PORT TERMINAL MANAGEMENT CONTRACT (Tier 1)
BASEPORT – ILOILO COMMERCIAL PORT COMPLEX (ICPC)

WITNESS BY: [redacted] CAROLINE C. CAUSON

INTERNATIONAL CONTAINER TERMINAL SERVICES, INC [redacted] EMILIO MANUEL V. PASCUA Authorized Representative

WITNESS BY: [redacted] MARK JON S. PALOMAR Vice-Chairperson, HO-BAC PTMC

PHILIPPINE PORTS AUHTORITY [redacted] JAY DANIEL R. SANTIAGO General Manager

KNOW ALL MEN BY THESE PRESENTS:

This **Port Terminal Management Contract** entered into this APR 15 2024 day of _____, in _____, by and between:

PHILIPPINE PORTS AUTHORITY, a government instrumentality with corporate powers created under Presidential Decree No. 857, as amended, with principal office address at PPA Corporate Building, A. Bonifacio Drive, South Harbor, Port Area, Manila, represented by its General Manager, **JAY DANIEL R. SANTIAGO**, duly authorized for the purpose by virtue of Board Resolution No. 3276, as contained in Secretary's Certificate dated 31 January 2024, copy of which is attached as **Annex "A"** and hereinafter referred to as the "**AUTHORITY**";

– and –

INTERNATIONAL CONTAINER TERMINAL SERVICES, INC., a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with office address at ICTSI Administration Building, Manila International Container Terminal South Access Road, Manila 1012, represented herein by its Authorized Representative Christian Martin R. Gonzalez, duly authorized for the purpose as shown in the Secretary's Certificate dated 22 December 2023, copy of which is attached as **Annex "B"** and hereinafter referred to as the "**OPERATOR**".

Hereinafter shall be referred to collectively as "Parties".

W I T N E S S E T H

WHEREAS, the AUTHORITY, pursuant to Presidential Decree No. 857, as amended, is vested with the power and authority (1) to supervise, control, regulate, construct, maintain, operate, and provide such facilities or services as are necessary in the ports vested in, or belonging to the AUTHORITY, and (2) to prescribe rules and regulation, procedures, and guidelines governing the establishment, construction, maintenance, and operations of all other ports, including private ports in the country;

WHEREAS, the PPA Board of Directors approved PPA Administrative Order (AO) Nos. 03-2016, as amended, PPA AO No. 12-2018, as amended, and PPA AO No. 09-2019, as amended; in order to encourage greater participation of private sector in port operations to ensure that the provision of port services will be of generally accepted global standards, the selection and award of Port Terminal Management Contracts shall be competitive and transparent and shall undergo competitive public bidding.

WHEREAS, the AUTHORITY issued an Invitation to Bid for the selection and award of contract for the Baseport – ICPC.

WHEREAS, after evaluation and post-qualification of the Technical and Financial Bids, the International Container Terminal Services, Inc. was declared as the Single Responsive Bidder (SRB).

WHEREAS, pursuant to BAC Resolution No. 01-2024 dated 26 January 2024 duly approved by the PPA General Manager as the Head of the Procuring Entity, the Notice of Award ("NOA") for the Port Terminal Management Contract (Tier 1) for the Baseport – ICPC was issued to the Operator in a letter dated 29 January 2024 duly accepted and conformed to by the latter;

NOW THEREFORE, for and in consideration of these premises and the mutual commitments, obligations and undertakings hereunder, the Parties have agreed as follows:

WITNESS BY:
CAROLINE C. CAUSON

INTERNATIONAL CONTAINER TERMINAL SERVICES, INC
ENRIQUE MANUEL V. PASCUA
Authorized Representative

WITNESS BY:
MARK JON S. PALOMAR
Vice-Chairperson, HO-BAC PTMC

PHILIPPINE PORTS AUHTORITY
JAY DANIEL R. SANTIAGO
General Manager

ARTICLE I

Section 1.01 **Contract Documents** - The following documents shall also constitute integral parts of this Contract, as fully as if the contents of said documents are reproduced, incorporated and set forth herein, and shall control in full force and effect the rights and obligations of the Parties, except those modified by the terms and conditions of this Contract:

a. Bidding Documents

i. Invitation to Bid;

ii. Instructions to Bidders;

iii. Terms of Reference and its attachments

iv. Supplemental/Bid Bulletin, if any

b. Technical and Financial Proposals and all other documents or statements submitted;

c. Performance Security;

d. Notice of Award; and

e. In case of Joint Venture, Certificate of Registration with the Securities and Exchange Commission issued within one (1) year from the date of the contract.

Section 1.02 **Words and Meanings** - The words and expressions in this contract shall have the same meanings respectively assigned to them in the contract documents referred to above.

Section 1.03 **Controlling Document** - In case of irreconcilable conflict between the provisions of this contract and the provisions of any of the contract documents, the former shall prevail.

WITNESS BY:
CAROLINE C. CAUSON

ARTICLE II

AREA OF MANAGEMENT, OPERATION, DEVELOPMENT AND MAINTENANCE

Section 2.01 **Area of Management, Operation, Development and Maintenance** - This contract shall cover the land and existing facilities at the Baseport - ICPC, particularly described and delineated in **Annex "C"** hereof and delivered to the OPERATOR.

Any additional concession area shall entail additional concession fee in the form of lease.

INTERNATIONAL CONTAINER TERMINAL SERVICES, INC
EMILIO MANUEL V. PASCUA
Authorized Representative

ARTICLE III

CONSIDERATION

Section 3.01 **Fixed and Variable Fees** – The OPERATOR shall, during the effectivity of this Contract, remit to the AUTHORITY the following Fixed and Variable Fees:

(a) Revenue Share from Contract Years 1-5

For the first five (5) Contract Years beginning on the effectivity of this Contract, the OPERATOR shall remit to the PPA a twenty percent (20%) share of its annual gross revenues from all sources, payable not later than the fifth (5th) day of the first month of every quarter without the need of demand.

(b) **Annual Fixed Fee** which shall be as follows:

Year of Contract	Yearly Fixed Fees
6	100,000,000.00
7	125,000,000.00
8	150,000,000.00
9	175,000,000.00
10	200,000,000.00
TOTAL	750,000,000.00

WITNESS BY:
MARK JON S. PALOMAR
Vice-Chairperson, PHO-BAC PTMC

The Concession Fee is exclusive of any, and all applicable Philippine National and Local Taxes, including but not limited to Value-Added Tax (VAT), Percentage Taxes, where applicable. The taxes due on the Concession Fee, including any subsequent increase thereof, shall be for the account of the OPERATOR.

The Annual Fixed Fee for Years 6 to 10 shall be divided into four (4) equal quarterly payments payable not later than the fifth (5th) day of the first month of every quarter without the need of demand.

PHILIPPINE PORTS AUHTORITY
JAY DANIEL R. SANTIAGO
General Manager

(c) **Concession Fee Escalation for Years 11 to 25 –** On year 11, and every three (3) years thereafter, the concession fee shall be increased based on the

Consumer Price Index (CPI) adjustment factor using the formula below:

$$\text{Concession fee} = \text{Concession fee of the Current Year} \times \frac{\text{CPI (All Items) Philippines NEW}}{\text{CPI (All Items) Philippines OLD}}$$

Where:

CPI (All Items) Philippines NEW = the CPI of the immediately preceding Contract Year

CPI (All Items) Philippines OLD = the CPI of the contract year the last concession fee was increased

However, the CPI (All Items) Philippines OLD for Year 11 concession fee computation shall be based on the CPI of the 7th year of the Concession Contract

The concession fee for Years 11-25 shall be payable not later than the fifth (5th) day of the first month of every quarter without the need of demand.

(d) **Variable Fee for Years 6 to 25** – In addition to the yearly concession fee, a twenty percent (20%) variable fee shall be remitted by the OPERATOR if the actual traffic volume exceeded the volume threshold by ten percent (10%). The volume threshold for Year 6 shall be based on the highest throughput for the last 5 years.

The volume threshold shall thereafter be increased based on the average percentage increase on traffic for Contract Years 1 to 5.

The OPERATOR shall remit to the AUTHORITY the Variable Fee quarterly, not later than the fifth (5th) day of the first (1st) month of the succeeding quarter without need of demand.

Section 3.02 **Payment Mechanics** - All payments to be made by the OPERATOR under this Contract shall be made (1) in Philippine Pesos (Php), and (2) by direct transfer to the account designated by the AUTHORITY, which shall be in a Government Financial Institution (GFI) pursuant to Section 5.2 of Department Circular No. 001-2015 dated 01 June 2015 issued by the Department of Finance (DOF).

Section 3.03 **Interest and Penalties** - Failure to remit the Fixed Fee and other fees on their respective due dates shall render the OPERATOR liable to the payment of interest and penalty charges without the need for any demand, in accordance with the existing regulations and subsequent amendments thereof. Interest payment by the OPERATOR shall be without prejudice to the other remedies available to the OPERATOR under this contract.

ARTICLE IV

MANAGEMENT AND OPERATION

Section 4.01 **Management and Operation** - The OPERATOR shall manage and operate the concession area and the facilities, structures, buildings existing thereon. The parties agree that the Authority shall retain possession, use and administrative control of the facilities and buildings not included in the concession area.

WITNESS BY: [redacted] CAROLINE C. CAUSON

INTERNATIONAL CONTAINER TERMINAL SERVICES, INC [redacted] EMILIO MANUEL V. PASCUA Authorized Representative

WITNESS BY: [redacted] MARK JON S. PALOMAR Vice-Chairperson, HO-BAC PTMC

PHILIPPINE PORTS AUHTORITY [redacted] JAY DANIEL R. SANTIAGO General Manager

Section 4.02 **Core and Non-Core Services** - The Operator shall provide and undertake the following core and non-core services at the Baseport - ICPC which shall include but not limited to the following:

a. Core Services:

(1) Investment in Port Infrastructure
(2) Maintenance of Port Infrastructure and Equipment
(3) Container Terminal Management
(4) Passenger Terminal Management
(5) Stevedoring (which includes arrastre) and related services
(6) Anchorage/ Midstream Operations
(7) Berthside Operations
(8) Berth Management
(9) Storage Management

b. Non-Core Services:

(1) Bagging services
(2) Water distribution services
(3) Weighbridge services
(4) Waste and Shore Reception facilities

Section 4.03 **Other Business and Third-Party Services** - The OPERATOR shall carry out all the core services stated in Section 4.02 (a). Except for the core services, the OPERATOR may, subject to approval of the AUTHORITY, sub-contract or designate a qualified third party to provide non-core and other related services.

For the avoidance of doubt, it is clarified that the provision of the following ancillary services: (1) chandling; (2) tugboat; (3) pilotage; (4) bunkering; (5) transport services; (6) water supply, including those services that may be hereinafter determined by the AUTHORITY in the Port Operational Area ("**Ancillary Services**"), is not the exclusive right of the OPERATOR, and these Ancillary Services may also be provided by any other service provider ("**Ancillary Service Providers**"). Further, the OPERATOR shall provide the Ancillary Service Providers uninterrupted access to the Port, to provide the Ancillary Services subject to such Ancillary Service Providers obtaining permits from the AUTHORITY to operate at the Port, and subject also to compliance by the Ancillary Service Providers with the OPERATOR's and AUTHORITY's health, safety and environmental rules, policies and procedures and general disclosed operational procedures and requirements.

Section 4.04 **Facilities, Cargo Handling Equipment and Gears** – The OPERATOR shall utilize the cargo handling equipment and facilities installed by the AUTHORITY in the concession area as listed in **Annex D** hereof.

The OPERATOR shall on its own account provide and deploy upon commencement of operation its committed equipment and gears in accordance with the Port Development/Business Plan which forms part of its Technical Proposal (**Annex E**).

The OPERATOR shall likewise provide and deploy on its own account the additional and replacement equipment and gears committed in its Port Development/Business Plan according to its schedules (**Annex F**) and such other necessary equipment and gears as may be required by the PPA.

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CAROLINE C. CAUSON

INTERNATIONAL CONTAINER TERMINAL SERVICES, INC
EMILIO MANUEL Y. PASCUA
Authorized Representative

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MARK JON S. PALOMAR
Vice-Chairperson, HO-BAC PTMC

PHILIPPINE PORTS AUHTORITY
JAY DANIEL R. SANTIAGO
General Manager

The OPERATOR shall fully comply with the commitments and conditions to finance, develop, manage, operate, and maintain the Port Operational Area in accordance with the Port Development/Business Plan.

The Port Development/Business Plan may be revised by the OPERATOR to ensure that the commitments contained therein and in this Contract, continue to achieve key performance indicators under this Contract, and allow the OPERATOR the opportunity of a fair return of investment, provided that, any revision to the Port Development/Business Plan shall require prior approval by AUTHORITY. In all cases, the OPERATOR shall furnish the AUTHORITY with a copy of the revised Port Development/Business Plan.

The OPERATOR shall be responsible for the repair and maintenance of all equipment and gears used in the operations as well as the security thereof.

If during the contract period, equipment is procured by the OPERATOR whose depreciation period is longer than the contract period, the existing Contract shall not be deemed automatically extended to allow full depreciation.

All equipment of the OPERATOR being used at the port shall, upon expiration of the initial term of the Contract or in the event the Contract is pre-terminated or cancelled, automatically become the property of the AUTHORITY without any obligation to reimburse for the same except for equipment acquired by the OPERATOR during the last five (5) years prior to the termination or expiration of the Contract. In which case, AUTHORITY shall have the option either to purchase the same at book value at the time of transfer of possession and control or to pay to the OPERATOR reasonable rentals for all equipment it may utilize. In such event, the AUTHORITY shall have the right to immediately take over possession and control of and utilize the serviceable cargo handling equipment, gears, machinery and tools including office equipment, furniture and fixtures of the OPERATOR as may be needed by the AUTHORITY for the continuous and uninterrupted operation at the port.

The OPERATOR shall return to their original condition, normal wear and tear excluded, all the existing improvements, structures, buildings and facilities at the port; including structures where the equipment, facilities and gears were removed from their installation.

All properties owned and belonging to the AUTHORITY but made available to the OPERATOR shall be returned to the former in good working conditions immediately upon the termination or expiration of the Contract.

Section 4.05 **Construction of the Works** – The OPERATOR shall construct and complete the Works in accordance with the requirements and design contained in the Port Development/Business Plan and in compliance with all relevant rules and procedures, the environmental standards and prudent industry practice. The AUTHORITY shall have the right to monitor the progress of the Works.

Section 4.06 **Certificate of Acceptance** – The AUTHORITY shall conduct an inspection to determine whether the Works performed by the OPERATOR is in accordance with the Port Development/Business Plan and prudent industry practice.

The AUTHORITY, upon its determination that the Works satisfy the design and construction under the Port Development/Business Plan, shall issue a Certificate of Final Acceptance.

Any review by the AUTHORITY of the Works shall not relieve the OPERATOR of any of its obligations under this Contract.

WITNESS BY:
[redacted]
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Authorized Representative

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MARK JON S. PALOMAR
Vice-Chairperson, HO-BAC PTMC

PHILIPPINE PORTS AUHTORITY
[redacted]
JAY DANIEL R. SANTIAGO
General Manager

a. **Certificate of Provisional Acceptance** – If the AUTHORITY determines that the Works substantially comply with the Port Development/Business Plan, and unless the OPERATOR is in material breach of any of its material obligations under this Contract, then the AUTHORITY shall issue a Certificate of Provisional Acceptance subject to the rectification of the defects in accordance with this Section.

Following the issuance of a Certificate of Provisional Acceptance, the OPERATOR shall be permitted to start operations of the relevant Works. Notwithstanding the issuance of a Certificate of Provisional Acceptance, the OPERATOR shall remain obliged to carry out the Works contemplated under this Section until a Certificate of Final Acceptance is issued.

b. **Punch List Rectification Program** – The OPERATOR shall send to the AUTHORITY, for approval, within ten (10) days from receipt of a Certificate of Provisional Acceptance:

1. A program specifying how it intends to rectify the Punch List Items specified in the Provisional Acceptance Certificate; and

2. The timetable for rectifying Punch List Items identified.

c. **Rectification of Punch List Items** – The OPERATOR shall rectify Punch List Items relating to the relevant Works in accordance with the approved Punch List Rectification Program and shall notify the AUTHORITY when the same has been rectified.

d. **Failure to Rectify Defects** – Without prejudice to any other right the AUTHORITY may have under this Contract, if the OPERATOR fails to rectify any Punch List Items for which it is responsible in accordance with the approved program:

1. The AUTHORITY shall, upon reasonable notice to the OPERATOR, be entitled to have the Punch List Items in question corrected; and

2. The OPERATOR shall no later than (30) days after the AUTHORITY's demand therefor, reimburse the reasonable costs and expenses of the AUTHORITY in so doing, and the AUTHORITY shall be entitled to forfeit the Performance Security in the event that the amounts to be reimbursed have not been paid after the expiration of the thirty (30) day period.

e. **Occurrence of Delay** – If any Delay occurs, the OPERATOR shall promptly notify the AUTHORITY:

1. The cause of the Delay;

2. Its estimate of the impact of the Delay on the probability that the timeline of the relevant Phase Works will be met; and

3. The action it has taken or proposes to take to mitigate the effects of the Delay.

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JAY DANIEL R. SANTIAGO
General Manager

f. **Communications** – The OPERATOR shall provide regular updates to the AUTHORITY no less frequently than monthly of the notifications provided under Section 4.06(e) (*Occurrence of Delay*) including as to the effects of the incident, the likely delay to be caused thereby and the steps that it is taking or proposes to take to mitigate the effects of the incident.

The provision of notification under Section 4.06(e) (*Occurrence of Delay*) and updates under this Section and the use by the OPERATOR of all reasonable efforts to overcome or mitigate the Delay are conditions precedent to the OPERATOR entitlement to any adjustment of any Milestones.

The AUTHORITY may, *motu proprio*, send a communication to the OPERATOR indicating any delay in the Works if applicable or in the performance of the Services notwithstanding the lack of any communication from the OPERATOR informing the AUTHORITY of any delay.

g. **Mitigation of Delay** – The OPERATOR shall take all reasonable actions necessary to mitigate the consequences of a Delay and resume performance of its obligations as soon as practicable. For the avoidance of doubt, the OPERATOR shall not be relieved of its obligations under this Contract for those aspects that are not affected by a Delay.

h. **Delay Events**

1. An "**OPERATOR Delay Event**" is a Delay that is not caused by a Material Adverse Government Action, or a Force Majeure Delay Event.

2. A "**Force Majeure Delay Event**" is a delay caused by a Force Majeure Event, provided that the affected Party has used all reasonable endeavours in accordance with this Contract to overcome or mitigate the effects of such event.

3. Upon occurrence of an OPERATOR Delay Event, the OPERATOR shall provide a written notice to the AUTHORITY, within fifteen (15) days from the occurrence of the Delay. The AUTHORITY may also notify the OPERATOR, in writing, of any OPERATOR Delay Event within fifteen (15) days from discovery or knowledge by the AUTHORITY.

i. **Consequences of OPERATOR Delay Event** – The AUTHORITY shall be entitled to receive compensation from the OPERATOR in an amount at least equal to one-tenth of one percent (1/10 of 1%) of the unperformed portion of the Works for each day of Delay.

If the OPERATOR fails to compensate the AUTHORITY within ten (10) days from demand, the latter shall be entitled to interest in accordance with the existing rules and regulations of the AUTHORITY, and to forfeit the Performance Security.

When the OPERATOR's obligation to compensate the AUTHORITY has reached an amount equivalent to ten percent (10%) of the development costs, the same shall be a ground for the cancellation or termination of this Contract.

WITNESS BY: [redacted] CAROLINE C. CAUSON

INTERNATIONAL CONTAINER TERMINAL SERVICES, INC [redacted] EMILIO MANUEL V. PASCUA Authorized Representative

WITNESS BY: [redacted] MARK JON S. PILOMAR Vice-Chairperson, HO-BAC PTMC

PHILIPPINE PORTS AUHTORITY [redacted] JAY DANIEL R. SANTIAGO General Manager

The payment of the above liquidated damages shall be without prejudice to other rights of the AUTHORITY, which it may have under this Contract.

j. **Consequences of a Force Majeure Delay Event** – If the OPERATOR incurs Delay due to a Force Majeure Delay Event, the OPERATOR shall be entitled to: (a) an extension equal to the time during which the OPERATOR is unable to perform such action as a direct and proximate cause of the force majeure, provided that it pays the applicable Concession Fee during the said extension, or(b) the applicable Concession Fee shall be reduced in proportion to the period equivalent to that during which there was Force Majeure and the OPERATOR was prevented from managing and operating the Concession Area, and generating revenue therefrom.

Not later than thirty (30) days after the OPERATOR, as the direct and proximate result of a force majeure, has become unable to perform its obligations under this Contract, the Parties shall consult with each other with a view to agreeing on appropriate measures considering the circumstances.

k. **Subcontracting** – The OPERATOR shall have full responsibility for the completion of the Project and the financing, operation, development and maintenance of the Concession Area and shall remain fully liable to the AUTHORITY for the performance of the Services.

Except for the actual construction and development obligations, the core functions shall in no case be sub-contracted out by the OPERATOR.

The OPERATOR may, subject to the prior approval of the AUTHORITY, sub-contract, hire or designate a third-party to perform the non-core functions. Provided, however, that the OPERATOR shall hold the AUTHORITY free and harmless from any and all liabilities, cause or causes of action and claims which may be filed by a third party, its personnel, agents or representatives arising from, or in connection with the rendition of services by a sub-contractor under this Contract. Provided further, that the sub-contracts shall not exceed the Concession Period. Provided finally, that the sub-contract shall include a provision that the AUTHORITY shall, in its discretion, have the right to pre-terminate the same in case this Contract is cancelled or terminated.

The OPERATOR shall remain responsible for the acts and omissions of any Sub-contractor in its capacity as such, as if they were the OPERATOR's own acts or omissions.

Section 4.07 **Working Capital** - The OPERATOR shall establish and maintain a deposit in a reputable Universal or Commercial bank the amount of Fifty-One Million Pesos (Php 51,000,000.00) as Working Capital to sufficiently meet its day-to-day operational needs, including any and all claims arising from its operations.

Section 4.08 **Key Performance Indicators (KPIs)** - The OPERATOR shall efficiently operate the port and provide the services covered under this Contract. The OPERATOR must be able to attain KPIs equal to, or better than the following KPIs which may be progressively increased during the duration of this Contract:

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CAROLINE C. CAUSON

INTERNATIONAL CONTAINER TERMINAL SERVICES, INC
EMILIO MANUEL V. PASCUA
Authorized Representative

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Vice-Chairperson, HO-BAC PTMC

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JAY DANIEL R. SANTIAGO
General Manager

Key Performance Indicators	Productivity Rates	
	Average Gross Service Time at Berth per Vessel	Average Working Time at Berth per Vessel
1 Vessel Productivity		
❖ RoRo (RORO/LCT)	13.74 hours	11.08 hours
❖ Containerized Vessel (Domestic)	9.28 hours	8 hours
▪ Cement -Domestic -Foreign	 38.57 hours 68.01 hours	 33.44 hours 59.69 hours
▪ Rice in bags	206.72 hours	152.19 hours
▪ Other General Cargo in bulk/rebagging (Corn/Fertilizer/Soya/Wheat)	153.3 hours	130.66 hours
2 Average number of cranes per vessel	Two (2)	
3. Conventional (MT) Cargo in tonner bags and other palletized commodities	100 MT/Hour for Domestic (Self-sustaining/Mobile Harbor Crane) 140 MT/Hour for Foreign (Self-sustaining/Mobile Harbor Crane)	
4. Bulk (using a pipeline) Cement Silo Bulk (using 2 hoppers) Domestic Foreign	150 MT/Hour 80 MT/Hour 100 MT/Hour	
5. RORO (Car ship)	60 Units/Hour	
6. CONTAINERIZED (box)	25 Boxes/Hour using STS	
7. Port user satisfaction survey results	Very satisfactory	
8. Minimum port user and passenger service standards	Full Compliance/IMS Certification	

Every three (3) years or whenever necessary, the KPIs may be subject to revisions after the conduct of review by the Parties.

If the OPERATOR fails to maintain productivity equal to or better than pre-specified productivity measures in any given period, the OPERATOR may be required to provide additional variable fee payments. Failure to meet productivity measures for 3 consecutive years may result in the termination of the Contract.

Section 4.09 **Repair and Maintenance** – The OPERATOR shall cover the cost of repairs and maintenance of all port facilities within the concession area, including PPA owned and built equipment and infrastructure in accordance with a pre-determined maintenance plan.

Section 4.10 **Dredging** - During the term of this Contract, the OPERATOR shall undertake all maintenance dredging works in all navigable waters of the Baseport – ICPC to ensure safe passage and berthing of vessels therein. The AUTHORITY shall be

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responsible for and shall bear the cost of the capital dredging (i.e., fairways, access channels, turning basin). The AUTHORITY shall perform the capital dredging, as may be necessary.

Dredge spoils shall be dumped in such areas as may be identified by the relevant governmental agencies. This shall not be construed however to limit the AUTHORITY in designating the specific locations for the placing/disposal of dredge spoils.

Section 4.11 **Management Information System** – The OPERATOR shall undertake and implement computerization programs for the OPERATOR's port operations and financial transactions, adoptable and compatible with the AUTHORITY's MIS Computerization Project. Such computer programs shall include, among others, the functionalities of the Port Operations Management System (POMS), the Account and Finance Management System (AFMS) and other functions implemented under said project.

Within three (3) months of taking over the operations of the terminal, the OPERATOR shall provide an information technology system fully operational such as but not limited to the following:

1. Internationally recognized Terminal Operation System (TOS)
2. Financial System

Section 4.12 **Submission of Reports** - The OPERATOR shall furnish the AUTHORITY with detailed reports of the movement of cargo and vessels at the premises in the form, substance and frequency prescribed in existing PPA rules and regulations. Further, the OPERATOR shall submit the financial and operational reports prescribed by the AUTHORITY.

The OPERATOR shall furnish the AUTHORITY with monthly statistical data of its financial and operational activities and the maintenance and development of the facilities and equipment.

Section 4.13 **Insurance** – The OPERATOR shall secure an insurance to cover the property damage on all the concession area facilities and equipment against all risks, including but not limited to windstorm, flood, earthquake, fire and vessel impact. In addition, all facilities and equipment covered by this Contract shall be insured up to their full appraised value against losses and damages under the terms approved by the AUTHORITY. The OPERATOR shall regularly furnish the AUTHORITY copies of the insurance policies and receipts of current premium payments. The required insurance coverage for property damage shall be secured from the Government Service Insurance System (GSIS).

The insurance policies shall be effective from the date of effectivity of this Contract and shall be renewed annually for the entire duration of this Contract. All insurance premiums and other related costs shall be borne solely by the OPERATOR.

The OPERATOR shall not perform nor allow any act to be done that may render the insurance policies null and void.

The OPERATOR shall also insure all cargoes under its custody against fire as well as against loss or damage resulting from acts of its employees, agents or sub-contractors.

The OPERATOR shall secure a Comprehensive General Liability (CGL) Insurance to cover Bodily Injury, Property Damage including all port operational facilities, and Personal Injury Liability. In addition, all equipment and leased facilities shall be insured up

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to their full appraised value against losses and damages under the terms approved by the AUTHORITY. The OPERATOR shall regularly furnish the AUTHORITY copies of the insurance policies and receipts of current premium payments.

Section 4.14 **Taxes, Licenses, Permits and Fees** – The OPERATOR's tax, licenses, fees and charges of whatever form, kind or nature due or which may be due to the national and/or local government units and/or its instrumentalities/agencies on the account of the performance of the service and/or its activities stipulated herein, shall be paid for and obtained by the OPERATOR on its own account. The AUTHORITY shall extend reasonable assistance to the OPERATOR in securing the necessary licenses and permits with the relevant government agencies, as may be necessary. The OPERATOR shall on an annual basis, present, within the duration of the Contract, a Tax Clearance from the Bureau of Internal Revenue (BIR) as well as a copy of its Income and Business Tax Returns duly stamped and received by the BIR and duly validated with the tax payments made thereon.

The OPERATOR shall pay all lawful taxes and other impositions on real properties within its area of responsibility under this Contract, which are payable to the government, its agencies, instrumentalities or political subdivisions, accruing from the date of the effectivity of this Contract.

Section 4.15 **Quality Standards** - Within six (6) months from the effectivity of the Contract, the OPERATOR shall have commenced the required processes in order to secure a certification for ISO 9001 (Quality Management Systems Standards), ISO 14001 (Environmental Management Systems Standards), and OSHS 18001 (Occupational Safety and Health Standards) or Integrated Management System (IMS). For this purpose, the OPERATOR shall notify AUTHORITY as soon as it has secured the necessary certifications and in no case to exceed three (3) years from the signing of the Contract.

The core and non-core processes mentioned in Section 4.02 shall be enrolled to the ISO Integrated Management System (ISO 9001, ISO 14001 and OSHS 18001) certification.

Section 4.16 **Utilities** – The OPERATOR shall pay all charges relating to electrical supply, communications and other utilities used within the concession area directly to the individual service providers.

Section 4.17 **Promotion** – The OPERATOR shall market and promote the concession area. It may also request the AUTHORITY to assist in its marketing and promotional activities. Reasonable and actual costs incurred by the AUTHORITY in connection therewith shall be reimbursed by the OPERATOR, subject to the prior approval by the OPERATOR, and upon presentation of valid supporting documents.

Section 4.18 **Performance Security** – The OPERATOR shall, within one (1) month from signing of this Contract, put up the required Performance Security in a form of cash, cashier's check, manager's check, bank draft/guarantee, irrevocable letter of credit, or surety bond equivalent to the concession fee for the 6th year. The required amount of the Performance Security for Year 1-5 shall be equivalent to the bidder's proposed concession fee for Year 6. The amount of Performance Security for Year 6-10 shall be equivalent to the bidder's proposed concession fee for the said years. For Year 11-25, the amount of Performance Security shall be based on the computed concession fee pursuant to Section 3.01(c) hereof. The Performance Security shall answer for and guarantee the faithful performance of its obligations under this Contract. It shall further guarantee the prompt payment of all its contractual liabilities, such as but not limited to, payment of Variable Fees, interest and penalties in case of delay, and other charges, as well as losses, injuries or damages on any property and other premises occupied by or

WITNESS BY:
CAROLINE C. CAUSON

INTERNATIONAL CONTAINER TERMINAL SERVICES, INC
EMILIO MANUEL V. PASCUA
Authorized Representative

WITNESS BY:
MARK JON S. PALOMAR
Vice-Chairperson, NO-BAC PTMC

PHILIPPINE PORTS AUHTORITY
JAY DANIEL R. SANTIAGO
General Manager

under the control of the OPERATOR. It shall also answer for the damages that the AUTHORITY may sustain as a result of the OPERATOR's non-performance or violation of any contractual obligation or due to negligence. The Performance Security, until so released in writing by the PPA, shall remain in full force and effect and shall be secured in accordance with PPA AO No. 08-2023, or its subsequent amendments. The OPERATOR shall renew the Performance Security annually and failure of which shall constitute a default on its part and shall cause the termination of the Contract.

The form and conditions of the Performance Security shall be in accordance with the pertinent rules and regulations of the AUTHORITY.

Section 4.19 **Property and Cargo Under the OPERATOR's Control** - The AUTHORITY reserves the right to police entry and exit gates and the use of the concession area for national security and for the exercise of its regulatory functions. All other government regulatory agencies such as the Bureau of Customs, Philippine Coast Guard, Bureau of Quarantine, etc. shall continue to exercise their inherent functions in the concession area. The AUTHORITY assumes no responsibility or liability for loss or damage to the property of the OPERATOR or property under the control of the OPERATOR whether caused by fire, water or other causes, nor does it assume responsibility for any shortages of cargo handled by the OPERATOR at the concession area, except in cases where the loss or damage is attributable to the fault, willful act or negligence of the AUTHORITY, its officers, agents, or employees.

Section 4.20 **Port Safety and Security** – The OPERATOR shall be responsible for the safety and security in the concession area. It shall implement thereat the Port Facility Security adopted by the AUTHORITY and such other safety and security measures applicable and/or required thereon. The OPERATOR shall also comply with all safety and security regulations promulgated by the government agencies concerned.

WITNESS BY:
CAROLINE C. CAUSON
INTERNATIONAL CONTAINER TERMINAL SERVICES, INC
EMILIO MANUEL V. PASCUA
Authorized Representative

ARTICLE V
TARIFF AND RATE ADJUSTMENT

Section 5.01 **Tariff and Related Service Charges** – The applicable tariff on stevedoring, storage and other related services for handling cargoes at the concession area shall be provided in **Annex "G"** hereof which forms an integral part of this Contract.

Section 5.02 **Rate Adjustment** – The prescribed rates and charges collectible by the OPERATOR for services rendered may be subject to adjustments in accordance with the rate adjustment mechanism as approved by the AUTHORITY.

Failure of the OPERATOR to secure authorization to increase cargo handling rates in accordance with the rate adjustment mechanism of the AUTHORITY shall not absolve the OPERATOR from the payment of any fees stipulated in Article III hereof.

Section 5.03 **Cost Recovery Measures** – Subject to the conditions set in the preceding Section, and in order to cushion the impact of changes in input prices of labor, fuel and power, an interim across the board cargo handling rate increase may be granted to the OPERATOR using the Consumer Price Index (CPI) formula as a guide.

Section 5.04 **Rate-Setting for Non-Traditional Services** – In cases where non-traditional services may be offered to the port users, the OPERATOR may apply for the applicable service rates and such rates shall be processed in accordance with the tariff setting mechanism of the AUTHORITY.

WITNESS BY:
MARK JON S. PALOMAR
Vice-Chairperson, HO-BAC PTMC
PHILIPPINE PORTS AUTHORITY
JAY DANIEL R. SANTIAGO
General Manager

ARTICLE VI
PORT LABOR

Section 6.01 **Port Workers' Retirement and Separation Fund (PRSF)** – The OPERATOR shall upon the effectivity of this Contract establish and maintain a PRSF strictly in accordance with the pertinent provisions of PPA Administrative Order No. 01-2006, as amended. The PRSF shall be used exclusively to finance and pay the benefits of port workers and employees of the OPERATOR who resign, retire, have been retrenched or whose services have been terminated due to change of operator/contractor at the concession area. The amount of the PRSF shall be correspondingly adjusted/increased in accordance with the applicable regulations of the AUTHORITY to fully cover the retirement/separation benefits of port workers/employees of the OPERATOR retiring during the term of this Contract, provided that any existing retirement and separation plan of the OPERATOR in favor of its employees which conforms with the requirements of PPA Administrative Order No. 01-2006, as amended, shall be sufficient for this purpose.

Section 6.02 **Relationship of Parties** – Nothing contained herein shall be construed as establishing a relation of employer and employee as between the AUTHORITY and the OPERATOR. The OPERATOR has complete charge, supervision and control of its personnel and shall be fully responsible for the services performed by them or on their behalf.

The OPERATOR shall during the performance of the services under this Contract be an independent contractor, retaining complete control over its personnel, conforming to all statutory requirements with respect to all its employees, and providing all appropriate employee benefits.

ARTICLE VII
VISITORIAL POWERS

Section 7.01 **Visitorial Powers** – The OPERATOR shall make available, at all times during office hours and upon prior reasonable notice, for inspection, examination and audit by the duly authorized personnel of the AUTHORITY and the Commission on Audit its books of accounts, billings, payroll and records pertinent to this Contract.

The AUTHORITY shall conduct performance audit, as well as inspect, examine and audit the records and books of accounts, and shall be exercised by visiting officials pursuant to and within the limits of the duties and functions vested upon the respective offices by express provision of the law.

ARTICLE VIII
PROHIBITION AGAINST ASSIGNMENT AND TRANSFER OF CONTRACT

Section 8.01 **Prohibition Against Assignment and Transfer of Contract** The OPERATOR shall not, either directly or indirectly, assign, hypothecate, encumber or transfer this Contract or any interest therein without prior written consent of the AUTHORITY, which consent shall not be unreasonably withheld.

WITNESS BY:
CAROLINE C. CAUSON

INTERNATIONAL CONTAINER TERMINAL SERVICES, INC
EMILIO MANUEL V. PASCUA
Authorized Representative

WITNESS BY:
MARK JON S. PALOMAR
Vice-Chairperson, HO-BAC PTMC

PHILIPPINE PORTS AUTHORITY
JAY DANIEL R. SANTIAGO
General Manager

WITNESS BY:
[redacted]
CAROLINE C. CAUSON

INTERNATIONAL CONTAINER TERMINAL SERVICES, INC
[redacted]
EMILIO MANUEL V. PASCUA
Authorized Representative

WITNESS BY:
[redacted]
MARK JON S. PALOMAR
Vice-Chairperson, HO-BAC PTMC

PHILIPPINE PORTS AUHTORITY
[redacted]
JAY DANIEL R. SANTIAGO
General Manager

ARTICLE IX
SUSPENSION CANCELLATION OR TERMINATION OF CONTRACT AND DAMAGES

Section 9.01 **Grounds** – The AUTHORITY may, without prejudice to other remedies against the OPERATOR, extrajudicially suspend, cancel or terminate this Contract on any of, but are not limited to, the following grounds, which may be determined as fundamental breaches of Contract:

1. Failure of the OPERATOR without justifiable cause to remit to the AUTHORITY the committed Fixed and Variable Fees;

2. Failure to complete any Works in accordance with the timeline specified in the Port Development/Business Plan;

3. Any representation or warranty made by the OPERATOR is false or inaccurate in any material respect and this is reasonably likely to have a material adverse effect on the ability of the OPERATOR to carry out the Project;

4. The OPERATOR abandons the Project;

5. Failure of the OPERATOR without justifiable cause, to pay during the designated paydays to its employees, laborers, stevedoring and dockworkers their just salaries or wages, and or remittances of premiums to SSS, Philhealth and fringe benefits as those obligations fall due.

6. Overcharging of cargo handling rates or collection of rates other than those prescribed in this Contract.

7. Failure and/or refusal of the OPERATOR to fully comply with its commitments as specified in its submitted Business Plan.

8. Failure of the OPERATOR to provide and maintain in good operating condition the cargo handling, safety and related equipment/gears resulting to material inefficiency of the concession area.

9. Failure of the OPERATOR to attain the committed productivity rate.

10. Failure of the OPERATOR to establish, maintain and update the prescribed PRSF or similar fund for its workers and employees.

11. Change of control of the OPERATOR arising from the sale, assignment, transfer or other disposition, of all or substantially all, of the capital stock by the OPERATOR without the prior written consent and approval of the AUTHORITY.

12. When the OPERATOR's performance is rated or considered "FAILED" in accordance with the Performance Standards and Rating System, or its subsequent amendments, of the AUTHORITY.

13. Failure of the OPERATOR to post the Performance Security in accordance with Section 4.26 or to renew the same within one (1) month after the expiration of the said bond.

14. Unjustified refusal of the OPERATOR to make available its books of accounts and other documents for inspection, examination or audit as provided for in this Contract

or otherwise to submit to supervision, inspection and/or overseeing by AUTHORITY and/or duly authorized representatives, after prior reasonable notice.

15. Existence of pilferages of cargoes in excess of one-tenth (1/10) of one (1%) percent of the total value and/or the total volume in metric tons of all cargoes handled monthly due to the unjustified failure of the OPERATOR to control such pilferages.

16. If the OPERATOR, through any of its corporate officers and ranking management officials or employees from the rank of section head or higher, by taking advantage of their free access to the concession area and the vessels calling thereat, engage in smuggling and other activities and the OPERATOR fails or refuses without justifiable cause to take corrective or disciplinary action against its culpable officers, officials or employees.

17. If the OPERATOR is engaged in any unlawful, illegal or highly immoral business practice, prejudicial to the interest or well-being of the Government or its employees or laborers or any such practice which would unduly cause cessation of operations of the cargo handling services.

In case of repetitive instances of non-performance regularly by the OPERATOR, the AUTHORITY can take necessary action for termination of the Contract and forfeiture of Performance Security after issuing a maximum of three months' notice.

Subject to due process requirements, when national security so requires or if the AUTHORITY shall find that public interest shall be better served by the cancellation of the Contract.

Section 9.02 **Effects of Cancellation or Termination of Contract** – As a consequence of cancellation or termination of this Contract, the AUTHORITY shall:

a. Seize the Performance Security;
b. Take possession of the concession area and its equipment;
c. Take over the management and operation of the concession area; and
d. Charge the OPERATOR compensation equal to three (3) times the average yearly amount of financial commitments and other remuneration paid during the three (3) years preceding the termination.

Further, the OPERATOR shall have no right to any compensation due, directly or indirectly, to the early termination of this Contract.

Section 9.03 **Notice of Violation and Decision** – The AUTHORITY shall inform the OPERATOR in writing of any violation of the terms of this Contract or its failure to perform any of its commitments or undertaking specified in this Contract, giving the latter up to thirty (30) days from receipt within which to explain. In the event such explanation is satisfactory to the AUTHORITY, the AUTHORITY shall allow a period of time to remedy the situation. Otherwise, the AUTHORITY may extra-judicially suspend, cancel or terminate this Contract upon approval by the Board of Directors of the AUTHORITY.

In all cases of violation of this Contract by the OPERATOR, the AUTHORITY shall be entitled to damages as may be adjudicated by proper authorities.

Section 9.04 **Mutual Termination of Contract** – At any time, the AUTHORITY and the OPERATOR may agree to terminate this Contract subject to the conditions defined by both parties. No such termination may take effect without the prior approval of the Board of Directors of the AUTHORITY.

WITNESS BY:
CAROLINE C. CAUSON

INTERNATIONAL CONTAINER TERMINAL SERVICES, INC
EMILIO MANUEL V. PASCUA
Authorized Representative

WITNESS BY:
MARK JON S. PALOMAR
Vice-Chairperson, HO-BAC PTMC

PHILIPPINE PORTS AUHTORITY
JAY DANIEL R. SANTIAGO
General Manager

WITNESS BY:
CAROLINE C. CAUSON

INTERNATIONAL CONTAINER TERMINAL SERVICES, INC
EMILIO MANUEL V. PASCUA
Authorized Representative

WITNESS BY:
MARK JON S. PALOMAR
Vice-Chairperson, HO-BAC PTMC

PHILIPPINE PORTS AUHTORITY
JAY DANIEL R. SANTIAGO
General Manager

Section 9.05 **Ownership/Acquisition of Improvement, Facilities and Equipment; Option to Purchase and Use of OPERATOR's Equipment by AUTHORITY** – Upon expiration of the term of this Contract or cancellation prior to its expiration, all existing improvements, structures, buildings and facilities at the concession area, permanent or semi-permanent, constructed by or belonging to the OPERATOR shall automatically become the property of the AUTHORITY without any obligation to reimburse the cost thereof.

Any equipment of the OPERATOR being used at the concession area shall, upon expiration of the term of this Contract or in the event the Contract is pre-terminated or cancelled, automatically become the property of the AUTHORITY without any obligation to reimburse for the same, except for equipment acquired by the OPERATOR whose depreciation extends beyond the expiration of this Contract. The OPERATOR shall return to their original condition, normal wear and tear excluded, all the existing improvements, structures, buildings and facilities at the concession area; including structures where the equipment, facilities and gears were removed from its installation.

In case the depreciation of equipment and gears extend beyond the term of this Contract, the costs for acquiring cargo handling equipment and facilities shall be mutually agreed by both parties.

The AUTHORITY shall have a right of first refusal over the cargo handling equipment, facilities and gears on the basis of its residual book value.

If the AUTHORITY will not acquire the cargo handling equipment and facilities, the OPERATOR shall remove the same from the port premises within thirty (30) days after expiration of this Contract, provided that such removal can be done without damaging the concession area. If the OPERATOR fails to remove such cargo handling equipment and facilities, the AUTHORITY shall have the right to subject the equipment to an auction sale and apply the proceeds thereof to damages and expenses it had incurred as a consequence of non-removal.

The OPERATOR shall likewise overhaul or recondition all equipment, facilities and gears owned by the AUTHORITY to a state reasonably acceptable to the AUTHORITY.

The Contract shall not be deemed automatically extended even if during the contract period the OPERATOR procured cargo handling equipment whose depreciation period is longer than the contract period.

The second and third sentences of the preceding paragraph shall likewise apply on equipment, infrastructure and other improvements introduced or acquired by the OPERATOR in the event the termination is not due solely to the fault of the OPERATOR.

Section 9.06 **Takeover by the AUTHORITY** – Without prejudice to Section 9.02 of this Contract, the AUTHORITY shall have the right to immediately takeover operations at the concession area, including all equipment and structures therein, in any of the following instances:

a. In cases of any emergency such as strikes, lock-out, stoppage of work and other causes of similar nature for the duration of such emergencies if the same results in the inability of the OPERATOR to carry out its obligations and deliver the services in accordance with the Contract;
b. In case of violation of any of the terms and conditions of this Contract or the AUTHORITY's rules and regulations;

c. In case of cancellation or termination of this Contract; or
d. In such other cases where the AUTHORITY deems that the takeover is warranted as provided in Article II, Section 17(b), 12(c) of PPA Administrative Order No. 01-2006, as amended.

WITNESS BY: [redacted] CAROLINE C. CAUSON

Section 9.07 **National Security and Public Interest** – In cases where national security or public interest so requires, the AUTHORITY may suspend the effectivity of this Contract and immediately take-over operations of the concession area. Upon cessation of the event affecting national security or public interest, the AUTHORITY shall immediately turn-over the operations of the concession area to the OPERATOR. The Fixed Fees shall be reduced in proportion to the period of such take-over. In addition, the term of this Contract shall be automatically extended for a period equivalent to that during which the Contract was suspended.

INTERNATIONAL CONTAINER TERMINAL SERVICES, INC [redacted] EMILIO MANUEL V. PASCUA Authorized Representative

Section 9.08 **Compensation** – In the event that the property and/or operations of the OPERATOR or any part thereof at any time becomes the subject matter of or be included in any notice, notification or declaration concerning or relating to acquisition by the Government or any government authority or if the Government or government authority shall seize or otherwise appropriate in time of war or national emergency all or any substantial part of the property or other assets or control of operations of the OPERATOR or shall have taken any action that would prevent the OPERATOR or their officers from carrying on the operation of its business or a substantial part thereof, the OPERATOR shall forthwith inform the AUTHORITY of the same and the parties hereto shall undertake all necessary steps and measures to ensure that the OPERATOR is awarded reasonable compensation for the duration of such seizure or appropriation.

ARTICLE X

VENUE OF ARBITRATION AND LITIGATION

Section 10.01 **Venue of Arbitration and Litigation** - In case of controversy or dispute arising between the OPERATOR and the AUTHORITY concerning this Contract, either party may submit such dispute or controversy to arbitration. The arbitration proceedings shall follow the rules prescribed in Republic Act No. 9285, as amended, otherwise known as the "Alternative Dispute Resolution Act of 2004" and shall be conducted in the City of Manila.

WITNESS BY: [redacted] MARK JON S. PALOMAR Vice-Chairperson, HO-BAC PTMC

The venue of any court action arising from this Contract shall be the proper court in the City of Manila to the exclusion of all other venues. Provided, however, that nothing herein contained shall preclude the AUTHORITY from exercising its rights provided under Article IX of this Contract.

ARTICLE XI

MISCELLANEOUS PROVISIONS

Section 11.01 **Compliance with Government Rules and Regulations** – The OPERATOR shall, from the effectivity of this Contract, strictly comply with all the existing laws, policies, guidelines, rules and regulations which are now or may hereafter be promulgated by the government and/or the AUTHORITY. All such policies, guidelines, rules and regulations, and all applicable laws, shall be read into, and made integral part of this Contract.

PHILIPPINE PORTS AUHTORITY [redacted] JAY DANIEL R. SANTIAGO General Manager

Section 11.02 **Training Program** - The OPERATOR shall conduct training programs for its employees in coordination with the AUTHORITY. Likewise, the OPERATOR shall conduct trainings for its employees and those employees of the AUTHORITY in line with the technology transfer and advancement.

Section 11.03 **Claims, Damages and Liabilities** – The OPERATOR shall hold the AUTHORITY free and harmless from any and all claims, damages, liabilities, actions, suits or causes of action which may be brought by any third party by reason of this Contract, including its implementation, on arising from its own actions or of any of its employees, agents and representatives, or due to the non-performance or non-observance of any law, statute, administrative or executive order or resolution, ordinance, or any of the covenant herein contained.

WITNESS BY: [redacted] CAROLINE C. CAUSON

Section 11.04 **Claims Relating to Lands Subject of Expropriation Proceedings** The AUTHORITY hereby warrants to the OPERATOR that the AUTHORITY has the right to grant the OPERATOR possession of the real property subject of this Contract and that the OPERATOR will have quiet possession of the same in pursuance of, and for the period set out in this Contract.

The AUTHORITY shall hold the OPERATOR free and harmless from any and all liabilities and claim for damages and/or suits relating to the lands subject of the expropriation cases or civil proceedings filed by or against the AUTHORITY including but not limited to the case before the Supreme Court, entitled "Philippine Ports Authority vs. Remedios Rosales-Bondoc, et al.", docketed as G.R. No.173392 and all other related cases.

INTERNATIONAL CONTAINER TERMINAL SERVICES, INC [redacted] EMILIO MANUEL V. PASCUA Authorized Representative

Section 11.05 **Non-Relinquishment or Non-Waiver or Rights** – The failure of the AUTHORITY to insist upon a strict performance of any of the terms, conditions and covenant hereof shall not be deemed a relinquishment or waiver of right or remedy that the AUTHORITY may have, nor shall it be construed as a waiver of any subsequent breach or default of the terms, conditions or covenants herein contained. No waiver by the AUTHORITY shall be deemed to have been made unless expressed in writing and signed by the AUTHORITY or its duly authorized representative.

Section 11.06 **Notices** – Any notice permitting or required to be served upon the OPERATOR may be served upon at the office address of the OPERATOR. If the OPERATOR shall give notice in writing to the AUTHORITY of any change in the office address, then in such event such notice shall be given to the OPERATOR at such substitute address. Any notice permitted or required to be served upon the AUTHORITY may be served upon it at the PPA Head Office Building, Bonifacio Drive, South Harbor, Port Area, Manila. If the AUTHORITY shall give notice in writing to the OPERATOR of any change in said address, then and in such event such notice shall be given to the AUTHORITY at such substitute address.

WITNESS BY: [redacted] MARK JON S. RALOMAR Vice-Chairperson, HO-BAC PTMC

Section 11.07 **Mutual Trust** - In entering into this Contract, the parties recognize that it is impracticable to make provision for every contingency that may arise in the course of performance thereof. Accordingly, the parties hereby declare it to be the intention that this Contract shall operate between them with fairness and without detriment to the interest of either of them. If in the course of performance of this Contract, unfairness to or detriment to the interest of any party is disclosed or anticipated then the relevant party may send written notice of such unfairness or detriment to the other party, and within five (5) working days, the parties in good faith shall meet and use their best endeavors to agree upon such actions as may be necessary and equitable to remove the cause or causes of such unfairness or detriment.

PHILIPPINE PORTS AUHTORITY [redacted] JAY DANIEL R. SANTIAGO General Manager

If no such agreement is reached by the parties within fifteen (15) working days from the date a party sends to the other party a written request for an action to remove the cause of such unfairness (or such longer period as the parties may agree), the provisions of Article IX shall apply.

Section 11.08 **Force Majeure** – Neither party shall be responsible or liable to the other in any manner whatsoever for the destruction, damage, losses, injury, delay, or deviation from the Contract as a result of force majeure, such as but not limited to typhoon, conflagration, floods, fire, widespread epidemic or disease, earthquake,

lightning and other similar natural calamities or events which could not be foreseen or which though foreseen, are inevitable, or those events caused by war, rebellion, terrorism, civil unrest or commotion, strikes, lockouts and industrial disputes not within the control of either party.

If either party is unable to comply with any of the conditions specified in this Contract due to force majeure, that party shall notify the other as soon as practicable but not later than ten (10) days after such occurrence. The latter party shall, within one (1) month after receipt of notice, inform the former of its concurrence of the existence of force majeure and the effect thereof on their contractual obligations and responsibilities.

In the event of a force majeure:

a. The terms of this Contract shall be automatically extended without need of any act for a period equivalent to that during which there was force majeure preventing the OPERATOR from operating the concession area fully and generating revenue therefrom; or
b. The Fixed Fees shall be reduced in proportion to the period equivalent to that during which there was a force majeure and the OPERATOR was prevented from operating the concession area and generating revenue therefrom.

In any case, the party claiming the benefit of this provision shall exercise due diligence in complying with the provisions of the Contract and shall take appropriate means to minimize or remove the effects of force majeure and, within the shortest possible time, attempt to resume performance of the obligation affected by the event of force majeure.

Section 11.09 **Non-Relief From Liability** - Any suspension or cancellation of this Contract shall not relieve the OPERATOR of any liability that may already accrued prior to such suspension or cancellation.

Section 11.10 **Separability Clause** – Each paragraph, part, term and/or provision of this Contract shall be considered severable, and if, for any reason, any paragraph, part, term and/or provision herein is determined to be invalid or contrary to, in conflict with, any existing or future law or regulation, such shall not impair the operation of or affect the remaining portions, sections, parts, terms, and/or provisions of this Contract, and the latter shall continue to be given in full force and effect and bind the Parties hereto; and said invalid sections, parts, terms, and/or provisions shall be deemed not part of this Contract.

Section 11.11 **Special Warranty** - The OPERATOR hereby warrants that it has not given or promised any gift or consideration to any official of the AUTHORITY or the Government in order to obtain this Contract, and that the execution of this Contract shall not result directly or indirectly in a violation of the Anti-Graft and Corrupt Practices.

ARTICLE XII

ENTIRE AGREEMENT, AMENDMENTS AND SUPPLEMENTS

Section 12.01 **Entire Agreement, Amendments and Supplements** – This Contract contains the entire agreement and understanding between the AUTHORITY and the OPERATOR as to the subject matter thereof and merges and supersedes all prior agreements, commitments, representations, writings and discussions between them except as to the commitments and representations made by the OPERATOR in its Bid Proposal for which the OPERATOR continues and remains to be bound. This Contract may not be changed, modified or supplemented in any way except by an instrument in writing executed by both the OPERATOR and the AUTHORITY and duly approved by the

CAROLINE C. CAUSON

EMILIO MANUEL V. PASCUA
Authorized Representative

MARK JON S. PALOMAR
Vice-Chairperson, HO-BAC PTMC

JAY DANIEL R. SANTIAGO
General Manager

PPA Board of Directors.

ARTICLE XIII

EFFECTIVITY AND TERM

Section 13.01 **Effectivity and Term** – This Contract shall become effective on the date specified in the Notice to Proceed to be issued by the AUTHORITY and shall remain in full force and effect for a period of TWENTY FIVE (25) years unless sooner modified, cancelled, or terminated in accordance with the pertinent provisions herein provided.

The renewal of this Contract shall be subject to the provisions of PPA AO No. 007-2023 and its subsequent amendments.

IN WITNESS WHEREOF, the parties have hereunto, acting through their representatives and duly authorized for the purpose, have caused this Contract to be signed in their respective names as of the day, year and at the place first above written.

PHILIPPINE PORTS AUTHORITY

By:

JAY DANIEL R. SANTIAGO
General Manager

INTERNATIONAL CONTAINER TERMINAL SERVICES, INC.

By:

EMILIO MANUEL V. PASCUA
Authorized Representative

SIGNED IN THE PRESENCE OF:

MARK JON S. PALOMAR
Vice-Chairperson, HO-BAC-PTMC

CAROLINE C. CAUSON
Witness

WITNESS BY:
CAROLINE C. CAUSON

INTERNATIONAL CONTAINER TERMINAL SERVICES, INC
EMILIO MANUEL V. PASCUA
Authorized Representative

WITNESS BY:
MARK JON S. PALOMAR
Vice-Chairperson, HO-BAC PTMC

PHILIPPINE PORTS AUHTORITY
JAY DANIEL R. SANTIAGO
General Manager

ACKNOWLEDGMENT

REPUBLIC OF THE PHILLIPINES)
CITY/MUNICIPALITY OF MANILA) S.S.

BEFORE ME, a Notary Public for and in the City of MANILA, Philippines, this APR 15 2024 day of _____, 20___, personally appeared the following:

NAME	CTC NO.	DATE	PLACE
Jay Daniel R. Santiago	[redacted]	valid until 12 Dec 29	DFA, Manila
~~Emilio Manuel V. Pacuna~~			

known to me and to me known to be the same persons who executed the foregoing instrument as:

POSITION	COMPANY	CTC NO.	DATE	PLACE
General Manager	Philippine Ports Authority			
Authorized Representative	International Container Terminal Services, Inc.			

and they acknowledged to me that the same is their own free act and deed as well as the free and voluntary act of the corporation they represent.

The foregoing instrument is a Contract for the Port Terminal Management of the Baseport - ICPC consisting of twenty-two (22) pages, including this page on which this acknowledgment is written, signed by the parties and their instrumental witnesses on each and every page hereof.

IN WITNESS WHEREOF, I have hereunto affixed my hand and notarial seal on these presents at the place and on the date first above written.

NOTARY PUBLIC

[redacted]

Doc. No. 15;
Page No. 4;
Book No. I;
Series of 2024

Arthur Raymund A. Enerio, Roll No. 54181 NOTARY PUBLIC Manila, Philippines

ATTY. ARTHUR RAYMUND A. ENERIO
Attorney's Roll Number: 54181
Commission No. 2024-077
Notary Public of Manila City until December 31, 2025
ICTSI Admin Building Port of Manila
PTR No. 10093793 01/17/2024 Makati City
IBP Lifetime No. 015868; Makati City
MCLE Compliance No. VII-0021956 4/14/2025