
TERMINAL SERVICES AGREEMENT

BETWEEN

**PT. TERMINAL PETIKEMAS SURABAYA
(as the Operator)**

AND

**Any Client
Utilising the services provided by the Operator
(as the Customer)**

FOR

Provision of Terminal Services

June 8th, 2018

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This agreement (the **Agreement**) is made and entered into at the Port(s) of Surabaya (the **Port**):

PT. Terminal Petikemas Surabaya, having its registered seat at Jl. Tanjung Mutiara No. 1, Surabaya (*the Operator*); and

Any Client, Lines and /or Parties utilising the Terminal and/or services provided by the Operator (Collectively the **Customer**).

Use of the Terminal and/or the Operator's services by any Customer indicates de facto acceptance of this Agreement. In the event that this document is unsigned it shall remain in force until modified by the Operator.

BACKGROUND

- (A) The Operator supplies the Terminal Services at the Port.
- (B) The Customer requires the Terminal Services at the Port.
- (C) This Agreement:
 - (a) defines the Terminal Services the Operator will supply to Cargo, Containers and Vessels owned, chartered, operated, leased or otherwise under the control of the Customer at the Port;
 - (b) states the terms on which the Operator will supply and the Customer will acquire those Terminal Services;
 - (c) is governed by the laws of Indonesia and each Party submits to the non-exclusive jurisdiction of the courts of Indonesia for the purposes of enforcement of any arbitral award obtained in accordance with this Agreement;
 - (d) shall take effect from January 1st, 2018; and
 - (e) unless otherwise terminated in accordance with this Agreement, shall be valid as long as service still persists, starting from the Commencement Date.
- (D) Any schedule or appendix to this Agreement shall take effect as if set out in this Agreement and references to this Agreement shall include its schedules and appendices.

GENERAL TERMS & CONDITIONS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

Affiliate means in relation to a body corporate, any subsidiary or holding company thereof and any subsidiary of any such holding company or any entity which Controls, is Controlled by, or is under the common Control of such body corporate.

Agent means the agent(s) of the Customer appointed in accordance with clause 23.

Applicable Laws means all applicable mandatory laws, regulations and international conventions which are binding in effect.

Arrive or **Arrival** means the arrival of a Vessel at the Terminal.

Berthing Window or **Berthing Window Plan** means the timings at which a Vessel is to Arrive and complete cargo operations.

Cargo means any goods, merchandise or other property whatsoever, whether or not in a Container, in respect of which the Operator provides the Terminal Services.

Commencement Date has the meaning given to it in Recital C (d).

Confidential Information of a Party means the following information in any form:

- (a) the terms and conditions of this Agreement (which is Confidential Information of each Party); and
- (b) information of a confidential nature which is communicated by or on behalf of that Party to the other Party, before or after the date of execution of this Agreement including, without limitation, information relating to the financial or trading position of the first-mentioned Party and practices, techniques, processes, trade secrets and know-how relating directly or indirectly to the operation of the Terminal (being Confidential information of the Operator) or of a Vessel (being Confidential information of the Customer).

Container means any container, flat, bolster or other unit conforming with ISO dimensional standards for international shipping and which is owned, leased, chartered, managed, operated and/or used by the Customer.

Control or **Controlled** means the holding of power to direct or cause the direction of management, policies and decisions of a company, corporation, partnership or other entity through, including without limitation, control by direct or indirect means of more than fifty per cent (50%) of the voting rights in such company, corporation, partnership or other entity.

Credit Period has the meaning given to it in Appendix 3.

Customer's Visitors means all employees, agents, subcontractors and any other person whom the Customer may direct or invite to enter the Terminal.

EDI means electronic data interchange between the Parties.

EDIFACT means the United Nations standards for Electronic Data Interchange for Administration, Commerce and Trade.

ETA means estimated time of Arrival.

Facility Security Plan means the security plan established by the Operator in relation to the operation of the Terminal.

Force Majeure Event has the meaning given to it in clause 13.4.

General Terms and Conditions means clauses 1 to 25 (inclusive) of this Agreement.

Good Industry Practice means the exercise of that degree of skill, diligence, prudence, foresight and practice which would reasonably and ordinarily be expected:

- (a) in relation to the carriage of containerised and un-containerised cargo by sea, from an experienced shipping operator; and
- (b) in relation to Terminal Services, from an experienced port terminal operator under the same or similar conditions.

Hazardous Cargo means Cargo of any kind classified by the International Maritime Organisation or International Maritime Dangerous Goods Code as hazardous.

ISPS Code means the International Ship and Port Facility Security Code forming part of the Safety of Life at Sea (SOLAS) Convention of the International Maritime Organisation.

Liability Ceiling Amount has the meaning given to it in clause 18.2.

Liability Floor Amount has the meaning given to it in clause 18.3.

Marks means a Party's name, business name, trade name, trademark, service mark, logo, or other indication of brand whether owned and/or controlled.

Party means a party to this Agreement and includes that Party's successors and permitted assigns and **Parties** shall have a corresponding meaning.

Performance Standards means the standards against which the Parties are measured under the terms of this Agreement.

Rates means the prices charged by the Operator and agreed with the Customer in respect of Terminal Services rendered by the Operator under this Agreement as set out in Appendix 3.

Shipper has the meaning given to it in the SOLAS guidelines

SOLAS means the International Convention for the Safety of Life at Sea of the International Maritime Organization as supplemented by the SOLAS Guidelines, as amended from time to time.

SOLAS Guidelines means the *Guidelines regarding the verified gross mass of a packed of container carrying cargo* (MSC.1/Circ.1475) published by the International Maritime Organization.

Term has the meaning given to it in Recital C(e).

Terminal means such wharf area within the Port owned, leased, operated or managed by the Operator at any time during the term of this Agreement, together with adjacent areas in which the Operator provides the Terminal Services.

Terminal Services means the services and/or facilities to be provided at the Terminal to the Customer as set out in the Agreement including all such other services which may be agreed between the Parties from time to time.

TEU means twenty-foot equivalent unit and in calculating TEUs, a 20' Container shall comprise one (1) TEU, a 40' Container shall comprise two (2) TEUs, and a 45' Container shall comprise two point two five (2.25) TEUs.

Strings means those container shipping trades, as amended from time to time in accordance with the terms of this Agreement.

US Dollars or **USD** means the lawful currency of the United States of America.

Vessel means any ship calling at the Terminal for the carriage of Cargo of which the Customer is the owner, charterer or disponent owner; which shall include mother vessels, full container vessels, feeder vessels or barges owned, chartered, operated or used by the Customer.

Vessel Operator means the operator in control of any vessel at the Port.

VGM or Verified Gross Mass means the total gross mass of a packed Container as obtained by one of the two methods prescribed by SOLAS and otherwise in accordance with Applicable Laws.

VGM Declarant means the Customer, Shipper or another person on behalf of the Customer or Shipper.”

1.2 Interpretation

- (a) In this Agreement unless the contrary intention appears:
- (i) a reference to a part, clause, schedule, annexure or appendix is a reference to a part or clause of or schedule, annexure or appendix to this Agreement and references to this Agreement include any recital, schedule, annexure or appendix;
 - (ii) a reference to this Agreement or another instrument includes any variation or replacement of either of them;
 - (iii) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
 - (iv) the singular includes the plural and vice versa;
 - (v) the word **person** includes an individual, a firm, a body corporate, an unincorporated association or an authority;
 - (vi) a reference to a named person includes a reference to the person's executors, administrators, successors and permitted assigns;
 - (vii) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day; and
 - (viii) a reference to a day is to be interpreted as the period of time commencing at midnight and ending twenty four (24) hours later.

- (b) Save to the extent expressly set out in this Agreement, this Agreement is not intended to nor shall it create any rights, claims or benefits enforceable by any person that is not a party to it. Accordingly, save to the extent expressly set out in this Agreement, no person shall derive any benefit or have any right or entitlement in relation to this Agreement by virtue of the Contracts (Rights of Third Parties) Act 1999.

2. TERM

2.1 Term

This Agreement shall take effect from Commencement Date and, unless otherwise terminated in accordance with this Agreement, shall remain in effect for the Term.

2.2 Expiry

During the last 3 (three) months of the Term, the Parties shall negotiate in good faith with a view to agreeing upon mutually acceptable terms and conditions on which contractual relations shall continue following expiry of such period (in the form of extension and/or variation of this Agreement). In the absence of such agreement, this Agreement shall terminate upon the expiry of the Term.

3. TERMINAL SERVICES

In receiving the Terminal Services from the Operator, the Customer shall:

- (a) not use any entity other than the Operator to supply any Terminal Services (or any services substantially similar to the Terminal Services) to any String within the Port for the Term;
- (b) act in compliance with the Applicable Laws;
- (c) act in a safe and efficient manner;
- (d) promptly perform each task allocated to it in this Agreement; and
- (e) act in accordance with any lawful and reasonable directions given from time to time by the Operator within the scope of this Agreement.
- (f) comply with the Operator's Modern Slavery and Human Trafficking Policy and any applicable anti-slavery and human trafficking laws, statutes, regulations and codes in force from time to time.
- (g) represent and warrant that none of its activities conducted whilst in Port violate the Operator's Modern Slavery and Human Trafficking Policy and any applicable anti-slavery and human trafficking laws, statutes, regulations and codes in force from time to time.
- (h) notify the Operator as soon as it becomes aware of:
 - (i) any breach, or potential breach of any applicable anti-slavery and human trafficking laws, statutes, regulations and codes; or
 - (ii) any actual or suspected slavery or human trafficking occurring whilst it is docked at the Port.

4. VESSELS

4.1 Which Vessels

The Vessels governed by the provisions of this Agreement are the Vessels notified in writing by the Customer to the Operator, whether prior to the commencement of this Agreement or from time to time during the Term.

4.2 Vessel Warranty

The Customer warrants and undertakes to ensure that the Vessels are operated in compliance with all Applicable Laws and international standards with respect to safety, stability, seaworthiness, fitness for purpose and security including, without limitation, regulations introduced pursuant to the ISPS Code.

4.3 Reserved Right

If during the term of the Agreement, the Customer introduces any Vessel not fully cellular and / or outfitted with semi-automatic twist locks, the Operator reserves the right to:

- (a) review the applicable tariff rates if the Operator cannot work that Vessel as efficiently as previous Customer Vessels; and
- (b) review the Performance Standards in relation to that Vessel.

5. RIGHT TO INSPECT

5.1 Inspection of Operator Equipment

The Customer may, upon reasonable notice, inspect any equipment used to supply the Terminal Services. Such inspection must take place at a time suitable to all relevant Parties.

5.2 Inspection of Customer Vessels

The Operator may, from time to time, conduct vessel safety inspections as a part of the Operator's occupational health and safety responsibility. The Customer acknowledges that the Operator is required to provide its employees and subcontractors with a safe working environment and will comply with all reasonable requests to achieve this.

6. CONFIDENTIALITY & PUBLICITY RESTRICTIONS

6.1 Use of Confidential Information

Each Party:

- (a) undertakes to use the Confidential Information of the other Party solely for the purposes of performing its obligations under this Agreement; and
- (b) except as permitted under clause 6.2, must ensure that it maintains, and that its officers and employees maintain, the confidentiality of all Confidential Information of the other Party.

6.2 Use of Confidential Information – Exception

A Party (the **Receiving Party**) may disclose Confidential Information of the other Party (the **Disclosing Party**) to a third party, to the extent that:

- (a) such Confidential Information becomes public knowledge otherwise than as a result of a breach of clause 6.1, or the Receiving Party receives such information from another person in circumstances which do not involve any breach of any obligation of confidence owed to the Disclosing Party;
- (b) the Disclosing Party consents in writing to such disclosure;
- (c) such disclosure is required in order to enable the Receiving Party to perform its obligations under this Agreement in accordance with applicable regulations (including, without limitation, prevailing port authority, harbour master, customs or security procedures); or
- (d) such disclosure is otherwise required by Applicable Law, or by any court of competent jurisdiction or any competent judicial, governmental, supervisory or regulatory body.

6.3 Use of Information

Neither Party shall knowingly use or permit the use of any Confidential Information obtained during their relationship to the disadvantage of the other Party or for the profit of its own or any third party's interest.

6.4 Return of Confidential Information

Upon termination of this Agreement, each Party must, promptly following receipt of a written request from the other Party return to the latter Party, and where not possible destroy, all confidential information of the latter Party in material form (including without limitation, those parts of all notes and other records of the first Party containing confidential information of the latter Party in the first Party's possession or control).

6.5 Announcements

- (a) No public announcement of any kind shall be made by any Party in relation to the subject matter of this Agreement without the consent of the other Parties as to the form, content and timing of the announcement, subject to any overriding statutory or regulatory obligations of disclosure imposed by law or the rules of any applicable regulatory body.
- (b) Unless otherwise agreed in writing, neither Party shall at any time, whether during or after the Term hereof:
 - (i) display or in any other way use the name, the Marks or any content of the other Party in which the other Party or any of its Affiliates hold a copyright, in connection with publicity, advertisements, or promotion of a Party's own business; or
 - (ii) identify the other Party or any of its Affiliates in any manner on its own customer list or its website (or on any third party website) or include its name in the metatags of any website.

6.6 Continuing Obligations

The provisions of this Clause 6 shall remain in full force and effect notwithstanding the expiry of the Term or earlier termination of this Agreement (for whatever reason).

7. HEALTH, SAFETY AND ENVIRONMENT

7.1 Operator

The Operator is required to:

- (a) ensure that Good Industry Practice and the Applicable Laws relating to health, safety and environment are followed when providing the Terminal Services;
- (b) use its best endeavours to ensure its subcontractors' compliance with health, safety and environment requirements of this Agreement;
- (c) ensure its employees, servants, agents and subcontractors are provided with the necessary and adequate safety and environment training for performing the Terminal Services;
- (d) monitor and evaluate its safety performance, based on Operator lead and lag indicators and take such actions as are required or appropriate to rectify and improve its overall safety and environmental performance;
- (e) maintain an emergency response plan to deal with unforeseen events, including, but not limited to, fire and explosion, and carry out drills periodically, including in such a manner and with such frequency as may be required to comply with local Applicable Laws; and
- (f) ensure that the Customer and the Customer's employees, servants, subcontractors, agents and other stakeholders receive health and safety instructions when entering the Terminal.

7.2 Customer

The Customer is required to:

- (a) ensure that its employees, servants, subcontractors and agents comply with the health and safety regulations and instructions as set out by the Operator.
- (b) ensure that its Vessels comply with the Applicable Laws and reasonable instructions as set out by the Operator. The Operator shall have the right to refuse provision of the Terminal Services to the Customer in the event of, and to the extent of, the Customer's non-compliance with any of such Applicable Laws or instructions of the Operator. If a Vessel is at berth at the time of such non-compliance, the Customer undertakes to meet any additional costs resulting from such non-compliance and/or ensure that the berth is vacated immediately upon receipt of written request from the Operator.
- (c) provide, at its own cost, all materials necessary for securing containers and/or other Cargo on board the Vessel and provide the Operator with the appropriate lashing plan of the securing of any containers and/or other Cargo loaded by the Operator. The Operator shall not be responsible for the security of any lashing materials that may be left at their Terminal from time to time.

- (d) Use its best endeavour to ensure that:
 - i. Containers and/or cargo have been packed and stowed in accordance with best practice;
 - ii. The weight of containers does not exceed the load limit of the container and is evenly distributed;
 - iii. That the container and/or cargo packing is in every way safe and complies with the Indonesian and relevant international safety rules, regulations and lawful requirements;
 - iv. That all containers shipped have valid ACEP stickers or CSC plates.
- (e) Undertakes that all lawful, and statutory requirements in relation to the Cargo made by any approved body or authority, are observed by the Customer, its servants and/or agents.

7.3 Removal of Objectionable Cargo

The Operator reserves the right to move to another location and/or inspect any Cargo which in its judgement is reasonably likely to damage other Cargo or property, at the risk and expense of the Customer. The Customer will be notified prior to such removal if practicable.

8. SECURITY AT THE TERMINAL

8.1 Vessel at Customer's Risk

The Operator will not be responsible for the security or safety of any Vessel while tied up at the Terminal.

8.2 Compliance with Security Requirements

- (a) The Customer shall comply with all Applicable Laws pertaining to security requirements, the Facility Security Plan and any of the Operator's standing instructions which may be operative at such time. The Operator shall have the right to refuse provision of the Terminal Services to the Customer in the event of the Customer's non-compliance with any of such laws, regulations, instructions or requirements of the Operator. If a Vessel is at the Terminal at the time of such non-compliance, the Customer undertakes to meet any additional costs resulting from such non-compliance and/or ensure that the berth is vacated immediately upon receipt of written request from the Operator.
- (b) The Operator undertakes to implement and maintain such security measures necessary to ensure that the Terminal complies with Good Industry Practice and the Applicable Laws in relation to security, including such security measures as required by the ISPS code (together, the **Security Measures**).

8.3 Costs of compliance with Security Requirements

In the event that, as a result of a change in Good Industry Practice or the Applicable Laws, the Operator deems it necessary to change the Security Measures in order to comply with its obligations at clause 8.2(b), and such change results in an increase in the cost of the provision of such Security Measures, the Operator may recover such additional costs from the persons (including, for the avoidance of doubt, the Customer) to whom the Operator provides services and/or facilities at the Terminal.

8.4 Stowaways

- (a) The Customer shall enforce strict access controls at the gangway on all Vessels whilst berthed at the Terminal, in order to prevent unauthorised access to those Vessels.
- (b) The Operator shall enforce strict access controls at the perimeter of the Terminal to prevent unauthorised access to the Terminal.
- (c) The Operator will not be liable for any loss or damage suffered or incurred by the Customer (including, without limitation, any fines or penalties or the payment of expenses by the Customer on account of care, lodging, medical attention, security or repatriation) arising from the presence on board Vessels of stowaways, or other unauthorised personnel.

9. CUSTOMER ACCESS TO TERMINAL

Subject to the Applicable Laws and the Facility Security Plan, the Operator shall allow reasonable access to the Customer and the Customer's Visitors, upon reasonable request, to attend the Terminal for the purpose of carrying out the business and agency requirements of the Customer relating to the Terminal Services supplied by the Operator to the Customer. The Customer and the Customer's Visitors shall observe all requirements of the Facility Security Plan, all safety regulations and any of the Operator's standing instructions which may be operative at that time. The Customer will be fully liable for the acts and omissions of the Customer's Visitors while they are present at the Terminal and shall indemnify and keep indemnified the Operator in respect of any loss or damage suffered or incurred as a consequence of any such act or omission.

10. OBLIGATIONS AND RELATIONSHIP ISSUES

10.1 Appoint Representative

The Customer and the Operator must:

- (a) each appoint and maintain, for the term of this Agreement, a suitable full time employee to represent it and to supervise the performance of its obligations (the **Representative**);
- (b) each ensure its Representative regularly meets with the other's Representative to discuss the progress of this Agreement; and
- (c) if reasonably requested by the other, replace its Representative.

10.2 Applicable Laws to Override

Each Party acknowledges that the Applicable Laws may regulate how the Operator can perform the Terminal Services. The specifications of the Terminal Services, including without limitation the Operator's obligations, are subject to such Applicable Laws.

10.3 Interdependence of Performance of Obligations

The Parties acknowledge that each Party's ability to meet its obligations under this Agreement is dependant upon the other Party meeting its obligations under this Agreement. Accordingly, neither Party shall be in breach of its obligations under this Agreement to the extent that its ability to meet those obligations has been materially adversely impacted by a failure of the other Party to meet its obligations under this Agreement.

10.4 Review of Obligations

At least once during each 12 month period during the Term of this Agreement, the Representatives must:

- (a) review in good faith Appendices 1-3 with the intention of enhancing the performance of the Terminal Services, such as operating requirements, performance standards, berthing window plan and operational safety;
- (b) decide whether these Appendices should be varied; and
- (c) if the Parties agree to make any variation, ensure that it is constituted in an amendment to this Agreement,

provided that if no such variations are agreed, the existing Appendices shall continue to apply.

10.5 Maintenance of Records

Each Party must maintain and retain relevant documents and records, for the Term of this Agreement, sufficient to enable verification of compliance with its obligations under this Agreement and, where reasonably required by the other Party, shall provide copies of such records (or reasonable access, as appropriate, during normal business hours) for the purposes of such verification.

11. SERVICE ISSUES

Each Party must notify the other Party, without undue delay, after becoming aware of anything that is likely to, or will, adversely impact on the either Party's ability to perform its obligations under this Agreement, specifying at least:

- (a) the nature and cause of the problem; and
- (b) the steps, if any, being taken to minimise the impact of the problem.

The Parties must use their reasonable efforts to resolve the problem as quickly as possible.

12. SUBCONTRACTING

- (a) The Operator may sub-contract the performance of the Terminal Services or any part thereof, but, unless such a sub-contract is at the request of the Customer, any sub-contracting shall in no way relieve the Operator of any of its obligations under this Agreement and the Operator shall remain responsible for any sub-contractor and its performance. The Operator shall ensure that any such sub-contractors comply with and observe the terms and conditions of this Agreement as if they were an original party to this Agreement, in particular, but in no way limited to, the obligations of confidentiality provided in Clause 6.
- (b) If the Customer makes a request, the Operator may sub-contract the provision of Terminal Services with respect to the Vessel to another terminal operator in the Port upon such terms and conditions as the Operator may negotiate with that operator, provided that the Operator will not be liable to the Customer for any adverse performance or acts or omissions of that operator. Notwithstanding the foregoing, the provisions of this Agreement shall continue to apply as between the Operator and the Customer, including, without limitation, the payment of rates by the Customer in accordance with the Rates set out in Appendix 3

- (c) In the event of a Vessel call being subcontracted or transferred to another terminal operator at the request of the Customer, any Containers received into the Operator's Terminal will be relocated to the other operator's terminal at the expense of the Customer and each Container will be charged for the gate-in, gate-out and any storage accruing in accordance with the Rates set out in Appendix 3.

13. FORCE MAJEURE

13.1 Relief from Liability

A Party (an **Affected Party**) shall be relieved from liability (except for any accrued payment obligations) for any delay in the performance of, or inability to perform, an obligation under this Agreement which is directly caused by or results from a Force Majeure Event, for so long as the inability to perform continues.

13.2 Obligations of Affected Party

- (a) Notwithstanding the foregoing, the Affected Party shall:
 - (i) make all reasonable efforts to prevent, minimise and thereafter mitigate any delays or costs occasioned by any Force Majeure Event, including recourse to alternative acceptable sources of services, equipment and materials; and
 - (ii) use all reasonable efforts to ensure resumption of normal performance of this Agreement after the occurrence of any Force Majeure Event and perform its obligations hereunder to the maximum extent practicable.
- (b) Each Party shall bear their respective costs and neither Party shall be required to pay to the other Party any costs arising out of a Force Majeure Event.

13.3 Notification

If a Force Majeure Event occurs, the Affected Party shall notify the other Party as soon as reasonably practicable and in any event within 10 Business Days after the Affected Party reasonably determines that the occurrence of the Force Majeure Event affects the performance of its obligations under this Agreement in a material way. The notification shall comprise details of the suspected Force Majeure Event, the estimated financial consequences thereof and the measures and efforts exerted by the Affected Party to mitigate and overcome the effects of the occurrence of the Force Majeure Event.

13.4 Force Majeure

In this Agreement, a **Force Majeure Event** means any event or circumstance or combination of events whenever occurring which is directly caused by or results from an event described in Clause 13.5 for so long as such event or the inability to perform continues, and:

- (a) is outside the control of the Affected Party;
- (b) could not be avoided, prevented or overcome with reasonable foresight, prudence and diligence or otherwise by taking action according to Good Industry Practice; and
- (c) materially prevents, hinders or delays performance of all or a material part of the Affected Party's obligations under this Agreement.

13.5 Categories of Force Majeure Events

Without limiting the generality of Clause 13.4 and subject to Clause 13.2, a Force Majeure Event shall include, but not be limited to, the following categories or circumstances of a natural or general nature, including:

- (a) acts of God;
- (b) nuclear explosion, radioactive, biological or chemical contamination;
- (c) landslides, earthquakes and tsunamis;
- (d) epidemic, plague or quarantine;
- (e) blockade or closure of the Port;
- (f) strikes or other industrial action affecting the Terminal and/or the Terminal Services, other than those caused by or directly attributable to the Operator or Customer (as the case may be);
- (g) war (whether declared or not), civil war, invasion, embargo, military coup, revolution or armed conflict on a national scale;
- (h) sabotage, criminal damage, terrorism, but only when any of the Terminal Services are directly affected;
- (i) riot, civil commotion, insurrection on a massive or national scale; and
- (j) adverse weather conditions.
- (k) any change in Applicable Laws after the Commencement Date of this Agreement

13.6 Force Majeure Termination

Subject to compliance with Clauses 13.2 to 13.5 (inclusive), if the Force Majeure Event or its consequences continue such that the Affected Party is unable to comply with its material obligations or exercise its material rights hereunder for a continuous period of at least 180 calendar days, either Party shall be entitled to terminate this Agreement by giving written notice to the other Party, unless the Affected Party has during the existence of the Force Majeure Event taken steps reasonably satisfactorily to the other Party to overcome the relevant Force Majeure Event or its consequences and is continuing to implement the same at the end of such period.

14. PAYMENT OBLIGATIONS

14.1 Payment of Rates

Rates and the currency the Customer must pay to the Operator is confirmed in a proforma invoice and invoice, issued by the Operator for concern purpose include its revisions/amendments made from time to time which subject to inform to the Customer.

14.2 Taxes

The Rates stated in this Agreement are exclusive of all applicable taxes. Where such tax is payable in respect of the provision of the Terminal Services under this Agreement, then the Operator is entitled to recover that amount from the Customer. In that event the Operator must provide the Customer with a tax invoice with respect to the amount of tax charged.

14.3 Basis of Invoicing

Promptly after each Vessel call, the Operator will invoice the Customer for all amounts owing under this Agreement for Terminal Services supplied in respect of that Vessel call, specifying the currency in which payment is due and how those amounts have been calculated as well as providing supporting documentation. Storage and other ancillary charges will be invoiced on a periodic basis.

The Operator will invoice the Customer in the same currency stated in the Rates. Payment in a different currency will only be accepted at the sole discretion of the Operator.

Any disbursements incurred by the Operator on behalf of the Customer and not related to a particular port call of a Vessel shall, unless otherwise agreed, be computed and settled in the same currency as those in which the expenses included on the invoice were incurred.

14.4 Credit Period

The Customer must pay each undisputed Operator invoice (including excess storage charges and other Operators charges) without set off or counterclaim within the Credit Period set out in Appendix 2.

14.5 Disputed Invoices

If the Customer disputes any amount stated in an invoice provided in accordance with clause 14.3, the Customer must notify the Operator within the Credit Period and the relevant Parties must seek to resolve the dispute as quickly as possible. The Customer must pay the non disputed amount of the invoice within the Credit Period. In the event that the relevant Parties cannot resolve the dispute informally, then they must follow the dispute resolution procedure in clause 15 to resolve the dispute.

14.6 Interest on Overdue Amounts

The Operator may charge the Customer interest on any overdue amount, calculated daily at the lending rate (as charged on the due date by the Central Bank of the country in which the Port is situated) plus 2%, from the due date until the date of payment.

14.7 Remedies for Non-Payment

If the Customer fails to pay undisputed invoices for thirty (30) days after the due date, the Operator shall be entitled to seek remedy as it sees fit including, but not limited to, elimination of any discount to the Terminal's standard rates, suspension of Terminal Services and termination of this Agreement.

15. DISPUTE RESOLUTION

15.1 Dispute Meeting

- (a) In the event of any dispute between the Parties arising out of or relating to this Agreement, representatives of the Parties shall, within 14 days of service of a written notice from either party to the other party (a **Dispute Notice**), hold a meeting (a **Dispute Meeting**) in an effort to resolve the dispute.
- (b) Each Party shall use all reasonable endeavours to send a representative who has authority to settle the dispute to attend the Dispute Meeting.

15.2 Intervention of CEOs

If within 28 days of the date of service of a Dispute Notice, the Parties shall have failed to resolve the dispute, whether or not a Dispute Meeting has been held, each of the Parties shall prepare and send to the other Parties a memorandum stating its understanding of the dispute, its position in relation to the dispute, its reason for taking that position and any proposal for resolving the dispute, and the chief executive officer of each of the Parties shall be provided with copies of all memoranda prepared under this clause 15.2 and shall as soon as reasonably practicable meet to discuss the dispute and use all reasonable endeavours to resolve it.

15.3 Reference to arbitration

Any dispute which is not resolved within 40 days after the service of a Dispute Notice, whether or not a Dispute Meeting has been held, shall, at the request of either Party made within 40 days of the Dispute Notice being served, be referred to arbitration under the rules of Badan Arbitrase Nasional Indonesia [BANI] (the **Rules**) before three arbitrators who shall be appointed in accordance with the Rules. The place of the arbitration shall be Jakarta and the language of the arbitration shall be in Indonesian.

15.4 Binding effect of arbitral award

The Parties each hereby unconditionally and irrevocably:

- (a) agree that an award by the duly appointed arbitrators pursuant to the provisions of clause 15.3 shall be final, conclusive and binding upon it and may be enforced in any court of competent jurisdiction including, but not limited to, those in Indonesia and within Operator's jurisdiction; and
- (b) consent generally to the giving of any relief or the issue of any process in connection with the enforcement of any arbitral award including, without limitation, enforcement or execution against any assets belonging to it.

15.5 Interim measures not affected

Notwithstanding the foregoing, the Parties agree that either of them may seek interim measures including injunctive relief or specific performance in relation to the provisions of this Agreement or the Parties' performance of it from any court of competent jurisdiction.

16. TERMINATION

16.1 Termination for Cause

A Party (the **Non-Defaulting Party**) may terminate this Agreement with immediate effect by giving notice to the other Party (the **Defaulting Party**) if:

- (a) the Defaulting Party breaches any material term of this Agreement (including, without limitation, an obligation to pay) and fails to remedy the breach within 30 days after receiving notice from the Non-Defaulting Party requiring it to do so;
- (b) the Defaulting Party disposes of the whole or any part of its assets, operations or business other than in the normal course of business (except a voluntary liquidation for the purpose of amalgamation or reconstruction if the new company assumes all of the Defaulting Party's obligations under this Agreement on terms satisfactory to the Operator);

- (c) a mortgagee, receiver, receiver and manager, liquidator, provisional liquidator or any kind of external administrator is appointed to the Defaulting Party or any of its assets or business;
- (d) any arrangement or compromise is entered into between the Defaulting Party and its creditors;
- (e) the Defaulting Party ceases to be able to pay its debts as and when they fall due; or
- (f) the Defaulting Party ceases to carry on its business in the ordinary course.

16.2 Duty to Notify

The Defaulting Party must notify the Non-Defaulting Party immediately if any of the events set out in sub-clauses 16.1(b) to 16.1(f) happens to the Defaulting Party.

16.3 All Rights Preserved

Termination of this Agreement under this clause 16 shall be without prejudice to the accrued rights and obligations of the Parties under this Agreement, including, without limitation, the right of the Operator to be paid all accrued fees and charges then outstanding under this Agreement and the obligations of confidentiality imposed on all Parties.

16.4 Right to review applicable Rates

Notwithstanding the termination rights available under this clause 16, if the Customer consistently fails to fulfil any material obligation or breach any material term under this Agreement, the Operator reserves the right to review the applicable Rates. Any change in the applicable Rates shall only take place upon the prior written agreement of the Parties.

17. AFTER TERMINATION

17.1 Cargo Returned Against Payment

Promptly after termination of this Agreement (which expression shall include, for the purposes of this clause 17, expiry of the Term of this Agreement):

- (a) the Operator must return to the Customer, at the Customer's expense and upon fulfilment of the Customer's payment obligations under sub-clause 17.1(b), any Containers or Cargo in the Operator's or its subcontractors' possession or control; and
- (b) the Customer must pay the Operator for all Terminal Services supplied up to and on termination.

17.2 Clauses Survive

Clauses 1, 6 16.3 and this clause 17 continue to bind the Parties after termination of this Agreement.

18. LIABILITY OF OPERATOR

18.1 Liability

Subject to clause 20.5, the Operator shall indemnify and keep indemnified the Customer (and its employees, officers and agents) in respect of any death, personal injury, loss or damage suffered or incurred as a consequence of any breach of the Agreement by the Operator constituting negligence or wilful misconduct or any act or omission of the Operator (or any of its employees, officers or agents) constituting negligence or wilful misconduct except to the extent that such death, personal injury, loss or damage is caused by a breach of this Agreement or an act or omission of the Customer (or any of its employees, officers or agents).

18.2 Liability Cap

Subject to the provisions of clause 20.4, the liability of the Operator under this Agreement arising out of any single incident or series of incidents arising from a common cause shall not exceed USD fifteen million (\$15,000,000) (the **Liability Ceiling Amount**).

The liability of the Operator under this Agreement shall not exceed the financial limits set out below for the specified category of loss or damage provided that the maximum liability of the Operator arising out of any single incident or series of related incidents or series of incidents arising from a common cause shall not in any case exceed the Liability Ceiling Amount:

- (a) In the case of damage to a Vessel, a maximum of US\$15,000,000 arising out of any single incident or series of related incidents;
- (b) in the case of physical loss or damage to a Container, or a Container and its ancillary equipment, the depreciated value or the reasonable cost of repairs whichever is less;
- (c) in the case of physical loss or damage to Cargo, the Customer's liability to its customer under its Bill of Lading or other contract of carriage to a maximum of:
 - (i) in the case of containerised Cargo: \$75,000 per Container; and
 - (ii) in the case of break bulk or non-containerised Cargo: \$50,000 per piece arising out of any single incident;
- (d) in the case of any other equipment owned or operated by the Customer not previously referred to in this clause, subject to a limit of \$25,000, the lesser of the reasonable cost of repair and the depreciated value.

18.3 Liability Floor

The Customer shall make no claim against the Operator for an amount less than USD one thousand (\$1,000) (the **Liability Floor Amount**).

18.4 No Liability

Notwithstanding the generality of clause 18.1, the Operator shall not be liable for any loss or damage to a Container or Cargo, death or personal injury to the extent that such loss, damage, death or injury is caused by or contributed to by defective protection or packing, latent or natural wastage or contamination of Cargo, misdeclared Cargo information, failure or malfunction of refrigerated container equipment or refrigerants or defective or malfunctioning twistlocks of the Customer.

18.5 Transfer of Risk

For the purpose of this Agreement, the custody of Containers and Cargo will be transferred to the Operator as follows:

- (a) For export Containers/Cargo: upon passing in the Terminal gate according to the relevant equipment interchange receipt to be issued by the Operator, until stowing of the Container/Cargo on the Vessel (locking twist locks on board).
- (b) For import Containers/Cargo: upon unstowing of the Container/Cargo from the Vessel (from unlocking twist locks on board) until either:
 - (i) passing out of Terminal gate into the custody of the person duly authorised to receive the Container / Cargo according to the relevant equipment interchange receipt to be issued by the Operator; or
 - (ii) received by the person duly authorised to take delivery of the Container / Cargo according to the relevant equipment interchange receipt to be issued by the Operator, whichever happens first
- (c) For transshipment and restows of Cargo/Containers: as from unstowing of the Container/Cargo from the Vessel (as from unlocking twist locks on board) until restowing of such Container/Cargo on the Vessel (as from locking twist locks on board).

19. LIABILITY OF CUSTOMER

19.1 Liability

Subject to clause 20.5, The Customer shall indemnify and keep indemnified the Operator (and its employees, officers and agents) in respect of any death, personal injury, loss or damage suffered or incurred as a consequence of any breach of the Agreement by the Customer constituting negligence or wilful misconduct or any act or omission of the Customer (or any of its employees, officers or agents) constituting negligence or wilful misconduct except to the extent that such death, personal injury, loss or damage is caused by a breach of this Agreement or an act or omission of the Operator (or any of its employees, officers or agents).

19.2 Himalaya Clause

The Customer:

- (a) must include in all its contracts of carriage for Containers or Cargo loaded or discharged at the Terminal, provisions whereby every sub-contractor of the Customer (including the Operator and each of the Operator's sub-contractors):
 - (i) shall have the benefit of any provision in such contract which limits the Customer's liability relating to such carriage (including, without limitation, any liability caps or limitation periods), and the Operator hereby appoints the Customer as its agent only for such limited purpose; and
 - (ii) shall not be liable to any party other than the Customer in relation to Cargo and, without prejudice to the liability of the Operator to the Customer and the Customer's rights of indemnity under this Agreement, the Customer hereby indemnifies the Operator and each of the Operator's sub-contractors and shall hold them harmless against any claim by a third party relating to Cargo.

- (b) acknowledges that the Operator has agreed with its sub-contractors that they will enjoy the benefit of the exclusion and limitation of liability terms agreed with the Customer pursuant to this Agreement and accordingly agrees that:
 - (i) the exclusions and limitations of the Operator's liability in clauses 18 and 20 of this Agreement shall benefit the Operator's sub-contractors, all employees and agents of the Operator or of any sub-contractor and anyone else who is vicariously liable for acts or omissions of any such person; and
 - (ii) for the purposes of this sub-clause (b) only, the Operator enters into this Agreement as agent for all such persons who shall be treated as if they were parties to this Agreement.

19.3 Liability Cap

Subject to the provisions of clause 20.4, the liability of the Customer under this Agreement arising out of any single incident or series of incidents arising from a common cause shall not exceed the Liability Ceiling Amount.

Nothing in this Agreement shall be construed as a waiver by the Customer of its right to limit its liability for personal injury or property damage by establishing a limitation fund under an applicable international convention or national law governing the liability of owners and/or operators of seagoing ships. The liability of the Customer to the Operator shall, subject to clause 20.4, be limited to the greater of any relevant amount prescribed by such limitation fund or the Liability Ceiling Amount per incident or series of incidents arising from a common cause.

19.4 Liability Floor

The Operator shall make no claim against the Customer for an amount less than the Liability Floor Amount.

20. GENERAL LIABILITY PROVISIONS

20.1 No Other Liability

In addition to any applicable legislation and subject to clause 20.4, this Agreement states:

- (a) the entire liability of the Parties to each other; and
- (b) the extent of each Party's liability for any claim.

For the avoidance of doubt, the limitations of liability stated in this Agreement shall not prejudice the rights of any Party to pursue any remedy available at law including, without limitation, application for an order for specific performance or injunctive relief to enforce the terms of this Agreement.

20.2 Mitigation

Notwithstanding any other provision herein, both the Operator and the Customer shall, at all times, take all reasonable steps to minimise and mitigate any loss, damage and/or costs and expenses for which the relevant Party is entitled to bring a claim against the other pursuant to this Agreement.

20.3 Claim notification periods

No claim may be pursued by either the Operator or the Customer (the **Claimant** for the purpose of this clause) against the other (the **Recipient** for purposes of this clause) unless:

- (a) in the case of an event which customarily requires a survey of damage, the Claimant must immediately notify the Recipient. Failure to do so may release the Recipient from liability with regards to any claim;
- (b) the Recipient has been advised in writing of the event or events giving rise to the claim within sixty (60) days of their occurrence; and
- (c) formal notification of such claim, in the form of written demand or commencement of proceedings, setting out all relevant details of the claim is received by the Recipient within one (1) year of the occurrence of such event or events.

20.4 Non-Excludable Condition

The Parties do not exclude or limit the application of any provision of any Applicable Law (such as an implied condition or warranty) to the extent that such exclusion would contravene that Applicable Law or cause any part of this Agreement to be void.

20.5 Exclusions from Liability

Subject to clause 20.4, the Operator and Customer exclude all liability to each other for any loss or damage which is either:

- (a) caused by and to the extent of a Force Majeure Event; or
- (b) consequential or indirect loss or damage whether arising in contract, tort, statute or otherwise even if:
 - (i) the Parties knew they were possible; or
 - (ii) they were otherwise foreseeable,

including, without limitation, loss of revenue, income, profits, market, interest or hire, fiscal loss or loss on currency exchange.

20.6 Material Breach

The provisions of this clause 20 apply even in circumstances arising from a material breach of contract or breach of a material term.

20.7 No Personal Liability

There is no agreement between the Customer and any director, employee or consultant (whether employed or self-employed) of the Operator (each an **Employee**) and any services provided by such Employees are provided on behalf of the Operator and not in his or her personal capacity and no Employee assumes any personal responsibility, obligation or duty to you. The Customer undertakes that it will not bring any claim (including under this Agreement or in law of tort) against an Employee.”

21. INSURANCE OBLIGATIONS

21.1 Operator

The Operator must at all times during the term of this Agreement:

- (a) take out and maintain with insurers of international standing all such insurances and insure against such risks and for such sums as would normally be taken out by a prudent terminal operator and in any event to a level of cover not less than the Liability Ceiling Amount, including, but not limited to, liability insurances in respect of the Operator's negligence; and
- (b) provide evidence of the currency of such insurance coverage upon the Customer's request.

21.2 Customer

The Customer must at all times during the term of this Agreement:

- (a) take out and maintain with insurers of international standing all such insurances and insure against such risks and for such sums as would normally be taken out by a prudent shipping operator and in any event to a level of cover not less than the Liability Ceiling Amount, including, but not limited to, P&I Club insurances; and
- (b) provide evidence of the currency of such insurance coverage upon the Operator's request.

22. RELATIONSHIP BETWEEN THE PARTIES

This Agreement does not create a relationship of employer and employee, principal and agent (except for the limited purpose stated in clause 19.2) or partnership between the Operator and the Customer.

Other than as provided in this Agreement, a Party shall not incur any liabilities nor make any contractual commitment on behalf of the other Party without prior written approval.

23. AGENT

The Customer may, subject to prior notification in writing to the Operator, appoint an agent in respect of the Terminal Services and other services and facilities provided by the Operator pursuant to this Agreement, in which event, the Customer shall be deemed to have authorised the Agent to act on the Customer's behalf in respect of all matters hereunder including to pay to or receive from the Operator all sums due under this Agreement unless the Customer notifies the Operator to the contrary at the time of such appointment or any time thereafter and:

- (a) the Operator shall be entitled at any time, to act upon any instruction, request, notice or other communication from the Agent without prior reference to the Customer and to receive from and to pay to the Agent any sums due under this Agreement (including any rebate);
- (b) any payment made by the Operator to the Agent pursuant to this Agreement shall be held by the Agent in trust for the Customer and the receipt of the Agent of such payment shall be a full and sufficient discharge of the Operator in respect of such payment;

- (c) any payment made by the Operator to the Agent pursuant to this Agreement shall only be made to the Agent for the time being when such payments fall due without any apportionment or deduction whatsoever with any other person; and
- (d) the entitlement of the Operator under sub-clause (a) above shall continue until the Operator receives notice from the Customer to cease acting upon such communication or to cease the receipt and/or making of such payments from and to the Agent thereafter.

24. NOTICES

24.1 Notification

A Party notifying or giving notice under this Agreement must notify:

- (a) in writing;
- (b) addressed to the address of the recipient specified on the first page of this Agreement or as varied by notice given in accordance with this clause; and
- (c) left at or sent by registered post, e-mail or facsimile to that address.

24.2 Receipt

A notice given in accordance with clause 24.1 will be taken to have been received:

- (a) if delivered by hand to the recipient's address, on the date of delivery, as long as delivery is acknowledged in writing by the recipient;
- (b) if sent by registered post, 5 days after posting; and
- (c) if sent by facsimile or e-mail, on the first working day at the recipient's address, after transmission.

25. GENERAL

25.1 Waiver and Modification

None of the provisions of this Agreement shall be considered waived by any Party unless a waiver is given in writing by that Party. No waiver of any breach shall be deemed to be a waiver of any other or subsequent breach. No alteration or amendment to any provision of this Agreement will be effective or enforceable unless made in writing and signed by the Parties to this Agreement.

25.2 Representations, Warranties and Undertakings

Both Parties shall, throughout the Term, be duly incorporated, validly existing and in good standing under the laws of the place of their incorporation, have full power to carry on their businesses and to enter into and perform their obligations under this Agreement, and shall, throughout the Term, comply with all Applicable Laws.

Both Parties have taken all necessary corporate and other steps, and have obtained all necessary consents and approvals (if any), to authorise the execution, delivery and performance of this Agreement.

25.3 No reliance

In entering into this Agreement no Party may rely on any representation, warranty, collateral contract or other assurance (except those set out in this Agreement and the documents referred to in it) made by or on behalf of any other Party before the signature of this Agreement and each of the Parties waives all rights and remedies which, but for this paragraph, might otherwise be available to him in respect of any such representation, warranty, collateral contract or other assurance, provided that nothing in this paragraph shall limit or exclude any liability for fraud.

25.4 Counterparts

This Agreement may be executed in any number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument

25.5 Further Assurance

Each Party agrees, at its own cost and expense, upon the request of the other Parties, to do and execute or cause to be made done or executed all such acts, instruments, assurances and writings as may be reasonably necessary or desirable to perfect or give effect to the provisions of this Agreement and to use all reasonable endeavours to cause third parties to do likewise.

25.6 Severability

If any provision of this Agreement shall be or be determined to be illegal, invalid, void or voidable, the legality or validity of the remainder of this Agreement shall not be affected and the remainder of this Agreement shall continue in full force and effect.

25.7 Strict Compliance

In the absence of express provision to the contrary, failure or omission by a Party to this Agreement at any time to enforce or require strict or timely compliance with any provision of this Agreement or any related document shall not impair the ability of that Party to exercise the rights and remedies it otherwise has in respect of a breach of any such provision.

25.8 No Merger

None of the provisions of this Agreement will merge in or upon the execution of this or any other agreement, document, act, matter or thing.

25.9 Assignment of Rights

No Party may assign its rights under this Agreement without the prior consent in writing given by the other Party (which may be granted or withheld entirely at the discretion of such other Party), except that in the case of corporate reorganizations or restructurings where the other Party is not materially prejudiced thereby, such consent may not be unreasonably withheld.

25.10 Entire Agreement

This Agreement is the entire agreement between the Parties as to its subject matter and in relation to that subject matter, supersedes any prior understanding or agreement between the Parties, including without limitation, any letter of intent or proposal.

25.11 Precedence

In the event that any conflict arises between the Appendices and the General Terms and Conditions, the provisions set out in the General Terms and Conditions will take precedence.

25.12 Costs

Each Party must bear its own costs and out of pocket expenses (including legal costs) incurred in relation to the negotiation and execution of this Agreement.

25.13 Waiver of Sovereign Immunity

Each Party irrevocably waives all immunity to which it may be or become entitled in relation to this Agreement, including immunity from jurisdiction, enforcement, execution, prejudgment proceedings, injunctions and all other legal proceedings and relief, both in respect of itself and its assets, and consents to such proceedings and relief.

APPENDIX 1: OPERATOR'S OBLIGATIONS

The Operator shall provide the Terminal Services described in this Agreement to the Customer:

- (a) in compliance with the Agreement and Applicable Laws;
- (b) in a safe and efficient manner;
- (c) in accordance with any lawful and reasonable directions given from time to time by the Customer within the scope of this Agreement;

1. BERTHING

The Operator shall:

1.1 **If a Vessel Arrives on Schedule**, meaning Arrival at Terminal physical berth within 4 hours of the agreed Berthing Window. Arrival at Pilot Station should be latest 2 hours before commencement of the Berthing Window, assuming it takes 2 hours from Pilot Station to Berth.

- (a) provide a berth on Arrival.
- (b) work the Vessel to maintain the agreed Berthing Window Plan, provided the Vessel meets the Minimum Crane Density requirement and has an exchange that does not exceed the move count (including restows moves' count).

1.2 **If a Vessel does not Arrive on Schedule:**

- (a) berth and work the Vessel at the next available opportunity. Work will commence on the Vessel at the normal start of shift after Arrival.
- (b) provide the best productivity possible using Good Industry Practice, however the Operator shall be under no obligation to meet the agreed Berthing Window parameters.

2. SHIP OPERATIONS

The Operator shall provide:

2.1 Planning

Stowage planning based upon instructions from the Customer including but not limited to:

- (a) accessing the incoming electronic bay plan and retransmitting the completed electronic bay plan immediately upon operations being completed; and
- (b) providing a pre-planned bay plan data by email, before submitting to vessel, in accordance with the existing standard, prior to starting load operations subject always to all export Containers being received in container yard.
- (c) providing The final bay plan will be submitted after complete load, not later than [two (02)] hours after ATD.

2.2 Loading and Discharging

- (a) cranes, labour and handling equipment necessary for the loading and discharging operations, so as to ensure that the Containers and Cargo of the Customer are handled in a safe and efficient manner in accordance with Good Industry Practice;
- (b) a bay plan and a working sequence for acceptance by the Vessel's command prior to the commencement of operations provided that the Customer complies with requirements of Appendix 2.
- (c) movement of Containers from Vessel's cells or deck to wharf or vice versa;
- (d) restowing of containers at the request of the Customer;
- (e) lashing and unlashng of deck Containers and Cargo, where patent lashing fittings only are used;
- (f) opening and closing of twistlocks and attaching and removing twistlocks from Containers on and under deck;
- (g) discharging and loading of Vessel twistlock bins or racks;
- (h) discharging, loading and securing of hatch covers;
- (i) movement of Containers from wharf to stacking area or vice versa;
- (j) checking and confirming Container numbers;
- (k) reporting (in compliance with EDIFACT standards) of Containers and Cargo loaded and discharged from the Vessel in the format required by the Customer provided that the Customer complies with the provisions of ship bay plan, discharge, load and transshipment instructions by EDI; and
- (l) reporting of visual damage to Containers, and other equipment via Container Damage Reports.

2.3 Documentation

Upon arrival at the Terminal, the Operator shall provide the Vessels with the following documentation:

- (a) Full stowage plan (soft copy, BAPLIE file format);
- (b) Reefer manifests including slot positions, provided by liner and stowage coordinator;
- (c) Dangerous Cargo manifests including slot positions, and packing certificates; provided by liner and stowage coordinator;
- (d) Out of gauge (OOG) and Break Bulk manifests including slot positions, provided by liner and stowage coordinator;
- (e) Work sequence;
- (f) Any specific documentation required on a case by case basis, provided it has been agreed by terminal operator; and
- (g) Scheduled departure time.

Throughout the cargo operation, the Operator shall supply updated documentation to the Vessel as and when this becomes available.

Upon completion of cargo operations the Operator shall supply the Vessel with any of the above documentation that may have changed or otherwise been incomplete.

3. YARD OPERATIONS

3.1 Receival and Delivery:

The Operator shall provide:

- (a) suitable handling and storage areas based on the frequency of calls and the volumes to be handled as notified to the Operator, together with gate operations for the receival and delivery of Containers by road or by rail;
- (b) details of the normal receival and delivery times as indicated by the Operator and as may be amended by the Operator from time to time
- (c) delivery of import Containers/Cargo at the Terminal (during normal receival and delivery hours) and all clerical work and reporting associated;
- (d) receival of export Containers/Cargo within the receival period in accordance with the procedures noted below:
 - (i) The **Cut-off** for all Vessels will be [(06) six hours] preceding the advised time of Arrival or earlier if required by the Vessel Operator.
 - (ii) Commencement of the Receival Period (Opening Stack) will be three days (72 hours) before the estimated time of Arrival.
 - (iii) All received export containers/cargo have to be released [(03) three hours] preceding the advised time of Arrival or earlier if required by the Vessel Operator.
 - (iv) Receival Period will only be altered in exceptional cases and should be requested one week (07 days) preceding the advised time of Arrival or earlier if required by the Vessel Operator.
 - (v) Requests for late receivals made before Cut-off will be subject to agreement between the Parties as to the costs involved. No guarantee will be given that such late receivals will be accepted.
 - (vi) In the event of a Late Receival being requested, the following will apply:
 1. All late receival applications must be lodged through the Vessel Operator prior to the normal cargo cut-off for that Vessel.
 2. The Vessel Operator's Late Receival Request (LRR) is to be completed and sent to the Operations Planning Manager and Business Development Manager at the Terminal with Operations Director in copy.
 3. Except in the case of restricted hazardous commodities, LRR's cannot be considered for containers arriving after the vessel commences work.
 4. The Operator will promptly respond to the request by sending the LRR back, advising if the request has been accepted.
 5. Once the Late Receival arrangements are confirmed the Operator will arrange Terminal time slots for the appointed carrier.

- (vii) For consortiums where more than one operator is involved, the Operator will only agree receival arrangements, regardless of whether they are normal, late or special receivals, with the Vessel Operator.
- (e) regular reports (in compliance with EDIFACT standards and communicated electronically) of Containers and Cargo movements into and within the Terminal in the format required by the Customer provided that the Customer complies with the provisions of requirements in Appendix 2.
- (f) arrangements at the discretion of the Operator for acceptance/delivery of Containers/Cargo outside normal receival and delivery hours.

3.2 Storage

The Operator shall provide:

- (a) storage for export Containers/Cargo received during the Receival Period noted in 3.1(d).
- (b) storage for import Containers/Cargo following the completion of Vessel operations in accordance with the provisions contained in Appendix 3;
- (c) storage for transshipment Containers/Cargo following the completion of Vessel operations in accordance with the provisions contained in Appendix 3;

3.3 Temperature Controlled and Ventilated Cargo and Containers

The Operator shall:

- (a) provide electrical outlets and connect and disconnect the power supply;
- (b) set temperatures in accordance with the set points notified on the [booking advice] and monitoring the temperature settings displayed on the reefer units twice daily whilst in the Terminal and after receival or prior to delivery;
- (c) report faults, variations between the [booking advice] set point and Container set point, and machinery malfunctions (including abnormal temperature variations as nominated and provided by the Customer) to the Customer at agreed frequency;
- (d) Operator Excused from Liability

The Operator will not be liable in respect of:

- (i) any failure of or interruption in the supply of electrical power, beyond the control of the Operator, to the Containers referred to in this clause;
- (ii) any failure or malfunction of such Containers or any associated equipment;
- (iii) any claim in respect of a Container or Cargo where the Operator has properly performed all its obligations under this Agreement;
- (iv) any claim in respect of a container or cargo where the operator has not been advised of the temperature settings required; or

- (v) any damage or failure due to special requests to adjust reading temp and to meet the setting temp (PTI), by vessel operator, or by customers.
Should there any changing of temp, made remotely either thru our consent or without our consent,

3.4 Hazardous Cargo

The Operator shall not be obliged to handle Cargo that is prohibited by any of the Applicable Laws.

- (a) Subject to this clause, with respect to Hazardous Cargo or any Cargo listed as restricted by the Customer, the Operator and the Customer must agree in writing upon arrangements for handling such restricted Cargo prior to the arrival of the Cargo.
- (b) Subject to this clause, with respect to all Hazardous Cargo, the Operator may impose charges to recover extra costs incurred, including costs for labour delay time, and special insurance or handling procedures required by laws or Good Industry Practice.
- (c) Without limiting the generality of the foregoing, any Container loaded with Dangerous Goods shall prior to discharge or delivery to The Terminal operator be clearly marked in accordance with all applicable local and/or international codes.
- (d) Class Acceptable to landing, or stowed, in Terminal yard in accordance with latest IMDG local regulation in-force all classes and UNNO, except class 1; class 7; and class 5. Prior arrival of those, shipping line is obliged to submit all details [2 (two) days] prior arrival, including port authority approval.
- (e) In case of wrong declaration of IMDG class, UNNO, by consignee, shipper or vessel operator, the Operator may impose charges to recover extra costs incurred.

3.5 CONTAINER WEIGHING

- (a) The Operator shall check the existence of a VGM in the Cargo documentation provided by the Customer and shall not load a packed Container onto a Vessel to which SOLAS applies unless it has a VGM for such Container either provided by a VGM Declarant before the VGM Cut-off or established by the Operator in accordance with clause 3.5(c) below.
- (b) The Operator shall treat as genuine and rely in good faith upon, without further investigation, a gross mass of a Container purporting to be a VGM received from a VGM Declarant in any communication ordinarily used for the provision of information or as otherwise agreed between the Parties.
- (c) If either:
 - (i) a packed Container has been received by the Terminal but the VGM for such Container is not provided to the Operator by a VGM Declarant before the VGM Cut-off; or
it is agreed in writing (including by e-mail) between the Parties that a packed Container shall be weighed by the Operator,
then the Operator shall obtain the VGM for such Container using appropriately calibrated and certified equipment as required by Applicable Laws and, for the purpose of paragraph (ii), that VGM shall replace the VGM for that Container previously provided by a VGM Declarant¹.

- (d) Any weight of a packed Container established by the Operator, other than pursuant to clause 3.5(c) above, shall not be considered as the VGM for the purpose of SOLAS and Applicable Law related thereto.
- (e) The Operator will promptly communicate the VGM obtained in accordance with clause 3.5(c) above to the Customer.
- (f) The Operator shall not load a Container onto a Vessel if the VGM provided by the Customer or established by the Operator in accordance with clause 3.5(c) above shows a VGM greater than the maximum gross mass indicated on the Safety Approval Plate under the International Convention for Safe Containers, as amended (an "Overweight Container").
- (g) If agreed with the Customer and subject to clause 3.5(f), the Operator will de-stuff Overweight Containers and stuff and seal two or more Containers with the contents of such Overweight Containers and weigh each repacked sealed Container in accordance with clause 3.5(c). The [Customer/Operator] shall be responsible for removing any Overweight Containers from the Terminal without delay at the cost of the Customer.
- (h) The Customer shall pay all such charges arising out of or in connection with the activities performed by the Operator in this clause 3.5 and levied by the Terminal as are set out in Appendix 4 including, but not limited to, checking the existence of a VGM in the Cargo documentation provided by the Customer, establishing a VGM for a Container in accordance with clause 3.5(c) above, additional transport, shunting, handling, re-handling, de-stuffing, stuffing, storage or other charges resulting from Overweight Containers, delays or missed sailings.
- (i) The Operator shall not have any liability arising out of or in connection with delays or missed sailings as a result of:
 - (i) any failure of a VGM Declarant or third party to comply with the requirements of SOLAS or the terms of this Agreement;
 - (ii) the receipt by the Terminal of an Overweight Container;
 - (iii) the Terminal not having received a VGM before the VGM Cut-off; or
 - (iv) establishing a VGM for a Container in accordance with clause 3.5(c) above.
- (j) If as a result of a change in Good Industry Practice or the Applicable Laws (including SOLAS), the Operator's costs in order to comply with its obligations under this clause 3.5 are increased, the Operator may recover such additional costs from the Customer."

APPENDIX 2: CUSTOMER'S OBLIGATIONS

1. BERTHING

The Customer shall

- (a) comply with the Operator's Berthing Window Plan, Minimum Crane Density and exchange parameters under the terms of this Agreement;
- (b) provide regular sailing schedules and notification of estimated time of Arrival;
- (c) manage and control the movement of Vessels and/or related Vessel equipment within the Port with all due care and skill such that the Vessels do not cause any damage to the Terminal or persons or property on or in the vicinity of the Terminal;
- (d) provide to the Operator the general arrangement plan of any Vessel and any other pertinent information in accordance with the requirements of this Appendix 2;
- (e) berth the Vessel so as to best aid maximum productivity of Cargo transfer. The Operator must specify the working berth most conducive to the efficient operation of the vessel and on which side the Vessel should be berthed. If the Vessel can be worked equally well from either side it shall be berthed so as to minimise tug costs for the Customer. If the Customer (via the Vessel's command) elects not to comply with the Operators berthing request, the Operator reserves its rights to vary the Vessel's working program and Performance Standards;
- (f) vacate the berth at the agreed window time unless the Operator has delayed the completion of the Vessel's operations or unless otherwise mutually agreed; and
- (g) when necessary give at least 3 months notice to the Operator of desired changes to the Berthing Window Plan. Changes to the Berthing Window Plan shall be agreed between the Operator and Customer prior to these changes coming into effect.
- (h) Terminal makes no warranty or representation by allocating berths that any Vessel will not ground whilst approaching, leaving or resting at any berth, or that there are no obstructions on the seabed and it shall be the Shipping Line's sole responsibility to satisfy itself in advance as to such matters including the suitability or fitness of any berth so allocated.

2. SHIP OPERATIONS

The Customer shall:

- (a) To employ in its service suitable Vessels designed to be capable of carrying Containers for discharge and loading by Container handling equipment as used by the Company.
- (b) Submit to the Operator not later than [two (2) – 3 Days] days before the Vessel arrives one (1) complete and accurate set of Cargo documentation as is necessary for the safe, orderly and efficient discharge/loading of that Vessel. Such documentation shall be in the format reasonably requested by the Operator and include, without limitation, manifests, bay plans, notifications and detailed descriptions of breakbulk, hazardous and reefer Cargos together with such other documents as the Operator may have notified duly in advance that it reasonably requires the Customer to provide;

- (c) ship bay plan, discharge, load and transshipment instructions twelve (12) hours before Arrival.
- (d) information about late gate arrivals and special stow requirements twelve (12) hours before the estimated time of Arrival.
- (e) arrange for the delivery of Containers or Cargo to the Terminal in accordance with the Cut-off procedures described in Appendix 1 and supply not later than [twelve (12)] hours before the Vessel arrives, information sufficient to enable the Operator to provide the Terminal Services, including the validation of any export Containers to be loaded;
- (f) confirm to the Operator, not later than the time of receipt of Containers/Cargo by the Operator in its yard, the Customer's instructions in relation to the loading or otherwise of such Containers/Cargo (including a lashing plan);
- (g) ensure that all lashing gear (including (un)locking poles, stacking cones and twist-locks) conforms to international standards, is in good working order, is fitted in a consistent manner and is placed readily available adjacent to the area to be lashed/unlashed;
- (h) Comply with all reasonable written requests by the Operator to ensure a safe working environment including, but not limited to, installing necessary handrails and temporary fencing barriers without undue delay for all unprotected edges, particularly around outboard cells and open hatches.
- (i) As soon as possible following receipt of a VGM with respect to any Container which is to be handled at the Terminal, communicate or procure the communication of the VGM to the Operator; and
- (j) Hereby confirm as agent of the Shipper that the Operator has authority from the Shipper to act on its behalf and perform all actions contemplated in clause 3.5 of Appendix 1.
- (k) Acknowledge TDR latest 24 hours after receipt.

3. INVOICING & PAYMENTS

- (a) The Customer shall confirm to the Operator within 24 hours after receipt by the Customer, the accuracy of actual ship working information provided by the Operator to the Customer for invoicing purposes through the TDR (Terminal Departure Report). Absence of a response from the Customer will be deemed an acceptance of the information provided, and the relevant Parties must resolve any dispute with respect to the information within [three (3)] Business Days of first receipt.
- (b) Credit Period

Operator invoice should be paid by Customer within 7 (seven) working days from the invoice date of issuance.

APPENDIX 3: RATES

The rates forming important and inseparable part of this Terminal Service Agreement is as per the published tariff and its amendment made from time to time.