

This document has been prepared for the purposes of the **PPP IN INFRASTRUCTURE RESOURCE CENTER FOR CONTRACTS, LAWS AND REGULATIONS (PPIRC)** website. It is a sample document FOR REFERENCE PURPOSES ONLY and SHOULD NOT BE used as a "model". The inclusion of any legal materials on the PPIRC website does not mean that they are in any way approved, endorsed or recommended by the World Bank Group or its affiliates. Legal advice should be sought to determine whether a particular legal document is appropriate for any given project, and how the specific terms of the document should be adapted to fit the circumstances of that project

Schedule 1 Part 1

Definitions

In this Agreement, the following words and phrases shall have the following meanings:

"Actual Commissioning Date" the date on which a Commissioning Certificate is issued for a Berth;

"Affected Party" as defined in clause 22.1;

"Agreement" the Concession Agreement entered into between the Ports Authority and the concessionaire of which this schedule is a part;

"Applicable Interest Rate" the interest rate applied against a sum at the rate of _____ per cent per annum (___% p.a.) above US\$ LIBOR in respect of sums payable in [_____] and at the rate of _____ per cent per annum (___% p.a.) above AWDR in respect of sums payable in [country currency] and paid for the period from but excluding the due date of such sum to and including the date such sum is actually received in cleared funds by the recipient;

"Approval Authorities" all Authorities whose consent or approval is required for the implementation of the Project and the performance of this Agreement and the other Project Documents in accordance with their respective provisions including:

- a) the Board of Investment in [_____];
- b) the Ministry of Finance of the Government;
- c) the Central Bank of [_____] and
- d) the Central Environment Authority;

"Assessment Information" as defined in clause 21.3;

"Assurance" as defined in clause 40.2(b);

"Authority" any national, regional or local authority, agency, ministry, minister, official or other organization or person (whether legal or natural), in each case of or in [_____] and including the Approval Authorities or any court, tribunal,

commission or arbitral body of competent jurisdiction, whose Directives are legally enforceable or with which it is usual to comply;

"AWDR" as defined in schedule 6;

"Bank" as defined in clause 24.8;

"Berth" either an Inner Berth or an Outer Berth, as the context requires;

"BOI Agreement" the agreement, in the agreed terms, between the Board of Investment in [_____] and the concessionaire concerning the availability of certain economic benefits to the concessionaire and commensurate responsibilities of the concessionaire;

"BQ" as defined in clause 12.3;

"Breakwater" the proposed breakwater to be built (if the Government so decides) south of quay which is to be the subject of the feasibility study contemplated by an agreement between the concessionaire and the Ports Authority;

"Bribery" as defined in clause 20.2(c);

"Builder" the counterparty or counterparties to the Building Contract during its subsistence;

"Building Contract" the contract or contracts entered, or to be entered, into between the Builder and the concessionaire for the construction of the Phase 1 Facilities and the Passenger Berth, in a form which contains provisions approved by the Ports Authority concerning its assignment to the Ports Authority or enabling the exercise of other step-in rights of the Ports Authority;

"Business Day" any day other than a Saturday, Sunday or Public Holiday in [_____];

"Business Plan" in respect of a financial year, a plan for the business of the concessionaire consisting of:

- a) the strategic development and marketing objectives of the concessionaire for that financial year,
- b) the operating and financial targets and forecasts of the concessionaire for that financial year including monthly income, balance sheet and cashflow statement; and

c) business and financial forecasts of the concessionaire for the four (4) financial years following that financial year,

"Buy Out Option" as defined in clause 2.5(j);

"Buy Out Price" the sum payable pursuant to clause 2.5 (l);

"Change in Law" the introduction, amendment or repeal of any Law or changes in the interpretation, application or enforcement of any Law directly affecting the Project that occurs subsequent to the date of signing this Agreement;

Comment [ID1]: Where a project is subject to competitive tendering it is better to use a number of days before the Tender Date as a reference point.

"Change in Law Event" as defined in clause 21.1;

"Clear Days" as defined under General Guide Lines to the Tariff as appears at the end of annex 1 to schedule 12;

"Collateral Warranties" means any and each of the collateral warranties from the Builder and the Designer respectively in favor of the concessionaire;

Comment [ID2]: Should this be to Port Authority as Concessionaire will be in direct contract with the Builder.

"Commissioning Certificate" the certificate issued in relation to a Berth by the Test Certifier pursuant to clause 10.1, in the form set out in schedule 16;

"Commissioning Test" as defined in clause 10.2;

"Companies Act" The [] Companies Act No 17 of 1982 as amended, varied or supplemented from time to time together with all statutory re-enactments thereof;

Comment [ID3]: Suggest this can be deleted as reference to number and date makes identification of location easier.

"Concession Area" as described in the first schedule to the Site Lease and depicted in schedule 17;

"Concession Term" as defined in clause 3.7;

"Consents" all licenses, consents, permits, authorizations and other approvals from any Authority or any other person (including the Identified Permits), which may be required at any time during the Concession Term, whether by law or for any other reason, to enable the concessionaire to perform its obligations under this Agreement;

"Construction Observer" a person appointed by the Ports Authority from time to time (pursuant to clause 9.14) to observe and inspect the Works;

"Construction Program" the timetable for the execution of the Works as set out in part 1 of schedule 9;

"Control" as defined in the Companies Act;

"Corrective Action Notice" as defined in clause 27.1;

"Corruption" as defined in clause 20.2(b);

"Cranes" as defined in clause 8;

"Credit Agreements" the loan agreement(s) entered into, or to be entered, into between the Lenders and the concessionaire to provide finance to the concessionaire in order that the concessionaire may fulfill its obligations under this Agreement;

"Debt" the obligation (whether present or future, actual or contingent, as principal or surety) for the payment or repayment of money (whether relating to interest, principal or otherwise) incurred in respect of:

- (a) moneys borrowed or raised;
- (b) any bond, note, loan stock, debenture or similar instrument;
- (c) any acceptance credit, bill discounting, note purchase, factoring or documentary credit facility;
- (d) the supply of any goods or services which is more than forty five (45) days past the due date;
- (e) any hire purchase agreement, conditional sale agreement or lease, where that agreement has been entered into primarily as a method of raising finance or financing the acquisition of an asset;
- (f) any guarantee, bond, stand-by letter of credit or other similar instrument issued in connection with the performance of contracts;
- (g) any interest rate or currency swap agreement or any other hedging or derivatives instrument or agreement;
- (h) any arrangement pursuant to which any asset sold or otherwise disposed of by a person is or may be leased to or reacquired by that person (whether following the exercise of an option or otherwise); or
- (i) any guarantee, indemnity or similar insurance against financial loss given in respect of the obligation of any person;

"Design Contract" the contract entered, or to be entered, into between the Designer and the concessionaires for the design of the Phase 1 Facilities and the Passenger Berth;

"Design Data" all calculations, designs, design information, specifications, plans, programs, computer software, drawings, graphs, sketches, models, samples and mock-ups and other documents prepared or to be prepared by or on behalf of the concessionaire in relation to the Works and the Operations;

"Design Solution" as defined in clause 9.2;

"Designer" the counterparty to the Design Contract;

"Directive" an instruction, request, guidance or other requirement of an authority which is legally enforceable or with which it is usual to comply;

"Disclosed Data" as defined in clause 40.1;

"End Date" as defined in clause 22.13;

"Excluded Assets" as defined in clause 35.2;

"Existing Superstructure" the breakwaters of the Port in existence as at the date of signature of this Agreement;

"Expert" as defined in clause 48.12;

"Extension Event" as defined in clause 9.16;

"Financial Model" the financial model which forms the basis for the termination Compensation Base Case and for purposes of clause 21;

"Financing Documents" the Credit Agreements and related security documentation;

"Forbearance" as defined in clause 44.2;

"Force Majeure" as defined in clause 22.4;

"Functional Requirements" as defined in clause 9.1;

"Good International Practice" the exercise of that degree of skill, diligence and prudence which would, in order to satisfy internationally expected standards of performance, reasonably be practiced by an experienced person holding all applicable qualifications who is engaged in the same type or similar types of activity under the same or similar circumstances. To avoid doubt, the parties agree that the standards of performance include those required to achieve the objective of establishing and then maintaining during the Concession Term, the Phase 1 Facilities as having the status of a world class, modern container

terminal, the main function of which is to be a central transshipment point in a container transport hub;

"Government" the Government of [_____];

"Handback Certificate" means a certificate in the form set out in part 3 of schedule 14;

"Handback Deficiency Bond" as defined in clause 26.10;

"Handback Deficiency Notice" as defined in clause 26.8(b);

"Handback Expert" as defined in clause 26.14;

"Handback Proposals" as defined in clause 26.3;

"Handback Requirements" the terms set out in part 1 of schedule 14;

"Handover" the date, no later than sixty (60) days after the Phase 1 Effective Date, on which the ports Authority gives the concessionaire peaceful and vacant possession of the Concession Area for the conduct of the business of a container handling terminal as contemplated by this Agreement, together with such access rights as are described in the Site Lease;

"Harbour Master" as defined in the [_____] Ports Authority Act;

"Holding Company" as defined in the Companies Act;

"ICC Centre" as defined in clause 2.5 (g) (iii);

"Identified Permits" the permits set out in schedule 4;

"Initial Inspection" as defined in clause 26.2;

"Initial Period" the period expiring on the second (2nd) anniversary of the date on which the Commissioning Certificate for the last of the three (3) Inner Berths is issued;

"Initial Shareholders" the Shareholders as described in schedule 20;

"Inner Berth" any and each of the three (3) berths comprising the Phase 1 Facilities;

"Innocent party" as defined in clause 34.4;

"Insolvent Sponsor" as defined in clause 30.1(a);

"Intellectual Property Rights" all rights to registered or unregistered trade marks, service marks, patents, registered designs, utility models, applications for any of the foregoing, copyrights, unregistered designs, confidential information, know-how or other intellectual property rights of any nature;

"Inter-Terminal Operations Agreement" the agreement entered, or to be entered, into between the Ports Authority and the concessionaire concerning the movement of containers between the various container facilities within the Port in the agreed terms;

"JCT" the Jaye Container Terminal located within the Port;

Comment [ID4]: Not sure what this refers to?

"Law" any applicable [_____] law, statute, proclamation, by-law, directive, decision, regulation, rule, order, notice, judicial order or judgment or delegated or subordinated legislation including directions or guidance issued pursuant to any legislation;

"LCL" as defined under General Guide Lines to the Tariff as appears at the end of annex 1 to schedule 12;

"Lender" the International Finance Corporation, [_____]Development Bank, Commonwealth Development Corporation and/or any other lender from whom Loan Finance for the Project has been or is to be obtained, so long as any sums are due and owing by the concessionaire to such Lender,

Comment [ID5]: Suggest reference to any lenders could enable project to be identified.

"Lenders' Direct Agreement" the agreement to be entered into among the Lenders, the Ports Authority and the concessionaire;

"Life-Cycle Maintenance" all life-cycle maintenance, including all major and structural maintenance, replacement or refurbishment planned over the whole life of the Phase 1 Facilities;

"Loan Finance" the finance to be made available to the concessionaire pursuant to the Credit Agreements;

"Management Contract" the management services contract entered, or to be entered into, between the concessionaire and P&O Ports Limited in the agreed terms;

"Management Services Provider" as defined in clause 15(b);

"Masters Attendant Ordinance" the Masters Attendant Ordinance, [____], as amended;

Comment [ID6]: Suggest reference to legislation should be made more general.

"Milestone" each event set out in part 2 of schedule 9;

"Milestone Achievement Date" the date on which a Milestone is in fact achieved;

"Milestone Sunset Date" the date set out in part 2 of schedule 9 as extended (if at all) pursuant to an Extension Event;

"Minister" the Minister of the Government in charge of the subject of ports or the Port;

"Operation Period" as defined in clause 3.7(c);

"Operations" all the activities relating to the option, maintenance and repair of the Phase I Facilities necessary to meet the requirements of this Agreement;

"Operator" any person who carries out all or a major part of the functions of an operator of the Phase 1 Facilities;

"Outer Berth" any and each of the proposed four (4) berths in the Phase 2 Facilities;

"Outer Harbour" the area to be enclosed by the Breakwater;

"Party" party to this Agreement and the respective successors in title and permitted assignees of such party;

"Party in default" as defined in clause 34.4;

"Passenger Berth" the passenger berth contemplated in conjunction with the Phase 1 Facilities and described in section 2 of part 1 of schedule 3 and section B of part 1 of schedule 8 and completed and commissioned as contemplated in part 2 of schedule 9;

"Phase 1 Conditions Precedent" the conditions precedent set out in schedule 5;

"Phase 1 Effective Date" as defined in clause 3.3;

"Phase 1 Facilities" the container handling facilities (including quay walls and other infrastructure and superstructure and all fixtures, fittings and Plant) relating to the three (3) berths to be constructed on the inner harbour at quay, as described in part 1 of schedule 3;

"Phase 2 Facilities" the container handling facilities (including quay walls and other infrastructure and superstructure and all fixtures, fittings and Plant) relating to the four (4) proposed berths on the seaward wall of quay, as described in part 2 of schedule 3;

"Plant" machinery, apparatus, equipment and any other moveable assets of any nature intended to form, or forming part of the Phase 1 Facilities, including without limitation all maintenance equipment and spare parts;

"[] Group" []

"[] Support Letter" the letter, in the form approved by the Ports Authority, concerning the support to be given by the [];

"Port" the Port of [];

"Port Services" as defined in clause 11.1;

"Port Services Agreement" the agreement entered, or to be entered, into between the Ports Authority and the concessionaire for the provision of services by the Ports Authority in relation to the container terminal facilities to be operated by the concessionaire pursuant to this Agreement in the agreement terms;

"Ports Authority Warranties" those Warranties contained in part 2 of schedule 2;

"Ports Authority's Shares" the fifteen percent (15%) equity in the concessionaire held by and issued to the Ports Authority; half of which shall be in consideration of the transfer value of Cranes and the other half of which shall be paid for in cash;

Comment [ID7]: Suggest percentage be leaved blank.

"Project" as defined in clause 5.1;

"Project Acts and Omissions" as defined in clause 38.1;

"Project Documents" this Agreement, the BOI Agreement, the Building Contract, the Design Contract, the Inter-Terminal Operations Agreement, the

Management Contract, the Port Services Agreement, the Site Lease and the Terminal Access Agreement;

"Protected Persons" as defined in clause 40.2;

"[___ Quay]" the [_____] Quay located within the Concession Area;

"Reactive Maintenance" all maintenance, repair, replacement or refurbishment which is outside the scope of Life-Cycle Maintenance and Routine Maintenance, and which is necessary or desirable to remedy damage to or defects in the Phase 1 Facilities or otherwise restore the Phase 1 Facilities;

"Reference Date" as defined in clause 22.13;

"Regulator" the person who it is contemplated will in due course be appointed by the Government pursuant to statute to oversee and regulate some or all of the matters which are the subject of this Agreement as more particularly described in schedule 10;

"Remedial Period" as defined in clause 27.1;

"Remedial Program" as defined in clause 34.4(b);

"Renewal Construction Program" as defined in clause 26.3(c);

"Renewal Amount" as defined in clause 26.3(d);

"Renewal Amount Bond" as defined in clause 26.5(a);

"Renewal Works" as defined in clause 26.3(b);

"Rival Port" a port which:

- a) handles or is designed to handle more than one million five hundred thousand (1,500,000) TEU per year within five (5) years of Handover, and
- b) at least forty per cent (40%) of the capacity of which is used for transshipment cargo;

"Routine Maintenance" maintenance, repair or replacement which is routine, minor, short term or cyclical in nature and necessary or desirable to keep the Phase 1 Facilities in good and safe working order,

"Royalties" the sums payable by the concessionaire to the Ports Authority

Comment [ID8]: Suggest that number be left blank

pursuant to the provisions of schedule 6;

"[currency]" the lawful currency of the [_____] from time to time;

"The concessionaire Associates" as defined in clause 38.1;

"the concessionaire maintenance policy" the standards, specifications, procedures and other requirements for the provision of maintenance set out or identified in schedule 18;

"The concessionaire Warranties" those Warranties contained in part 1 of schedule 2;

"Security Interest" any mortgage, charge, pledge, lien, encumbrance, right of set off, hypothecation or assignment by way of security, retention of title or ownership or any other agreement or arrangement having the effect of conferring security, however created;

Services" as defined in schedule 12;

"Shareholders Agreement" the agreement between the shareholders of the concessionaire and the concessionaire relating, amongst other things, to the participation of the shareholders in the concessionaire;

Significant Port Interest" as defined in clause 4.2;

"Site Lease" the lease of the land constituting the Concession Area to be entered into by the Ports Authority and the concessionaire in the agreed terms and the conferring of rights of access to the Concession Area on the concessionaire;

Sponsors" [_____]

"Ports Authority Act" the [_____] Ports Authority Act No. [_____] amended, varied or supplemented from time to time together with all statutory reenactments thereof;

"Tariffs" as defined in schedule 12;

"Tax" includes any and all forms of taxes, levies, imposts, duties and charges and all withholdings and deductions in respect of taxes, levies, imposts, duties and charges of whatever nature and whether directly or primarily chargeable against, recoverable from, or attributable to the concessionaire or another

Comment [ID9]: Unusual for the definite article to be used to establish alphabetical order of definitions although in this case "t" comes before "s".

person, including those on or relating to: income, profits, gains, dividends, other distributions (of cash or non-cash assets), turnover, receipts, sales, consumption, use, transfer, ownership, inheritance, occupation, moveable property, land or other immoveable property, the cessation of business, the transfer of fiscal residence or domicile, insurance or social security contributions, documentary taxes, customs, excise and other import and export duties, repatriation of monies outside [_____], the conversion of currency, the creation, transfer, increase or repayment of share capital;

"Terminal Access Agreement" the agreement to be entered into by the Ports Authority and the concessionaire in the agreed terms giving the Ports Authority rights of access to the Concession Area during the Concession Period inter alia to facilitate berthing and unberthing of passenger vessels;

"Termination Compensation" the compensation payable pursuant to clause 36;

"Termination Compensation Base Case" the amount of compensation set out in the column headed "Compensation" in the table set out in part 2 of schedule 19;

"Terms" as defined in clause 2.5(d);

"Test Certifier" the Expert appointed pursuant to clause 10;

"TEU" as defined in schedule 6;

"Total Annual Throughput" as defined in schedule 6;

"Transfer Committee" the committee set up pursuant to clause 37.2;

"Transfer Date" the last day of the Concession Term;

"Transfer Price" as defined in clause 26.5(a);

"Trust Account" the trust account established pursuant to clause 24.7;

"UNCITRAL" as defined in clause 48.4;

"[_____]" the lawful currency of the United States of America from time to time;

"USCPI" the United States Consumer Price Index for all urban consumers

Comment [ID10]: Reference to dollars could be put back.

(CPI-U) published monthly by the United States Bureau of Labour Statistics within the United States Department of Labour, an index using a base of 100, last rebased in 1982;

"Warranties" the representations, warranties and undertakings contained in schedule 2; and

"Works" all the activities relating to the design, construction, equipping, commissioning and testing of the Phase 1 Facilities necessary to meet the requirements of this Agreement.

SAMPLE

Schedule 1
Part 2
Interpretation

This Agreement shall be interpreted according to the following provisions:

1. The headings and sub-headings in this Agreement (and references to them) are included for convenience only and shall not be taken into account in interpreting this Agreement.
2. The schedules form an integral part of this Agreement and have the same full force and effect as if they were set out in the body of this Agreement
3. The provisions in the body of this Agreement shall prevail in the event of any conflict between such provisions and the provisions of the schedules.
4. A reference to a person shall include reference to any natural person, corporation (wherever incorporated), partnership, unincorporated association, any form of governmental or supra governmental body, agency or authority (whether federal, national, provincial or otherwise) and any other entity or association of any nature (in each case whether or not having legal capacity).
5. In this Agreement, the interpretation rule known as the *eiusdem generis* rule shall not apply, nor shall any similar rule or approach to interpretation, and accordingly where a general statement is followed by the word "including" or "in particular" or where in some other way specific examples are given of matters included in the general statement the word "including" or "in particular" or the specific examples shall not limit the scope of the ordinary meaning of the general statement.
6. Where any word or expression is given a defined meaning, any other grammatical form of that word or expression shall have a corresponding meaning, where the context requires.
7. Where the context requires:
8. the singular includes the plural and vice versa; and
9. The masculine includes the feminine and the neuter and vice versa.
10. Wherever provision is made for the giving or issuing of any notice, endorsement, consent, approval, certificate or determination by any

person, unless otherwise specified, such notice, endorsement, consent, approval, certificate or determination shall be in writing and the words "notify", "endorse", "approve", "certify" or "determine" shall be construed accordingly. Where any notice, consent or approval is to be given by the Ports Authority, the notice, consent or approval shall be given on its behalf only by any of the Chairman or the Managing Director of the Ports Authority or such other person specifically authorized by the Board of Directors of the Ports Authority.

11. Any consent or approval to be given by the Ports Authority under this Agreement may be granted or withheld by the Ports Authority, acting reasonably, except where there is an express provision to the contrary.
12. The language of this Agreement is English. All correspondence, drawings, Design Data, test reports, certificates, specifications and information between the parties shall be entirely in English.
13. References to any Law are to be construed as references to that Law as from time to time amended or to any Law from time to time replacing, extending, consolidating or amending the Law.
14. References to this Agreement and any agreement or document include (subject to all relevant consents) a reference to that agreement or document as varied, substituted, novated or assigned.
15. References to a public organization shall be deemed to include a reference to any successor to such public organization or any organization or entity which has taken over either or both of the relevant functions and responsibilities of the public organization.
16. Each of the concessionaire's and the Ports Authority's obligations, duties and responsibilities shall be construed as separate obligations, duties and responsibilities owed to the Ports Authority and the concessionaire respectively.
17. Where this Agreement states that an obligation shall be performed "no later than" or "Within" a prescribed number of days after a stipulated date or event (the "base date") or "by" a date which is a prescribed number of days after a base date, time shall be counted in calendar days and, subject to paragraph 17, the latest time for performance shall be noon on the last day for performance of the obligations concerned.
18. Where this Agreement states that an obligation shall be performed "no later than" or "by" a prescribed number of days before a base date or

"by" a date which is a prescribed number of days before a base date, time shall be measured in calendar days and, subject to paragraph 17, the latest time for performance shall be noon on the last day for performance of the obligations concerned.

19. Where, pursuant to paragraphs 15 or 16, the last day for performance of an obligation under this Agreement falls on a day which is not a Business Day, the latest time for performance shall be ended to noon on the next following Business Day.
20. Any reference to a document in the agreed terms is to the form of the relevant document agreed between the parties and for the purpose of identification initialled by each of them or on their behalf (in each case with such amendments as may be agreed by or on behalf of the parties).
21. Unless the context requires otherwise, in this Agreement all references to time are to time in [_____].

Schedule 2
Part 1

The concessionaire Warranties

Corporate

1. The concessionaire is a limited liability company duly incorporated and validly existing as an independent legal entity under the laws of [_____].
2. The concessionaire has all necessary legal capacity to enter into and perform all its obligations and to exercise all its rights under this Agreement and the other Project Documents.
3. The concessionaire has taken all necessary corporate action to authorize the entry into and performance of this Agreement and the other Project Documents and the signatories on behalf of the concessionaire to each of the Project Documents to which the concessionaire is a party has been duly authorized to execute and deliver this Agreement and the other Project Documents on behalf of the concessionaire.
4. No order has been made or petition presented or filed in any court of competent jurisdiction or resolution passed for the appointment of an administrative or other receiver, manager or liquidator of the concessionaire or any person with a similar function, or for its winding up, nor has any distress, execution or other process been levied on the concessionaire or any of its assets.
5. Except as expressly described in this Agreement or the other Project Documents, since its incorporation, the concessionaire has not undertaken any trading, has incurred no borrowings and has not incurred any liabilities of any nature whatsoever, whether actual or contingent.
6. The concessionaire does not enjoy and has obtained warranties from the other contracting parties to each of the Project Documents (except for the Ports Authority and any Authority to which this Warranty does not apply) that they do not enjoy, under the laws of any jurisdiction, any right of immunity from suit, judgement, set-off, execution on a judgement, attachment or other legal process concerning any of its obligations under any of the Project Documents.

7. To the best of the concessionaire's knowledge, information and belief, no litigation, administrative, arbitration or other proceedings before any court or any judicial, administrative or other authority, arbitrator or other person is taking place, pending or threatened against the concessionaire or against any of its assets.
8. On the Phase 1 Effective Date the information contained in schedule 20 (initial capitalization) is true and complete in all respects and there is no matter which renders any such information untrue, incomplete or misleading.

Commercial

1. Each of the Project Documents is or on the Phase 1 Effective Date will be in full force and effect and:
 - (a) all obligations expressed to be assumed by the concessionaire under each of the Project Documents (other than the Building Contract) to which it is a party constitute legal, valid, binding and enforceable obligations of the concessionaire in accordance with the respective provisions of the Project Documents (other than the Building Contract) (it being acknowledged and agreed that enforceability is subject to limitations under the general law resulting from insolvency laws or similar laws of general application affecting creditors' rights and the discretionary power of courts to make certain orders and grant certain remedies); and
 - (b) all obligations expressed to be assumed by contracting parties to the Project Documents other than the concessionaire (except for the Ports Authority and any Authority to which this Warranty does not apply) to the best of the concessionaire's knowledge, information and belief constitute legal, valid, binding and enforceable obligations of the person in question in accordance with the provisions of the Project Document (it being acknowledged and agreed that enforceability is subject to limitations under the general law resulting from insolvency laws or similar laws of general application affecting creditors' rights and the discretionary power of courts to make certain orders and grant certain remedies) and the concessionaire has obtained a warranty to that effect in the relevant Project Document from the person in question.
2. The entry into and performance of this Agreement and the other Project Documents by the concessionaire does not and will-not conflict with any

restriction or other obligation which is legally binding on the concessionaire or any of its present or future assets.

3. The information contained in the Business Plan (in so far as such information does not represent an opinion, intention, projection or forecast) is true and accurate in all material respects.
4. The opinions, intentions, projections and forecasts contained in the Business Plan and the assumptions on which they are based are made or given in good faith and after careful consideration and enquiry of all relevant circumstances genuinely reflect the concessionaire's views and are fair and reasonable.
5. Nothing has occurred since the date of the Business Plan which:
 - (a) renders any of the information contained in it false or misleading; or
 - (b) Adversely affects any of the opinions, intentions, projections and forecasts contained in it.
6. To the best of the concessionaire's knowledge, information and belief, neither the concessionaire nor any Sponsor, nor any of their respective group or associated companies, nor any of their respective officers, employees or authorized agents has committed any act of Bribery or Corruption.
7. The information disclosed by the concessionaire by letter dated [] to the Ports Authority as to the current and planned activities of the persons identified therein with regard to obtaining a Significant Port Interest within the meaning of either clause 4.3 or clause 4.4 is true, complete and up to date.

**Schedule 2
Part 2**

The Ports Authority Warranties

1. The Ports Authority is a statutory corporation duly established and validly existing as an independent legal entity under the laws of [_____].
2. The Ports Authority has all necessary legal capacity to enter into and perform all its obligations under this Agreement and those other Project Documents to which it is a party.
3. The Ports Authority has been duly authorized by its Board of Directors, at a duly convened meeting of the Board of Directors of the Ports Authority, to enter into this Agreement and other Project Documents to which it is a party and perform the obligations undertaken by the Ports Authority in terms of this Agreement and the other Project Documents to which it is a party.
4. The Ports Authority does not enjoy, under the laws of any jurisdiction, any right of immunity from suit, judgement, set-off, execution on judgement, attachment or other legal process concerning any of its obligations under this Agreement and/or the other Project Documents to which it is a party.
5. To the best of its knowledge, information and belief, no litigation, administrative, arbitration or other proceedings before any court or any judicial, administrative or other authority or arbitrator is taking place, pending or threatened against the Ports Authority concerning entry into this Agreement and/or any of the other Project Documents to which it is a party and/or the performance of the obligations undertaken by the Ports Authority in terms of this Agreement and/or the other Project Documents to which it is a party.
6. All obligations expressed to be assumed by the Ports Authority under this Agreement and the other Project Documents to which it is a party constitute legal, valid, binding and enforceable obligations of the Ports Authority (it being acknowledged and agreed that enforceability is subject to limitations under the general law resulting from insolvency laws or similar laws of general application affecting creditors' rights, and the discretionary power of courts to make certain orders and grant certain remedies) and the entering into or performance of this

Agreement or the other Project Documents to which it is a party will not conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default or require any consent under any instrument or arrangement to which the Ports Authority is party and by which it is bound or violate any of the terms of the [_____]Ports Authority Act and regulations made thereunder and any other statute, rule or regulation applicable to the Ports Authority or any writ, order, injunction or judgement by which the Ports Authority is bound.

7. The Ports Authority shall, upon application by the concessionaire grant all such Consents (with the exception of the Identified Permits to be issued by any Authority other than the Ports Authority) as the Ports Authority may be required to give under Law and are such as are required for the performance of the concessionaire's obligations under this Agreement.
8. That:
 - (a) the use by the concessionaire of the Concession Area in the manner contemplated by this Agreement will not contravene any Law and that the Ports Authority is the sole legal and beneficial owner of the Concession Area; and
 - (b) the transfer of employees as contemplated by this Agreement is valid and does not contravene any Law or collective agreement or impose on the concessionaire any obligations further to those identified in this Agreement; and
 - (c) The Concession Area and/or the cranes transferred by the Ports Authority pursuant to clause 8 are not and if properly used or operated by the concessionaire do not constitute an environmental hazard or a source of pollution or contamination.
9. The Ports Authority is the legal and beneficial owner of the Cranes free from any encumbrance, lien, claim or interest of any other person.

**Schedule 3
Part 1
The Phase 1 Facilities and Passenger Berth**

[]

**Schedule 3
Part 2
The Phase 2 Facilities**

[]

SAMPLE

Schedule 4

The Identified Permits

[]

SAMPLE

Schedule 5

The Phase 1 Conditions Precedent

In this schedule, a certified copy means a document certified by a director or secretary of the concessionaire as being a true and complete copy of the document which is and shall remain in full force and effect up to and including the Phase 1 Effective Date.

Conditions precedent to be fulfilled by the concessionaire:

A. Delivery by the concessionaire to the Ports Authority, in form and substance satisfactory to the Ports Authority (acting reasonably), of the following documents:

1. A duly certified copy of the concessionaire's certificate of incorporation and of any certificate of incorporation on change of name or certificate on re-registration as a public company);
2. A certified copy of the Memorandum and Articles of Association of the concessionaire in the form approved by the Lenders and all shareholders of the concessionaire;
3. Certified minutes of a meeting of the Board of Directors of the concessionaire evidencing:
 - (a) Consideration by the directors of:
 - (i) a draft of this Agreement and the other Project Documents;
 - (ii) the concessionaire's rights and obligations under the proposed Project Documents; and
 - (iii) the legal capacity of the concessionaire to undertake the Project and enter into and perform the Project Documents and the authority of the directors to exercise the powers of the concessionaire to do the same; and
 - (b) a valid resolution of the directors approving the execution, delivery and performance by the concessionaire of each of the Project Documents and authorizing two directors to witness the affixing of the company's seal and to sign each of the Project Documents on behalf of the concessionaire and to approve any changes to the draft Project

Documents produced to the directors and authorizing a specified person or persons to sign and dispatch or to receive all notices and other communications required or permitted to be given by or to the concessionaire under any of the Project Documents;

4. A specimen of the signature of each person authorized by the concessionaire to witness the affixing of the company's seal and to sign any Project Document and to sign and dispatch or to receive all notices and other communications required or permitted to be given by or to the concessionaire under any of the Project Documents.
5. Documentary evidence of the execution and delivery of each of the Project Documents and of the satisfaction or waiver of any conditions precedent under each of the Project Documents, except for any condition precedent requiring the satisfaction or waiver of any of the Phase 1 Conditions Precedent pursuant to this Agreement.
6. Documentary evidence of the receipt by the concessionaire of all Identified Permits (and any other applicable Consents) as listed under section A of schedule 4.
7. Documentary evidence that the concessionaire has taken out the insurances required by clause 24 (other than those insurances relating to construction which cannot be procured until after the Handover).
8. The Collateral Warranties (other than those which cannot be procured until after the Handover), duly executed and delivered.
9. The [_____] Group Support Letter duly executed and delivered.
10. The lawful allotment and issue, duly authorized and fully paid up, with relevant share certificates of one half of the Ports Authority's Shares, and the transfer to the concessionaire of the three (3) gantry cranes currently located on the [_____] in accordance with the provisions of clause 8.
11. A letter from the concessionaire (or other documentary evidence) which confirms that the preliminary tests and inspections required to be undertaken in order to establish the viability of the Design Solution have been completed.

12. Entering into an agreement or arrangement with that number of persons determined by the concessionaire as the minimum number of employees required to perform its obligations under this Agreement, such agreement or arrangement to be with the employees themselves or with trade unions representing such employees.
13. Confirmation from the concessionaire that it has satisfied itself as to the nature and extent of the conditions of or affecting the Concession Area (including climatic, hydrological, hydro geological, ecological, environmental, geotechnical and seismic conditions) insofar as the preliminary inspection tests disclose the ground and the sub-soil, the seabed, the geographical area and nature of the Concession Area and the risk of injury or damage to property affecting the Concession Area, the nature of the materials (whether natural or artificial) to be excavated and the nature and extent of the design, work and materials necessary for the execution of the Works.
14. Information as to the current and planned activities of each of:
 - a. The Concessionaire;
 - b. any and all subsidiaries or subsidiary undertakings of the concessionaire;
 - c. the Sponsors;
 - d. any and all subsidiaries or subsidiary undertakings of the Sponsors; and
 - e. the [_____]Company;
 - f. With regard to ownership, operation or management of or provision of services to any container port facilities within an area comprising the [_____]
15. Execution of the requisite direct agreements with the Lenders.
16. Execution of the Financing Documents by all parties to such documents.

B. There is no breach of any of the Warranties applying to the concessionaire.

Conditions precedent to be fulfilled by the Ports Authority

C. Delivery by the Ports Authority to the concessionaire in form and substance satisfactory to the concessionaire (acting reasonably), of the following:

1. The execution by the Ports Authority of the Port Services Agreement, the Shareholders Agreement, the Inter-Terminal Operations Agreement, the Terminal Access Agreement, the Site Lease and the BOI Agreement.
2. The Government furnishing to and the concessionaire the concessionaire having received a counterpart executed by the Government of the Implementation Agreement in a form reasonably satisfactory to the concessionaire and the Lenders and the satisfaction or waiver of all conditions precedent to the effectiveness of the Implementation Agreement.
3. The concessionaires having received evidence of the authority of the person or persons, who will on behalf of the Ports Authority, sign this Agreement.
4. The concessionaire having received a legal opinion from counsel for the Ports Authority in a form and substance reasonably satisfactory to the concessionaire with respect to (insofar as concerns the Ports Authority) the due authority, valid existence, execution, delivery and performance of this Agreement, the Port Services Agreement, the Shareholders Agreement, the Inter-Terminal Operations Agreement, the Terminal Access Agreement and the Site Lease and confirming that all necessary Governmental approvals to enable the Ports Authority to enter into such agreements including the approval of the Cabinet of Ministers of the Government (not limited to Consents) have been secured.
5. The demarcation of the access road to the Concession Area in a manner satisfactory to the concessionaire.
6. The designation of the Port as a priority service zone for the provision and/or connection of power and water.
7. The execution by the Government of a direct agreement with the Lenders.

D. There is no breach of any of the Warranties applying to the Ports Authority.

Schedule 6

Payment of royalties

The concessionaire shall pay fees to the Ports Authority for the containers handled within the Concession Area based on the number of TEU handled over the ship's rail in each Contract Year, such fees being calculated and payable on the terms set out in this schedule.

Definitions

1. For the purpose of this schedule, the following words and phrases shall have the following meanings:

"AWDR" the average weighted deposit rate for [country currency] as announced from time to time by the Central Bank of [_____];

"Contract Year" each successive period of 365 days (or 366 days if a leap year occurs), the first such period beginning on Handover,

"Phase 1 Effective Date" as defined in clause 3.3 in the main text of this Agreement;

"Royalties Payment Date" the [_____] day of the month following the month to which the relevant payment relates PROVIDED that should such [_____] day not be a Business Day, the Royalties Payment Date shall be the following Business Day;

"Tariffs" the fees charged (in the [country currency]/[_____] from time to time by the concessionaire for the provision by the concessionaire of each and any of the Services to its Users;

"TEU"(twenty foot equivalent unit) the standard unit of measurement for containers used throughout the international shipping industry;

"TEU Fee" the fee for each TEU handled over the ship's rail referred to in paragraph 3 (during the first three Contract Years) or paragraph 4 (after the end of the third Contract Year) below (as appropriate);

"Total Annual Throughput" in any Contract Year, the total number of TEU handled over the ship's rail at the ship-to-shore interface within the Concession Area;

"Users" the users, clients or customers of the concessionaire; and

"US\$ LIBOR" the rate per annum at which deposits in [] in an amount approximately equal to the sums outstanding from time to time under this schedule are offered by leading banks in the []Eurodollar Market for a period equal to the time during which the said sums are outstanding;

Royalties payable for each Contract Year

2. For each Contract Year, the concessionaire shall pay the Ports Authority a sum calculated by multiplying (i) the Total Annual Throughput by (ii) the TEU Fee.

TEU fee payable during the first three Contract Years

3. Depending on Total Annual Throughput, the TEU Fee during the first three (3) Contract Years shall be:
 - (a) \$[]() should the Total Annual Throughput be between [] and [] TEU; or
 - (b) \$[] () should the Total Annual Throughput be between [] and [] TEU; or
 - (c) \$[] () should the Total Annual Throughput be over [] TEU.

Having been calculated in accordance with the above scale, the TEU Fee in a Contract Year shall be payable on the whole of the Total Annual Throughput for that Contract Year (for example []).

For the [] Contract Year, the concessionaire shall guarantee a throughput of [] TEU.

TEU fee payable after the first three Contract Years

4. For the fourth (4th) and following Contract Years, the TEU fee shall be []being a rate guaranteed by the concessionaire regardless of Total Annual Throughput;

PROVIDED that

- (a) should the Total Annual Throughput be below [] TEU, the sum which the concessionaire shall pay pursuant to

paragraph 2 above shall be calculated using a deemed Total Annual Throughput of [_____] TEU;

- (b) should the concessionaire in a Contract Year be prevented from handling containers within the Concession Area because of an event of Force Majeure within the meaning of clause 22.5 or clause 36.4 such deemed Total Annual Throughput shall be reduced to the actual throughput during the period in which the Force Majeure event or the inability to substantially perform continues;
- (c) the occurrence prior to the third or fourth (4th) Contract Year as is relevant of an event of Force Majeure under clauses 22.5 or 36.4 shall extend the date of commencement of the provisions of this paragraph 4 and the provisions of paragraph 3 as relates to the guaranteed throughput in the third (3rd) Contract Year for a period equal to the period during which the Force Majeure or the inability to substantially perform continues; and
- (d) where the concessionaire has made a claim on its insurers in respect of lease rentals and such insurers have confirmed to the Ports Authority that an event of Force Majeure has occurred during the relevant period the deemed Total Annual Throughput referred to in sub-clause (a) shall be adjusted such that,
 - (i) a proportionate part of such deemed Total Annual Throughput shall apply when there is no event of Force Majeure; and
 - (ii) Actual throughput shall apply during the period in which the Force Majeure event or the inability to substantially perform continues.

Increase of TEU Fees

- 5. On the first day of the fifth (5th) Contract Year, the TEU Fee shall be increased by the same percentage that the concessionaire's Tariffs have been increased (save that attributable to domestic container storage charges) since the Phase 1 Effective Date, such percentage being the weighted average percentage increase in the concessionaire's Tariffs. In the case of the first (1st) year where such increase is applicable, the percentage increase shall be computed on the basis of the Tariff levels set out in the Sponsors' proposal dated [_____] addressed to the Ministry of Shipping, Ports, Rehabilitation

Comment [ID11]: This could identify country of project.

and Reconstruction, which shall be used as the denominator. Thereafter actual Tariffs shall be used as the denominator.

For the purpose of this paragraph 5, "weighted average percentage increase" shall mean the percentage figure obtained by comparing the total Tariff revenue earned by the concessionaire (save that attributable to domestic container storage charges) during the first four (4) Contract Years with the amount of total Tariff revenue that the concessionaire would have earned (save that attributable to domestic container storage charges) during the first four (4) Contract Years had the concessionaire been charging its Users on the basis of the concessionaire's Tariffs in place on the first day of the fifth (5th) Contract Year.

6. During the fifth (5th) and following Contract Years, whenever there is an increase in the concessionaire's Tariff revenue (save that attributable to domestic container storage charges), the TEU Fee shall be increased by the same percentage that the concessionaire's Tariff revenue (save that attributable to domestic container storage charges) are increased, such percentage being the weighted average percentage increase in the concessionaire's Tariff revenue (save that attributable to domestic container storage charges).

For the purpose of this paragraph 6, following an increase in the concessionaire's Tariffs (save that attributable to domestic container storage charges), "weighted average percentage increase" shall mean the percentage figure obtained by comparing the Tariff revenue earned by the concessionaire (save that attributable to domestic container storage charges) in the previous calendar year with the amount of Tariff revenue that the concessionaire would have earned (save that attributable to domestic container storage charges) in that calendar year had the concessionaire been charging its Users such increased the concessionaire Tariffs.

Payment arrangements

7. All sums payable by the concessionaire to the Ports Authority pursuant to this schedule shall be paid monthly in arrears on each Royalties Payment Date.
8. During the first two (2) Contract Years, the TEU Fee used to calculate the amount due on each Royalties Payment Date shall be set in accordance with paragraph 3 above by estimating the likely Total Annual Throughput by projecting from the number of containers handled within the Concession Area from the beginning of the relevant Contract Year to the end of the relevant month.

9. At the end of each of the first two (2) Contract Years, the appropriate TEU Fee shall be assessed in accordance with paragraph 3 and paragraph 4 above and shall be applied to the actual Total Annual Throughput for the relevant Contract Year.
 - (a) Should the aggregate of the monthly sums paid to the Ports Authority on each Royalties Payment Date during that Contract Year be greater than the sums payable for that Contract Year pursuant to paragraph 2 above following the above assessment of the TEU Fee, the Ports Authority shall repay the difference to the concessionaire on the 15th day following the end of that Contract Year (provided that if that 15th day is not a Business Day, the Ports Authority shall make such payment on the preceding Business Day).

Alternatively,
 - (b) should the aggregate of the monthly sums paid to the Ports Authority on each Royalties Payment Date during that Contract Year be less than the sums payable for that Contract Year pursuant to paragraph 2 above following the above assessment of the TEU Fee, the concessionaire shall pay the difference to the Ports Authority on the 15th day following the end of that Contract Year (provided that if that 15th day is not a Business Day, the concessionaire shall make such payment on the preceding Business Day).
10. On each Royalties Payment Date, the concessionaire shall supply the Ports Authority with a written statement in a form acceptable to the Ports Authority summarizing the TEU throughput for the relevant month and showing the calculation of the sum being paid by the concessionaire on that Royalties Payment Date. The written statement shall be certified as true and accurate by an authorized officer of the concessionaire and shall be supported by such documentation as is necessary to evidence or demonstrate the accuracy of the information contained in statement.
11. All sums payable by the concessionaire to the Ports Authority pursuant to this schedule shall be paid into such account as the Ports Authority shall nominate to the concessionaire from time to time.

Accountant's certificate

12. At the concessionaire's cost, within thirty (30) days of the end of each Contract Year, the concessionaire shall supply the Ports Authority with

a certificate stating the sum due for that Contract Year by the concessionaire pursuant to paragraph 2 above. The certificate shall be issued by the concessionaire's auditors. The concessionaire shall make available to the auditors all documents and information required or requested by the auditors in order that the auditors may issue the certificate.

Default interest

13. A party (the "defaulting party") shall on demand pay interest to the other party on any sum that is payable by the defaulting party to the other party pursuant to this schedule but which is not paid in full in cleared funds on the due date for payment of such sum. Such interest shall be applied against such unpaid sum at the rate of [____] per cent per annum ([__]% p.a.) above US\$ LIBOR in respect of sums payable in [____] and at the rate of [____] per cent per annum ([__]% p.a.) above AWDR in respect of sums payable in [country currency] and shall be paid for the period from and including such due date to and including the date the non-defaulting party actually receives payment in cleared funds.

No deductions

14. All sums payable by the concessionaire pursuant to this schedule shall be paid in full, without set-off or counterclaim and free and clear of and without deduction of or withholding for or on account of any Tax or any restrictions or conditions of any nature, unless the concessionaire is required by law to make any such deduction or withholding.
15. If the concessionaire is required by law to make any such deduction or withholding, then the concessionaire shall ensure that such deduction or withholding shall not exceed the minimum legal liability therefore and the concessionaire shall within thirty (30) days thereafter forward to the Ports Authority an official receipt or other official documentation evidencing payment of the deduction or withholding.
16. If the concessionaire is required by law to make any such deduction or withholding, then the concessionaire shall only be obliged to pay the Ports Authority the resulting net sum, PROVIDED that the concessionaire shall pass all relevant documentation to the Ports Authority necessary to enable the Ports Authority to claim a tax credit in respect of the deduction or withholding from the relevant tax authorities. The concessionaire shall co-operate with the Ports Authority to enable it to obtain such tax credit and the concessionaire shall assist the Ports

Authority quickly and fully in any request by the Ports Authority for information or further documentation.

17. Should the Ports Authority be unable to obtain a tax credit in full due to:
- (a) a mistake by the concessionaire in making the deduction, withholding or remittance in the first place; or
 - (b) the concessionaire, in the Ports Authority's reasonable opinion, failing to cooperate with the Ports Authority in the manner provided in paragraph 16 above,

then the Ports Authority shall return all documents received from the concessionaire in connection with the tax credit application, whereupon the concessionaire shall on demand pay the Ports Authority such additional sum as shall result (when taken together with the net payment already made to the Ports Authority by the concessionaire) in the receipt by the Ports Authority of a net amount equal to the full amount which would otherwise have been receivable under this schedule had no such deduction or withholding been required. The concessionaire shall on demand pay the Ports Authority default interest as provided in paragraph 13 above on such additional sum from the date on which the original payment had been due to the Ports Authority to the date on which actual payment is received by the Ports Authority.

Security

18. The concessionaire shall provide the Ports Authority security in a sum equivalent to three (3) months lease rental and Royalty Payments as may be projected at any time in the form of (i) a standby letter of credit from a first class bank acceptable to the Ports Authority, or (ii) an interest bearing blocked deposit account, or (iii) such other form of security as both parties may mutually agree.

Schedule 7
Employment provisions

1. *Preliminary*

1.1 the concessionaire shall employ the [___] employees who desire to work for the concessionaire on terms and conditions which are overall no less advantageous than those such Quay employees were drawing at the time of their termination as employees of the Ports Authority. To this purpose the concessionaire shall source not less than [___] employees employed by the Ports Authority with the required skills:

- (a) initially from staff working on the [___] Container Terminal; if unable to source the total number required, then:
- (b) from staff working at the rest of Quay; if still unable to source the total number required, then:
- (c) from the staff working at other locations of the Ports Authority; and if there still be a shortfall of the total number required and the Ports Authority is satisfied that the concessionaire is unable to obtain the required number of employees from within the Ports Authority, then:
- (d) the concessionaire may source its requirements from outside the Ports Authority;

provided that employees with more than 10 years of service as at 1979 would not be considered for transfer by the Ports Authority.

Comment [ID12]: Suggest year be left blank.

1.2 The concessionaire may undertake such consultation with trade unions, employees and employees' representatives as the concessionaire shall in its discretion deem fit. In so doing, the concessionaire shall have due regard to and observe:

- (a) any applicable Law;
- (b) any relevant collective bargaining or other agreements relating to the unions, employees or employees' representatives concerned;
- (c) the relevant contracts of employment of the said employees; and
- (d) all relevant consultation provisions and obligations concerning the said employees, unions or employees' representatives.

Subject to applicable Law, the Ports Authority shall transfer to the concessionaire (or, in the case of employees falling under 3.4 (c) only, in the discretion of the Ports Authority, provide the concessionaire with access to) such employee records relating to those former employees of the Ports Authority who are employed by the concessionaire upon Handover as the concessionaire shall reasonably require.

2. *Consultation with Ports Authority*

The concessionaire shall keep the Ports Authority fully informed of, and consult with the Ports Authority concerning, the status of its discussions and dealings with the Ports Authority's employees and their trade unions and other representatives during the period up to the Phase 1 Effective Date for the purpose of:

- (a) satisfying the Ports Authority as to the concessionaire's compliance with its obligations under this schedule; and
- (b) effective liaison with the Ports Authority concerning any matters which may cause or contribute to dissatisfaction of, or any form of industrial action by, any of the employees or other persons working in the Port, whether employed by the Ports Authority or others.

3. *Cross indemnities*

- 3.1 Subject to paragraph 3.4 below, the Ports Authority shall remain solely responsible for all debts owed to the employees by the Ports Authority and all other liabilities to the employees (including breach of contract, redundancy payments, pay in lieu of notice, or related damages or compensation, statutory or otherwise, of any type) which relate to their employment by the Ports Authority up to the date on which an employee ceases employment with the Ports Authority and commences employment with the concessionaire) (the "Employee Transfer Date") and the Ports Authority shall indemnify and keep indemnified the concessionaire accordingly.
- 3.2 Subject always to paragraph 3.4 below, the provisions of clause 2.5(n), clause 36.2 (i) and 36.3 (c) of the Agreement, the concessionaire shall be solely responsible for all the debts owed to the employees and for all other liabilities to the employees (including breach of contract, redundancy payments, pay in lieu of notice, or related damages or compensation, statutory or otherwise, of any type) which relate to their employment at any time on or after the Employee Transfer Date (even though any such amount may be calculated under applicable

employment laws by reference to a period or periods of employment with the Ports Authority as well as a period of employment with the concessionaire) and the concessionaire shall indemnify and keep indemnified the Ports Authority accordingly.

- 3.3 To give effect to the provisions of paragraphs 3.1 and 3.2, all wages, salaries and other emoluments (including holiday pay) and other sums payable to the employees which are not specifically attributable to a particular event or time shall be apportioned on a time basis so that such part of the outstanding relevant amount attributable to the period ending immediately before the Employee Transfer Date shall be borne by the Ports Authority and such part of the amounts attributable to the period commencing on the Employee Transfer Date shall be borne by the concessionaire.
- 3.4 All gratuities payable by the Ports Authority to its employees or former employees who are subsequently employed by the concessionaire shall be dealt with as follows:
- (a) the Ports Authority shall make provision for such sums as are necessary to cover the payment of the said gratuities;
 - (b) the amount so provided shall be calculated by reference to applicable Law, to the period of the relevant employee's employment by the Ports Authority and to the relevant employee's salary at the date of termination of that employee's employment by the Ports Authority;
 - (c) each relevant employee may opt to be paid the sums referred to in (b) above by the Ports Authority upon termination of his employment with the Ports Authority, in which event such sums shall be paid by the Ports Authority and the Ports Authority shall not be obliged to pay any further sums in respect of gratuities in relation to such employee;
 - (d) if an employee does not exercise the option in (c) above, the provisions of (f) to (h) below shall apply as regards any gratuities payable in relation to such employee;
 - (e) at such time as an obligation to pay a gratuity to a relevant employee arises under Law, the Ports Authority shall pay the sums provided under (a) above in respect of such employee in accordance with (f) below;
 - (f) sums payable by the Ports Authority under (b) above shall be paid by the Ports Authority (i) directly to the employee under (c)

above; (ii) to the concessionaire under (e) above in which case the concessionaire shall account promptly to the relevant employee in respect thereof; or (iii) if required by Law to any fund or account established under Law for the receipt thereof; provided that in the event the Ports Authority does not settle in full the amount due as at Handover and the Law relating to gratuity is subsequently amended, then the Ports Authority shall pay to the concessionaire any additional amount relating to the period of employment with the Ports Authority;

- (g) in no event shall the Ports Authority be obliged to pay any sums in respect of gratuities in addition to those referred to in (b) above; and
- (h) The concessionaire shall be responsible for and shall pay all gratuities payable under Law which arises in respect of or by reference to the period of the relevant employee's employment by the concessionaire.

4. *Employees' provident fund*

The concessionaire shall pay [_____] per cent ([_]%) of the salary of each of its employees to the Employees' Provident Fund in terms of the [_____] Act.

5. *Employees' trust fund*

The concessionaire shall pay [_____] per cent ([_]%) of the salary of each of its employees to the Employees' Trust Fund in terms of the [_____] Act.

6. *Employee loans*

A tripartite agreement shall be entered into between the Ports Authority, the concessionaire and each employee who leaves the employment of the Ports Authority and takes up employment with the concessionaire. Such agreement shall provide that the Ports Authority is entitled to recover its loans to the relevant employee on the pre-existing terms agreed between the Ports Authority and such employee, by remittance directly from the concessionaire to the Ports Authority out of wages otherwise payable by the concessionaire to such employee, provided that

- (a) such recoveries for remittance shall be made only insofar as the employee has a credit balance of [___] per cent ([___]%) of the gross salary; and
- (b) The concessionaire shall not be liable to recover any outstanding balances due to the Ports Authority on the employee ceasing to be employed by the concessionaire.

7. *Staff Qualifications and training*

- 7.1 The concessionaire shall procure that, at all times during the term of this Agreement, recruitment of all its employees shall comply with all applicable Law.
- 7.2 The concessionaire shall ensure that, at all times during the term of this Agreement, there shall be a sufficient number of competent, properly trained and qualified/registered staff and/or consultants (including all relevant grades of supervisory personnel) to enable it to perform its functions under this - Agreement effectively, and shall ensure that all such staff are competent and capable to undertake the work for which they are employed and have all relevant qualifications and skills.
- 7.3 The concessionaire shall ensure that staff engaged in the performance of its functions under this Agreement are at all times properly trained for their respective functions, including training for all rules and procedures concerning health and safety at work and compliance with mandatory requirements of Law, in particular those concerning fire risks, precautions and procedures.
- 7.4 The concessionaire shall provide the Ports Authority upon request with details of its management organization and all personnel policies and procedures applicable to staff engaged in activities under this Agreement.

PAGES 131 AND 132 ARE NOT IN THE PDF VERSION

- 10. The gantry cranes will be designed and constructed in accordance with FEM Specification - Section 1 - Heavy Lifting Appliances - 3rd Edition - October 1987 or similar international standards.
- 11. Other plant shall be designed in accordance with internationally accepted standards appropriate to the duty to be performed.

B. Passenger Berth

The basic functional requirements are as identified in part 1 of schedule 3 as well as the following:

1. The quay walls shall be so designed and configured to be appropriate for berthing of vessels up to 220 metres in length and to provide an alongside depth of 10 metres.
2. Quay walls shall be durable and shall not require more maintenance than would reasonably be expected for a modern quay construction.
3. With the exception of plant and other items described in A6 above, the clauses A5, A6, A7 and A9 shall apply to construction of the Passenger Berth.

**Schedule 8
Part 2
The Design Solution**
[_____]

SAMPLE

**Schedule 9
Part 1
The Construction Program
Stages 1, 2, 3**
[]

**Schedule 9
Part 2
The Milestone Sunset Dates**
[]

SAMPLE

Schedule 10

The Regulator

Draft provided by the Government subject to the approval of the concessionaire and the Lenders

The Regulator

1. may be empowered to regulate tariff for port services as determined by the Minister;
2. in regulating tariffs, shall act in an impartial and non-discriminatory manner taking into account the tariffs set in other similar ports and the particular conditions in [_____] while applying sound commercial principles;
3. shall consult all relevant parties prior to regulating tariffs; in particular he shall consult the Ports Authority, shipping agents, the Treasury and the Minister;
4. may regulate tariff on application made by a relevant party or on his own initiative; and
5. For the purpose of regulating tariff and for discovery of any unfair or discriminatory practices, shall have the power to investigate and make determinations as appropriate.

Schedule 11

Commissioning tests

1. The supplier(s) of the quay gantry cranes will be required to carry out a series of commissioning test(s) to verify that the quay gantry cranes are fit to operate. An outline of such test(s) is shown below but such test(s) may vary according to the particular equipment supplied. Where possible, the Test Certifier will be present at the test(s) as necessary in order to be in a position to provide the Commissioning Certificate as identified in schedule 16.
2. Tests shall include but not be limited to the following:
 - A. Pre-operational inspection and testing which shall include:
 - ◆ checking of the cranes leading dimensions and confirming that they comply with specification's requirements;
 - ◆ checking of trolley rails for level and alignment;
 - ◆ visual examination of all components, assemblies and drives and checking for correctness of fitting including tolerances, clearances, alignments and adjustments;
 - ◆ checking of greasing oil levels, hydraulic systems and pneumatic systems;
 - ◆ visual examination of welded and bolted connections of structures;
 - ◆ checking of all safety guards and fittings;
 - ◆ checking the wire reeving systems; and
 - ◆ Checking of details and correctness of electrical safety devices, circuits, earthing, insulation cubicles and cabling.
 - B. No-load operation and testing which shall include:
 - ◆ checking of cranes leading dimensions under operating condition and confirming that they comply with the specification's requirements;
 - ◆ the individual parts of the equipment shall be "controlled" run to check the proper operation of alarms and warning devices, the tracking of the traverse trolley and gantry travel, the operation of safety devices and smooth acceleration and stopping of the crane;
 - ◆ the crane shall be travelled and traversed over full length of the Operator's runway to check clearances between gantry wheel flanges and berth rail and other physical fixed obstructions;

- ◆ pipe work subject to pressure shall be checked for leaks;
- ◆ supply of lubricants shall be monitored; and
- ◆ Electrical system for the crane shall be proven to be functional.

C. Load testing

Load testing shall be carried out according at least to the requirements of FEM Section 1 and local Law. If differing, Loading requirements of both sources shall be complied with and include:

- ◆ the required maximum safe working load shall be applied to the main hoist at the point causing maximum deflection; the maximum deflection shall be checked and compared with the manufacturer's calculated deflection under safe working load; the final deflection after removal of the load shall also be checked;
- ◆ each function in turn shall be used with the safe working load, and be checked for brake adjustment, speed and power,
- ◆ with maximum safe working load applied to the main hoist, the crane travel and traverse shall be checked up to full speed to ensure that the load can be controlled satisfactorily, and hoist brake application when lowering on power drop and simultaneous operation of main hoist and travel under full load and acceleration;
- ◆ noise level shall be checked as required;
- ◆ crane main hoist, trolley and gantry travel functions shall be checked for static and dynamic test with addition loads above the safe working load as specified in FEM Section 1; and
- ◆ checking of the anti-sway system.

D. Durability test

After the above tests are completed, the crane shall be put into extensive use in actual container operation or in simulation with crane handling rated load for a continuous period of 48 hours. At least continuous 8 hours of the test shall be breakdown free where the operator or a technician is not called upon to re-set any switch.

3. Reports

Accurate and complete reports of all testing shall be prepared. Such reports shall record all the information checked during the test including

clearances, temperatures, voltages, currents, heat generation, noise levels, starting times, acceleration durations, stopping times, settings and other control set points.

4. Ancillary Equipment

All ancillary equipment including, but not limited to, lighting, air-conditioning, machinery-room ventilation plant, personnel lift, etc., shall be tested for conformity with the specification and all applicable standards.

SAMPLE

Schedule 12

Setting of tariffs

The concessionaire's ability to set the level of tariffs that it charges for the provision of services to its users, clients or customers shall be restricted by the terms set out in this schedule.

Definitions

1. For the purpose of this schedule, the following words and phrases shall have the following meanings:

"Concession Term" as defined in clause 3.7 in the main text of this Agreement;

"Contract Year" each successive period of 365 days (or 366 days if a leap year occurs), the first such period beginning on the Handover,

"Conversion Rate" the mid rate of exchange for US\$ to or vice versa as the case may be quoted from time to time by the Central Bank of [_____];

"Services" all those services provided within the Port (however described and whether provided on a consolidated basis or not), as set out in the Tariff Code;

"Tariff Code" the list of Services and charges relating thereto published from time to time by the Ports Authority as amended, varied or supplemented, the form of which current as at the date of signature of this Agreement appears at annex 1 to this schedule 12 and which shall be applied (subject to any such amendment, variation or supplement) in accordance with the provisions of annex 2 to this schedule;

"Tariffs" the fees charged (in or [_____]) from time to time by the concessionaire, the Ports Authority or any other operator of container facilities within the Port (as appropriate) for the provision by each such operator of each and any of the Services to its Users as is relevant;

"Users" in relation to each of the concessionaire, the Ports Authority or any other operator of container facilities within the Port, the users, clients or customers of that operator.

Limits on tariff setting in the first five years

2. During the first five Contract Years:

- (a) the aggregate of all the concessionaire's Tariffs per TEU shall not be less than the aggregate of the Ports Authority's equivalent Tariffs;

- (b) each and all of the concessionaire's Tariffs relating to charges against cargo interests shall not be less than the Ports Authority's equivalent Tariffs;
 - (c) The concessionaire shall publish a tariff booklet which shall include fully and clearly all discounts available against its Tariffs and the basis on which such discounts will be granted;
 - (d) when comparing Tariffs charged by the concessionaire with those charged by the Ports Authority for the purposes of 2(a) above, the maximum discounted Tariffs shall be used;
 - (e) save as provided in clause 12.5(b), the concessionaire shall not offer discounts or rebates to its Users based on high volume use of the container facilities operated by the concessionaire within the Concession Area or elsewhere or on any other basis PROVIDED that the concessionaire may give its Users any discount or rebate on the same or less favourable basis as any discount or rebate is offered from time to time by the Ports Authority to its Users AND PROVIDED always that any discount or rebate offered by the concessionaire to its Users shall at no time be more favourable than that offered by the Ports Authority to its Users; and
 - (f) the concessionaire shall not set Tariffs on such terms the effect of which is to offer Services on more favourable terms (in respect of aggregate price for the Services as a whole) than the Services provided by the Ports Authority to its Users.
3. The Ports Authority shall ensure that any operator with which it contracts for the provision by that operator of Services within the Port shall be bound by the same restrictions as set out in paragraph 2 above.
4. The Ports Authority shall give the concessionaire not less than [_____] (_____) days written notice of any change in
- (a) the Ports Authority's Tariffs; and
 - (b) Any discounts or rebates against those Tariffs set out in the Tariff Code before such changes shall come into effect.
5. The concessionaire shall give the Ports Authority not less than [_____] (_____) days written notice of any change in the concessionaire's discounts or rebates against its published Tariffs before such changes shall come into effect.

6. If a Regulator is appointed prior to the end of the first five Contract Years, the provisions of this schedule shall be read subject always to the power of the Regulator to intervene in all matters relating to Tariffs.

After the end of the first five Contract Years

7. After the end of the first five Contract Years, the concessionaire may set its Tariffs at whatever level and charge its Users for the provision of Services on whatever basis it wishes SUBJECT ALWAYS to the power of the Regulator to intervene in all matters relating to Tariffs and subject to paragraph 8 below.

8. Neither the Ports Authority nor the concessionaire shall change its Tariffs or the terms on which it provides Services without first giving the other not less than [_____] (____) days' written notice of any such change SUBJECT ALWAYS to the power of the Regulator to intervene in all matters relating to Tariffs.

Limits on domestic cargo tariffs

9. At no time during this Agreement shall the increase in the weighted average of all the concessionaire's Tariffs relating to domestic containers be greater than the proportionate increase in the weighted average of all charges accruing to the concessionaire in respect of transshipment containers unless the Ports Authority increases its tariffs relating to domestic containers. The base point for measuring the said Tariffs and weighted averages shall be the tariffs and weighted averages over the first year of operations.

Equal treatment

10. the provisions of this schedule shall be read and interpreted in the light of the principle agreed by the parties that all Users shall be treated equally during the Concession Term. This principle shall mean that all Users are charged the same price for the provision of the same service or are charged a different price (whether higher or lower) from the normal price for the provision of a service which is different (whether more or less onerous) from a normal service. In particular, no User associated with, or affiliated to [_____] or the concessionaire or any of the concessionaire's shareholders from time to time shall be charged for the provision of Services by the concessionaire at any rate or on any terms which are more favourable than the rates or term to the concessionaire other users.

11 The Ports Authority shall not increase the prices charged by it for its Services in a manner which is unreasonable, arbitrary or discriminates unfairly against the concessionaire. In setting any increase in the price charged for its Services the Ports Authority shall have due regard to:

- (a) during the period referred to in clause 4.3(a), the charges made for equivalent Services in any Rival Port lying within the area defined in clause 4.3(b);
- (b) after expiry of the period referred to in clause 4.3(a), the charges made for equivalent Services in any Rival Port lying within the area defined in clause 4.4(b);
- (c) the costs of providing the Services and each of them;
- (d) the ability of users of the Port to bear such increase; and
- (e) The rate of return on investment on the assets used to provide the Services and each of them.

12. The provisions of paragraph 11 shall apply insofar as not inconsistent with the appointment of the Regulator and any Law relating thereto or emanating therefrom.

Currency conversion

13. Where the concessionaire and the Ports Authority are paid in different currencies in respect of any Tariffs, the Conversion Rate applicable as at the date of payment of such Tariffs shall be applied when determining compliance or non-compliance with this schedule 12.

14. The provisions of this schedule which apply to the Ports Authority shall also bind any assignee, successor or nominee of the Ports Authority with respect to the same matters.

**Schedule 13
Part 1**

Description of pre-commissioning insurance

NOTES

1. The value of all insurances would be progressively adjusted, based on actual capital costs incurred and actual levels of activity.
2. This schedule is subject to finalization of costs.

CONSTRUCTION INSURANCE MARINE TRANSIT

SCOPE OF COVER Covering the transit of plant and equipment as described and declared. Perils of the sea include fire, lightning, storm, impact.

SUM INSURED Maximum value of any one shipment

DEDUCTIBLE [_____]

EXCLUSIONS Invasion, act of foreign enemy, hostilities confiscation, nationalization. Moths, termites or other insects, wear and tear, fading scratching or marring, gradual deterioration, normal upkeep or making good

CONTRACTORS ALL RISK INSURANCE

SCOPE OF COVER Permanent and temporary works, materials, equipment against all risks of loss or damage

Third party liability

Insured legal liability for the third party personal injury and or property damage arising out of the performance of the project

SUMS INSURED/LIMIT OF INDEMNITY

Contract works Up to [_____] million less US\$....., being the cost of the Passenger Berth

Third party liability [_____] any one occurrence/unlimited in the policy period

DEDUCTIBLES

Contract Works:

- [_____] each and every loss from storm tempest, flood, water damage, subsidence, collapse and earthquake.
- [_____] each and every loss arising out of testing/commissioning and maintenance.
- [_____] each and every loss.

Third party liability:

[_____] each and every occurrence in respect of property damage only.

PRINCIPAL EXCLUSIONS

War, invasion, act of foreign enemy, hostilities, confiscation, nationalization

Moths, termites or other insects, wear and tear, fading scratching or marring, gradual deterioration, normal upkeep or making good

Penalties incurred under contract for delay, non completion or non compliance with contract terms.

Error or omission in design, or failure of design, normal settling, seepage, shrinkage or expansion in buildings or foundations, walls, pavements, roads and other structural improvements, creeping, heaving and vibration, faulty materials or faulty workmanship.

Water craft, aircraft, and loss from normal action of the sea

RIOT, STRIKE, CIVIL COMMOTION, TERRORISM

COVER Up to [_____]

DEDUCTIBLES approximately 1% of current value

EXCLUSIONS War and allied perils

War, invasion, act of foreign enemy, hostilities or warlike operations (whether war be declared or not) or civil war, riot, strike, mutiny, civil commotion assuming the proportions of or amounting to a popular rising, military rising, insurrection, rebellion, revolution, military or usurped power, the act of any person acting on behalf of or in connection with any organization with activities directed towards the overthrow by force of the Government de jure or de factor or to the influencing of it by terrorism or violence, permanent or temporary

dispossession resulting from confiscation, nationalization, commandeering or requisition by any lawfully constituted authority, permanent or temporary dispossession of any building resulting from the unlawful occupation of such building by any person.

Nuclear Weapons

Directly or indirectly caused by or contributed by or arising from ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel.

Any accident, loss, destruction, damage or legal liability directly or indirectly caused by or contributed to by or arising from nuclear weapons material

EMPLOYERS LIABILITY

COVER Workers Compensation as required by Law.

AUTOMOBILE LIABILITY

COVER Market value
Third party injury and property damage

OPERATIONAL INSURANCE INDUSTRIAL SPECIAL RISKS BUSINESS INTERRUPTION SCOPE OF COVER

Section 1 Reinstatement/replacement of property of every kind and description belonging to the insured or for which the Insured is responsible or has assumed responsibility prior to the occurrence of any damage.

Section 2 Business Interruption Insurance to cover specified expenses required under the Concession Agreement.

SUMS INSURED For general Force Majeure, - the replacement value of the facility up to [_____] less the cost of the Passenger Berth and the value of the wharves, piers and buildings taken over for so long as they are in operational use as wharves, piers and buildings.

For riot strike and civil commotion, if relevant to a limit to be negotiated on a proportionate basis

DEDUCTIBLES [_____]

Earthquake Computer [_____]
Money [_____]
Impact by vessels All other losses [_____]

KEY EXCLUSIONS Property and perils

War, invasion, act of foreign enemy, hostilities, confiscation, nationalization

Water from normal action by the sea

Property whilst in transit other than incidental movement

Jewellery, furs, bullion, precious metals or precious stones
Water craft

Vehicles or trailers registered or licenses to travel on a public road, provided that the exclusion shall not apply to mobile plant and equipment.

Roadways, railway tracks.

Property undergoing construction erection alteration or addition

Moths, termites or other insects, wear and tear, fading scratching or marring, gradual discoloration, normal upkeep or making good

Error or omission in design, or failure of design, normal settling, seepage, shrinkage or expansion in buildings or foundations, walls, pavements, roads and other structural improvements, creeping, heaving and vibration, faulty materials or faulty workmanship.

Consequential loss due to delay, lack of performance, loss of contract

COMPREHENSIVE GENERAL LIABILITY SCOPE OF COVER

(a) All sums which the insured shall be obligated to pay by reason of liability imposed upon the insured by law or assumed under the contract or agreement by the insured on account of Stevedores liability, property damage and personal injury.

(b) All expenses incurred in connection with (a) above.

SUM INSURED Public, Products and Stevedores Liability.
[_____] any one occurrence/unlimited during the period of Insurance

DEDUCTIBLES [_____] each and every occurrence

KEY EXCLUSIONS War, pollution unless sudden and accidental, radiation, punitive or exemplary damages, asbestos, employers' liability, fines and penalties.

RIOT, STRIKE, CIVIL COMMOTION, TERRORISM

COVER Up to [_____]]

DEDUCTIBLES approximately 1% of current value

SAMPLE

**Schedule 14
Part 1**

The Handback Requirements

Upon termination of this Agreement, the concessionaire shall return back to the Ports Authority all infra and superstructure comprising the Phase 1 Facilities in good order and condition (less normal wear and tear) so as to allow the Ports Authority or a successor terminal operating company immediately to continue the efficient management and operation of normal terminal handling activities on all types and sizes of vessels for which the Phase 1 Facilities were designed and built without interruption or need for rehabilitation works.

In particular, the following requirements shall be fully satisfied at Handback:

- ◆ Total constructed length of quay wall to be handed over including apron, roadways, stacking areas, interchange areas and gatehouse.
- ◆ Total paved areas to be in such condition that all heavy duty and other terminal operations can take place with normal efficiency and without risk of slow-down, damage or accident to container handling and/or other equipment and a properly functioning drainage system.
- ◆ The condition of the electrical facilities (transformers, switchboards and all cables) shall permit normal and uninterrupted use.
- ◆ The mooring devices (such as bollards) and fendering systems to be in adequate condition to be fully suitable for berthing the largest container ships calling at the Phase 1 Facilities.
- ◆ The administrative and other support buildings (control offices) shall be in good order and condition less normal wear and tear.
- ◆ The workshops shall be transferred in good order and condition less normal wear and tear, including the necessary workshop tools as well as the maintenance records of any equipment to be handed back to the Ports Authority.
- ◆ Equipment and spare parts stock shall be handed back to the Ports Authority (except those equipment items for which the capital expenditure was not approved by the Ports Authority under clause 25 of this Agreement). The condition of the equipment shall be commensurate with its remaining design life period. The price payable shall be the equipment net book value and the normal procurement price for the spare parts.

- ◆ The Ports Authority shall be granted such intellectual property rights as are in accordance with and subject to the provisions of clause 35.6 of this agreement.

Schedule 14 Part 2

Expiry date inspection

The main purpose of this inspection shall be to verify whether all the defects and short comings outstanding from the previous inspection in accordance with clause 26.2 have been corrected.

All inspections shall be carried out by an expert appointed in accordance with clause 26.

1. Buildings, structures and infrastructures facilities

1.1 *Wharf*

All structural components of the wharf and all fittings such as fenders, bollards, quay crane rails etc shall be visually inspected and any defects recorded.

1.2 *Pavements*

All pavements including RTG running tracks, ITV pavements, container stacking areas, truck queuing areas, parking areas, access roads, etc shall be visually inspected and any remaining defects requiring reinstatement recorded.

1.3 *Buildings and facilities*

All buildings including administration building, workshops, canteen and amenities building, substation, weigh bridges etc shall be visually inspected and any remaining defects requiring reinstatement recorded. All building services such as air-conditioning systems, electrical fittings, plumbing, fixtures etc shall be inspected and run to verify they are in proper working order.

1.4 *Services*

All electrical and communication lines, cables, panel boards, transformers etc and storm water, fire and potable water lines including fittings, light towers etc shall be inspected, checked and any remaining defects requiring reinstatement recorded.

1.5 *Reefer Area*

Reefer plug stands, reefer plugs, reefer electrical and communications panel boards and cables shall be inspected and any remaining defects requiring reinstatement recorded.

2. *Equipment*

Machinery, apparatus and equipment forming part of the Phase 1 Facilities, including all maintenance equipment and spare parts, shall be inspected, checked and any defects requiring repair recorded.

Schedule 14
Part 3
Form of the Handback Certificate

The concessionaire
[Address]

With a copy to:

The Chairman
[] Ports Authority
[Address]

Reference is made to clause 26 of an agreement entered into on [] between the concessionaire and Ports Authority (the "Concession Agreement").

We HEREBY CERTIFY in terms of clause 26 of the Concession Agreement:

- (i) the concessionaire has at its cost completed the Renewal Works in accordance with the Renewal Construction Program;
- (ii) The Phase 1 Facilities conform to the Handback Requirements.

Dated:

Signed:

Schedule 15

The Transfer Arrangements

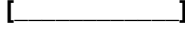
A Transfer Committee shall be established to prepare for and supervise the transfer of the Phase 1 Facilities and the Transfer Equipment. The Transfer Committee shall be established at least three (3) months before the expiry of the Operation Period and not less than two (2) weeks after termination of this Agreement according to clauses 30 — to 33.

The Transfer Committee shall comprise an equal number of representatives of the Ports Authority and the concessionaire, each with equal voting rights. The number of Transfer Committee members will be jointly determined by the Ports Authority and the concessionaire. The Transfer Committee shall agree upon a method of identifying the items to be transferred establishing their conditions, the need for possible remedial action and the most suitable arrangements for the transfers in order to achieve smooth continuance of the management and operation of the Phase 1 Facilities.

Schedule 16
Form of Commissioning Certificate
[]

SAMPLE

Schedule 17
Plan showing the Concession Area



SAMPLE

Schedule 18

The concessionaire maintenance policy

There are two fundamental objectives of the equipment maintenance policy, as follows:

the short-term objective is satisfying the day-to-day operational requirements; and the long-term objective is the ongoing maintenance to maximize the equipment's useful life span.

The long-term maintenance policy revolves around preventative maintenance. With time, an historical profile on equipment performance can be generated and could be used to monitor trends and implement a predictive maintenance program.

Maintenance team

Crucial to a maintenance policy will be the maintenance team. The concessionaire's philosophy is to employ local tradesmen in their respective fields to undertake the routine and out of service maintenance tasks. The philosophy also revolves around multi skilling the workforce to enable flexible cross training between electrical and mechanical personnel. Such personnel will be supported with ongoing training to ensure they are abreast of the latest technological changes relevant to the equipment they service.

Specialized maintenance requirements like major equipment overhauls for engines and transmissions will be outsourced through the local representative of the original equipment manufacturer.

Where necessary long-term training courses will be organized. These courses will be conducted through in-house resources and by outside specialist instructors. Training offered shall include trouble shooting in the areas of hydraulics, diesel engines, engines and electronics.

Workshop facility

A central asset to a successful maintenance policy is the workshop design and facilities provided. Workshop layout shall be individually planned to suit the servicing requirements of the types of equipment operated. Workshop design shall be functional, energy efficient and environmentally acceptable.

The workshop shall be established in a location close to the operational area. Consideration during the planning stage will be given to aspects such as minimizing the amount of terminal traffic around the workshop and to the access requirements of supply/delivery vehicles.

The workshop shall consist of adequate space to cater for equipment in service. The workshop will consist of service pits for large and small equipment.

Workshop layout will be such that welding bays, machining equipment and staff amenities are located appropriately. Bulk lubrication and cleansing agent tanks/barrels will be stored in a suitably safe area in the workshop.

Staff amenities will include lockers, showers/toilets and change rooms, tables and chairs, water for drinking and a fridge.

Major tools, including lifting jacks, small service forklifts, welding machines, an air compressor with pressure and free air capacity to inflate large tyres of the largest vehicles, a mobile high pressure water cleaner, work benches, a pedestal drill and a small lathe shall be included.

Air, water and hydraulic lines shall run along the perimeter of the workshop with outlets at appropriate points specific to the workshop design.

An overhead crane with lifting capacity of 10 tonnes shall be installed. The crane travel range will provide sufficient coverage of the workshop area.

A suitable vehicle will be fitted out as a mobile workshop to service equipment out in the terminal. The mobile workshop will have the necessary equipment and tools on board.

Other light vehicles such as pick-up trucks will be used to enable the maintenance team to commute around the terminal facility.

Communication between the maintenance personnel out in the terminal, the workshop and the operations crew will be via portable two-way radios.

A wash bay facility shall be provided. Waste water will drain into a central pit and then into an oil/water separator. The wash bay will be capable of supporting a recirculating system where bay waste water is reused after it passes through the oil/water separators hence conserving fresh water usage.

Stores

Stores will be adjacent to the workshop.

The stores room will be used for stocking all fast moving spares and critical item spares. Stores will also be responsible for issuing tools. Slow moving spare parts will be stored in a separate secure area.

The stores area will be divided into two sections, one for tools and the other for spares and general goods. A parts numbering system based on a Computerized Maintenance Management System (CMMS) will be used to identify items. Stock management through the CMMS will trace stock movements, produce usage reports and will be capable of automatic reordering and listing the supplier portfolio

Refuelling bay

The refuelling bay will be located in an appropriate designated area.

The main fuel holding tank will be suitable for the purpose. It will be inspected regularly for bacterial build up on the inside wall and shall have a low drain point for water condensation.

The tank shall also have a safety release valve to allow its contents to drain into the bunded area. Such valves shall have locking arrangements.

The refuelling pump shall be capable of high flow rates for large machines and shall also have a bowser for refuelling small vehicles.

Metering devices and where possible fuel theft protection systems such as a pump cut out key shall be installed.

Waste water or fuel spills from the refuelling bay will drain into a central pit and then into an oil/water separator.

The fuel dispensing procedure will be illustrated on a signboard appropriately placed in the line of sight of the user.

A fire hydrant or extinguisher shall be placed around the area to the satisfaction of the local fire brigade authority.

Lighting will be made available for the area to ensure night operations are safely conducted. Position of the lights will take into account due care for flammable fumes.

A refuelling mobile service truck is to be used for equipment which cannot be driven to the refuelling bay. This truck will carry a range of lubricants, water etc.

Computerized Maintenance Management System (CMMS)

The maintenance function will be integral to the management accounting systems enabling total costing to be captured. Purchasing, work orders, stores, equipment tracking and fuel monitoring devices shall be linked via maintenance system software to provide real time costing capability and assets register.

CMMS will allow the maintenance engineer to have access to financial information relating to equipment and civil engineering infrastructure, repair costs, budgets, year to date expenditure etc, allowing the engineer to make informed decisions.

Documentation and rapid information retrieval is paramount to an efficient preventative/predictive maintenance program. The proposed maintenance management system software will enable the planning, scheduling, issuing of work orders, and tracking of performance and failures to be recorded into software. This capability will allow the maintenance engineer to assess the nature of defects, analyze trends in failures and instigate corrective actions.

Periodic reports shall be issued to indicate the extent to which the maintenance program has performed in accordance with schedules thus enabling management to monitor and assess conditions.

In summary, the CMMS will be used to collect, provide and manage information such as:

- ◆ purchasing
- ◆ store management
- ◆ plant/asset register
- ◆ plant performance history
- ◆ maintenance costs
- ◆ preventative maintenance programs
- ◆ repetitive breakdowns
- ◆ contract maintenance agreements
- ◆ warranty expiry dates
- ◆ schedule of statutory inspection dates

Condition monitoring

Condition monitoring will form an integral part of CMMS. Oil test samples will be part of the routine condition monitoring activity. Ideally the local lubricant supplier will be responsible for collecting and analyzing oil samples and providing trend reports and advice on test results.

All field condition monitoring information will then be analyzed later at a glance along with documented maintenance history so that a maintenance person will then be able to determine the cause of a failure and instigate the required corrective actions.

Programmable Logic Controllers (digital/PLCs) are part and parcel of the CMMS. They are to be used to control, monitor and to flag results on equipment such as cranes, reefers and mobile equipment. This is a form of passive reactive diagnostic maintenance diagnostic in that faults are flagged after the event. With time, sufficient information will be collected on the characteristics of pieces of equipment a onto a data base. Digital/PLCs will be used with predictive maintenance programs to provide an active preventative environment. Potential faults will be anticipated before a break down occurs.

Crane monitoring systems

All newly installed quay cranes shall be equipped with extensive digital/PLC monitoring systems. All information shall be conveyed to the workshops by fiber optic wavelength from the quay cranes. This will enable the maintenance team to carry out real time monitoring of equipment functions whilst the quay cranes are operational.

**Schedule 19
Part 1
Termination Compensation Base Case**
[]

**Schedule 19
Part 2
Model for Termination Base Case Compensation**
[]

SAMPLE