

[DRAFT] CONCESSION AGREEMENT

relating to the

TIBAR BAY PORT PROJECT

between

**THE GOVERNMENT OF THE DEMOCRATIC REPUBLIC OF TIMOR-LESTE
REPRESENTED BY THE MINISTRY OF TRANSPORT AND COMMUNICATIONS,**

and

[Concessionaire]

dated [●] 2015

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THIS CONCESSION AGREEMENT IS ENTERED ON [●] 2015

BETWEEN:

The Government of Timor-Leste, represented by the Ministry of Transport and Communication herein represented by His Excellence Pedro Lay da Silva, the Minister of Transport and Communications, (hereafter referred to as the "**Grantor**");

AND

[●], a company registered under the laws of Timor-Leste and having its registered office at [●], herein represented by [●], (hereinafter referred to as the "**Concessionaire**"),

Each of the Grantor and the Concessionaire shall be referred to individually as a "**Party**" and collectively as the "**Parties**".

WHEREAS:

- (A) The Government of Timor-Leste wishes to make arrangements for the implementation of the Project and, in accordance with Decree-Law No. 42/2012 Regulating the Legal Regime on Public-Private Partnerships as amended by Decree-Law No. 2/2014 and Decree-Law No. 10/2005 setting out the procurement legal regime (as amended), has invited private sector companies to tender for a single contract to design, build, finance, operate and maintain the Port Facility and provide the Services.
- (B) Following a prequalification process implemented by the Government of Timor-Leste (represented by the Ministry of Finance and the Ministry of Transport and Communications) based on the Prequalification Document issued on 21 October 2013, *[insert name of the Preferred Bidder]* was declared a "*Pre-qualified Bidder*".
- (C) Following a bid submission and evaluation process implemented by the Government of Timor-Leste (represented by the Ministry of Finance and the Ministry of Transport and Communications) based on the Instructions to Bidder issued on 14 May 2014, *[insert name of the Preferred Bidder]* was selected as "*Preferred Bidder*".
- (D) *[insert name of the Preferred Bidder]* incorporated *[insert name of Concessionaire]*, the Concessionaire, a company duly registered in Timor-Leste with its shareholding as described in Appendix 12 (*Concessionaire Shareholding*).
- (E) In accordance with the results of the bid submission and evaluation process and Decree-Law No. *[insert number and title of project-specific law]*, the Grantor has agreed to enter into this Agreement with the Concessionaire for the carrying out of the works and the provision of the services described generally above and more particularly in this Agreement.

IT IS HEREBY AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the context otherwise requires, the following terms shall have the following meanings:

"**Affected Communities**" means any people or communities located in the Concession Area's geographical proximity, who are subject to actual or potential direct risks and/or adverse impacts related to the construction or operation of the Project.

"**Affected Party**" has the meaning given in Article 37.1.1.

"**Affiliate**" means a Person which directly or indirectly, through one or more intermediaries, is Controlled by, Controls, or is under common Control with, another Person.

"**Agreement**" means this agreement, including its preamble and all of its appendices (which shall be deemed to form an integral part thereof).

"**Antiquities**" means all fossils, antiquities, structures, and other remains, objects or things, having archaeological, historical, artistic, geological and/or monetary value or interest, discovered in the Concession Area.

"**Applicable Law**" means any act, statute or piece of legislation; any executive order or decree; any delegated or subordinate legislation, order, statutory instrument, rules or regulations; any judgment or order of a court of competent jurisdiction; any administrative act or decision of a Public Authority having legally binding effect; codes, standards or guidance having legally binding effect; in the case of each of the foregoing, applicable in Timor-Leste and irrespective of whether the same are applicable to a particular Person; as may be amended from time to time.

"**Automatic Tariff Revision**" has the meaning given in Appendix 6 (Tariffs).

"**Automatic Tariff Revision Date**" has the meaning given in Appendix 6 (Tariffs).

"**Automatic Tariff Revision Notice**" has the meaning given in Appendix 6 (Tariffs).

"**Auxiliary Equipment**" has the meaning given in Appendix 3 (Technical Specifications).

"**Auxiliary Services**" has the meaning given in Article 22.3.

"**Bid**" means the bid submitted by the [*insert name of the Preferred Bidder*] in response to the Instructions to Bidders.

"**Bid Security**" means the bid bond provided by the winning bidder to the Grantor pursuant to the Instructions to Bidders.

"**Breach Thresholds**" include (and are limited to) the following circumstances:

- (a) one or more breaches of this Agreement by the Concessionaire (whether material or not) occurring over the past twelve (12) consecutive months (starting in reverse chronological order from the date of the latest breach) resulting in the Concessionaire owing the Grantor an amount of Operation Penalties at least equal to twenty-five percent (25%) of the amount of the Operation Security (being the amount of Operation Security to be provided by the Concessionaire at the time of such latest breach); and

(b) one or more breaches of this Agreement by the Concessionaire (whether material or not) occurring over the past thirty-six (36) consecutive months (starting in reverse chronological order from the date of the latest breach) resulting in the Concessionaire owing the Grantor an amount of Operation Penalties at least equal to fifty percent (50%) of the amount of the Operation Security (being the amount of Operation Security to be provided by the Concessionaire at the time of such latest breach).

"**Break Bulk Cargo**" means any cargo other than a Container;

"**Break Bulk Throughput Payment**" has the meaning given in Article 30.1.3;

"**Business Day**" means a day when banks are open for business in Timor-Leste and which is not a Saturday or Sunday, a public holiday or other official holiday granted by the Government of Timor-Leste.

"**Cargo Handling Equipment**" has the meaning given in Appendix 3 (*Technical Specifications*).

"**Cargo Handling Services**" has the meaning given in Article 22.2.

"**Change in Law**" means, after the Effective Date, the enactment of any new Applicable Law, the repeal, modification or re-enactment of any existing Applicable Law or a change in the interpretation or application of any Applicable Law.

"**Change of Currency**" has the meaning given in Article 1.3.1.

"**Closing Period**" has the meaning given in Article 3.4.1.

"**Commencement Date**" has the meaning given in Article 3.4.4.

"**Compensated Debt**" has the meaning given in Article 44.1.

"**Completion Certificate**" has the meaning given in Article 17.3.

"**Concession Area**" means the area specified in Appendix 1 (*Concession Area Layout*).

"**Concession Extension Request**" has the meaning given in Article 3.2.1.

"**Concession Fee**" means collectively the TEU Throughput Payment, the Transshipment TEU Throughput Payment and the Break Bulk Throughput Payment payable by the Concessionaire to the Grantor in accordance with the terms of this Agreement.

"**Concession Period**" has the meaning given in Article 3.1.

"**Concessionaire**" has the meaning given in the description of the Parties on the first page of this Agreement.

"**Concessionaire's Assets**" has the meaning given in Article 33.3.

"**Concessionaire Construction Costs**" means, without prejudice to the Grantor's obligation to pay Viability Gap Funding, the remaining capital expenditure required to carry out the Works in accordance with this Agreement, such remaining capital expenditure to be financed by the Concessionaire at its own cost and risk.

"**Concessionaire E&S Obligations**" means the specific Concessionaire's environmental and

social obligations set out in Article 6.

"**Concessionaire Event of Default**" has the meaning given in Article 40.1.

"**Concessionaire Notice of Variation**" has the meaning given in Article 35.2.1.

"**Concessionaire Operation Costs**" means the Port Facility operation and maintenance costs and the costs of providing the Services that shall be entirely financed by the Concessionaire at its own cost and risk.

"**Concessionaire Tariff**" means the tariffs specified in Part I of Appendix 6 (Tariffs) to be collected by the Concessionaire in accordance with the provisions of Article 31.1.

"**Concessionaire's Representative**" has the meaning given in Article 53.1.

"**Concessionaire Variation Economic Impact**" has the meaning given in Article 35.2.2;

"**Conditions for the Benefit of Concessionaire**" means the conditions for the benefit of the Concessionaire specified in Article 3.4.2.

"**Conditions for the Benefit of Grantor**" means the conditions for the benefit of the Grantor specified in Article 3.4.1.

"**Construction Period**" means the period from the Commencement Date to the Service Commencement Date.

"**Construction Security**" has the meaning given in Article 10.1.

"**Container**" means a standardized re-sealable transportation box for unitized freight handling with standardized equipment as commonly used in sea transportation designed and constructed in accordance with the requirements applicable to any of the categories described under the technical reference document published by the International Standards Organisation based in Geneva, Switzerland, under reference number ISO 668.

"**Control**" means, with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management, business or policies or actions of such Person, whether through the ownership of voting securities, by contract or otherwise, or the power to elect or appoint at least fifty percent (50%) of the directors, managers, partners or other individuals exercising similar authority with respect to such Person(s) and "**Controlled**" shall be construed accordingly.

"**Crane Productivity**" means the minimum Container moves per gross crane working hour.

"**Curable Concessionaire Event of Default**" means a Concessionaire Event of Default referred to in paragraphs 40.1(a) to 40.1(g) of the definition of Concessionaire Event of Default in Article 40.1.

"**D&C Subcontractor**" means [**insert name**] and any person who in addition or substitution is engaged by the Concessionaire to undertake all, or substantially all, of the Works.

"**Data Room**" means the password protected virtual data room hosted on the following website: [https://www.mof.gov.tl/tibar-bay-project-project-data-room/ made available to the bidders for the Project in accordance with the Instructions to Bidders.](https://www.mof.gov.tl/tibar-bay-project-project-data-room/made-available-to-the-bidders-for-the-project-in-accordance-with-the-instructions-to-bidders)

"**Debt**" means the debt of the Concessionaire outstanding to the Lenders under the Financing Documents including hedging costs but excluding other any ancillary costs such as breaking

costs.

"Debt to Equity Ratio" means in relation to the Concessionaire a Debt to Equity ratio of a maximum of 70:30.

"Default Interest Rate" means an interest rate of one (1) month LIBOR plus four percent (4%) per annum.

"Delay Liquidated Damages" means the liquidated damages to be paid by the Concessionaire to the Grantor during the Construction Period in accordance with Article 14.2.

"Design Documents" means all executive drawings, reports, documents, programs calculations and other design documents, including conceptual design, detailed design, and final working drawings to be prepared and produced by the Concessionaire in accordance with this Agreement, and more specifically in accordance with the Technical Specifications, in order to obtain the Permits and carry out the Works.

"Direct Agreement" has the meaning given in Article 29.1.3.

"Disclosed Data" has the meaning given in Article 7.1.

"Discriminatory Change in Law" means a Change in Law, the terms of which apply expressly to:

- (a) the Project and not to similar projects;
- (b) the Concessionaire and not to other persons; and/or
- (c) operators of public private partnerships and not to other persons.

"Dispute" has the meaning given in Article 52.1.1.

"Domestic Container" means a Container which is not a Transshipment Container.

"Due Date" means the fifteenth (15th) Business Day after the last day of the month to which the Concession Fee or the Grantor Tariff (as the context requires) relates in accordance with Articles 30.2 and 31.2.

"E&S Law" means any Applicable Law relating to the environment, labor, health and safety (meaning all applicable statutes, laws, ordinances, rules and regulations of Timor-Leste including all authorization setting standards concerning environmental, social, labor, health and safety or security risks).

"E&S Management Plans" has the meaning given in Article 6.3.

"E&S Monitoring Plans" has the meaning given in Article 6.3(d).

"Effective Date" has the meaning given in Article 3.3.7.

"Effectiveness Period" has the meaning given in Article 3.3.1.

"EHS Guidelines" means the World Bank Group Environmental, Health, and Safety (i) General Guidelines (2007), (ii) Guidelines for Ports, Harbors and Terminals, (iii) Guidelines for Shipping, and (iv) Guidelines for Construction Materials Extraction, as may be modified, amended, and updated from time to time, available at <http://www.ifc.org/ehsguidelines> .

"**EIA**" means the Environmental Impact Assessment required to be conducted by the Concessionaire in accordance with the terms of Article 6.

"**Equipment**" means all mobile equipment afloat and ashore required for the safe, secure and efficient operation of the Port Facility and provision of Services in accordance with this Agreement, including the Cargo Handling Equipment, the Marine Equipment and the Auxiliary Equipment.

"**Equity**" means the capital (including statutory and voluntary reserves) of the Concessionaire attributable to a Shareholder in respect of its investment in the Concessionaire, including any amount owing under any Subordinated Loan from a Shareholder to the Concessionaire but excluding any amount owing under any other type of loan from a Shareholder to the Concessionaire and excluding any amount obtained under the VGF.

"**Execution Date**" means the date on which this Agreement has been executed by both Parties.

"**FIDIC**" means the Federation Internationale des Ingenieurs-Conseils, the international federation of consulting engineers, based in Geneva, Switzerland.

"**Financial Assistance**" means all funded and non-funded financial assistance including loans, advances, lease assistance and guarantees required for the Project (but excluding Equity).

"**Financial Close**" means the date when (i) the Financing Documents shall have been duly executed by all parties thereto and; (ii) all the conditions precedent to first disbursement shall have been fulfilled and (iii) the Debt to Equity Ratio shall be achieved upon the first disbursement.

"**Financial Plan**" means the indicative financial plan and financial model of the Concessionaire forming part of its Bid and which is set out in Appendix 16 (*Indicative Financial Plan*).

"**Financing Documents**" means, collectively, the documents executed in favour of or entered into with the Lenders, by the Concessionaire in respect of the Financial Assistance including refinancing and includes any document providing security for the Financial Assistance, including refinancing.

"**Force Majeure Event**" has the meaning given in Article 37.1.

"**Good Industry Practice**" means:

- (a) the exercise of that degree of skill, diligence and prudence; and
- (b) the application of those practices, methods, specifications and standards of equipment, safety and performance,

as may from time to time be reasonably and ordinarily expected of a skilled and experienced international entity engaged in design, construction, operation and maintenance of facilities, equipment and systems of the type and size similar to the Port Facility, Equipment and Services.

"**Grantor**" has the meaning given in the description of the Parties on the first page of this Agreement.

"**Grantor Event of Default**" has the meaning given in Article 40.2.

"**Grantor Notice of Variation**" has the meaning given in Article 35.1.1.

"**Grantor's Representative**" has the meaning given in Article 53.1.

"**Grantor's Step-In Right**" has the meaning given in Article 42.

"**Grantor Tariff**" means the tariffs specified in Part II of Appendix 6 (Tariffs) to be collected by the Concessionaire on behalf of the Grantor in accordance with the provisions of Article 31.2.

"**Grantor Variation**" has the meaning given in Article 35.1.1.

"**Grantor Variation Economic Impact**" has the meaning given in Article 35.1.3.

"**Grantor Variation Estimate**" has the meaning given in Article 35.1.3.

"**GRT**" means Gross Registered Tonnage.

"**Handover Condition Survey**" means a condition survey of the Concession Area and the Port Facility and performance of the Services, comprised of:

- (a) an assessment of the fitness and compliance of the Concession Area, the Port Facility and the Equipment with the specifications and conditions applicable to them pursuant to this Agreement; and
- (b) an inventory of the assets forming part of the Port Facility and the Equipment on the basis of the inventory kept by the Concessionaire pursuant to Article 18.

"**Handover Date**" means the date of Termination.

"**Handover Requirements**" has the meaning given in Article 45.1.5.

"**Handover Plan**" has the meaning given in Article 45.2.2.

"**Handover Security**" means the security specified in Article 10.3.

"**HOC**" has the meaning given in Appendix 6 (Tariffs).

"**HOC Amount**" has the meaning given in Appendix 6 (Tariffs).

"**ICSID Convention**" has the meaning given in Article 52.3.2.

"**IFC**" means International Finance Corporation.

"**IFC Performance Standards**" means the IFC Performance Standards on Environmental and Social Sustainability dated January 1, 2012 available at <http://www.ifc.org/performancestandards>.

"**Incurable Concessionaire Event of Default**" means a Concessionaire Event of Default referred to in paragraphs 40.1(h) or 40.1(i) of the definition of Concessionaire Event of Default in Article 40.1.

"**Independent Engineer**" has the meaning given in Article 12.1.

"Independent Expert" means the expert that shall be designated by the Parties in accordance with Article 52.2 whenever this Agreement requires referral of any matter to the Independent Expert.

"Instructions to Bidders" means the instructions to bidders for the Project issued by the Grantor on 14 May 2014.

"Intellectual Property Rights" means any patent, utility model, registered design, trademark, copyright or other intellectual property right (including any and all licenses), regardless of where or whether it is registered.

"Key Subcontractors" means the D&C Subcontractor and the O&M Subcontractor.

"Key Subcontractors Direct Agreement" means the agreement or agreements signed with the Key Subcontractors to enable the Grantor to exercise the Grantor Step-in Right, a form of which is set forth at Appendix 14 (*Agreed Form of Direct Agreement with Key Subcontractors*).

"Largest Stake" means the stake representing at least forty percent (40%) of Equity (both in terms of voting rights and rights to dividends) in the Concessionaire which confers to its holder (i) the status of the largest shareholder of the Concessionaire and (ii) the right to exercise effective control over the technical and operational activities of the Concessionaire.

"Lead Shareholder" the Person identified as the Lead Shareholder in Appendix 12 (*Concessionaire Shareholding*).

"Lender" means any Person providing Financial Assistance under the Financing Documents.

"Lenders' Step-in Right" means the right of the Lenders to take remedial action in relation to the Project as set out in Appendix 13 (*Agreed Form of Direct Agreement with Lenders*).

"LIBOR" means the British Bankers' Association interbank offered rates for deposits in USD which appear on the relevant page of the Reuters Service (currently page LIBOR01) or, if not available, on the relevant pages of any other service (such as Bloomberg Financial Markets Service) that displays such rates.

"Livelihood Restoration Plan" or **"LRP"** means the plan required to be prepared by the Concessionaire as part of the EIA in accordance with Article 6.

"Local Development Plan" means the undertakings of the Concessionaire in relation to the development of industry in Timor-Leste, the creation of employment and training opportunities for the domestic workforce and other development targets forming part of its Bid and which are set out in Appendix 15 (*Local Development Plan*).

"Lock-In Period" has the meaning given in Article 54.2.2.

"Manufacturer's Recommendations" means the instructions, procedures and recommendations which are issued by any manufacturer of the Equipment relating to the operation, maintenance and repair of the Equipment and any revisions to such instructions, procedures and recommendations agreed to by any manufacturer of the Equipment and which are valid at the time such operation, repair and maintenance is being carried out.

"Marine Equipment" has the meaning given in Appendix 3 (*Technical Specifications*).

"Marine Services" has the meaning given in Article 22.1.

"**Matters for Determination**" has the meaning given in Article 52.2.1.

"**Milestone**" refers to a milestone as set out in Appendix 2 (*Project Schedule*) [note: definition to be confirmed once project schedule finalised].

"**Mineral Resources**" means all non-living natural non-renewable resources, including fossil fuels, metallic and non-metallic minerals, whether raw or processed.

"**Minimum Service and Equipment Investment Requirements**" means the requirements specified in Appendix 4 (*Minimum Service and Equipment Investment Requirements*).

"**Net Equity Cash Flow**" means the net equity cash flow projections calculated in accordance with Appendix 17 (*Net Equity Cash Flow*).

"**Notice of Default**" means a notice that may be served by either Party in accordance with the terms of this Agreement notifying to the other Party the occurrence of an Event of Default and specifying (i) the details of such Event of Default and (ii) the period of time during which such Event of Default may be cured or remedied.

"**Number of TEU Moved**" has the meaning given in Appendix 5 (*Calculation of Throughput Payments*).

"**Number of Transshipment TEU Moved**" means the number of Transshipment Containers, moved over a berthed ship's rail at the Port Facility in such month expressed in TEU.

"**O&M Subcontractor**" means [*insert name of O&M Subcontractor*] and any person who, whether in addition or in substitution, is engaged by the Concessionaire to undertake all, or substantially all, of the Services.

"**Operation Penalties**" has the meaning given in Article 28.1.

"**Operation Period**" means the period commencing on the Service Commencement Date and ending upon the earlier of (i) expiry of the Concession Period as may be extended in accordance with the provisions of this Agreement, or (ii) early termination of this Agreement.

"**Operation Security**" means the security specified in Article 10.2.

"**Operation Year**" means each successive period of three hundred sixty-five (365) days, the first such period beginning on the Service Commencement Date.

"**Permits**" means all the permits, authorizations and consents, which must be obtained from any Public Authority in order for the Concessionaire to carry out the Works and perform the Services (including port safety and security, navigational safety and ship safety manoeuvres) and otherwise to perform its obligations under this Agreement.

"**Person**" means any individual, company, corporation, partnership, joint venture, unincorporated organization or any other legal entity, including their lawful successors and assignees.

"**PFME Economic Impact**" has the meaning given in Article 38.5.

"**PFME Notice**" has the meaning given in Article 38.2.

"**Political Force Majeure Event**" has the meaning given in Article 38.1.

"**Pollution**" means any pollutant or contaminant, including any chemical, industrial, radioactive, dangerous, biochemical, noxious, toxic or hazardous substance, water or residue (whether in solid, semi-solid, liquid, gaseous or vaporous form) or any genetically modified organism.

"**Port Assets**" has the meaning given in Article 33.2.

"**Port Facility**" means the Container and general cargo port including the access channel and harbour basin, the quay wall, all Port Assets and any and all additions, alterations or extensions to that port, to be co-financed, designed, constructed, commissioned, operated, maintained and managed by the Concessionaire within the Concession Area during the Concession Period in accordance with the terms and conditions of this Agreement.

"**Pre-Commencement Compensation**" has the meaning given in Article 3.4.6.

"**Project**" means this project for a Public Private Partnership (PPP) for the design, construction, financing and operation of the Port Facility under a Design Build Operate Transfer (DBOT) scheme in accordance with this Agreement.

"**Project Agreements**" means (i) the agreements entered into between the Concessionaire and the Key Subcontractors and (ii) any other material agreements or contracts, entered into by the Concessionaire in relation to the Project during the subsistence of this Agreement, excluding this Agreement and the Financing Documents.

"**Project Schedule**" means the schedule setting out the Milestones and other target dates for the Project, as set out in Appendix 2 (*Project Schedule*).

"**Prolonged Force Majeure Event**" has the meaning given in Article 37.5.

"**Provisional Certificate**" has the meaning given in Article 17.5.

"**Public Authority**" means any governmental department, commission, board, body, bureau, agency, authority, instrumentality, court or other judicial or administrative body of Timor-Leste whether central, state, or local, having jurisdiction over the Concessionaire, the Concession Area, the Port Facility and Services or any portion thereof.

"**Punch List**" has the meaning given in Article 17.5.

"**Qualifying Change in Law**" means:

- (a) a Discriminatory Change in Law; and/or
- (b) a Specific Change in Law;

which was not foreseeable at the Execution Date and which is not a Political Force Majeure Event.

"**Qualifying Change in Law Economic Impact**" or "**QCIL Economic Impact**" has the meaning given in Article 39.1.

"**Relevant Portion**" means for any VGF Drawdown that portion of Equity and debt financing provided by the Concessionaire and the Lenders as per the schedule set out in Appendix 7 (*VGF Disbursement Schedule*).

"**Representatives**" means the Grantor's Representative and the Concessionaire's Representative.

"**Resettlement Action Plan**" or "**RAP**" means the plan required to be prepared by the Concessionaire as part of the EIA in accordance with Article 6.

"**Scheduled Service Commencement Date**" means the contractually agreed date appearing as such in the Project Schedule (as may be extended from time to time in accordance with this Agreement), by which the Concessionaire shall have done all that is necessary, including completing the Works and obtaining all Permits, for the Port Facility to be fully operational and ready for the delivery of the Services and shall have obtained the Completion Certificate.

"**Services**" means the Marine Services, the Cargo Handling Services and the Auxiliary Services to be carried out at the Port Facility, and maintenance of the Port Facility and Concession Area as per Article 23, in accordance with the provisions of this Agreement.

"**Service Commencement Date**" has the meaning given in Article 20.2.

"**Shareholders**" or "**Shareholder**" means the Persons or any Person identified as such in Appendix 12 (*Concessionaire Shareholding*).

"**Specific Change in Law**" means any Change in Law which specifically refers to the provision of works and/or services the same as or similar to the Works and/or Services or to the holding of shares in companies whose main business is providing services the same as or similar to the Services.

"**Subcontract**" means any contract entered into by the Concessionaire and a third party for the execution by such third party of any part of the Works or Services.

"**Subcontractor**" means any Person entering into a Subcontract with the Concessionaire.

"**Subordinated Loan**" means an unsecured loan to the Concessionaire which ranks after other debts with regard to (i) claims on assets or earnings and (ii) in case of bankruptcy or liquidation of the Concessionaire (or any similar proceedings).

"**Tariff**" means collectively the Concessionaire Tariff and the Grantor Tariff.

"**Tax**" means any tax, charge, impost, tariff, assessment, duty, levy or fee of any kind charged, imposed or levied, directly or indirectly, by any Public Authority under Applicable Law, including any goods and services tax, sales tax, stamp duty, import duty, withholding tax (whether on income, dividends, interest payments, fees, equipment rentals or otherwise), tax on foreign currency loans or foreign exchange transactions, excise tax, property tax, registration fee or license, including any interest, penalties or other additions thereon.

"**Technical Specifications**" means the technical requirements listed in Appendix 3 (*Technical Specifications*) with which the Concessionaire shall comply.

"**Termination**" means the termination of this Agreement, whether by expiry or early termination.

"**Termination Notice**" means the notice of termination having effect within twenty-two (22) Business Days as from the date of its issuance that either Party may serve in accordance with the terms of this Agreement.

"**TEU**" means "twenty foot equivalent unit", the standard unit of measurement for the volume of Containers used throughout the international shipping industry, so that a Container of a length of twenty feet is equal to one TEU and a Container of a length of forty feet is equal to two TEUs for the purposes of this Agreement.

"**TEU Unit Fee**" has the meaning given in Appendix 5 (*Calculation of Throughput Payments*).

"**TEU Throughput Payment**" has the meaning given in Article 30.1.1.

"**Timor-Leste**" means the Democratic Republic of Timor-Leste.

"**Timor-Leste CPI**" refers to the Timor Leste Consumer Price Index published monthly by the Directorate-General for Statistics under Consumer Price Index Series 2 (<http://www.dne.mof.gov.tl/cpi/index.htm/>) or any replacement as issued by the competent Public Authority from time to time.

"**Timor-Leste CPI Variation**" refers to the variation (calculated as a percentage) between the latest Timor Leste CPI available at a point in time and the latest Timor-Leste CPI available at another point earlier in time.

"**Transshipment Container**" means a Container discharged from a vessel and placed in the custody of the Concessionaire for the purposes of shipment on another vessel (with all its original content) declared on a transshipment manifest with the ultimate port of destination marked on each Container lodged within the Concession Area prior to or at the time such Container is placed in its custody.

"**Transshipment TEU Throughput Payment**" has the meaning given in Article 30.1.2.

"**Transition Plan**" has the meaning given in Article 20.1.

"**Unexploded Ordnance**" means any explosive ordnance (including ammunition, bomb grenade or torpedo) that has failed to explode or detonate, affecting the Concession Area and which could not have been reasonably foreseen by a competent investigation preceding the Commencement Date.

"**US Dollar**" or "**USD**" means the lawful currency of the United States of America and of Timor-Leste.

"**User(s)**" means the users, clients or customers of the Concessionaire using the Port Facility and/or the Services.

"**Viability Gap Funding**" or "**VGF**" has the meaning given in Article 29.2.

"**VGF Account**" means a dedicated special purpose account on the books of an entity mutually agreed by the Concessionaire and the Grantor, provided that the agreement of the Concessionaire shall not be unreasonably withheld, where the VGF shall be deposited by the Grantor to be withdrawn only for the purpose of financing of the Project's capital expenditure pursuant to the terms of this Agreement.

"**VGF Disbursement Schedule**" means the schedule of disbursement of VGF attached in Appendix 7 (*VGF Disbursement Schedule*).

"**VGF Drawdown**" means each separate instalment of Viability Gap Funding as shown in Appendix 7 (*VGF Disbursement Schedule*).

"**VGF Drawdown Request**" means a drawdown request made by the Concessionaire in the form set form in Appendix 8 (*VGF Drawdown Request*) countersigned by the Independent Engineer.

"**Weight of Break Bulk Cargo Moved**" has the meaning given in Appendix 5 (*Calculation*

of Throughput Payments).

"Works" means all necessary engineering, design and construction works, including the procurement, purchase and installation of the Equipment, required in order for the Port Facility to meet the Technical Specifications and for the Concessionaire to execute the Services in accordance with the Minimum Service and Equipment Investment Requirements and other provisions of this Agreement.

1.2 Rules of Interpretation

Unless the context of this Agreement otherwise requires:

- (a) words of any gender include each other gender;
- (b) the definitions in Article 1.1 apply to all forms of the defined terms, including the singular and plural;
- (c) the terms "hereof", "herein", "hereby", "hereto" and similar words refer to this entire Agreement and not to any particular Article, Exhibit or Appendix or any other subdivision of this Agreement;
- (d) references to Appendices and Attachments shall be references to Appendices and Attachments to Appendices to this Agreement unless otherwise agreed by the Parties;
- (e) references to any enactment includes any amendment to or re-enactment of that enactment and any rules or regulations made pursuant to that enactment; and reference to a law means reference to such law as may be amended or re-enacted;
- (f) the words "include" or "including" shall be deemed to be followed by "without limitation" or "but not limited to" whether or not they are followed by such phrases or words of like import;
- (g) references to "this Agreement" or to any other agreement or document shall be construed as a reference to such agreement or document as amended, modified or supplemented and in effect from time to time and shall include a reference to any document which amends, modifies or supplements it, or is entered into, made or given pursuant to or in accordance with its terms;
- (h) whenever this Agreement refers to a number of "days", such number shall refer to calendar days; any reference to a "month" or a "year" shall be construed as a reference to a calendar month or year calculated according to the Gregorian calendar;
- (i) any capitalized words, terms, phrases and abbreviations used specifically in any Appendix or any Attachment to any Appendix shall have the meanings set forth in such Appendix or Attachment, as the case may be;
- (j) if there is any inconsistency between any capitalized word, defined term, phrase or abbreviation set forth in Article 1.1 and any provision, capitalized word, term, phrase or abbreviation set forth elsewhere in this Agreement, any other Appendix, or any Attachment to any Appendix, the meaning set forth in Article 1.1 shall take precedence over the meaning set forth in any other Appendix, or any Attachment to any Appendix unless the context of this Agreement otherwise requires;
- (k) if the provisions of this Agreement are internally conflicting or if they conflict with any Appendix thereto, the more onerous obligation or highest standard shall govern or

prevail to the extent of the conflict;

- (l) references to a "Party" shall include references to their lawful successors and assignees; and
- (m) the headings of Articles, Chapters and Articles in this Agreement and the table of contents are inserted for convenience and reference purposes only and shall not in any way affect the interpretation of this Agreement.

1.3 Change of Currency

1.3.1 Occurrence of a Change of Currency

Subject to Applicable Law, if a currency other than the US Dollar is recognised by the Government of Timor-Leste as the lawful currency of Timor-Leste (a "**Change of Currency**"), then:

- (a) if permitted by Applicable Law, the Concessionaire shall be entitled to continue charging the Concessionaire Tariff in US Dollar to the Users; or
- (b) if not permitted by Applicable Law, then the Concessionaire and the Grantor shall discuss the possibility of adjusting the Concessionaire Tariffs or implementing any other mechanism to leave the Concessionaire in a no better no worse position than it would have been if there had been no Change of Currency or which may reduce any impact (whether negative or positive) of the Change in Currency on the Concessionaire (including any foreign exchange risk borne by the Concessionaire).

1.3.2 Effect of a Change in Currency on this Agreement

Subject to Article 1.3.1 above and to Applicable Law, the Grantor may, in the event of a Change of Currency, at any time and at its discretion, designate the lawful currency recognised by the Government of Timor-Leste as the currency that will apply to this Agreement, and, following such designation:

- (a) all references in the Agreement to the US Dollar shall be to the currency so designated by the Grantor (other than those directly relating to the Grantor Tariff if Article 1.3.1 (a) applies);
- (b) all obligations under the Agreement (other than those directly relating to the Grantor Tariff if Article 1.3.1(a) applies) shall be converted to, or paid in, such currency, being provided that any security to be provided by the Concessionaire to the Grantor under this Agreement and previously issued by the relevant Person at the date of such designation shall be unaffected by such designation until it is re-issued (at which point it shall be denominated in the designated currency); and
- (c) any conversion from one currency or currency unit to another shall be at the official rate of exchange recognised by the competent Public Authority for the conversion of that currency into the other, rounded up or down by the Grantor.

2. CONCESSION RIGHTS AND OBLIGATIONS

2.1 Concessionaire General Obligations

2.1.1 The Concessionaire shall:

- (a) carry out and complete the Works;
- (b) procure, install, maintain and replace, whenever necessary, the Equipment;
- (c) manage, operate and maintain the Port Facility and perform the Services during the Operation Period;
- (d) finance at its own costs and risks the Concessionaire Construction Costs and the Concessionaire Operation Costs;
- (e) pay to the Grantor the Concession Fee;
- (f) collect on behalf of the Grantor the Grantor Tariff;
- (g) upon Termination, hand over the Port Facility and the Equipment to the Grantor, or to any Person designated by the Grantor; and (h) do all things incidental or related thereto or which are required in accordance with Good Industry Practice;

subject to and in accordance with the terms and conditions of this Agreement, Applicable Law, Permits and Good Industry Practice.

2.1.2 The Concessionaire's sole corporate object shall be the performance of this Agreement and the Concessionaire shall not carry out any activity which is not necessary or ancillary to the fulfilment of such object.

2.2 Concessionaire Rights

2.2.1 In consideration of the obligations of the Concessionaire under this Agreement:

- (a) the Grantor shall grant to the Concessionaire access to the Concession Area as follows:
 - (i) from the occurrence of the Effective Date until the earlier of (i) the Commencement Date or (ii) the date on which Termination occurs, access in accordance with Article 5.2.2; and
 - (ii) from the Commencement Date until the date on which Termination occurs, access to the Concession Area in accordance with Article 5.1.1;
- (b) the Grantor shall grant to the Concessionaire, from the Service Commencement Date, exclusivity rights provided under and subject to Article 4;
- (c) the Grantor shall grant to the Concessionaire the right to collect the Concessionaire Tariff from the Service Commencement Date in accordance with Article 31; and
- (d) the Grantor shall pay the Viability Gap Funding subject to and in accordance with Article 29.

2.3 Risks Related to the Project

2.3.1 Without prejudice to any provision contained in this Agreement, the Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has after a

complete and careful examination made an independent evaluation of this Agreement (including its Appendices), the Concession Area as well as all the information provided by Grantor, and has determined to the Concessionaire's satisfaction the nature and extent of such difficulties, risks and hazards as are likely to arise or may be faced by the Concessionaire in the course of performance of its obligations hereunder.

2.3.2 The Concessionaire further acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Article 2.3.1 and hereby confirms that Grantor shall not be liable for the same in any manner whatsoever to the Concessionaire, except in case of fraud or deceit of the Grantor.

2.4 Unfettered statutory functions of the Grantor

2.4.1 Nothing in this Agreement shall in any way restrict or otherwise affect the unfettered jurisdiction of the Grantor or of any Public Authority to exercise any of its statutory functions or powers.

2.4.2 Except as otherwise provided in this Agreement, the Concessionaire bears the risk of any Public Authorities and/or the Grantor exercising (or abstaining from exercising) their statutory functions and powers in a manner which disrupts, interferes with or otherwise affects the Project and will not be entitled to make any claim against the Grantor in relation to such exercise.

3. CONCESSION PERIOD AND CONDITIONS PRECEDENT

3.1 Entry into Force - Concession Period

3.1.1 This Agreement shall enter into full force and effect on the Effective Date and shall remain in effect for a period starting from the Commencement Date which shall initially be of thirty (30) years (the "**Concession Period**"), unless terminated earlier in accordance with its terms.

3.1.2 The Concession Period may be extended:

- (a) as expressly provided under this Agreement pursuant to Articles 5.3.5, 5.4.4, 35.1.13, 37.3.4, 38.12 and 39.9; or
- (b) upon request of a Party, pursuant and subject to the provisions of Article 3.2 below.

3.2 Extension of Concession Period

3.2.1 Each Party may request in writing the other Party that the Concession Period be extended in accordance with this Article 3.2 for an additional period of up to ten (10) years (a "**Concession Extension Request**") at least:

- (a) three (3) years prior to the expiry of the Concession Period (as may be extended from time to time in the circumstances referred to in Article 3.1.2 (a), if applicable) in the case of the first Concession Extension Request; or
- (b) six (6) months prior to the expiry of the Concession Period (as may have been extended following a previous Concession Extension Request and as may be subsequently extended from time to time in the circumstances referred to in Article

3.1.2 (a), if applicable) in the case of any subsequent Concession Extension Request.

3.2.2 Any extension of the Concession Period pursuant to Article 3.2.1 above shall be subject to:

- (a) the Parties reaching an agreement on the terms and conditions of such extension;
- (b) Applicable Law; and
- (c) approval of the Council of Ministers of Timor-Leste.

3.2.3 If the Parties have failed to agree on the terms and conditions of an extension to the Concession Period following a Concession Extension Request by:

- (a) in the case of the first Concession Extension Request, the date falling twelve (12) months prior to the expiry of the then applicable Concession Period;
- (b) in case of a subsequent Concession Extension Request, the date falling three (3) months prior to the expiry of the then applicable Concession Period,

the Concession Period shall expire in accordance with Article 3.1.1.

3.2.4 Nothing in this Article 3.2 shall constitute or be construed as an entitlement for the Concessionaire to be granted any extension to the Concession Period.

3.2.5 The Grantor may elect in its absolute discretion to refuse any extension to the Concession Period under this Article 3.2 or to agree to the terms and conditions of such extension and shall have no liability to the Concessionaire if it does so.

3.3 Conditions Precedent to Effective Date

3.3.1 Other than Articles 1 (*Definitions*), 3.3 (*Conditions Precedent to Effective Date*), and 48 (*Confidentiality*) to 54 (*Miscellaneous*) which commence on the date of this Agreement, this Agreement will not take effect unless and until each of the conditions precedent in Articles 3.3.3 and 3.3.4 are either met or waived by the relevant Party no later than thirty (30) Business Days from the Execution Date (the "**Effectiveness Period**").

3.3.2 The Concessionaire shall ensure that the following conditions are met, or waived by the Grantor, as soon as possible following the Execution Date and, in any event, no later than the last day of the Effectiveness Period.

3.3.3 The Concessionaire shall have delivered the following documents to the Grantor:

- (a) true and complete copies of:
 - (i) the Articles of Association and incorporation certificate of the Concessionaire; and
 - (ii) the resolutions adopted by the Shareholders authorizing the execution, delivery and performance by the Concessionaire of this Agreement,
- (b) legal opinion(s) from qualified external legal advisors of the Concessionaire concerning:
 - (i) the due incorporation and valid existence of the Concessionaire;

- (ii) the authority of the Concessionaire to enter into this Agreement; and
- (iii) the authority of the signatory to represent the Concessionaire in executing this Agreement,

which opinions shall be in form and substance and from legal advisors of suitable reputation, in each case reasonably satisfactory to the Grantor.

The Concessionaire shall give notice to the Grantor as soon as it considers that it has satisfied the above conditions (except those that may have been waived by the Grantor in writing).

3.3.4 The Grantor shall use reasonable endeavours to ensure that the Project is approved by the Auditors' Chamber of the Supreme Administrative, Tax and Auditing Court in accordance with Law No. 9/2011, as soon as possible and, in any event, no later than the last day of the Effectiveness Period. The Grantor shall give notice to the Concessionaire as soon as practicable after the Auditors' Chamber has issued its approval, or is deemed to have tacitly approved, of the Project.

3.3.5 Within ten (10) Business Days following receipt by the Grantor of a notice under Article 3.3.3, the Grantor shall (acting reasonably) confirm in writing whether it has received the documents listed in Articles 3.3.3(a) and 3.3.3(b) and that it considers them to be satisfactory or unsatisfactory or confirms whether any of the conditions set out at Article 3.3.3 have been waived in writing by the Grantor.

3.3.6 Within ten (10) Business Days following receipt by the Concessionaire of a notice under Article 3.3.4, the Concessionaire shall (acting reasonably) confirm in writing the receipt of the notice of the approval by the Auditor's Chamber.

3.3.7 The date on which both Parties have confirmed in writing under Articles 3.3.5 and 3.3.6 that the conditions precedent in Articles 3.3.2 and 3.3.4 have been either satisfied or waived by them in writing shall be the "**Effective Date**". If written confirmation under either Article 3.3.5 or Article 3.3.6 is received after the last day of the Effectiveness Period, but following a notice sent in accordance with Articles 3.3.3 or 3.3.4 (as the case may be) within the Effectiveness Period, the relevant conditions precedent will be deemed to have been satisfied or waived within the Effectiveness Period.

3.4 Conditions Precedent to Closing

3.4.1 Each Party shall ensure that each of the conditions allocated to it in this Article 3.4 is either met or waived by the relevant Party no later than eleven (11) months from the Effective Date (the "**Closing Period**"). The Concessionaire shall ensure that the following conditions are met, unless waived by the Grantor, as soon as possible following the Execution Date and, in any event, no later than the last day of the Closing Period (the "**Conditions for the Benefit of the Grantor**"):

- (a) the Concessionaire shall have delivered the following documents to the Grantor:
 - (i) executed copies of the Project Agreements to which the Concessionaire is a party;
 - (ii) a legal opinion from qualified external legal advisors of the Concessionaire concerning (A) the authority of the Concessionaire to enter into such Project

Agreements, (B) the authority of the signatory to represent the Concessionaire in executing such Project Agreements and (C) the validity and enforceability of such Projects Agreements which opinions shall be in form and substance and from legal advisors of suitable reputation, in each case reasonably satisfactory to the Grantor;

- (iii) the Construction Security duly executed in accordance with Article 10.1;
- (iv) details of the Concessionaire's share capital (including the total amount of share capital, the list of subscribers, the amount subscribed and whether any share is paid-up or not paid-up);
- (b) the Concessionaire shall have submitted the EIA conducted in accordance with the terms of reference set forth in Appendix 11 (*Terms of Reference for EIA*) to the competent Public Authority and addressed a copy to the Grantor in due time to allow the issuance of relevant Permits during the Closing Period;
- (c) the Concessionaire shall have obtained all the Permits required to start construction of the Port Facility or otherwise required to perform its obligations during the Construction Period;
- (d) the Concessionaire shall have subscribed to all the insurance policies required for the Construction Period in accordance with Article 34 and provided to the Grantor evidence of the same;
- (e) the Concessionaire shall have achieved Financial Close and delivered to the Grantor executed copies of the Financing Documents;
- (f) the Concessionaire shall have executed the Direct Agreement with the Grantor and the Lenders;
- (g) the Concessionaire shall have procured the execution by the Key Subcontractors of the Key Subcontractors Direct Agreement; and
- (h) the Concessionaire shall have executed the Key Subcontractors Direct Agreement with the Grantor and each of the Key Subcontractors.

The Concessionaire give notice to the Grantor as soon as it considers that it is in a position to meet the above conditions (except those that have been waived by the Grantor in writing).

3.4.2 The Grantor shall ensure that the following conditions are met, unless waived by the Concessionaire, as soon as possible and, in any event, no later than the last day of the Closing Period ("**Conditions for the Benefit of the Concessionaire**"):

- (a) has taken all required steps to enable the granting of the access to the Concession Area to the Concessionaire in accordance with Article 5; and
- (b) execution of the Direct Agreement with the Concessionaire and the Lenders and of the Key Subcontractors Direct Agreement.

The Grantor shall give notice to the Concessionaire as soon as it considers that it is in a position to meet the above conditions (except those that may have been waived by the Concessionaire in writing).

3.4.3 The Grantor and the Concessionaire shall jointly appoint the Independent Engineer as soon as possible and, in any event, no later than the last day of the Closing Period. If the Grantor and the Concessionaire have not agreed on the appointment of the Independent Engineer before a period starting one month prior to the last day of the Closing Period, then either Party may submit immediately the appointment of the Independent Engineer to the final and binding decision of the President of FIDIC or a person appointed by the President.

3.4.4 Within ten (10) Business Days following receipt by the Grantor of a notice under Article 3.4.1, the Grantor shall (acting reasonably) confirm in writing whether it considers that the Conditions for the Benefit of the Grantor have been satisfied or waived in writing by the Grantor.

Within ten (10) Business Days following receipt by the Concessionaire of a notice under Article 3.4.2, the Concessionaire shall (acting reasonably) confirm in writing whether it considers that the Conditions for the Benefit of the Concessionaire have been satisfied or waived in writing by the Concessionaire

The date on which both Parties have confirmed in writing that the relevant conditions in their favour have been either satisfied or waived by them in writing shall be the "**Commencement Date**".

3.4.5 If the Commencement Date has not occurred by the last day of the Closing Period, the Parties shall promptly meet to discuss how to satisfy the outstanding conditions. If the Parties cannot agree on a timetable for the completion of the outstanding conditions within forty-four (44) Business Days of the first meeting, or if either Party fails to satisfy the outstanding conditions within the agreed timetable, then:

- (a) if the only conditions that have not been satisfied or waived at that time are Conditions for the Benefit of the Grantor, the Grantor may choose to terminate this Agreement by giving a forty-four (44) Business Days' notice to the Concessionaire. Upon the expiry of such period, this Agreement shall automatically terminate without the need for further notice, unless all the outstanding conditions have been satisfied at such date, in which case this Agreement shall not terminate. If termination occurs in accordance with this paragraph, the Grantor shall be entitled to call the totality of the Bid Security and this amount shall constitute the sole and exclusive remedy for the Grantor for such termination and shall be paid as a genuine pre-estimate of and reasonable compensation for loss suffered by the Grantor;
- (b) if the only conditions that have not been satisfied or waived at that time are Conditions for the Benefit of the Concessionaire, the Concessionaire may choose to terminate this Agreement by giving a forty-four (44) Business Days' notice to the Grantor. Upon the expiry of such period, this Agreement shall automatically terminate without the need for further notice, unless all the outstanding conditions have been satisfied at such date, in which case this Agreement shall not terminate. If termination occurs in accordance with this paragraph, the Concessionaire shall be entitled to request the Grantor to return the Bid Security and, subject to the Concessionaire complying with the provisions of Articles 3.4.6 and 3.4.7, pay to the Concessionaire the applicable Pre-Commencement Compensation;
- (c) if the conditions that have not been satisfied or waived at that time are both Conditions for the Benefit of the Grantor and Conditions for the Benefit of the Concessionaire, both the Grantor and the Concessionaire may choose to terminate this Agreement by giving a forty-four (44) Business Days' notice to the other Parties. Upon the expiry of such period, this Agreement shall automatically terminate without the need for further notice, unless all the outstanding conditions have been satisfied at such date, in which

case this Agreement shall not terminate. If termination occurs in accordance with this paragraph, the Concessionaire shall be entitled to request the Grantor to return the Bid Security and this shall constitute the sole and exclusive remedy for the Concessionaire for such termination and the Concessionaire shall have no other claim or remedy whatsoever for such termination, including for recovery of any compensation; and

- (d) as an exception to (a) above, if the only condition not satisfied or waived is the condition set out in Article 3.4.1(c) and the Concessionaire has submitted applications for such relevant Permits which were complete and compliant in all material respect with Applicable Law and the policies of the relevant Public Authority, then the Closing Period should be extended by such time as necessary for such condition to be fulfilled within a limit of one hundred and eighty (180) days, following which if the condition remains unfulfilled, the Concessionaire shall be entitled to (i) terminate this Agreement, (ii) to request the Grantor to return the Bid Security and (iii) subject to the Concessionaire complying with the provisions of Articles 3.4.6 and 3.4.7, be paid by the Grantor the applicable Pre-Commencement Compensation.

3.4.6 In the circumstances identified in Articles 3.4.5(b) and 3.4.5(d) and subject to Articles 3.4.7 and 3.4.8, compensation may be payable by the Grantor to the Concessionaire before the Commencement Date (the "**Pre-Commencement Compensation**").

The Pre-Commencement Compensation shall include and be limited to the following elements:

- (a) compensation for expenses actually and reasonably incurred by the Concessionaire in relation to the preliminary engineering design of the Port Facility, subject to a maximum limit of three million US Dollars (USD 3,000,000), which is subject to the Concessionaire transferring to the Grantor all preliminary engineering design documents, materials or studies (including all Intellectual Property Rights attached to such documents, materials or studies if the Concessionaire owns such Intellectual Property Rights, or, otherwise, the Concessionaire granting or procuring the grant of all rights necessary to enable such documents, materials or studies to be used by the Grantor for any purpose) in relation to which any such expense is claimed;
- (b) compensation for expenses actually and reasonably incurred by the Concessionaire in relation to the preparation of the EIA, subject to a maximum limit of two million US Dollars (USD 2,000,000), which is subject to the Concessionaire transferring to the Grantor:
 - (i) the latest draft of the EIA (including all Intellectual Property Rights associated with the draft EIA if the Concessionaire owns such Intellectual Property Rights, or, otherwise, the Concessionaire granting or procuring the grant of all rights necessary to enable the EIA to be used by the Grantor for any purpose); and
 - (ii) any document, material or study relating thereto (including all Intellectual Property Rights attached to such document, material or study if the Concessionaire owns such Intellectual Property Rights, or, otherwise, the granting or procuring the grant of all rights necessary to enable such document, material or study to be used by the Grantor for any purpose) in relation to which any such expense is claimed; and
- (c) compensation for any other expenses actually and reasonably incurred by the Concessionaire in relation to other preparatory work directly relevant to the

Project, subject to a maximum limit of five hundred thousand US Dollars (USD 500,000).

3.4.7 The Grantor will have no entitlement to payment of the Pre-Commencement Compensation with respect to any expense until each of the following conditions has been satisfied to the reasonable satisfaction of the Grantor:

- (a) the Concessionaire has provided the Grantor with the relevant documents, studies and rights as listed in paragraphs (a) to (c) of Article 3.4.6 above; and
- (b) the Concessionaire has provided the Grantor with evidence reasonably satisfactory to the Grantor that such expense has been reasonably and actually incurred (including an invoice or receipt).

3.4.8 The Pre-Commencement Compensation shall constitute the sole and exclusive remedy for the Concessionaire in relation to any termination of this Agreement in accordance with Articles 3.4.5(b) and 3.4.5(d) and the Concessionaire shall have no other claim or remedy whatsoever for such termination, including for recovery of any other compensation.

4. EXCLUSIVITY

[Note: Article 4 - Exclusivity Clause is still under final approval from the Government of Timor-Leste]

4.1 The Grantor shall ensure that as from the Service Commencement Date there shall be no Container and general international cargo handling operations in the existing Dili Port except for passenger and domestic ferries.

4.2 The Grantor undertakes that the Concessionaire shall benefit from the exclusive right to carry out cargo handling in Timor-Leste (such handling to be carried only at the Port Facility), being however provided that:

- (a) The port facilities to be developed at Suai and Oecussi port and their respective operator(s) shall be allowed to handle international cargo; and
- (b) The following are excluded from the exclusivity right of the Concessionaire:
 - (i) cargo which is shipped or otherwise transported from a place in Timor-Leste to another place in Timor-Leste;
 - (ii) goods carried on (xx) boats, ships or vessels sailed or operated as a regular service between two ports via journeys with sailing times of up to two (2) days, and predominantly used for roll-on-roll-off cargo operations; or (yy) boat, ships or vessels sailed or operated for the primary purpose of transporting natural persons from one place to another (whether in Timor-Leste or not) as passengers and which may carry cargo as an ancillary activity (and for the avoidance of doubt cruise ships or liners shall be included in this category);
 - (iii) shipments of cement to and from the cement factory to be constructed and operated in Baucau;
 - (iv) Mineral Resources; and

- (v) shipments by or to any military body.

The Grantor shall ensure that all Public Authorities comply with the provisions of this Article 4.2.

5. CONCESSION AREA

5.1 Grant of Concession Area

5.1.1 For the purpose of implementation of the Project and in consideration of the Concessionaire's obligations under this Agreement and subject to Article 5.5 (*Permitted Access*), the Grantor shall grant to the Concessionaire, at its own costs, risks and responsibility as from the Commencement Date and for the entire Concession Period, subject to the conditions of this Agreement:

- (a) the exclusive right to occupy, use and peacefully enjoy the Concession Area free and clear of any encumbrances, unauthorized Persons and third party rights, and without unreasonable and unjustified interference from the Grantor or other Public Authorities;
- (b) the exclusive right of passage over and under, and of access and egress to and from the Concession Area and any part thereof without unreasonable and unjustified interference from the Grantor or any third party; and
- (c) the right of access and egress to and from the Concession Area and any part thereof as may be granted by the Concessionaire to any third party in the ordinary course of the implementation and operation of the Project by the Concessionaire.

5.1.2 Notwithstanding its grant of rights set forth herein, the Concessionaire shall not obtain title or ownership over the Concession Area. The Concessionaire shall not create or permit to subsist any security interest over the whole or any part of the Concession Area.

5.1.3 The Concessionaire shall ensure the safety and security of the Concession Area in accordance with Article 24.

5.1.4 The Concession Area shall not be used by the Concessionaire for any purpose other than the implementation of the Project in compliance with Applicable Law, Good Industry Practice and the terms of this Agreement.

5.2 Grantor's Obligations in Respect to the Concession Area

5.2.1 The Grantor shall bear all costs, expenses and responsibility related to:

- (a) acquisition by the Grantor or any Public Authority, as applicable, of full right, title and interest in land, including the reclaimed land, as the case may be, at the Concession Area (including any obligation to pay compensation on account of such land purchase or the rehabilitation and resettlement of any affected Persons);
- (b) obtaining any "change in use" permissions from the relevant Public Authorities, if required, for the use of the land for the implementation of the Project in accordance with this Agreement;
- (c) obtaining vacant, peaceful and unencumbered possession of such land, including by

taking any action necessary to defend any claims from third parties regarding ownership of the land;

- (d) obtaining all necessary rights of way, way leaves and easement rights over the adjacent land for the purpose of the performance of the Concessionaire's obligations and the exercise of the Concessionaire's rights under this Agreement; and
- (d) implementation (but not preparation or design) of the Resettlement Action Plan or Livelihood Restoration Plan;

The Grantor shall comply with Applicable Law, the Resettlement Action Plan or Livelihood Restoration Plan and IFC Performance Standard 5 when conducting actions specified in this Article 5.2.1.

- 5.2.2** From the occurrence of the Effective Date until the earlier of (i) the Commencement Date or (ii) the date on which Termination occurs, the Grantor shall provide rights of access (including temporary rights of way) as are reasonably required by the Concessionaire to the Concession Area at the Concessionaire's risks, costs and responsibility, for the purposes of carrying out any survey or investigation necessary for the Concessionaire to prepare the performance of its obligations arising on or after the Commencement Date and satisfy the conditions set forth at Article 3.4.1.

5.3 Antiquities

- 5.3.1** If any Antiquities are discovered in the Concession Area after the Execution Date, the Concessionaire shall:

- (a) take all steps required by the Applicable Law and IFC Performance Standard 8 in relation to the Antiquities;
- (b) promptly notify the Grantor and the Independent Engineer of such discovery;
- (c) take such steps as any appropriate Public Authority may legally require, which may include ceasing and not carrying out any operations which may hinder the excavation of the Antiquities or in any way interfere with the Antiquity; and
- (d) take all necessary steps to preserve the Antiquity in the same position and condition in which it was found.

- 5.3.2** All Antiquities will be the absolute property of the Grantor.

- 5.3.3** The Grantor, any appropriate Public Authority and any Person acting on behalf of either of them shall be entitled to have access to the Concession Area for the purposes of investigating any Antiquity, drawing up a plan to deal with the Antiquity and/or any related excavation work and the Concessionaire shall provide reasonable assistance to the Grantor, any appropriate Public Authority and/or any Person acting on behalf of either of them.

- 5.3.4** If compliance with this Article 5.3 requires suspension or delay of the Works, Parties should refer to the extension procedure provided by Article 14.4.

- 5.3.5** If the costs of completion of the Works and/or delivery of the Services increase as a direct result of compliance with the requirements of this Article 5.3, then, subject to Article 5.3.6, the Concessionaire shall be entitled to compensation for such reasonable increased costs

upon the submission by the Concessionaire to the Grantor of data, documents and information evidencing the amount of such increased costs, including any data, documents or information reasonably requested by the Grantor, in all cases certified by the Concessionaire as being accurate and complete. Such compensation shall be provided:

- (a) during the Construction Period, by a direct payment from the Grantor to the Concessionaire, unless otherwise agreed by the Parties;
- (b) after the end of the Construction Period, in such form as the Parties may agree, or failing agreement, as determined by the Grantor (acting reasonably), which may include any one or more of the following: an extension of the Concession Period (subject to the Concessionaire's consent) or a direct payment from the Grantor to the Concessionaire or a temporary decrease of the Concession Fee.

5.3.6 The Concessionaire shall not be entitled to any extension or costs under this Article 5.3 to the extent such delay in the Works or additional cost arises from its failure to comply with its obligations under Article 5.3.1 or if the completion of the Works is already affected by delays attributable to the breach by the Concessionaire of other provisions of this Agreement.

5.4 Unexploded Ordnance

5.4.1 If any Unexploded Ordnance is discovered in the Concession Area at any time during the Concession Period, the Concessionaire shall:

- (a) take all steps required by the Applicable Law in relation to such Unexploded Ordnance;
- (b) immediately notify any Public Authority responsible for the disposal of explosives, the Grantor and the Independent Engineer of such discovery;
- (c) cease and not carry out any operations which may detonate or in any way interfere with the Unexploded Ordnance or its safe removal and disposal, and take such steps as any appropriate Public Authority may legally require; and
- (d) take all necessary steps to protect the lives and safety of any natural persons in the Concession Area or its vicinity.

5.4.2 The Grantor, any appropriate Public Authority and any Person acting on behalf of either of them shall be entitled to have access to the Concession Area for the purposes of investigating any Unexploded Ordnance, drawing up a plan to deal with the Unexploded Ordnance, any related excavation work and/or defusing or otherwise disposing of the Unexploded Ordnance, and the Concessionaire shall provide reasonable assistance to the Grantor, any appropriate Public Authority and/or any Person acting on behalf of either of them.

5.4.3 If compliance with this Article 5.4 requires suspension or delay of the Works, the Parties should refer to the extension procedure provided by Article 14.4.

5.4.4 If the costs of completion of the Works and/or delivery of the Services increase as a direct result of compliance with the requirements of this Article 5.4, then, subject to Article 5.4.5, the Concessionaire shall be entitled to compensation for such increased costs upon the submission by the Concessionaire to the Grantor of data, documents and information evidencing the amount of such increased costs, including any data, documents or information reasonably requested by the Grantor, in all cases certified by the Concessionaire as being accurate and complete. Such compensation shall be provided:

- (a) during the Construction Period, by a direct payment from the Grantor to the Concessionaire;
- (b) after the end of the Construction Period, by an extension of the Concession Period (subject to the Concessionaire's consent), a direct payment from the Grantor to the Concessionaire or a temporary decrease of the Concession Fee or by any combination of the foregoing.

5.4.5 The Concessionaire shall not be entitled to any extension or costs under this Article 5.4 to the extent such delay in the Works or additional cost arises from its failure to comply with its obligations under Article 5.4.1 or if the completion of the Works is already affected by delays attributable to the breach by the Concessionaire of other provisions of this Agreement.

5.5 Permitted Access

The Concessionaire shall give, or cause to be given, access to the Concession Area to (i) any Public Authority exercising any of its statutory functions on or in relation to the Concession Area, and (ii) the Grantor or its representatives or advisors as reasonably necessary for the purpose of exercising its rights under and complying with the terms of this Agreement; provided that the Grantor or its representatives or advisors, as applicable, shall be subject to, and shall comply with, applicable safety and security procedures generally applied by the Concessionaire to individuals given access to the Project Concession Area.

5.6 Allocation of Concession Area Risks

5.6.1 Except as expressly set out in this Article 5, the Concessionaire shall be liable for all risks affecting the Concession Area, including any Pollution and geotechnical or soil risks, and the Concessionaire shall not be entitled to make any claim against the Grantor, and the Grantor will not be liable for any claim, arising out of or in connection with such risks.

5.6.2 The Concessionaire shall not be liable for risks related to Pollution existing prior to the Commencement Date and expressly identified in the EIA unless such Pollution:

- (i) was disclosed by the Grantor to the Concessionaire prior to the Execution Date;
- (ii) would have been reasonably expected to be revealed by an inspection on site prior to the Execution Date; or
- (iii) was caused directly or indirectly by an act or omission of the Concessionaire or its contractors.

6. CONCESSIONAIRE E&S OBLIGATIONS

6.1 The Concessionaire shall design, build, operate, and maintain the Project in compliance with all requirements of Applicable Law, E&S Law, IFC Performance Standards 1, 2, 3, 4, 5, 6, and 8, and EHS Guidelines, whichever is more stringent.

6.2 The Concessionaire shall procure that the EIA is performed in relation to the Project at its own cost (including any mitigation measures). The Concessionaire shall in particular ensure that:

- (a) the EIA is conducted in conformity with the requirements of (i) E&S Law, (ii) IFC Performance Standard 1 – Assessment and Management of Environmental and Social

Risks and Impacts and (iii) the terms of reference specified in Appendix 11 (*Terms of Reference for EIA*); and

- (b) the EIA is conducted by competent professional advisers with relevant experience conducting environmental and social impact assessments for similar projects in the region, and such advisers have appropriate experience in applying IFC Performance Standards and Good Industry Practice and such advisers include as part of their team marine and terrestrial biodiversity experts with appropriate experience.

6.3 The Concessionaire must submit the terms of reference set out in Appendix 11 (*Terms of Reference for EIA*) and the project document to the Direcção Nacional do Meio Ambiente (National Directorate for the Environment) and obtain its prior approval before implementation of the EIA. The Concessionaire shall develop, implement, and maintain the Environmental and Social Management Plans identified in the EIA (the "**E&S Management Plans**") and comply with the obligations and standards set out in the E&S Management Plans. The E&S Management Plans shall:

- (a) include a biodiversity action plan;
- (b) fully describe mitigation and performance improvement measures and actions identified in the EIA;
- (c) clearly define procedures, roles and responsibilities, and timelines for their implementation;
- (d) define subsequent monitoring plans of such measures and actions (the "**E&S Monitoring Plans**") which will focus on monitoring and measuring the effectiveness of E&S Management Plans and compliance with E&S Law, IFC Performance Standards and EHS Guidelines;
- (e) be applicable to any Subcontractors; and
- (f) incorporate a Resettlement Action Plan or a Livelihood Restoration Plan designed by the Concessionaire in compliance with IFC Performance Standard 5. The Resettlement Action Plan shall be designed to mitigate the negative impacts of physical displacement, while the LRP shall be designed to mitigate the negative impacts of economic displacement. If the Project causes both physical and economic displacement, the mitigations for economic displacement shall be incorporated in the Resettlement Action Plan without the need to prepare a separate Livelihood Restoration Plan. The Resettlement Action Plan or Livelihood Restoration Plan shall also identify development opportunities, develop appropriate budget and schedule, establish entitlements of all categories of project affected households and people, offer assistance, and ensure that these entitlements and assistance are provided in a transparent, consistent, and equitable manner.

6.4 The Concessionaire shall consult on a regular basis with the Grantor in relation to the design of the envisaged Resettlement Action Plan or Livelihood Restoration Plan and the scope of the resulting activities and shall take into account any reasonable comments from the Grantor on such plans.

6.5 Notwithstanding the fact that the Resettlement Action Plan or Livelihood Restoration Plan are to be prepared and designed by the Concessionaire at its own cost, the responsibility for its implementation, including any associated costs, shall lie with the Grantor in accordance with Article 5.2.

- 6.6 The Concessionaire shall define, acquire and maintain the required organizational capacity and competency (in relation to staff and systems) to implement and maintain the E&S Management Plans and E&S Monitoring Plans. In particular, the Concessionaire shall define key E&S roles and responsibilities, assign them to staff with appropriate skills and expertise and train staff on management of E&S risks and impacts.
- 6.7 The Concessionaire shall develop a stakeholder engagement process, establish and maintain constructive relationships with key stakeholders, including the Affected Communities. This stakeholder engagement process shall be an on-going process and shall be a development of and expand the results of the stakeholder engagement process initiated by the Grantor.
- 6.8 The Grantor's review of or comment on (or failure to review or comment on) any plan required to be developed, implemented and maintained by the Concessionaire under the EIA shall not relieve the Concessionaire from any obligations or liabilities under this Agreement.

7. DISCLOSED DATA

- 7.1 The Grantor has made available to the Concessionaire prior to the Execution Date certain materials, documents and data related to the Project, Concession Area, Works and the Services (including the content of the Data Room) and other matters which are or may be relevant to the Project and the obligations undertaken by the Concessionaire under this Agreement as well as any other information given orally or in written form to the Concessionaire (the "**Disclosed Data**").
- 7.2 The Grantor shall not be liable to the Concessionaire in respect of any inaccuracy, error, omission, unfitness for purpose, defect or inadequacy of any kind whatsoever in the Disclosed Data, except in case of fraud or deceit of the Grantor.
- 7.3 The Grantor gives no warranty or undertaking that the Disclosed Data represents all of the information in its possession or power (either during the tender process or at the execution of this Agreement) relevant or material to the Project or the obligations undertaken by the Concessionaire under this Agreement. The Grantor shall not be liable to the Concessionaire in respect of any failure to disclose or make available (whether before or after the execution of this Agreement) to the Concessionaire any information, documents or data, nor to keep the Disclosed Data up to date, nor to inform the Concessionaire (whether before or after execution of this Agreement) of any inaccuracy, error, omission, unfitness for purpose, defect or inadequacy in the Disclosed Data except in the case of fraud or deceit.

8. PROJECT PERMITS

- 8.1 The Concessionaire shall seek, obtain and renew, in a timely fashion, all Permits that may be required for the Works and for the Services under Applicable Law and in accordance with Good Industry Practice, including certifications and approvals of all Public Authorities controlling or affecting the construction or operation of the Port Facility. The Concessionaire shall bear all costs and expenses (including application fees and Taxes) in connection with the preparation, submission and obtaining of all Permits.
- 8.2 The Grantor shall provide, and shall cause the concerned Public Authority to provide, all reasonable administrative assistance that may be required in processing the applications for, and issuance of, Permits submitted by the Concessionaire in his own name or for and on behalf of the Grantor or by any Contractor in relation to the Project.

- 8.3** The Concessionaire shall ensure that:
- (a) all Permits that may be required in order to start construction of the Port Facility shall have been obtained prior to the Commencement Date; and
 - (b) all Permits that may be required in order to start operation of the Port Facility and provision of Services shall have been obtained prior to the Services Commencement Date.
- 8.4** The Concessionaire acknowledges and confirms that any Permit to be granted by any Public Authority may be granted or withheld by such Public Authority in accordance with the Applicable Law.

9. PROJECT AGREEMENTS

- 9.1** The Concessionaire shall execute, in a timely manner, the Project Agreements which shall: (i) be entered into with the relevant parties on an arm's length basis and (ii) not be commercially unreasonable, and any other agreements necessary to be entered into by the Concessionaire in satisfaction of the Concessionaire's obligations under this Agreement.
- 9.2** The Concessionaire shall not agree to or make any amendments, modifications or supplements to, or consent to any changes of any provision of, or grant of any waivers under, any of the Project Agreements, which may materially adversely affect the rights and obligations of the Parties under this Agreement without the prior written consent of the Grantor.

10. PROJECT SECURITIES

10.1 Construction Security

- 10.1.1** The Concessionaire shall submit to the Grantor, no later than on the Commencement Date, an unconditional and irrevocable on-demand bank guarantee, issued by a bank with a credit rating of at least AA- under the Standard and Poor's rating or with Aa3 under the Moody's rating or such other rating as the relevant Public Authority may agree, in accordance with the Applicable Law for an amount in USD equal to the higher of (i) 10% of the VGF and (ii) ten million US Dollars (USD 10,000,000) and in the form set out in Appendix 9 (*Security Forms*) to secure the due performance of the Concessionaire's obligations under this Agreement during the Construction Period (the "**Construction Security**"). If the rating of the bank issuing the Construction Security falls at any time below the rating required under this Article 10.1.1, the Concessionaire shall, as soon as possible, issue a new Construction Security for the same amount remaining at the time of such occurrence, with a bank of a rating complying with the rating required under this Article 10.1.1.
- 10.1.2** The Concessionaire shall maintain the Construction Security in full force and effect from the date on which it was issued until the date on which the Completion Certificate is validly issued, on which date the Construction Security shall be released.
- 10.1.3** If the Construction Security is scheduled to expire prior to the date contemplated in Article 10.1.2, then at least twenty-two (22) Business Days prior to the scheduled expiry of the Construction Security, the Concessionaire shall arrange for an extension or replacement of the Construction Security. If the Concessionaire fails to extend or replace the Construction

Security by such date, the Grantor shall be entitled to draw on the Construction Security and to retain the proceeds of the Construction Security as security for the performance of the Concessionaire's obligations, and a Concessionaire Event of Default shall be deemed to have occurred.

10.1.4 Without prejudice to any other right which the Grantor may have under this Agreement, the Grantor shall have the right to draw on the Construction Security and claim the amount guaranteed on demand upon the Concessionaire's failure to honor any of its obligations, responsibilities or commitments during the Construction Period or in respect of any amount due from the Concessionaire to the Grantor and shall, at the time of the exercise of such right, send a notice to the Concessionaire describing the reasons for drawing on part or all of the Construction Security. The withdrawal by the Grantor of the entire amount of the Construction Security prior to the delivery of the Completion Certificate shall constitute a Concessionaire Event of Default.

10.1.5 If this Agreement is terminated prior to the Service Commencement Date for any reason other than the occurrence of a Concessionaire Event of Default, the Construction Security shall be duly discharged and released to the Concessionaire, when the Grantor's right to receive any amounts to meet the Concessionaire's accrued liabilities as on such date of Termination have been satisfied.

10.2 Operation Security

10.2.1 As a condition to the issuance of the Completion Certificate, the Concessionaire shall submit to the Grantor, an unconditional and irrevocable on-demand bank guarantee, issued by a bank with a credit rating of at least AA- under the Standard and Poor's rating or with Aa3 under the Moody's rating or such other rating as the relevant Public Authority may agree, in accordance with the Applicable Law an initial amount of five million US Dollars (USD5,000,000) (and subject to adjustments in accordance with Article 10.2.6) and in the form set out in Appendix 9 (Security Forms) to secure the due performance of the Concessionaire's obligations under this Agreement during the Operation Period (the "**Operation Security**"). If the rating of the bank issuing the Operation Security falls at any time below the rating required under this Article 10.2.1, the Concessionaire shall, as soon as possible, issue a new Operation Security for the same amount remaining at the time of such occurrence, with a bank of a rating complying with the rating required under this Article 10.2.1.

10.2.2 The Concessionaire shall maintain the Operation Security in full force and effect from the date on which it was issued until the date on which the Handover Security is validly issued, on which date the Operation Security shall be released.

10.2.3 If the Operation Security is scheduled to expire prior to the date contemplated in Article 10.2.2, then at least twenty-two (22) Business Days prior to the scheduled expiry of the Operation Security, the Concessionaire shall arrange for an extension or replacement of the Operation Security. If the Concessionaire fails to extend or replace the Operation Security by such date, the Grantor shall be entitled to draw on the Operation Security, and a Concessionaire Event of Default shall be deemed to have occurred.

10.2.4 Without prejudice to any other right which the Grantor may have under this Agreement, the Grantor shall have the right to draw on the Operation Security and claim the amount guaranteed on demand upon the Concessionaire's failure to honour any of its obligations, responsibilities or commitments during the Operation Period and shall, at the time of the exercise of such right, send a notice to the Concessionaire describing the reasons for drawing on part or all of the Operation Security. The withdrawal by the Grantor of the entire amount of the Operation Security prior to the end of the Operation Period shall constitute in itself a

Concessionaire Event of Default, unless the Grantor, at its own discretion, agrees to waive its right to terminate the Concession Agreement resulting from such Concessionaire Event of Default in consideration for the provision by the Concessionaire of a new Operation Security for the full amount set out in Article 10.2.1.

10.2.5 If this Agreement is terminated prior to the expiry of the Concession Period for any reason other than the occurrence of a Concessionaire Event of Default, the Operation Security shall be duly discharged and released to the Concessionaire, subject to the Grantor's right to receive any amounts to meet the Concessionaire's accrued liabilities as on such date of Termination.

10.2.6 Starting from the end of the third Operation Year, the amount of the Operation Security shall be adjusted no later than one (1) month after the commencement of the fourth Operation Year and thereafter no later than one (1) month after the end of every successive period of three (3) Operation Years .

Such adjustment shall be made according to the following formula:

$$\text{adjusted amount of Operation Security} = \frac{15}{100} \times \text{Concessionaire Revenue}$$

Being provided that the adjusted amount of Operation Security shall not be lower than the Minimum Operation Security Amount or greater than the Maximum Operation Security Amount.

Where:

"Concessionaire Revenue": means an amount equal to the total revenue of the Concessionaire during the latest completed Operation Year;

"Maximum Operation Security Amount": means an amount in US Dollars, initially of ten million US Dollars (USD 10,000,000) which is to be revised on the day an adjustment to the Operation Security is made in accordance with Article 10.2.6, according to the following formula:

$$\text{Revised Maximum Operation Security Amount} = \text{current Maximum Operation Security Amount} \times (1 + X)$$

"X" refers to the Timor-Leste CPI Variation between the date on which the Maximum Operation Security amount is to be revised and either: (i) the date of issuance of the Operation Security, or, if the Operation Security has not yet been adjusted (ii) the date of the latest adjustment of the Operation Security;

"Minimum Operation Security Amount": means an amount in US Dollars, initially of five million US Dollars (USD 5,000,000) which is to be revised on the day an adjustment to the Operation Security is made in accordance with Article 10.2.6, according to the following formula:

$$\text{revised Minimum Operation Security Amount} = \text{current Minimum Operation Security Amount} \times (1 + X)$$

"X" refers to the Timor-Leste CPI Variation between the date on which the Maximum Operation Security amount is to be revised and either: (i) the date of issuance of the

Operation Security, or, if the Operation Security has not yet been adjusted (ii) the date of the latest adjustment of the Operation Security.

- 10.2.7** Starting from the date of the first adjustment on which the amount of the Operation Security is equal to or greater than the Maximum Operation Security Amount, the amount of the Operation Security shall be maintained at the Maximum Operation Security Amount calculated in accordance with Article 10.2.6 until the return by the Grantor of the Operation Security in accordance with Article 10.3.3.
- 10.2.8** For the purpose of adjusting the amount of the Operation Security, the Concessionaire shall require a bank complying with the conditions set forth in Article 10.2.1 to issue an adjusted Operation Security for the adjusted amount. Other than those regarding the initial amount of Operation Security, the provisions of Articles 10.2.1 to 10.2.5 shall apply to the adjusted Operation Security.
- 10.2.9** In the process of adjustment, an existing Operation Security may only be cancelled after an adjusted Operation Security provided in accordance with this Agreement has been accepted in writing by the Grantor.

10.3 Handover Security

10.3.1 Twelve (12) months prior to the Handover Date or immediately after the issuance of a Termination Notice by either Party in case of Early Termination of this Agreement, the Concessionaire shall provide to the Grantor an unconditional and irrevocable on-demand bank guarantee, issued by a bank with a credit rating of at least AA- under the Standard and Poor's rating or with Aa3 under the Moody's rating or such other rating as the relevant Public Authority may agree, in accordance with the Applicable Law (the "**Handover Security**") for an amount in US Dollars equal to the sum of:

- (a) the amount of the Operation Security to be issued at that time by the Concessionaire in accordance with the provisions of Article 10.2; and
- (b) the amount determined by the Independent Expert in carrying out the first Handover Condition Survey in accordance with Article 45.2.1.1,

and in the form set out in Appendix 9 (Security Forms), to secure the due performance of the Concessionaire's handover obligations under Article 45.

If the rating of the bank issuing the Handover Security falls at any time below the rating required under this Article 10.3.1, the Concessionaire shall, as soon as possible, issue a new Handover Security for the same amount remaining at the time of such occurrence, with a bank of a rating complying with the rating required under this Article 10.3.1.

- 10.3.2** The Handover Security shall be valid for a period of twenty-four (24) months following the Handover Date unless cancelled earlier by the Grantor.
- 10.3.3** Promptly after the Handover Security is issued, the Grantor shall return to the Concessionaire the Operation Security.
- 10.3.4** Without prejudice to any other right which the Grantor may have under this Agreement, the Grantor shall have the right to draw on the Handover Security and claim the amount guaranteed on demand upon the Concessionaire's failure to honour any of its obligations, responsibilities or commitments contained in, arising from or related to those contained in Article 45.

11. UTILITIES

- 11.1 Subject to the provisions in Article 11.2 (b), the Concessionaire shall be responsible for procuring all utilities required for the performance of the Concessionaire's obligations under this Agreement.
- 11.2 The Grantor shall ensure that, at the latest on the Service Commencement Date:
- (a) the upgrade of the main Dili-Liquica road is substantially completed and such road can be used for road freight; and
 - (b) a connection point to the power grid is available at the Concession Area.
- 11.3 The Grantor shall use reasonable endeavors to assist the Concessionaire in obtaining the relevant authorization(s) required to operate the radiocommunication systems and equipment reasonably necessary for the normal operation of the Port Facility.

12. INDEPENDENT ENGINEER

- 12.1 Prior to the Commencement Date, the Parties shall jointly appoint in accordance with Article 3.4.3 an international engineering consulting firm, specializing in the business of the supervision of design, engineering, construction and supervision of port infrastructure and related environmental and social impacts, with experience in applying IFC Performance Standards, and able to deploy suitably qualified and experienced personnel (the "**Independent Engineer**").
- 12.2 The scope of works of the Independent Engineer is set out in Appendix 10 (*Independent Engineer*). All fees, costs, charges and expenses payable to the Independent Engineer shall be equally borne by the Grantor and the Concessionaire.
- 12.3 The Parties shall replace the Independent Engineer in any of the following circumstances:
- (a) if the Independent Engineer has not discharged its duties in accordance with Article 12.4; or
 - (b) if the mandate of the Independent Engineer terminates.
- 12.4 The Parties shall require the Independent Engineer to act independently, reasonably, fairly and expeditiously to facilitate the smooth completion of the Works.
- 12.5 Notwithstanding Article 12.8, the Independent Engineer shall have no authority, whether express or implied, to amend, vary or curtail any of the rights or obligations of the Parties.
- 12.6 The Parties shall cooperate regarding all matters within the scope of or in connection with the Independent Engineer's appointment. All instructions and representations made by either Party to the Independent Engineer shall be copied to the other Party and both Parties are entitled to attend all inspections by or meetings involving the Independent Engineer.
- 12.7 The Concessionaire shall authorize the Independent Engineer, at all times during the Construction Period, to enter upon and access the Concession Area and the Port Facility. The Grantor and Concessionaire shall have the right to accompany the Independent Engineer during its/his attendance at the Concession Area. The Parties agree that the Independent

Engineer shall have no authority to delay or hinder any work taking place in the Concession Area provided that if the Independent Engineer becomes aware or suspects that Works are being carried out in breach of the Technical Specifications or any other standard applicable to such Works in accordance with this Agreement, the Independent Engineer may request the Concessionaire to cease such Works and the Concessionaire shall comply with such request.

12.8 The Concessionaire shall authorize the Independent Engineer, at all times during the Construction Period, to attend any project team meetings held by the Concessionaire to review the progress of the Works, and to provide its comments/suggestions regarding the progress as well as the manner in which the Works are undertaken.

13. GENERAL CONSTRUCTION OBLIGATIONS

13.1 The Concessionaire shall complete the Works and achieve the Service Commencement Date in a manner that is:

- (a) in compliance with Technical Specifications, Concessionaire E&S Obligations, Applicable Law, Permits and Good Industry Practice; and
- (b) safe and reliable for performance of the Services during the Operation Period in compliance with Technical Specifications, Minimum Service and Equipment Investment Requirements, Concessionaire E&S Obligations, Applicable Law, Permits and Good Industry Practice.

13.2 Prior to commencement of the Works, the Concessionaire shall:

- (a) appoint an employee having sufficient skill and expertise as the Concessionaire's representative to supervise the completion of the Works at the Concession Area and to liaise with the Independent Engineer and the Grantor during the progress of the Works; and
- (b) construct, provide and maintain a reasonably furnished site office and accommodation for the Independent Engineer at the Concession Area.

13.3 During the Construction Period, the Concessionaire shall take all necessary measures to:

- (a) maintain the safety and security of all goods, materials and the personnel at the Concession Area;
- (b) prevent nuisance and unreasonable noise and disturbance when carrying out the Works; and
- (c) ensure that emissions, discharges and effluent from the Concessionaire's activities comply with the Applicable Law and EHS Guidelines whichever is more stringent.

13.4 The Concessionaire has allowed for the provision of all work and materials necessary for the performance of the Works and the performance of its obligations during the Construction Period in accordance with the requirements of this Agreement. All such work and materials must be undertaken and provided by the Concessionaire at its own cost as part of its obligations during the Construction Period and will not entitle it to make any claim against the Grantor, except as otherwise expressly provided in this Agreement.

14. CONSTRUCTION TIMELINES

14.1 Commencement and Completion of Works

14.1.1 The Concessionaire shall be entitled to commence the Works starting from the Commencement Date. The Concessionaire shall complete the Works and achieve the Service Commencement Date on or before the Scheduled Service Commencement Date. Without prejudice to the foregoing obligation, the Concessionaire shall comply with the Project Schedule and adhere to the Milestones as specified in the Project Schedule.

14.1.2 Without prejudice to Article 14.1.1, the Concessionaire shall:

- (a) promptly inform the Grantor of any anticipated deviations from any Milestones stipulated in the Project Schedule; and
- (b) provide the Grantor with monthly written reports regarding the progress of the Works based on the Project Schedule.

14.1.3 Without prejudice to Article 14.1.2, if the Concessionaire becomes aware of anything which will, or is likely to, give rise to a delay in achieving the Service Commencement Date by the Scheduled Service Commencement Date, it must promptly give to the Grantor and the Independent Engineer:

- (a) a notice setting out detailed particulars of the delay; and
- (b) a detailed corrective action plan setting out how the Concessionaire intends to avoid, mitigate or minimize the consequences of the delay.

14.1.4 The Concessionaire must amend its corrective action plan to address any reasonable comments that may be provided by the Independent Engineer to the Concessionaire following receipt by the Independent Engineer of such corrective action plan.

14.1.5 Without prejudice to Article 14.1.4, the Concessionaire must comply with its corrective action plan but will not be relieved from any responsibility or liability by virtue of any comments provided by the Independent Engineer on the plan or by virtue of its implementation of the plan.

14.1.6 The Independent Engineer shall be copied on all communications exchanged between the Parties pursuant to this Article 14.1.

14.2 Delays in Works - Delay Liquidated Damages

14.2.1 If the Concessionaire fails to complete the Works and achieve the Service Commencement Date on or before the Scheduled Service Commencement Date then the Grantor shall be entitled to delay liquidated damages in accordance with Article 14.3 for each day of delay beyond the Scheduled Service Commencement Date (the "**Delay Liquidated Damages**").

14.2.2 The payment of such Delay Liquidated Damages shall not relieve the Concessionaire from its obligations to complete the Works, or from any of its other duties, obligations or responsibilities under this Agreement. The Concessionaire shall use and continue to use its best endeavors to avoid or reduce further delay to the Works, or the issue of the Completion Certificate or the Provisional Completion Certificate, as relevant.

14.2.3 If the delay to completing the Works and achieving the Service Commencement Date on or before the Scheduled Service Commencement Date exceeds three hundred and sixty (360)

days, the Grantor shall be entitled to terminate this Agreement for Concessionaire Event of Default in accordance with Article 41.2.

14.2.4 Any amounts paid to the Grantor by the Concessionaire as Delay Liquidated Damages under this Article 14.2 shall constitute the sole and exclusive remedy for the Grantor for such delay and shall be paid as a genuine pre-estimate of and reasonable compensation for loss suffered by the Grantor.

14.2.5 If the circumstances mentioned in Article 14.2.1 arise, the Grantor shall be entitled to all remedies available to it under this Agreement, which include:

- (a) calling upon the Concessionaire to pay the Delay Liquidated Damages in accordance with Article 14.3.2;
- (b) deducting the Delay Liquidated Damages from any monies due to the Concessionaire (including any VGF amount) in accordance with Article 54.11; and/or
- (c) calling upon or drawing down from the Construction Security the amount of Delay Liquidated Damages payable in accordance with Article 14.3.2.

14.3 Calculation and Payment of Delay Liquidated Damages

14.3.1 The Concessionaire shall be liable to pay the following Delay Liquidated Damages to the Grantor in accordance with Article 14.2:

- (a) ten thousand US Dollars (USD 10,000) per day of delay from day one (1) to the earlier to occur of: (i) the date on which the Service Commencement Date is achieved and (ii) day sixty (60) from the Scheduled Service Commencement Date;
- (b) twenty-five thousand US Dollars (USD 25,000) per day of delay from day sixty-one (61) to the earlier to occur of: (i) the date on which the Service Commencement Date is achieved and (ii) day one hundred eighty (180) from the Scheduled Service Commencement Date; and
- (c) fifty thousand US Dollars (USD 50,000) per day of delay from day one hundred eighty-one (181) to the earlier to occur of: (i) the date on which the Service Commencement Date is achieved and (ii) day three hundred and sixty (360) from the Scheduled Service Commencement Date.

14.3.2 Delay Liquidated Damages shall be paid within fifteen (15) Business Days of receipt of the written request by the Grantor, failing which the Grantor shall have the right to call the corresponding amount under the Construction Security or to set-off such amount against any amount due by the Grantor to the Concessionaire.

14.4 Extension of Scheduled Service Commencement Date

14.4.1 The Scheduled Service Commencement Date and the relevant Milestones under the Project Schedule may be extended only upon the occurrence of:

- (a) the discovery of Antiquities (as provided for in Article 5.3) or Unexploded Ordinances (as provided for in Article 5.4);
- (b) failure or delay of the Grantor in providing the VGF in accordance with Article 29 and the VGF Disbursement Schedule;

- (c) a Grantor Notice of Variation is agreed or determined in accordance with Article 35.1;
- (d) Concessionaire Notice of Variation is agreed or determined in accordance with Article 35.2);
- (e) a Force Majeure Event (as provided for in Article 37.1);
- (f) a Political Force Majeure Event (as provided for in Article 38.1); and/or
- (g) a Grantor Event of Default (as provided in Article 40.2).

14.4.2 If any of the above events affecting the Concessionaire, causes delays in the completion of Works and achievement of the Milestones under the Project Schedule and of the Scheduled Service Commencement Date, the Concessionaire shall give the Grantor and the Independent Engineer a written notice providing full details of the relevant event and requesting an extension to the Scheduled Service Commencement Date, within twenty-two (22) Business Days after the Concessionaire became aware or should have reasonably become aware of such event.

14.4.3 The Project Schedule and the Scheduled Service Commencement Date shall be adjusted by mutual agreement between the Parties, failing which within ten (10) Business Days of the date on which both Parties became aware of the occurrence of any of the events listed in Article 14.4.1, any party may require the Independent Engineer to adjust the Project Schedule and/or the Service Commencement Date by taking into account the length and effect of the delay caused by such event; provided, however, that:

- (a) such dates shall not be extended to the extent that such delay would have nevertheless been experienced had such event not occurred; and
- (b) the Concessionaire shall have made all reasonable efforts to prevent or reduce to a minimum and mitigate the effect of any delay, including recourse to alternate sources of services, equipment and materials and construction equipment.

14.4.4 Unless agreed by the Grantor in writing and in its sole discretion, neither the Project Schedule nor the Scheduled Service Commencement Date shall be extended if such delay arises from the Concessionaire's failure to comply with its obligations under this Agreement.

15. DESIGN OF THE PORT FACILITY

15.1 The Concessionaire shall prepare the Design Documents, so as to conform to the terms of this Agreement, including Technical Specifications, Concessionaire E&S Obligations, Applicable Law, Permits and Good Industry Practice.

15.2 The Design Documents shall be submitted for the review of the Grantor and the Independent Engineer. The Concessionaire shall comply with the submission deadlines provided in the Technical Specifications.

15.3 The Independent Engineer shall review the Design Documents and provide its comments to the Parties within twenty-two (22) Business Days of the date of receipt of the submission of the Design Documents by the Concessionaire. The Independent Engineer shall provide a copy of its comments or suggestions in relation to the Design Documents to the Concessionaire.

- 15.4** If the Concessionaire receives comments or suggestions from the Grantor [or] Independent Engineer within twenty-two (22) Business Days of the submissions of the Design Documents, it will be under an obligation to revise and submit the revised Design Documents to the Independent Engineer with one (1) copy for the Grantor (such comments and suggestions from the Independent Engineer or the Grantor shall not constitute a Variation for the purpose of this Agreement).
- 15.5** If the Independent Engineer and the Grantor fail to notify the Concessionaire and the Grantor of any comments, suggestions or modifications required within the twenty-two (22) Business Days mentioned in Article 15.4, then the Design Documents submitted by the Concessionaire shall be deemed to be approved by the Independent Engineer.
- 15.6** At any time during the Construction Period, the Concessionaire shall be free to submit to the Grantor and the Independent Engineer modifications to the approved Design Documents, provided that the modified Design Documents comply with Technical Specifications, Applicable Law, Permits and Good Industry Practice. Any such modifications shall be subject to review and approval procedures specified in this Article 15. The declarations and confirmations given by the Concessionaire under Article 15.8 shall remain unaffected.
- 15.7** The Concessionaire shall not be entitled to any extension of time or compensation for any costs incurred in complying with the requirements of this Article 15.
- 15.8** The Concessionaire declares and confirms that:
- (a) it has carefully checked the requirements of the Technical Specifications and they are adequate to ensure that the Works undertaken in compliance with such Technical Specifications will be fit for the purpose of enabling the Concessionaire to carry out its obligations in accordance with this Agreement;
 - (b) it has satisfied itself that there are no omissions or ambiguities in or between the Technical Specifications and this Agreement;
 - (c) the design of the Port Facility (including the Design Documents) shall be safe and fit for its intended purposes;
 - (d) the carrying out of the Works (including the construction of the Port Facility) in accordance with the Design Documents will satisfy the requirements of this Agreement;
 - (e) the Works and the Port Facility will, on the Service Commencement Date and thereafter, be fit for their intended purpose.
- 15.9** In case of any ambiguity between this Agreement and the Design Documents, such ambiguity shall be resolved by applying the higher standard, quality, service level or quantum.

16. CONSTRUCTION OF THE PORT FACILITY

- 16.1** During the Construction Period, the Concessionaire shall:
- (a) ensure that professionally competent Persons are appointed to manage the Works;
 - (b) ensure that the Works are carried out in accordance with health and safety standards

expected of a prudent and diligence professional carrying out such works;

- (c) undertake that all the Works, materials, Equipment, equipment, systems and procedures are up-to-date and not obsolete, in good condition and in conformity with Technical Specifications, Concessionaire E&S Obligations, Applicable Law, Permits, Good Industry Practice and the other requirements of this Agreement;
- (d) ensure the Works do not adversely and materially interfere with the lawful activities of other Persons; and
- (e) ensure that the Port Facility is designed, built, tested and commissioned in accordance with the final Design Documents approved by the Independent Engineer under Article 15.

16.2 At the completion of each Milestone of the Construction Period for the Works, the Concessionaire shall as soon as practicable notify in writing the Independent Engineer of such completion and the Independent Engineer shall have the right to provide its comments/suggestions regarding the compliance of such completed portion of the Works with Technical Specifications, Concessionaire E&S Obligations, Applicable Law, Permits and Good Industry Practice within ten (10) Business Days from the date on which the Concessionaire has given notice to the Independent Engineer, with a copy to the Grantor.

16.3 If the Independent Engineer makes any comments, suggestions or modifications regarding any defects or deficiencies in the Works during the ten (10) Business Days mentioned in Article 16.2, then the Concessionaire shall be bound to make such modifications to the Works as are necessary and adequate to rectify such defects or deficiencies.

16.4 If the Independent Engineer fails to notify the Concessionaire and the Grantor of any comments, suggestions or modifications required within the ten (10) Business Days mentioned in Article 16.2, then such completed construction shall be deemed to be approved by the Independent Engineer.

17. TESTING AND COMMISSIONING OF THE PORT FACILITY

17.1 Upon completion of the Works such that the Concessionaire can commence operation of the Port Facility in a safe and reliable manner for the performance of the Services on a commercial basis, the Concessionaire shall issue a notice to the Independent Engineer and the Grantor, requiring them or their representatives to be present at the Concession Area on the date(s) specified in such notice (which date shall be at least ten (10) Business Days after the date of the notice), to carry out necessary tests and inspections to determine that the Port Facility can be safely and reliably operated for the performance of the Services in accordance with this Agreement and that it is in conformity with Technical Specifications, Concessionaire E&S Obligations, Applicable Law, Permits, Good Industry Practice and the other requirements of this Agreement. Such notice shall include a testing and commissioning plan to be submitted to the Independent Engineer for its approval. The Independent Engineer shall notify the Concessionaire of its approval or comments on the testing and commissioning plan within the time set in Article 17.2.

17.2 The Independent Engineer shall either approve the testing and commissioning plan submitted by the Concessionaire or request amendments to such plan by written notice sent to the Concessionaire at least five (5) Business Days prior to the tests date(s) specified in the Concessionaire's notice. The Concessionaire shall, if applicable, amend the testing and commissioning plan as instructed by the Independent Engineer prior to the test date(s)

specified in the Concessionaire's notice (or, if required by the Independent Engineer, the Concessionaire shall be entitled to postpone the test date(s) by issuing an updated written notice to the Independent Engineer and the Grantor). The Independent Engineer and the Grantor shall communicate with each other to discuss their availability and, at least five (5) Business Days prior to the tests date(s) specified in the Concessionaire's notice, either:

- (a) confirm to the Concessionaire their availability for attending the tests on the date(s) specified in the Concessionaire's notice; or
- (b) propose new dates on which the testing and commission plan shall be carried.

17.3 Once the date for the testing and commissioning is agreed between the Grantor and the Independent Engineer, the Concessionaire shall carry out the tests in accordance with provisions of this Article 17 under the supervision of the Independent Engineer. The Grantor shall be entitled to attend these tests. The Independent Engineer shall issue a completion certificate for the Works which shall be final and binding on the Parties (the "**Completion Certificate**") upon occurrence of the following:

- (a) The Independent Engineer being satisfied that the tests set out in the testing and commissioning plan have been successfully completed; and
- (b) The Concessionaire having fulfilled the following conditions:
 - (i) the submission to the Grantor of the Operation Security in accordance with Article 10.2;
 - (ii) the submission to the Grantor of three (3) sets of the "as built" drawings of the Port Facility, duly verified by the Independent Engineer;
 - (iii) the Concessionaire having completed or received from the Subcontractors the complete operation and maintenance manuals of the Port Facility, which have been approved by the Independent Engineer (with three sets delivered to the Grantor);
 - (iv) the Concessionaire having trained the operation and maintenance personnel for the proper operations and maintenance of the Port Facility;
 - (v) the Concessionaire having obtained all Permits required for performance of the Services at the Port Facility during the Operation Period in accordance with Article 8; and
 - (vi) the Concessionaire having obtained adequate insurance covers for the Port Facility required during the Operation Period in accordance with Article 34.

17.4 If the Independent Engineer is not satisfied that the requirements in Articles 17.3(a) and 17.3(b) have been met, on or prior to the date occurring three hundred and sixty days (360) days as from the Scheduled Service Commencement Date for any reason, then such failure by the Concessionaire to complete the Works in accordance with the Technical Specifications, Applicable Law, Permits, Good Industry Practice and the other requirements of this Agreement shall amount to a Concessionaire Event of Default.

17.5 The Independent Engineer may, at the request of the Concessionaire, issue a provisional Completion Certificate (the "**Provisional Certificate**") if the tests are successful and the Port Facility can be placed in commercial operation though certain works or things forming part thereof are outstanding and not yet complete. In such an event, the Provisional Certificate

shall have appended thereto a list of outstanding items signed jointly by the Independent Engineer and the Concessionaire (the "**Punch List**").

17.6 Upon completion by the Concessionaire of all Punch List items, the Independent Engineer shall issue the Completion Certificate. Failure of the Concessionaire to complete all the Punch List items within the time set forth in Article 17.4 for any reason shall amount to a Concessionaire Event of Default.

18. DOCUMENTS TO RETAIN AT SITE

In accordance with Good Industry Practice, the Concessionaire shall, on or after the Service Commencement Date, obtain and retain at the Concession Area (in paper or electronic form):

- (a) copies of all reports of the tests performed on the Port Facility under supervision of the Independent Engineer in accordance with Article 17;
- (b) copies of the complete operation and maintenance manuals of the Port Facility, which have been approved by the Independent Engineer;
- (c) full documentation relating to the Concessionaire's Environmental and Social Management and Monitoring Plans and health and safety manuals;
- (d) "as built" drawings of the Port Facility, duly verified by the Independent Engineer;
- (e) any other detailed technical documents related to the design, engineering and construction of the Port Facility in the possession of the Concessionaire; and
- (f) an updated and accurate inventory of the assets comprised in the Port Facility and used to provide the Services.

19. LIABILITY OF THE PARTIES

19.1 The Concessionaire agrees that:

- (a) notwithstanding any review, comment or approval of or on the Design Documents (or any failure to do so) or any modifications thereto by the Independent Engineer or the Grantor, the Concessionaire shall bear all risk, loss and liability for compliance with Technical Specifications, Applicable Law, Permits and Good Industry Practice and for the adequacy, safety and fitness of purpose of the Design Documents for the completion of the Works and the performance of the Services;
- (b) notwithstanding any approval of, review by or compliance with the instructions of the Independent Engineer or the Grantor of any or all of the Works, the Concessionaire shall be solely responsible for any deficiency or non-conformity in the design of the Port Facility and the realization of the Works as well as any delay in the issuance of the Completion Certificate;
- (c) no certificate (including a Completion Certificate), notice or other act or omission by the Independent Engineer or the Grantor will constitute an approval by the Grantor of the Concessionaire's performance of its obligations, be taken as evidence that the Works comply with this Agreement or prejudice the Grantor's rights under this Agreement or generally; and

- (d) the failure of the Independent Engineer or the Grantor to object to or fail to monitor any design, design drawing, specification, work process or construction item shall not be construed as a waiver by the Independent Engineer or the Grantor of any of its rights under this Agreement or in any way relieve the Concessionaire of its obligations hereunder.

19.2 The Concessionaire shall not be liable to the Grantor in connection with this Agreement for any indirect or consequential loss or damage suffered by the Grantor.

19.3 Except where this Agreement limits or restricts the Grantor's liability in any manner, the Grantor shall be liable for any loss or damage directly suffered by the Concessionaire as a result of the Grantor's default or gross negligence, but shall not be liable to the Concessionaire for any indirect or consequential loss or damage arising thereof.

20. COMMENCEMENT OF OPERATION

20.1 Transition Plan

No later than eighteen (18) months before the Scheduled Service Commencement Date, the Concessionaire shall submit to the Grantor for approval a draft of a plan determining the practical modalities for the transition in the provision of the Services to Users from the existing Dili Port to the Port Facility, based on the terms of reference set out in Appendix [●] (the "**Transition Plan**").

Following receipt by the Grantor of the draft Transition Plan prepared by the Concessionaire, the Concessionaire and the Grantor shall meet to discuss and seek to agree on the Transition Plan. The Grantor may submit to the Concessionaire its comments and amendments to the draft Transition Plan prepared by the Concessionaire.

The discussions of the Concessionaire and the Grantor shall be duly documented by the Concessionaire, which shall submit to the Grantor for approval minutes thereof no later than five (5) Business Days following the date on which each of such discussions occurred.

If, six (6) months prior to the Scheduled Service Commencement Date, the Parties have failed to reach an Agreement on the Transition Plan, then the Concessionaire shall be deemed to have accepted the Grantor's comments and amendments to the draft Transition Plan prepared by the Concessionaire.

20.2 Service Commencement

The Concessionaire shall commence the performance of the Services at the Port Facility only on the issuance of the Completion Certificate by the Independent Engineer. The date of issuance of the Completion Certificate shall be the date of commencement of Services at the Port Facility (the "**Service Commencement Date**").

21. GENERAL OPERATION OBLIGATIONS

21.1 During the Operation Period, the Concessionaire shall manage, operate, maintain and repair the Port Facility and provide the Services, entirely at its cost, charges, expenses and risk in accordance with the provisions of this Agreement. The Concessionaire shall perform the Services in a manner that is in compliance with Technical Specifications, Concessionaire E&S Obligations, Minimum Service and Equipment Investment Requirements, Applicable Law, Permits and Good Industry Practice.

- 21.2** The Concessionaire has allowed for the provision of all work and materials necessary for the provision of the Services and the performance of its obligations during the Operation Period in accordance with the requirements of this Agreement. Except as otherwise provided in Articles 5, 35, 38, 39 and 44 all such work and materials must be undertaken and provided by the Concessionaire at its own cost as part of its obligations during the Operation Period and will not entitle it to make any claim against the Grantor.
- 21.3** The Concessionaire shall at all times during the Concession Period, provide the Grantor and its representatives with reasonable access to the Concession Area and the Port Facility for monitoring of the Services and for conducting inspections and audits in accordance with this Agreement.
- 21.4** The Concessionaire shall develop and implement a safety and surveillance program for the Port Facility in accordance with Article 24, comply with the safety regulations and adopt appropriate safeguards and measures for security of environment, human life and property at the Port Facility in accordance with Applicable Law, Concessionaire E&S Obligations and Good Industry Practice.
- 21.5** The Concessionaire shall keep accurate records of any accident or other occurrence at the Concession Area and/or the Port Facility that results in injury to Persons or damage to property. The Concessionaire shall provide to the Grantor and the Grantor's representatives reasonable access to these records, from time to time as requested by the Grantor, subject to requirements of confidentiality.
- 21.6** The Concessionaire shall design and maintain emergency, preparedness and response systems in line with Good Industry Practices and EHS Guidelines in order to prevent and mitigate any harm to people, including Concessionaire's workers, other workers, the Affected Communities, and the environment.
- 21.7** The Concessionaire shall not:
- (a) use all or any part of the Port Facility or the Equipment for any purpose other than the implementation of the Project in compliance with Applicable Law, Good Industry Practice and the terms of this Agreement; and
 - (b) save to the extent necessary or desirable to facilitate the improved operation of the Port Facility in accordance with this Agreement, dispose of or remove from the Port Facility any Equipment except for the purposes of replacement with an item of equivalent or greater value.

22. SCOPE AND LEVEL OF SERVICES

22.1 Marine Services

During the Operation Period, the Concessionaire shall provide the following marine services (the "**Marine Services**"):

- (a) pilotage;
- (b) tug assistance; and
- (c) mooring services;

all in accordance with Technical Specifications, Minimum Service and Equipment Investment Requirements, Applicable Law, Permits and Good Industry Practice.

22.2 Cargo Handling Services

22.2.1 During the Operation Period, the Concessionaire shall provide the following cargo handling services (the "**Cargo Handling Services**"):

- (a) Container handling; and
- (b) other cargo handling;

all in accordance with Technical Specifications, Minimum Service and Equipment Investment Requirements, Applicable Law, Permits and Good Industry Practice.

22.2.2 The Cargo Handling Services shall include the following obligations of the Concessionaire:

- (a) take charge of the goods and/or Containers discharged from vessels or loaded onto vessels and give necessary receipts for the same;
- (b) store goods and/or Containers so discharged or loaded at its own risk, cost, charges and expenses;
- (c) receive or give delivery of the goods and/or Containers and subject to the provision of this Agreement and Applicable Law, receive or recover from consignees or owners or vessel agents' charges due and payable by them;
- (d) make efforts to maximise cargo handled and revenue so as to achieve optimal utilization of the Port Facility and Services; provided that this provision shall not be construed as obliging the Concessionaire to adopt tariff discounting or rebating practices;
- (e) cooperate with any Public Authority performing statutory functions related to the import and export of goods and merchandising (including customs); and
- (f) develop, prepare and submit to the Grantor for its approval procedures in relation to unclaimed cargo in accordance with Applicable Law and Good Industry Practice and, subject to the Grantor's approval, implement such procedures.

22.3 Auxiliary Services

22.3.1 During the Operation Period, the Concessionaire may provide auxiliary services commonly offered in comparable sea ports in support of the Marine Services and Cargo Handling Services so as to achieve optimal utilization of the Port Facility (the "**Auxiliary Services**").

22.3.2 Auxiliary Services include supply of fresh water and electricity to vessels, bunkering services, maintenance and repairs services for Containers, electricity supply and monitoring of reefer Containers, cleaning of Containers, and warehousing and logistic services, all in accordance with Technical Specifications, Minimum Service and Equipment Investment Requirements, Applicable Law, Permits and Good Industry Practice.

22.4 Equal Treatment of Users

22.4.1 The Concessionaire shall operate the Port Facility as a common user facility and shall provide the Services to the Users on an arm's length basis.

- 22.4.2** The Concessionaire Tariff represents the maximum amount that the Concessionaire may charge to Users and the Concessionaire shall be entitled to grant price reductions or discounts on the Concessionaire Tariff to Users provided these are granted for commercial reasons, with a view to maximizing the profits of the Concessionaire and in accordance with Good Industry Practice. However the Concessionaire may not grant any price reduction or discount to a User associated with, or Affiliated to the Concessionaire or any of the Concessionaire's shareholders from time to time, unless such reduction or discount is made on an arm's length basis in accordance with Article 22.4.1.
- 22.4.3** The Concessionaire shall not offer or agree to make available any berths in the Port Facility on a dedicated or exclusive basis, provided however that the Concessionaire shall be entitled to:
- (a) allocate the berths in the Port Facility in such manner as it deems appropriate; and
 - (b) offer or agree to make available the Berths at the Port Facility on a preferential basis / window system.

23. MAINTENANCE AND REPAIR OF THE PORT FACILITY

23.1 General Maintenance and Repair Obligations

- 23.1.1** During the Operation Period, the Concessionaire shall undertake the maintenance and repair of the Port Facility and the Equipment such that they shall be:
- (a) in good working condition (subject only to fair wear and tear);
 - (b) maintained in compliance with Technical Specifications, Applicable Law, Permits and Good Industry Practice and the Manufacturer's Recommendations where applicable, and the other requirements of this Agreement; and
 - (c) capable of being used for the performance of the Services in accordance with Technical Specifications, Minimum Service and Equipment Investment Requirements, Concessionaire E&S Obligations, Applicable Law, Permits, Good Industry Practice and the other requirements of this Agreement.
- 23.1.2** The Concessionaire shall more specifically comply with all maintenance and repair requirements specified in Section 13 of Appendix 3 (*Technical Specifications*).
- 23.1.3** The Concessionaire shall put in place all necessary financial, technical, technological, managerial and other resources for the operation, maintenance, repair and replacement of the Port Facility and Equipment in a timely manner.

23.2 Dredging

- 23.2.1** The Concessionaire shall procure that the dredging of the access channel (as described in Appendix 3 (*Technical Specifications*)) and the harbor (as described in Appendix 3 (*Technical Specifications*)) are adequately maintained during the Operation Period when and to the extent that this is required for the safe passage of vessels to the Port Facility and according to the design depth as stated in the Technical Specifications.
- 23.2.2** The Concessionaire shall implement the Dredging Management Plan developed in the EIA.
- 23.2.3** Every Operation Year, an independent hydrographic engineer (appointed on the same

conditions applicable to the appointment of the Independent Engineer as set out in Article 12) shall undertake a survey of the available water depth of the Access Channel and the Harbour to assess the maintenance dredging requirements, if any.

This independent hydrographic engineer shall be appointed as follows:

The Grantor and the Concessionaire shall jointly appoint an independent hydrographic engineer before the [*insert relevant month*] month of each Operation Year. If the Grantor and the Concessionaire have not agreed on the appointment of an independent hydrographic engineer before the expiry of such deadline, then either Party may agree to submit immediately the appointment of the independent hydrographic engineer to the final and binding decision of the President of FIDIC or a person appointed by the President.

23.2.4 The frequency of surveys specified in Article 23.2.3 shall be mutually reviewed after five (5) Operation Years according to the actual degree of siltation of the Access Channel and the Harbour.

23.2.5 After every maintenance dredging procured by the Concessionaire an Independent Expert shall be appointed by the Concessionaire and the Grantor in order to undertake a technical assessment to confirm that adequate dredging has been completed.

24. SAFETY AND SECURITY

24.1 The Concessionaire may make his own arrangements for security at the Concession Area in accordance with Article 24.2 provided the Concessionaire shall abide by the security regulations/ procedures prescribed by the Grantor from time to time.

24.2 Security arrangements shall comply with the International Ship and Port Facility Security Code (ISPS Code), SOLAS Chapter XI (ISPS Code) at all times and IFC Performance Standard 4 (paragraphs 12, 13, and 14).

24.3 The Concessionaire shall be responsible for the establishment and maintenance of adequate fire mains and hydrants as specified in the Technical Requirements, as well as basic firefighting equipment according to Good Industry Practice. Further, the Concessionaire shall ensure continuous on-site presence of no less than three (3) staff each properly trained and certified for firefighting as first response unit.

25. STAFFING AND EMPLOYMENT

25.1 The Concessionaire shall in its sole discretion and at its sole cost make all appropriate arrangements to employ and remunerate, in accordance with Applicable Law, staff and personnel in suitable numbers and with appropriate qualifications, accreditation and experience in order to provide the Services in accordance with this Agreement.

25.2 The Concessionaire shall engage and deploy pilots licensed by the appropriate Public Authority for pilotage operations in the Port Facility. The Concessionaire shall take all measures as may be necessary to familiarize such pilots with the local waters of Tibar Bay and in accordance with the prevalent practices in the ports of Timor-Leste and guidelines, if any, issued by such appropriate Public Authority.

25.3 The Concessionaire shall comply with the requirements of IFC Performance Standard 2 in

matters of labor and working conditions.

- 25.4** The Concessionaire shall comply with its Local Development Plan as set out in Appendix 15 (*Local Development Plan*). The Concessionaire shall provide all information reasonably requested by the Grantor to allow the Grantor to monitor compliance by the Concessionaire with the Local Development Plan.

26. CONCESSIONAIRE REPORTING OBLIGATIONS

26.1 Monthly Reports

- 26.1.1** The Concessionaire shall submit to the Grantor monthly reports on:

- (a) cargo and Container traffic,
- (b) unit gross and net output/discharge rates at berth,
- (c) daily output rate per vessel,
- (d) all information relating to the Minimum Service and Equipment Investment Requirements as per Appendix 4 (*Minimum Service and Equipment Investment Requirements*), and
- (e) all accidents or other occurrences at the Concession Area and/or the Port Facility that results in injury to Persons or damage to property,

within fifteen (15) Business Days following the end of each month.

The Concessionaire shall submit to the Grantor any other information relating to operations in the Port Facility and/or the Services (including performance against the Minimum Service and Equipment Investment Requirements and the calculation and collection of the Concessionaire Tariff and Grantor Tariff) which the Grantor may reasonably require.

- 26.1.2** The form of the reports shall be agreed between the Concessionaire and the Grantor. If no agreement is found to this effect, the Grantor shall be entitled to prescribe a reasonable form for such reports by written notice to the Concessionaire.
- 26.1.3** If the Grantor considers that a report has not been properly prepared or contains erroneous information or data, the Grantor may serve a notice to that effect to the Concessionaire within thirty (30) Business Days of receipt of such report expressing its objections. If such objection has not been resolved by agreement between the Parties within fifteen (15) Business Days after the service of such notice, then either Party may initiate a dispute resolution procedure in accordance with Article 52.
- 26.1.4** If the resolution of any objection made pursuant to this Article requires any revision or adjustment to any report, then the Concessionaire shall, within ten (10) Business Days, issue a revised version of his report and such revised report shall for all purposes of this Agreement take the place of the original report.

26.2 Additional Reporting Obligations

26.2.1 The Concessionaire shall prepare yearly audited accounts and shall communicate such audited accounts to the Grantor as soon as practicable upon such accounts being approved by the Concessionaire's auditors.

26.2.2 The Concessionaire shall, as soon as practicable upon being requested in writing to do so by the Grantor:

- (a) provide the Grantor with a copy of the latest version of the Financing Documents; and
- (b) provide the Grantor with a copy of the latest version of the Project Agreements.

26.2.3 The Concessionaire shall immediately notify in writing the Grantor of:

- (a) any amendments made to the Concessionaire's constitutional documents (including those listed at Article 3.3.3(a)(i)), being provided that the Concessionaire's notice shall include copies of the amended constitutional documents;
- (b) any change to the Concessionaire's share capital (including to the details listed at Article 3.4.1(a)(iv)).

27. GRANTOR AUDIT RIGHTS

In addition to any inspection or audit that can be carried out by any Public Authority under Applicable Law or the Grantor (or any of its departments or agencies under its supervision) as empowered by a statutory right, the Grantor shall be entitled, at its discretion and at its cost, and with five (5) Business Days prior notice, to audit the accounts, contracts, financing arrangements and the business operations of the Concessionaire that relate to the Project at any time during this Agreement, but no more than once a year.

The Grantor shall also be entitled at its discretion and at its cost, and with five (5) Business Days prior notice, to audit and inspect any document or material relating to the statements or certificates described in Articles 30.2.1, 30.4, 31.2.2.1 and 31.2.4 or to any information contained in such statements, at any time during this Agreement.

The Concessionaire shall provide full access to its accounts, contracts and all business related information to the extent necessary for the audits described in this Article and shall give reasonable assistance to the Grantor to conduct its audits.

28. OPERATION PENALTIES

28.1 If the Concessionaire fails to meet the Minimum Service and Equipment Investment Requirements, the Concessionaire shall be liable to pay penalties to the Grantor in accordance with the provisions of Appendix 4 (*Minimum Service and Equipment Investment Requirements*) (the "**Operation Penalties**").

28.2 The payment of such Operation Penalties shall not relieve the Concessionaire from its obligations to comply with the Minimum Service and Equipment Investment Requirements or from any of its other duties, obligations or responsibilities under this Agreement.

- 28.3** The Grantor shall be entitled to call upon the Concessionaire to pay the Operation Penalties by serving at any time a written notice to the Concessionaire specifying the Minimum Service and Equipment Investment Requirements which were not met by the Concessionaire and providing the calculation of the amount of Operation Penalties payable pursuant to Appendix 4 (*Minimum Service and Equipment Investment Requirements*). The Concessionaire shall have ten (10) Business Days from receipt of such written notice to pay the relevant amount. Should the Concessionaire fail to make such payment to the Grantor within such ten (10) Business Day period, the Grantor shall be entitled to:
- (a) deduct the Operation Penalties from any monies due, or to become due, to the Concessionaire in accordance with Article 54.11; and/or
 - (b) call upon or draw down from the Operation Security the amount of Operation Penalties payable.
- 28.4** In case of the Concessionaire's repeated failure to comply with the Minimum Service and Equipment Investment Requirements resulting in the call by the Grantor of the entire amount of the Operation Security at any time during the Operation Period, the Grantor shall be entitled to terminate this Agreement for Concessionaire Event of Default in accordance with Article 41.2, unless the Grantor, at its own discretion, agrees to waive its right to terminate the Concession Agreement resulting from such Concessionaire Event of Default in consideration for the provision by the Concessionaire of a new Operation Security for the full amount set out in Article 10.2.1.

29. FINANCING

29.1 Concessionaire Financing

- 29.1.1** Without prejudice to the Grantor's obligation to pay the Viability Gap Funding, the Concessionaire shall be responsible for the full financing of the Concessionaire Construction Costs and the Concessionaire Operation Costs required for the development and implementation of the Project at its own cost and risk and in compliance with the Financial Plan. The Concessionaire undertakes to comply with all material aspects of its Financial Plan and to comply at all times with the Debt to Equity Ratio.
- 29.1.2** The Concessionaire shall procure that the terms of the Financing Documents are:
- (a) consistent with those of an arm's length transaction and not commercially unreasonable; and
 - (b) not inconsistent with the provisions of this Agreement.
- 29.1.3** The Grantor and the Concessionaire acknowledge that for the purposes of financing of the Concessionaire Construction Costs and the Concessionaire Operation Costs, the Concessionaire may require Financial Assistance from the Lenders. The Grantor and the Concessionaire shall enter into good faith negotiations with the Lenders with a view to executing and delivering a direct agreement the terms and conditions of which shall be substantially in the form set out in Appendix 13 (*Agreed Form of Direct Agreement with Lenders*) and which shall provide, inter alia, for the Lenders' Step-in Right (the "**Direct Agreement**").
- 29.1.4** For the avoidance of doubt, under no circumstances shall the Grantor be liable for any failure of the Concessionaire to meet any of its obligations towards the Lenders, save in accordance

with the provisions of this Agreement.

29.2 Grantor's Viability Gap Funding

- 29.2.1** The Grantor shall make available to the Concessionaire a non-refundable grant in the amount of [insert the amount set forth in the *Successful Bidder's Bid*], to be disbursed in accordance with the following provisions of this Article 29.2, to partially fund the capital expenditure necessary to carry out the Works (the "**Viability Gap Funding**" or "**VGF**").
- 29.2.2** At the completion of each Milestone of the Construction Period for the Works and in accordance with the VGF Disbursement Schedule, the Concessionaire may send to the Grantor a duly completed VGF Drawdown Request in the form attached hereto as Appendix 8 (*VGF Drawdown Request*) for the portion of the Viability Gap Funding as set out in the VGF Disbursement Schedule for the relevant Milestone.
- 29.2.3** Each VGF Drawdown Request shall be sent by the Concessionaire's Representative to the Grantor's Representative at the address specified in Article 54.5.1.
- 29.2.4** In respect of each Milestone, a VGF Drawdown Request shall be considered duly submitted only if the Concessionaire provides satisfactory documentary evidence that such Milestone has been duly completed and approved by the Independent Engineer and that the Concessionaire complies with the Debt to Equity Ratio.
- 29.2.5** Subject to Article 29.2.6, the Grantor shall pay to the Concessionaire the relevant portion of the Viability Gap Funding as specified in a duly submitted VGF Drawdown Request within forty four (44) Business Days of receipt of such VGF Drawdown Request to the following Concessionaire's bank account entitled: Bank name: [●] / Account number: [●] / Account name: [●].
- 29.2.6** The Grantor reserves the right to postpone or reject any VGF Drawdown Request if, at the time of receipt of a VGF Drawdown Request, the Concessionaire has committed a Concessionaire Event of Default and, in case of a Curable Concessionaire Event of Default, such Curable Concessionaire Event of Default has not been remedied by the Concessionaire in accordance with Article 41.2.1(b).

30. CONCESSION FEE

30.1 Components of the Concession Fee

- 30.1.1** For each month from (and including) the month in which the Service Commencement Date falls until (and including) the month in which Termination occurs, the Concessionaire shall pay to the Grantor a royalty (the "**TEU Throughput Payment**") for the Containers handled within the Concession Area, except for the Transshipment Containers, calculated in accordance with the provisions of Part I of Appendix 5 (*Calculation of Throughput Payment*).
- 30.1.2** For each month from (and including) the month in which the Service Commencement Date falls until (and including) the month in which Termination occurs, the Concessionaire shall pay to the Grantor a royalty (the "**Transshipment TEU Throughput Payment**") for the Transshipment Containers handled within the Concession Area calculated in accordance with the provisions of Part II of Appendix 5 (*Calculation of Throughput Payment*).

30.1.3 For each month from (and including) the month in which the Service Commencement Date falls until (and including) the month in which Termination occurs, the Concessionaire shall pay to the Grantor a royalty for the Break Bulk Cargo handled within the Concession Area calculated in accordance with the provisions of Part III of Appendix 5 (*Calculation of Throughput Payment*) (the "**Break Bulk Throughput Payment**").

30.2 Payment Procedure

30.2.1 The Concessionaire shall for each month, submit to the Grantor, no later than the Due Date, a written statement in a form and in a manner acceptable to the Grantor, summarizing for such month:

- (a) the Number of TEU Moved;
- (b) the applicable TEU Unit Fee;
- (c) the TEU Throughput Payment due for such month;
- (d) the Number of Transshipment TEU Moved;
- (e) the Transshipment TEU Throughput Payment due for such month;
- (f) the Weight of Break Bulk Cargo Moved during such month;
- (g) the applicable Break Bulk Unit Fee; and
- (h) the Break Bulk Throughput Payment due for such month.

always provided that the figures for such information shall be calculated in accordance with Appendix 5 (*Calculation of Throughput Payment*) and Appendix 6 (*Tariffs*).

Such statement shall be certified as true and accurate by an authorized officer of the Concessionaire and shall be supported by such documentation as is necessary to evidence or demonstrate the accuracy of the information contained therein.

30.2.2 The Concessionaire shall pay the TEU Throughput Payment, Transshipment TEU Throughput Payment and Break Bulk Throughput Payment due to the Grantor for each month by wire transfer to the Grantor's designated bank account as notified, from time to time, by the Grantor to the Concessionaire, no later than the Due Date. The Concessionaire shall ensure that the funds corresponding to such TEU Throughput Payment, Transshipment TEU Throughput Payment and Break Bulk Throughput Payment are actually transferred to the Grantor's bank account at the latest one (1) Business Day prior to the Due Date if a domestic bank transfer is used, or three (3) Business Days prior to the Due Date if an international bank transfer is used.

30.3 Payment of Outstanding Throughput Payments

Upon Termination of this Agreement, the Concessionaire shall, no later than fifteen (15) Business Days after such Termination:

- (a) pay to the Grantor, by wire transfer to the Grantor's designated bank account as notified, from time to time, by the Grantor to the Concessionaire, the Concession Fee accrued from the first day of the relevant month until the day on which Termination has occurred;
- (b) submit to the Grantor a written statement in the form described in Article 30.2.1

relating to the Concession Fee referred to in (a) above;

- (c) pay to the Grantor by wire transfer to the Grantor's designated bank account as notified, from time to time, by the Grantor to the Concessionaire any outstanding TEU Throughput Payment and/or Transshipment TEU Throughput Payment and/or Break Bulk Throughput Payment, if any, including interest accrued thereupon; and
- (d) ensure that the funds corresponding to the payments referred to in (a) above and, if applicable, in (c) above are actually transferred to the Grantor's bank account at the latest one (1) Business Day prior to the expiry of the fifteen (15) Business Days period set out above if a domestic bank transfer is used, or three (3) Business Days prior to the fifteen (15) Business Days period set out above if an international bank transfer is used.

30.4 Annual Certificate

Within sixty-six (66) Business Days of the end of each Operation Year (or of the date of Termination), the Concessionaire shall submit to the Grantor a certificate stating:

- (a) the total amounts of the TEU Throughput Payment paid for such Operation Year;
- (b) the Transshipment TEU Throughput Payment paid for such Operation Year;
- (c) the Break Bulk Throughput Payment paid for such Operation Year; and
- (d) for each of the items to be contained in the statement mentioned in Article 30.2.1, the total amounts corresponding to such item for such Operation Year.

The certificate shall be issued by the Concessionaire's auditors. The Concessionaire shall make available to its auditors (with copies to the Grantor) all documents and information required or requested by the auditors in order for the auditors to issue such certificate.

31. TARIFFS

31.1 Concessionaire Tariff

31.1.1 Levy and Recovery of Concessionaire Tariff

During the Operation Period, the Concessionaire shall be entitled to levy and recover the Concessionaire Tariff from the Users using the Port Facility and/or Services in accordance with the provisions of Appendix 6 (Tariffs).

Subject to Article 22.4.2, the Concessionaire shall be entitled to grant reductions or discounts to Users on the Concessionaire Tariff.

31.1.2 Payment Procedure for Concessionaire Tariff

The Concessionaire shall determine the modalities of collection of the Concessionaire Tariff. The Concessionaire shall be entitled to collect the Concessionaire Tariff in USD (or in any other lawful currency that may officially be adopted by the Government of Timor-Leste) from Users using the Port Facility and/or Services through ships registered outside of Timor-Leste.

31.2 Grantor Tariff

31.2.1 Collection of Grantor Tariff

31.2.1.1 During the Operation Period, the Concessionaire shall have the obligation to collect, on behalf of the Grantor, the Grantor Tariff due from the Users using the Port Facility in accordance with the provisions of Part II of Appendix 6 (Tariffs), and remit the same to the Grantor.

31.2.1.2 The Concessionaire shall be duly authorized by the Grantor or such other Public Authority as may be competent in this regard, for the purpose of such collection.

31.2.2 Deposit of Grantor Tariff

Grantor Tariff shall be deposited as soon as practicable, but in any case no later than two (2) Business Days after its collection in a dedicated bank account opened by the Concessionaire with a first-rate bank valued with a credit rating of at least BBB under the Standard and Poor's rating or with Baa2 under the Moody's rating acceptable to the Grantor and maintained by the Concessionaire on behalf of the Grantor. The Concessionaire acknowledges that the Grantor Tariff is the property of the Grantor at all times and that no encumbrance, lien or security be granted to any third party over such amounts.

31.2.2.1 The Concessionaire shall also, for each month, submit to the Grantor, no later than on the Due Date, a written statement in a form and in a manner acceptable to the Grantor, summarizing for such month:

- (a) the amount of Grantor Tariff due under each head of charge;
- (b) the total amount of Grantor Tariff collected and deposited in the dedicated bank account; and
- (c) the total amount of Grantor Tariff remitted to the Grantor.

For avoidance of doubt, the Concessionaire shall be liable to the Grantor for any shortfall between the total amount of Grantor Tariff due for a month and the total amount of Grantor Tariff actually collected and deposited in the dedicated bank account.

31.2.2.2 Such statement shall be certified as true and accurate by an authorized officer of the Concessionaire and shall be supported by such documentation as is necessary to evidence or demonstrate the accuracy of the information contained therein.

31.2.2.3 No later than on the Due Date, the Concessionaire shall remit to the Grantor the Grantor Tariff for the preceding month by wire transfer to the Grantor designated bank account as notified, from time to time, by the Grantor to the Concessionaire. The Concessionaire shall ensure that the funds corresponding to the remittance of Grantor Tariff are actually transferred to the Grantor's bank account at the latest one (1) Business Day prior to the Due Date if a domestic bank transfer is used, or three (3) Business Days prior to the Due Date if an international bank transfer is used.

31.2.3 Payment of Outstanding Grantor Tariff

31.2.3.1 Upon Termination of this Agreement, the Concessionaire shall, no later than fifteen (15) Business Days after such Termination:

- (a) remit to the Grantor the Grantor Tariff collected from the first Business Day of the relevant month until the day on which Termination has occurred;

- (b) submit to the Grantor a written statement in the form described in Article 31.2.2.1 corresponding to the remittance of the Grantor Tariff referred to in (a) above;
- (c) remit to the Grantor any outstanding Grantor Tariff, if any, including interest accrued thereupon; and
- (d) ensure that the funds corresponding to the remittance of the Grantor Tariff referred to in (a) above and, if applicable, referred to in (c) above are actually received by the Grantor bank and available on the Grantor bank account at the latest one (1) Business Day prior to this date if a domestic bank transfer is used, or three (3) Business Days prior to this date if an international bank transfer is used.

31.2.4 Annual Certificate

Within sixty-six (66) Business Days of the end of each Operation Year (or of the date of Termination), the Concessionaire shall submit to the Grantor a certificate stating:

- (a) the total amount of Grantor Tariff collected on behalf of and remitted to the Grantor for such Operation Year;
- (b) for each of the items to be contained in the statement mentioned in Article 31.2.2.1, the total amounts corresponding to such item for such Operation Year.

The certificate shall be issued by the Concessionaire's auditors. The Concessionaire shall make available to its auditors (with copies to the Grantor) all documents and information required or requested by the auditors in order for the auditors to issue such certificate.

32. DEFAULT INTEREST

Any payment which is payable by the Concessionaire to the Grantor under or in relation to this Agreement shall be paid with the time period or on the date provided in this Agreement failing which it shall yield interest at the Default Interest Rate.

33. OWNERSHIP AND CERTAIN RIGHTS

33.1 Concession Area

The ownership of the Concession Area shall always remain vested with the Grantor. The Concessionaire shall neither assign, transfer, sublet, create any charge or encumbrance, nor shall the Concessionaire create or permit creation of any third party rights whatsoever, on whole or any part of the Concession Area except for licences or other rights of access granted to third parties as contemplated in Article 5.1.1.

It is expressly agreed that the Concessionaire's rights in the Concession Area shall cease without the need for any action to be taken by the Grantor upon Termination.

33.2 Assets Created or Provided by the Concessionaire - Port Assets

All infrastructure assets, buildings, structures, berths, wharfs and other immovable goods which are:

- (a) constructed installed, located, created, or provided by the Concessionaire at the Concession Area pursuant to this Agreement; and
- (b) connected to the ground and which cannot be removed or, when and if removed, would cause material physical damage to the Port Facility or to the asset itself,

but always excluding any Equipment (the "**Port Assets**") shall form part of the public domain and shall therefore remain in the ownership of the Grantor at all times.

The Concessionaire shall neither assign, transfer, create any charge or encumbrance, nor shall the Concessionaire create or permit creation of any third party rights whatsoever, on whole or any part of the Port Assets.

33.3 Assets Created or Provided by the Concessionaire - Concessionaire's Assets

33.3.1 The ownership of all Equipment installed, located, created or provided by the Concessionaire at the Concession Area pursuant to this Agreement and all deposits on bank accounts opened by the Concessionaire and, in general, any cash held by the Concessionaire (except for deposits or cash related to Grantor Tariff collected by the Concessionaire on behalf of the Grantor, including all cash held in the bank account contemplated in Article 31.2.2) (the "**Concessionaire's Assets**") shall remain with the Concessionaire until Termination.

33.3.2 The Concessionaire shall be entitled to create a charge on its rights, title and interest in the Concessionaire's Assets in favor of Lenders for securing the Financial Assistance provided or agreed to be provided by them under the Financing Documents, provided however that the Concessionaire shall procure that:

- (a) any such charge shall not be effective before the Commencement Date and shall not continue for a period exceeding the Concession Period;
- (b) any such charge shall not be for the Concession Area or the Port Facility nor encumber the Concession Area or the Port Facility; and
- (c) if early termination of this Agreement occurs, the said charge shall be released and discharged upon payment of compensation by the Grantor to the Lenders, to the extent they are entitled to receive the same in accordance with the provisions of this Agreement.

34. INSURANCE

34.1 General Obligations

The Concessionaire shall, at its sole cost and expense, obtain and maintain the insurances described in this Article 34 with reputable insurance and reinsurance companies. The Concessionaire shall designate the Grantor as the loss payee and additional insured as the case may be under such insurance policies.

34.2 Insurance during the Construction Period

The Concessionaire shall, at its cost and expense, obtain and maintain during the Construction Period such insurances as are customary by a prudent and competent contractor in accordance with Good Industry Practice in comparable projects, including the following:

For all the assets constructed/purchased by the Concessionaire including the assets handed over to Concessionaire by the Grantor:

- (a) contractor's all risks insurance, owner-controlled;
- (b) third party liability insurance including property damage and bodily injury to personnel of the Grantor and others who may enter the Concession Area;
- (c) workmen's compensation insurance;
- (d) marine cargo insurance including removal of the wreck of any craft deployed by Concessionaire; and
- (e) any other insurance (including compulsory insurances in Timor-Leste) that may be necessary to protect the Concessionaire, its employees and its assets including all Force Majeure Events that are insurable and not otherwise covered in items (a) to (d).

34.3 Insurance during Operation Period

As from the Scheduled Commercial Operation Date or at the latest after expiry of the insurances required under Article 34.2, the Concessionaire shall obtain and maintain at its own cost and risk during the Operation Period in respect of the Port Facility and Services and its operations such insurance as may be required under any of the Financing Documents, Applicable Law and such insurance as may be necessary or desirable in accordance with Good Industry Practice. The level of insurance to be obtained and maintained shall be agreed with Grantor prior to the Scheduled Commercial Operation Date, being provided that if no Agreement is found in this respect, then either Party may refer the matter to the Independent Expert for determination in accordance with Article 52.2.

The insurances which the Concessionaire shall obtain and maintain during the Operation Period include:

- (a) property all risks including machinery breakdown covering loss, damage or destruction of the Port Facility and Services, at replacement value;
- (b) commercial general liability insurance (including terminal operator liability) including property damage and bodily injury to personnel of the Grantor and others who may enter the Port Facility except for the employees of the Concessionaire covered under (d);
- (c) to the extent possible, Concessionaire's general liability arising out of this Agreement;
- (d) workmen's compensation insurance; and
- (e) any other insurance that may be necessary to protect the Concessionaire and its employees, including all Force Majeure Events that are insurable and not otherwise covered in paragraphs (a) to (d).

34.4 Evidence of Insurance

34.4.1 Within twenty-two (22) Business Days of obtaining any insurance cover or its renewal, the Concessionaire shall furnish to Grantor, copies of certificates of insurance, copies of the insurance policies (or appropriate endorsements, certifications or other satisfactory evidence of insurance) signed by an authorized representative of the insurer.

34.4.2 The Concessionaire shall pay the premium payable on any policy of insurance so as to keep it in force and valid throughout the Concession Period and furnish copies of the same to the Grantor. The Concessionaire shall not cancel, change, fail to renew the terms of any insurance policy obtained and/or maintained under this Article 34 without the prior written consent of the Grantor. The Concessionaire shall request such consent by written notice to the Grantor.

34.4.3 The Grantor may, at any time, request the Concessionaire in writing to provide evidence satisfactory to the Grantor that the Concessionaire has complied with the terms of any insurance policy the Concessionaire is required to obtain or maintain under this Article 34, including evidence of payment or receipts from the relevant insurance companies. The Concessionaire shall provide such evidence to the Grantor within ten (10) Business Days from receiving the Grantor's request.

34.4.4 If the Concessionaire fails to obtain or maintain any insurance policy in accordance with this Article 34, the Grantor shall have the right to procure such insurance policy on behalf of the Concessionaire at the expense of the Concessionaire.

34.5 Waiver of Subrogation

All insurance policies supplied by the Concessionaire shall include a waiver of any right of subrogation of the insurers there under against, inter alia, Grantor, and its assigns, subsidiaries, Affiliates, employees, insurers and underwriters and of any right of the insurers of any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such Person insured under any such policy.

34.6 Transfer of Proceeds

Subject to Article 34.8, insurance proceeds received by the Grantor as loss payee shall be transferred to the Concessionaire to be applied by the Concessionaire in accordance with Article 34.7.

34.7 Application of Insurance Proceeds

Subject to the provisions of the Financing Documents, all moneys received by the Concessionaire under insurance policies (whether directly or through the Grantor) shall be promptly applied by the Concessionaire towards repair or renovation or restoration or substitution of the Port Facility and Services or any part thereof which may have been damaged or destroyed. The Concessionaire shall carry out such repair or renovation or restoration or substitution to the extent possible in such manner that the Port Facility and Services or any part thereof, shall, after such repair or renovation or restoration or substitution be as far as possible in the same condition as they were before such damage or destruction, normal wear and tear excepted.

34.8 Grantor Discretion in Case of Substantial Damage to Port Facility

If all or substantially all the Port Facility is destroyed or substantially destroyed in a single event which does not otherwise give rise to termination of this Agreement, then the Grantor shall be entitled to, at its discretion, keep any proceeds paid to the Grantor as loss payee under any of the insurance policies procured or maintained by the Concessionaire in accordance with this Article 34 and to terminate this Agreement in accordance with Article 43.1(c).

34.9 Unapplied Insurance Proceeds

In the case any insurance proceeds which the Concessionaire is entitled to pursuant to an insurance policy obtained or maintained under this Agreement are not applied in accordance with Article 34.7, then such proceeds shall be due by the Concessionaire to the Grantor and payable upon Termination.

35. VARIATION

35.1 Grantor Variations

35.1.1 If the Grantor requires a variation in the Works and/or Services (a "**Grantor Variation**"), it must serve a notice on the Concessionaire (the "**Grantor Notice of Variation**"), detailing the requested variation. If the variation is requested within the Construction Period, a copy of the Grantor Notice of Variation must also be served by the Grantor on the Independent Engineer.

35.1.2 The Grantor shall not propose a variation in the Works and/or the Services which:

- (a) requires the Works and/or the Services to be performed in a way that infringes the Applicable Law or the Technical Specifications, or is inconsistent with Good Industry Practice;
- (a) would cause any Permit to be revoked (or a new Permit required to implement the relevant variation in the Works and/or the Services to be unobtainable);
- (b) would materially adversely affect the Concessionaire's ability to deliver the Works and/or the Services;
- (c) materially and adversely affects the health and safety of any Person;
- (d) would require the Concessionaire to implement the variation in the Works and/or the Services in an unreasonable period of time; and/or
- (e) would, if implemented, materially and adversely change the nature of the Project (including the risk profile).

35.1.3 The Grantor Notice of Variation shall:

- (a) set out the variation in the Works and/or the Services required in sufficient detail to enable the Concessionaire to calculate and provide the elements to be provided by the Concessionaire in the estimate to be sent to the Grantor in accordance with Article 35.1.5 (the "**Grantor Variation Estimate**"), including the economic impact of the proposed variation on the Project as defined in Article 35.1.5(c) (the "**Grantor Variation Economic Impact**"); and
- (b) require the Concessionaire to provide the Grantor within twenty-two (22) Business Days of receipt of a Grantor Notice of Variation with the Grantor Variation Estimate or any longer period as agreed between the Parties.

35.1.4 Notwithstanding the other provisions of this Article 35.1:

- (a) if, on receipt of the Grantor Notice of Variation pursuant to Article 35.1.1, the Concessionaire objects to such Grantor Notice of Variation for one of the reasons stated in Article 35.1.2, it shall, as soon as practicable and in any event within

fifteen (15) Business Days after having received the Grantor Notice of Variation, serve a notice on the Grantor stating its opinion and the reasons therefor; and

- (b) the Parties shall meet as soon as practicable and in any event within ten (10) Business Days of receipt of such notice. If the Grantor agrees with the Concessionaire's objection pursuant to Article 35.1.4 (a), the Grantor Notice of Variation shall be withdrawn. If the Parties are unable to agree on this matter in respect of a variation in the Works and/or the Services, either Party may refer the matter to the Independent Expert for determination in accordance with Article 52.2. If it is determined by the Independent Expert that the Concessionaire's objection pursuant to Article 35.1.4 (a) is justified, the Grantor Notice of Variation shall be deemed to have been withdrawn.

35.1.5 As soon as practicable and in any event within twenty-two (22) Business Days after the date on which the Concessionaire has received a Grantor Notice of Variation or, where a Grantor Notice of Variation has been referred to determination by the Independent Expert pursuant to Article 35.1.4 (b), the date on which it is determined by the Independent Expert that the Concessionaire's objection pursuant to Article 35.1.4 (a) is not justified or any other date mutually agreed in writing by the Parties, the Concessionaire shall submit to the Grantor the Grantor Variation Estimate, with a copy to the Independent Engineer if the Grantor Notice of Variation is served during the Construction Period. The Grantor Variation Estimate shall be prepared in good faith by the Concessionaire and shall include:

- (a) a detailed timetable for implementation of the variation in the Works and/or the Services;
- (b) the Concessionaire's reasonable opinion on:
 - (i) whether relief from compliance with obligations is required, including the obligations of the Concessionaire to complete the Works and achieve the Service Commencement Date on or before the Scheduled Service Commencement Date and/or the obligations of the Concessionaire to meet the Minimum Service and Equipment Investment Requirements (as the case may be);
 - (ii) any impact on the provision of the Works and/or the Services;
 - (iii) any amendment required to this Agreement and/or any Project Agreement as a result of the variation in the Works and/or the Services;
 - (iv) any estimate of the change in the costs of the Project that results from the variation in the Works and/or the Services taking into account the capital expenditure referred to in paragraph (vii) and other estimated changes in costs;
 - (v) any gain or loss of revenue that results from the variation in the Works and/or the Services, being provided that revenue growth based on historical volumes should not be considered;
 - (vi) any changes to the Concessionaire's operating expenses or working capital requirements that results from the variation in the Works and/or the Services;
 - (vii) any capital expenditure that is required or no longer required or will be deferred as a result of the variation in the Works and/or the Services;

- (viii) the cost and terms of any debt financing to be raised (or which could be foregone, including debt that can potentially be retired) in relation to the variation;
 - (ix) any other impact on the Concessionaire's Net Equity Cash Flow that results from the variation in the Works and/or the Services; and
 - (x) for the avoidance of doubt, no costs or revenue items or savings shall be counted twice in preparing the estimate;
 - (c) the Grantor Variation Economic Impact, which shall be equal to the net present value of the changes in Net Equity Cash Flow until the expiry of the Concession Period discounted by an adjustment factor of thirteen percent (13%) per annum;
 - (d) details of any Permits which are required; and
 - (e) the proposed method of certification of any construction or operational aspects of the Works and/or the Services required by the variation in the Works and/or the Services.
- 35.1.6** When procuring any work, services, supplies, materials or equipment required in relation to the variation in the Works and/or the Services, the Concessionaire shall comply with Good Industry Practice with the objective of ensuring that it obtains best value for money (taking into account all relevant circumstances including, in particular, the requirement that the Concessionaire should not be worse off as a result of the implementation of the variation in the Works and/or the Services).
- 35.1.7** As soon as practicable after the Grantor receives the Grantor Variation Estimate, the Parties shall discuss and agree the issues set out in the Grantor Variation Estimate. In the course of these discussions, the Concessionaire shall:
- (a) provide evidence:
 - (i) that the Concessionaire has used reasonable endeavors (including (where practicable) the use of competitive quotes) to oblige its Subcontractors to minimize any increase in costs and maximize any reduction in costs; and
 - (ii) that the prices for the relevant capital works are in line with the international market standards at the relevant time;
 - (b) demonstrate how any capital expenditure to be incurred or avoided is being measured in a cost-effective manner; and
 - (c) demonstrate that any expenditure that has been avoided, which was anticipated to be incurred to replace or maintain assets that would be affected by the Grantor Variation concerned, has been taken into account in the amounts which the Concessionaire has included or considered pursuant to Article 35.1.5.
- 35.1.8** During the discussions to be held under Article 35.1.7, the Grantor may modify the Grantor Notice of Variation. In each case the Concessionaire shall, as soon as practicable, and in any event not more than ten (10) Business Days after receipt of such modification, notify the Grantor of any consequential changes to the Grantor Variation Estimate.
- 35.1.9** Should the Grantor and Concessionaire fail to reach an agreement on any material aspect of the Grantor Variation Estimate (including the Grantor Variation Economic Impact), then

either Party may:

- (a) if any modification to the Grantor Notice of Variation has been made by the Grantor, twenty-two (22) Business Days after receipt by the Concessionaire of the latest modification; or
- (b) if no such modification has been made by the Grantor, twenty-two (22) Business Days after issuance by the Concessionaire of the Grantor Variation Estimate,

refer the Grantor Variation Estimate to the Independent Expert for determination in accordance with Article 52.2.

Notwithstanding such reference to the Independent Expert the Grantor, may, at its discretion, require the Concessionaire to carry out the Grantor Variation pending determination of the Grantor Variation Estimate by the Independent Expert by written notice to the Concessionaire. Following receipt of such notice, the Concessionaire shall begin as soon as practicable to carry out the relevant Grantor Variation. Should the Grantor exercise such right, the Grantor will be deemed to have waived its right to withdraw the Grantor Notice of Variation related to such Grantor Variation following determination by the Independent Expert, and compensation shall be made based on the Grantor Variation Economic Impact and pursuant to the options provided under Article 35.1.12 (if the Grantor Variation Economic Impact is positive) or Article 35.1.13 (if the Grantor Variation Economic Impact is negative).

35.1.10 As soon as practicable after the Grantor Variation Estimate has been agreed by the Parties in accordance with Article 35.1.7 or determined by the Independent Expert pursuant to Article 35.1.9, the Grantor may (except in the case where the Grantor has exercised its right to require the Concessionaire to carry out a Grantor Variation pending determination of a Grantor Variation Estimate by the Independent Expert under Article 35.1.9):

- (a) confirm in writing the Grantor Variation Estimate (as modified) to the Concessionaire, with a copy to the Independent Engineer if the Grantor Notice of Variation has been served during the Construction Period; or
- (b) withdraw the Grantor Notice of Variation and notify the Concessionaire of the same by means of written notice, with a copy to the Independent Engineer if the Grantor Notice of Variation has been served during the Construction Period.

If the Grantor confirms the Grantor Variation Estimate, the Parties shall enter into any agreements to amend this Agreement or any relevant Project Agreement or otherwise as might be necessary to give effect to and/or to document the variation in the Works and/or the Services.

35.1.11 If the Grantor does not confirm in writing the Grantor Variation Estimate (as modified) within twenty-two (22) Business Days of the contents of the Grantor Variation Estimate having been agreed in accordance with Article 35.1.7 or determined pursuant to Article 35.1.9, the Grantor Notice of Variation shall be deemed to have been withdrawn (except in the case where the Grantor has exercised its right to require the Concessionaire to carry out a Grantor Variation pending determination of a Grantor Variation Estimate by the Independent Expert under Article 35.1.9).

35.1.12 If the Grantor Variation Economic Impact contained in a Grantor Variation Estimate which was agreed by the Parties in accordance with Article 35.1.7 or determined by the Independent Expert pursuant to Article 35.1.9 is positive, the Grantor shall be entitled to seventy-five percent (75%) of such Grantor Variation Economic Impact, and shall be

compensated by the Concessionaire through any or a combination of the following, as determined by the Grantor in its sole discretion:

- (a) a decrease in the VGF;
- (b) upfront Payment by the Concessionaire to the Grantor;
- (c) staggered Payment by the Concessionaire to the Grantor; and/or
- (d) an increase in the Concession Fee.

The terms and conditions of any of the above payments shall be set so that their aggregate net present value will be equal to 75% of the Grantor Variation Economic Impact. For the avoidance of doubt, to derive the net present value of the compensation elements other than (b), an adjustment factor equal to thirteen percent (13%) will be used to discount these cash flows.

35.1.13 If the Grantor Variation Economic Impact contained in a Grantor Variation Estimate which was agreed by the Parties in accordance with Article 35.1.7 or determined by the Independent Expert pursuant to Article 35.1.9 is negative, the Grantor shall compensate the Concessionaire for such negative Grantor Variation Economic Impact through any or a combination of the following modes of compensation:

- (a) an increase in the Concessionaire Tariff;
- (a) upfront Payment by the Grantor to the Concessionaire;
- (b) staggered Payment by the Grantor to the Concessionaire;
- (c) extension of the Concession Period; and
- (d) reduction in the Concession Fee.

The choice of the compensation elements set out above shall be at the Grantor's sole discretion, provided that the Grantor may only provide compensation through an increase in the Concessionaire Tariff and/or an extension of the Concession Period with the Concessionaire's consent, which may not be unreasonably withheld or delayed.

The terms and conditions of any of the above compensation elements shall be calculated so that their aggregate positive net present value impact on the Concessionaire's Net Equity Cash Flow shall be equal to the Grantor Variation Economic Impact Effect. For the avoidance of doubt, to derive the positive net present value impact on the of the Net Equity Cash Flow for of the compensation elements other the one set at Article 35.1.13(a), an adjustment factor equal to thirteen percent (13%) per annum will be used to discount these cash flows.

35.1.14 Where one of the Parties determines to make a direct payment to the other Party pursuant to Articles 35.1.12 (b) or (c) or or 35.1.13 (a) the Grantor and the Concessionaire shall agree:

- (a) a payment schedule, milestones and means of verification of milestones in respect of each payment and the relevant Works and/or Services covered by the payment ;
- (b) if the parties are unable to agree the payment schedule, milestones and means of verification of milestones then these shall be determined by the Independent Expert in accordance with Article 52.2. In its determination, the Independent Expert shall have regard to (i) the timing of the anticipated additional cash flow requirements of

the Concessionaire resulting from the relevant Grantor Variation, and (ii) the financing and budgetary constraints of the Grantor;

- (c) the Grantor shall make payment to the Concessionaire within forty-four (44) Business Days of receipt by the Grantor of invoices presented to the Grantor (complete in all material respects) in accordance with the agreed or determined payment schedule (as the case may be, varied by agreement from time to time) accompanied by the relevant evidence (where applicable) that the relevant part of the variation in Works and/or the Services has been carried out; and
- (d) in the case of a staggered payment made under Article 35.1.12 (c) or 35.1.13 (b) above, interest at the Default Interest Rate shall accrue on any amount due by the Grantor that is not paid by the Grantor to the Concessionaire from the date on which the payment is first scheduled to be made by the Grantor under the agreed or determined payment schedule (as the case may be) to the date of payment.

35.1.15 As an exception to Article 35.1.1, if a Grantor Variation can be procured from a third party, on an open market basis, for an amount lower than [fifty thousand (50,000) USD]:

- (a) the Grantor may send to the Concessionaire a simplified notice of variation (containing elements relating to the Grantor Variation to be determined at the Grantor's discretion);
- (b) the Concessionaire shall, within ten (10) Business Days of receiving such notice, provide the Grantor with an estimate of the costs for such Grantor Variation and use reasonable endeavours (including (where practicable) the use of competitive quotes) to oblige its Subcontractors to minimise any increase in costs and maximise any reduction in costs; and
- (c) compensation to the Concessionaire shall be made by direct payment by the Grantor to the Concessionaire in accordance with Article 35.1.14.

35.1.16 If the Parties cannot agree on the amount of compensation to be paid to the Concessionaire with respect to the Grantor Variation referred to in Article 35.1.15, then the Grantor may, within twenty-five (25) Business Days of receipt of the simplified notice of variation referred to in Article 35.1.15 above, refer such amount to the Independent Expert for determination in accordance with Article 52.2.

35.1.17 If the Grantor does not confirm in writing that it wishes to implement the Grantor Variation referred to in Article 35.1.15 within twenty-two (22) Business Days of the compensation amount for such Grantor Variation having been agreed or determined pursuant to Article 35.1.16, such Grantor Variation shall be deemed to have been withdrawn.

35.1.18 The Grantor shall, at its discretion, be entitled to terminate this Agreement for public policy reasons pursuant to Article 43.1(c) instead of compensating the Concessionaire under this Article 35.1. In this case, the Grantor shall be exempted from any obligations it may have incurred under this Article 35.1. The Grantor shall be able to exercise this right at any time.

35.2 Concessionaire Variations

35.2.1 If the Concessionaire wishes to introduce a variation in the Works and/or the Services, it must serve a notice on the Grantor, providing details of such variation (the "**Concessionaire Notice of Variation**"). If the variation is requested within the Construction Period, a copy of the Concessionaire Notice of Variation must also be served by the Concessionaire on the Independent Engineer.

35.2.2 The Concessionaire Notice of Variation must:

- (a) set out the proposed variation in the Works and/or the Services in sufficient detail to enable the Grantor and the Independent Engineer if the Concessionaire Notice of Variation is served during Construction Period to evaluate it in full;
- (b) specify the Concessionaire's reasons for proposing the variation in the Works and/or the Services;
- (c) request the Grantor to consult with the Concessionaire with a view to deciding whether to agree to the variation in the Works and/or the Services and, if so, what consequential changes the Grantor requires as a result;
- (d) indicate any implications of the variation in the Works and/or the Services on this Agreement and any of its terms;
- (e) indicate, in particular, whether a change to the Concession Fee and/or Concessionaire Tariff (and/or other means of compensation provided under Article 35.2.7) is proposed;
- (f) indicate if there are any dates by which a decision by the Grantor is critical;
- (g) include a detailed estimate of the costs of the proposed variation; and
- (h) provide an estimate of the variation costs and changes in revenues and other items which could impact Net Equity Cash Flow that results from the variation in the Works and/or the Services, and implementation timetable in accordance with Article 35.1.5, and the economic impact of the proposed Concessionaire Variation on the Project ("**Concessionaire Variation Economic Impact**"), which is equal to the net present value of the changes in Net Equity Cash Flow projections until the expiry of Concession Period discounted by an adjustment factor of thirteen percent (13%) per annum to the Concessionaire.

35.2.3 The Grantor shall evaluate the Concessionaire Notice of Variation in good faith, taking into account all relevant issues, including whether:

- (a) a change in the Concession Fee or Concessionaire Tariff (and/or other means of compensation provided under Article 35.2.7) will occur;
- (b) the variation affects the quality of the Works and/or the Services or the likelihood of successful delivery of the Works and/or the Services;
- (c) the variation will interfere with the relationship of the Grantor with third parties;
- (d) the financial strength of the Concessionaire is sufficient to perform the variation in the Works and/or the Services;
- (e) the residual value of the Project Facilities is reduced; or
- (f) the variation materially affects the risks or costs to which the Grantor is exposed.

35.2.4 As soon as practicable after receipt by the Grantor of a Concessionaire Notice of Variation, the Parties shall meet and discuss the matter referred to in it. During their discussions the Grantor may propose modifications or accept or reject the Concessionaire Notice of Variation. If the Grantor proposes a modification the Concessionaire shall, as soon as practicable, and in any event not more than ten (10) Business Days after receipt of such

modification, notify the Grantor of any consequential changes to the Concessionaire Notice of Variation.

35.2.5 If the Grantor accepts the Concessionaire Notice of Variation (with or without modification), the relevant variation in the Works and/or the Services shall be implemented within the time period proposed by the Concessionaire and accepted by the Grantor. Within this period, the Parties shall consult and agree the remaining details as soon as practicable and the Parties shall enter into any documents to amend this Agreement or any relevant Project Agreement or otherwise which are necessary to give effect to or to document the variation in the Works and/or the Services.

35.2.6 The Grantor may in its sole and absolute discretion, accept or reject a Concessionaire Notice of Variation. If the Grantor rejects a Concessionaire Notice of Variation, it shall not be obliged to give its reasons for such a rejection.

35.2.7 If the Concessionaire Notice of Variation is accepted by the Grantor and the Concessionaire Variation Economic Impact is positive, the Grantor shall be entitled to a share of such Concessionaire Variation Economic Impact, which share will be agreed between the Grantor and Concessionaire. The Grantor may receive compensation for its share of the positive Concessionaire Variation Economic Impact from the Concessionaire through any or a combination of the following as agreed by the parties:

- (a) a decrease in the VGF;
- (b) upfront Payment by the Concessionaire to the Grantor;
- (c) staggered Payment by the Concessionaire to the Grantor; and/or
- (d) an increase in the Concession Fee.

The terms and conditions of any of the above compensation elements shall be set so that their aggregate net present value will be equal to the agreed share of the Grantor of the Concessionaire Variation Economic Impact. For the avoidance of doubt, to derive the net present value of the compensation elements other than (b), an adjustment factor equal to thirteen percent (13%) per annum will be used to discount these cash flows.

35.2.8 Unless otherwise agreed between the Parties, the Concessionaire must undertake any variation proposed by the Concessionaire in accordance with this Article 35.2 and accepted by the Grantor at its own cost and risk and:

- (a) all funding for such variation shall be provided by the Concessionaire; and
- (b) unless the Grantor specifically agrees to a decrease in the Concession Fee or an increase in the Concessionaire Tariff, there shall be no decrease in the Concession Fee or increase in the Concessionaire Tariff as a result of a variation in the Works and/or the Services proposed by the Concessionaire.

36. INTELLECTUAL PROPERTY RIGHTS

36.1 The Concessionaire shall acquire for itself from all relevant third parties such rights, including Intellectual Property Rights, as are necessary in order for it to fulfill its obligations under this Agreement, including the obligation under Article 36.2.

36.2 The Concessionaire hereby grants to the Grantor a non-exclusive, irrevocable and perpetual royalty-free license to use, adapt, translate, incorporate in other materials and to copy for its

own use, and sub-license all Intellectual Property Rights (i) to which the Concessionaire has title and/or (ii) in relation to which the Concessionaire has a right of use, however such license shall:

- (a) only be granted to the extent such Intellectual Property Rights are required to enable the Grantor or a successor concessionaire to perform functions equivalent to those of the Concessionaire under this Agreement or to otherwise complete, operate, use, exploit, maintain and expand the Port Facility; and
- (b) in relation to any software acquired or used by the Concessionaire, be limited in time and granted for no shorter than a period starting on the Effective Date and ending on the expiry of a period of two (2) years starting from the later of (i) the date of Termination or the (ii) date on which the Concessionaire has effectively handed over the Port Facility to the Grantor.

The Concessionaire hereby waives any moral rights it may have in relation to such Intellectual Property Rights and procure that it shall cause, where applicable, any individuals holding any moral right in relation to such Intellectual Property Rights to waive such moral rights.

36.3 The Concessionaire shall indemnify and hold harmless the Grantor and its employees, officers, directors, advisors and agents (Indemnified Persons) from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages and costs and expenses of whatsoever nature, including attorney's fees and expenses, which the Indemnified Persons may suffer as a result of any infringement or alleged infringement of any Intellectual Property Right arising out of or in connection with any design, engineering, materials or any other work or Services furnished, supplied or executed by, or on behalf of, the Concessionaire.

36.4 The provisions of this Article 36 shall survive Termination indefinitely.

37. FORCE MAJEURE

37.1 Definition of Force Majeure Event

37.1.1 A "**Force Majeure Event**" means any unforeseeable event, circumstance or combination of events or circumstances, beyond the reasonable control of the Party affected ("**Affected Party**") occurring on or after the Execution Date that affects the performance by the Affected Party of its obligations under or pursuant to this Agreement which could not have been prevented, overcome or remedied in whole or in part by the Affected Party through the exercise of diligence and reasonable care.

37.1.2 Force Majeure Events include the following circumstances, provided that they meet the criteria spelled out in the definition of Force Majeure Event above:

- (a) acts of war, invasion or act of foreign enemy, or acts of terrorism, blockade, embargo, rationing, military coup, curfews in each case occurring within or involving Timor-Leste;
- (b) acts or rebellion, riot, civil commotion, strikes of a political nature, act or campaign of terrorism, or sabotage of a political nature in each case occurring within Timor-Leste;
- (c) lightning, fire, earthquake, storm, cyclone, typhoon, hurricane, tornado, landslide,

tsunami or other natural calamity;

- (d) nuclear explosion, radioactive contamination, ionizing radiation, biological or chemical contamination;
- (e) strikes, work to rule or go-slows (other than a strike which is not a nationwide strike by employees of the Party claiming the same as a Force Majeure Event or of any shareholders of such Party, or by employees of any direct or indirect Affiliate, parent, subsidiary of any shareholder or sub-contractor of such Party);
- (f) explosion of an Unexploded Ordnance; and
- (g) epidemic occurring within Timor-Leste.

37.2 Notice of Force Majeure Event

The Affected Party shall give written notice to the other Party in writing of the occurrence of the Force Majeure Event as soon as the same arises or as soon as reasonably practicable and in any event within five (5) Business Days after the Affected Party knew, or ought reasonably to have known, of its occurrence and the adverse effect it has or is likely to have on the performance of its obligations under this Agreement.

37.3 Effect of Force Majeure Event

37.3.1 The Affected Party shall be excused from performance and shall not be construed to be in default in respect of this Agreement for so long as, and to the extent that, such failure to perform is due to a Force Majeure Event.

Such excuse from performance shall be limited to the period of time during which performance is hindered as a result of the Force Majeure Event and to the obligations which cannot be performed as a result of the Force Majeure Event.

37.3.2 However, a Force Majeure Event shall not excuse the non-performance by the Affected Party of any obligation to make any payment to the other Party which became due and payable prior to such Force Majeure Event and shall not prevent the finding of a breach in relation to such non-performance. Where a Force Majeure Event affects or is likely to affect any Party's ability to make payments, such Party must use reasonable endeavours to effect payment through means alternative to those commonly used.

37.3.3 The Affected Party shall have the duty to make all reasonable efforts to mitigate the effects of the Force Majeure Event on the performance of its obligations under this Agreement.

37.3.4 With the exception of the obligation in Article 37.3.2, the Affected Party shall be entitled to be granted by the other Party extension of time for the performance of any obligation (including the Closing Period, the Concession Period if allowed by Applicable Law and any dates specified in the Project Schedule) by such period of time not exceeding the period during which the relevant performance was affected by the Force Majeure Event. Such extension shall be mutually agreed by the Parties, being provided that if no agreement on such extension is found within thirty (30) Business Days of the occurrence of a Force Majeure Event, then any Party may submit the matter to determination by an Independent Expert in accordance with Article 52.2.

37.4 Costs and Liability

37.4.1 Upon occurrence of a Force Majeure Event after the Commencement Date, the Parties shall

bear their respective costs and neither Party shall be required to pay to the other Party any costs arising out of any such Force Majeure Event.

37.4.2 Save and except as expressly provided in this Article 37, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant to this Article 37.

37.5 Termination Due to Force Majeure Event

37.5.1 Either Party shall have the right to terminate this Agreement by serving a Termination Notice, in the following circumstances:

- (a) the completion of the Works or the performance of the Services is substantially prevented, hindered or delayed for more than one hundred eighty (180) consecutive days on account of one or more Force Majeure Events; or
- (b) any Force Majeure Event occurs, the effects of which will substantially prevent or delay the completion of the Works or the performance of the Services for a continuous period of at least one hundred eighty (180) days

(each a "**Prolonged Force Majeure Event**").

38. POLITICAL FORCE MAJEURE

38.1 A "**Political Force Majeure Event**" shall mean any act or omission by any Public Authority in Timor-Leste which occurs after the date of signature of this Agreement, which has a material adverse effect on (i) the ability of the Concessionaire to observe and perform any of its material rights and obligations under this Agreement, and/or (ii) the cost or the profits of such performance, and provided that such event is limited to the following circumstances only:

- (a) failure to grant to the Concessionaire any material Permit that is required for the purposes of the Concessionaire's performance of its obligations and enforcement of its rights under this Agreement, except where such failure results from the Concessionaire's non-compliance with Applicable Law;
- (b) expropriation, requisition, confiscation or nationalization of the Port Facility or any material part thereof or any act or omission or any series of acts or omissions by a Public Authority directly resulting in the effective loss of the whole or substantially the whole of the Concessionaire's assets or rights under this Agreement, but excluding:
 - (i) any consequence of a Concessionaire Event of Default under Article 41.2;
 - (ii) any action taken in accordance with Article 42;
 - (iii) Termination by the Grantor under Articles 37.5 or 43.1 or otherwise under this Agreement.
- (c) prohibition or restriction on (i) the distribution of dividends to the Shareholders or other means of repatriation or transferability of Concessionaire's profits or gains

and/or (ii) senior debt service by the Concessionaire having a material adverse effect on the Concessionaire, except where such prohibition or restriction constitute a remedy or sanction lawfully exercised by the Grantor or any relevant Public Authority as a result of any breach by the Concessionaire of any Applicable Law or Permits.

38.2 The Concessionaire shall, within fifteen (15) Business Days of the date on which a Political Force Majeure Event occurs, notify the Grantor in writing of such occurrence (a "**PFME Notice**") and, subject to Article 38.4, the Grantor and the Concessionaire shall, within ten (10) days of the receipt of the PFME Notice by the Grantor, meet to discuss the situation and the Grantor shall make reasonable efforts to remedy such Political Force Majeure Event.

38.3 If, following the occurrence of a Political Force Majeure Event:

(a) the Grantor succeeds in remedying such Political Force Majeure Event within: one hundred and eighty (180) days from the date of receipt of the PFME Notice by the Grantor in the case of a Political Force Majeure Event exclusively due to the circumstances listed in paragraph (a) of Article 38.1 or sixty (60) days from the date of receipt of the PFME Notice by the Grantor in any other case, then the Concessionaire shall:

(i) be entitled to compensation in relation to such Political Force Majeure Event pursuant to the provisions of Articles 38.5 to 38.13; and

(ii) not be entitled to terminate this Agreement due to such Political Force Majeure Event; or

(b) the Grantor does not succeed in remedying such Political Force Majeure Event within: one hundred and eighty (180) days from the date of receipt of the PFME Notice by the Grantor in the case of a Political Force Majeure Event exclusively due to the circumstances listed in paragraph (a) of Article 38.1 or sixty (60) days from the date of receipt of the PFME Notice by the Grantor in any other case, then the Concessionaire shall be entitled to terminate this Agreement in accordance with Article 43.2(c).

38.4 If a Political Force Majeure Event occurs and the circumstances of such Political Force Majeure Event are incapable of being remedied by the Grantor within: one hundred and eighty (180) days from the date of receipt of the PFME Notice by the Grantor in the case of a Political Force Majeure Event exclusively due to the circumstances listed in paragraph (a) of Article 38.1 or sixty (60) days from the date of receipt of the PFME Notice by the Grantor in any other case, then the Concessionaire shall be entitled to terminate this Agreement in accordance with Article 43.2(c).

38.5 If the circumstances provided in Article 38.3(a) occur and, within a period of six (6) months from the end of the relevant Political Force Majeure Event, the Concessionaire is able to demonstrate in writing to the Grantor that such Political Force Majeure Event has caused a reduction in the Concessionaire's Net Equity Cash Flow higher or equal to a threshold amount of fifty thousand (50,000) US Dollars, through an increase in capital expenditures or costs and expenses, and/or a reduction in revenues or other factors that impact Net Equity Cash Flow (the "**PFME Economic Impact**"), then the Concessionaire shall be entitled to compensation from the Grantor and shall as soon as practicable send to the Grantor an estimate of such PFME Economic Impact.

38.6 The threshold amount mentioned in Article 38.5 above shall be revised on the first day of each Operation Year according to the following formula:

revised threshold amount =
current threshold amount $\times (1 + X)$; where

"X" refers to the Timor-Leste CPI Variation between the date the threshold amount is to be revised and the latest Timor Leste Consumer Price Index available on the first day of the previous Operation Year.

38.7 The PFME Economic Impact shall be prepared in good faith by the Concessionaire, taking into account its assessment of:

- (a) any necessary change in the Works and/or Services;
- (b) whether any changes are required to the terms of this Agreement to deal with the Political Force Majeure Event, including, but not limited to, an extension of the Concession Period, a direct payment, a temporary decrease or increase of the Concession Fee or a temporary decrease or increase of the Concessionaire Tariffs or any combination of the foregoing;
- (c) whether relief from compliance with obligations is required, including the obligations of the Concessionaire to achieve Scheduled Service Commencement Date and/or meet the Minimum Service and Equipment Investment Requirements;
- (d) any gain or loss of revenue that have resulted from the relevant Political Force Majeure Event;
- (e) any positive or negative change in the costs of the Project that directly result from the Political Force Majeure Event; and
- (f) any capital expenditure that is required or no longer required as a result of the Political Force Majeure Event.

Details of the above elements and adequate supporting evidence shall be communicated by the Concessionaire to the Grantor at the same time as it conveys its estimate of the PFME Economic Impact.

38.8 The estimate of the PFME Economic Impact shall also be accompanied with:

- (a) evidence that the Concessionaire has used reasonable endeavours (including (where practicable) the use of competitive quotes) to oblige its Subcontractors to minimise any increase in costs and maximise any reduction in costs;
- (b) a demonstration of how any capital expenditure to be incurred or avoided is being measured in a cost-effective manner, including showing that when such expenditure is incurred or would have been incurred, Political Force Majeure Event foreseeable at that time have been taken into account by the Concessionaire;
- (c) evidence as to how the Political Force Majeure Event has affected prices charged by any similar businesses to the Project; and
- (d) a demonstration that any expenditure that has been avoided, which was anticipated to be incurred to replace or maintain Works that have been affected by the Political Force Majeure Event, has been taken into account in calculation of the PFME Economic Impact.

38.9 As soon as practicable after receipt of the PFME Economic Impact by the Grantor and in any

case no later than thirty (30) Business Days thereafter, the Parties shall discuss the PFME Economic Impact with a view to agreeing on such figure.

38.10 If the Parties cannot agree on the PFME Economic Impact within sixty (60) Business Days after the receipt of the Financial Impact of the Political Force Majeure Event(s) by the Grantor, the matter shall be referred to an Independent Expert.

38.11 If the PFME Economic Impact as agreed between the Parties in accordance with Article 38.9 or determined by an Independent Expert in accordance with Article 38.10 demonstrates that the Concessionaire is required to incur additional capital expenditure due to the Political Force Majeure Event, then the Concessionaire shall use its reasonable endeavors to obtain funding for such capital expenditure on terms reasonably satisfactory to it and the Lenders and the Grantor shall cooperate with the Concessionaire in order to facilitate the granting of such funding.

38.12 The Grantor may provide compensation to the Concessionaire through any or a combination of the following modes of compensations:

- (a) upfront Payment by the Grantor to the Concessionaire;
- (b) staggered Payment by the Grantor to the Concessionaire;
- (c) reduction in the Concession Fee;
- (d) increase in the Concessionaire Tariff;
- (e) extension of the Concession Period.

The choice of the compensation elements set out above shall be at the Grantor's sole discretion, provided that the Grantor may only provide compensation through an increase in the Concessionaire Tariff and/or an extension of the Concession Period with the Concessionaire's consent which may not to be unreasonably withheld or delayed.

The terms and conditions of any of the above modes of compensation shall be set so that their aggregate positive net present value impact on the Concessionaire's Net Equity Cash Flow shall be equal to the PFME Economic Impact. For the avoidance of doubt, to derive the net present value of the compensation elements other than the one set out in Article 38.12(a), an adjustment factor equal to thirteen percent (13 %) per annum will be used to discount these compensation elements.

38.13 Where the Grantor determines to make a payment to the Concessionaire pursuant to Article 38.12(b) above:

- (a) the Grantor and the Concessionaire shall agree on a payment schedule in respect of the payment of the amount agreed to be paid by the Grantor;
- (b) if the parties are unable to agree the payment schedule then it shall be determined by the Independent Expert in accordance with Article 52.2. In its determination, the Independent Expert shall have regard to (i) the timing of the anticipated additional cash flow requirements or excedents of the Concessionaire resulting from the relevant Political Force Majeure Event, and (ii) the financing and budgetary constraints of the Grantor; and
- (c) interest at the Default Interest Rate shall accrue on any amount due by the Grantor that is not paid by the Grantor to the Concessionaire from the date on which the

payment is first scheduled under the agreed or determined payment schedule (as the case may be) to the date of payment.

38.14 The Grantor shall, at its discretion, be entitled to terminate this Agreement for public policy reasons pursuant to Article 43.1(c) instead of compensating the Concessionaire under this Article 38. In this case, the Grantor shall be exempted from any obligations it may have incurred under this Article 38. The Grantor shall be able to exercise this right at any time.

39. QUALIFYING CHANGE IN LAW

39.1 As soon as practicable and in any event within thirty (30) Business Days of becoming aware of the occurrence of a Qualifying Change in Law, the Concessionaire shall send to the Grantor an estimate of the impact of such Qualifying Change in Law on the Concessionaire's financial condition (the "**Qualifying Change in Law Economic Impact**" or "**QCIL Economic Impact**"), which shall be calculated as the net present value of the changes in the Net Equity Cash Flow until the expiry of Concession Period discounted by an adjustment factor of thirteen percent (13%) per annum.

39.2 The QCIL Economic Impact shall be prepared in good faith by the Concessionaire, taking into account its assessment of:

- (a) any necessary change in the Works and/or Services;
- (b) whether any changes are required to the terms of this Agreement to deal with the Qualifying Change in Law, including, but not limited to, an extension of the Concession Period, a direct payment, a temporary decrease or increase of the Concession Fee or a temporary decrease or increase of the Concessionaire Tariffs or any combination of the foregoing;
- (c) whether relief from compliance with obligations is required, including the obligations of the Concessionaire to achieve Scheduled Service Commencement Date and/or meet the Minimum Service and Equipment Investment Requirements;
- (d) any gain or loss of revenue that will result from the relevant Qualifying Change in Law;
- (e) any positive or negative change in the costs of the Project that directly result from the Qualifying Change in Law; and
- (f) any capital expenditure that is required or no longer required as a result of a Qualifying Change in Law taking effect during the Operation Period.

Details of the above elements and adequate supporting evidence shall be communicated by the Concessionaire to the Grantor at the same time as the QCIL Economic Impact.

39.3 The QCIL Economic Impact shall also be accompanied with:

- (a) evidence that the Concessionaire has used reasonable endeavours (including (where practicable) the use of competitive quotes) to oblige its Subcontractors to minimise any increase in costs and maximise any reduction in costs;
- (b) a demonstration of how any capital expenditure to be incurred or avoided is being measured in a cost-effective manner, including showing that when such expenditure is

incurred or would have been incurred, Qualifying Changes in Law foreseeable at that time have been taken into account by the Concessionaire;

- (c) evidence as to how the Qualifying Change in Law has affected prices charged by any similar businesses to the Project; and
- (d) a demonstration that any expenditure that has been avoided, which was anticipated to be incurred to replace or maintain Works that have been affected by the Qualifying Change in Law concerned, has been taken into account in calculation of the QCIL Economic Impact.

39.4 As soon as practicable after receipt of the QCIL Economic Impact by the Grantor and in any case no later than thirty (30) Business Days thereafter, the Parties shall discuss the QCIL Economic Impact with a view to agreeing on such figure.

39.5 If the Parties cannot agree on the QCIL Economic Impact within sixty (60) Business Days after the receipt of the QCIL Economic Impact by the Grantor, the matter shall be referred to an Independent Expert.

39.6 If a QCIL Economic Impact as agreed between the Parties in accordance with Article 39.4 or determined by an Independent Expert in accordance with Article 39.5 demonstrates that the Concessionaire is required to incur additional capital expenditure due to a Qualifying Change in Law, then the Concessionaire shall use its reasonable endeavors to obtain funding for such capital expenditure on terms reasonably satisfactory to it and the Lenders, and the Grantor shall cooperate with the Concessionaire in order to facilitate the granting of such funding.

39.7 If the QCIL Economic Impact as agreed between the Parties in accordance with Article 39.4 or determined by an Independent Expert in accordance with Article 39.5 is positive, the Grantor shall be entitled to seventy-five percent (75%) of such QCIL Economic Impact, and shall be compensated by the Concessionaire through any or a combination of the following, as determined by the Grantor in its sole discretion:

- (a) a decrease in the VGF;
- (b) upfront Payment by the Concessionaire to the Grantor;
- (c) staggered Payment by the Concessionaire to the Grantor; and/or
- (d) an increase in the Concession Fee.

The terms and conditions of any of the above payments shall be set so that their aggregate net present value will be equal to 75% of the QCIL Economic Impact. For the avoidance of doubt, to derive the net present value of the compensation elements other than (b), an adjustment factor equal to thirteen percent (13%) will be used to discount these cash flows.

39.8 If the QCIL Economic Impact as agreed between the Parties in accordance with Article 39.4 or determined by an Independent Expert in accordance with Article 39.5 is negative, the Concessionaire shall be entitled to compensation from the Grantor.

39.9 The Grantor may provide compensation to the Concessionaire through any or a combination of the following modes of compensations:

- (a) an increase in the Concessionaire Tariff;

- (b) upfront Payment by the Grantor to the Concessionaire;
- (c) staggered Payment by the Grantor to the Concessionaire;
- (d) extension of the Concession Period;
- (e) reduction in the Concession Fee;
- (f) amendment of the Agreement.

The choice of the compensation elements set out above shall be at the Grantor's sole discretion, provided that the Grantor may provide compensation through an increase in the Concessionaire Tariff, an extension of the Concession Period and/or an amendment of this Agreement with the Concessionaire's consent which may not be unreasonably withheld or delayed, Applicable Law, and to the consent of any relevant Public Authority.

The terms and conditions of any of the above modes of compensation shall be set so that their aggregate positive net present value impact on the Concessionaire's Net Equity Cash Flow shall be equal to the QCIL Economic Impact. For the avoidance of doubt, to derive the net present value of the compensation elements other than the one set out in Article 39.9 (b), an adjustment factor equal to thirteen percent (13%) will be used to discount these compensation elements.

39.10 Where one of the Parties determines to make a staggered payment to the other Party pursuant to Articles 39.7 (c) or Articles 39.9 (c) above:

- (a) the Grantor and the Concessionaire shall agree on a payment schedule;
- (b) if the parties are unable to agree the payment schedule, then these shall be determined by the Independent Expert in accordance with Article 52.2. In its determination, the Independent Expert shall have regard to (i) the timing of the anticipated additional cash flow requirements or excedents of the Concessionaire resulting from the relevant Qualifying Change in Law, and (ii) the financing and budgetary constraints of the Grantor; and
- (c) interest at the Default Interest Rate shall accrue on any amount due by the Grantor that is not paid by the Grantor to the Concessionaire from the date on which the payment is first scheduled to be made by the Grantor under the agreed or determined payment schedule (as the case may be) to the date of payment.

39.11 The Grantor shall, at its discretion, be entitled to terminate this Agreement for public policy reasons pursuant to Article 43.1(c) instead of compensating the Concessionaire under this Article 39. In this case, the Grantor shall be exempted from any obligations it may have incurred under this Article 39. The Grantor shall be able to exercise this right at any time.

40. EVENTS OF DEFAULT

40.1 A "Concessionaire Event of Default" shall mean any of the following:

- (a) Concessionaire's failure to pay to the Grantor any amount(s) due to the Grantor pursuant to this Agreement and reaching in aggregate five hundred thousand US Dollars (USD 500,000) or more;
- (b) Concessionaire's failure to collect and remit to the Grantor the Grantor Tariff in

accordance with Article 31.2;

- (c) delay in completion of Works beyond three hundred and sixty (360) days after the Scheduled Service Commencement Date;
- (d) Concessionaire's failure to provide, maintain and renew, as may be required, the Construction Security, and/or the Operation Security and/or the Handover Security as set out in Article 10;
- (e) withdrawal by the Grantor of the entire amount of the Construction Security prior to the delivery of the Completion Certificate as set out in Article 10.1.4 and of the Operation Security prior to the end of the Operation Period as set out in Article 10.2.4;
- (f) Concessionaire's material deviation from the Technical Specifications or material breach of Concessionaire E&S Obligations as set out in this Agreement;
- (g) a breach of this Agreement by the Concessionaire, whether or not expressly designated as such hereunder, in the following cases:
 - (i) material breach of this Agreement; or
 - (ii) repeated non-material breaches of this Agreement that:
 - (aa) have a result materially similar to the result of a material breach;
 - (bb) have a material adverse impact on the use and enjoyment of the Services by the Users; or
 - (cc) result in the Concessionaire reaching any of the Breach Thresholds; or
- (h) bankruptcy or other insolvency event of the Concessionaire;
- (i) a breach of any of the declarations and confirmations made or given by the Concessionaire under Articles 15.8, 49, 54.1 and/or 54.2 ; and/or

40.2 A "**Grantor Event of Default**" shall mean any of the following:

- (a) failure to pay the Viability Gap Funding in accordance with Article 29 and the aggregate unpaid amount of Viability Gap Funding reaches five hundred thousand US Dollars (USD 500,000) or more;
- (b) breach of the exclusivity undertakings under Article 4;
- (c) breach of its obligations under Article 5; and/or
- (d) breach of any of the declarations and confirmations made or given by the Grantor under Article 49.

41. EARLY TERMINATION IN CONNECTION WITH AN EVENT OF DEFAULT

41.1 Termination for Grantor Event of Default

41.1.1 On the occurrence of a Grantor Event of Default, the Concessionaire shall serve to the Grantor a Notice of Default requiring the Grantor to remedy the Grantor Event of Default

within ninety (90) Business Days of such Notice of Default, or such longer period as may be agreed by the Grantor and the Concessionaire.

41.1.2 If the relevant matter or circumstance has not been remedied or rectified within ninety (90) Business Days of such Notice of Default or such longer period as may be agreed by the Grantor and the Concessionaire, the Concessionaire may serve to the Grantor a Termination Notice and Articles 44 and 45 shall apply.

41.2 Termination for Concessionaire Event of Default

41.2.1 Grantor's Options

On the occurrence of a Concessionaire Event of Default, the Grantor shall, without prejudice to the provisions of Article 42 and subject to the Lenders' Step-in Right:

- (a) in the case of an Incurable Concessionaire Event of Default, terminate this Agreement in its entirety by serving a Termination Notice on the Concessionaire; and
- (b) in the case of a Curable Concessionaire Event of Default, serve a Notice of Default on the Concessionaire requiring the Concessionaire to remedy the Curable Concessionaire Event of Default within thirty (30) Business Days of such Notice of Default or such longer period as may be agreed by the Grantor.

41.2.2 Termination

The Grantor shall be entitled, without prejudice to the provisions of Article 42 and subject to the Lenders' Step-in Right, to terminate this Agreement by serving a Termination Notice to the Concessionaire, and Articles 44 and 45 shall apply, if the Curable Concessionaire Event of Default notified in a Notice of Default is not remedied within thirty (30) Business Days of such Notice of Default or as may be agreed in writing between the Parties.

42. GRANTOR'S STEP-IN

42.1 Cause for Step-In

If:

- (a) a Concessionaire Event of Default occurs that (i) is (individually or in aggregate) so substantial as to adversely affect the present or future ability of the Port Facility to operate consistently with Good Industry Practice and (ii) has not been remedied within forty-eight (48) hours from the date of the Notice of Default issued by the Grantor in connection with such Concessionaire Event of Default, or
- (b) a Force Majeure Event occurs which, in the reasonable opinion of the Grantor, presents a material risk that the Port Facility will not be operated safely and consistently with Good Industry Practice,

the Grantor shall be entitled (but shall have no obligation to), upon giving forty-eight (48) hours prior written notice, to step-in and undertake actions in accordance with Article 42.2.

42.2 Exercise of Step-In Right

42.2.1 If Article 42.1 applies, the Grantor may notify in writing the Concessionaire of the following:

- (a) a description of the emergency remedial action it intends to take, which may include the taking over of all or part of the Port Facility, including by limiting the access of the Concessionaire to the Port Facility, by operating the Equipment in his stead and by giving instructions to the staff of the Concessionaire;
- (b) the reason for such action;
- (c) the date it wishes to commence such action (which date may be the date of the notice itself);
- (d) the time period which it believes will be necessary for such action; and
- (e) to the extent practicable, the effect on the Concessionaire and its obligation to provide the Services during the period such action is being taken

(the "**Grantor's Step-In Right**").

42.2.2 The Grantor may exercise the Grantor's Step-In Right directly or may instruct any third party of its choice to act on its behalf. In any event, at all times during the exercise of the Grantor's Step-In Right, the Grantor shall exercise, and shall procure any third party acting on its behalf to exercise, due care and diligence with regard to the Port Facility; provided however, that the Grantor shall not be liable:

- (a) for any damage to the Concessionaire's Assets (including the Equipment) sustained during the exercise of the Grantor's Step-In Right, except where the damage is the result of gross negligence or willful default on the part of the Grantor or the third party acting on the Grantor's behalf; or
- (b) generally, for any type of economic loss, consequential or indirect damages suffered by the Concessionaire further to the exercise by the Grantor of the Grantor's Step-In Right.

42.2.3 Except in relation to an event described in Article 42.1(b), the Grantor may recover from the Concessionaire as a debt due and payable, all reasonable costs incurred in connection with such undertakings (whether conducted by third-party contractors or by the Grantor itself), but only to the extent such costs:

- (a) are evidenced by documentation confirming such expenses; and
- (b) were incurred consistently with Good Industry Practice.

The Grantor shall be entitled to call on the Construction Security and/or Operation Security in accordance with Article 10 for any such sums due by the Concessionaire if unpaid within thirty (30) Business Days of the Grantor's notice requesting payment thereof (and for the avoidance of doubt, the Concessionaire shall make direct payments of such sums to the Grantor on demand if the amount thereof exceeds the amount of the Construction Security or the Operation Security, as might be relevant).

42.3 Procedure and Duration

42.3.1 The Grantor and the Concessionaire shall meet immediately upon the exercise of the Grantor's Step-In Right with a view to agreeing on a plan of action to remedy the situation. If (i) no agreement is found, or (ii) an agreement is found but the Concessionaire has not performed or implemented such agreement, within forty-four (44) Business Days of the time when the Grantor begins to exercise the Grantor's Step-In Right, the Grantor may in its

absolute discretion issue a Termination Notice to the Concessionaire for Concessionaire Event of Default and Articles 44 and 45 shall apply, except if the cause for the exercise of the Grantor's Step-In Right was exclusively a Force Majeure Event pursuant to Article 42.1 (b), in which case the Grantor may only terminate this Agreement in accordance with Article 37.

42.3.2 If the Grantor does not issue a Termination Notice at the end of the period of forty-four (44) Business Days as specified in Article 42.3.1, the Grantor's Step-In Right shall end immediately and the Concessionaire shall be reinstated in its rights and obligations under this Agreement.

42.4 Rights and Obligations of the Concessionaire

42.4.1 The Concessionaire shall be relieved from its obligations to operate the Port Facility and to provide the Services, but only to the extent and for the period of time where the Port Facility and the Services have been taken over by the Grantor in the exercise of its Grantor's Step-In Right.

42.4.2 The Concessionaire shall, in addition to taking all appropriate action to remedy the Curable Concessionaire Event of Default that initially gave rise to the Grantor's Step-In Right, provide all assistance to the Grantor for the exercise of its Step-In Right. Any undue impediment to Grantor's exercise of its rights under this Article by the Concessionaire, shall entitle the Grantor to immediately give a Termination Notice to the Concessionaire for Concessionaire Event of Default and Articles 44 and 45 shall apply.

42.4.3 For the avoidance of doubt, the Concession Fee shall remain due by the Concessionaire to the Grantor during the Grantor's exercise of the Grantor's Step-In Right.

42.5 Payments

When exercising the Grantor's Step-In Right, the Grantor shall be exclusively entitled to collect the Grantor Tariff and the Concessionaire Tariff from the Users. During the exercise of the Grantor's Step-In Right, the Grantor will, within ten (10) Business Days of the end of each month, remit to the Concessionaire the Concessionaire Tariff to which the Concessionaire is entitled minus the Concession Fee and any deduction that the Grantor may make in respect of the fees, costs (whether direct and indirect) or otherwise any expense relating to the exercise by the Grantor of the Grantor's Step-in Right.

43. EARLY TERMINATION

43.1 Early Termination by the Grantor

Without prejudice to Article 3.4.5, the Grantor shall have the right to terminate this Agreement based on:

- (a) an Incurable Concessionaire Event of Default or a Curable Concessionaire Event of Default that has not been cured or remedied as provided in Article 41.2;
- (b) a Prolonged Force Majeure Event as provided in Article 37.5.1;
- (c) for public policy reasons;

by serving a Termination Notice to the Concessionaire.

43.2 Early Termination by the Concessionaire

Without prejudice to Article 3.4.5, the Concessionaire shall have the right to terminate this Agreement based on:

- (a) a Grantor Event of Default that has not been cured or remedied as provided in Article 41.1;
- (b) a Prolonged Force Majeure Event as provided in Article 37.5.1; or
- (c) a Political Force Majeure Event, subject to the provisions of Article 38;

by serving a Termination Notice to the Grantor.

44. EARLY TERMINATION PAYMENTS

44.1 Amount of Termination Compensation

If Termination of this Agreement occurs otherwise than pursuant to Articles 3.3 and 3.4, the Grantor shall pay the Concessionaire Termination Compensation which shall be calculated as follows:

<p>Amount of Termination Compensation</p> <p style="text-align: center;">=</p> <p>Starting Value + Additional Costs + Compensated Equity - Specific Deductions - Grantor Dues</p>

Where:

"Grantor Dues" means any amount due by the Concessionaire to the Grantor; and

Starting Value, Additional Costs, Compensated Equity and Specific Deductions are calculated depending on the circumstances of Termination as set forth in the table below:

circumstances of Termination	Starting Value	Additional Costs	Compensated Equity	Specific Deductions
Termination further to a Prolonged Force Majeure Event pursuant to Article 37	Compensated Debt	fifty percent (50%) of (Hedging and Breaking Costs <u>minus</u> any Grantor Break Costs)	Fixed Adjusted Net Equity (applying an adjustment factor of four percent (4%) per year or two percent (2%) per 6 month period)	Insurance Amount + Value of Non-Compliant/Unnecessary Assets

circumstances of Termination	Starting Value	Additional Costs	Compensated Equity	Specific Deductions
Termination further to Concessionaire Event of Default pursuant to Article 41.2	ninety percent (90%) of Compensated Debt	Hedging and Breaking Costs	0	Grantor Break Costs + Current Security + Value of Non-Compliant/Unnecessary Assets
Termination further to Grantor Event of Default pursuant to Article 41.1 <u>or</u> Termination by Grantor for public policy reasons pursuant to Article 43.1(c) <u>or</u> Termination by the Concessionaire for Political Force Majeure pursuant to Article 43.2(c)	Compensated Debt	Hedging and Breaking Costs	Fixed Adjusted Net Equity (applying an adjustment factor of thirteen percent (13%)) per year or six and a half (6.5%) per 6 month period	Value of Non-Compliant/Unnecessary Assets

For the purposes of the table above:

"**Compensated Debt**" means an amount equal to the debt of the Concessionaire outstanding to the Lenders under the Financing Documents (including accrued interest), from which shall be subtracted:

- (a) any amount by which the Concessionaire exceeds the Debt to Equity Ratio at the date of Termination;
- (b) any cash, cash equivalents and marketable securities owned by the Concessionaire at the date of Termination; and
- (c) any Hedging and Breaking Costs.

"**Current Security**" means: if Termination occurs during the Construction Period, the Construction Security or if Termination occurs after the Construction Period, either of the (i) Operation Security (if Handover Security not provided by Concessionaire) or (ii) the Handover Security (if provided by Concessionaire);

"Fixed Adjusted Net Equity" on and as of the date of Termination, an amount equal to the sum of the Fixed Adjusted Value of all Equity Contributions made prior to the date of Termination less the sum of the Fixed Adjusted Value of all Equity Distributions made prior to the date of Termination; provided that, if such difference shall result in an amount that is less than zero (0), such amount shall be deemed to be zero (0);

and, for the purpose of calculating the Fixed Adjusted Net Equity:

"Fixed Adjusted Value" means, on and as of the date of Termination, the value of any Equity Contribution or Equity Distribution, as the case may be, which value shall be determined by taking the amount of such Equity Contribution or Equity Distribution (in each case in Dollars or, if any such Equity Contribution or Equity Distribution was originally made in a currency other than Dollars, the Dollar equivalent of such Equity Contribution or Equity Distribution at the time made), and adjusting such value, compounding semi-annually, for each calendar year or part thereof during the period from the date of such Equity Contribution or Equity Distribution, as the case may be, using as an adjustment factor equal to the adjustment factor for a 6-month period provided in the table above;

"Equity Contribution" means any contribution by a Shareholder to the Equity;

"Equity Distribution" means (i) any Equity Contribution that may have been returned or repaid, in whole or in part, to any Affiliate of the Concessionaire, (ii) any dividend or other distribution paid by the Concessionaire to any Affiliate thereof with respect to any Equity Contribution, (iii) any amount paid by the Concessionaire to any Affiliate thereof as interest, fee or premium with respect to any Equity Contribution and (iv) any other amount paid by the Concessionaire to any Affiliate thereof and (v) any amount paid by the Concessionaire in respect of goods sold or services performed by such Affiliate to or for the Concessionaire in accordance with a contract or lease.

The calculation of the Fixed Adjusted Value shall be made using the following formula:

$$\sum_{i=1}^n [equity\ contribution_i - distribution_i] \times (1 + r)^{(n-i)}$$

Where:

n = is the number of 6-month periods (each one a "Period") from the Effective Date through the date of Termination, provided that the last period may be less than 6 months.

r = the appropriate adjustment rate as shown in the above table divided by two.

" $equity\ contribution_i$ " = any Equity contribution in a Period i

" $distribution_i$ " = amount of all dividends and equity outflows such as other profit based payments, and premiums and fees paid by the Concessionaire to Affiliates in Period i

And where the adjustment rates to be applied shall be:

- in the case of Termination further to a Prolonged Force Majeure Event pursuant to Article 43.2(c), the adjustment factor set out in the table above; and
- in the case of Termination further to a Grantor Event of Default pursuant to Article 41.1 or Termination by the Grantor for public policy reasons pursuant to Article 43.1(c), the adjustment factor set out in the table above.

"Grantor Break Costs" means the breakage costs or penalties incurred by the Grantor in relation to the Termination of this Agreement;

"Hedging and Breaking Costs" means any costs incurred by the Concessionaire under the Financing Documents in respect of (i) the early close-out of hedging (other than currency hedging) and (ii) early prepayment which become due as a result of the termination of the Concession Agreement being provided that such amount shall not be greater than an amount equal to five percent (5%) of the Compensated Debt; and

"Insurance Amount" means the sum of:

- (a) any insurance claims paid or payable in relation to any insurance taken out by the Concessionaire pursuant to this Agreement, except if any such claim or amount corresponding thereto has been paid to the Grantor but not transferred to the Concessionaire in accordance with Article 34.6; and
- (b) in case any of the insurances the Concessionaire is required to procure or maintain under Article 34 is not procured or maintained, any amount that would have been payable to the Concessionaire had such insurance(s) been procured or maintained in accordance with Article 34.

"Value of Non-Compliant/Unnecessary Assets" means the value of any capital expenditure related to (i) Works which do not comply with the Technical Specifications and (ii) Works or other assets of the Concessionaire which are not specifically required for the provision of the Services or which are redundant with other Works or assets used for the provision of the Services.

44.2 Calculation of Termination Compensation

The amount of Termination Compensation payable by the Grantor shall be prepared by the Concessionaire, validated as fair and accurate by the Concessionaire's auditors and then notified in writing by the Concessionaire to the Grantor within ten (10) Business Days of a party receiving from the other Party a notice informing that such other Party is terminating this Agreement.

The Concessionaire's notification setting out the amount of Termination Compensation shall be accompanied by reasonable and clear details of the calculation made by the

Concessionaire and sufficient supporting evidence for the Grantor to verify the Concessionaire's calculation, failing which the Concessionaire's notification will not be valid.

44.3 Approval of Termination Compensation

If:

- (a) the Grantor agrees with the amount of Termination Compensation indicated in the Concessionaire's notification, the Grantor shall notify in writing the Concessionaire of its agreement of such notification within forty (40) Business Days of receipt of such notification;
- (b) the Grantor disagrees with the amount of Termination Compensation indicated in the Concessionaire's notification, the Grantor may submit the calculation of such amount to determination by an Independent Expert pursuant to Article 52.2 within forty (40) Business Days of receipt of such notification by following the procedure provided in such Article; or
- (c) the Grantor does not object or agree to the amount of Termination Compensation indicated in the Concessionaire's notification issued under Article 44.2 within forty (40) Business Days of receipt of such notification, such amount and will be deemed to be accepted by the Grantor.

44.4 Payment of Termination Compensation

The Grantor shall pay the Termination Compensation to the Concessionaire in either one or several instalments, at the discretion of the Grantor. Subject to the Concessionaire complying with its obligations under Article 45, the Termination Compensation shall be payable on the latest on a date referred to as the "**Termination Compensation Due Date**". The Termination Compensation Due Date shall be:

- (a) if the circumstances provided in Article 44.3(a) occur: the date falling two (2) years after the Grantor has notified the Concessionaire its agreement with the amount of Termination Compensation;
- (b) if the circumstances provided in Article 44.3(b) occur: the date falling two (2) years after the Independent Expert has made a decision; or
- (c) if the circumstances provided in Article 44.3(c) occur: the date falling two (2) years after the Grantor has received the notice sent by the Concessionaire under Article 44.2.

Interest at the Default Interest Rate shall accrue on any outstanding amount of Termination Compensation that is not paid to the Concessionaire starting on the day on which each of the periods referred to in Articles 44.4 (a) to (c) above begins (as applicable).

45. HANDOVER

45.1 General Provisions

45.1.1 Handover of the Concession Area and Port Facility should be made following the procedure set out at Article 45.2, except in the case of Termination other than due to expiry of the Concession Period, in which case the provisions of Article 45.3 shall apply.

45.1.2 The Concessionaire shall co-operate with, and provide all access and information to the Grantor (or any third party designated by the Grantor) and the Independent Expert, as may be required or useful for the handover to be carried pursuant to this Article 45.

45.1.3 Upon Termination, the Grantor, or any Person designated by the Grantor to replace the Concessionaire under the Project, shall not be bound to take-over, employ or compensate the employees of the Concessionaire.

45.1.4 The Grantor, or any Person designated by the Grantor to replace the Concessionaire under the Project, shall, from the period starting twelve (12) months before the expiry of the Concession Period, or, in the case of Termination other than due to expiry of the Concession Period, as soon as practicable before the Handover Date, be entitled to consult with the employees of the Grantor and their representatives as the Grantor, or such Person, as applicable, in its discretion deems fit. In so doing, the Grantor, or such Person, as applicable, shall have due regard to and observe:

- (a) Applicable Law;
- (b) any other agreements relating to the employees or employees' representatives concerned; and
- (c) the relevant contracts of employment of said employees.

Subject to Applicable Law, the Concessionaire shall transfer to the Grantor, or any Person designated by the Grantor to replace the Concessionaire under the Project, as applicable, the employment records of the current or former employees of the Concessionaire whom the Grantor, or such Person, wishes to employ, as the Grantor, or such Person, as applicable, may reasonably require.

45.1.5 Without prejudice to any other provision in this Agreement, and to the extent Termination occurs after the Service Commencement Date, the Concessionaire shall procure that on the Handover Date, the Port Facility shall be in a condition that:

- (a) allows the Port Facility to operate as a commercial container and general cargo terminal on competitive terms capable of handling container and general cargo vessels; and
- (b) ensures that the levels of performance of the Port Facility and the Equipment meet the requirements of the Technical Specifications and of the Minimum Service and Equipment Investment Requirements,

for a period of five (5) years for the Equipment and a period of thirty (30) years for the Project Facility beyond the Handover Date, provided that the Port Facility is operated and maintained from the Handover Date in accordance with Good Industry Practice (the "**Handover Requirements**").

45.1.6 On the Handover Date, the Concessionaire shall:

- (a) hand over to the Grantor peaceful possession of the Concession Area, Port Facility,

the Equipment, any Works and the Services free of any encumbrance;

- (b) transfer to the Grantor all its rights, titles and interest in the assets comprised in or used in connection with the Port Facility, the Equipment and the Services which are required to be transferred to the Grantor in accordance with this Agreement and execute such deeds and documents as may be necessary for such transfer and complete all legal or other formalities required;
- (c) hand over to the Grantor all documents including Design Documents, plans, drawings, as built drawings, manuals and records relating to operation and maintenance of the Port Facility, the Equipment and the Services;
- (d) transfer technology and up-to-date know-how relating to design, construction, operation and maintenance of the Port Facility, the Equipment, any Works and the Services;
- (e) assign or cause to be assigned to the Grantor any Project Agreements which are (i) valid and subsisting; and (ii) which the Grantor has chosen to take over, and terminate or cause to be terminated such Project Agreements not assigned to the Grantor. For this purpose, the Concessionaire shall ensure that all Project Agreements are assignable in favor of the Grantor without any further action on part of the respective counterparties. The Concessionaire shall entirely at its cost, terminate all such Project Agreements which are not transferred/assigned and/or are not required to be transferred/assigned to the Grantor;
- (f) at its cost, transfer to the Grantor all such Permits which the Grantor may require and which can be legally transferred; provided that if the termination is due to a Grantor Event of Default, the cost of such transfer shall be borne or reimbursed by the Grantor;
- (g) at its cost, remove from the Concession Area within ninety (90) Business Days from the expiry of the Concession Period, any moveable assets that are not taken over by or not to be transferred to, the Grantor pursuant to the provisions of this Agreement.

45.1.7 Handover Documentation

Subject to the provisions of the Handover Plan, the Concessionaire shall, at least twenty-five (25) Business Days prior to the expiry of the Concession Period or, in the case of Termination other than due to expiry of the Concession Period, as soon as practicable before the Handover Date, prepare and deliver to the Grantor the following documents in electronic and paper formats:

- (a) a detailed list of the Equipment;
- (b) a detailed list of all the personnel employed at the Port Facility during a period of twelve (12) months before the date of the Handover (containing, subject to Applicable Law, their personal details, level of security clearance (if any) and contact details);
- (c) a detailed list of all the Users that have used the Port Facility and/or the Services, or, more generally, done any transaction with the Concessionaire (containing, subject to Applicable Law, their personal or corporate details and contact details, and all the amounts paid by such Users to the Concessionaire);

- (d) a detailed list of the suppliers, contractors or service providers used or employed by the Concessionaire in relation to the provision of the Services and the operation, management or maintenance of the Port Facility (containing, subject to Applicable Law, their personal or corporate details and contact details, and the details of the missions or task assigned to them);
- (e) evidence in a form reasonably satisfactory to the Grantor that the Concessionaire has complied with its obligations relating to Intellectual Property which are set forth in Article 36; and
- (f) any other information element reasonably necessary to the taking over of the operations of the Port Facility and to ensure continuity in the provision of the Services as may be required by the Grantor.

45.2 Handover upon Expiry of the Concession Period

45.2.1 Condition Survey

45.2.1.1 The Parties shall appoint an Independent Expert to conduct two (2) Handover Condition Surveys, being provided that:

- (a) the first Handover Condition Survey shall be made at least thirty-six (36) months prior to the expiry of the Concession Period; and
- (b) the second Handover Condition Survey shall be made at least twelve (12) months prior to the expiry of the Concession Period.

In carrying out the first Handover Condition Survey, the Independent Expert shall estimate the amount of money in US Dollars required for a third party to place the Concession Area, the Port Facility and the Equipment in compliance with the specification and conditions applicable to them pursuant to this Agreement.

45.2.1.2 If, as a result of any of the Handover Condition Surveys undertaken in accordance with Article 45.2.1.1, the Independent Expert considers that the Concession Area, the Port Facility or the Equipment or any part thereof have/has not been operated and maintained in accordance with the requirements under this Agreement (normal wear and tear excepted) the Independent Expert shall notify in writing the Concessionaire of such situation (with a copy to the Grantor) and the Concessionaire shall, at its cost and expense, take all necessary steps to put the same in good working condition prior to the Handover Date.

45.2.2 Handover Plan

The Concessionaire and the Grantor shall meet no later than twelve (12) months before the end of the Concession Period to discuss and seek to agree on a plan determining the practical modalities for the taking over of the operations of the Port Facility by the Grantor (or any third party designated by the Grantor) (the "**Handover Plan**").

The Handover Plan shall include a training program for the Grantor's personnel and shall set a schedule for delivery of the documents listed in Article 45.1.7.

The discussions of the Concessionaire and the Grantor relating to the Handover Plan shall be duly documented by the Concessionaire which shall submit to the Grantor for approval minutes thereof as well as a draft handover plan no later than five (5) Business Days following the date on which such discussions occurred or on which the handover plan was agreed (as applicable).

45.3 Handover upon Early Termination

45.3.1 Condition Survey

Upon service of a Termination Notice, the Parties shall appoint, within ten (10) Business Days of such notice, an Independent Expert to conduct a Handover Condition Survey. Such Independent Expert shall prepare and communicate to the Parties such survey within twenty-two (22) Business Days of its appointment.

In carrying out such Handover Condition Survey, the Independent Expert shall estimate the amount of money in US Dollars required for a third party to place the Concession Area, the Port Facility and the Equipment in compliance with the specification and conditions applicable to them pursuant to this Agreement. Such amount shall be due and payable by the Concessionaire to the Grantor.

45.3.2 Taking Over

If, as a result of the Handover Condition Survey undertaken in accordance with Article 45.3.1, the Independent Expert considers that the Concession Area, the Port Facility or the Equipment or any part thereof have/has not been operated and maintained in accordance with the requirements under this Agreement (normal wear and tear excepted) the Concessionaire shall, at its cost and expense, take all necessary steps to put the same in good working condition prior to the Handover Date.

45.4 Unlawful Hold Over

Should the Concessionaire unlawfully hold over or occupy the Concession Area after the Handover Date:

- (a) any money received the Concessionaire in the Operation of the Port Facility or the provision of the Services shall be the property of the Grantor and held on the Grantor's behalf; and
- (b) the Grantor shall be entitled to take any action in order to ensure the Concessionaire ceases such holding over or occupation.

46. RELATIONS WITH THIRD PARTIES - INDEMNITIES

46.1 The Concessionaire shall indemnify the Grantor against any liabilities or claims arising from:

- (a) death or personal injury to any Person; and/or
- (b) loss or damage to property (including property belonging to the Grantor for which it is responsible);

which may arise out of or in consequence of any act or omission or negligence by the Concessionaire in connection with the performance or non-performance of its obligations under this Agreement. To the extent that the Concessionaire makes payment to the Grantor of an indemnified amount arising out of the actions of a third party, the Concessionaire shall be subrogated to the rights of the Grantor against such third parties who shall then be entitled to pursue the Grantor's claim against the relevant third party.

46.2 If an Grantor receives any notice, demand, letter or other document concerning any claim

from which it appears that the Grantor is or may become entitled to indemnification under this Article 46, the Grantor must give notice in writing to the Concessionaire as soon as reasonably practicable. Any additional liability of the Concessionaire which arises as a result of any unreasonable delay by the Grantor in giving such notice to the Concessionaire is hereby excluded from the scope of the Concessionaire's indemnity in favor of the Grantor.

46.3 Where it appears that the Grantor is or may become entitled to indemnification from the Concessionaire in respect of any or all of the liability arising out of the act or omission which is the subject of the claim, the Concessionaire may resist the claim in the name of the Grantor, in which event the Concessionaire shall have the conduct of any defense, dispute, settlement, compromise or appeal of the claim and of any incidental negotiations, and the Grantor shall give the Concessionaire all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim.

47. SUBCONTRACTORS

47.1 The Concessionaire shall not be allowed to subcontract the Cargo Handling Services. For any other operations under the Project, the Concessionaire shall be free to enter into Subcontracts with the Subcontractors that possess sufficient skills, reputation and resources to undertake such obligations. In particular, the Concessionaire may undertake the Works itself or through Subcontractors possessing the requisite technical, financial and managerial expertise and capability. In any case the Concessionaire shall be solely responsible for compliance with this Agreement.

47.2 The Concessionaire shall ensure that any and all Subcontracts contain the following provisions:

- (a) provisions enabling the rights and obligations of the Concessionaire under that contract to be novated or assigned (free of charge) to the Grantor upon Grantor's written request if:
 - (i) this Agreement is terminated;
 - (ii) the Grantor exercises the Grantor's Step-in Right; or
 - (iii) any of the Lenders exercises the Lenders' Step-in Right,
- (b) provisions imposing on the Subcontractor insurance requirements, including professional liability requirements, in accordance with Good Industry Practice;
- (c) provisions undertaking a confidentiality obligation similar to the one set out in Article 48; and
- (d) a term that extends no further than the expiry of the Concession Agreement.

47.3 The Concessionaire shall in no way be relieved of any of its obligations under this Agreement by the default of any Subcontractor.

47.4 The Concessionaire must ensure that no Key Subcontractor is engaged in connection with the Project without that Key Subcontractor having delivered to the Grantor a duly executed direct agreement, substantially in the form contained in Appendix 14 (*Agreed Form of Direct Agreement with Key Subcontractors*).

48. CONFIDENTIALITY

The Parties shall keep the provisions of this Agreement including its Appendices as well as any documents disclosed or provided to the other Party pursuant to this Agreement strictly confidential. This obligation shall not apply to the disclosure of information:

- (a) by one Party to its advisers or consultants and, on the part of the Concessionaire, in its dealings with the Lenders, whether potential or actual, provided that all such advisers, consultants and Lenders are bound by equivalent confidentiality undertakings;
- (b) to such parties and in such extent as is necessary to discharge obligations under this Agreement;
- (c) that is generally available to the public unless the initial public disclosure was made by such Party in breach of this Article;
- (d) if and to the extent required by Applicable Law;
- (e) to comply with a court order or a regulatory order of an authorized public body; and
- (f) by the Grantor in relation to its reporting obligations to the Government of Timor-Leste, to the Parliament of Timor-Leste or to any Public Authority.

49. UNDERTAKINGS

Each Party declares and acknowledges to the other Party that:

- (a) in relation to the Concessionaire, it is duly organised, validly existing and in good standing under the laws of the jurisdiction of its incorporation/establishment;
- (b) it has full power and authority to execute, deliver and perform its obligations under this Agreement;
- (c) it has taken all necessary action to authorise the execution, delivery and performance of this Agreement;
- (d) this Agreement constitutes the legal, valid and binding obligation of it, enforceable against it in accordance with the terms hereof; and
- (e) there are no actions, suits or proceedings pending or to its best knowledge, threatened against or affecting it before any court, administrative body or arbitral tribunal which might materially and adversely affect its ability to meet or perform any of its obligations under this Agreement.

50. GOVERNING LAW

This Concession Agreement shall be construed and interpreted in accordance with and governed by the laws of Timor-Leste, excluding conflict of law provisions.

51. FRAUD AND CORRUPTION

- 51.1** Neither the Concessionaire nor any Affiliates, nor any Shareholders, nor any Person acting on its or their behalf, has committed or engaged in, with respect to the Project or any transaction contemplated by this Agreement, any Sanctionable Practice.
- 51.2** The Concessionaire and the Shareholders shall not engage in (and shall not authorize or permit any Affiliate or any other Person acting on its behalf to engage in) with respect to the Project or any transaction contemplated by this Agreement, any Sanctionable Practices.
- 51.3** For the purposes of this Article, the following terms shall have the following meaning:
- (a) "Sanctionable Practice" means any Corrupt Practice, Fraudulent Practice, Coercive Practice or Collusive Practice as those terms are defined below;
 - (b) "Corrupt Practice" is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another Person;
 - (c) "Fraudulent Practice" is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a Person to obtain a financial or other benefit or to avoid an obligation;
 - (d) "Collusive Practice" is an arrangement between two or more Persons designed to achieve an improper purpose, including to influence improperly the actions of another Person; and
 - (e) "Coercive Practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any Person or the property of the Person to influence improperly the actions of a Person.

52. DISPUTE RESOLUTION

52.1 Amicable Settlement

- 52.1.1** If any dispute, difference, controversy or claim of any kind arises or occurs between the Parties as to anything or matter arising under, out of or in connection with this Agreement or otherwise in connection with the implementation of the Project (a "**Dispute**"), any party may notify the other Party in writing of the existence of such Dispute.
- 52.1.2** Within ten (10) Business Days of issuance of the notification referred to in Article 52.1.1, the Parties shall attempt in good faith to come to an agreement in relation to the disputed matter, by referring the Dispute to one or more meetings of the Representatives who have sufficient authority to be able (if necessary with consultation back to their respective organisations) to resolve it. In attempting to resolve the Dispute in accordance with the provisions of this Article 52.1.2, the Parties shall (and shall procure that their employees and Representatives shall) use reasonable endeavors to resolve such Dispute without delay by negotiations or any other informal procedure which the relevant representatives may adopt. Those attempts shall be conducted in good faith in an effort to resolve the dispute without necessity for formal proceedings
- 52.1.3** If the Parties have been unable to resolve the dispute within ten (10) Business Days of

referral to the Representatives, either Party may refer the Dispute for resolution in accordance with Article 52.2 or 52.3.

52.2 Independent Expert Decision

52.2.1 The following matters or Disputes shall be determined by an Independent Expert pursuant to this Clause 52.2:

- (a) matters which shall expressly be submitted to an Independent Expert pursuant to Articles 4; 10.3.1; 20.1, 23.2.5, 34.3, 35.1, 37.3, 38.10, 38.13, 39.5, 39.10, 44.3, 45.2, 45.3 and Appendix 6 (*Tariffs*) ("**Matters for Determination**"); and
- (b) Disputes which the Parties have agreed in writing to submit to an Independent Expert.

52.2.2 Where any Matter for Determination or Dispute is to be submitted to an Independent Expert, the decision of the Independent Expert in respect of the relevant Matter for Determination or Dispute shall be final and binding upon the Parties.

52.2.3 If a Matter for Determination or Dispute principally relates to a technical, engineering or any other operational issue, the Independent Expert shall be:

- (a) if such Matter for Determination or Dispute arises during the Construction Period: the Independent Engineer; or
- (b) if such Matter for Determination or Dispute arises after the end of the Construction Period:
 - (i) if the issue principally relates to general port design and construction or structures and buildings: a civil engineer;
 - (ii) if the issue principally relates to dredging or water depth: an hydrographic engineer;
 - (iii) if the issue principally relates to Marine Equipment: a marine engineer;
 - (iv) if the issue principally relates to Cargo Handling Equipment and Auxiliary Equipment: a mechanical engineer;
 - (v) if the issue principally relates to insurance: an insurance broker with experience in insuring infrastructure projects; or
 - (vi) if the dispute principally relates to any other asset or field of expertise: any person experienced in the construction or operation of port facilities (as appropriate), that holds an internationally recognized qualification in the relevant field,

being always provided that in any case the person appointed as Independent Expert shall not have any conflict of interest.

52.2.4 If a Matter for Determination or Dispute principally relates to the manner in which an amount, sum or quantity of money or any financial value is to be calculated, the Independent Expert shall be a chartered public accountant (i) registered in Timor-Leste (provided that such expertise is available in Timor-Leste at a reasonable cost), (ii) having at least ten (10) years of professional experience as a chartered public accountant, including at least five (5) years in Timor-Leste, and (iii) who has no conflict of interest.

52.2.5 Any Party entitled to submit a Matter for Determination to an Independent Expert may do so by submitting to the other Party a notice in writing to that effect.

52.2.6 The Independent Expert shall be appointed by agreement between the Parties. If the Parties have not reached an agreement on such appointment within ten (10) Business Days of:

- (a) in relation to a Matter for Determination: the date of the written request issued by one Party to the other; or
- (b) in relation to a Dispute: the date of the written agreement of the Parties agreeing to submit a Dispute to an Independent Expert,

then any Party may apply to either:

- (i) the President of FIDIC or a person appointed by the President (if the Independent Expert is to be appointed pursuant to Article 52.2.3); or
- (ii) the President of the Institute of Chartered Accountants in Australia (if the Independent Expert is to be appointed pursuant to Article 52.2.4),

for that person to appoint the Independent Expert.

52.2.7 The following provisions shall only apply to Disputes (and not to Matters for Determination) submitted to an Independent Expert:

- (a) within five (5) Business Days after the Independent Expert has been appointed, the Independent Expert shall require the Parties to submit in writing their respective arguments. The Independent Expert shall, in his/her absolute discretion, consider whether a hearing is necessary in order to resolve the dispute.
- (b) it shall be entirely within the power and competence of the Independent Expert to decide upon any matters related to the proper preparation of the Dispute for hearing and in that regard the Independent Expert shall direct the Parties accordingly.
- (c) the Independent Expert shall set the date for the hearing, choose the venue (which shall be a venue in Dili, Timor-Leste) for the hearing and determine all matters regarding any aspect of the hearing. Moreover, the Independent Expert can decide whether at the hearing the Parties are to give oral evidence or confine themselves to presenting their cases in writing or by some other appropriate procedure. In this regard, the Independent Expert must be guided of the need to ensure fairness, the cost-effective resolution of the dispute, and to resolve the dispute quickly.

52.2.8 The Independent Expert shall provide both Parties with his/her written decision on the Matter for Determination or Dispute, within twenty (20) Business Days of the appointment of the Independent Expert (or such other period as the Parties may agree after such appointment). The Independent Expert shall give his/her reasons for his decision.

52.2.9 The Independent Expert's costs of any referral shall be borne equally by the Parties. Each Party shall bear its own costs arising out of the referral, including its legal costs and the costs and expenses of any witnesses.

52.2.10 The Independent Expert shall act impartially and may take the initiative in ascertaining the facts relevant to the Matter for Determination or Dispute.

52.2.11 The proceedings shall be confidential and all information, data or documentation disclosed

or delivered by either Party to the Independent Expert in consequence of or in connection with his/her appointment as Independent Expert shall be treated as confidential. Neither the Parties nor the Independent Expert shall, save as permitted by Article 48 of this Agreement, disclose to any person any such information, data or documentation unless the Parties otherwise agree in writing, and all such information, data or documentation shall remain the property of the Party disclosing or delivering the same and all copies shall be returned to such Party on completion of the Independent Expert's work.

52.2.12 The Independent Expert is not liable for anything done or omitted in the discharge or purported discharge of his/her functions as Independent Expert, unless the act or omission is grossly negligent, in bad faith or fraudulent. Any employee or agent of the Independent Expert is similarly protected from liability.

52.2.13 If any dispute arises between the Parties in relation to the application of the procedure set out in this Article 52.2, it shall be considered as a new Dispute for the purposes of Article 52, and, pending resolution of such Dispute, such procedure shall be suspended.

52.3 Arbitration

52.3.1 Where a Dispute can be referred to this Article 52.3 pursuant to Article 52.1.3 and where the Parties have not agreed to submit such Dispute to an Independent Expert in accordance with Article 52.2, then either Party may submit such Dispute to arbitration as provided below.

52.3.2 The Parties hereby consent to submit to the International Centre for Settlement of Investment Disputes any Dispute that can be submitted to arbitration under Article 52.3 pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the "**ICSID Convention**") in accordance with the rules and procedure set forth in the ICSID Convention. Arbitration proceedings shall be held at the Singapore International Arbitration Centre in Singapore.

52.3.3 The arbitral tribunal shall consist of three (3) arbitrators, one appointed by each Party, and the third, who shall be president of the tribunal, appointed by agreement between the Parties. The arbitration shall be conducted in English and all documents submitted in connection with such proceeding shall be in English or accompanied by a certified English translation.

52.3.4 It is hereby stipulated that the transaction to which this Agreement relates is an investment.

52.3.5 It is hereby agreed that, although the Concessionaire is a national of Timor-Leste, it is Controlled by nationals of [*insert name(s) of other member State[s] to the ICSID Convention*] and shall be treated as a national of [that]/[those] State[s] for the purposes of the ICSID Convention.

52.3.6 This Agreement, and the rights and obligations of the Parties hereunder shall remain in full force and effect pending the award in the international arbitration proceedings, which award, if appropriate, shall determine whether and when any termination shall become effective.

52.4 Waiver of Immunities

The Grantor irrevocably waives, to the fullest extent permitted by Applicable Law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction, order for specific performance or for recovery of property, (iv) attachment of its assets (whether before or after judgment) and (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any proceedings in the courts of any jurisdiction. The Grantor

irrevocably agrees, to the fullest extent permitted by Applicable Law, that it will not claim any such immunity in any proceedings.

52.5 Performance to Continue

No referral of any Dispute to any resolution process in terms of this Article 52 shall relieve either Party from its liability for the due and punctual performance of its obligations under this Agreement.

53. REPRESENTATIVES

53.1 Representatives

53.1.1 From the Effective Date, the Grantor shall nominate and appoint a representative (the "**Grantor's Representative**") and the Concessionaire shall nominate and appoint a representative (the "**Concessionaire's Representative**") and each Party shall notify in writing the other Party of such appointments. Any change in Representative shall be duly notified to the other Party during the term of the Concession Agreement.

53.2 Functions

53.2.1 The Grantor and the Concessionaire shall procure that the Representatives meet on a regular basis to perform the functions described below:

- (a) to provide a means for the joint review of issues relating to all day to day aspects of the performance of this Agreement;
- (b) to provide a forum for open exchange of ideas and joint strategic discussion, allowing the Parties to discuss issues of relevance to the Project, and possible variations of this Agreement to reflect those changes or for the more efficient performance of this Agreement; and
- (c) in certain circumstances, pursuant to Article 52, to provide a means of resolving disputes or disagreements between the Parties amicably.

53.2.2 The role of the Representatives shall be to make recommendations to the Parties, which the Parties may accept or reject at their complete discretion. The Representatives shall not have any authority to vary any of the provisions of this Agreement or to make any decision which is binding on the Parties (save as expressly provided in Article 52). Neither Party shall rely on any act or omission of the Representatives acting in that capacity, so as to give rise to any waiver in respect of any right, benefit or obligation of either Party.

53.2.3 Minutes of all recommendations (including those made by telephone or other form of telecommunication) and meetings of the Representatives shall be kept by the Concessionaire and copies circulated promptly to the parties, normally within five (5) Business Days' of the making of the recommendation or the holding of the meeting. A full set of minutes shall be open to inspection by either Party at any time, upon request.

53.2.4 Each Party shall use its best endeavours to ensure the proper functioning of such meetings and shall ensure that their Representatives attend meetings prepared and fully briefed.

54. MISCELLANEOUS

54.1 Assignment

54.1.1 Subject to Article 54.2 and the provisions of the Direct Agreement, the Concessionaire shall not sell, encumber, assign or otherwise transfer its rights or obligations under or pursuant to this Agreement without the prior written consent of the Grantor. Any actual, attempted or purported sale, encumbrance, assignment or other transfer by the Concessionaire of any of its rights or obligations or interests in, under or pursuant to this Agreement that does not comply with the terms of this Article shall be null, void and of no force or effect, and shall be a Concessionaire Event of Default.

54.1.2 The Grantor shall be entitled to transfer or reclaim any of its rights and obligations under this Agreement to or from any other Public Authority.

54.2 Change in Shareholding

54.2.1 The Concessionaire declares and confirms to the Grantor that as at the Execution Date, the shareholding of the Concessionaire is as represented in the Appendix 12 (*Concessionaire Shareholding*) and that no arrangements are in place that have or may have or result in any sale, transfer or disposal of any legal, beneficial, equitable or other interest in any or all of the shares of the Concessionaire.

54.2.2 The Concessionaire undertakes and covenants that the Lead Shareholder, shall hold at least a Largest Stake in the Concessionaire as from the Service Commencement Date until expiration of the five (5) years period as from the Service Commencement Date (the "**Lock-In Period**"), provided, however, that the Lead Shareholder shall be able to transfer Equity to third parties provided that any such transfer shall not (i) individually constitute a transfer of the Largest Stake, or (ii) as a consequence of any prior or concurrent transfer(s) result in the Lead Shareholder losing its Largest Stake.

54.2.3 Upon expiration of the Lock-In Period, any transfer of Equity by the Lead Shareholder shall be subject to the Grantor's prior approval, which shall not be withheld if the proposed transferee is of experience, financial standing, stability and reputation at least equivalent to those of the Lead Shareholder, and the Grantor's review of the proposed transferee's financial statements and of the transfer documents demonstrates such experience, financial standing, stability and reputation.

54.2.4 As an exception to the provisions of Articles 54.2.2 to 54.2.3 above, the Lead Shareholder shall be free to transfer all of its Equity (but not part only) in the Concessionaire during the Lock-In Period to a wholly-owned subsidiary subject to the following conditions being fulfilled:

- (a) the Lead Shareholder must own, legally and beneficially, all of the shares in such subsidiary and must retain such ownership for a period expiring no earlier than the Lock-In Period;
- (b) the Lead Shareholder shall, at least six (6) months prior to such transfer, inform the Grantor in writing of the precise identity of the transferee and of the reason for and modalities (including the price and details of the transfer documents) of the transfer; and
- (c) the Lead Shareholder shall, at least one (1) month prior to such transfer, provide the Grantor with a document duly signed by the Lenders in which they declare that they have no objection to such transfer and that such transfer will not result in an event of default of the Concessionaire under the Financing Documents.

Any transferee which has validly been transferred the Lead Shareholders' Equity under this Article 54.2.4 shall, upon failing to meeting the above conditions, immediately re-transfer such Equity in totality either back to the Lead Shareholder or to an Affiliate of the Lead Shareholder meeting all of the above conditions.

54.2.5 Notwithstanding any provision of this Agreement, no Shareholder may transfer or grant any interest in Equity to any Person that:

- (a) has been barred by any Government Entity in Timor-Leste or in any other jurisdiction, from participating in any project on a private participation basis (whether on a BOO/BOT basis or otherwise), and the bar subsists as on the date of the contemplated transfer;
- (b) was debarred by the World Bank Group from participating in any competitive bidding process, and whose name is published on <http://www.worldbank.org/debarr>; or
- (c) is under a declaration of ineligibility for corrupt and fraudulent practices issued by the Government of Timor-Leste.

54.3 Language

This Agreement shall be prepared and executed in English and Portuguese versions. In case of discrepancies between the versions, the English language version shall prevail.

Any communications and notices between the Parties in relation thereto shall be in English.

54.4 Taxes and Duties

54.4.1 The Concessionaire shall be solely responsible and liable for the payment of, and undertakes that it will pay, or ensure the payment of, all Taxes assessed on the Concessionaire and its employees in relation to the Works and/or Services, or as otherwise may be assessed as a consequence of the performance of by the Concessionaire of its obligations under this Agreement. The Concessionaire shall defend, indemnify and hold harmless the Grantor from and against any liability for payment of such Taxes.

54.4.2 The Grantor is not liable to the Concessionaire and the Concessionaire has no claim against the Grantor in respect of any Taxes paid by the Concessionaire under this Agreement.

54.4.3 Each of the Parties shall, when making a payment under this Agreement to the other Party, withhold or deduct any Tax when required to do by so by Applicable Law. If any such withholding or deduction is required, the Party liable for making the payment shall not be required to, when making the payment to which the withholding or deduction relates, pay to the other Party any additional amount in respect of such tax (including an amount as will ensure that such other Party receives the same total amount that it would have received if no such withholding or deduction had been required).

54.4.4 The provisions of this Article shall survive Termination.

54.5 Notices

54.5.1 Any notice or other communication from one Party to the other Party which is required or permitted to be made under the provisions of this Agreement shall be: (i) made in writing; (ii) delivered personally (by hand delivery) or sent by pre-paid registered mail or by courier to the address of the other Party which is provided below or to such other address as the other Party shall by notice require, or sent by facsimile transmission (with receipt of

transmission confirmation) to the facsimile number of the other Party which is shown below or to such other facsimile number as the other Party shall by notice require; and (iii) marked for the attention of the person(s) designated below or to such other person(s) as the other Party shall by notice require:

For notices required under this Agreement:

The Grantor: [●]

The Concessionaire: [●]

For any other communications or correspondence between the Parties related to this Agreement:

For the Grantor: The Grantor's Representative (relevant individual nominated at the time of the notice)

The Concessionaire: The Concessionaire's Representative (relevant individual nominated at the time of the notice)

54.5.2 Any notice or other communication made by one Party to the other Party in accordance with the foregoing provisions of this Article shall be deemed to be received by the other Party: (i) if delivered by hand delivery on the day that it is left at that Party's address, (ii) if sent by pre-paid registered mail or by courier, forty eight (48) hours from the date of posting, or (iii) if sent by facsimile transmission, on the date set out on the receipt of transmission confirmation.

54.6 Severability

If any term or provision of this Agreement is held invalid or unlawful or unenforceable, the remaining provisions of this Agreement shall not be affected.

54.7 Further Assurance

The Parties shall at all times:

- (a) do all such further acts; and
- (b) execute and deliver all such further deeds and documents,

as shall be reasonably convenient or necessary to perform, or further the objectives of, this Agreement or to facilitate any matter reasonably incidental thereto.

54.8 Entire Agreement

This Agreement represents the entire agreement entered into between the Parties in relation to the Project and supersedes any or all previous agreements or arrangements, whether oral or written, between the same Parties in respect of the Project and/or in respect of the contents of this Agreement (including any dealings or exchanges of information in connection with the tendering of the Project, such as the request for expressions of interest and the Instructions to Bidders and/or Bids).

54.9 No Waiver

No provision of this Agreement shall be deemed waived by either Party except when such waiver is expressly given in writing. No indulgence as to time or failure by either Party to

insist upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights under this Agreement shall be construed as a waiver of any such provisions or the relinquishment of any such rights for the future.

54.10 No Set-off by the Concessionaire

All payments to be made by the Concessionaire to the Grantor under this Agreement shall be calculated and be made without (and free and clear of any deduction) set-off or counterclaim. The Concessionaire may not suspend the performance of any of its obligations under this Agreement.

54.11 Set-off by the Grantor

The Grantor shall be entitled to set-off any debt due by the Concessionaire as a result of the Concessionaire's failure to pay the Concession Fee, the Grantor Tariff or any other amounts due under this Agreement from any amount payable by the Grantor to the Concessionaire under this Agreement.

54.12 Duty to Mitigate

Each Party shall use its commercially reasonable efforts to mitigate any loss for which it is entitled to indemnification pursuant to this Agreement. In the event that a Party fails to so mitigate an indemnifiable loss, the other Party shall have no liability for any portion of such loss that reasonably could have been avoided had the relevant Party made such efforts.

54.13 Amendments

Any amendment to this Agreement shall be made in writing and be subject to the approval of the Council of Ministers of Timor-Leste.

Draft of 19 December 2014

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IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective duly authorized representatives as of the date first written above.

Made in [●], in [●] ([●]) originals by:

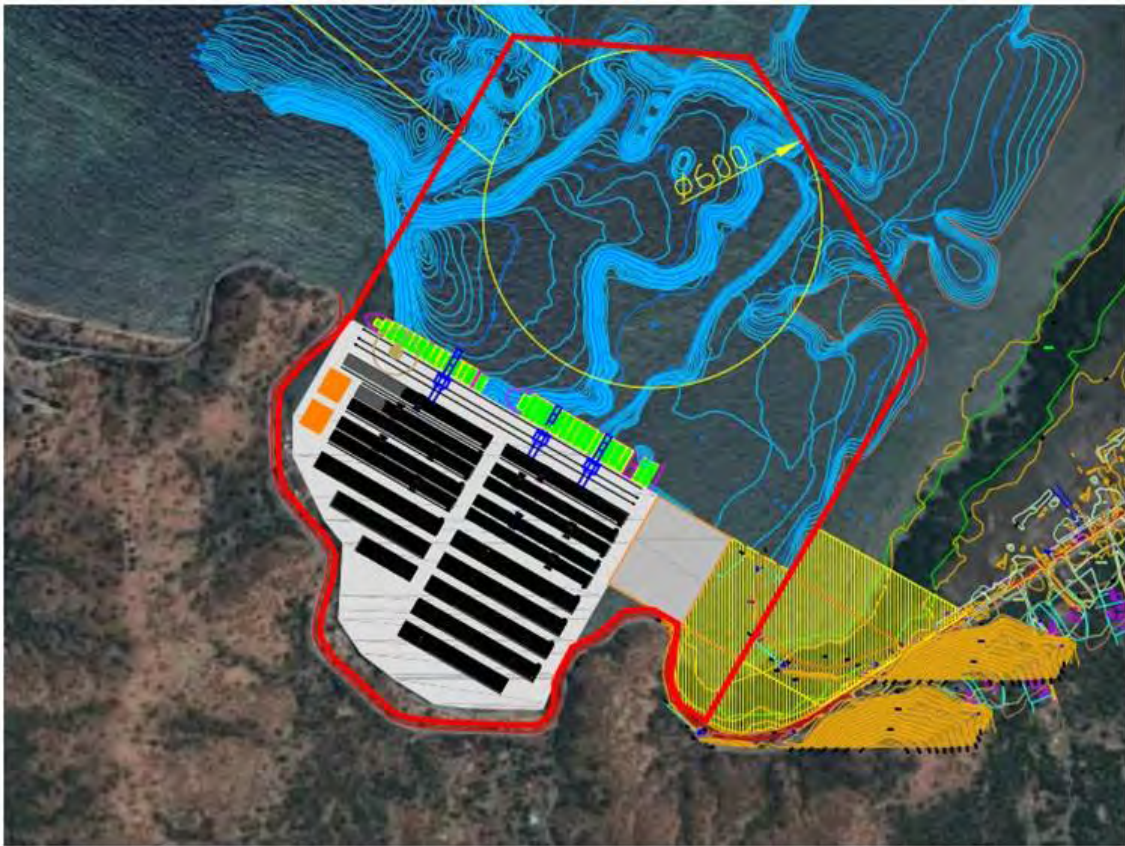
[CONCESSIONAIRE]
[Name]

[GRANTOR]
[Name]

By:.....

By:.....

APPENDIX 1 - CONCESSION AREA LAYOUT



The coordinates of the boundaries of the Concession Area are: [*coordinates to be confirmed*].

The total Container terminal area is approximately 270,000 m² (including the quay apron area).

The grey area is tentatively earmarked for general cargo operations; it comprises approximately 27,000 m².

The yellow area within the Concession Area could be used for offices, customs, and workshops. The yellow area outside the Concession Area indicates a potential extension area. The total size of the yellow-marked area is approximately 112,500 m².

Note: This layout is a tentative indication only and shall be replaced by the final layout of the concessionaire. Bidders are free to develop their own layout within the Concession Area boundaries shown above according to Appendix 3 and 4 of this Concession Agreement.

Draft of 19 December 2014

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APPENDIX 2 - PROJECT SCHEDULE

[to be provided by Successful Bidder]

Draft of 19 December 2014

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APPENDIX 3 - TECHNICAL SPECIFICATIONS

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1. SCOPE OF WORKS

1.1 General Requirements

The services and the works described hereunder include:

- (c) Procurement / execution of design services;
- (d) Obtaining of planning permission and construction of the Port Facility, including access channel and harbour with navigational aids, quay walls, dredging and reclamation works, terminal yards, buildings, utilities and equipment to make the Port Facility a fully functional and operational maritime port; and
- (e) Selection and procurement of suitable cargo handling and auxiliary equipment, as well as marine crafts for the safe and efficient operations of the Port Facility.

The services and works described hereunder shall (i) integrate, as relevant, the mitigation measures defined in the EIA, (ii) follow the EHS Guidelines, and (iii) take into consideration Good Industry Practice identified in the EIA.

1.2 Scope of Design Services

The execution of design services shall include preparation of all design documents required to undertake the design of the Port Facility and to obtain all the required Permits. The design services shall be phased as follows:

Design Services Phasing	Scope
Preliminary Design	Preliminary design shall provide a further refinement of the proposed concept to facilitate testing by the Independent Engineer/Grantor, including regulatory approval. This must provide sufficient information for the communication of the design to a third party for marketing or consultation purposes. It shall include a detailed layout of the planned Port Facility, including a phasing concept.
Planning and Operation Permission	Based on the preliminary design (approved by the Independent Engineer/Grantor), the Concessionaire shall be required to obtain the planning and operation permission for the Port Facility.
Final Design	Final design is the phase where the scope of each component in the design is clearly defined and co-ordinated. Final design shall provide sufficient information for the Independent Engineer/Grantor to clearly understand the aesthetics and functionality of each structure, facility, equipment, building, and internal spaces.
Detailed Design	Based on the final design (approved by the Independent Engineer/Grantor), the Concessionaire shall elaborate the detailed design

for execution and workshop drawings.

1.3 Scope of Construction Works

The scope of construction works includes the removal of the existing structures within the Concession Area, execution of dredging works, reclamation works, construction of new quay wall, terminal yard, utilities and so on to provide a fully functional and operational container and general cargo port at Tibar Bay. The scope of construction works shall include, but shall not be limited to, the following main items:

- (a) Design of all required construction works,
- (b) Clearance of the site (on- and offshore) before commencement of works from waste, scrap, debris, vegetation, existing structures, etc.,
- (c) Earthworks:
 - Soil investigations,
 - Dredging works for access channel and soil replacement in reclamation areas, if required,
 - Reclamation of land areas from the sea to provide the terminal yard area,
 - Scour protection in front of the new quay wall, if required,
 - Slope protection for reclaimed area,
 - Soil improvement (if any),
 - Surcharge / preloading of reclaimed areas,
 - General civil works,
- (d) Quay wall construction:
 - Construction of approximately 630 m new quay,
 - Installation of crane rails for the quay wall and other quay wall furniture, such as bollards, fenders, safety ladders, etc.,
 - Crane rails, utilities, etc.
- (e) Terminal yard infrastructure and utility works, including interface to existing services and utilities:
 - Surface water drainage system,
 - Potable water network,
 - Fire fighting system,

- Sewage system,
- Electrical network system and electrical equipment,
- Data & Communication networks,
- Cable duct bank system,

The design shall be prepared for the whole and fully functional system, including connection to the external networks, if any.

(f) Surface construction and road markings,

(g) Buildings and facilities:

- Operating and auxiliary facilities, such as administration buildings, offices for public authorities and services as required, container freight stations, if required, workshops, warehouses, gates, firefighting station, if required, amenity buildings, transformer buildings, power house / power generation,
- Lighting poles,
- Fences,
- Barriers,
- Turnstiles,
- Weighbridges,
- Water towers, if required,

(h) Aids to navigation.

1.4 Scope of Equipment Procurement

Equipment procurement shall include all mobile equipment afloat and ashore for the safe, secure and efficient operations of the Port Facility. It shall also include provision of a state of the art port ICT system, including hard-and software.

The Concessionaire shall procure, install and maintain the following types of equipment including:

- (a) Cargo Handling Equipment, such as:
- Mobile Harbour Crane,
 - Ship-to-Shore Gantry Cranes,
 - Rubber Tyred Gantry Cranes,
 - Reach Stackers,
 - Empty Container Handlers,

- Terminal Tractors and Trailers, and
 - Forklift Trucks,
- (b) Auxiliary Equipment such as terminal cars, busses, tank lorry and workshop equipment, and
- (c) Marine Equipment, such as Tug Boats and Pilot Boats.

The Concessionaire shall ensure that the above equipment is suitable for the specific climatic, environmental and economic conditions of Timor-Leste.

2. ADDITIONAL INVESTIGATIONS

The Concessionaire shall evaluate all existing data of previous investigations for the construction of the new quay and the landside utilities and shall, if necessary, carry out all new investigations, if it considers that available information is not sufficient.

3. PORT FACILITY LAYOUT

The Concessionaire shall provide a binding Port Facility layout as part of their Business Plan which will form part of the Concession Agreement.

The Concessionaire shall ensure that the Port Facility layout meets conditions including:

- (a) Minimisation of land use,
- (b) Phasing of facility development,
- (c) Compliance with international Container and Break Bulk Cargo handling standards,
- (d) Adequacy of gate complex capacity ensuring all queuing and parking can be provided on the terminal without any interference with passing national road,
- (e) Suitable and sufficient storage for projected cargo types and volumes, especially full and empty containers, container freight station, reefer container storage, appropriate buffer storage for bagged cement and rice, and storage for imported vehicles and project cargo. Storage area layout and dimensioning must be according to capacity calculation,
- (f) Adequate pavement design for full and empty container storage, general cargo and vehicles storage, project cargo storage, and port roads,
- (g) Traffic management concept, including traffic separation of cargo types and traffic circulation,
- (h) Tug and pilot boat berthing and on-shore facilities,
- (i) Compliance with stakeholder requirements, which shall include customs and the port authority,
- (j) Minimisation of Port Facility environmental and social impacts and risks on surrounding areas and Affected Communities,
- (k) Integration of the mitigation measures identified in the EIA and relevant to the layout, and

- (l) Proof of concept, i.e. ability to achieve or exceed the Minimum Service Requirements.

4. CIVIL AND MARINE WORKS

4.1 Technical Standards and Regulations

The Concessionaire shall prepare the design documents in accordance with Applicable Law and Good Industry Practice, including the below international, European and German standards for the design of maritime structures, effective on the Execution Date, to be used as minimum design standards :

- (a) EN 1990: Basis of structural design
- (b) EN 1991: (Eurocode 1) Actions on structures
- (c) EN 1992: (Eurocode 2) Design of concrete structures
- (d) EN 1993: (Eurocode 3) Design of steel structures
- (e) EN 1994: (Eurocode 4) Design of composite steel and concrete structures
- (f) EN 1997: (Eurocode 7) Geotechnical design
- (g) EN 1998: (Eurocode 8) Design of structures for earthquake resistance
- (h) EN 10080:2005: Steel for the reinforcement of concrete
- (i) EN 206-1: Concrete – Part 1: Specification, performance, production and conformity
- (j) "EAU 2004", "Recommendations of the Committee for Waterfront Structures, Harbours and Waterways"
- (k) PIANC guidelines – World Association for Waterborne Transport Infrastructure.

The Concessionaire shall be entitled to use equivalent Australian or American standards and codes, subject to the prior authorization of the Independent Engineer/Grantor.

The Concessionaire shall take into account the following standards for generalities, load analysis, any static calculations of quay walls, mooring and fendering system:

- (a) BS 5400: British Standard for steel, concrete and composite bridges
- (b) ROM 0.2-90: Maritime Works Recommendations – Actions in the design of maritime and harbour works
- (c) ROM 05-94: Geotechnical Recommendations for the design of maritime and harbour works
- (d) International Code for seismic loads.

4.2 Design Documents Submission and Approval

4.2.1 Design Programme

The Concessionaire shall submit the design documents, including drawings and other supporting

documents, in the form of design packages.

The Concessionaire shall prepare a schedule of the design package submission (hereafter the "**Design Programme**"). The Design Programme shall provide for technical submissions to different Public Authorities' authorities at the various stages. The Concessionaire shall make its own enquiries concerning the durations of these procedures and shall be responsible for managing the approval process.

The Design Programme shall be approved by the Independent Engineer/Grantor and shall be phased, in accordance with Permits, and in consideration of the time needed for the proper examination and approval by the Independent Engineer/Grantor. On receipt of the Independent Engineer's/Grantor's approval, the Concessionaire shall apply for the necessary Permits, or shall, as the case may be, prepare complete submissions allowing the Grantor to apply for necessary Permits.

4.2.2 Construction Specifications

The Concessionaire shall submit the construction specifications as part of the design documents.

The construction specifications shall be specific to the construction works designed by the Concessionaire. The construction specifications shall also be consistent with the documentation necessary for the construction permit and the approval of the concerned authorities.

The construction specifications shall be in full accordance with Applicable Law, Permits and Good Industry Practice. The construction specifications shall include explicit references to standards used.

The construction specifications shall establish a level of quality for the construction works consistent with Good Industry Practice, as it is used in the European Union, Australia or USA.

The construction specifications shall be divided into separate parts covering all aspects of the temporary and permanent works.

4.2.3 Drawings and Calculations

4.2.3.1 Calculations

The Concessionaire shall include in the design calculations and reflect on the drawings elements including:

- (a) The governing design criteria such as design life, exposure conditions and seismic categories;
- (b) Standards used in the design and execution;
- (c) Vessel, container crane and vehicle loads;
- (d) Information about concrete, including strength classes, exposure classes, design life, etc.;
- (e) Additional information about concrete mixture, if necessary, type of cement, consistency, maximum water- cement ratio, air content, maximum aggregate size, additives, etc.;

- (f) Information about reinforcing steel, including type, strength, ductility and fabricating restrictions (re-bending, welding etc.), proof stress and relaxation properties for pre-stressing steel;
- (g) All dimensions of the structure, including necessary detailing of tendons, joints, bearings etc.;
- (h) Arrangement and placing of bars, including quantity, diameter, spacing, length, position in elevation and plan, bending radius, location of laps and anchorage length, placement of injection and airing tubes for post-tensioning ducts, supports for tendons;
- (i) Concrete cover to reinforcement;
- (j) Permissible tolerances for all elements - reinforcing, pre-stressing tendons, structural elements, concrete cover, etc.;
- (k) Cross reference to reinforcement schedule and monitoring programs;
- (l) Information about setting out points (coordinates);
- (m) For pile foundations the bearing capacity, size, layout and numbering of the piles;
- (n) Stability calculations at all phases of the construction, including the stability of the completed works;
- (o) Calculations for the sea bed improvement / filling surcharge, and projections for the long term settlements after 1, 5, 10 years and the ultimate maximum settlement;
- (p) Necessary expansion joints in plan and section, including length, levels, mounting dimensions, position for anchorages and movement diagram to establish back clearance;
- (q) Curing procedures for each element of the structure;
- (r) Assembly instructions for bearings due to temperature variations at the time of installation;
- (s) Construction joints including position, design, and when necessary also casting sequences;
- (t) Service ducts and access provision, protection of access location for future accessibility; and
- (u) Any other calculations or substantiation which the Grantor or the Independent Engineer may request.

If the design indicates pre-stressing the following additional data shall be provided:

- (a) Stressing sequence;
- (b) Minimum concrete strength before stressing;
- (c) Calculated values for pre-stressing force, elongation, wedge draw-in and tolerances for these values;
- (d) Modulus of elasticity for the pre-stressing steel; and
- (e) Coefficient of friction and allowance for unintentional angular displacement of tendons.

Calculations shall be typed in double spaced format with a clear and detailed index. All formulas and code clauses relied on shall be referenced in the text.

4.2.3.2 Detailed Design Drawings

The Concessionaire shall prepare all detailed design drawings necessary to construct the Port Facility. All drawings shall be submitted to the Independent Engineer/Grantor for approval at least forty-four (44) Business Days prior the programmed start of construction of the relevant element of the construction works.

Drawings scales shall be:

- (a) General Arrangement Drawings, scales 1:500 and 1:100;
- (b) Dimension Drawings, scale 1:100 or 1:50;
- (c) Reinforcement Drawings, scale 1: 100, 1:50 longitudinally, with 1:5 or 1:10 transversely, if needed for clarity;
- (d) Construction Details, cross sections, scale 1:20 or 1:10 or 1:5.

Drawings shall show relevant chainages, natural ground levels, sea levels, new construction, design levels and all other features, such as positions of bollards, fenders, crane rails, utility chambers, etc. Cross sections shall be generated at a maximum of 25 m intervals in order to identify variations in the sea bed improvement works or changes in the construction details.

The detailed design shall be executed on an advanced CAD system in conjunction with digital topographic survey.

4.2.4 Design Review

The Concessionaire shall ensure that all drawings and associated technical memoranda forming part of the design documents are signed by appropriately licensed designers, and are reviewed and certified.

4.2.5 Design of Temporary Works

The Concessionaire shall ensure that all temporary works are covered by a valid design approval, which shall be submitted to the Independent Engineer/Grantor at least ten (10) Business Days prior to the programmed start of construction of the relevant element of the temporary works. If the temporary works are changed during construction, the as-built temporary works must be covered by a new temporary works design approval.

4.2.6 Copies

All design documents, including design submissions, calculations, drawings and supporting documents, shall be submitted in one (1) original and four (4) copies. The submissions of the design documents shall be accompanied by indexes and drawings lists showing the documents unique reference number, date and revision number.

4.2.7 Electronic Data

The Concessionaire shall provide electronic copies of all drawings and documents, including the models used to generate drawings in a format approved by the Independent Engineer/Grantor.

4.3 Design Parameters

4.3.1 Seismic Conditions

For all design and construction works peak ground acceleration (PGA) of at least 0.24 g has to be considered.

4.3.2 Reference Level

All project levels shall refer to Chart Datum (CD).

4.3.3 Design Working Life

General design working life for the structures of the new quay shall be at least sixty (60) years.

Minimum design working life for general structures shall be as follows:

Design Working Life Category	Design Working Life (years)	Examples
1	10	Temporary structures (1)
3	25	Agricultural and similar structures
4	50	Building structures and other common structures
5	100	Monumental building structures, bridges, and other civil engineering structures

(1) Structures or parts of structures that can be dismantled with a view to being re-used should not be considered as temporary.

The Concessionaire shall ensure that the design working life for **pavement is at least twenty five (25) years**. Pavement design shall be determined in consideration of expected traffic loads for various areas.

4.3.4 Design Vessel

Parameter	Unit	Container Ship
Overall length	m	280
Beam	m	42.8
Carrying capacity	dwt	90,000
Displacement	t	120,000
Max. Draught	m	14.5
Container Capacity	TEU	7,000

4.3.5 Nominal and Design Depths for Quay Wall Construction

Water Level	Depth
CD +0.00 m	Lowest Astronomical Tide
-14.50 m	Maximum draught of vessel
-0.50 m	Under keel clearance
CD -15.00 m	Nominal depth
-0.50 m	Dredging tolerance*
-1.50 m	Scour allowance*
CD -17.00 m	Design depth*

* Depending on chosen quay construction and scour protection measures dredging tolerance and scour allowance might be reduced. Reduction shall be approved by the Independent Engineer/Grantor.

Dredging works can be done in phases. Initial and final depths of the harbour and access channel are defined in Section 5.2.

4.3.6 Design Loads and Actions

For **local impacts of flotsam** following single forces shall be used:

- (a) For stiff constructions (e.g. piles, concrete walls): 100 kN
- (b) For flexible constructions (e.g. ladders): 30 kN

Partial safety factors for the impacts of flotsam shall be taken as for the exceptional load case.

General life loads shall be considered on top of finished ground level/pavement as follows:

- (a) 60 kN/m² - uniform distributed life load at quay apron, due to the use of a mobile harbour crane
- (b) 60 kN/m² - uniform distributed life load at container stacking area

Crane Loads for **Ship-To-Shore (STS) Crane** shall be as follows:

Geometry:

- (a) Crane rail span: 30.48 m
- (b) Distance from centre of waterside rail to quay wall's edge: 2.50 m – 3.00 m

Vertical linear distributed wheel load:

- (a) In service: 550 kN/m
- (b) Out of service: 650 kN/m (waterside crane rail), and 460 kN/m (landside crane rail)

Only one rail shall receive full load, while the other one shall be considered with twenty percent (20%) of the full load.

Horizontal load:

- (a) Perpendicular Ten percent (10%) of vertical load
- (b) Longitudinal Fifteen (15%) of vertical load of braked wheel

The Concessionaire shall ensure that three cranes can operate buffer to buffer.

Suitable other dimensions/loads might be used subject to the prior approval of the Independent Engineer/Grantor.

The Concessionaire shall ensure that the **Mobile Harbour Crane** has 45 t lifting capacity at working short radius of 9 m and a maximum radius of 32 m. The following crane loads shall be considered:

- (a) Minimum outrigger load (32 m): 180 kN (hook operation on ropes)
- (b) Maximum outrigger load (9 m): 450 kN (hook operation on ropes)
- (c) Uniformly distributed load: 13.6 kN/m²

(d) Maximum load per tyre: 52 kN

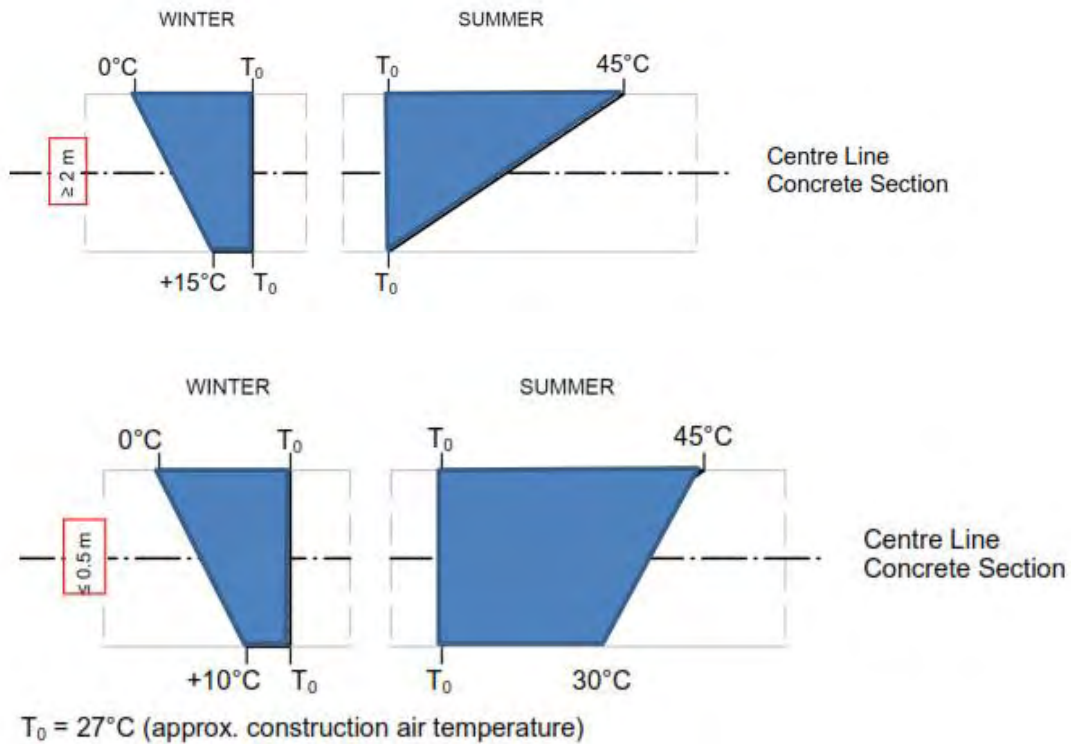
(e) Dynamic amplification factor of f_{dyn} : 1.2 used for design of concrete runway

Suitable other dimensions/loads might be used subject to the prior approval of the Independent Engineer/Grantor.

For **Reach Stacker** operations the dynamic amplification factor $f_{dyn} = 1.10$ shall be used for the design of concrete runways.

Calculation of constraint forces shall consider the following **differences of temperatures**. For cross sections with a height between 0.5 m and 2.0 m the values shall be interpolated.

Temperatures to Be Considered for Constraint Forces



For monolithic structures, hydration energy and resulting temperature gradients shall be considered for the design of reinforced concrete sections. The Concessionaire shall perform tests including monitoring of temperature curve within concrete at samples after the concrete mix is finalized. Depending on the temperature during hydration and the correlation to the concrete strength the temperature T_0 might be adjusted.

5. EARTHWORKS

5.1 General

The Concessionaire shall carry out all earthworks in accordance with grades, elevations, dimensions, depths, widths and permissible deviations and heights indicated in this Appendix 3 (*Technical*

Specifications). Earthworks shall comprise dredging works, land reclamation works, scour and slope protection, soil improvement and ground settlement works.

5.2 Dredging

Dredging works shall comprise the dredging of an approach channel, a turning circle and inner basin, and berth pockets, as per following sketch. The Concessionaire shall ensure that all dredging works comply with the following minimum dimensions:

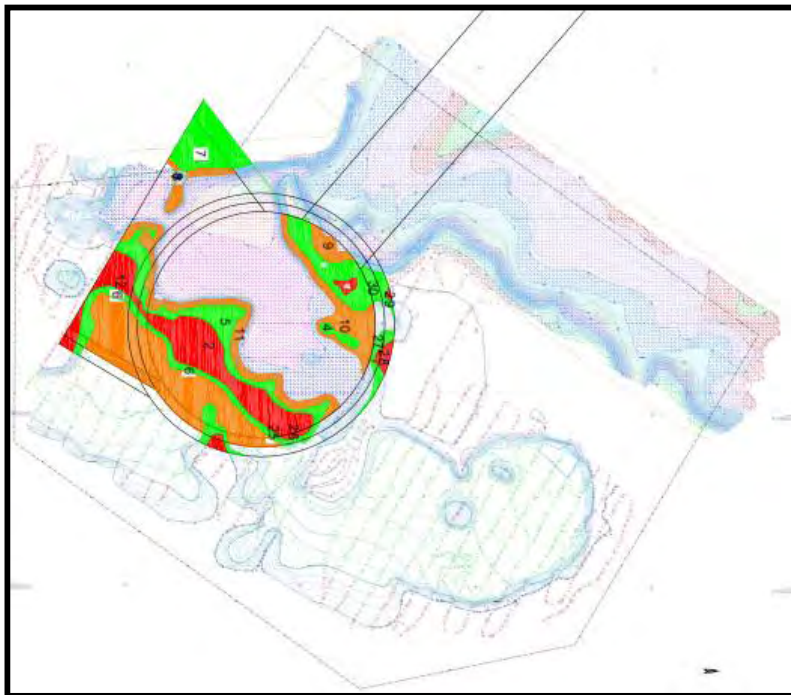
- (a) Width of access channel: 200 m,
- (b) Diameter of turning circle cum harbour basin: 600 m, and
- (c) Minimum distance between turning circle and quay wall: 120 m.

The Concessionaire shall ensure that the initial available water depth for the above mentioned harbour areas is of **-15.0 m CD**.

The initial available water depth shall be deepened to **-16.0 m CD** when regular Container Liner Services make at least twenty-six (26) calls per year at the Port Facility with vessels requiring this water depth.

Dredging works shall also comprise mining of material for land reclamation for the Port Facility on the South Western shoreline of Tibar Bay.

Dredging Sketch



Dredging works shall include supply, fabrication and installation of materials required, the provision of all labour, plant and equipment, and the control of the proper execution and completion of the works.

The Concessionaire shall install an automatic tide gauge related to CD and shall determine all tidal levels during dredging operations with reference to this gauge.

The Concessionaire shall select the appropriate dredging equipment that shall meet the capacity and the quality requirements of the dredging works, method of loading and transport of materials, and method of disposal and disposal grounds.

Notwithstanding existing evidence of the nature of materials given in available surveys and studies, the Concessionaire shall only rely on its own soil investigations as to the adequacy of its dredging plant and rates for dealing with the materials encountered and any variations in the nature of said materials.

All rocks, boulders, wrecks and all other objects encountered during the dredging works shall be lifted, removed and disposed off-site by the Concessionaire.

The Concessionaire shall use its best endeavours to dredge to the least possible depth below the dredged levels given. Dredging tolerances shall be as follows:

Dredging Tolerances

Area	Vertical		Horizontal
	Above design depth	Below design depth	
	[mm]	[mm]	[mm]
General dredging in navigational areas	+0	-600	+/-2,500
Next to existing structures	+0	-600	+/- 700
Pre-treated rock areas	+0	-700	+/-2,500
For soil replacement in reclamation areas	+0	-1,000	+/-2,500

Suitable dredged materials shall be used for the reclamation works to be performed under the Agreement. Any excess dredged materials (not used for reclamation purposes) shall be placed in a suitable disposal area off-shore. The Concessionaire may be required to hand over any such excess material to the Grantor to be used for other projects around Dili.

The dredging works shall comply with all requirements of the EIA and Dredging Management Plan, Applicable Law, Permits and Good Industry Practice. The Concessionaire shall apply any appropriate measures to decrease the impact of the dredging works on water quality, fish migration, spawning

places and fish nutrition and shall reduce turbidity resulting from dredging, discharging and dumping to minimum.

5.3 Land Reclamation

The land area of the Port Facility shall be reclaimed to a level of at least **+4.8 m CD**, including pavement.

Land reclamation works include (i) supply, fabrication and installation of all required materials,(ii) provision of all labour, plant and equipment, and (iii) control of the proper execution and completion of the works.

The Concessionaire shall only use suitable dredged material for land reclamation purposes, which means that only sand and gravels with less than fifteen percent (15%) of fines shall be used. To comply with this requirement, the Concessionaire shall provide for certain selection of the dredging materials and shall avoid the use of material from silty fine sand layers.

Reclaimed materials shall be compacted by vibratory rollers or impact compacters in order to achieve ninety-five percent (95%) Modified Proctor Density in the upper layer. Reclaimed materials under sea level shall be compacted by vibro-compaction to achieve a density to guarantee a safety factor against liquefaction (earthquake effect on soils).

5.4 Soil Improvement

The Concessionaire shall undertake any soil improvement measures that may be required in order to accelerate settlements in the reclamation area. The soil improvement measures implementation shall depend on:

- (a) Soil type, fines content,
- (b) Soil properties (strength, compressibility, hydraulic conductivity),
- (c) Area and depth of treatment,
- (d) Expected loads,
- (e) Settlement criteria,
- (f) Availability of skills, equipment, materials, and
- (g) Economics.

The soil improvement measures shall be studied and designed in detail by the Concessionaire. An adequate phasing of the soil improvement works shall be planned, in order to have available areas within the Port Facility for the different construction steps in due time.

5.5 Ground Settlement

If the reclamation material and the soil at the reclaimed area are mostly composed of cohesive soils, this area will be exposed to settlements. The Concessionaire shall estimate the settlements in detail in

order to apply the required corrective measures and to avoid damages due to settlements in the designed structures.

Duration and extent of the consolidation process shall be analysed before taking decisions on foundations, pavement types and project implementation timeline. After the determination of such parameters, the Concessionaire shall decide whether these ground settlements are acceptable and shall indicate the way they affect the construction of the Port Facility. The Concessionaire shall take an informed decision in this respect.

5.6 Scour and Slope Protection

The Concessionaire shall provide scour and slope protections.

Scour and slope protection works shall include supply, fabrication and installation of required materials, provision of all labour, plant and equipment, and control of the proper execution and completion of the works.

The slope protection under the deck of the quay wall shall be formed by different rock layers on a geotextile. If such rock layers cannot be supplied from dredging, the Concessionaire shall select the source or sources of quarry rock winning and shall be responsible for quarrying, supply and transport to the site of suitable rock in sufficient quantity for the scour and slope protection. The Concessionaire shall determine the most suitable mode of delivery of rock materials from the proposed quarry to the site, including type of plants, means of transportation and methods to be used.

The slope protection shall consist of following elements¹:

- (a) Primary (protection) layer,
- (b) Secondary (cushioning/filter) layer,
- (c) Impermeable lining or geotextile, and
- (d) Levelling layer.

¹ Not all of these elements are required in every situation.

The Concessionaire shall use the following general materials:

Rock	Bulk Density [t/m ³]	Rock	Bulk Density [t/m ³]
Granit	2.5-2.8	Syenite	2.6-2.9
Diorit	2.6-3.1	Quartzite	2.6-2.8
Gabbro	2.8-3.2	Limestone	2.3-2.7
Rhyolite	2.3-2.8	Gneiss	2.6-2.8
Andesite	2.4-3.1	Marble	2.7-2.8
Basalt	2.5-3.1	Serpentinite	2.5-2.6

Classification requirements are:

Heavy	Class designation	ELL	NLL	NUL	EUL	M_{em}	
	Passing requirements kg	< 5% kg	< 10% kg	> 70% kg	> 97% kg	lower limit kg	upper limit kg
	10 000-15 000	6500	10 000	15 000	22 500	12 000	13 000
	6000-10 000	4000	6000	10 000	15 000	7500	8500
	3000-6000	2000	3000	6000	9000	4200	4800
	1000-3000	700	1000	3000	4500	1700	2100
	300-1000	200	300	1000	1500	540	690

Light	Class designation	ELL	NLL	NUL	EUL	M_{em}	
	Passing requirements kg	< 2% kg	< 10% kg	> 70% kg	> 97% kg	lower limit kg	upper limit kg
	60-300	30	60	300	450	130	190
	10-60	2	10	60	120	20	35
	40-200	15	40	200	300	80	120
	5-40	1.5	5	40	80	10	20
	15-300 *	3	15	300	450	45	135

Coarse	Class designation	ELL	NLL	NUL	EUL	M_{em}
	Passing requirements mm	< 5% mm	< 15% mm	> 90% mm	> 98% mm	< 50% mm
	45/125	22.4	45	125	180	63
	63/180	31.5	63	180	250	90
	90/250	45	90	250	360	125
	45/180 **	22.4	45	180	250	63
	90/180 ***	45	90 ***	180 ***	250	NA

The Concessionaire shall plan the scour and slope protection works in such a manner as to avoid the exposure of vulnerable portions of completed structures to the risks of damages when waves of maximum energy may be expected. The Concessionaire shall at his own cost protect the underlayers of the revetment already in place with suitably sized armour units, if the construction work is temporarily suspended.

6. QUAY WALL

6.1 Quay Wall Dimensions

Item	Dimension
Elevation / deck level (m CD)	+4.80
Quay length (m)	630.00

6.2 Quay-Wall Design

Design of the quay wall shall include:

- (a) Geotechnical analysis, including geotechnical stability and anticipated settlements;
- (b) A functional design of the quay to accommodate the design vessels, including quay layout (top level, alignment, furniture configuration) and location;
- (c) Design of mooring and fendering system;
- (d) Structural design, including foundation, superstructure and bottom protection;
- (e) Design of system and elements to support and operate ship-to-shore cranes and other possible equipment.

The quay wall shall have all characteristics and be provided with all elements to allow for fully functional container and the general cargo handling services. These elements include, but are not limited to:

- (a) Complete mooring and anchoring system for vessels: fenders and bollards, as detailed in the following Sections 6.3.1 and 6.3.2,
- (b) Ship-to-shore crane rails in accordance with crane supplier's requirements,
- (c) Locking pits and jacking points for securing cranes during storm events in accordance with max. number of gantry cranes to be installed,
- (d) Buffer stops for cranes at edges of quay wall,
- (e) Crane cable channel with cover,
- (f) Turn-over pits and power connection for the STS cranes,

- (g) Safety ladders at the quay wall front,
- (h) Water connection for fire-fighting purposes,
- (i) Potable water connections for vessel supply,
- (j) Adequate road marking of the apron area to delimitate different areas, and
- (k) Quality requirements on the quay wall surface are:
 - (i) Even surface level with no excessive depressions (maximum 10 mm when tested with a 3 m straight edge),
 - (ii) Brushed surface to provide good skid resistance, and
 - (iii) Smooth slope to the seaside for water evacuation purposes.

6.3 Quay Furniture

6.3.1 Fenders

The Concessionaire shall ensure that the design of fendering shall comply with the PIANC Report of Working Group 33 "Guidelines for the Design of Fender Systems: 2002". The arrangement, size, type and detail of the fenders shall be carefully considered and determined such that:

- (a) The vessel (largest and smallest) shall not hit any other structure during impact under all possible berthing operations under specified or normal conditions;
- (b) The fenders shall have sufficient lengths to cater for the safe berthing of vessels fully loaded or unloaded and under extreme tidal conditions with adequate tolerances to cater for wave, vessel roll, etc; and
- (c) Rated fender reaction shall consider small and large vessels energy absorption and allowable ship hull pressure (< 200 kN/m²).

6.3.2 Mooring Points (Bollards)

The quay wall shall include mooring points, in the form of bollards, along the whole length of the quay wall, appropriate to the structure of the quay and the design vessels. The bollards shall be staghorn (sloping lobe) type and shall be of sufficient height to accommodate the required mooring lines.

The Concessionaire shall ensure that the bollards are suitable for working loads of 2,000 kN (200 tons) and be capable of resisting the designated pull when operating with a breaking mooring line at the highest level, and other lines at lower levels operating at approximately fifty percent (50%) of the breaking load. They shall be designed to a minimum factor of safety of 2 (FS = 2).

The anchorage design shall give due consideration to the mooring line pull operating through a horizontal range of 180 degrees and at any angle in the vertical plane from the horizontal to 45 degrees above the horizontal.

The spacing between bollards shall be not more than 30 m.

6.3.3 Ship-To-Shore (STS) Crane Rail System

Crane rails shall be designed to withstand the loads transmitted by the STS cranes and shall allow the cranes to move along the whole length of the quay wall.

The crane rail system shall consist of:

- (a) Continuously welded rail,
- (b) Flexible resilient pad bearing between rail and sole plate,
- (c) Steel sole plate, drilled to suit the bolting requirements and with suitable attachments to permit fine adjustments for levelling,
- (d) High strength pourable non-shrinkage grout,
- (e) Fastening system, to hold the rail in place on the sole plate and secure it against surge along its length, sideways and uplift forces, and
- (f) Earthing.

The finished rail tolerances shall be in accordance with the F.E.M. 1.001, 3rd Edition [F.E.M. Fédération Européenne de la Manutention, Section I, Heavy Lifting Appliances, Booklet 8, Test Loads and Tolerances], but shall be subject to confirmation by the crane supplier. It shall be assumed as follows:

- (a) Maximum variation for required cross level differences: 4 mm,
- (b) Maximum gradient: 1:1000,
- (c) Maximum deviation from required rail level: ± 2 mm,
- (d) Gauge tolerance: ± 5 mm,
- (e) Maximum deviation from straight line: 1 mm in 2 m, and
- (f) Maximum deviation from required rail line: ± 3 mm.

To lock the crane against horizontal movement in a storm event locking pits shall be provided to arrest the crane against sliding on the rail. Jacking pits shall be provided as support points for the locked crane. Locking pits and jacking points shall be cast in during quay wall concrete works. The locking pits shall include a drainage pipe. A minimum of one (1) set locking pit/jacking points per STS Crane shall be installed.

At each end of the crane rails, adequate buffer stops shall be installed.

The crane cable protection system shall consist of a special reinforced rubber belt and preformed stainless steel channel designed to protect the power cables while allowing crossing of vehicular traffic. The stainless steel cable channel shall be formed by pre-fabricated interlocking channel sections to facilitate installation and each channel section shall be electrically connected to the other

along sides with copper grounding strips. The channel shall be shaped to provide a recess for the slot cover thus ensuring protection of its edges.

Drainage points shall be provided every 50 m.

The channel cover shall be a high quality flexible rubber steel cord and nylon reinforced for heavy traffic loading. It shall possess sufficient longitudinal flexibility to allow the cover to be lifted into the vertical position or have an opening angle of 90°. It shall be resistant to mechanical and abrasive wear and also weather and corrosion resistant in view of the marine environment.

6.3.4 Safety Ladders

Ladders shall be provided at recesses in the quay wall front with a maximum spacing of 100 m, for emergency purposes. The upper part of the ladder shall be installed in the recess and the lower part is to be installed on a fixing frame. Design step load shall be minimum 2 kN. An additional horizontal load at the structural worst case point of the ladder of 30 kN shall be considered for strokes to consider floating debris within the harbour basin from every direction.

7. ON-SHORE FACILITIES

7.1 Pavement and Roads

The Concessionaire shall be responsible for construction of the access route from the main Dili-Liquica road to the Concession Area and shall ensure that any access road that it constructs as part of the Works is maintained free and clear of any obstructions.

The Concessionaire shall ensure that the pavement and base layers are strong enough to withstand the loads from container and other cargo stacking and traffic. The pavement shall be flexible and easy to repair in cases of damages and local settlements. Construction of base layer shall be in compliance with Applicable Law, Permits and Good Industry Practice.

RTGs shall operate on suitable reinforced concrete beams.

Pavement of gate area, parking spaces and terminal roads outside the storage areas can be lighter, which shall be subject of the detailed design to be provided by the Concessionaire.

Port Facility roads shall be provided with:

- (a) Traffic signs,
- (b) Safety barriers to storage areas,
- (c) Road marking,
- (d) Elevated curbed footpaths,
- (e) Drainage works with precast concrete ducts, and
- (f) Other road furniture, required for operation.

At areas, where substances hazardous to water, like oil, fuel, or detergents are used (e.g. mechanical

workshop area and container washing areas), a pavement sealed against fluids shall be implemented.

7.2 Utilities

7.2.1 Surface Water Drainage

For the purpose of adequate design and dimensioning of the drainage system, the Concessionaire shall acquire suitable data on maximum daily/hourly rainfall.

The design shall be prepared for the whole system, including drainage structures on quay wall, connection points from the open container storage areas and discharge structure in accordance with Applicable Law, Permits and Good Industry Practice.

Storm water from the Port Facility areas, roads and stockpile areas shall be collected. To achieve a proper discharge, a cross gradient of at least two percent (2%) shall be applied. In paved areas, precast concrete open ducts (covered ducts, where roads etc. shall be crossed) shall be arranged that are connected to the manholes of the storm water system located near the outlet structures.

Discharge in these precast concrete ducts shall be hydraulically calculated with the Gauckler–Manning–Strickler formula for open channel flow.

After separation of solid substances in sand traps and sedimentation basins, storm water from terminal and traffic areas shall be discharged in the harbour basins, if not requested differently by environmental regulations.

In areas where fuels and light liquids are handled (e.g. mechanical workshop area), and where necessary due to environmental requirements, sufficiently dimensioned coalescence separators with integrated mud separator and a subsequent monitoring and sampling manhole shall be installed before connected to the general drainage system. The coalescence separator shall be connected to a sewage water treatment plant.

7.2.2 Sewage Water System

The design shall be prepared for the whole system, including connection points from the open container storage areas, discharge structure and a treatment plant in accordance with Applicable Law, Permits and Good Industry Practice.

All buildings have to be connected to the sewage network. Dimension of waste water treatment plant shall be sufficient to treat the accumulation of sewage water from all terminal facilities.

Sewage water shall flow through gravity flow and pressure pipes (depending on distances to be covered) towards the waste water treatment plant. Treated water shall be discharged directly into the sea by an outlet.

In areas where detergents are handled (e.g. container washing area), a coalescence separator with integrated mud separator and a subsequent monitor and sampling manhole shall be installed before connected to the general sewage system.

7.2.3 Potable Water

Potable water shall be supplied to the berths (for bunkering), any toilet facilities, and to any other building or structure requiring it. The design shall be prepared for the whole system, including connection to the external network, if available, or a water supply well, in accordance with Applicable Law, Permits and Good Industry Practice. The Concessionaire shall provide connections for future expansion areas, if any.

Water demand of all facilities has to be determined by the Concessionaire during the design phase in accordance with Good Industry Practice. The potable water system, the corresponding water storage building and water storage tanks shall be designed in detail in the final design and submitted for approval to the Independent Engineer/Grantor.

Potable water shall be stored in a water storage tank.

The potable water system shall be rated to cover a maximum pressure head of 10 bar within the system. Pressure head at supply point shall be 4 bar at maximum.

In order to prevent contamination of potable water within the system, the largest consumer shall be located at the end of the potable water main pipeline to guarantee constant circulation of potable water. Dead ends shall be reasonably prevented. If, for any reasons, dead ends cannot be prevented a flush and cleaning facility shall be arranged to flush the pipelines in regular intervals.

Water shall be pumped into the system with centrifugal pumps located inside the water storage building.

7.2.4 Fire Fighting System

The design shall be prepared for the whole system, including connection to a seawater pumping station, etc. in accordance with Applicable Law, Permits and Good Industry Practice. The firefighting system shall cover the whole Port Facility area, including all terminal facilities. The system should be extendable for future extension areas. Additional pumping stations shall be built, if required by the extension of the network.

Seawater drawn from a special pumping station with submersible borehole pumps shall feed the fire fighting system. The whole fire fighting system, including all devices and equipment, has to be seawater resistant.

The number and location of under floor and stand post hydrants and hose connections shall be determined by the Concessionaire for approval by the Independent Engineer/Grantor, but shall not be spaced further apart than 90 m or more than 45 m from a dead end.

The whole system shall stay flooded under a constant pressure head in order to detect leaks within the system and for reasons of quick availability of firefighting water in case of fire.

The firefighting system shall be dimensioned to cover a maximum pressure head within potable water system of 16 bar. Pressure head at supply point shall be 5 bar at maximum.

7.2.5 Electrical Network and Power Supply Equipment

The design for electrical energy supply to the entire Port Facility shall be prepared for the whole system in accordance with the Applicable Law, Permits, Good Industry Practice, and the general design criteria described in this section.

The final design of the Port Facility shall provide the final requirements for the electrical system.

The scope of work includes:

- (a) Medium voltage main substation;
- (b) Medium voltage / low voltage substations in the Port Facility area;
- (c) Medium voltage network;
- (d) Low voltage network;
- (e) Low voltage infrastructure distribution cabinets;
- (f) Backup power plant;
- (g) Control system (SCADA / BMS);
- (h) Fence security system;
- (i) CCTV system ;
- (j) Telecommunication and data network;
- (k) Wireless data network; and
- (l) Grounding and lightning protection system.

The Concession Area shall be fed from the national grid with 33 kV, 50 Hz cable systems to a main substation of the Port Facility. The interfaces between the Port Facility and local utility providers shall be clarified by the Concessionaire on time.

The Port Facility shall be equipped with a medium voltage distribution network. The system shall originate from the main Port Facility substation and connect the different medium voltage substations at the Concession Area. A number of customized low voltage substations shall be installed next to the consumers and loads. The network shall be designed as a loop system.

The substations (walk-in) shall be type-tested units built with reinforced concrete sections. The buildings shall be arranged with raised floor to provide easy cable installation. Alternatively a cable cellar with concrete construction could be designed.

The **33 kV** and **medium voltage switchgears** shall be factory-assembled type tested and gas insulated units. Together all medium voltage switchgear units form the main distribution system of the Concession Area. A proper control system shall be provided. The switch settings, the alarm errors and the power measurements have to implement to that control system.

Low voltage networks shall be designed to supply the different low voltage consumers and users of

the port, such as reefer containers, outdoor lighting, pump stations and smaller buildings (e.g. gates). Each low voltage substation shall have an own low voltage network to provide power to the local consumers.

The distribution of the cable networks shall be done by a duct system consisting of plastic and / or steel conduits. The Concessionaire shall construct a sufficient number of concrete man- and inspection holes.

The Concessionaire shall provide a PC-based process visualization control system. The control system shall monitor the complete distribution network and the backup power plant.

In addition to the power systems, the Concessionaire shall provide all required electrical subsystems to operate a modern port.

The Concessionaire shall provide a backup plant. It shall be located next to the main port substation and shall feed the medium voltage network.

All electrical switchgear, switchboards, panels and equipment shall be sized above the available short circuit current from the calculation. This should include future extension of the network and the backup generator plant.

The electrical systems shall be designed to operate 24 hours / 7 days in harsh marine conditions and according to the local environmental conditions. Adequate corrosion resistance has to be provided by appropriate surface treatment of equipment, stainless steel, heavy-duty plastic and proper enclosures.

The electrical distribution network beginning from the 33 kV feed-in system up to the low voltage main distribution boards shall be designed in a redundant manner to allow easy reconfiguration of the system.

Adequate floodlights on pile founded poles have to be installed to ensure an average luminance level of 50 lux in the container yard and general areas of the Port Facility.

All data within the Concession Area shall be transmitted by using a fibre optic network between the buildings. That backbone network shall be performed with optic fibre multimode cables. The telephone communication shall be done by a copper cable network. Both, the fibre and the copper cabling shall be designed as a loop system. In addition, a WLAN system shall be provided that covers the complete Concession Area.

7.3 Buildings & Facilities

7.3.1 Container Freight Station

A container freight station (CFS) shall be constructed according to demand as established by the Concessionaire. The CFS shall predominantly be used for handling, storage and redistribution of container cargo. The Concessionaire may also consider a temporary storage of Break Bulk Cargo. It shall be an enclosed and roofed building. The building shall be equipped with office rooms and toilets, IT network, ventilation and air condition as well as power supply, water supply and disposal.

7.3.2 Mechanical Workshop

The Concessionaire shall design, construct and equip a mechanical workshop building that provides sufficient space and facilities to ensure the maintenance of the Cargo Handling Equipment at all times in accordance with Good Industry Practice.

The mechanical workshop building shall be divided into several functional areas with different equipment. Offices, control rooms, common rooms, workshops for different repair works and toilets shall be part of the workshop. The mechanical workshop shall be equipped with overhead cranes, power supply, water supply/disposal, pneumatic compressor, IT, ventilation and air condition, etc.

7.3.3 Other Buildings

The Concessionaire shall design, and construct at the Port Facility sufficiently dimensioned office space and other facilities such as laboratories of a total of 1,500 square meters for the Public Authorities responsible for customs, immigration, health and quarantine.

The Concessionaire shall design and construct at the Port Facility sufficiently dimensioned structures to accommodate container scanners to be operated by the Public Authorities responsible for customs.

The above and all other buildings, such as administration building, and any building required for the efficient operation of the Port Facility shall be designed, constructed and equipped according to the Building Code of Australia (BCA) for Commercial Buildings (Volume One - Class 2 to 9 buildings) or equivalent international standards.

7.3.4 Gates and Fences

Gates and fences shall comply with the International Ship and Port Facility Security Code (ISPS Code).

Gates shall control road access to the Port Facility. The gates shall be sufficiently dimensioned to cope with expected future traffic flows. Gates shall also accommodate Public Authorities, if required. Sufficient marshalling / parking areas shall be provided to avoid any backlog of vehicles on public roads. This shall include but not be limited to a sufficiently dimensioned truck park outside the controlled area but in close vicinity to the gate. Dimensioning of gates and marshalling areas shall be supported by capacity calculations and a traffic management concept.

Gates shall be equipped with control booths, traffic control barriers and surveillance cameras, power supply, lighting, fire alarm, etc. The gate area shall be roofed for protection against extreme weather conditions. Pre-assembled gate booths may be installed at the gates.

The Port Facility shall be completely fenced off the surrounding land. The fence itself shall be built of hot-dip galvanised high rectangular poles with a guard track. Its minimum height shall be 2.5 m. The foundations shall be built directly into the ground. At the leading edge of the quay wall an overhanging fence element shall be installed to avoid a sidestepping along the fence.

The Concessionaire may provide additional fencing for specific areas with sensitive cargo, e.g. imported cars.

8. AIDS TO NAVIGATION

8.1 Standards and Regulations

The Concessionaire shall procure, locate, install, maintain and replace, if required, all navigational aid equipment in accordance with (i) Applicable Law and (ii) the recommendations of the International Association of Marine Aids to Navigation and Lighthouse Authorities (IALA), including compliance with the IALA Maritime Buoyage System - Region A, as specified in Sections 8.2.

8.2 Sector Lights and Lateral Buoys

The Concessionaire shall ensure that any vessel approaching the Port Facility shall be guided by a leading light.

The Concessionaire shall set up an upper and sub-fire on the South-Eastern shore of the Tibar Bay with sufficient height to reach a luminous range of light of 10 sea miles.

The end of the access channel which is also the beginning of the turning and harbour basin shall be indicated to approaching vessels by an illuminated (lateral) pair of buoys:

- (a) **Starboard Side Buoy** shall be green and shall have a green cone on top, which shall have the following approximate dimensions:

Height: 360 mm;

Width: 460 mm.

The Starboard Side Buoy shall be equipped with a green light.

- (b) **Port Side Buoy** shall be red and shall have a red cylinder on top, which shall have the following approximate dimensions:

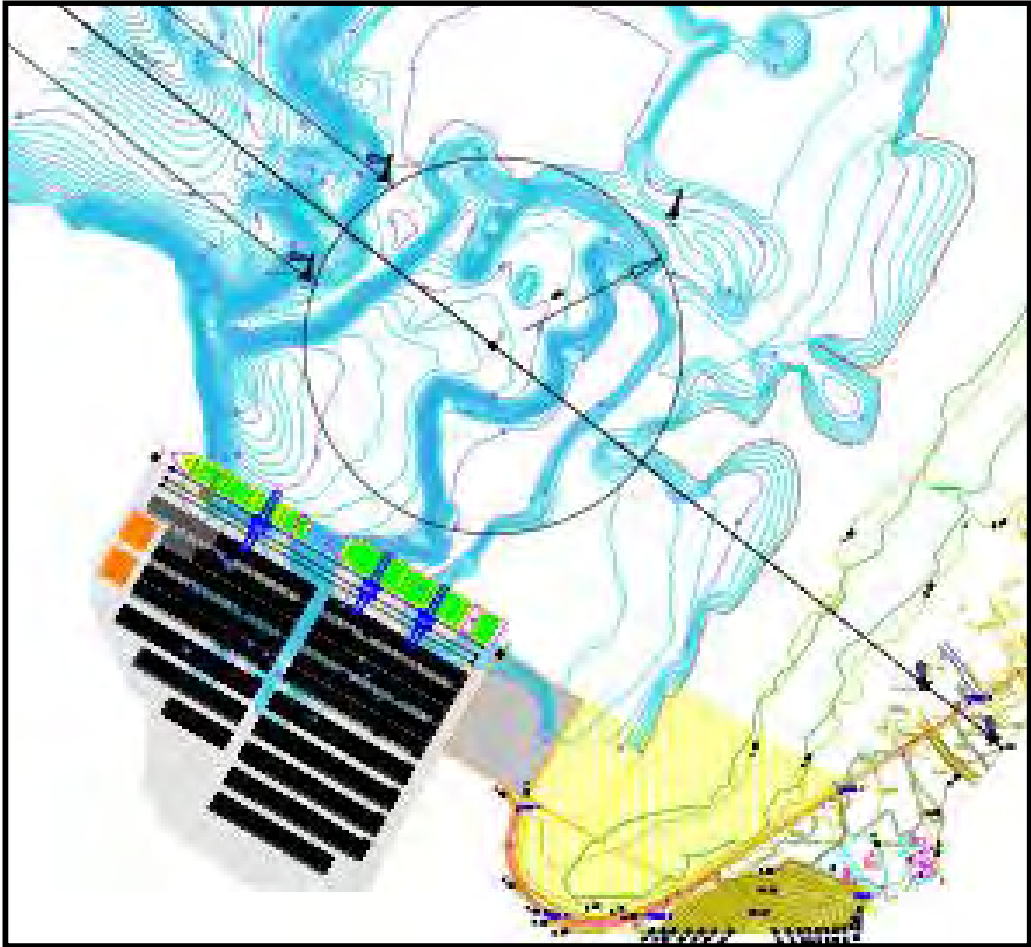
Height: 500 mm;

Width: 390 mm.

The Port Side Buoy shall be equipped with a red light.

Reefs are located within the bay and north of the proposed harbour basin. To improve the navigational safety a cardinal mark as a buoy "South" shall be positioned.

Suggested Position of Navigational Aids Equipment at Tibar Bay



9. CARGO HANDLING EQUIPMENT

The Concessionaire shall procure, install, operate, maintain and replace, if required, all equipment required for the handling and storage of all vessels and cargo in accordance with the specifications set forth in Sections 9.1 to 9.8 (the "**Cargo Handling Equipment**").

The Concessionaire shall be allowed to employ adequate equivalent or better equipment in accordance with Good Industry Practice as long as the Minimum Service Requirements are met.

9.1 Ship-to-Shore (STS) Crane

Equipment Feature	Requirement
Application	Container handling at quay
Rail gauge	30,480 mm

Equipment Feature	Requirement
Outreach from waterside rail	50 m
Back-reach	15 m
Overall width buffer to buffer, compressed	max. 27 m
Clearance under portal beam	min. 17 m
Lifting capacity under hook at maximum outreach	45 tons
Lifting capacity under spreader at 20,000 mm outreach	40 tons
Lifting height above rail/under hook	min. 38.5 m
Lifting height below rail	min. 16 m
Hoisting speeds	
<i>Empty</i>	min. 180 m/min
<i>rated load</i>	min. 90 m/min
Trolley speed	min. 45 m/min
Boom hoist speed	max. 5 min
Gantry travel speed	min. 45 m/min
Electrical control system	AC/DC
Number of wheels	8 or 10 each corner
Max. permissible single wheel load	450 kN
Structural Classification	U8/Q2/A7
Operating temperatures	+ 20°C to + 45°C

9.2 Mobile Harbour Crane

Equipment Feature	Requirement
Application	Container & general cargo handling at quay
Outreach	max. 32,000 mm
Overall width buffer to buffer, compressed	approx. 17,000 mm
Lifting capacity under hook at maximum outreach	45 tons
Lifting capacity under spreader at 20,000 mm outreach	40 tons
Lifting height above ground/under hook	25,000 mm
Lifting height below ground level	12,000 mm
Hoisting speeds	
<i>Empty</i>	min. 50 m/min
<i>rated load</i>	min. 25 m/min
Luffing speed	min. 40 m/min
Gantry travel speed	min. 30 m/min
Rotating	1.5 rpm
Rope system	2-rope type
Number of driven wheels	50% individually-driven wheels
Max. permissible single wheel load	52 kN
Structural Classification	U7/Q2/A7

Equipment Feature	Requirement
Operating temperatures	+ 20°C to + 45°C
Electrical control system	AC, inverter-driven

9.3 Rubber Tyred Gantry Crane

Equipment Feature	Requirement
Application	Container yard stacking
Overall span	7 + 1 vehicle lane, 26,100 mm
Number of wheels	16, revolving by 90° and spin turn
Tire size	Pneumatic, 16.00 – 25
Lifting capacity under spreader	40 tons
Stacking height:	one over five, 9'6'' container
Overall height:	approx. 26 m
Overall length:	max. 28 m
Spreader height under twist locks:	min. 18.20 m
Spreader slewing/trim	min. +/- 3%
Crane travel speed	min. 120 m/min
Trolley travel speed:	min. 60 m/min
Hoisting speed full/empty	min. 50 / 25 m/min
Climbing capacity:	2%
Power supply:	diesel-electric unit/AC motors, 60 Hz

Equipment Feature	Requirement
Anti-sway system:	Yes
Rope system:	synchronised
Spreader:	20', 40', 45' telescopic type
Drivers cabin:	mounted at trolley
Operating temperatures	+ 20°C to + 45°C

9.4 Terminal Tractor

Equipment Feature	Requirement
Application	Transport of trailers for general cargo and containers
Truck type	Port terminal truck with 5 th wheel lifting device, 2'' king-pin
Cross Combined Weight	70 tons
5 th wheel load	min. 25 tons
5 th wheel height &	1,250 mm
5 th wheel lifting height	min. 500 mm
Speed fully laden	min. 25 km/h
Speed empty	min. 40 km/h
Rear axle capacity	30,000 kg at 25 km/h
Power unit	Diesel, turbo-charged, 6 cylinders, Tier III
Power output	min. 165 kW

Equipment Feature	Requirement
Wheels/tyres	Pneumatic type, 2 in front, 4 in rear, size 11 R 22.5
Brakes	Pneumatic drum brakes / wet disc brakes
Gearbox	Power-shift gear box, min. 4/3 with torque converter
Driver's cabin	Noise and heat-insulated, safety glass, A/C unit, FOPS, ROPS
Operating temperatures	+ 20°C to + 45°C

9.5 Terminal Trailer

Equipment Feature	Requirement
Application	Transport of 2 x 20' or up to 1 x 45' containers and general cargo
Trailer type	"Cornerless" type chassis with platform and 2" king pin
Construction type	Rigid steel-frame construction with steel platform. 4 fixed guides at each side and 1 fixed guide at front and rear. 6 container stoppers. Adjustable landing leg (telescopic)
Capacity	50 tons at 25 km/h
Length	
<i>Outside</i>	14,200 mm
<i>Inside</i>	13,750 mm
Width	max. 2,900 mm
Platform height	max. 1,550 mm
Sliding plate height	max. 1,250 mm

Equipment Feature	Requirement
Number of wheels	8
Tyre type	Pneumatic, size 11 R 22.5
Axle type	2 leaf spring suspended axles
Speed	
<i>fully laden</i>	25 km/h
<i>Empty</i>	40 km/h
Operating temperature	+ 20°C to + 45°C

9.6 Reach Stacker

Equipment Feature	Requirement
Application	Container yard operations, container loading/unloading from trucks/trailers
Lifting height	15,200 mm
Lifting capacities	
<i>1st row at 1,900 mm load centre</i>	41 tons
<i>2nd row at 3,950 mm load centre</i>	24 tons
<i>3rd row at 6,500 mm load centre</i>	11 tons
Total weight unladen, maximum	67 tons
Total weight laden, maximum	110 tons
Maximum weight on front axle laden	100 tons

Equipment Feature	Requirement
Maximum weight on front axle unladen	37 tons
Engine	Diesel, turbo-charged, 6 cylinders, Tier III
Minimum power output	200 kW
Driving speed	25 km/h
Lifting/lowering speed	0.25 m/s, 0.4 m/s
Tires	pneumatic type
Transmission	converter/power shift
Brakes - drive axle	wet disc
Parking brake	disc-mechanical
Spreader	20' – 40'
Spreader rotation, minimum	- 95/+ 185°
Spreader side shifting, minimum	± 800 mm
Spreader sloping, minimum	± 3°
Cabin	Fixed and closed, noise and heat-insulated, safety glass, A/C unit, ROPS
Operating temperatures	+ 20°C to + 45°C

9.7 Empty Container Handler

Equipment Feature	Requirement
Application	Empty container handling for 5 high 9'6" standard ISO container 20' to 40'

Equipment Feature	Requirement
Lifting capacity	9 tons at 1,220 mm LC
Mast lift	2-stage mast, 5 high 9'6'' containers, free-view type
<i>minimum lifting height under spreader</i>	15,200 mm
<i>forward/backward movement</i>	3°/3°
Tire type	pneumatic
Wheels	4 in the front, 2 in the rear
Total height, with lowered mast	max. 10,000 mm
Total width	min. 4,000 mm
Turning radius	5,000 – 6,000 mm
Ground clearance (at middle of wheel-base)	min. 350 mm
Travel speed	min. 25 km/h
Lifting speed laden/unladen	min. 0.40/0.60 m/s
Spreader	20', 40' telescopic side-frame spreader
Side shift	min. 500 mm each side
Transmission	Power shift 3/3 with torque converter
Brakes – drive axle	wet disc
Parking brake	Disc - mechanical
Engine	Diesel, turbo-charged, 6 cylinders, Tier III

Equipment Feature	Requirement
Power output	min. 160 kW
Operator's cabin	Elevated cabin closed at the rear, sound-insulated with A/C unit, FOPS, ROPS
Operating temperatures	+ 20°C to + 45°C

9.8 2.5 t Forklift Truck

Equipment Feature	Requirement
Application	Container and truck loading and unloading, warehouse operation
Lifting capacity	2.5 tons at 500 mm LC
Drive unit	Liquid propane gas
Wheels	4 wheels, two wheels driven, super-elastic tyres
Operator's cabin	Open driver compartment, FOPS, ROPS
Lifting height, h3	min. 3,000 mm
Free lifting height, h2	min. 1,000 mm
Total height, stevedoring configuration	max. 2,100 mm
Total width	max. 1,200 mm
Turning radius	max. 2,400 mm
Ground clearance at middle of wheelbase	130 mm
Travel speed	20 km/h
Lifting speed laden/unladen	min. 0.5 m/s

Equipment Feature	Requirement
Gradability	min. 20 %
Mast	2-stage, free lift, free visibility
Electrical system	12 V
Power output engine	min. 40 kW
Operating temperature	+ 20°C to + 45°C

10. AUXILIARY EQUIPMENT

The Concessionaire shall procure, install, operate, maintain and replace, if required, all other terminal equipment required for the efficient operation of the Port Facility as a commercial container and general cargo port, such as terminal cars, busses, tank lorry and workshop equipment in accordance with Good Industry Practice (the "**Auxiliary Equipment**").

11. MARINE EQUIPMENT

The Concessionaire shall procure, install, operate, maintain and replace, if required, the main marine crafts in accordance with the specifications set forth in Sections 11.1 and 11.2 (the "**Marine Equipment**").

The Concessionaire shall be allowed to employ adequate equivalent or better equipment in accordance with Good Industry Practice as long as (i) the Minimum Service Requirements are met and (ii) the expected vessels can be safely handled at the Port Facility.

11.1 Tug Boat

Equipment Feature	Requirement
Application	To safely move and manoeuvre vessels by towing or pushing them within Tibar Bay harbour and its proximity
Length LOA	Max. 35 m
Beam BOA	Min. 11 m

Equipment Feature	Requirement
Draught	Max. 6 m
Speed	Min. 12 knots
Drive System	Azimuth Stern Drive or equivalent
Bollard Pull	Min. 60 tons @ 100% MCR
Power Range	Min. Marine Diesel 2 x 2,000 kW
Operational Range	Approximately 1,000 NM
Bow Thruster	Yes
Winch	Yes
Buoy Laying Facilities	Suitable for Aids to Navigation at the Port Facility
Accommodation	Depending on proposed Mode of Operation (Crew sleeps on board or ashore)
Fire Fighting System	Yes
Design Conditions	Sea water min. 25°C / max. 35°C Air min. 20°C / max. 45°C
Classification	Lloyds, Bureau Veritas, Germanischer Lloyd or equivalent

11.2 Pilot Boat

Equipment Feature	Requirement
Application	To transport pilots and occasionally other persons (vessel crew members, etc.) between land and ships calling the Port Facility

Equipment Feature	Requirement
Length LOA	Min. 12 m
Beam BOA	Min. 4 m
Draught	Max. 1.5 m
Speed	Min. 15 knots
Drive System	Twin fixed pitch props or equivalent
Power Range	Marine Diesel approx. 2 x 600 kW
Operational Range	12 hrs
Pilots & Crew	3+
Carrying Capacity	3-10 persons
Design Conditions	Sea water min. 25°C / max. 35°C Air min. 20°C / max. 45°C
Classification	Lloyds, Bureau Veritas, Germanischer Lloyd or equivalent

12. TERMINAL ICT / EDP

12.1 General Requirements

The Concessionaire shall procure, install, maintain and replace, if required, an overall IT system landscape and architecture, containing all IT systems, showing interfaces and dependencies between them.

The IT systems for the Port Facility shall be reliable, highly available and user friendly. They shall be scalable and extensible according to future requirements. The underlying data shall have integrity and a properly defined structure.

The terminal operating system (the "TOS") shall be able to manage up to 500,000 TEU per annum. It shall also cover Break Bulk Cargo functionality for an annual throughput of 500,000 tons. It shall support terminal operations in order to meet all the Minimum Service Requirements.

12.2 Functional Requirements

The TOS shall support and optimise operations of the Port Facility in accordance with Good Industry Practice. It has to cover container operations with gantry cranes, internal trucks, mobile harbour cranes and ship-to-shore cranes and must fully support all business processes of a modern container terminal. The graphical user interfaces of the IT systems shall be user friendly, fault tolerant and support multiple languages by configuration.

The TOS shall include a modern reporting and business intelligence module that is capable of delivering required key performance indicators (hereafter "**KPIs**") in real time to the Port Facility. The KPIs have to be available via interface to 3rd party systems and via web access. The access to the KPIs shall be controlled via a role and user based access management system.

12.3 Interface Requirements

The Concessionaire shall ensure that the chosen TOS and other relevant IT systems possess well-defined and documented application programming interfaces.

The TOS shall be required to interface to several sub systems, such as:

- (a) Customs and other authorities;
- (b) Port community system;
- (c) Vehicle booking system / Truck appointment system;
- (d) Non-intrusive inspection devices (like X-Ray);
- (e) Gate operating system;
- (f) Shipping lines, agents and other external stakeholders;
- (g) Security system and access management system; and
- (h) Closed circuit television (CCTV) system.

Moreover, all standard electronic data interface messages shall be handled (e.g. BABPLIE, CODECO, COARRI, etc.).

12.4 Technical Requirements

Due to operational requirements, the TOS shall be very reliable and available 24 hours 7 days a week. The TOS shall be available ninety-nine point nine percent (99.9%) of the time. Consequently **unplanned** downtime shall not exceed 8.76 hours a year or 43.2 minutes a month.

The TOS shall be scalable in order to cope with any future Port Facility and/or volume expansions. It shall include a web based portal accessible by Users, customs and other external stakeholders based on an access control system.

All the IT systems shall comply with international standards for IT system security and safety (ISO/IEC 27002 or similar standards).

12.5 Hardware and Infrastructure Requirements

The Concessionaire shall procure, install, maintain and replace, if required, adequate hardware and infrastructure for the ICT, including:

- (a) Server room location and equipment,
- (b) Backup server room location,
- (c) Positioning of fibre optical cables, and
- (d) Positioning of wireless LAN (WLAN) access points.

The Concessionaire shall ensure redundancy in the hardware and IT infrastructure.

12.6 Project Management Requirements

The Concessionaire shall apply a Good Industry Practice project management approach for the implementation of the IT systems and their operation. This shall include an integral project management plan for the commissioning of the IT systems.

The Concessionaire shall design a disaster recovery plan as a means of risk mitigation, as well as quality assurance measures. The quality management system shall be compliant with EN ISO 9001.

The Concessionaire has to develop a Good Industry Practice concept for service level agreements with the suppliers and for the management of the IT applications.

12.7 Terminal IT Operations and Strategy

The Concessionaire shall ensure that the IT system landscape initially installed at the Port Facility remains up-to-date and be continuously improved and extended in order to meet any new requirements during the Concession Period. Any system update, renewal or replacement in the future shall not negatively affect the operations at the Port Facility.

13. MAINTENANCE AND REPAIRS

The Concessionaire shall:

- (a) establish, adhere to and implement a policy of scheduled maintenance of the Port Facility, including the Equipment, in accordance with Good Industry Practice;
- (b) in relation to the Port Facility infrastructure and buildings:
 - (i) monitor settlements (if required) and undertake the necessary maintenance works to remedy defects caused by them;
 - (ii) arrange regular inspections to identify damages, which may affect the working life of the structures (such as cracks, excessive corrosion) and repair them;
 - (iii) check, maintain and repair all technical terminal systems (electrical, potable water, etc.) regularly to assure their correct function;
- (c) in relation to the Equipment, be responsible for:

- (i) routine, scheduled, non-scheduled and emergency maintenance and repairs service;
- (ii) provision of tools, tackle, equipment and supplies required to perform the works; and
- (iii) routine testing of the Equipment;
- (d) maintain a register of all Equipment subject to statutory inspection, including recording all test dates and results;
- (e) operate and maintain the Equipment in accordance with the Manufacturer's Recommendations and keep maintenance records of the Equipment;
- (f) ensure that the capacity and levels of performance of the Port Facility and the Equipment at all times meet the Technical Specifications and the Minimum Service Requirements;
- (g) maintain (including the making or installation of all necessary or desirable repairs and replacements) the Port Facility in good condition and repair and so as to:
 - (i) keep the Port Facility operating as a commercial container and general cargo terminal on competitive terms capable of handling container and general cargo vessels at all times, and
 - (ii) achieve its full useful economic life in accordance with the design documents and these Technical Specifications (five (5) years from the Handover Date for the Equipment and thirty (30) years from the Handover Date for the Project Facility).

Equipment shall be subject to the maximum age limitations:

Equipment type	Maximum age in years as from date of first commissioning
Ship-to-shore gantry crane (rail mounted) All types of marine crafts	10
Mobile harbour crane, rubber tyred gantry crane, straddle carriers	8
All other container and cargo handling equipment, vehicles	5

APPENDIX 4 - MINIMUM SERVICE AND EQUIPMENT INVESTMENT REQUIREMENTS**PART I - MINIMUM SERVICES REQUIREMENTS**

Indicator	Value
Marine Services	
Service availability	24/7
Maximum ships' waiting time for tug boat / pilot (provided that sufficient space at the berth is available considering the size of a vessel, and her cargo type and volume to be discharged and/or loaded and sufficient notice was given by the vessel in advance)	20 minutes
Container Terminal	
Service availability	24/7
Container handling operations at the quay	minimum 06.00 hours to 20.00 hours, Monday to Saturday
Receipt/delivery of containers to/from land transport	
Crane Productivity is defined as total handling volumes, i.e. number of containers moved, divided by total berth hours of vessel from twistlock closing on 1st moved container to twistlock opening on last moved container without any further reductions.	
From Operation Year 1 (starting on Service Commencement Date):	14 moves
From Operation Year 5 (starting four Operation Years after Service Commencement Date):	18 moves
From Operation Year 9 (starting eight Operation Years after Service Commencement Date):	22 moves
Container horizontal transport between quay and stack must be sufficiently dimensioned to cope with vessel operation without delaying delivery to land vehicles. The Concessionaire shall deploy a sufficiently large equipment fleet for Container storage to cater for the quayside performance requirements, as well as the landside operation without backlog of trucks on either end.	
Average maximum truck turn-around time at the Port Facility from entry to exit of the Concession Area when delivering or picking up a Container (excluding customs clearance)	45 minutes
General Cargo and Break Bulk Cargo	
Annual average gross productivity per gang-shift (8 hours) in tons (over pier)	
Break Bulk Cargo (bagged, palletised, big bags)	550 metric tons
Steel Products	1,000 metric tons

PART II - EQUIPMENT INVESTMENT

The Concessionaire shall comply with the Equipment investment requirements specified in Part II of this Appendix 4, failing which the Concessionaire shall be liable to pay Operation Penalties as provided in Part III.

Type of Quay Crane*	Number*	Annual Number of Containers over the Quay Triggering the Obligation of Additional Quay Cranes **
[to be confirmed]	[to be confirmed]	[to be confirmed]
[to be confirmed]	[to be confirmed]	[to be confirmed]
[to be confirmed]	[to be confirmed]	[to be confirmed]

*To be specified by the Concessionaire in the Equipment Investment Schedule to be provided with the Technical Bid

**If this number of containers is exceeded in two consecutive Operations years, the additional crane must be on site 12 month after the end of the second Operations year.

PART III - OPERATION PENALTIES

MINIMUM SERVICE REQUIREMENTS

Indicator	Value	Penalty
Marine Services		
Maximum ship’s waiting time for tug boat / pilot (provided that berth is available and sufficient notice was given by the vessel in advance)	20 minutes	300 USD per tug service exceeding maximum waiting time 100 USD per pilotage exceeding maximum waiting time
Container Terminal		
Crane Productivity Gross productivities are defined as total handling volumes, i.e. containers moved divided by berth hours without reduction.		Monthly average 15 USD per TEU for every month with Crane Productivity below Minimum Service Requirement
Operation Year 1: By Operation Year 5: By Operation Year 9:	14 moves 18 moves 22 moves	
Average maximum truck turn-around time at the Port Facility from entry to exit of the Concession Area when delivering or picking up a Container (excluding customs clearance)	45 minutes	Monthly average 5 USD per TEU for every month exceeding the average maximum truck turn-around time
General Cargo and Break Bulk Cargo		

Indicator	Value	Penalty
Annual average gross productivity per gang-shift (8 hours) in tons (over pier)		Annual average 0.50 USD per ton for every year with average gross productivity per gang-shift (8 hours) below Minimum Service Requirement (to be calculate separately for Break Bulk Cargo and Steel Products)
Break Bulk Cargo (bagged, palletised, big bags)	550 metric tons	
Steel Products	1,000 metric tons	

The value of each of the penalties above shall be revised automatically at the same time as the Concessionaire Tariff by applying *mutatis mutandis* the revision formula for the Grantor Tariff at Part III of Appendix 6 (Tariffs). For the avoidance of doubt, when applying this formula, "Revised HOC" shall correspond to the revised value of penalty and "HOC currently in force" shall correspond to the value of the penalty at the time the revision is made. The "HOC Indexation Coefficient" will be calculated in accordance with the provisions of Section 3.4 of Appendix 6 (Tariffs).

MINIMUM EQUIPMENT INVESTMENT REQUIREMENTS

Type of Quay Crane	Penalty - Failure to Provide Additional Cranes
[●]	[●] % of purchase price per month
[●]	[●] % of purchase price per month
[●]	[●] % of purchase price per month

HOC	(1)	(2)	(3)	(4)	(5)
Empty 20 ft Domestic Container	Number of TEU Charged	Applicable HOC Amount	(1) × (2)	HOC Amount Variation	(3) × (4)
Empty 40 ft Domestic Container	Number of TEU Charged	Applicable HOC Amount	(1) × (2)	HOC Amount Variation	(3) × (4)
<i>Domestic Container receipt or delivery from or to land vehicles</i>					
Full 20 ft Domestic Container	Number of TEU Charged	Applicable HOC Amount	(1) × (2)	HOC Amount Variation	(3) × (4)
Full 40 ft Domestic Container	Number of TEU Charged	Applicable HOC Amount	(1) × (2)	HOC Amount Variation	(3) × (4)
Empty 20 ft Domestic Container	Number of TEU Charged	Applicable HOC Amount	(1) × (2)	HOC Amount Variation	(3) × (4)
Empty 40 ft Domestic Container	Number of TEU Charged	Applicable HOC Amount	(1) × (2)	HOC Amount Variation	(3) × (4)
TOTAL			Y		X

In the table above:

Numbers in brackets which are terms of a multiplication contained in a cell (a "Base Cell") each refer to the value of the cell located under the column of which the title is the same as such number and in the same row in which the Base Cell is located;

"Number of TEU Charged" means, for each row in which such term is used, the total number of TEU charged by the Concessionaire under the HOC set out in the first cell from the left of such row, during the Operation Year immediately preceding the latest revision of the Concessionaire Tariff as per of Part III of Appendix 6 (Tariffs);

"Applicable HOC Amount" means, for each row in which such term is used, the HOC Amount charged under the HOC set out in the first cell from the left of such row, according to the Concessionaire Tariff in force immediately before the latest revision of the Concessionaire Tariff as per Part III of Appendix 6 (Tariffs);

"HOC Amount Variation" means, for each row in which such term is used, the variation (expressed as a percentage), with respect to the HOC set out in the first cell from the left of such row, between the amount charged under such HOC according to the Concessionaire Tariff in force immediately before the latest revision of the Concessionaire Tariff as per Part III of Appendix 6 (Tariffs) and the amount charged under such HOC under the Concessionaire Tariff as revised under the latest Concessionaire Tariff change in accordance with Part III of Appendix 6 (Tariffs);

"X" means the aggregate of the values of all the cells contained in column (5); and

"Y" means the aggregate of the values of all the cells contained in column (3).

2.2 Entry into force of revised TEU Unit Fee

Draft of 19 December 2014

Confidential – For information only

The TEU Unit Fee as revised under Section 2.1 shall be effective retroactively from the date on which a revised Concessionaire Tariff becomes effective in accordance with the provisions of Part III of Appendix 6 (*Tariffs*).

PART II - TRANSHIPMENT TEU THROUGHPUT PAYMENT

3. Formula for calculation of Transshipment TEU Throughput Payment

The Transshipment TEU Throughput Payment due for a month shall be equal to 10% of the total amount charged by the Concessionaire to Users under the following HOCs:

- (a) Full Transshipment Container (USD per TEU, full circle); and
- (b) Empty Transshipment Container (USD per TEU, full circle).

PART III - BREAK BULK THROUGHPUT PAYMENT

4. Formula for calculation of Break Bulk Throughput Payment

The Break Bulk Throughput Payment due for a month shall be calculated according to the following formula:

$$\begin{aligned} \text{Break Bulk Throughput Payment} = \\ \text{Weight of Break Bulk Cargo Moved} \\ \times \\ \text{Break Bulk Cargo Unit Fee} \end{aligned}$$

Where:

"Weight of Break Bulk Cargo Moved" means the weight, expressed in metric tons, of Break Bulk Cargo moved over a ship's rail at the Port, during such month;

"Break Bulk Cargo Unit Fee" means USD 0.5.

5. Revision of Transshipment Break Bulk Cargo Unit Fee

5.1 Formula for Revision of Break Bulk Cargo Unit Fee

In case of revision of the Concessionaire Tariff in accordance with Part III of Appendix 6 (Tariffs), the Break Bulk Cargo Unit Fee set out in Section 4 may be revised by the Grantor notifying the Concessionaire in writing, according to the following formula:

$$\begin{aligned} \text{Revised Break Bulk Cargo Unit Fee} = \\ \text{Break Bulk Cargo Unit Fee currently in force} \\ \times \\ \text{Break Bulk Cargo Unit Fee Indexation Coefficient} \end{aligned}$$

Where:

"Break Bulk Cargo Unit Fee Indexation Coefficient" means:

Total of values in the cells contained in column 5 of the table set out below (referred to as "X")

Total of values in the cells contained in column 3 of the table set out below (referred to as "Y")

HOC	(1)	(2)	(3)	(4)	(5)
<i>General Cargo Stevedoring</i>					
Cement and rice in bags	Number of tons	Applicable HOC Amount	(1) × (2)	HOC Amount Variation	(3) × (4)
Other general Cargo	Number of tons	Applicable HOC Amount	(1) × (2)	HOC Amount Variation	(3) × (4)
TOTAL			Y		X

In the table above:

Numbers in brackets which are terms of a multiplication contained in a cell (a "Base Cell") each refer to the value of the cell located under the column of which the title is the same as such number and in the same row in which the Base Cell is located;

"Number of tons" means, for each row in which such term is used, the total number of metric tons charged by the Concessionaire under the HOC set out in the first cell from the left of such row, during the Operation Year immediately preceding the latest revision of the Concessionaire Tariff as per Part III of Appendix 6 (Tariffs);

"Applicable HOC Amount" means, for each row in which such term is used, the amount charged under the HOC set out in the first cell from the left of such row, according to the Concessionaire Tariff in force immediately before the latest revision of the Concessionaire Tariff as per Part III of Appendix 6 (Tariffs);

"HOC Amount Variation" means, for each row in which such term is used, the variation (expressed as a percentage), with respect to the HOC set out in the first cell from the left of such row, between the amount charged under such HOC according to the Concessionaire Tariff in force immediately before the latest revision of the Concessionaire Tariff as per Part III of Appendix 6 (Tariffs) and the amount charged under such HOC under the Concessionaire Tariff as revised under the latest Concessionaire Tariff change in accordance with Part III of Appendix 6 (Tariffs);

"X" means the aggregate of the values of all the cells contained in column (5); and

"Y" means the aggregate of the values of all the cells contained in column (3).

5.2 Entry into Force of Revised Break Bulk Unit Fee

The Break Bulk Unit Fee as revised under Section 5.1 shall be effective retroactively from the date on which a revised Concessionaire Tariff becomes effective in accordance with the provisions of Part III of Appendix 6 (Tariffs).

APPENDIX 6 – TARIFFS

PART I - CONCESSIONAIRE TARIFF

1. Amount and Pattern of Concessionaire Tariff at the Execution Date

1.1 List of Main Items and Amount of Concessionaire Tariff

HEAD OF CHARGE	AMOUNT (IN USD)
Marine Services	
<i>Charges and fees apply for each single service and for vessels exceeding 500 GRT.</i>	
Pilotage (USD per in or out navigation)	1,000.00
Towage (USD per service)	3,000.00
Mooring (USD per mooring or unmooring)	250.00
Cargo Handling	
<i>Domestic Container Stevedoring (ship to shore/stack or vice versa)</i>	
Full 20 ft Container (USD)	148.00
Full 40 ft Container (USD)	296.00
Empty 20 ft Container (USD)	113.00
Empty 40 ft Container (USD)	226.00
<i>Domestic Container Receipt or Delivery from or to land vehicles</i>	
Full 20 ft Container (USD)	50.00
Full 40 ft Container (USD)	100.00
Empty 20 ft Container (USD)	40.00
Empty 40 ft Container (USD)	80.00
<i>Container Stevedoring</i>	
Full Transshipment Container (USD per TEU, full circle)	Rate to be determined by Concessionaire
Empty Transshipment Container (USD per TEU, full circle)	Rate to be determined by Concessionaire
<i>General Cargo Stevedoring</i>	
Cement and rice in bags (USD per metric ton)	4.80
Other general cargo (USD per metric ton)	5.30
Container Storage in Port	
<i>Full Container</i>	
Day 1 to 5	Free
Day 6 to 10 (USD per TEU per day or part thereof)	5.50
Day 11 to 20 (USD per TEU per day or part thereof)	11.00
As from Day 21 (USD per TEU per day or part thereof)	22.00

HEAD OF CHARGE	AMOUNT (IN USD)
<i>Empty Container</i>	
Calendar day 1 to 5	Free
Day 6 to 10 (USD per TEU per day)	3.30
Day 11 to 20 (USD per TEU per day)	6.60
As from Day 21 (USD per TEU per day)	13.20

The amount charged for the following HOCs:

- (a) Full Transshipment Container (USD per TEU, full circle); and
- (b) Empty Transshipment Container (USD per TEU, full circle)

shall, as far as permitted by Applicable Law, be determined by the Concessionaire and shall not be subject to approval of the Grantor.

1.2 Other Fees, General and Specific Conditions

A comprehensive list of other fees proposed to be charged by the Concessionaire to Users (such as fees for power and water supply, for communications services, reefer charges, etc.), including general and specific conditions for such fees and for the operation of the Port Facility (to the exception of those already mentioned in the List of Main Items and Amount of Concessionaire Tariff at Section 1.1), shall be submitted by the Concessionaire to the Grantor for prior approval.

If the Grantor fails to notify the Concessionaire of any comments, suggestions or modifications required within twenty-two (22) Business Days after receipt by the Grantor of the Concessionaire's proposal as to the other fees, general and specific conditions referred to above, then such proposal shall be deemed to be rejected by the Grantor.

PART II - GRANTOR TARIFF

2. List of Items and Amount of Grantor Tariff at the Execution Date

HEAD OF CHARGE	AMOUNT (IN USD)
Vessel Fees	
Navigation Fee (USD per GRT per In or Out)	0.060
Dockage Fee (USD per GRT per call)	0.025
Dockage Fee (USD per GRT per 1 st 24 hours at berth)	0.080
Dockage Fee (USD per GRT per following 24 hours at berth)	0.040

PART III - REVISION OF TARIFFS

3. Indexation of Tariffs

3.1 Automatic Indexation of Concessionaire and Grantor Tariffs

- 3.1.1 Each of the heads of charge listed in Section 1.1, established by the Concessionaire with the approval of the Grantor under Section 1.2 and listed in Section 2 (a "HOC") shall be charged

according to the amount which follows such HOC (the "**HOC Amount**"). Each HOC Amount shall be revised automatically each year (the "**Automatic Tariff Revision**") on the anniversary of the Service Commencement Date (the "**Automatic Tariff Revision Date**") in accordance with the provisions of Section 3.4.

3.1.2 At least three (3) months before the occurrence of the Automatic Tariff Revision Date, the Concessionaire shall serve the Grantor with a notice (an "**Automatic Tariff Revision Notice**") including the following information:

- (a) A clear mention that such notice is an "AUTOMATIC TARIFF REVISION NOTICE";
- (b) The date of the notice;
- (c) The Automatic Tariff Revision Date; and
- (d) For each HOC, a table displaying:
 - (i) the HOC Amount currently in force;
 - (ii) the proposed revised HOC Amount pursuant to the application of the provisions of Section 3.4; and
 - (iii) the "*HOC Indexation Coefficient*" used to calculate such proposed revised HOC Amount,

always provided that the details of the calculations leading to the proposed revised HOC Amount shall be appended as notes to such table;

The Automatic Tariff Revision Notice shall be accompanied by sufficient supporting evidence for the Grantor to verify the Concessionaire's calculations, failing which the Concessionaire's Automatic Tariff Revision Notice will not be valid.

3.2 Approval of Revised Concessionaire and Grantor Tariffs

If:

- (a) the Grantor agrees with the revised HOC Amounts contained in the Automatic Tariff Revision Notice, the Grantor shall notify in writing the Concessionaire of its approval of such revised HOC Amounts within twenty-two (22) Business Days of receipt of such notification; or
- (b) the Grantor disagrees with the revised HOC Amounts contained in the Automatic Tariff Revision Notice, the Grantor may submit the calculation of such revised HOCs to an Independent Expert pursuant to Article 52.2 within twenty-two (22) Business Days of receipt of such notification by following the procedure provided in such Article,

always provided that if the Grantor does not object or agree with the revised HOC Amounts contained in the Automatic Tariff Revision Notice issued under Section 3.1 within twenty-two (22) Business Days of receipt of such notification, such revised HOC Amounts will be deemed to be accepted by the Grantor.

3.3 Entry into force of revised Concessionaire and Grantor Tariffs

3.3.1 The revised HOC Amounts approved by the Grantor under Section 3.2 or determined to be applicable by an Independent Expert pursuant to Article 52.2 shall be effective on the Automatic Tariff Revision Date.

3.3.2 Following the Grantor's approval or the decision of the Independent Expert, the Concessionaire shall adequately publicise the revision of the revised HOC Amounts in accordance with Good Industry Practice.

3.4 Formula for Indexation of Concessionaire and Grantor Tariffs

3.4.1 The automatic revision of each the Concessionaire Tariff shall be carried by revising each HOC according to the following formula:

$$\begin{aligned} \text{Revised HOC Amount} = \\ \text{HOC Amount currently in force} \\ \times \\ \text{HOC Indexation Coefficient} \end{aligned}$$

Where:

"HOC Indexation Coefficient" means an amount calculated as follows:

$$1 + ((0.3 \times X + (0.7 \times \text{PPI 311})) \times 0.75)$$

Where "X" refers to the Timor-Leste CPI Variation between the date of the Automatic Tariff Revision Notice and the date falling one year before the date of the Automatic Tariff Revision Notice.

Where "PPI 311" refers to the year-on-year variation (expressed as a percentage change from a given month in a year as compared to the corresponding month of the immediately preceding year) for Services related to water transportation (commodity code 311) under the latest United States Producer Price Index Detailed Report available when the Automatic Tariff Revision Notice is dated, based on the United States Producer Price Index Detailed Report published monthly by the relevant United States authority (currently the US Department of Labor) and currently available at this address http://www.bls.gov/ppi/ppi_dr.htm. If this publication ceases to be published regularly and/or commodity code 311 is removed from the publication, the Grantor may, by notice to the Concessionaire, designate instead a statistical publication of equivalent reliability and relevance and/or a commodity code or item replacing, in the reasonable opinion of the Grantor and as applicable, such publication and/or commodity code 311.

4. Re-examination of Concessionaire and Grantor Tariffs

4.1 Regular Re-examinations

4.1.1 Notwithstanding any revision to be carried out automatically under Section 3.1, the Concessionaire and Grantor Tariffs and the formula provided in Section 3.4 shall be re-examined at in accordance with Section 4.2 on the following dates:

- (a) the fourth anniversary of the Service Commencement Date;
- (b) the date on which each period of five consecutive years following the date mentioned in (a) above ends; and
- (c) any date on which the Parties agree to re-examine the tariffs.

4.2 Re-examination Process

- 4.2.1 Each of the Concessionaire and the Grantor may, within 180 days from any of the dates mentioned in Section 4.1.1, notify the other Party that it wishes to re-examine the Concessionaire and Grantor Tariffs and the formula provided in Section 3.4. The notification shall detail the revisions that are sought by the Party issuing the notice and the arguments supporting such revision.
- 4.2.2 Upon issuance of such a notification, the Parties shall meet as soon as reasonably practicable to re-examine the Concessionaire and Grantor Tariffs and/or the formula provided in Section 3.4 (for the purposes of this Appendix, a "**Tariff Re-examination Session**").
- 4.2.3 During a Tariff Re-examination Session, each Party shall be entitled to make submissions and proposals in relation with the revision of the Concessionaire and Grantor Tariffs and/or the formula provided in Section 3.4, in order to take into account any of the following elements:
- (a) A fundamental change in the operating environment that results in increased costs beyond the control of the Concessionaire;
 - (b) Inadequacy of the formula provided in Section 3.4 being due to the fact such formula no longer accurately reflects changes occurring from time to time in the costs incurred by the Concessionaire in operating the Port Facility in accordance with this Agreement; and
 - (c) The potential introduction of new services.
- 4.2.4 Further to the Tariff Re-examination Session, the Parties may agree to revise the Concessionaire and Grantor Tariffs and/or the formula provided in Section 3.4 or make other changes to the Concessionaire and Grantor Tariffs that they deem appropriate. The Grantor may, in its absolute discretion, refuse to agree to any revision or generally any change proposed by the Concessionaire. As an exception, in the case the Parties' disagreement relates to the circumstances set forth at Section 4.2.3(b), any of the Parties may submit the issue to an Independent Expert in accordance with Article 52.2, being provided that the Independent Expert shall not determine any issues other than those relating directly to the circumstances set forth at Section 4.2.3(b).
- 4.2.5 If the Parties agree on any revision of the Concessionaire and Grantor Tariffs and/or the formula provided in Section 3.4 or on any other changes to the Concessionaire and Grantor Tariffs they shall also try to find an agreement on the date on which any such revision or change is to be effective. If no such agreement is found, the Grantor shall, in its absolute discretion, set such date.

APPENDIX 7 – VGF DISBURSEMENT SCHEDULE

[amounts to be completed depending on total VGF required by Successful Bidder in its Bid]

VGF SCHEDULE			
Milestone #	Detail of Milestone Completed	Percentage of VGF	VGF Disbursement Amount (USD)
1	Engineering design and mobilisation	5%	
2	25% completion of dredging and reclamation	10%	
3	25% completion of quay wall	5%	
4	50% completion of dredging and reclamation	10%	
5	50% completion of quay wall	10%	
6	75% completion of dredging and reclamation	10%	
7	100% completion of dredging and reclamation	10%	
8	75% completion of quay wall	5%	
9	50% completion of paving and utilities	5%	
10	100% completion of quay wall	10%	
11	50% completion of equipment in place	5%	
12	50% completion of building and facilities	5%	
13	Service Commencement	10%	
	TOTAL:	100%	

APPENDIX 8 – VGF DRAWDOWN REQUEST

[Letterhead of the Concessionaire]

Date: [_____]

To: [Ministry of Finance, Government of Timor-Leste]
[Address]

From: [Concessionaire]
[Address]

Reference: VGF Drawdown Request N° [●]

Sirs,

Kindly refer to the Concession Agreement related to the Tibar Bay Port Project dated [●] (the "Concession Agreement"), between the Government of Timor-Leste (the "Grantor") and [●] (the "Concessionaire").

Expressions defined in the Concession Agreement shall bear the same meanings herein.

In accordance with the provisions of the Concession Agreement, the Concessionaire hereby requests that the Ministry of Finance pay the sum of [amount in words] US Dollars (USD [amount in digits]) corresponding to the VGF Drawdown N°[●] in the VGF Drawdown Schedule from the VGF Account into the following account [*account of the Concessionaire otherwise indicated by the Concessionaire*]:

Amount:
Bank:
Account number:
Bank Code:
IBAN:
BIC (SWIFT):
Address of Bank:

We hereby declare and confirm that:

- (1) the Relevant Portion has been contributed by us;
- (2) the Concessionaire has not committed a Concessionaire Event of Default or to the extent to which a Concessionaire Event of Default has occurred, that Concessionaire Event of Default is a Curable Concessionaire Event of Default and has been remedied by the Concessionaire in accordance with the Concession Agreement.

Yours faithfully,

[Concessionaire]

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By: [●]

Title: [●]

CC: [Ministry of Infrastructure, Government of Timor-Leste]

[Address]

Attention: [●]

We confirm that the value of the Works completed on the Project in accordance with the Concession Agreement and to our satisfaction is not less than the cumulative value of all Relevant Portions contributed by the Concessionaire to date plus the cumulative value of all VGF Drawdowns previously paid and the VGF Drawdown claimed under this VGF Drawdown Request.

Yours faithfully,

[Independent Engineer]

By: [●]

Title: [●]

APPENDIX 9 – SECURITY FORM

PART I - CONSTRUCTION SECURITY FORM

CONSTRUCTION SECURITY

WHEREAS,

- (A) [●] (the "**Concessionaire**") and the Government of Timor-Leste, represented by the Ministry of Finance and the Ministry of Transport and Communication (the "**Grantor**") have entered into a Concession Agreement dated [●] (the "**Agreement**") whereby the Grantor has granted to the Concessionaire a concession for the development of the Tibar Bay Port Project, subject to and in accordance with the provisions of the Agreement.
- (B) Article 10 of the Agreement requires the Concessionaire to furnish, no later than on the Commencement Date of such Agreement, an unconditional and irrevocable on-demand bank guarantee to the Grantor (the "**Construction Security**") in a sum of **[insert an amount in USD equal to the higher of (i) 10% of the VGF and (ii) ten million US Dollars (USD 10,000,000)]** (the "**Guaranteed Amount**") as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Construction Period.

KNOW ALL PEOPLE by these presents that we **[name of Bank]** of **[name of country]** having our registered office at **[address]** (hereinafter called the "**Bank**") hereby unconditionally and irrevocably undertake to pay the Grantor, the sum of **[insert an amount in USD equal to the higher of (i) 10% of the VGF and (ii) ten million US Dollars (USD 10,000,000)]** in accordance with the following terms:

- (i) We shall pay the Grantor immediately upon written demand and irrespective of any objection by the Concessionaire or any other party such amount or amounts as the Grantor may demand not exceeding in the aggregate the above mentioned amount, namely **[insert an amount in USD equal to the higher of (i) 10% of the VGF and (ii) ten million US Dollars (USD 1,000,000)]** by transfer to the Grantor's account at any bank in Timor-Leste or in any other manner acceptable to the Grantor;
- (ii) It shall not be necessary, and the Bank hereby waives any necessity, for the Grantor to proceed against the Concessionaire before presenting to the Bank its demand under this Construction Security;
- (iii) All payments made based on the Grantor's demand shall be free and clear of, and without any present or future deduction for payment of any Tax, levies, duties, charges, fees, deductions or withholdings of any nature whatsoever and by whomsoever imposed;
- (iv) The undertakings contained in this guarantee constitute direct and fundamental obligations of the Bank and are unconditional and irrevocable. We shall not be excused from any or all of these obligations for any reason or reasons of whatever nature or source or any omission, act or proceeding by the Grantor or by a third party which would excuse or discharge us from the obligations and liabilities stated in this guarantee;
- (v) Our guarantee will remain in full force until the Completion Certificate is validly issued or until the Agreement is terminated for any reason other than the occurrence of a Concessionaire Event of Default (the "**Expiration Date**"). This Guarantee may be extended

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upon simple joint written demand of the Concessionaire and the Grantor, for as long as such extension request is received by the Bank prior to the Expiration Date; and

- (vi) This guarantee shall be governed by and construed in accordance with the laws of [●] and any dispute with respect to this guarantee shall be held and finally settled by the courts of [●].

Signed and sealed this [●] day of [●] 201[●] at [●].

The Bank

(Signature)

(Name)

(Designation)

(Address)

PART II - OPERATION SECURITY FORM

OPERATION SECURITY

WHEREAS,

- (A) [●] (the "**Concessionaire**") and the Government of Timor-Leste, represented by the Ministry of Finance and the Ministry of Transport and Communication (the "**Grantor**") have entered into a Concession Agreement dated [●] (the "**Agreement**") whereby the Grantor has granted to the Concessionaire a concession for the development of the Tibar Bay Port Project, subject to and in accordance with the provisions of the Agreement.
- (B) Article 10 of the Agreement requires the Concessionaire to furnish, no later than on the Commencement Date of such Agreement, an unconditional and irrevocable on-demand bank guarantee to the Grantor (the "**Operation Security**") in a sum of **[insert an amount in USD calculated in accordance with Article 10.2]** (the "**Guaranteed Amount**") as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Operation Period.

KNOW ALL PEOPLE by these presents that we **[name of Bank]** of **[name of country]** having our registered office at **[address]** (hereinafter called the "**Bank**") hereby unconditionally and irrevocably undertake to pay the Grantor, the sum of **[insert an amount in USD calculated in accordance with Article 10.2]** in accordance with the following terms:

- (i) We shall pay the Grantor immediately upon written demand and irrespective of any objection by the Concessionaire or any other party such amount or amounts as the Grantor may demand not exceeding in the aggregate the above mentioned amount, namely **[insert an amount in USD calculated in accordance with Article 10.2]** by transfer to the Grantor's account at any bank in Timor-Leste or in any other manner acceptable to the Grantor;
- (ii) It shall not be necessary, and the Bank hereby waives any necessity, for the Grantor to proceed against the Concessionaire before presenting to the Bank its demand under this Operation Security;
- (iii) All payments made based on the Grantor's demand shall be free and clear of, and without any present or future deduction for payment of any Tax, levies, duties, charges, fees, deductions or withholdings of any nature whatsoever and by whomsoever imposed;
- (iv) The undertakings contained in this guarantee constitute direct and fundamental obligations of the Bank and are unconditional and irrevocable. We shall not be excused from any or all of these obligations for any reason or reasons of whatever nature or source or any omission, act or proceeding by the Grantor or by a third party which would excuse or discharge us from the obligations and liabilities stated in this guarantee;
- (v) Our guarantee will remain in full force until the date on which the Handover Security is validly issued or until the Agreement is terminated for any reason other than the occurrence of a Concessionaire Event of Default (the "Expiration Date"). This Guarantee may be extended upon simple joint written demand of the Concessionaire and the Grantor, for as long as such extension request is received by the Bank prior to the Expiration Date; and
- (vi) This guarantee shall be governed by and construed in accordance with the laws of [●] and

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any dispute with respect to this guarantee shall be held and finally settled by the courts of [●].

Signed and sealed this [●] day of [●] 201[●] at [●].

The Bank

(Signature)

(Name)

(Designation)

(Address)

PART III - HANDOVER SECURITY FORM

HANDOVER SECURITY

WHEREAS,

- (A) [●] (the "**Concessionaire**") and the Government of Timor-Leste, represented by the Ministry of Finance and the Ministry of Transport and Communication (the "**Grantor**") have entered into a Concession Agreement dated [●] (the "**Agreement**") whereby the Grantor has granted to the Concessionaire a concession for the development of the Tibar Bay Port Project, subject to and in accordance with the provisions of the Agreement.
- (B) Article 10 of the Agreement requires the Concessionaire to furnish, no later than on the Commencement Date of such Agreement, an unconditional and irrevocable on-demand bank guarantee to the Grantor (the "**Handover Security**") in a sum of [amount in words] US Dollars (USD [amount in digits]) (the "**Guaranteed Amount**") as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the period starting twelve (12) months before the Handover Date and ending twenty-four (24) months after the Handover Date.

KNOW ALL PEOPLE by these presents that we [name of Bank] of [name of country] having our registered office at [address] (hereinafter called the "**Bank**") hereby unconditionally and irrevocably undertake to pay the Grantor, the sum of [amount in words] US Dollars (USD [amount in digits]) in accordance with the following terms:

- (i) We shall pay the Grantor immediately upon written demand and irrespective of any objection by the Concessionaire or any other party such amount or amounts as the Grantor may demand not exceeding in the aggregate the above mentioned amount, namely [amount in words] US Dollars (USD [amount in digits]) by transfer to the Grantor's account at any bank in Timor-Leste or in any other manner acceptable to the Grantor;
- (ii) It shall not be necessary, and the Bank hereby waives any necessity, for the Grantor to proceed against the Concessionaire before presenting to the Bank its demand under this Operation Security;
- (iii) All payments made based on the Grantor's demand shall be free and clear of, and without any present or future deduction for payment of any Tax, levies, duties, charges, fees, deductions or withholdings of any nature whatsoever and by whomsoever imposed;
- (iv) The undertakings contained in this guarantee constitute direct and fundamental obligations of the Bank and are unconditional and irrevocable. We shall not be excused from any or all of these obligations for any reason or reasons of whatever nature or source or any omission, act or proceeding by the Grantor or by a third party which would excuse or discharge us from the obligations and liabilities stated in this guarantee;
- (v) Our guarantee will remain in full force until a period of twenty-four (24) months starting on the day on which the Handover Date occurs has elapsed (the "Expiration Date"). This Guarantee may be extended upon simple joint written demand of the Concessionaire and the Grantor, for as long as such extension request is received by the Bank prior to the Expiration Date; and

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- (vi) This guarantee shall be governed by and construed in accordance with the laws of [●] and any dispute with respect to this guarantee shall be held and finally settled by the courts of [●].

Signed and sealed this [●] day of [●] 201[●] at [●].

The Bank

(Signature)

(Name)

(Designation)

(Address)

APPENDIX 10 - INDEPENDENT ENGINEER

The Works shall be supervised by the Independent Engineer to ensure quality and proper execution of the Works.

A different Independent Engineer can be appointed for each task (design or construction supervision).

The Independent Engineer shall have the following main scope of works:

- Advice on the technical feasibility of the design;
- Check the overall quality of design drawings;
- Ensure compliance of the design (technical specifications, drawings) with international standards and Grantor's requirements;
- Review and approve the Design Documents;
- Cost review;
- Countersign VGF Drawdown Request;
- Ensuring that work performed is as per specifications and Good Industry Practice to guarantee the quality of the Works;
- Monitor progress of Works and compliance with the Project Schedule;
- Prepare monthly and final progress reports and submit them to the Grantor in a format approved by the Grantor;
- Participate in meetings with the Grantor or the Concessionaire and the Concessionaire and his Subcontractors;
- Approval of materials to be used on site;
- Quantity surveying;
- Supervise and approve the Works;
- Elaboration of payment certificates;
- Monitor and interpret contract documents;
- Review Grantor Notice of Variations, Estimates and Concessionaire Notice of Variations and provide opinions if required;
- Carry out necessary tests and inspections to determine that the Port Facility is in conformity with Technical Specifications, Applicable Law, Permits and Good Industry Practice;
- Issue the Completion Certificate;
- Verify "as built" drawings of the Port Facility;

- Approve operation and maintenance manuals of the Port Facility;
- Review and determine whether the mitigations identified in the EIA submitted by the Concessionaire are being applied and approve the same;
- Monitor the implementation by the Grantor of the RAP or LRP;
- Review and determine whether the Environmental and Social Management and Monitoring Plans are being designed and applied by the Concessionaire as set out in this Agreement;
- Assess and determine the adjustments necessary to the Project Schedule and Scheduled Service Commencement Date following an event falling within Article 14.4; and
- Monitor compliance with all applicable E&S requirements, including E&S Law, IFC Performance Standards 1, 2, 3, 4, 5, 6, and 8 and EHS Guidelines.

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APPENDIX 11 - TERMS OF REFERENCE FOR EIA



**TERMS OF REFERENCE FOR
ENVIRONMENTAL IMPACT ASSESSMENT (EIA)
OF
TIBAR BAY PORT, TIMOR-LESTE**

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List of Acronyms

AAPA	American Association of Port Authorities
ADB	Asian Development Bank
BP	Best Practice
CBD	Convention on Biological Diversity
CEDA	Central Dredging Association
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CFS	Container Freight Station
CSIRO	Commonwealth Scientific and Industrial Research Organization (Australia)
EHS	Environment, Health and Safety
EIA	Environmental Impact Assessment
EMP	Environmental Management Plan
ESIA	Environment and Social Impact Assessment
ESPO	European Seaports Organization
FAD	Fish Aggregation Device
GHG	Greenhouse Gas
GoTL	Government of Timor-Leste
HPC	Hamburg Port Consulting GmbH
IAPH	International Association of Ports and Harbours
ICS	International Chamber of Shipping
IEE	Initial Environmental Evaluation
IFC	International Finance Corporation (of WBG)
IMarEST	Institute of Marine Engineering, Science and Technology
IMO	International Maritime Organization (UN)
LOA	Length Overall (of ships)
MARPOL	International Convention on the Prevention of Pollution from Ships
NAGD	National Assessment Guidelines for Dredging (Australia, 2009)
NB-SAP	National Biodiversity Strategy and Action Plan
NGO	Non-Government Organization
NOAA	National Oceanic and Atmospheric Administration (USA)
PD	Project Document (under Decree Law 5/2011)
PIANC	World Association for Waterborne Transport Infrastructure
PASS	Potential Acid Sulphate Soils
PS	Performance Standard (IFC)
REA	Rapid Environmental Assessment
SEC	Stakeholder Engagement and Consultation process
TEU	Twenty Foot Equivalent Unit (shipping container)

ToR	Terms of Reference
UN	United Nations
UNEP	United Nations Environment Programme
UNTAET	United Nations Transitional Authority in Timor-Leste
WBG	World Bank Group
WEDA	Western Dredging Association
WODA	World Dredging Association (WODA)

1. INTRODUCTION

The Purpose of the Terms of Reference for Environmental Impact Assessment (EIA) of Tibar Bay Port, Timor-Leste is to provide a detailed description of the work to be carried out by the concessionaire of the Tibar Bay Port in order to fulfill the requirements for Environmental Licensing of the Port.

2. BACKGROUND

The Government of Timor-Leste (GoTL) proposes to construct a new port facility in Tibar Bay, 10 km west of Dili, to replace the transportation of cargo traffic through Dili Port which is becoming increasingly congested. GoTL will go to tender for a private party to undertake the design, construction, financing and operation of the new port for a 30-year time period. The winning bidder will be required to prepare an environmental impact assessment (EIA) for the Project as one of its initial responsibilities.

GoTL is being assisted with the development of the Port by the International Finance Corporation (IFC). GoTL, with IFC's assistance, has identified a preferred site for the Port within Tibar Bay, prepared a conceptual Port design, prepared an environmental and social Scoping Study that identifies likely primary and secondary impacts of the Port, and prepared a range of other supporting studies for Port development.

Tibar Bay, running approximately 1.6 km east-west and 1 km north-south, was selected by GoTL as the most appropriate site for the new Port based on a range of considerations. Seven alternative port site layouts were then considered within the Bay based on operational, engineering, environmental, social and cost factors. A site on the western side of the Bay, (Figure 1), was selected as the preferred site based on its operational suitability, minimal environmental and social impacts, and cost effectiveness. Port facilities at this site are likely to consist of a 26.9 ha container terminal, 2.7 ha general cargo area and 11.6 ha for offices and workshops.

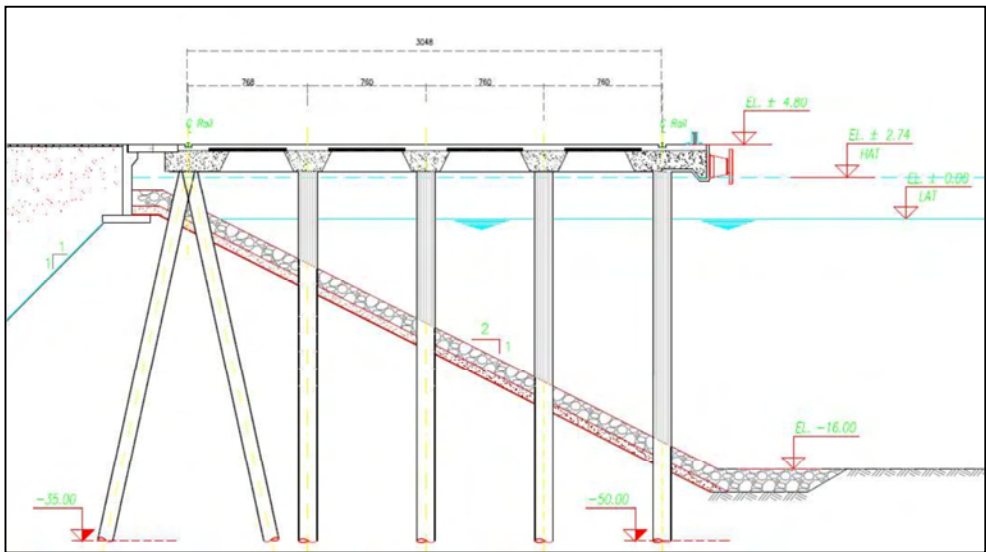
Port construction in Tibar Bay will require the creation of a 200 m wide approach channel through the western side of the reef across the mouth of the Bay, establishing a 600 m diameter turning circle within the Bay, construction of a wharf, land reclamation and some landside developments. The site will require the removal of around 30 ha of marine habitat, most notably consisting of approximately 18 ha of seagrass bed, up to 1 ha of live coral and between 1-3 ha of mangrove, depending upon the final design.

A concept design of the Port was developed by Hamburg Port Consulting (HPC), building on earlier work undertaken by Soros Associates (2012). A *Rapid Environmental Assessment* (REA) was conducted for the Port in September 2012 to provide a preliminary identification of environmental and social issues associated with the development. An environmental and social *Scoping Study* (2013) was prepared by EcoStrategic Consultants to provide a more detailed identification of issues and assist GoTL in selecting the preferred site within Tibar Bay.

Figure 1: Preferred port site within Tibar Bay



Figure 2: Proposed Cross-section of Piled Quay Wall with Rock-Armoured Slope



3. DETAILS OF THE PROPONENT

Tibar Port is proposed to be developed by the Ministry of Transport and Communication (MTC), Government of Timor-Leste (GoTL), with design, construction and operation to be undertaken on behalf of MTC by a private company under a concession agreement. MTC's contact details for Port development are:

Contact: Flavio Cardoso Neves
Position: Vice Minister, Ministry of Transport and Communication
Address: Rua Avenida Bispo de Medeiros, no 8, Mercado Lama, Dili
Phone: +670 3313755
Email: Flavio@neves.tl

The EIA will be undertaken by the concessionaire. These TOR will be included in the Concession Agreement between the GoTL and the private company.

4. LEGAL REQUIREMENTS

4.1 EIA Requirement and Preparation

Government licensing (or approval) of the Port is required under Timor-Leste *Decree-Law 5/2011 Environmental Licensing* prior to the commencement of construction. In accordance with Decree-Law 5/2011, Tibar Bay Port is classified as a Category A project as it may have significant environmental impacts, and as such it is subject to the preparation of an EIA and an Environmental Management Plan (EMP).

The EIA required under national law is equivalent to an Environmental and Social Impact Assessment (ESIA) required for IFC Category A projects. This ToR has been prepared to meet the GoTL requirements and IFC *Performance Standards*, to guide the preparation of the EIA in accordance with the project approval conditions. The EIA will be prepared by the Port Concessionaire, deemed to be the Project “Proponent”.

The EIA shall identify and assess the environmental and social risks and impacts of the Port, and design and incorporate appropriate impact avoidance and mitigation measures into Project design, construction and operation. This shall be done in accordance with:

- national legislation and regulations;
- IFC Performance Standards (PS);
- WBG Environmental, Health and Safety (EHS) Guidelines (WBG Guidelines); and
- other relevant best practices (BPs).

The EIA shall be prepared using suitably qualified and experienced environmental and social specialists. The level of detail provided in the EIA shall be commensurate with the Project’s environmental and social risks and impacts. The EIA shall assess the likely impacts of Port construction and operation, and plan appropriate impact avoidance and mitigation measures. The EIA will be prepared at the same time as the detailed design of the Port is prepared, with close collaboration occurring between the EIA team and port design team to optimize the design.

4.2 Environmental Assessment and Approval Process

Regulatory approval of development projects is undertaken by the National Directorate for Environment (NDE) under *Decree-Law 5/2011 Environmental Licensing* that defines the environmental licensing system for public and private projects that are likely to produce environmental and social impacts. The licensing system sets out the process, procedures, roles and responsibilities of the Project Proponent. The Project ‘proponent’ is defined as “*a person, including a legal person, both public and private, who requires a licence to carry out a project*” in the Decree.

The port proponent will be the private sector entity awarded the concession by GoTL to design, build and operate the Port (the ‘Concessionaire’).

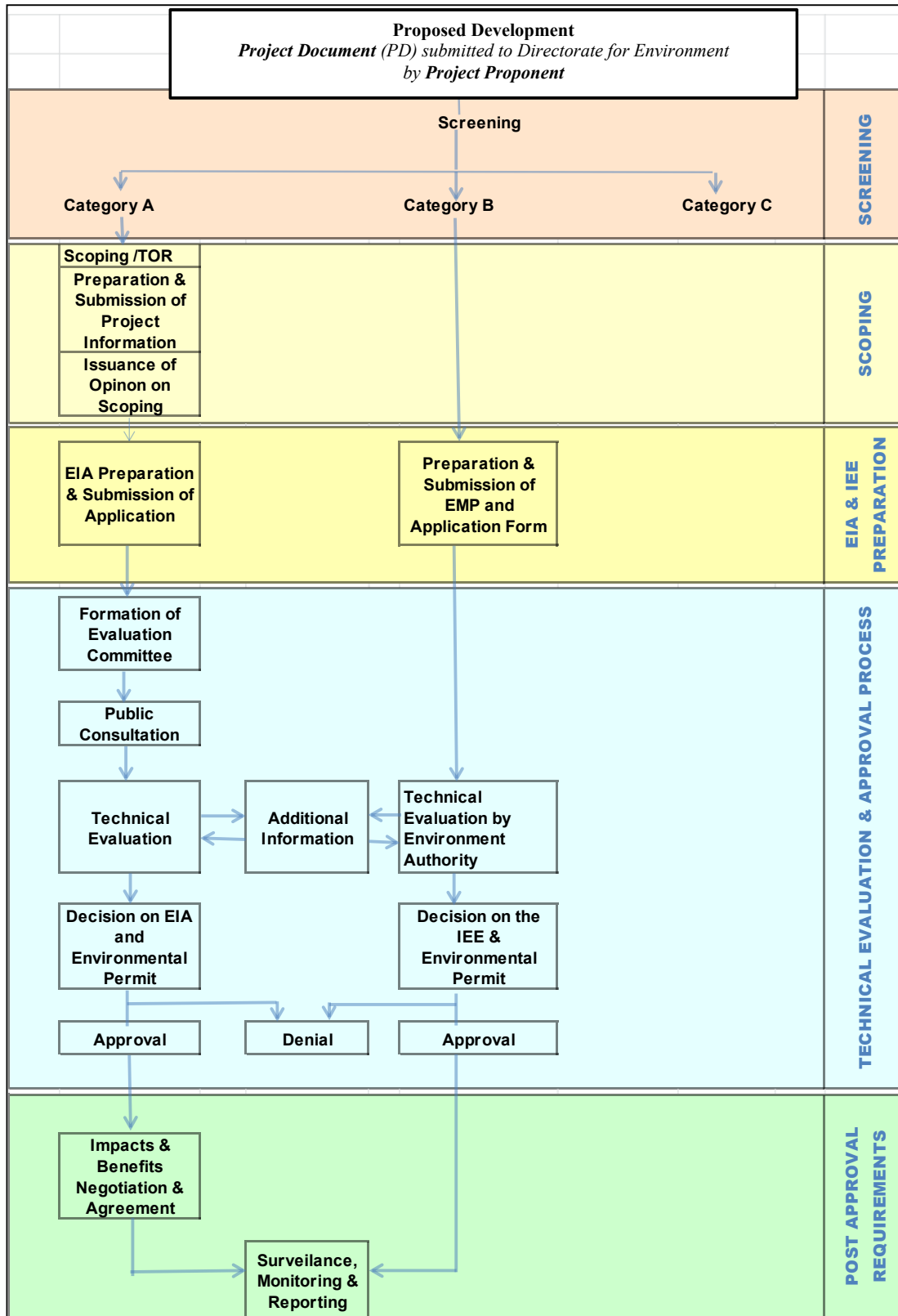
The EIA process commences when the project proponent prepares a Project Document (PD) and submits this to NDE. The PD identifies the proponent, describes the project, outlines the major likely impacts, provides layout drawings and site maps, and provides copies of any permits or government support already obtained. This has been completed by the Ministry of Transport and Communication as of May 2014.

In accordance with *Decree-Law 5/2011*, Tibar Bay Port is classified as a Category A development as it has “*the potential to cause significant adverse impacts*”, and therefore requires a detailed EIA. For Category A projects the proponent must prepare a Scoping Report and Draft ToR for the EIA for review by GoTL. GoTL has a maximum of 10 Business Days to review the ToR and provide comments to the proponent. The *Scoping Study* was completed in October 2013, and this document is the draft ToR.

The proponent – in this case the selected Concessionaire – then prepares the *Draft EIA* in compliance with the approved ToR, incorporating an Environmental Management Plan (EMP), and submits this to NDE for assessment. NDE establishes an Evaluation Committee consisting of representatives of relevant agencies and institutions to review the *Draft EIA*, and the report is made available for public review. The maximum *Draft EIA* review period, including technical review and consultation, is 50 days.

The *Final EIA* is prepared by the proponent taking into account the comments received from the Evaluation Committee’s technical review and public consultation, then submitted to NDE for approval. If the project is approved, an Environmental Permit is issued and may contain conditions of consent, including the requirement to implement the mitigation and monitoring measures set out in the EIA, EMP and other Project management plans.

Figure 3: Timor-Leste Environmental Impact Assessment and Licensing Process



Source: ADB, 2011.

4.3 Standards, Guidelines and Good industry Practice

In addition to Timor-Leste legal requirements and guidelines, the EIA shall comply with the following standards, guidelines and good international industry practice (GIIP).

4.3.1 World Bank / IFC Guidelines and Performance Standards

The EIA shall take into account World Bank Group (WBG) and IFC guidelines and performance standards, including, but not limited to:

- *IFC Performance Standards on Environmental and Social Sustainability*² (IFC, 2012);
- *Environmental Health and Safety (EHS) General Guidelines* (WBG, 2007);
- *EHS Guidelines for Ports, Harbors, and Terminals* (WBG, 2007); and
- *Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets* (IFC, 2007).

The EIA shall also be prepared in accordance with all applicable IFC Performance Standards (PS). Specific PSs that are known to apply to this development regardless of the site selected within Tibar Bay are:

- PS1: Assessment and Management of Environmental and Social Risks and Impacts.
- PS2: Labor and Working Conditions
- PS3: Resource Efficiency and Pollution Prevention
- PS4: Community Health, Safety, and Security
- PS5: Land Acquisition and Involuntary Resettlement
- PS6: Biodiversity Conservation and Sustainable Management of Living Natural Resources

Depending upon the site selected, PS8: Cultural Heritage may also apply.

Where WBG EHS Guidelines and IFC PSs differ from Timor-Leste regulations, the Project shall achieve whichever requirement, standard or guideline is more stringent.

4.3.2 Good International Industry Practice

The design, construction and operation of the Port shall comply with good international industry practice (GIIP) through the incorporation of impact avoidance and management measures into the design, construction and operation of the Project. The EIA shall identify and specify relevant GIIP to avoid and manage environmental and social risks and impacts associated with port design, construction and operation. GIIP that requires consideration is provided by the following organisations:

- International Maritime Organisation (IMO) - regime for shipping;

² IFC Performance Standards and World Bank Group EHS Guidelines - http://www.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/IFC+Sustainability/Sustainability+Framework/Sustainability+Framework+-+2012/#PerformanceStandards.

- International Association of Ports and Harbours (IAPH);
- International Chamber of Shipping (ICS);
- World Association for Waterborne Transport Infrastructure (PIANC);
- World Dredging Association (WODA);
- Central Dredging Association (CEDA);
- Western Dredging Association (WEDA);
- Institute of Marine Engineering, Science and Technology (IMarEST);
- United Nations Environment Programme (UNEP);
- Organization for Economic Cooperation and Development (OECD);
- American Association of Port Authorities (AAPA) - Environmental Management Handbook; and
- European Seaports Organization (ESPO) - Green Guide.

While Timor-Leste has yet to ratify the main IMO Conventions, or implement them nationally through domestic law, the Port will be planned, built and operated to fully comply with all relevant IMO conventions, standards and guidelines, consistent with GIIP and IFC’s PSs and guidelines.

5. ENVIRONMENTAL AND SOCIAL ISSUES

The environmental and social *Scoping Study* (2013) for the Project identified the potential risk and impact issues associated with the proposed development. These issues, depending upon the final site utilized in Tibar Bay, include:

Table 1: Potential Environmental and Social Impacts

	Potential Impacts	Feature Affected or Cause
Environmental	Biodiversity destruction/degradation	Coral, mangroves, seagrass beds, tidal flats, deeper water, indirect impact on key biodiversity areas, ship strike of larger marine creatures
	Changes to Bay and coastal hydrodynamics	Broad channel opened to the sea Wharf Land reclamation
	Bay foreshore erosion	Broad channel opened to the sea Wave refraction off the wharf Ship movement within the Bay
	Seawater quality deterioration	Dredging Spills – ships and cargo Releases from ships Seabed disturbance from ship movement within the Bay
	Sea/land degradation	Dredge material disposal Land reclamation Land-based cut and fill

		Induced landside development
	Drainage and sedimentation	Altered catchment drainage into the Bay
	Solid waste	Construction waste Ship waste Port waste
	Wastewater	Ship wastewater Port sewage Port stormwater runoff
	Noise	Construction activities Port operation Road traffic
Socio-economic	Resettlement	Households (between 2-20+)
	Loss or reduction in livelihoods	Effects on fishing, aquaculture, salt production, tidal flat resource collection, etc
	Business relocation	Oil terminal Ship maintenance facility
	Employment	APORTIL staff reduced New Port positions
	Loss of cultural heritage sites	Canoe launching site Freshwater springs Possible rock jetty*
	Damage to or loss of domestic water supply	Natural springs
	Restrictions to local access	Port structures blocking Bay access
	Safety	Construction Ship approach and docking Port operation
	Traffic	To/from the Port
	Reduced visual amenity	Tourist lodge, local houses, etc

* - feature unlikely to be affected by the use of proposed site.

The above issues will be assessed in the EIA at site, watershed, regional, national and cross-border levels as appropriate. Cross-border issues are likely to include potential impacts on marine ecosystems/biodiversity and seawater quality.

5.1 Study Area

The proposed study area includes the Suco Tibar and Suco Ulmera in the Sub-district of Bazarte, the marine area of Tibar Bay and the lower Tibar watershed. Nearby areas will also be considered where a potential influence on the Port or direct or indirect impact from the port may occur.

5.2 Timeline for EIA

Table 2: EIA Program

EIA Tasks / Milestones	Month											
	1	2	3	4	5	6	7	8	9	10	11	12
1. Submit EIA ToR	■											
2. ToR approval and commencement of the EIA	■											
3. Background research / literature review	■	■										
4. Stakeholder engagement within the EIA	■	■	■	■	■	■	■	■	■	■	■	■
5. Field surveys and impact assessment ¹		■	■	■	■	■						
6. Preparation of the Draft EIA			■	■	■	■						
Milestone 1: Draft EIA						■						
7. NDE technical review							■	■				
8. Preparation of the Final EIA								■	■			

Milestone 2: Final EIA																	
9. Submit EIA for approval																	
Milestone 3: Environmental Permit																	
10. Apply for other project permits (as required)																	
Milestone 4: Other Permits (as required)																	

1 - timed to account for seasonality (e.g. marine water quality sampling during (i) the monsoon season, and (ii) the dry southeast trade winds season; turtle surveys during the nesting season.

6. SCOPE OF WORK

EIA preparation shall involve the following minimum scope of work (but not necessarily be limited to these tasks), with many tasks to be undertaken concurrently. The structure of the EIA shall generally comply with the outline presented in Annex 1, but subject to change as required for the Project.

Task 1 – Review of Previous Studies and Information

Review Port planning and related environmental and social studies to identify and understand likely environmental and social risks and impacts likely to be associated with the development, and baseline conditions, including:

- *Due Diligence Draft Report Iia Technical and Operational Analysis* (HPC, 2013);
- *Environmental and Social Scoping Study* (EcoStrategic Consultants, 2013);
- *Rapid Environmental Assessment* (Millette, 2012);
- *Port Alternatives* (IFC, 2013);
- public consultation information; and
- other relevant information.

The *Scoping Study*, this *EIA ToR* and recent public consultation feedback are the main guides for initially identifying relevant environmental and social issues and risks associated with Port construction and operation, although the EIA team shall identify any other relevant issues during EIA preparation. The *Port Alternatives* summary discusses the operational, engineering, environmental and social rationale applied to select the preferred Port site. Other relevant environmental and social information on Tibar Bay, the district, region and nationally shall also be reviewed.

Task 2 – Collaboration on Port Design / Alternatives Analysis

The EIA team shall collaborate with the port design engineers during the preparation of the detailed design to ensure that appropriate impact avoidance and mitigation measures are built into the design. This process will commence early and involve on-going input during the design process, including: (i) joint site inspections by EIA team members and the design engineers to identify and discuss key issues and opportunities, and assigning responsibility for investigation/design/review; (ii) the presentation of recommended impact avoidance and mitigation measures and options to the engineering team early during detailed design; (iii) on-going input into the design process; and (iv) review of the detailed design prior to finalisation.

Based on this work, the EIA team shall: (i) draft the alternatives section of the EIA (incorporating the *Port Alternatives* (IFC, 2013) discussion), describing the alternatives that were examined and the rationale for the selected of each chosen alternative. This section will also assess the ‘do nothing’ port development scenario; and (ii) report on the agreed impact avoidance and mitigation measures for Port design, construction and operation in the impact assessment and EMP sections of the EIA.

Task 3 – Project Description

A detailed project description shall be prepared based on the selected port design, illustrated with layout plans and area maps. This description shall include a summary of the design and port operation.

Task 4 – Review of Policy, Legal and Administrative Framework

Review and describe national and local (District, Sub-district and Suco) environmental and social laws/decrees, regulations, policies and strategies that relate to Project siting, design, approval and operation, and the Project's obligations under these laws and policies, including:

- environmental laws, natural resources laws, social laws, planning laws, transport laws, maritime laws and fisheries laws;
- traditional customary laws (Tarah Bandu) and how the project will comply with these.
- all relevant national policies, strategies and action plans, including but not limited to the SDP (GoTL, 2011a), the National Infrastructure Plan (GoTL 2009), the National Biodiversity Strategy and Action Plan (NB-SAP) (GoTL 2011b) and National Adaptation Program on Climate Change (NAP-CC) (GoTL, 2010) and how the project will comply with these.
- international treaties and conventions that Timor-Leste is a signatory to or is in the process of considering (e.g. Convention on Biological Diversity (CBD), Convention on Combating Desertification (CCD), UN Framework Convention on Climate Change (UNFCCC), relevant maritime conventions and instruments of the International Maritime Organization (IMO)). Describe how the Project will comply obligations under these laws/decrees, regulations, etc.

Identify and describe applicable WBG EHS Guidelines, IFC PSs and guidelines, and the guidelines of any co-financiers. Explain the requirements, standards and guidelines relating to Project siting and design, approval, mitigation measures and treatment standards, public consultation, and monitoring and reporting³.

Task 5 – Stakeholder Engagement / Public Consultation

Comprehensive stakeholder engagement shall be undertaken by the Concessionaire/EIA team during the preparation of the EIA in accordance with *Decree Law 5/2011*, relevant IFC Performance Standards and the IFC *Stakeholder Engagement Handbook* (2007), commensurate with Project risks and impacts. This will form a significant component of the Concessionaire's early stakeholder engagement, which will continue over the life of the Concession.

This engagement process will build upon GoTL's initial engagement, learning lessons from the effectiveness of this with different stakeholder groups, to focus on the detailed project design and EIA preparation phases of the project. As such, the Concessionaire shall coordinate its activities with those of GoTL to ensure that the process continues in a structured manner, with both parties contributing to the activities as required.

Key elements of stakeholder engagement during EIA preparation shall include:

- Systematic identification of project stakeholders and their interests;

³ The World Bank EHS Guidelines - <http://www.ifc.org/ifcext/sustainability.nsf/Content/EHSGuidelines>.

- Review of regulatory requirements for stakeholder engagement on projects;
- Seeking input from stakeholders on how they wish to be consulted;
- Preparation of a stakeholder engagement plan commensurate with project impacts;
- Provision of information ahead of consultations on environmental and social impacts;
- Using consultation to enhance mitigation and agree compensation and benefits;
- Maintaining involvement with government-led consultation;
- Reporting changes in the evolving project design to stakeholders on a regular basis;
- Documenting the process and results of consultation;
- Integrating stakeholder information across the project planning functions.

(taken from IFC, 2007)

The Concessionaire shall prepare a Stakeholder Engagement Plan that covers the above elements and how stakeholder engagement activities will be integrated into the Concessionaire's environmental and social management system.

Engagement will primarily be with the affected people to: (i) gather baseline information and discuss mitigation, compensation and benefits (livelihood restoration, land use planning and other project mitigation measures); (ii) keep people informed about Project developments; and (iii) respond to issues as they arise. Engagement will also involve the broader community, Government agencies and NGOs.

Task 6 – Collection of Baseline Data

Baseline environmental and socioeconomic conditions relevant to Project impacts and risks shall be described for the Project's area of influence, including covering any associated facilities and potential indirect impacts. Baseline information shall be relevant to likely significant and secondary Project risks and impacts, with the level of detail commensurate with the significance of the associated risks and impacts (type, scale and location). It shall cover the range of physical, biological, socioeconomic and physical cultural features that are likely to be affected. Baseline information shall be presented for different spatial levels (e.g. site, adjoining area, Sucos (Tibar and Ulmera), Sub-district (Bazartete), District (Liquica) and nationally).

Secondary data shall be used where relevant (e.g. statistical records, census records, government reports, NGO publications, academic studies and texts, topographic maps, aerial photos, satellite imagery). Where secondary information is inadequate or unreliable, primary data shall be collected by specialists applying industry-recognized survey and analysis methods. All field sampling shall be designed to provide a statistically rigorous baseline for future monitoring, establishing reference or control sites as required. Field sampling shall take account of seasonal factors. Features will be mapped in a GIS where appropriate.

Baseline conditions will form the benchmark against which Project effects are predicted and measured. The baseline description shall include, but not be limited to:

Marine: bathymetry; oceanography, hydrodynamics and coastal processes; seawater quality; marine sediment characterization (including potential acid sulphate soils - PASS), including potential contamination; marine habitats and biodiversity; studies to support dredge material disposal.

Terrestrial: topography; geology; hydrology and drainage; climate; watershed condition; land use/cover; air quality; water availability and quality; noise; habitats and biodiversity, including nearby protected areas; infrastructure.

Socioeconomic: region/district/Suco context (governance, administration, population, indigenous people, education and literacy, settlement pattern, land tenure, public health and amenities, vulnerable groups, etc); socioeconomic conditions of directly and indirectly affected local households, including livelihoods (marine and land use, other), income, assets, living conditions; vulnerable groups; local businesses; cultural heritage and archaeology; views of local people.

Field surveys and/or modeling required to determine baseline conditions at Project sites and surrounding features that are likely to be affected by the Project include:

Marine

- Hydrodynamics and coastal processes – Bay and coastline (based on oceanographic data and modeling);
- Marine sediment quality and PASS – on proposed excavation/dredging sites. Describe the parameters set out in the Australian National Assessment guidelines for Dredging (NAGD, 2009) and guidelines under the London Protocol (e.g. IMO 2009 and IMO 2005). The geological survey is testing 15 samples tested for PASS, which may be sufficient;
- Marine habitat and biodiversity – within and immediately adjacent to the Bay, including mangroves, seagrasses, coral reefs and fisheries, building upon previous studies. The presence of any IUCN Red List species or *UNTAET Regulation No. 2000/19 Protected Areas* listed species. A survey of marine mega-fauna (cetaceans, whale sharks and manta rays) will also be undertaken between Tibar and Atauro;
- Benthic communities - Project footprint;
- Fish Aggregation Devices (FADs) (rompongs) – offshore;
- Seawater quality;
- Underwater noise survey;
- Dredge material dump site studies (in accordance with London Protocol and Aus NAGD 2009);
- Survey and mapping of FADs (rompongs).

Terrestrial

- Habitat/vegetation survey - project footprint and adjoining areas;
- Wildlife survey - project footprint and adjoining areas, Tasitolu wetland;
- Land use survey – directly affected land and adjacent areas;
- Sedimentation study – assessment of Tibar catchment sediment loads entering the Bay;
- Water quality sampling – surface and groundwater.

Social

- Socioeconomic survey, census and asset register of directly affected households – Port footprint, adjacent areas and households reliant on Bay natural resources for their livelihoods – to identify the persons who will be displaced by the project, determine who will be eligible for compensation and assistance;
- Socioeconomic survey of indirectly affected households living in proximity to the Bay;
- Cultural heritage and archaeology survey – Port footprint (including potential historical “rock jetty” if it may be affected);
- Any field surveys required for Economic Valuation of Ecosystem Services.

The EIA team will identify the need for any additional baseline surveys and conduct these during EIA preparation as required.

Task 7 – Assessment of Risks and Impacts

Project risks and impacts shall be assessed in accordance with the requirements and standards set out in *Decree Law 5/2011*, IFC Performance Standards, WBG guidelines and other relevant guidelines. The assessment will cover all risks and impacts using recognized methods as applicable, but shall focus on the potentially significant impacts. Impacts shall be identified in the context of the Project’s area of influence, covering: the Project footprint (Port facilities, dredge material disposal sites, borrow areas, etc) and other areas likely to be directly affected by Project activities; indirect impacts from unplanned but predictable developments; associated facilities⁴; and cumulative impacts⁵. Impact avoidance and mitigation measures shall be designed for the Project to enable the Port to achieve compliance with national legislation, IFC PSs and WBG EHS Guidelines, whichever is more stringent. These measures shall be incorporated into Project design, construction and operation.

Impact assessment shall take into account the views and concerns of key stakeholders, including affected people, representatives of affected communities, relevant authorities and NGOs. Impacts shall be described in terms of: being adverse or beneficial, direct / indirect, cumulative, localised / regional / cross-border / global, duration, and permanent / temporary / reversible. Wherever possible impacts shall be objectively described (quantified) rather than simply subjectively described.

Impact assessment will address, but not be limited to, the following impact issues:

Environmental

- **Alteration of Bay/coast hydrodynamics** – changes to tides, surge levels, circulation patterns, coastal and Bay erosion and accretion, from land reclamation, dredging, the wharf and possible breakwater;
- **Sea/land degradation** – dredge material disposal (type and volume of material, site options, disposal methods), Bay foreshore erosion, etc;

⁴ Associated facilities - facilities that are not funded as part of the project and that would not have been constructed or expanded if the project did not exist and without which the project would not be viable (IFC, 2012).

⁵ Cumulative impacts – result from the incremental impact on areas or resources used or directly impacted by the project, from other existing, planned or reasonably defined developments at the time the risks and impacts identification process is conducted (IFC, 2012). Limited to adverse impacts on key valuable environmental and social components.

- **Seawater quality deterioration** – Port stormwater runoff, potential spills, ship movements in the Bay, etc;
- **Catchment drainage and Bay sedimentation** – processes, volumes, etc;
- **Land use change** – conversion of public and private land uses into port facilities, areas, current land use and cover;
- **Habitat destruction/degradation and biodiversity loss** - loss of benthic and pelagic habitat from dredging and land reclamation; clearing of mangroves; loss of tidal flats; impact on Bay fisheries and nursery values; offshore dredge material dumping; degradation from increased turbidity / sedimentation from dredging and dumping, oil and chemical spills; effects of changes to hydrodynamics and coastal processes on marine habitats; impacts on marine turtles, dugong, crocodiles, cetaceans, whale sharks and manta rays (e.g. vessel strikes, underwater noise, port and ship lighting).
- **Ecosystem services** - loss of Bay/offshore fisheries, seagrass beds, coral, mangroves, tidal flat resources, by area and type; etc;
- **Pests and invasive species** – potentially introduced from construction machinery, ship ballast, hull fouling and cargo;
- **Water use** - Port domestic water supply, container wash-down, supply to ships – volume, quality and source/s;
- **Solid waste** - solid waste management, including MARPOL-compliant ships-waste reception facilities – types, volumes, disposal methods;
- **Wastewater and stormwater** – sewage treatment and discharge; process water (container wash-down, vehicle and machinery cleaning bays, workshops); hazardous material spills; ship discharges (bilge water, ballast water, sewage, garbage and anti-fouling) and MARPOL compliance; and stormwater runoff treatment;
- **Dredging and dredge material disposal** – impacts from construction and maintenance dredging on seawater quality, marine habitats and resources within the Bay, at dredge material disposal sites and along the coast; type and volume of material, site options, disposal methods, including PASS management;
- **Air quality** – construction and operation, including dust and vehicle emissions;
- **Underwater noise** - construction phase (e.g. pile driving) and operational phase (e.g. ships engines), with special consideration of impacts on cetaceans, whale sharks and manta rays using the straits between Tibar Bay and Atauro Island;
- **Noise** - Port activities, increased traffic along the main road – predicted noise levels compared to existing background levels;
- **Greenhouse gas emissions, climate change impacts and adaptation** – estimate of Port GHG emissions during construction and annual emissions during operation (black, green and blue carbon emission estimates); measures to reduce emissions; predicted climate change impact on the Port; adaptation measures to address impacts.

Social

- Land acquisition and physical displacement – number of households and people affected, land types and areas acquired, etc;
- Economic displacement / loss of livelihoods – loss of subsistence livelihoods (fisheries, mangroves, akadiru palm, mesquite forest, grazing areas, salt ponds, fish ponds, other marine and terrestrial resources); local businesses and employment (including the impact on workers at the existing Dili port); compensation and alternative livelihoods.
- Population change – resettlement, in-migration;
- Loss of facilities and amenities – loss/replacement of water supply, sanitation, Bay access, etc;
- Loss of cultural heritage sites – types and significance of sites;
- Safety – worker and community safety during Port construction and operation;
- Traffic – during construction and operation, primarily between Dili and the Port; and
- Reduced visual amenity – particularly from locations close to the Port (western side) and from businesses or activities that utilise the views (e.g. Tibar Bay Resort).

Task 8 – Preparation of Management Plans

Environmental and social management plans / operational procedures shall be prepared detailing the measures to be implemented during the pre-construction, construction and operation phases of the Project to mitigate impacts and improve Project performance. Measures shall be developed based on the mitigation hierarchy, commencing with avoiding risks/impacts, followed by minimizing them, and finally compensating/offsetting residual impacts.

Each plan shall generally include: a summary of the significant adverse environmental and social impacts and risks that the measures are designed to avoid/mitigate/offset/compensate; aims of the actions/measures contained in the plan; associated project approvals, permits, conditions, and the standards against which they are assessed; the proposed measures/actions; implementation responsibilities; monitoring program (monitoring, audits, corrective actions, reporting); implementation schedule; and cost estimates and funding sources.

At a minimum, the following management plans shall be prepared:

Environmental

- **Environmental Management Plan (EMP)** – setting out impact mitigation measures to be implemented during the pre-construction, construction and operation phases of the Project. The EMP shall describe the main likely impacts of the Project, describe specific feasible and cost-effective mitigation measures that will be implemented to avoid or reduce adverse impacts, and set out implementation responsibilities and the monitoring regime.
- **Dredging Management Plan** – construction and maintenance dredging and dredge material management:
 - dredging minimization: e.g. alignment and positioning of channels, swing basins(s) and berths to optimize existing depth and natural scouring; use of real-time Under Keel Clearance (UKC) modeling and tidal windows to optimize ship-loadings
 - characterization of dredged material (based on Aus NAGD 09 and IMO sampling

guidelines);

- productive use of dredge material (e.g. land reclamation);
 - offshore dump site selection - in accordance with the London Protocol, all related IMO guidelines and Aus NAGD 2009; considering impacts on Atauro and neighbouring islands, fisheries and rompongs;
 - impact mitigation: turbidity containment, sediment minimization, real time monitoring of dredge plume dispersal with pre-set environmental trigger values at receptor sites (e.g. light over seagrasses or sedimentation on reefs) to enable real time, reactive management;
 - management, mitigation and monitoring of dredging – monitoring of dump-plume dispersal; real time monitoring during dumping with pre-set environmental trigger values at receptor sites to enable real time, reactive management.
- **Port Marine Spill Contingency Plan** - consistent with IMO, ITOPF and IPIECA planning guidelines.
 - **Biodiversity Action Plan** – Bay management to maintain/improve ecosystem health, and proposed biodiversity offsets (e.g. *Avicinea marina* mangrove rehabilitation in the Bay, establishment of community-based Marine Protected Areas (MPAs) in Tibar Bay, on the coast immediately west of Tibar Bay, at other significant coastal sites such as Hera, Metinaro and Manatuto.

Social

- **Livelihood Restoration Plan** – if the Project only involves economic displacement (no physical displacement), a Livelihood Restoration Plan will be developed setting out compensation for affected persons (including workers at the existing Dili port) and/or communities and other assistance measures. The Plan will establish the entitlements of affected persons and/or communities and will ensure that these are provided in a transparent, consistent, and equitable manner. Note: if physical displacement is required then livelihood restoration measures shall be incorporated into the Resettlement Action Plan rather than producing a separate plan.

Task 9 – Coordination, Reporting, Approvals and Transaction Support

The EIA team shall manage the entire EIA process, including related stakeholder engagement. The team shall closely coordinate and collaborate with the Port design team and other technical consultants engaged by the Concessionaire, and with GoTL, to ensure that:

- the timing of the EIA process is aligned with the Port design process and required regulatory approval;
- recommendations to minimize adverse environment and social impacts of the Port are incorporated into the engineering design, construction and operation activities; and
- any reasonable concerns and issues identified during stakeholder engagement are addressed in the planning of design, construction and operation of the Port.

The Concessionaire shall convene joint team meetings with the EIA team and design team to identify issues and opportunities relating to Port design and the avoidance and mitigation of environmental and social impacts.

The Concessionaire, with the assistance of the EIA team, shall provide support to GoTL regarding environmental and social matters relating to the Government's public engagement program as the need arises.

The Concessionaire, as the Project 'Proponent', shall submit the Draft EIA and Final EIA to GoTL and shall apply for any other regulatory approvals required for the Port.

The EIA team/Concessionaire shall prepare monthly progress reports for GoTL and IFC.

7. STATEMENT OF FLEXIBILITY

The EIA study area, project alternatives and impact issues being assessed may be subject to change as the EIA process proceeds and new information is obtained. Where this occurs the scope of the EIA will be expanded to ensure that these new issues are adequately covered.

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9. ANNEX 1: GENERAL SPECIFICATIONS OF THE PROPOSED PORT

Port Component	General Description
Port purpose	A terminal primarily designed for container handling and vehicle and machinery imports, with the capacity for occasional general cargo operations.
Design vessels	3,500 TEU container vessel with 245 m LOA (base case); and 7,000 TEU container vessel with 280 m LOA (long-term prediction).
Berths	Parallel berthing for both design vessels, requiring an ultimate quay length of 630 m, with development of one berth (for 245 LOA vessel) prior to 2028 , followed by the second berth (for 280 m LOA vessel).
Dredging	Capital dredging of approximately 3.9 million m ³ of material, including through sections of coral reef, to provide a 200 m wide access channel, a 600 m diameter turning circle in the Bay and berth pockets, all dredged to -15 m below Chart Datum.
Dredge material disposal	Use of approximately 2 million m ³ as fill in land reclamation and dumping of the remainder (approx. 1.9 million m ³) at an offshore sea dumping site (to be selected in accordance with the London Dumping Protocol)
Quay wall	Piling to create a quay wall (630 m long) in front of the reclaimed land, and armoring of the slope under the deck to guarantee stability against sea erosion and turbulence generated by ships.
Land reclamation	<p>Reclamation of around 25-30 ha of the Bay and adjacent inter-tidal flats, mangroves and low coastal land with 2~ million m³ of fill, to be sourced from dredged material to create land for shoreside infrastructure, including:</p> <ul style="list-style-type: none"> • container and imported vehicle handling and storage yard, • container wash-down and quarantine facility (possible), • customs area, • Container Freight Station (CFS), • maintenance workshops, • administration and other support buildings; and • parking, main gate and road access.
Breakwater	Possible construction of a small breakwater on the western to shelter berths from swell and waves.
Boat berths	Development of dedicated berths for tugs, line boat and/or pilot boat.
Supporting infrastructure	<p>Provision of other supporting infrastructure, including:</p> <ul style="list-style-type: none"> • vehicle and machinery fueling station, • electrical supply system and lighting, • potable water supply system, • fire-fighting system, • rainwater / stormwater drainage system, • sewerage system, • solid waste management system, and • marine navigation aids to mark the port entrance and access channel, in accordance with IALA Region A standards.

10. ANNEX 2: EXAMPLE OF EIA STRUCTURE

The following Table of Contents is provided for general guidance only, as an example of the minimum content required in the EIA. This is expected to be developed during the preparation of the EIA.

1. INTRODUCTION
2. PROJECT DESCRIPTION
3. EIA METHODOLOGY
4. ASSESSMENT OF ALTERNATIVES
 - 4.1 No development
 - 4.2 Coastline locations
 - 4.3 Tibar Bay sites
 - 4.4 Port design
5. RELEVANT LAWS, REGULATIONS, POLICIES AND GUIDELINES
 - 5.1 National
 - 5.2 Local
 - 5.3 International
6. BIO-PHYSICAL ENVIRONMENT
 - 6.1 Topography and bathymetry
 - 6.2 Geology, soils and marine sediments
 - 6.3 Climate
 - 6.4 Hydrodynamics, hydrology and water quality
 - 6.5 Land use/cover
 - 6.6 Ecosystems and biodiversity
 - 6.7 Oceanography and coastal processes
 - 6.8 Air quality
 - 6.9 Water sources and quality
 - 6.10 Transport and infrastructure
 - 6.11 Climate change and sea level rise
7. SOCIOECONOMIC AND CULTURAL ENVIRONMENT
 - 7.1 Administration
 - 7.2 Demographics
 - 7.3 Land tenure
 - 7.4 Livelihoods and employment
 - 7.5 Public health
 - 7.6 Cultural heritage
8. IMPACTS AND MITIGATION MEASURES - CONSTRUCTION PHASE
 - 8.1 Land-based construction activities
 - 8.1.1 Impacts on terrestrial biodiversity - clearing of site vegetation
 - 8.1.2 Demolition of existing buildings & infrastructure
 - 8.1.3 Construction of new facilities
 - 8.1.4 Sourcing or construction & fill material
 - 8.1.5 Changes to land-form, erosion, drainage & runoff
 - 8.1.6 Traffic
 - 8.1.7 Impacts on air quality - noise, dust & fumes
 - 8.1.8 Impacts on soil quality
 - 8.1.9 Impacts on freshwater quality, including groundwater
 - 8.1.10 Terrestrial socioeconomic & cultural impacts

- 8.2 Marine-based construction activities
 - 8.2.1 Impacts of dredging
 - 8.2.2 Impacts of dredge spoil disposal
 - 8.2.3 Impacts of land reclamation
 - 8.2.4 Impacts of wharf construction, pile driving & sheet pile driving
 - 8.2.5 Installation of mooring dolphins and aids to navigation
 - 8.2.6 Potential introduction of marine pests
 - 8.2.7 Potential marine spills (oil and chemicals)
 - 8.2.8 Marine waste management
 - 8.2.9 Marine socioeconomic & cultural impacts
- 8.3 Potential construction phase impacts on Key Biodiversity Sites

9. IMPACTS AND MITIGATION MEASURES - OPERATIONAL PHASE

- 9.1 Land-based operations
 - 9.1.1 Traffic
 - 9.1.2 Impacts on air quality - noise, dust & fumes
 - 9.1.3 Impacts on soil quality
 - 9.1.4 Impacts on freshwater quality, including groundwater
 - 9.1.5 Container wash-down and effluent discharge
 - 9.1.6 Stormwater drainage and discharge
 - 9.1.7 Hazardous cargoes and dangerous goods handling
 - 9.1.8 Terrestrial socioeconomic & cultural impacts
- 9.2 Marine-based operations
 - 9.2.1 Impacts of maintenance dredging and dredge spoil disposal
 - 9.2.2 Impacts on hydrodynamics and coastal processes
 - 9.2.3 Potential marine spills
 - 9.2.4 Potential introduction of marine pests (bio-fouling & ballast water)
 - 9.2.4 Ships' anti-fouling
 - 9.2.5 Ships waste management
 - 9.2.6 Marine socioeconomic & cultural impacts
- 9.3 Potential operational phase impacts on Key Biodiversity Sites

10. ENVIRONMENTAL MANAGEMENT PLAN

- 10.1 Management responsibilities
 - 10.1.1 Traffic
 - 10.1.2 Impacts on air quality - noise, dust & fumes
- 10.2 Impact mitigation measures
- 10.3 Monitoring program
 - 10.3.1 Environmental monitoring
 - 10.3.2 Resettlement monitoring
- 10.4 Auditing program
 - 10.4.1 Environmental compliance audits
 - 10.4.2 Resettlement compliance audits
- 10.5 Staff requirements
- 10.6 Implementation cost estimates
- 10.7 Institutional support

11. ENVIRONMENTAL OFFSETS

12. ECONOMIC ANALYSIS

- 12.1 Project cost
- 12.2 Marine-based operations
 - 12.2.1 Direct economic benefits
 - 12.2.2 Indirect economic benefits

12.3 Cost of impact mitigation measures

13. STAKEHOLDER ENGAGEMENT & COMMUNITY CONSULTATION

13.1 Information dissemination

13.2 Interviews

13.3 Group meetings

13.4 Public Hearings

13.5 Recommendations of affected people

14. CONCLUSIONS & RECOMMENDATIONS

REFERENCES

APPENDICES

APPENDIX 12 – CONCESSIONAIRE SHAREHOLDING

[to be filled in]

S.No	Name of Shareholder	Holding (%)
Lead Shareholder		
1		
Other Shareholders		
2		
3		
4		
5		

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APPENDIX 13 – AGREED FORM OF DIRECT AGREEMENT WITH LENDERS

[TO BE INSERTED]

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**APPENDIX 14 – AGREED FORM OF DIRECT AGREEMENT WITH KEY
SUBCONTRACTORS**

[TO BE INSERTED]

APPENDIX 15 – LOCAL DEVELOPMENT PLAN

[TO BE INSERTED]

APPENDIX 16 – INDICATIVE FINANCIAL PLAN

[TO BE INSERTED]

APPENDIX 17 - NET EQUITY CASH FLOW

The Net Equity Cash Flow is an amount corresponding to projections in the Concessionaire's cash flows. The formula to calculate the Net Equity Cash Flow (NECF) is as follows:

$$\text{NECF} = (\text{Net Income} + \text{Dep} - \text{NWC}) - \text{CAPEX} + \text{GP} - \text{PRIN} + \text{LDD}$$

WHERE:

Net Income is calculated as follows:

$$\text{Net Income} = \text{Revenues} - \text{Opex} - \text{Concession Fee} - \text{Dep} - \text{NIE} - \text{Tax}$$

For the purposes of calculating the Net Income, the terms included in this formula shall have the meanings ascribed set out below:

Revenues	means all Concessionaire revenues
Opex	means the direct costs incurred or to be incurred by the Concessionaire in providing the Services in accordance with the Agreement excluding CAPEX (as defined in the formula for calculating the Net Equity Cash Flow),
Concession Fee	means the Concession Fee as defined in this Agreement
Dep	means depreciation/amortization and other non-cash items, being provided that Dep shall be based on the accounting methodology used by the Concessionaire's auditors
NIE	means net interest expense equal to interest expense (interests paid by the Concessionaire in relation to any debt) minus interest income
Tax	All Tax payable by the Concessionaire

NWC means net increases in working capital, which are the increases in current assets less increases in current liabilities;

CAPEX means capital expenditures projected to be incurred less asset disposals, less avoided capital expenditures;

Dep has the meaning ascribed to this term in the formula for calculating Net Income;

GP means VGF Payments and other forms of direct payment by the Grantor to the Concessionaire;

PRIN means debt principal payments (under the Financing Documents) relating to new loans incurred to finance the variation (in the case of a Grantor Variation or Concessionaire Variation); and

LDD means drawdowns/disbursements on new loans incurred to finance the variation (in the case of a Grantor Variation or Concessionaire Variation).