

KPT website

Karachi International Container Terminal (KICT)

KICT, is already operational at the West Wharf. It was developed in phases. Initially two phases were operational with terminal area of 135,122 sqm and an annual capacity of 400,000 TEUs. Previously with only two phases functional, terminal area of 135,122 sq.m. Cost of Phase I & II is USD 65 million.

Phase-III has also been completed. This was inaugurated by Honorable Prime Minister Syed Yousuf Raza Gilani in November, 2008.

KICT website

In this phase, the terminal has an area of 260,000 sq.m with an additional investment of US\$ 55 million. The total Terminal capacity shall be increased to 700,000 TEUs. The 973 m long berths of the terminal are deepened to cater for 14 meter draught container ship. The Terminal is equipped with 6 gantry cranes, 15 RTGs, 4 Top lift, 4 empty handler, 50 chasis etc. Presently they are handling 806,000 TEUs per year

<http://cable.tmcnet.com/news/2011/01/23/5260798.htm>

Karachi International Container Terminal (KICT), Pakistan's leading container terminal operator, has been in operation since 1998. It is located within the Port of Karachi, a natural deepwater harbour west of the Indus Delta on the Arabian Sea. The facility has five berths equipped with modern container-handling equipment.

Pakistan & Gulf Economist Via Acquire Media NewsEdge) Karachi International Container Terminal (KICT) is located west of the Indus Delta in the natural deep-water harbor of the century old Port of Karachi. Subsequent to the signing of the concession agreement by the international project sponsors with Karachi Port Trust (KPT) in June 1996, KICT was formed as the Terminal Operating Company with the object of setting up a common user dedicated international container terminal at Karachi Port on the existing berths 28 to 30 at West Wharf on a build, operate and transfer (BOT) basis.

The terminal has since been expanded to berth nos. 26, 27, 28, 29 and 30. KICT, the first and largest international container terminal operator at Karachi Port, commenced commercial operations in November 1998, and has since been "Pakistan's leading container terminal operator", both in terms of productivity and efficiency. KICT is also the first container terminal operator in Pakistan to gain compliance with the International Ship and Port Security (ISPS) Code and receive ISO 9001:2000 certification.

As a member of the Hutchison Port Holdings (HPH) Group, KICT enjoys the support and expertise of the world's leading port investor, developer and operator to help transform KICT into a major container handling facility, capable

of receiving the region's increasing container trade. As an organization that actively invests in the development of modern port infrastructure, HPH is committed to playing a significant role in the development of the economies and the expansion of international trade opportunities for the countries in which it operates. Today HPH, a subsidiary of Hutchison Whampoa Limited (HWL), operates 306 berths in 50 ports, spanning 25 countries throughout Asia, the Middle East, Africa, Europe, the Americas and Australasia. In 2009, the HPH Group handled a combined throughput of 65.3 million TEU worldwide.

KICT - TERMINAL OPERATOR OF CHOICE Located on the Arabian Sea, KICT is strategically positioned at the confluence of the world's major shipping routes providing international shipping connections to leading hub ports in Asia, Middle East, Europe and North America. Additionally, it provides excellent rail and road connections to Pakistan's major up-country industrial and manufacturing zones.

As Pakistan's shipment of containerized cargo consistently grows apace with the market economy, it is matched by KICT's ability to handle increasing numbers of containers. In 2009 KICT recorded a container volume throughput of 724,000-TEU.

KICT's close proximity to Pakistan's banking & financial sector, ease of access, a dense network of services, 24/7 operations ensured to the highest security, safety and environmental protection standards, and a pool of managerial talent with international experience further augments KICT's strategic role as the key conduit for international trade with a rapidly-changing, knowledge-based world.

SHIPPING LINES OPERATING AT KICT Shipping lines operating at KICT serve ports around the world with the services spanning the globe. These include APL, COSCO, MOL, Yang Ming Line, Evergreen, Hyundai Merchant Marine, Samudera Shipping Line Ltd, NYK, Maersk Line, OOCL, Hanjin Shipping, TS Line, Hamburg Sud and many other Non Vessel Operating Common Carrier (NVOCC) operators.

KICT FACILITIES KICT occupies a cumulative area of 26.03 hectares and comprises three berths of which one is under development with a total quay wall length of 973 metres and current depth alongside of 12.5 metres. In addition to building existing container yard, KICT also constructed and enhanced supporting infrastructure, to include the expansion of in and out gatehouse lanes, in-house engineering department, marine operations and services buildings. KICT is also equipped with a temperature-controlled reefer facility offering reefer plugs capacity of 528 plugs for handling of perishable cargo in refrigerated containers.

The terminal is equipped with 7 ship-to-shore (STS) gantry cranes and two mobile harbour cranes (MHC). In supporting quayside operations, the container yard has a total of 23 rubber-tyred gantry cranes (RTGC) with a stacking arrangement of up to 'one-over-six'. In addition, KICT is outfitted with modern container handling equipment including terminal tractors, forklifts; chassis, reach stackers and empty hndlers.

KICT PHASE-III DEVELOPMENT With huge foreign direct investment, KICT has to-date been expanded in three

phases, with the latest being the Phase-III extension. The Phase III extension of KICT was initiated in collaboration with KPT, to build the infrastructure needed to meet the growing cargo-handling needs of Karachi Port.

KICT Phase-III extension involved deepening the alongside depth to 12.5 metres, enhancing handling capacity by redeveloping acquired additional land area and berths (nos 26 & 27) adjacent to initial facility and deploying additional quayside and container yard equipment.

With the inauguration of Phase-III extension in November 2008, KICT now operates a total of 7 ship-to- shore (STS) gantries, 2 mobile harbour cranes, 23 RTGCs, 8 reach stackers, 8 empty container handlers, 53 terminal tractors, 75 chassis, 4 forklifts and radio data terminals (RDTs) on all terminal equipment.



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http://www.hutchison-whampoa.com/upload_docs/2005/01/Ports/1505/1505_eng.htm

KICT and KPT sign Phase III development agreement

(Karachi, 31 January 2005) Karachi International Container Terminal (KICT) has entered into an agreement with the Karachi Port Trust (KPT) for development of its Phase III project at West Wharf of Karachi Port.

In addition to extending the existing concession period, the project involves deepening the alongside draft to 14 metres; enhancing handling capacity by acquiring and redeveloping additional land area (adjacent Berths 26-27, KESC Powerhouse area and KPT Stores area); and acquiring additional quayside and container yard equipment.

With KICT's expansion plans in place, the Company will operate a total of seven quay cranes, 20 Rubber Tyred Gantry Cranes (RTGCs), eight reachstackers, six empty container handlers, 48 terminal tractors, 64 chassis, six forklifts, and numerous radio

data terminals (RDTs). The above profile includes new equipment to be procured which is in addition to the mandated equipment under in the agreement with KPT.

On the occasion KPT Chairman Ahmed Hayat commented: "As the container transport industry in Pakistan is growing at a remarkable pace, KICT's Phase III development is extremely timely. Furthermore, with Pakistan crossing the one-million TEU throughput level last year, there is a need for a national strategy to create the necessary infrastructure to handle the country's growing trade. This will enable the port to further strengthen its role as the region's premier centre of trade."

Hutchison Port Holdings Group Managing Director John Meredith added: "HPH is pleased with its investment in Pakistan. The Group has heavily invested in KICT to ensure the terminal's handling capacity continues to expand alongside the country's robust growth in international trade."

KICT CEO, Mr. Khurram S. Abbas stated: "KICT is committed to further developing and investing in Pakistan's port sector and will continue to enhance its facilities to strengthen its competitive edge and contribute towards the economic development of the country. Striving to further enhance productivity, we are also working with Pakistan Customs on the implementation of an automated customs clearance system in order to reduce the container dwell time at the terminal."

As a subsidiary of the well established Hutchison Port Holdings (HPH) Group, KICT enjoys several advantages, including access to cutting-edge container handling technology, training resources and solid financial support to develop and implement port infrastructure projects.

http://ws.elance.com/file/PICT_Report_13-12-2006_Sample_Investor_Brief.pdf?crypted=Y3R4JTNEcG9ydGZvbGlvJTI2ZmlkJTNEZmZlNDIyOTAlMjZyaWQIM0QtMSUyNnBpZCUzRDMyMTcwNDU=

Possible Renegotiation of Contract with KPT

Addition of more berths can increase handling capacity of PICT. Currently, PICT is operating at berths number 6 - 9 at the Karachi Port while KPT uses its adjacent berths (4-5, 10-11) as multipurpose berths. Renegotiation of contract with KPT to add 2 or more of these adjacent berths will certainly help PICT to increase its handling capacity as done by KICT. KICT renegotiated its contract with KPT in 2005 to increase the

concession period from 2018 to 2025 and number for births from 3 to 5. Moreover, debt repayments will increase PICT's capacity to arrange finances for future expansion

projects

KPT website

Pakistan International Container Terminal (PICT)

The second Container Terminal on BOT was awarded by KPT in June 2002. This Terminal at Berths 6-9 East Wharf has 600 m quay wall with - 13.5 m depth over an area of 207,000 sqm. The terminal's planned capacity is 450,000 TEUs. This was a US \$ 75 million project.

PICT was also developed in Phases. In Phase-I Two modern gantry cranes and associated equipment were deployed.

Phase-II was completed in May 2006 with additional deployment of one more ship to shore gantry crane and Phase-III has been completed in January 2009. Presently they are handling 603,000 TEUs per year

PICT

In June 2002, Premier Mercantile Services (Pvt.) Ltd. ("PMS") entered into an Implementation Agreement ("IA") with Karachi Port Trust ("KPT"). They were to design, construct, operate and transfer, after 21 years, a modern container terminal at berths 6-9, East Wharf, Karachi Port. The new project, Pakistan International Container Terminal, distinguishes itself by having some key features

Salient Features of the Container Terminal:

- The Project commenced commercial operations in August 2002, within six weeks of taking over possession of the container terminal area from KPT with the existing container handling equipment of PMS; henceforth, the Project started generating business and paying Royalty and Land Rental to KPT within six weeks of taking the possession of the area.
- The Phase I Development of the Project was successfully completed ahead of schedule in March 2004 and within the targeted cost of US\$ 30 million.
- The terminal currently has 4 Ship-to-Shore ("STS") Quay Cranes, 2 Mobile Harbour Cranes, 10 Rubber Tyred Gantry ("RTG) Cranes and other ancillary equipment.
- The dedicated area for the Terminal is 220,000 square meters. The Quay Wall length is 600 meters.
- Amongst the present container terminals in Pakistan, PICT has the deepest berths, with a planned alongside depth of 13.5 meters and a current alongside depth of 12.2 meters.
- An entire Power Generation Plant of 7.4 Mega Watt capacity is installed with Cummins (UK) generators. PICT is enhancing the capacity of the Power Plant to 10 Mega Watt.
- PICT is the only Container Terminal in Pakistan Sponsored and owned by Pakistanis.
- It is the only port infrastructure project whose shares are quoted on the Karachi Stock Exchange.
- It is the first port infrastructure project in Pakistan financed by International Finance Corporation ("IFC")—the private sector arm of the World Bank.
- It is the first private sector project in Pakistan in which the OPEC Fund for International Development has participated as financiers.

- Karachi Port Trust, in order to maintain its edge over Port Qasim as the primary Port of Pakistan, sought proposals from private sector investors to develop the second modern, fully equipped international standard container terminal at East Wharf, Karachi Port.
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- Against competitive bidding, Premier Mercantile Services (Pvt.) Ltd. ("PMS"), a Marine Group Company, was awarded a 21-year Concession to build and operate a dedicated container terminal at Berths 6–9, Karachi Port, on a BOT basis in April 2002. Following extensive negotiations, an Implementation Agreement was entered into with the Trustees of the Karachi Port Trust, which inter alia detailed the commercial, financial and technical terms of the Concession. This Agreement also provides for the terms on which PICT will be required to implement additional Phases of the Project. The important relevant provisions required:
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 - a) The setting-up by PMS of a Terminal Operating Company ("TOC") to design, finance, construct and operate a dedicated container terminal with a capability of handling up to 450,000 Twenty Foot Equivalent Container Units ("TEUs") per annum on berths 6–9 East Wharf for a period of twenty-one (21) years in phases linked to traffic growth on a BOT basis;
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 - b) A commitment to meet the expanding needs for future container traffic growth;
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 - c) To complete the physical implementation of Phase I by April 17, 2004.
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 - Pakistan International Container Terminal (PICT) was formed as the Terminal Operating Company and took over dedicated container terminals on October 15th, 2002. PICT achieved successful completion of all contractual obligations of Phase-I development earlier than schedule on March 31st, 2004
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<http://www.logcluster.org/mobile/ops/pakistan/sea/portassess051222>

Karachi International Container Terminal (KICT)

- Karachi International Container Terminal is situated in Karachi Port's West Wharf, berths 28, 29 and 30. Total quay length is 600 M divided into two container berths. Depth alongside 11.0 M.
- The terminal is equipped with four quay cranes, three panamax, and one of post panamax size. Overall capacity - 28 moves per hour per crane, total 112 moves per hour.
- Total design capacity 500,000 TEUs per year, which was reached as of 2004.
- All movements are fully controlled and monitored by radio- and computer equipment.
- The size of vessels calling KIPT ranges between 2800 to 3000 TEU.
- Terminal is ISO 9000-2002 certified and ISPS compliant.
- For handling and storage charges please refer to the KPT website www.kpt.gov.pk .

- The terminal has recently implemented fully computerized clearance formalities, which considerably eases the import process. A dedicated scanner - though mostly for export containers - is to be installed soon. Again, this will speed up clearance formalities.
- Future development will include an additional 2 berths with depth alongside 14.0 M and the installation of an additional 100,000 square metre terminal/stacking area.

Website: www.kictl.com (at time of writing is unavailable) provides for online contacts with clearing agents, shipping lines' agents, customs office and container tracking.

Pakistan International Container Terminal (PICT)

- Pakistan International Container Terminal is situated in Karachi Port's East Wharf, berths 6, 7, 8 and 9. Total quay length 600 M divided into two container berths. Depth alongside 12.2 M.
- The terminal is equipped with 2 quay cranes for panamax size. It has overall design capacity for handling 150,000 TEUs per year, which has already been reached.
- All movements are fully controlled and monitored by radio- and computer equipment
- The terminal is seeking ISO 9001-2000, ISO 14001 and ISO 18001 OHSAS certification from Bureau Veritas. The terminal is ISPS compliant.
- For handling and storage charges please refer to website www.kpt.gov.pk

Website: www.pictctrtrack.com provides for online port and shipping information as well as container tracking.

IMPLEMENTATION AGREEMENT

PREAMBLE

This Agreement is made this 18th day of June, 2002 between the Trustees of the Port of Karachi, constituted under the Karachi Port Trust Act, 1886 as amended from time to time, having their offices at Karachi Port Karachi-74000 (hereinafter referred to as "KPT" which expression shall include their successors-in-interest and assigns) of the first part; and Premier Mercantile Services (Private) Limited, a company incorporated in Pakistan and having its principal place of business at 2nd Floor, Business Centre, Mumtaz Hasan Road, Off I.I. Chundrigar Road, Karachi (hereinafter referred to as "PMS" and referred to in the context as "the Sponsor", which expression shall include their successors-in-interest and permitted assigns) of the second part.

WHEREAS:

A) KPT intends to set up a common user container terminal at Karachi Port on the existing berths 6 to 9, at East Wharf on a build, operate and transfer ("BOT") basis, and had invited proposals for the design, finance, construction, development, operation and transfer of such terminal at Karachi Port.

B) Pursuant to the notification of award dated 12.04.2002, KPT and the Sponsor entered into negotiations which culminated in this Implementation Agreement.

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C) The Sponsor shall jointly with Affiliates set up and establish a terminal operating company as a joint venture public limited company, in accordance with the Laws of Pakistan, ("TOC") with the object of financing, constructing, developing, operating, managing and transferring the Terminal on the agreed Expiry Date, till the formation of TOC, the Sponsors shall assume the said liabilities/rights. Upon the issuance of the Certificate for Commencement of Business to the TOC it will be made a party to this Agreement by virtue of execution of a Novation Agreement among the Sponsor, KPT and TOC in terms of the format attached as Schedule 10 whereupon all representations, warranties and covenants of the Sponsor in this Agreement shall be deemed, so far as applicable, to be the representations, warranties and covenants of TOC also and all duties, obligations and responsibilities of the Sponsor under this Agreement shall be transferred to and assumed by the TOC as if TOC had been a party to this Agreement as of the Date of Signing. Licenses and authorizations needed to implement the Terminal will then be requested by and considered for TOC only and all procurements shall be made by and for the benefit of TOC. The Sponsor shall have the right to allocate shares in TOC to each of their Affiliates at their discretion. For this purpose, the Sponsor will provide to KPT a list of its Affiliates, such list should be provided along with the Novation Agreement, which list may be revised by Sponsor every six (6) Months. KPT shall have the right, within forty five (45) Days of receipt of any addition to the subsequent six monthly lists, to notify the Sponsor of any added Affiliate to which transfer of shares in the TOC may not be effected on the ground that, KPT in its discretion, determines this to be against Pakistan national

interests. In the event KPT does not notify the Sponsor of any such unacceptable Affiliate, within forty five (45) Days of receipt of any addition to the list, the same shall be deemed approved. The Sponsor may not transfer the shares in the TOC to companies other than Affiliates without the prior written approval of KPT, which shall not be unreasonably withheld. KPT shall respond to Sponsor/TOC request within forty five (45) Days. Notwithstanding the above, the TOC shall have the right to be listed on a stock exchange in Pakistan, in Consultation with KPT, and to issue and sell shares to the public at any time thereafter.

D) KPT and the Sponsor desire to enter into this Agreement so that the Project may be implemented in a manner which reflects close cooperation and mutual understanding between the public and private sectors with a view towards providing modern, efficient, competitive and non-discriminatory container handling services at Karachi Port for

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shipping lines, shippers, consignees and other port users in a manner consistent with the requirements of the shipping trade, government priorities and other port operations.

NOW IT IS HEREBY AGREED as follows:

Article 1 Interpretation

In this Agreement,

1.1 Expressions defined in Article 2 shall bear the respective meanings set out therein;

1.2 The headings are for convenience only and shall be ignored in construing this Agreement;

1.3 The singular includes the plural and vice versa;

1.4 References to Articles, Clauses, and Schedules are, unless the context otherwise requires, references to Articles and Clauses of, and Schedules to, this Agreement; and

1.5 References to any agreement, enactment, ordinance or regulation include any amendment thereof or any replacement in whole or in part.

Article 2 Definitions

"Affiliates: - shall mean any consortium, business house or firm local or foreign which is invited to join the joint venture Terminal Operating Company (TOC) by Sponsor at their discretion directly or indirectly.

"Agreement" - means this Agreement between KPT and the Sponsor including its Recitals and the following Schedules, which form an integral part of this Agreement:

Schedule 1 - Implementation Schedule

Schedule 2A, 2B - Equipment Schedule

Schedule 3 - Project Scope

Schedule 4 - Site Plan

Phase-I (Stage 1 and Stage II)

Phase-II

Phase-III

Schedule 5 - Insurances

Schedule 6 - Lease Agreement

Schedule 7 - Performance Bond

Schedule 8 - Novation Agreement

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Schedule 9 - Container Handling Charges

Schedule 10 - Novation Agreement (TOC)

Schedule 11 - Technical Requirement

Schedule 12 - Miscellaneous Items

"Appraisal Procedure" - means the following procedure for determining the Fair Market Value or any other amount or value expressly subject to the Appraisal Procedure under this Agreement. KPT and TOC shall first attempt to agree upon such matter. If KPT and TOC are unable to agree on such matter within thirty (30) Days after either one of them delivers a request therefore to the other, they shall consult for the purpose of appointing a mutually acceptable Independent Appraiser. If within ten (10) Days after such thirty (30) Days have elapsed KPT and TOC shall fail to agree upon a mutually acceptable Independent Appraiser then both parties will appoint one Appraiser each within seven (7) Days thereof and the Appraisers so appointed by the Parties will then appoint a third Appraiser within fourteen (14) Days, after the appointment of the latter of the two Appraisers. If the said Appraisers are unable to agree on the appointment of the third Appraiser within the stipulated period then either party may request for the appointment of an Independent Appraiser jointly by the Chairman, Pakistan Engineering Council and the President of the Institute of Chartered Accountants of Pakistan. The fees and expenses of the Independent Appraiser incurred with respect to any Appraisal Procedure shall be borne equally between KPT and TOC provided that (i) KPT shall pay all such fees and expenses if the need for such appraisal arose solely in connection with a KPT Event of Default, and (ii) TOC shall pay all such fees and expenses if the need for such appraisal arose solely in connection with a TOC Event of Default. Any decision taken by a sole Independent Appraiser or in the case of panel of Appraisers, by the majority of them shall be final and binding on the parties.

"Approval" - and any grammatical variation thereof means the written approval of KPT in accordance with the approval procedures set forth in Clause 6.4.

"Certificate for Commercial Operation" - shall mean the certificate issued by the Engineer in response to the application from TOC for the commencement of Commercial Operation.

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"Commercial Operation" - means the picking up for gain of the first container at the Site after Sponsor Possession by mobile crane/gantry crane during Phase I (Preliminary) of the Project, subsequent to Sponsor/TOC applying for and obtaining the Certificate for Commercial Operation.

"Completed Works" - shall mean any and all equipment, machinery, spare parts, materials (construction or otherwise), labor, consultants, and other costs relating to or arising out of the Project Scope, plans and specifications and the costs of their development (and shall include, without limitation, all cranes, spares, other terminal equipment, etc., inclusive of mobilization/demobilization costs of the Project).

"Completion Dates"- shall mean and include First (Preliminary) completion date, First Completion Date, Second Completion Date and Third Completion Date.

"Consents" - means all approvals, consents, authorizations, permits, decisions or other matters from or with any Public Sector Entity necessary for the implementation of the Project in accordance with this Agreement and any other agreements and documents entered into or made in implementation thereof or in relation therewith.

"Construction, Procurement and Erection Contracts" - means the agreements to be entered into between TOC and Contractors for the design, engineering construction, supply and erection of works and equipment, completion testing and commissioning of the various facilities and equipment of the Terminal, and for the completion thereof.

"Consultant(s)" - means the consultant(s) internationally qualified and experienced in port design and engineering to be appointed by TOC with the Approval of KPT from time to time to carry out investigation and studies, prepare designs and specifications and perform such other engineering and consulting services necessary for various components of the Project.

"Continuing Contracts" - means contracts/agreements relating to the Terminal signed by TOC in form and substance Approved by KPT with business, trade and employees which extend beyond the Expiry Date.

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"Contractors" - means all contractors employed by TOC (and their respective subcontractors) in their respective capacities as such and their respective successors and permitted assigns.

"Container Handling Charges" - means the schedule of all charges, fees and dues set by TOC for the items indicated in Schedule 9 for handling of containers/cargo and its storage in consultation with KPT,

including the Container Loading/Unloading Charge. The Container Handling Charges will be printed and published by TOC, in the first instance at least fifteen (15) Days prior to Commercial Operation and, thereafter, from time to time pursuant to Clause 8.4 of this Agreement. Said Container Handling Charges shall be denominated in US Dollars.

"Container Loading/Unloading Charge" - means the charge included in the Container Handling Charges for the loading or unloading of containers, non-containerized cargo or ship gear, etc., from ship to shore and vice versa.

"Date of Signing" - means the date on which this Agreement is signed by the party signing it last.

"Day" - means a calendar day.

"Dispute" - bears the meaning attributed thereto in Clause 25.1.

"Dollar" and "\$" - mean the lawful currency of the United States of America.

"Engineer" - means the independent firm of qualified consulting engineers/engineer carrying on business as consulting engineer(s) under The Laws of Pakistan or any person/official suitably qualified appointed by KPT pursuant to Clause 3.4.

"Exchange Risk Insurance" - means the insurance effected by TOC to cover exchange risks for foreign loans to be obtained by TOC.

"Expiry Date" - means the date falling twenty one (21) years from the Date of Signing.

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"Fair Market Value" - means, as to any equipment, the value of such equipment for lease or sale determined on the basis of an arm's-length transaction for cash between an informed and willing lessee or buyer (under no compulsion to lease or purchase) and an informed and willing lessor or seller (under no compulsion to lease or sell), neither of which is related to KPT or TOC, calculated as the value for the use at the present location and, in the case of leased equipment, for the remaining term of the then current lease, assuming that the lessee or buyer has all rights and permits necessary to use the equipment for its intended purposes.

"First Completion Certificate" - means the certificate issued by the Engineer pursuant to Clause 19.2 certifying that all the works included in Phase I of the Project Scope (Schedule 3) have been completed to the satisfaction of KPT in accordance with the Implementation Schedule (Schedule 1) and the Equipment Schedule (Schedule 2A & 2B) in accordance with this Agreement.

"First (preliminary) completion date – mean the date of completion of Phase I (Preliminary)

"First Completion Date" - means the date of completion of Phase I of the Project (being no later than twenty two (22) Months from the Date of Signing of Implementation Agreement as evidenced by the First Completion Certificate issued by the Engineer.

"Financing Agreements" - means the agreement or agreements entered into by TOC for the purpose of providing the funds necessary to implement the Project, including any and all agreements providing for security for such financing.

"Foreign Investors" - means investors not resident in Pakistan.

"GOP" - means the Government of the Islamic Republic of Pakistan.

"GOP Undertaking" - means those undertakings, actions and approvals required from GOP for setting up the Terminal.

"GOS" - means the Government of Sindh.

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"HMS CHARGE" - means Handling, Marshalling and Storage Charges for containers / other specified cargo payable by „Sponsor / TOC. to KPT at a unit rate agreed between parties per annum per square meter of KPT.s area in occupation of TOC, being the charges for such services on actuals. Provided always that the charges are paid for the entire area in occupation of Sponsor / TOC.

"Implementation Schedule" - means the timetable for the implementation of the Project set forth in Schedule 1.

"In Consultation With" - shall mean that, when required by this Agreement, the party wishing to take a certain action will give the other party reasonable notice of the same and an opportunity to provide its views regarding the contemplated action. Any action requiring consultation may be taken after receipt and due consideration of the other party.s views thereon or within fourteen (14) Days after the receipt by the other party of the notice of contemplated action, whichever is earlier.

"Investors" - means the shareholders of TOC from time to time.

"Investors' Equity" - means the aggregate as of the relevant date for calculation, of the amount paid up in the share capital of TOC and the amount standing to the reserves of TOC, net of any debit balance on the profit and loss account or any impairment of the issued share capital of TOC.

"KPT Act" - means the Karachi Port Trust Act, 1886, Bombay Act VI of 1886, as amended from time to time.

"KPT Charges" - means the Karachi port charges, channel dues, pilotage, tugging charge, berth fees, wharfage, priority charge, additional berthing window charge, docking and other charges on ships, container and cargo levied by KPT in accordance with the Tariff prevailing from time to time for all terminals at Karachi Port excluding storage, equipment detention, direct delivery and other charges of the TOC.

"Laws of Pakistan" - means all laws of Pakistan or, where applicable, any political subdivision thereof and all rules, regulations, and notifications made pursuant thereto.

"Lease Agreement" - means the lease agreement to be entered into between KPT and TOC for lease of the Site in terms of the Schedule 6.

"Lenders" - means (i) the parties who have made or will make available to TOC credit, in the form of loan(s), or other financing arrangement(s), to finance the Project pursuant to the Financing Agreements, and (ii) the persons who, from time to time with prior notice in writing to KPT make other credit facilities available to TOC, together, in each case, with their respective successors and assigns.

"Month" - means a month according to the Gregorian calendar.

"Natural Event" - bears the meaning attributed thereto in Clause 17.1 (a).

"Nominated Company" - bears the meaning attributed thereto in Clause 16.3.1.

"Non-Tariff Zone" - means the custom bonded zone within the jurisdiction of KPT or such other areas which are declared as such by the GOP.

"Notice of Completion" - bears the meaning attributed thereto in Clause 6.7.1.

"Phase I (Preliminary)" – means the period of Six (6) Weeks from taking over the Site by Sponsor during which time the Sponsor will build necessary infrastructure to accommodate Customs/Security personnel/Collection Centres for smooth Terminal Operations and will shift existing mobile cranes to Berths 6 to 9 and use these for handling containers and start paying the royalty at the agreed rate per revenue move.

"Phase I"- means those portions of the Project identified as such in the Project Scope, the Equipment Schedule and the Implementation Schedule including, inter alia, the installation of two new rail mounted gantry quay cranes and all incidental civil works thereto and required supporting plant, equipment and machinery capable of handling one hundred fifty thousand (150,000) Containers per annum.

"Phase II" - means those portions of the Project identified as such in the Project Scope and the Equipment Schedule including, inter alia, the installation of a third rail mounted gantry

quay crane and required supporting equipment and machinery specified in the Project Scope capable of handling above one hundred fifty thousand (150,000), and upto three hundred thousand (300,000) Containers per annum.

"Phase III" - means those portions of the Project identified as such in the Project Scope and the Equipment Schedule including, inter alia, the installation of a fourth rail mounted gantry quay crane and required supporting equipment and machinery specified in the Project Scope capable of handling above three hundred thousand (300,000) Containers per annum.

"Political Event" - bears the meaning attributed thereto in Clause 17.1 (b).

"Possession (Preliminary)" - shall mean the date after Sponsor take over the Site (Preliminary) for the purpose of building necessary infrastructure to accommodate Customs/Security personnel/Collection Centres for smooth Terminal Operations and for the use of mobile cranes.

"Possession" - shall mean the date, after KPT and TOC execute the Lease Agreement, (as referenced in Article 14) and when (i) all prior commercial operations of any prior tenants have ceased at the Site; and (ii) the Site is cleared of all containers and equipment and (iii) all buildings on the Site have been vacated; and (iv) the Site is free of all encumbrances and KPT notifies TOC, in writing, of its ability to hand over peaceful possession of the Site for the purposes of this Agreement.

"Prescribed Fee" - means any fee prescribed by the Laws of Pakistan.

"Prescribed Form"-means any form (including all information and details) prescribed by the Laws of Pakistan.

"Project" - means the development, design, engineering, financing, construction, supply, procurement, completion, insurance, operation, maintenance and transfer of the Terminal and all activities incidental thereto on BOT basis at Berths 6 to 9 East Wharf, Karachi Port on the Site leased to TOC by KPT and includes all activities specified or to be inferred

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from the Project Scope, in accordance with the Implementation and Equipment Schedules (Schedules 1, 2A & 2B) hereof.

"Project Scope" - means the scope of work for Phase I Preliminary, Phase I, Phase II and Phase III of the Project as set forth in Schedule 3.

"Prudent Terminal Practice" - means, at any particular time, the practices, methods or acts which, an internationally experienced terminal operator in light of the facts and in the exercise of reasonable judgment, would observe in developing, designing, constructing, equipping, operating and maintaining container terminals comparable in capacity, type and demand of maritime trade to the Terminal, in the region, to accomplish the desired result at reasonable cost consistent with reliability, safety and expedition in accordance with the manufacturers' and suppliers' recommendations, manuals and other instructions, and all applicable laws and regulations.

"Public Sector Entity" - means GOP, GOS or any department, authority, instrumentality autonomous Corporation or agency of GOP or GOS.

"Relevant Authority" - means the department, authority, instrumentality or agency from which a Consent is to be obtained and any authority, body or other person having jurisdiction under the Laws of Pakistan with respect to TOC, the Project or the financing, construction, operation or maintenance of the Terminal.

"Royalty" - means royalty payable by Sponsor/TOC to KPT in accordance with Article 8.

"Rupee" - means the lawful currency of Pakistan.

"Second Completion Certificate" - means the certificate issued by the Engineer pursuant to Clause 19.3 certifying that all the works included in Phase II of the Project have been completed to the satisfaction of KPT in accordance with the Project Scope and the Equipment Schedule in accordance with this Agreement.

"Second Completion Date" - means the date of completion of Phase II as evidenced by the Second Completion Certificate.

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"Security Package" - Security Package shall comprise the following documents:

(i) This Agreement.

(ii) The Lease Agreement.

(iii) The Construction, Procurement & Erection Contracts.

(iv) The Financing Agreements.

(v) The Insurance Policies as per Article 10 and the Exchange Risk Insurance.

(vi) Joint Venture Agreement between the Sponsor.

(vii) Certificate of Incorporation, Certificate for Commencement of Business and the Memorandum & Articles of Association of TOC.

"Site (Preliminary)" relates to Stage 1 and Stage II of Phase 1. Of this, Stage 1 means an area of about 86,871 Sq. meters (Eighty-Six Thousand and Eight Hundred and Seventy One Square Meters) as per joint survey duly marked on Site Plan at existing berths 6 to 9 East Wharf, Karachi Port, together with its sea front of 600 meters, spaces and road possession of which will be handed over to Sponsor by KPT immediately after the date of signing of IA. Stage II means an area of approximate 18,570 Sq. meters (Eighteen Thousand and Five Hundred Seventy Square Meters) along with all buildings (CM&EE Office, Workshop and other Buildings) as per joint survey duly marked on Site Plan, possession of which will be handed over to Sponsor / TOC by KPT not later than 3 months from the date of signing of IA.

"Site" - means an area of about 207,816 square meters (Two Hundred Seven Thousand Eight Hundred and Sixteen Square meters) including Site (Preliminary) at existing berths 6 to 9 East Wharf, Karachi Port, together with its sea front of (six hundred) 600 meters, spaces and roads, all to be leased to TOC by KPT pursuant to the Lease Agreement for the purposes of the Project on which the Terminal is to be built, and all rights of way and access from public highways, all as more particularly described and shown on the site plan attached as Schedule 4 hereto.

"Tariff" - means KPT's scale of rates, dues and charges on ships and goods as revised or amended from time to time.

"Terminal" - means the common user container terminal (with a design capacity to handle from 300,000 to 350,000 TEUs per annum to be implemented by TOC with the completion of Phase I Preliminary, Phase I, Phase II and Phase III of the Project on the Site), including, without limitation,

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the leasehold interest in and to the Site, the buildings including the fixtures and fitting, structures, services, equipment and facilities as specified in the Project Scope.

"TEU" - means twenty-foot equivalent unit.

Article 3 Rights, Representations, Warranties, and Covenants

3.1 Grant of Rights

KPT hereby grants to TOC the exclusive right to design, engineer, finance, insure, construct, complete, operate and maintain the Terminal, at the Site until the earlier of the Expiry Date or termination of this Agreement all strictly in accordance with the terms and conditions contained in this Agreement.

3.2 Sponsor Representations, Warranties and Covenants

(a) The Sponsor represents and warrants to KPT that as of the Date of Signing:

(i) This Agreement has been duly authorized, executed and delivered by the Sponsor and it constitutes the legal, valid and binding obligations of the Sponsor;

(ii) The execution, delivery and performance of this Agreement, subject to the granting and maintenance of the Consents, does not, and, subject to the granting and maintaining of any further Consents as may be required in the future, will not, constitute a violation of any statute, judgment, order, decree or regulation or rule of any court, governmental authority or arbitrator of competent jurisdiction applicable or relating to the Sponsor or their assets or business;

(iii) The Sponsor shall, within 120 Days from the Date of Signing, intimate the incorporation of TOC, procure its Certificate for Commencement of Business and, thereafter, procure the execution by it of the Novation Agreement in terms of Schedule 10;

(iv) The Sponsor have examined and inspected the Site and adjoining KPT areas and have satisfied themselves to the best of their knowledge after investigation of the Site (subject to the results of joint survey completed pursuant to Clause 4.1) as to the nature, location, physical and climatic conditions prevailing at Site, the suitability of the Site, the means of access thereto, the general and local conditions applicable to the Site, the availability and condition of roads, local customs and events, rainfall, water, electric power requirements, and the conformation to be encountered; and

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(v) The Sponsor will appoint the Consultants at their own cost prior to the Joint Survey to be conducted in accordance with Clause 4.1 for the design, engineering, construction, maintenance and completion of the Terminal.

(b) The Sponsor hereby covenant as follows:

(i) Sponsor / TOC shall design, engineer, finance, construct, supply, equip, insure, operate, maintain and transfer the Terminal in accordance with this Agreement and shall complete Phase I, including phase I (Preliminary), Phase II and Phase III of the Project by the First, Second and Third Completion Dates respectively;

(ii) The applicable Pakistan environmental guidelines and regulations and occupational health and safety standards shall be adhered to at all times by TOC. It shall also comply with all the Consents;

(iii) Sponsor / TOC shall have the sole right to negotiate and execute all contracts. However, all bidding documents, tenders, invitations to bid, if any, and draft terms of the Construction Procurement and Erection Contracts will have to be approved by KPT. Such Approval shall not be unreasonably withheld;

(iv) Sponsor / TOC shall operate and maintain the Terminal in accordance with Prudent Terminal Practice in such a manner so as not to materially obstruct or impede KPT's own port operations but Sponsor / TOC shall not be liable for any adverse effect to KPT operations resulting from normal operations & maintenance of the Terminal in accordance with this Agreement;

(v) Beginning from Preliminary Possession Sponsor / TOC shall have the option to manage, handle and provide temporary storage for containers/cargo on berth and plinth, if so required by KPT, and provide such other services at the Terminal for or on behalf of KPT as are provided by KPT, at the Date of Signing, upon payment by KPT of the same charges as payable by other customers of TOC;

(vi) Sponsor / TOC, if required by KPT and for a mutually agreed collection fee, shall collect KPT Charges on behalf of KPT for remittance to KPT at regular intervals as agreed between the parties and specified in this Agreement;

(vii) Sponsor /TOC, its servants, agents and Contractors, as of the commencement of the construction of the civil works until the Expiry Date or earlier termination of this Agreement shall conduct their activities and operations in such a manner as not to cause any interference, impediment or obstruction other than necessitated by the nature of the said activities and operations to the normal day to day working and operations of the Karachi Port and shall make and take all necessary and adequate arrangements for safety,

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security and fire protection in relation to and in respect of such areas where the said activities and operations are being carried on;

(viii) Beginning with Commercial Operation, Sponsor/TOC shall at all times maintain, and repair the Terminal in accordance with Prudent Terminal Practice, using modern equipment and facilities and as may be necessary to comply with any standards imposed by any insurance policies required by Article 10 and in effect at any time with respect to the Terminal or as may be desirable, in reasonable business judgment, for the efficient and competitive operation of the Terminal in the light of the demands of the actual container traffic at the Karachi Port;

(ix) TOC shall, in accordance with the Project Scope, at all times replace equipment and facilities that from time to time fail to function or become obsolete, worn, destroyed, damaged beyond repair, lost and stolen for any reason whatsoever, not attributable to KPT, with new or compatible used equipment of same age and condition which may be owned or leased, all with KPT's and TOC's mutual acceptance. TOC shall always keep the Terminal in good operating condition at its design capacity all in accordance with Prudent Terminal Practice. In the event that any equipment or facility is confiscated or seized and such equipment or facility is not recovered or released within a reasonable period, as mutually agreed by KPT and TOC, such equipment/facility shall be deemed lost as provided in this Clause 3.2(b)(ix) and the provisions hereof shall apply thereto;

(x) Beginning on the First Completion Date or with the Commercial Operation, whichever is earlier, Sponsor / TOC shall provide facilities at the Terminal for customs inspection;

(xi) Sponsor / TOC shall promptly deliver to KPT any dangerous cargo present at the Terminal;

(xii) Sponsor / TOC shall at all times have sole responsibility for ensuring that no goods, object or item or equipment is disposed off or falls into the channel/sea during design, construction, maintenance and/or operation of the Terminal and where such an event happens in spite of its best efforts, it shall forthwith, at its sole cost, remove/recover/lift the same, with notice to KPT;

(xiii) Sponsor / TOC shall have no concern or right in respect of the handling of container/cargo by KPT or whomsoever on any other berths within Karachi Port except those constituting the Site;

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(xiv) The performance by Sponsor / TOC, of its obligations under this Agreement will be carried out in such a manner as not to cause any physical loss, impediment or damage to the Karachi Port;

(xv) TOC shall so far as is material to this Agreement (a) at all times, maintain its corporate existence in compliance with the Laws of Pakistan (b) at all times hereunder comply with all applicable Laws of Pakistan (c) procure and maintain all Consents necessary for its performance under this Agreement, (d) give all required notices and allow all required inspection under all Consents obtained or applied for by it in connection with the Terminal (e) pay all Government taxes/charges and any agency's dues & levies (f) pay all prescribed fee in connection with such consent and (g) upon request of KPT, deliver or cause to be delivered from time to time to KPT certifications of its officers, accountants, engineers or agents as to the performance of its obligations under this Agreement and as to such matters as KPT may reasonably request;

(xvi) As of Commercial Operation or the First Completion Date, whichever is earlier, TOC shall not, without KPT's Approval undertake any activity in the Karachi Port other than those activities specified in this Agreement, exclusively in relation to the Terminal;

(xvii) Where in the event of any national emergency or under supreme security conditions so declared by GOP, through KPT or any other agency, takes over the entire control, possession and/or operation of the Terminal with immediate effect either with or without any prior notice to Sponsor / TOC or the Lenders, Sponsor / TOC will not create any hindrance, impediment or obstacle. (Clause 23 will be applicable if the Agreement is terminated);

(xviii) With the exception of uncollected container/cargo controlled by KPT, where any container or cargo remains uncollected at the Terminal beyond the allotted free time after unloading by Sponsor / TOC or is detained under orders of any Court or Public Sector Entity, Sponsor / TOC shall, at its own cost, provide storage space for the same at the Terminal or remove the same to any other warehouse as per the prevailing practice at the Port. KPT shall not be responsible for any such uncollected container/cargo. Sponsor / TOC will have lien on such cargo for all of its charges; and

(xix) Interest on any late payments shall accrue at the rate of 2% above the State Bank Rate per annum.

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3.3 KPT's Representations, Warranties and Covenants

(a) KPT hereby represents and warrants that as of the Date of Signing:

(i) It is duly created pursuant to KPT Act and is existing in compliance with the same and so far as is material to this Agreement, has complied with all applicable Laws of Pakistan, and that there are no proceedings pending, or to the best of its knowledge, threatened for the dissolution of KPT including a withdrawal or revocation of its powers under the KPT Act;

(ii) This Agreement has been duly authorized, executed and delivered by it and constitutes the legal, valid and binding obligation of it;

(iii) This Agreement has the approval of the competent authority and as far as it is aware, the execution, delivery and performance of this Agreement subject to the granting and maintenance of the Consents, does not and will not constitute a violation of any statute, judgment, order, decree or regulation or rule of any court, governmental authority or arbitrator of competent jurisdiction applicable or relating to it, its assets or its business; and

(iv) As of the date of the lease of Site to Sponsor/TOC, KPT shall have good and marketable title to the Site including any buildings or other constructions, rail tracks and other improvements there upon free and clear of any charge or encumbrance of any kind and has the power to enter into the Lease Agreement.

(b) KPT hereby covenants as follows:

(i) KPT shall make every endeavor in normal course to guarantee passage, movement, berthing, sailing and shifting of container ships to be loaded or unloaded at the Terminal at the request of Sponsor/TOC, the shipping lines, the shippers or other users of the port, as the case may be, all in accordance with the berthing policy laid down in Clause 7.4 below and current/present Port Rules, Regulations and Policy and Karachi Port emergencies;

(ii) KPT will maintain the channel and approaches to the Berths at a minimum depth of 32 ft. (9.75 m) at high tide in the channel. The berthing area along the quay wall at the terminal will also be maintained at 42ft. (12.8m) at 00 tide in consultation with TOC in such a manner so as not to have a material adverse effect on the Terminal; but KPT shall not be liable for any adverse effect on the Terminal resulting from normal operations and maintenance, including any dredging operations; provided aforesaid are not negligently performed.

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(iii) KPT shall not interfere in the operation of the Terminal in accordance with this Agreement and shall only exercise its powers under the KPT Act in a manner that is consistent with this Agreement;

(iv) KPT shall not discriminate against TOC in any manner whatsoever; provided however, that KPT shall not be bound to apply the terms of this Agreement to all its development plans;

(v) KPT shall arrange for the prompt removal of vessels from the berths at the Terminal that may be arrested/detained by an order of the Court or otherwise detained by any other Public Sector Entity provided that the vessel has not been directed to be detained on the same berth;

(vi) KPT will revise its Tariff, as notified in Statutory Regulatory Order (SRO) 129(K.E.)/94 dated July 01, 1994 so as to exempt the Terminal from the effect of Tables II and IV thereof;

(vii) KPT will receive from Sponsor/TOC all dangerous cargo from the Terminal at KPT's dangerous cargo shed and Sponsor/TOC shall be paid for such removal as per normal stevedoring rates;

(viii) KPT shall, at KPT's cost and expense, maintain/ construct all existing roads and railway connections from the Karachi Port (other than the Terminal) to the Terminal, whereas diversions due to construction of the Terminal and the relocation of the existing rail tracks and roads shall be the responsibility of TOC pursuant to Clause 6.5. All existing roads and railway connections and diversions respectively are as more particularly described and shown on the site plan attached as Schedule 4;

(ix) As regards other services in the exclusive purview of KPT but necessary for the safe and normal operation of the Terminal, KPT shall, if so requested by Sponsor/TOC provide same on payment by Sponsor/TOC of costs and charges as determined by KPT's published Tariff applicable to all terminals in Karachi Port;

(x) KPT shall not have any right of representation on the Board of Directors of TOC unless otherwise agreed by TOC;

(xi) In addition to the Container Handling Charges, the Sponsor/TOC shall be entitled to set, charge and collect such additional payments/charges including, inter alia, demurrage from consignees and container storage charges from carriers;

(xii) Interest on any late payments shall accrue at the rate of 2% above State Bank of Pakistan base rate per annum;

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(xiii) The KPT Customs Inspection Site within the Terminal shall only be utilized for cargoes loaded and unloaded by TOC.

3.4 Engineer : KPT shall appoint an independent firm of consulting engineers or any other person/official to oversee and Approve the development, design, engineering, supply, procurement, construction, commissioning and operation of the Project and Terminal including, without limitation the review and Approval of the designs and specifications and documents submitted by TOC, the observation of the progress of the work included in the Project Scope, the review of progress reports and, the issuance of certificates required under this Agreement on behalf of KPT.

3.5 Facilities for Engineer

The following facilities shall be provided, serviced and maintained for the exclusive use of the Engineer during the construction of the works and installation/commissioning of the terminal equipment:

- . Site office, fully furnished and equipped.
- . Survey equipment and protective clothing whenever required

Article 4 Pre-Construction

4.1 Joint Survey

Prior to the Date of Signing, the Sponsor shall appoint a reputable Surveyor, with Approval of KPT and cause the said Surveyor to carry out a survey of the Site and the quay wall together with nominated officials/surveyors of KPT. The said Surveyor, jointly with KPT's nominated officials/surveyors shall also make an inventory of all buildings, installations, structures, railway system/yard and other existing facilities and service lines at the Site with dimensioned sketches, drawings and details existing at the Site. Based on such joint survey, the said Surveyor will prepare a detailed report about the structural condition of the quay wall, and other structures to be retained, copies of which will be retained by both parties as reference for assessment of the condition of the quay wall and retained structures from time to time during construction, operation and maintenance of the Terminal and at the Expiry Date or earlier termination of this Agreement.

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4.2 Joint Ground Investigation

Prior to the Date of Signing, the Sponsor shall appoint a reputable Surveyor, with Approval of KPT and cause the said Surveyor to carry out an investigation of the ground conditions together with nominated officials/surveyors of KPT. The said Surveyor shall prepare trial pits, carry out CBR and laboratory tests of the soils and determine relevant soil design parameters. Based on such joint ground investigation, the said Surveyor shall prepare a detailed report on the prevalent ground conditions and their suitability for container terminal activities.

4.3 Technical and Financial Information

Within Six (6) Months from the Date of Signing of IA TOC shall furnish the following to KPT:

(a) Technical details, detailed Master plan, equipment schedules

etc. as required by KPT;

(b) Total equity break-up of TOC with dates of funding;

(c) Firm estimated cost of the Project; and

(d) Estimated duties, taxes or other levies in relation to the Project

and those applicable to TOC.

4.4 Detailed Plan and Schedules

Within Six (6) Months from the Date of Signing of IA TOC shall submit to KPT:

(a) a detailed plan and schedules showing the location, overall dimensions and general specifications of the new facilities to be built in the Terminal and what impact the new facilities will have on the existing facilities at the Site. TOC shall give a detailed inventory of buildings, structures, pavements, tracks, installations and facilities which will be dismantled or will be subjected to alteration. All such plans, schedules and inventories shall be subject to KPT review and Approval in accordance with the procedure laid down in Clause 6.4; and

(b) Indication of potential sources and terms of loan commitments with joint ventures/firms commitments of Lenders.

4.5 Subsurface Conditions

TOC shall have the option to invoke force majeure in the event there are unknown or unusual subsurface conditions not identified in the joint survey, if the cost to correct

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such condition would be prohibitive. Such unknown or unusual subsurface conditions shall be included in the definition of Force Majeure.

Article 5 Licenses/Consents

5.1 Applications To be Made by TOC

TOC shall at its sole cost and expense make or cause to be made all applications (whether initial or renewal applications) for the Consents in Prescribed Form and with Prescribed Fee to the Relevant Authorities and shall diligently pursue all such applications with a view to obtaining the relevant Consents as expeditiously as is practicable and shall maintain in effect all Consents received to enable TOC to perform its obligations under this Agreement.

5.2 Support of KPT

KPT shall support and recommend such applications insofar as these are reasonable so as to expedite the consideration thereof by the Relevant Authorities and shall provide all reasonable help to TOC to obtain and maintain the required Consents.

5.3 KPT Approvals

Provided that TOC shall have complied with all requirements under the KPT Act which relate to Site's development and under the terms of this Agreement, KPT shall promptly issue, or cause to be issued, all permits, Consents and Approvals required under the KPT Act or otherwise within its power and jurisdiction necessary for TOC to construct, equip, operate and maintain the Terminal in accordance with this Agreement. Any delay by KPT in issuing any such permits, Consents and Approvals shall extend the time of performance of TOC of any obligation imposed on the TOC in respect of Phases I, II and III.

Article 6 Construction Phase

6.1 Utility Services

TOC shall make its own arrangements for supply of water, electricity, fuel, communication lines or other utility services from the Relevant Authority and KPT shall not have any liability whatsoever, if TOC is unable to secure such necessary utility

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services. However, KPT agrees to provide to TOC on payment, such utility services as are surplus to its requirements and available with it. KPT also agrees to support and recommend all such applications to the Relevant Authority and provide all reasonable help in respect thereof.

6.2 Designs and Specification

All designs, engineering, specifications and documentation for all the construction work and procurement shall be based on international engineering standards, technical details set out in Schedule 3, and elsewhere in the Agreement, manufacturer's recommendations and Prudent Terminal Practice.

6.3 Documents to be Submitted to KPT

6.3.1 TOC shall submit to KPT/Engineer the following information and documents on or before the dates specified:

(a) Three copies of all designs and specifications of civil and infra-structure works, railway and other services relocation, gantry cranes and other equipment for the Project and conditions of bidding documents and invitations to tender, if any, and draft terms of the Construction, Procurement and Erection Contracts for Approval by KPT, one (1) Month before they are offered for bidding in accordance with the Implementation Schedule;

(b) Three copies of TOC's certificate setting forth (i) in respect of the debt financing of Phase I of the Project pursuant to the Financing Agreements, the name of each Lender and the principal amount of and related charges on the loan to be provided by such Lender, together with an amortization schedule of such loan within one (1) Month after the First Completion Date; and (ii) in respect of the equity in the name of each Investor holding more than ten percent (10%) of the paid up capital of TOC and the total shares held or subscribed, as the case may be, by such Investor within one (1) Month after its incorporation;

(c) As soon as available but in no event later than the commencement of construction of the civil works, three copies of the proposed schedule for the construction, supply and erection of the equipment and machinery of Phase I of the Project for Approval of KPT;

(d) On or before the commencement of the construction of the civil works in respect of each of Phase I, Phase II and Phase III, three copies of the Contractors' All Risks Insurance Policies;

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(e) Beginning at ninety (90) Days from the commencement of each of the Construction, Procurement and Erection Contracts, and ending on their respective Completion Dates, three copies of quarterly progress reports;

(f) On or before the First Completion Date, three copies of all initial insurance policies and certificates of insurance as in effect on such date;

(g) On or before the Completion Dates, three copies of all Consents that may have been issued to TOC for the construction and operation of the three Phases of the Project;

(h) No later than thirty (30) Days prior to both the Completion Date and to the Expiry Date, three copies of the proposed maintenance and operating procedures for the operation and maintenance of the Terminal;

(i) At least Seven (7) Days before the Completion Dates, three copies of all test results for tests performed on the Terminal and all equipment included in the Terminal in accordance with the Construction, Procurement and Erection Contracts;

(j) Three copies of all signed and stamped specifications for the civil and architectural works and as built drawings for the Terminal not previously delivered to KPT as soon as TOC receives them from the Contractors pursuant to the Construction, Procurement and Erection Contracts. TOC shall notify KPT of

any changes to the schedules described or included within the above paragraphs in a timely manner, for its records and for its Approval where required; and

(k) TOC shall submit periodic maintenance report regarding condition of all equipment and installation to be eventually handed over to KPT on the expiry of this Contract. Such maintenance report shall be submitted to KPT at the time that annual maintenance is carried out by TOC.

6.3.2 The receipts and/or approval of the above schedules, data, certificates and reports by KPT shall not be construed as an endorsement by KPT thereof nor as a warranty by KPT for the safety, durability or reliability of the Terminal, and shall in no manner reduce or absolve the obligations, warranties, representations and Consents of TOC under this Agreement.

6.4 Approval Procedure

6.4.1 All documents, drawings, Certificates and reports required to be submitted to KPT/Engineer for Approval under any of the clauses of this Agreement shall be reviewed and Approved by KPT/Engineer within a period of fourteen (14) Days after receipt thereof, such Approval not to be unreasonably withheld. Any objections that KPT/Engineer may

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have shall be communicated to TOC in reasonable detail in writing within the said fourteen (14) Days period. Upon receipt of said objections, TOC shall rectify the said documents/drawings/reports and resubmit the same for Approval and the terms of this Clause 6.4 shall apply mutatis mutandis, until Approval is given except that the period for Approval will stand reduced to seven (7) Days. If no objections are received by TOC within fourteen (14) Days or the said seven (7) Days period, as the case may be, the documents/ drawings/ reports shall be deemed to have been Approved by KPT/Engineer as submitted.

6.4.2 No Approval or deemed Approval by KPT/Engineer shall relieve TOC from its overall responsibilities, obligations, warranties, representations and covenants pursuant to this Agreement. No document which requires Approval under this Agreement and has received such Approval of KPT shall be modified or amended in any substantial manner without the further Approval of KPT/Engineer.

6.4.3 No time involved in rectification/resubmission of documents/drawings/reports shall relieve TOC from fulfilling its obligations hereunder within the period(s) specified to the extent such delay results solely and directly from the negligence of TOC; provided however, to the extent such delay does not arise from the negligence of TOC, the time for performance of any obligation imposed on TOC by this Agreement shall be extended.

6.5 Relocation, Salvage Material and Debris

6.5.1 Sponsor/TOC shall be responsible, at its sole cost, for the dismantling, removing, realigning, reconstructing and relocation of any facility upon the Site or any other location designated by KPT as per term of Implementation Agreement as may be required for the Project and installation of the Terminal.

Such removal, realignment, reconstruction and relocation shall be as per Schedule 4; provided however, notwithstanding anything in this Agreement to the contrary, TOC shall have the right but not the obligation to (i) demolish any building or structure within the Site not required for the Project excluding the H.M. Erskine historic building and clock tower and northern part of the South over bridge and existing power house. TOC shall ensure that any modifications, improvements or upgrading of existing structures and services at Site are in accordance with the Project Scope and do not in any manner impair the life and serviceability of any existing structures or facilities which are to be retained or strengthened pursuant to Clause 4.3.

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6.5.2 Sponsor/TOC shall be responsible, at its cost, for the removal of debris/salvage not required by the Project except rails and sleepers which shall be handed over to KPT at designated location & manner, and shall remove the same to an area designated by KPT within the port area and if not so required by KPT then to any area outside the KPT limits. TOC shall in no event dispose of the debris/salvage in the channel/sea.

6.6 Progress Observation by KPT and Engineer

KPT and/or the Engineer shall have the right to observe/oversee the progress of the construction of the Terminal and its testing and commencement of Operations, Sponsor/TOC shall comply with all requests of KPT and the Engineer for, and assist in arranging, any such observation visits to the Site. All persons attending the Site on behalf of KPT and the Engineer shall comply with the reasonable instructions and directions of TOC or its Contractors with regard to safety and security. TOC shall seek timely Approval from KPT/Engineer of all significant activities to be completed as specified in the Implementation Schedule and the provisions of Clause 6.4 shall apply to such Approvals.

6.7 Completion of Phase I, including Phase I (Preliminary)

6.7.1 At least fourteen (14) Days prior to the scheduled commencement of Phase I Preliminary & Phase I operations of the Project, written notice ("Notice of Completion"), together with a start-up and test schedule for the various equipment under Phase I Preliminary and Phase I of the Project Scope shall be served upon KPT or its Engineer to enable KPT or its Engineer to witness the said commencement.

6.7.2 Within fourteen (14) Days after the Notice of Completion, the Engineer shall either issue the First Completion Certificate or reject TOC's Notice of Completion by written notice to TOC specifying in reasonable detail the reason for such rejection. If the Engineer rejects the Notice of Completion, TOC at its own risk as to cost and time shall take all necessary corrective action and repeat the procedure until the issue of the First Completion Certificate by the Engineer. If such Certificate is not issued within three (3) Months of the first Notice of Completion, at TOC's request, KPT, the Engineer and TOC shall promptly meet to discuss and attempt to resolve the disagreement between TOC and the Engineer. If the parties fail to agree on whether the requirements for the issuance of the Certificate of

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Completion have been met or as to what remains to be accomplished, the parties shall employ the procedures set forth in Article 25.

6.8 Operation During Construction

TOC may commence Commercial Operation at any time after Possession (including, without limitation, prior to the issuance of the First Completion Certificate). Such Commercial Operation shall be governed by the terms of this Agreement.

6.9 Construction of Phase II & Phase III.

6.9.1 TOC shall proceed with the implementation of Phase II of the Project as soon as the container traffic volume exceeds 150,000 Containers per annum based upon an average of 37,500 Containers over three months period for two consecutive quarters.

6.9.1(a) TOC shall proceed with the implementation of Phase III of the Project as soon as the container traffic volume exceeds 300,000 Containers per annum based upon an average of 75,000 Containers over three months period for two consecutive quarters

6.9.2 The provisions of Clauses 6.3 to 6.8, in so far as relevant shall apply mutatis mutandis to Phase II and Phase III of the Project except that the period for submission of the documents shall be mutually agreed between KPT and TOC.

Article 7 Terminal Operations.

7.1 (a) TOC shall be in operation of the Terminal by the First Completion Date or at Commercial Operation, whichever is earlier.

(b) TOC shall provide all management and operating personnel and labor for the Terminal at the appropriate times and of such grades, with such qualifications and experience and in the numbers required for the efficient and smooth operation of a modern container terminal in accordance with Prudent Terminal Practice. Engagement of Dock Labor will be as per the Dock Workers (Regulation of Employment) Act 1974, as amended from time to time.

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(c) TOC shall obtain GOP's/KPT's prior clearance if it wishes to appoint any foreign national for working on the Site at the Terminal, which approval shall not be refused, except for security reasons.

7.2 Container Handling Productivity

TOC shall operate and maintain the Terminal in accordance with international container port productivity standards for comparable size/capacity terminals in the region and attain handling productivity in accordance with Prudent Terminal Practice. Nevertheless, TOC shall take all measures to ensure that a productivity norm of at least 25 to 30 containers per hour per shoreside gantry crane is

achieved under normal working conditions within one year after the completion of Phase I and is maintained until the Expiry Date.

7.3 Competitive Business

7.3.1 Other Dedicated Container Terminal(s)

In addition to this Terminal, KPT shall have the right to establish another container terminal facility at Karachi Port only when the aggregate container traffic at Karachi Port exceeds 750,000 TEU.s and further terminals each time the aggregate annual container traffic at Karachi Port increases by 300,000 TEU.s. Provided, however, that KPT may proceed at any time with planning, designing and tendering procedures for such other terminals.

7.3.2 Stevedoring Services Outside Terminal

TOC will not handle containers at other berths at Karachi Port, except with the express prior approval of KPT.

7.4 Berthing Policy

Container ships for the Terminal will be berthed as per decision of the KPT Berthing Committee based on the standard policy for Container Terminal Operators at Karachi Port on first come first served basis except when it is necessary in the national interest to supersede any such priority. Notwithstanding the above, the TOC shall be entitled to reserve a berthing window for carriers whose ships call at the Terminal on a regular basis, which carriers shall pay an additional charge to KPT for this entitlement. The TOC shall inform the KPT Berthing Committee of the same and shall have the

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exclusive right to assign and arrange with KPT for such berthing windows for said carriers. A separate berthing queue will be established for the Terminal. An out of queue ship opting to be served at the Terminal may be given berth however without disturbing the regular vessel schedule cycle. Only container ships/cargo shall be handled at the Terminal. In addition, at the request of TOC or KPT, by mutual agreement, special ships or special lifts may be handled at the Terminal in which event the Royalty payable in respect thereof will be agreed between KPT and TOC.

7.5 Operation and Maintenance

7.5.1 General Provisions

(a) TOC shall prepare and implement operating procedures and instructions for various equipment and facilities at the Terminal in accordance with Prudent Terminal Practice.

(b) Sponsor / TOC / Contractor shall develop and submit written procedures for operations at the Terminal In Consultation With KPT and the Customs authorities at least thirty (30) Days prior to the start of Commercial Operations. Such procedures which shall take into account the Project Scope, KPT's own

facilities and the anticipated container traffic and shall deal with all operational interfaces between KPT, the Customs authorities and TOC including, but not limited to, electronic means for flow of information, data, communication, collection of charges and levies etc. The operational interfaces shall include appropriate integration of computer data bases of the parties concerned. Any changes in these procedures shall be made only in Consultation with KPT.

7.5.2 Operations

TOC shall in accordance with this Agreement carry out the following operation at the site:

- (a) Discharge full and / or empty containers from vessels, stack such containers on the Terminal, make Container Freight Station ("CFS") containers available for destuffing at any such carrier's facility, stack full containers in customs inspection area and deliver such containers to consignees after receiving custom clearance;
- (b) Receive CFS and Container Yard ("CY") full export containers from line or line's representative or trucker; stack sealed CFS containers in outbound stack, stack CY containers in customs inspection area, shift such containers to outbound stack after customs clearance, and load such containers on vessels as instructed by lines; and

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- (c) Perform other ancillary services as solely determined by TOC; provided however, nothing in this Agreement shall be construed as requiring the TOC to perform CFS operations.

7.5.3 Maintenance and Repair Instructions

TOC shall prepare and implement instructions for each equipment/facility which shall include the following, all in accordance with Prudent Terminal Practice:

- (a) Preventive maintenance which will indicate the inspection required at regular intervals, the inspection procedures, routine cleaning and lubricating operations and the regular safety checks.
- (b) Repair and adjustment instructions which will aid in the inspections, fitting and dismantling of parts, as well as repair and adjustment procedures.
- (c) Spare parts list containing all the necessary data for ordering spare parts.
- (d) Programmed overhaul schedules.

7.5.4 Catalogues Concerning Spare Parts

TOC shall prepare, update and furnish clear and necessary information catalogues and lists concerning necessary spare parts for the machinery and equipment employed at the Terminal, in accordance with Prudent Terminal Practice and provide the same to KPT, if requested in writing.

7.5.5 Submitting of the Operating, Maintenance and Repair Instruction

Final, "As-Built" drawings, pamphlets, manuals, operating and maintenance instructions and procedures related to a given equipment or facility of the Terminal, if not already submitted earlier in accordance with the provisions of this Agreement shall be submitted by TOC to KPT, within One (1) Month of the Completion Dates respectively.

7.5.6 Inventory

TOC shall at all times keep an inventory of spare parts and other consumable for the machinery and equipment employed at the Terminal adequate for maintaining the said machinery and equipment.

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Article 8 Compensation, Payment, Billing

8.1. Royalty Payments

8.1.1 Beginning with Commercial Operation and until the earlier of the Expiry Date or termination of this Agreement, Sponsor/TOC shall pay to KPT a Royalty at the rate of US\$12.54 per Cross Berth revenue move with indexation of 5% after every three years. First indexation shall start after 05 (five) years from completion of phase I i.e. 22 months from the date of signing of Implementation Agreement.

8.1.2 Royalty payments shall be made in US Dollars, if collected by TOC in that currency, subject to the consent and direction of the State Bank of Pakistan, and , in the absence thereof, in the Pakistan rupees equivalent of U.S. Dollars calculated at the official rate of exchange as declared by the State Bank of Pakistan for the relevant date of berthing.

8.1.3 Royalty payments shall be made monthly within ten (10) Days of the end of each Month and shall be subject to annual adjustments, if any, on the basis of audited records of all containers/boxes handled at the Terminal maintained by TOC pursuant to Clause 8.7. The Royalty payments due to KPT shall not be subordinated to the payments of principal, interest, or any other charges/debts due by TOC to the Lenders of any third parties under the Financing Agreements or any other agreements/obligations of TOC with said third parties.

8.2 Handling, Marshalling and Storage Charge

8.2.1 Handling, Marshalling and Storage Charge ("HMS Charge") for containers/other specified cargo shall be payable by Sponsor / TOC to KPT at a unit rate of Rupees : 411/- (Rupees Four Hundred and Eleven) per square meter per annum in respect of the area of Site in occupation of Sponsor / TOC.

8.2.2 HMS Charge shall be subject to an indexation calculated at a rate of no greater than fifteen percent (15%) every 3 years. The first such indexation will occur three (3) years from possession.

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8.3 KPT Charges

8.3.1 KPT shall have the right to continue to levy and collect the KPT Charges directly from consignees and all other users. TOC shall ensure that no cargo is released by it unless the KPT Charges are either paid to KPT in total or collected by TOC on behalf of KPT. If such Charges are collected directly by KPT, TOC shall not be held responsible for releasing such cargo unless notified in advance by KPT of any non-payment of such Charges. In any event, TOC shall not release any cargo/container unless paid copy of the relevant KPT Wharfage Entry is available, and produced to TOC.

8.3.2 TOC shall give KPT at least two (2) working Day's notice before any container or cargo on which KPT has notified its intention to exercise its lien, is released by TOC to permit KPT to retain its lien on uncleared containers or cargo unless TOC shall have received evidence, in such form as will be agreed between it and KPT, that the KPT Charges due and payable in respect of such container or cargo have been paid to KPT or collected by TOC on behalf of KPT.

8.4 Container Handling Charges (Schedule 9)

8.4.1 TOC may revise from time to time, In Consultation With KPT, its Container Handling Charges including the Container Loading/Unloading Charge, and shall furnish ten (10) copies of the same to KPT within ten (10) Days of printing and publication. TOC may escalate these up to (15%) fifteen percent every (2) Two years upon at least thirty (30) Days prior written notice to KPT to that effect, subject to prevailing market conditions and consultations with KPT. In the event that TOC desires to exceed said fifteen percent (15%) increase every two (2) years, TOC will submit such request to KPT for Approval.

8.5 Collection of KPT Charges

On request from KPT, TOC shall collect the KPT Charges connected with the operations at the Terminal according to the Tariff. In such event TOC shall ensure that all KPT Charges collected by it on behalf of KPT are paid directly into a Bank Account nominated by KPT for the purpose, within ten (10) Days of the following month. Detailed procedures and collection fees, if any, shall be jointly agreed.

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8.6 Fees Payable by KPT to TOC

8.6.1 Beginning with Commercial Operation, KPT shall pay to TOC agreed fees/charges as compensation for the services or facilities requested by KPT and arranged/provided by TOC. Such charges will be determined on the basis of mutually agreed rates, but shall not be less than TOC's actual cost incurred (including reasonable overhead and profit). Fees due by KPT to TOC shall be paid monthly within Ten (10) days of the following Month into a Bank Account nominated by TOC. If such fees are not paid within the said period TOC shall be entitled to receive compensation/interest from KPT at the rate of 2% above State Bank of Pakistan base rate per annum on the amount remaining unpaid after the period in question. TOC shall be entitled to withhold/deduct all such outstanding amounts, by way of set off, from any payment due to KPT.

8.7 Collection Procedures

8.7.1 Detailed procedures and accounting systems regarding the collection by TOC of the KPT Charges and the payment of Royalty by TOC to KPT shall be prepared by TOC, which, upon Approval by KPT, shall be strictly followed. Such procedures and systems shall be agreed thirty (30) Days prior to Commercial Operation and shall be revised only with mutual consent of the parties.

8.7.2 In the event the Royalty payments due from TOC to KPT are not paid within the period specified in Clause 8.1.3 or the KPT Charges due from TOC to KPT are not paid within the period specified in Clause 8.5, KPT shall be entitled to receive compensation/interest from TOC at the rate of 2% above State Bank of Pakistan base rate per annum on the amount remaining unpaid after the periods in question. KPT shall be entitled to withhold/deduct all such outstanding amounts, by way of set-off, from any payment due to TOC.

8.8 Handling Records

TOC shall maintain detailed and proper records of all containers and non-containerized cargo or ship gear handled by TOC which records shall be available in a form and in such frequency as may be mutually agreed for inspection at TOC's premises by the officials nominated by KPT during TOC's normal business hours. Three copies of such records shall be provided to KPT promptly after each sailing.

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Article 9 Indemnities

9.1 Indemnity By TOC

TOC will bear responsibility for loss of or damage to berths, quay wall structure, apron, services or any other property, death or injury to any person (or any claim against KPT in respect thereof) suffered by KPT during the design, financing, construction, operation or maintenance of the Terminal resulting from any negligent act or omission of TOC and/or its Contractors and/or its Consultant, and TOC will hold KPT fully indemnified in respect thereof. The said indemnity shall not extend to any loss, damage, death or injury (or any claim in respect thereof) to the extent that it was caused by any negligent act or omission of KPT or the failure of KPT to take reasonable steps in mitigation thereof.

9.2 Indemnity by KPT

KPT will bear responsibility for loss of or damage to property, death or injury to any person (or any claim against TOC and/or its Contractors and/or its Consultant in respect thereof) suffered by TOC and/or its Contractors and/or its Consultant during the design, financing, construction, operation or maintenance of the Terminal resulting from any design defect in the Quay Wall and rear crane beam or any negligent act or omission of KPT and/or its Engineer, and/or such contractors (that may be appointed in the future) and KPT will hold TOC and/or its Contractors and/or its Consultant fully indemnified in respect thereof. This indemnity shall not extend to any loss, damage, death or injury (or any claim in respect thereof) to the extent that it was caused by any negligent act or omission of TOC and/or its Contractors and/or its Consultant or the failure of TOC and/or its Contractors and/or its Consultant to take reasonable steps in mitigation thereof.

9.3 Consequential Losses

In no case shall the indemnities in Clauses 9.1 and 9.2 extend to indirect or consequential loss or damage.

9.4 Notice of Proceedings

Each party shall promptly notify the other party of any claim or proceeding in respect of which it is entitled to be indemnified under this Article 9. Such notice shall be

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given as soon as reasonably practicable, but in any event within seven (7) Days, after the relevant party becomes aware of the same.

9.5 Conduct of Proceedings

In the event that any loss results from the joint or concurrent negligent or intentional acts or omissions of the Parties, each party shall be liable under this indemnification in proportion to the relative degree of fault.

9.6 Any fines or other penalties incurred by TOC/KPT for non-compliance with the applicable Laws of Pakistan or other Governmental directions taken pursuant thereto or the Consents shall be to the sole account of the party incurring the fine or penalty.

9.7 Neither party shall be entitled to settle or compromise any such claim, action, suit or proceeding without the prior written consent of the other party; provided, however, that after agreeing in writing to indemnify the indemnified party, the indemnifying party may settle or compromise any claim without the approval of the indemnified party. Except where such consent is unreasonably withheld, if a party settles or compromises any claim, action, suit or proceeding in respect of which it would otherwise be entitled to be indemnified by the other party without the prior written consent of the other party, the other party shall be excused from any obligation to indemnify the party making such settlement or compromise in respect of such settlement or compromise.

9.8 Following the acknowledgement of the indemnification and the assumption of the defense by the indemnifying party, the indemnified party shall have the right to employ its own counsel and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of such indemnified party, when and as incurred, unless (i) the employment of counsel by such indemnified party has been authorized in writing by the indemnifying party, (ii) the indemnified party shall have reasonably concluded that there may be a conflict of interest between the indemnifying party and the indemnified party in the conduct of the defense of such action, (iii) the indemnifying party shall not in fact have employed independent counsel reasonably satisfactory to the indemnified party to assume the defence of such action and shall have been so notified by the indemnified party, or (iv) the indemnified party shall have reasonably concluded and specifically notified the indemnifying party either that there may be specific defenses

available to it that are different from or additional to those available to the indemnifying party or that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement. If clauses (ii), (iii) or (iv) of the preceding sentence shall be applicable, then counsel for the indemnified party shall have the right to direct the defence of such claim, action, suit or proceeding on behalf of the indemnified party and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

Article 10 Insurance

10.1 Insurance Coverage

TOC, at its sole cost and expense, shall obtain and maintain during the term of this Agreement the insurances set forth in Schedule 5 at least in the amounts set forth therein, during the periods mentioned therein, naming the insured parties set out therein and in such form and with such insurance companies as may be acceptable to KPT. Provided, however, that such amounts may be reduced from time to time with mutual agreement. KPT acknowledges that the Lenders may also require to be designated as the loss payees or additional insured under such policies, as the case may be. TOC will maintain separate insurance in respect of the quay wall at the Terminal in accordance with Schedule 5 to cover any damage that may be done to the quay wall due to fault or negligence of TOC and/or its Contractors and/or its Consultant or otherwise after signing of the Lease Agreement. TOC will ensure that any payments received under such insurance are used exclusively for repair of such damage to the quay wall which will be undertaken without any undue delay. KPT will have the option to effect such repairs by itself from said payment, provided that if it exercises such option, it will effect such repairs without any delay. TOC shall not be in breach of its obligations hereunder if and to the extent that any particular insurance or endorsements are unavailable to it for reasons other than any negligence or default by TOC.

10.2 Special Liability Insurance Endorsements

TOC shall cause its insurers to provide the following endorsement items in its comprehensive or commercial general liability cover and, if applicable, umbrella or excess liability policies relating to the ownership, construction, operation and maintenance of the Terminal:

(i) Trustees of KPT shall be additionally insured under such policies; and

(ii) The following cross liability clause shall be made a part of the policy: "In the event of claims being made by reason of (i) personal and/or bodily injuries suffered by any employee or employees of one insured hereunder for which another insured hereunder is or may be liable, or (ii) damage to property belonging to any insured hereunder for which another insured is or may be liable, then this policy shall cover such insured against whom a claim is made or may be made in the same manner as if separate policies have been issued to each insured hereunder, except with respect to the limits of insurance".

10.3 Special Property Insurance Endorsements

TOC shall cause its insurers to provide the endorsements referred to in Clause 10.2 (i) and (ii) in its fire and perils and machinery breakdown policies covering the Project.

10.4 Insurance Certificates

TOC shall cause its insurers or agents to provide KPT with certificates of insurance evidencing the policies and endorsements listed above. Failure by TOC to obtain the insurance coverage or certificates of insurances required by this Article 10 shall not relieve TOC of the insurance requirements set forth herein or in any way relieve or limit TOC's obligations and liabilities under any other provision of this Agreement. If TOC shall fail to procure or maintain any insurance required pursuant to this Article 10 and such insurance is not procured or maintained by the Lenders or any other party, then KPT shall have the right to procure such insurance at the cost of TOC in accordance with the requirements of Schedule 5.

10.5 The terms and conditions of any policy of insurance obtained by TOC under this Article 10 shall not be amended without consulting KPT.

Article 11 Immigration and Controls

TOC shall make application in the Prescribed Form with Prescribed Fee and shall use its reasonable endeavors to obtain all work permits, employment passes, dependents passes, visas and other permits, if necessary, for foreign nationals involved in the Project. In making such applications, TOC shall comply with all Laws of Pakistan applicable thereto. In the event any permits or approvals are required from KPT, KPT will not unreasonably withhold such permits or approvals.

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Article 12 Terminal Security

TOC shall, at its own cost, provide all such security personnel, as are appropriate for the protection and security of the Site and the Terminal. From time to time TOC may request additional security forces from GOP or GOS to meet unusual security requirements under the exclusive control and direction of GOP or GOS provided, however, that TOC shall continue to remain responsible for the protection and security of the Site. No such request by TOC shall preclude a claim under any of the provisions of Article 17 by TOC, nor shall GOP's or GOS's providing such security forces be deemed of itself an admission or agreement by KPT that Force Majeure has occurred.

Article 13 Customs Duties & Import Controls/Foreign Exchange and Transfer of Funds.

13.1 TOC will be fully responsible for the timely payment of all customs duties, fees, surcharges and levies, sales tax, Iqra and import license fees both within and outside Pakistan and to follow the import/export rules of the GOP/GOS, issued/levied through CBR and other organizations.

13.2 Foreign exchange loans contracted for the Project shall be protected through current foreign exchange risk insurance cover schemes of the State Bank/National Bank of Pakistan, if required. Foreign currency accounts shall be maintained by TOC for receiving the amounts of foreign equity and loans and these will only be utilized for meeting the actual cost of the Project.

13.3 The foreign currency exchange and transfer abroad of all funds shall be governed by the Foreign Exchange Regulation Act, 1947, as amended from time to time, and rules and regulations made thereunder.

Article 14 Lease

14.1 Lease Agreement

Sponsor/TOC and KPT shall enter into a Lease Agreement in stages in respect of the Site, parts of which they take possession of as per this Agreement. Such Lease Agreement shall be in terms of Schedule 6 (except for Stage I & Stage II).

14.2 Registration

TOC shall be responsible for all payments to be made in connection with the Lease Agreement in accordance with the Laws of Pakistan including, without limitation, stamp

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duty and registration fees and charges and shall take all steps to ensure that the Lease Agreement is registered with the appropriate authorities under the Laws of Pakistan so as to make it legally valid and binding in accordance therewith.

14.3 Terms of Lease Agreement

The Lease Agreement shall, inter alia, incorporate provisions to the effect that:

(a) The tenure of the lease shall be from Possession (Preliminary) till the Expiry Date or earlier termination of this Agreement subject to the provisions of Clause 15.2.

(b) Actual physical possession of the Site Phase I will be handed over to Sponsor in stages in accordance with a scheme to be agreed with KPT. It is anticipated that in Stage I, possession of quay wall Berths 6 to 9 will be handed over alongwith back up area as agreed and marked on the Site Plan. In Stage II the possession of CMEE.s office duly agreed and marked on the Site Plan shall be handed over to Sponsor / TOC not later than 3 months of the date of signing of Implementation Agreement.

In Phase II, the backup area and Army Embarkation as marked on the Joint Survey Plan will be handed over to TOC.

In Phase III the area agreed and as marked on the Site Plan will be handed over to the TOC.

(c) TOC shall be responsible for the payment of all taxes, duties surcharge and levies, if and when levied by any government agency/authorities, whether provincial or federal.

Article 15 Assignment and Lenders' Security

15.1 Assignment

Neither party may assign or transfer this Agreement or any of its rights or obligations hereunder without the prior written consent of the other party, except as provided in Recital C.

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15.2 Lenders' Security

Notwithstanding Clause 15.1, for the purpose of financing the construction and operation of the Project/Terminal, TOC, with the Approval of KPT may create a security/charge over its rights and interests, under or pursuant to (a) this Agreement (b) any other agreement included within the Security Package, (c) its leasehold interest in and to the Site, (d) the Terminal, (e) the movable property and intellectual property of TOC, or (f) subject to the provisions of Clause 8.1.3, the revenues or any other rights or assets of TOC. The holder of any security created under this Clause 15.2 shall not be prevented or impeded by KPT from enforcing such security/charge in accordance with its terms. Unless the Lenders otherwise agree pursuant to Article 23 the security/charge so created (including, without limitation, the leasehold interest in respect of the Site) shall survive the termination of this Agreement until the repayment in full of all obligations of TOC under the Financing Agreements. The clause 15.2 is conditional upon KPT approving the terms and conditions upon which such security charge may be enforced. KPT approval shall not be unreasonably withheld.

Article 16 Provisions Relating To Lenders.

16.1 Security Package

KPT shall not take any discriminatory action which materially and adversely affects the interests of the Lenders under the Financing Agreements.

16.2 Enjoyment of Rights

KPT shall not take any discriminatory action which materially and adversely affects the Project or the performance of TOC's obligations or enjoyment of TOC's rights under the Security Package or, except as hereinafter provided, seek the expropriation or compulsory acquisition of the Terminal or TOC, whether in whole or in part.

16.3 Substitution of Nominated Company.

16.3.1 Upon the giving of notice to KPT and TOC by any of the Lenders or any agent or trustees under the Financing Agreements or the exercise by any of them of their rights to enforce their security (such notice to be given promptly after the exercise of such right stating in detail the default of TOC

complained of under the Financing Agreements), the Lenders shall be entitled to substitute another company with the consent of KPT (the

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"Nominated Company") for TOC under this Agreement in accordance with the following provisions of this Clause 16.3

16.3.2 Subject to Clauses 16.3.1 and 16.3.6, notice (a "Substitution Notice") may be given to KPT by or on behalf of the Lenders holding a majority percentage in the then outstanding principal amount owing by TOC under the Financing Agreements or such other percentage as will have been agreed among KPT, TOC and the Lenders on or before Financial Closing. The Substitution Notice shall indicate the entity which is proposed to continue this Agreement in place of TOC.

16.3.3 Upon receipt by KPT of a Substitution Notice, KPT and the relevant Lenders shall consult for a period of twenty-one (21) Days as to the entity which is to be the Nominated Company. On or before the expiry of that consultation period, KPT shall have the right to reject the company proposed in the Substitution Notice if it is not reasonably satisfied that such company has the technical and financial capability to continue the construction and/or operation of the Terminal in accordance with Prudent Terminal Practice or if KPT determines, solely on the basis of an appropriate order or instruction issued by the relevant Naval Security Authority or other Relevant Authority to that effect, that the substitution of such company would prejudice the national security interest of Pakistan. If KPT shall so reject the company proposed in the Substitution Notice, KPT and the relevant Lenders shall continue to consult for a further twenty-one (21) Days as to an alternative company to be the Nominated Company, subject to KPT's right to reject such alternative company for either of the reasons specified in the previous sentence. Except as aforesaid, KPT shall not reject a Nominated Company.

16.3.4 At the end of the period(s) specified in Clause 16.3.3 (unless, in accordance with Clause 16.3.3, KPT shall have rejected all companies proposed) KPT, TOC and the Nominated Company shall forthwith execute a Novation Agreement in the form set out in Schedule 8, incorporating amendments to this Agreement (if KPT and the Nominated Company, with the consent of the Lenders, shall have agreed on any amendments to this Agreement) provided that no such Novation Agreement shall be executed or take effect unless the Nominated Company shall have at the same time entered into, to the Lenders satisfaction, documents equivalent to those entered into by TOC under the Security Package and such documents shall have become effective. Thereupon, this Agreement, as

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amended shall continue in effect as if all references to TOC were to the Nominated Company, provided that (i) the Nominated Company shall not be obligated to satisfy any obligations of TOC hereunder that have become due and payable before the date of the said Novation Agreement and (ii) neither KPT nor the Nominated Company shall be entitled to terminate this Agreement by virtue only of the event giving rise to the relevant Substitution Notice.

16.3.5 In the event KPT does reject all the companies proposed by the Lenders, KPT shall have the option either to:

(i) Take over the ownership, control, management and operation of the Terminal by making payment of all the outstanding indebtedness of TOC to the Lenders or on such other terms and conditions as may be agreed between the Lenders and KPT; or

(ii) To nominate an entity of its own choice to substitute TOC ("KPT Substitution") for acceptance of Lenders whereupon the provisions of Clause 16.3.4, as appropriate, shall become applicable.

16.3.6 No Substitution Notice may be given, and, accordingly, no further substitution may take place under this Clause 16.3 unless KPT agrees otherwise, if there shall previously have been three (3) or more Nominated Companies with which KPT has entered into Novation Agreements pursuant to Clause 16.3.4.

16.3.7 KPT will, if so requested by TOC, give an undertaking substantially in the form of this Clause 16.3 to the Lenders (or any person acting on its or their behalf).

16.3.8 If TOC is in default under the Financing Agreements, the Lenders may, in enforcement of their security under the Financing Agreements, without cost or expense to KPT, appoint an experienced container terminal operator as an interim operator of the Terminal pending consultations with KPT concerning the substitution of TOC with the Nominated Company, and serve notice thereof to KPT. If KPT does not either approve such operator or give reasons for non-acceptance to the Lenders within three (3) Days of such notice, the appointment will be deemed to have been accepted by KPT. Such interim operator shall operate the Terminal in all material respects in accordance with the terms and conditions of this Agreement that would otherwise be applicable to TOC.

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16.4 Further Assurance

Each party shall execute and deliver and, where capable of registration, register with the Relevant Authorities in Pakistan such further instruments as are required under the law in order to perfect the grant of the rights conferred hereunder.

16.5 Consultation on Modification to this Agreement

If Sponsor/TOC advises KPT that amendments, modifications or revision to this Agreement are necessary to satisfy requirements of the Lenders, KPT and Sponsor/TOC shall promptly consult as to any mutually acceptable action necessary under the circumstances and negotiate in good faith with a view toward amending, modifying and revising this Agreement in a mutually satisfactory manner.

Article 17 Force Majeure

17.1 Meaning of Force Majeure

In this Agreement, "Force Majeure" means, with respect to either party, any event or circumstance or combination of events or circumstances beyond the reasonable control of such party materially and adversely affecting the performance by such party of its obligations or the enjoyment by such party of its rights under or pursuant to this Agreement; provided that (i) TOC shall not claim such material and adverse effect if it has occurred due to the failure of TOC to design, construct, insure, operate or maintain the Terminal as per this Agreement and (ii) KPT shall not claim such material adverse effect if it has occurred due to a failure of KPT to perform its obligations as per this Agreement. Without limitation to the generality of the foregoing, "Force Majeure" shall include the following events and circumstances to the extent that they satisfy the above requirements:

(a) Natural events (each a "Natural Event") including, but not limited to:

(i) Any material effect of the natural elements, including lightning, fire, earthquake, tsunami, flood, storm, cyclone, typhoon, or tornado;

(ii) Explosion or chemical contamination;

(iii) Epidemic or plague;

(iv) Unknown or unusual subsurface conditions not identified in the joint survey of the Site provided the cost to correct such condition is prohibitive; and

(v) Any event or circumstance of a nature or having an effect analogous to any of foregoing.

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(b) Other events of Force Majeure together with the events described in Clause 17.1 (c) each a "Political Event" including but not limited to:

(i) Acts of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, act of terrorism, or sabotage;

(ii) Radioactive contamination or ionizing radiation;

(iii) Strikes, works to rule or go-slow which are either widespread, nationwide or citywide or of a political nature;

(iv) Any event or circumstance of a nature or having an effect analogous to any of the foregoing.

(c) Other events of Force Majeure, but only to the extent that they affect the performance by TOC of its obligations under or pursuant to this Agreement including:

(i) The making of, or any change in, any Laws of Pakistan after the date hereof or any governmental action materially and directly preventing the performance or adversely affecting the performance by TOC or the Contractors of its or their obligations or the enjoyment by TOC or the Contractors of its or their rights under the Security Package;

(ii) The expropriation compulsory acquisition or nationalization of (aa) any shares in TOC if the result would be to acquire ownership or control of a majority of the shares in TOC, or (bb) any assets or rights of TOC or the Contractors;

(iii) Any of the Consents, after having been granted, being withdrawn, or if granted for a limited period, not being renewed upon application having been duly made or being renewed upon terms and conditions which adversely and materially affect TOC's compliance with this Agreement, or the Contractors' ability to fulfill their obligations to TOC or the attachment to any Consent subsequent to its grant of any terms or conditions which materially and adversely affect the ability of TOC to perform its obligations under this Agreement; and

(iv) Any event or circumstance of a nature or having an effect analogous to any of the foregoing. For the avoidance of doubt, it is the intention of the parties that all events or circumstances falling within paragraphs (a), (b) and (c) of this Clause 17.1 shall be classified either as Natural Events or as Political Events depending on their nature or effects.

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(d) Force Majeure shall expressly not include the following conditions, except to the extent resulting from an Event of Force Majeure:

(i) Late delivery of plant, machinery, equipment, materials, spare parts or consumables for the Project;

(ii) A delay in the performance of any Contractor; and

(iii) Lack or unavailability of money or changes in market condition.

17.2 Notice of Force Majeure

(a) The party claiming Force Majeure shall give notice to the other party of any event of Force Majeure as soon as reasonably practicable, but not later than thirty (30) working Days after the date on which such party knew or should reasonably have known of such event of Force Majeure and that it would materially and adversely affect the performance by it of its obligations or the enjoyment by such party of its rights under or pursuant to this Agreement.

(b) The party claiming Force Majeure shall give notice to the other party of (i) the cessation of the relevant event of Force Majeure, and (ii) the cessation of the effects of such event of Force Majeure as soon as practicable after becoming aware of each of (i) and (ii) above but, in each case within two (2) working Days after the date on which such party knew or should reasonably have known of such cessation.

(c) Neither party shall be excused pursuant to Clause 17.4 for any failure or delay in complying with its obligations under or pursuant to this Agreement unless the notice mentioned in Clause 17.2 (a) shall have been given, provided, however, that, if the said notice shall have been within the period

mentioned in Clause 17.2 (a), such party shall be excused for such failure or delay pursuant to Clause 17.4 from the commencement of the relevant event of Force Majeure.

17.3 Mitigation

The parties shall use their reasonable endeavors to mitigate the effects of any event of Force Majeure affecting the enjoyment by either party of its rights or the performance by it of its obligations under this Agreement and consult with each other with a view toward resolving the condition created by such Force Majeure in a mutually satisfactory manner.

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17.4 Consequences of Force Majeure

Subject as provided in Clause 17.2 (c), neither party shall be liable for any failure or delay in complying with its obligations under or pursuant to this Agreement to the extent that such failure or delay has been caused, or materially contributed to, by one or more event(s) of Force Majeure or its or their effects or by any combination thereof. The period allowed for the performance by such party, or the periods by which the Completion Dates of the Project are to be achieved shall be adjusted accordingly to include the effects of Force Majeure, provided, however, that no relief shall be granted to a party pursuant to this Clause 17.4 to the extent that such failure or delay would have nevertheless been experienced by such party had such event of Force Majeure not occurred. Nor shall a party affected by an event of Force Majeure have any liability to the other for any liquidated damages during an event of Force Majeure to the extent that such event prevents such party from performing its obligations in respect of which such liquidated damages would be payable pursuant to this Agreement; provided that if an event of Force Majeure prevents KPT from performing its obligations under paragraphs (i), (ii), and (v) of Clause 3.3 (b) and KPT requests in writing to TOC for performance of any or all of such obligations, TOC shall perform, or make arrangements with others for the performance of such requested obligations if practicable. KPT shall be obligated to pay the actual cost incurred by TOC for the above services. Other than the obligations set forth in Article 23 herein or for breaches of this Agreement, and without prejudice to the parties' rights to indemnification pursuant to Article 9, neither party shall bear any liability for any loss or expense suffered by the other as a result of an event of Force Majeure.

17.5 Termination as a Result of Force Majeure

In the event Force Majeure circumstances materially and adversely affect the construction or operation of the Terminal, as the case may be, for a period of thirty (30) consecutive days, then the parties shall, at the written request of either party, consult with each other with a view toward resolving the condition created by such event of Force Majeure in a mutually satisfactory manner including adjusting or modifying the provisions of this Agreement. If the parties do not agree on any mutually satisfactory action within a period of Ninety (90) Days from such written request (provided such events are still subsisting) then either party may terminate this Agreement by giving written notice to the other party and to the Lenders, whereupon, subject to the provisions of Article 23, Article

24 and Article 25, this Agreement shall immediately terminate. Until this Agreement is so terminated, nothing herein shall excuse TOC or KPT from fulfilling their respective obligations hereunder which are not materially precluded by the said event of Force Majeure.

Article 18 Taxes

All present and future federal, provincial, municipal or other lawful income and other taxes, duties, levies, or other impositions whatsoever applicable to TOC, its Contractors, sub-contractors, the Terminal, TOC employees and dock labor, or TOC's other assets shall be paid by TOC, its Contractors, sub-contractors and their employees and dock labor, respectively as the case may be in accordance with the requirements of the Laws of Pakistan. KPT will not assume any tax liability, whatsoever on behalf of TOC, nor will TOC assume any tax liability on behalf of KPT.

Article 19 Effectiveness, Duration, Completion, Expiry, Liquidated Damages

19.1 Effectiveness

This Agreement shall be effective on the Date of Signing and shall continue in full force and effect until the Expiry Date unless it is terminated pursuant to the provisions of this Agreement whichever is earlier.

19.2 Completion of Phase I

19.2.1 TOC shall achieve the First Completion Date no later than twenty two (22) Months from the Date of Signing of Implementation Agreement.

19.2.2 TOC shall:

- (i) Make best endeavours to meet the intermediate dates intimated in the Schedule I for the implementation of all material Phase I activities.
- (ii) For the purpose aforesaid TOC shall be required to satisfy the Engineer with evidence so that the Engineer may certify the following:
 - a) Date of commencement of all material activities relating to implementation of Phase I in accordance with Schedule I; and
 - b) Date(s) of placement of firm orders for procurement of all major/material plant, equipment and machinery to be incorporated in Phase I of the Project.

(iii) Completion of Phase I shall occur when TOC applies for and receives a certificate to this effect from KPT/Engineer.

19.3 Completion of Phase II & Phase III.

19.3.1 (a) TOC shall commence Implementation of Phase II when the container traffic volume specified in Clause 6.9.1 has been reached and is so certified by KPT and shall achieve the Second Completion Date within eighteen (18) Months from the date of the said certificate.

19.3.1 (b) TOC shall commence Implementation of Phase III when the container traffic volume specified in Clause 6.9.1(a) has been reached and is so certified by KPT and shall achieve the Third Completion Date within eighteen (18) Months from the date of the said certificate.

19.3.2 (I) For the purpose aforesaid, TOC shall be required to provide evidence to KPT to establish placement of firm orders for procurement of all major/material plant, equipment, and machinery to be incorporated in Phase II of the Project within three (3) Months from the date of the certificate specified in Clause 19.3.1.

(II) Completion of Phase II and III shall occur when TOC applies for and receives the Second and Third Completion Certificate, respectively.

19.4 Delay, Extension, Cost Overruns

19.4.1 In the event that TOC demonstrates that any event of Force Majeure or any KPT Event of Default has caused a delay in the achievement of the Completion Dates within the periods stipulated therefor, then such period shall be extended by mutual agreement of the parties so as to adequately reflect the consequences of said delay. In the event and to the extent that any such delay results in cost overruns in respect of the Project, TOC may make a claim in the amount of such cost overrun by written notice to KPT stating in sufficient detail the basis for such claim and the calculation of such cost overrun together with a certificate as to the accuracy of such calculations by TOC's auditors. KPT shall review such documentation and any amount agreed between the parties shall be paid to TOC.

19.5 Liquidated Damages

19.5.1 TOC shall use its best endeavours to provide for the payment of the liquidated damages in the terms and conditions of the Construction, Procurement, and Erection

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Contracts to enable TOC to recover such damages from such Contractors in the event TOC becomes liable to pay to KPT liquidated damages. However, TOC's inability to recover such liquidated damages from its Contractors shall in no manner reduce, dilute or absolve its obligation to pay liquidated damages to KPT strictly in accordance with this Agreement.

19.5.2 In the event the First Completion Date is not achieved as provided for in Clause 19.2.1 then for each Day or part thereof by which the First Completion Date is delayed, TOC shall pay to KPT liquidated damages at the rate of US Dollars Five Thousand Only (U.S \$: 5,000).

19.5.3 Liquidated Damages payable under Clause 19.5.2 shall be paid by TOC within fifteen (15) Days of the first written demand of KPT. Failing such payment by TOC, the Liquidated Damages due to KPT shall

be drawn from the Performance Bond or deducted from any sums due to TOC. Payment of Liquidated Damages by TOC shall be to the exclusion of any other remedy of KPT in respect of delays under this Agreement but shall not relieve TOC from its overall obligation to complete the Terminal or from any of its other obligations, risks or liabilities under this Agreement. In the event that any amounts of Liquidated Damages under this Article 19 are not paid within fifteen (15) Days, compensation thereon at the rate of 2% above State Bank of Pakistan base rate shall be payable by TOC until the date of payment / recovery thereof.

19.5.4 The liquidated damages provided for in this Agreement shall be payable in all events without set off or counter claim by TOC and the parties hereby agree that the amounts thereof are reasonable and have been mutually agreed as the predetermined loss of KPT in the circumstances.

19.5.5 The aggregate ceiling of liquidated damages recoverable for delay in achieving the First Completion Date shall be US Dollars One Million only (US\$ 1,000,000).

19.6 Performance Bond

19.6.1 TOC shall provide to KPT an unconditional, irrevocable and without recourse Performance Bond by way of a Bank Guarantee in the form attached hereto as Schedule 7 in a sum of US Dollars One Million, within 15 days of intimation to KPT of formation of TOC.

19.6.2 Such Guarantee shall replace the Guarantee of Rupees Ten Million (Rs.10,000,000/- submitted under provision of Para 1.1.3 of FORM OF BID as Bid security and be

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submitted from a Bank acceptable to KPT within (15) fifteen days of intimation to KPT of formation of TOC.

19.6.3 The Performance Bond Guarantee shall secure TOC's obligations, liabilities, warranties, indemnities, representations, guarantees and responsibilities under this Agreement including its obligations to pay Liquidated Damages and shall not be reduced by any payment of Liquidated Damages and shall remain in full force and effect until the issuance of the Third Completion Certificate.

Article 20 Termination for Default

20.1 Termination by KPT

20.1.1 KPT may give a notice of its intent to terminate this Agreement to TOC in accordance with Clause 20.3 with a copy thereof to the Lenders (or as they have designated), upon the occurrence of any of the following events (each a "TOC Event of Default"):

(a) Subsequent to the certification of the Engineer as per Clause 19.2.2. the suspension/abandonment by TOC of the construction activities of Phase I in accordance with Schedule I for more than thirty (30) consecutive Days for reasons other than Force Majeure events as specified in this Agreement;

(b) After the First Completion Date, the suspension or abandonment by TOC of the maintenance or operation of the Terminal (for other than an event of Force Majeure) for more than thirty (30) consecutive Days without the Approval of KPT, provided that (i) TOC shall not be deemed to have suspended maintenance or abandoned such operation if and for so long as the Engineer is satisfied that it is using its reasonable endeavors to recommence such operation and (ii) any Day during which the Terminal is shut down for normal maintenance and repair shall not be counted in such 30 day period if and for so long as the Engineer is satisfied that TOC is pursuing such maintenance and repair with due diligence;

(c) The failure of TOC to complete Phase I within a grace period of ninety (90) Days of the period stipulated in this Agreement for such purpose;

(d) Except for the purpose of amalgamation or restructuring (provided that such amalgamation or restructuring does not affect the ability of the amalgamated or restructured entity, as the case may be, to perform its obligations under this Agreement), the occurrence of any of the following events:

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(aa) The passing of a resolution by the shareholders of TOC for the winding up of TOC;

(bb) The appointment of a Liquidator in a proceeding for the winding up of TOC after notice to TOC and due hearing, which appointment has not been set aside or stayed within sixty (60) Days of such appointment; or

(cc) The making by a competent court of a final order winding up TOC;

(e) The assignment or subletting of the management and operations of the Terminal or any part thereof by TOC without Approval of KPT; provided that TOC may in the normal course of business engage third party contractors for performing miscellaneous services;

(f) Any other material breach by TOC of this Agreement (provided Arbitration is not pending in relation thereto) including non-payment of Royalty payments and lease charges as and when due, such as would justify KPT to treat this Agreement as having been repudiated by TOC and which, if not remedied within thirty (30) Days of written notice from KPT stating that a material breach of the Agreement has occurred which could result in the termination of this Agreement, (identifying the breach in question in reasonable detail and demanding remedy thereof) provided that if the breach cannot be remedied within such 30-day period despite TOC's reasonable endeavors to do so, such period shall be extended by mutual agreement for such additional period as is reasonably necessary to cure such breach if remedial action is promptly instituted within such 30 day period and is thereafter diligently pursued until such breach is corrected; or

(g) The appointment by TOC of a Contractor if (i) KPT has received a notice from TOC to such appointment and KPT has notified within the notice period (not being less than fifteen (15) Days), that the appointment would be contrary to the National Security interest of Pakistan; or (ii) TOC has not obtained the approval of KPT in accordance with Clause 3.2 (b) (ii) and KPT notifies TOC at any time that

the appointment is contrary to the National Security interest of Pakistan and TOC does not thereafter, within Seven (7) Days, remove such Contractor.

20.1.2 KPT may, by notice to the Sponsor, terminate this Agreement in the event the Sponsor fail to execute, or to procure execution by TOC of, the Novation Agreement (Schedule 10) pursuant to Recital C and Clause 3.2(a)(iii) of this Agreement within the period stipulated therein.

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20.2 Defaults of KPT

TOC may give a notice of its intent to terminate this Agreement to KPT in accordance with Clause 20.3, upon the occurrence of any of the following events unless resulting from a breach by TOC of this Agreement (each a "KPT Event of Default"):

(a) The dissolution, pursuant to law, of KPT except for the purpose of an amalgamation, reorganization or restructuring that does not legally affect the ability of the resulting entity to perform its obligations under this Agreement or any other agreement relating to the Project to which it may become a party;

(b) The transfer pursuant to a law of either (i) the rights and/or obligations of KPT or (ii) all or substantially all of the assets or undertakings of KPT, except where such transfer does not legally affect the ability of the transferee to perform its obligations under this Agreement or any other agreement relating to the Project to which it may become a party;

(c) Any default or defaults by KPT in the making of any ascertained, due and admitted payment or compensation required to be made by KPT under this Agreement within thirty (30) Days of the due date for payment which exceeds in the aggregate at any one time the sum of US Dollars Five Hundred Thousand Only (U.S \$: 500,000) or its rupee equivalent.

(d) Any material breach by KPT of this Agreement such as would entitle TOC to treat this Agreement as having been repudiated by KPT which, if not remedied within thirty (30) Days of notice from TOC to KPT, stating that a material breach of the agreement with KPT has occurred which could result in the termination of this Agreement (identifying the material breach in question in reasonable detail and demanding remedy thereof;) provided that if the breach cannot be remedied within such thirty (30) Days period despite KPT's reasonable endeavors to do so, such period shall be extended for such period as may be mutually acceptable and is reasonably necessary to cure such breach if remedial action is properly instituted within such thirty (30) Days period and is thereafter diligently pursued until such breach is rectified.

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20.3 Termination Notices

(a) A notice of intent to terminate this Agreement given pursuant to Clauses 20.1 or 20.2 (each a "Termination Intent Notice") shall specify in reasonable detail TOC Event of Default or KPT Event of Default, as the case may be, giving rise to the Termination Intent Notice;

(b) Following the giving of the Termination Intent Notice, the parties shall consult with each other and the Lenders if applicable, for a period of upto two (2) Months (or such longer period as they may agree) as to what steps shall be taken with a view to mitigating the consequences of the relevant event having regard to all the circumstances;

(c) The Lenders may cure any TOC Event of Default; and

(d) At the expiry of the said two (2) Months period and unless the parties shall have otherwise agreed or the event giving rise to the Termination Intent Notice shall have been remedied, subject to Clause 16.3, the party having given the Termination Intent Notice may terminate this Agreement by giving a further seven (7) Days written notice to the other party with a copy to the Lenders whereupon, subject to Articles 23 and 24, this Agreement shall immediately terminate at the end of the said seven (7) Days.

Article 21 Termination

21.1 Termination by Sponsor/TOC

The Sponsor or TOC, as the case may be, may terminate this Agreement at any time within six (6) Months of the Date of Signing in the event the GOP does not grant for TOC an exemption from duties/taxes on the import of Terminal Equipment and spare parts, inspite of best endeavours to obtain the same on the part of Sponsor/TOC. In this event, the Lease Agreement executed pursuant hereto shall also stand terminated and TOC shall, at KPT.s option, be responsible for restoring the Site and all structures thereon to their condition as at Possession or compensate KPT in respect thereof and restore peaceful and vacant possession of the Site to KPT forthwith, whereafter there will be no further obligation or commitment on either party whatever.

21.2 The Sponsor or TOC, as the case may be, shall exert their best efforts to arrange suitable financing for the implementation of the Project on non-recourse terms to the Sponsor, it being understood that KPT shall not be required to guarantee repayment of any loan. The Sponsor or TOC, as the case may be, shall notify KPT in writing immediately upon the procurement of such financing. In the event of failure to procure such financing

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within six (6) Months from the Date of Signing, KPT shall , if so requested, allow a further period of three (3) Months. In the event of failure of TOC to procure such financing, KPT may terminate this Agreement by giving written notice of such termination, unless TOC apply for extension and KPT approved the extension.

The provisions of this Clause 21.2 shall survive the execution of the Novation Agreement required pursuant to Clause 3.2(a)(iii).

21.3 Termination at Expiry Date

(a) This Agreement shall terminate on the Expiry Date.

(b) Prior to the Expiry Date, KPT will invite competitive bids for the operation of the Terminal from pre-qualified parties with terminal operating experience unless KPT intends to operate the Terminal itself after the Expiry Date. No later than twelve (12) Months before the Expiry Date, KPT shall advise TOC of its decision regarding the operation of the Terminal following the Expiry Date. In the Event KPT does not intend to operate the Terminal after the Expiry Date, it shall give TOC the first right of refusal to match the financial and other terms and conditions of the most successful bidder and stipulate a period of not less than Thirty (30) Days within which TOC would have the right to exercise said option.

Article 22 Transfer

22.1 Scope of Transfer

22.1.1 Transfer of Assets

(a) Except as otherwise provided in this Agreement, the scope of transfer covers the transfer of the Terminal together with all plant, equipment, machinery, vehicles, spares, infrastructure, installations, buildings, structures, civil works and facilities on the Site of the Project, including all other movable and immovable assets, complete as per the Project Scope with all replacements thereto made by TOC but excluding receivables until the Transfer Date ("the Transfer Assets").

Additional equipment acquired by TOC shall at the option of KPT be offered to KPT at mutually agreed price.

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(b) Such transfer will take place on the Expiry Date or upon earlier termination of this Agreement in accordance with the terms hereof ("the Transfer Date") from TOC to KPT.

22.1.2 Transfer of Continuing Contracts

(a) The scope of transfer also includes the transfer of the Continuing Contracts but only to the extent that any obligations and liabilities thereunder of TOC are due and payable on or after the Transfer Date.

(b) TOC shall be responsible for all obligations and liabilities in respect of the Continuing Contracts prior to the Transfer Date.

22.2 Procedure of Transfer on Expiry Date

22.2.1 Assets

(a) Ninety (90) Days before the Expiry Date, KPT and TOC shall jointly appoint an independent engineer ("the Examiner") to inspect and examine the Transfer Assets. The Examiner together with the nominees

of KPT and TOC shall make a joint inspection of the Terminal and all Transfer Assets with a view to KPT taking over the Transfer Assets.

The Examiner shall also certify whether TOC has maintained the Terminal in a sound manner in accordance with this Agreement or otherwise and whether the Terminal is in sound and good running condition and repair or not. All fees of the Examiner shall be jointly borne by KPT and TOC.

(b) TOC shall ensure that all such Transfer Assets of TOC as on the Expiry Date are free of all encumbrances, liabilities, liens, mortgages or the like, other than those Approved by KPT, and the said assets shall be so transferred to KPT. TOC hereby agrees to fully indemnify and hold KPT harmless against every and all claims, damages, losses, demands, actions, judgments, liabilities, costs, fees and expenses arising out of any obligation or liability of TOC (whether by statute, contract or otherwise) or any act or omission of TOC provided any said claims, losses, etc. arise from breach of TOC's obligations under this Clause 22.2.1 (b). In furtherance of the foregoing TOC agrees to execute or cause to be executed by banks such bonds, assurances and guarantees (in form and substance acceptable to KPT) in order to secure the foregoing indemnity.

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(c) All the Transfer Assets (complete lock, stock and barrel) shall be transferred to KPT on the Expiry Date at a token value of Rupees One (Rs.1/-) only and TOC shall be liable to make payment of all amounts and Royalty due and payable to KPT as on the Expiry Date in accordance with this Agreement.

22.2.2 Continuing Contracts

(a) TOC shall obtain Approval of KPT for all Continuing Contracts before entering into the same and submit copies to KPT.

(b) TOC shall be responsible for clearing all liabilities/payments concerning the Continuing Contracts that have become due and payable on or before the Expiry Date.

(c) A list of receivables, if any, of TOC that are acceptable to KPT shall be prepared for payment by KPT to TOC.

22.2.3 Training of Management Personnel

TOC shall place counterpart nominees of KPT alongside TOC staff in key management positions over the twelve (12) Month period before the Expiry Date to ensure smooth handing over and transfer of the Terminal on the Expiry Date. During such period, the salary and all other service benefits for such nominees shall be paid by KPT.

Article 23 Transfer Upon Early Termination

23.1 Termination Prior to First Completion Date

(a) In the event that this Agreement shall be terminated prior to the First Completion Date, Sponsor/TOC and the Engineer shall, within fifteen (15) Days from the date of the Termination Intent Notice pursuant to Clauses 17.5 or 20.3, as the case may be, prepare a report setting forth (i) a list of Completed Works as of the effective date of such termination which fall under the Project Scope together with the value of the Completed Works, and (ii) a proposal for the demobilization of the Project.

(b) Upon preparation of the said report, KPT and Sponsor/TOC shall agree on the demobilization action to be taken and determine the amounts payable by KPT to Sponsor/TOC pursuant to the Appraisal Procedure as follows:

(i) In case of a termination for a KPT Event of Default, the sum of One hundred percent (100%) of the cost of the Completed Works as certified by the Engineer.

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(ii) In case of a termination for a Political Event, Seventy percent (70%) of the Cost of the Completed Works as certified by the Engineer.

(iii) In case of a termination for a Natural Event, the sum of Sixty percent (60%) of the cost of the Completed Works as certified by the Engineer.

(iv) In case of a termination for a Sponsor/TOC Event of Default, except pursuant to Clause 20.1.1 (a) and (e) Seventy percent (70%), of the cost of the Completed Works as certified by the Engineer.

23.2 Termination After First Completion Date

(a) In the event this Agreement shall be terminated on or after the First Completion Date but prior to the Expiry Date, TOC and the Engineer shall, not later than fifteen (15) Days after the date of the Termination Intent Notice pursuant to Clause 17.5 or 20.3, submit a report setting forth a complete list of all movable and immovable assets comprised in the Terminal together with a certification by TOC and the Engineer that the Terminal is in good repair and operating order, normal wear and tear excepted.

(b) Upon submission of the said report KPT and TOC shall determine the amounts payable by KPT to TOC pursuant to the Appraisal Procedure as follows:

(i) In the case of a termination for a KPT Event of Default, the sum of:

(A) The book value of infrastructure/civil works; and

(B) The Fair Market Value of the Equipment, and

(C) An amount equal to the average net income for a one year period which shall be calculated by averaging the net income of the TOC over the three years preceding the effective date of termination (or from the date of Commercial Operation if a three year period has not yet occurred), discounted at Twelve and a half percent (12.5%) per annum or an agreed return on shareholders equity.

(ii) In case of a termination for a Political Event, the sum of:

- (A) The book value of infrastructure/civil work, and;
- (B) Fair Market Value of equipment; and
- (C) Twenty percent (20%) return on shareholders equity for one year only.

(iii) In case of a termination for a Natural Event, the sum of:

- (A) Book value of infrastructure/civil works and;
- (B) Fair Market Value of equipment;

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(iv) In case of termination for a TOC Event of Default book value of infrastructure/civil works and book value of equipment [except pursuant to 20.1.1 (e)]

(c) In case of a termination due to Force Majeure or for a TOC Event of Default, KPT shall have the option to take over the equipment upon paying sums as described in Clause 23.2 (b) (ii), (iii) and (iv) as the case may be and in the case of (iv) provided the Lender.s interest is protected. If KPT does not take over the equipment, TOC shall remove all its equipment within 180 days of KPT.s refusal to take over the equipment and no payment will be due for the equipment.

23.3 Protection of Lenders

(a) In the case of a KPT Event of Default the amount determined under Clause 23.2 (b) shall be not less than the sum of (1) the debt outstanding to the Lenders under the Financing Agreements plus (2) minimum Eighteen percent (18%) per annum on equity for one year.

(b) If the Terminal is taken over by KPT as a going concern, the Lenders will have the right to enforce security in which case KPT will pay the agreed indebtedness at that time due and payable under the Financing Agreements and thereafter make all debt service payments thereon as they fall due in accordance with the provisions of the Financing Agreements.

(c) Notwithstanding any other provision of this Agreement, KPT shall only assume any obligation towards the Lenders where the Financing Agreement in question has been Approved by KPT and there has been no default by TOC under the said Financing Agreement.

23.4 Payment and Transfer

(a) After the determination of the amounts pursuant to Clause 23.1 (b), 23.2 (b), or 23.3, KPT shall pay to TOC or the Lenders, as the case may be, the amount so determined within twelve months of the date of termination in accordance with an agreed schedule, provided that KPT shall not make such payment if

and to the extent that the Lenders exercise their rights in and to the assets that would otherwise be subject to transfer to KPT

(b) If the Lenders consent to the transfer of such assets to KPT, then, upon payment by KPT of the amount so determined, the leasehold interest of TOC in the Site shall terminate and title to all assets included in the Terminal (in the case of Clause 23.3

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and paragraphs (i), (ii) and (iii) of Clause 23.2 (b) or the civil works and other immovable assets at the Site (in the case of Clause 23.1 (b) and paragraph (iv) of Clause 23.2 (b) shall pass to KPT free of any liens, charges or encumbrances of any type whatsoever).

(c) In all events of termination of the Agreement howsoever occurring and notwithstanding anything herein to the contrary, except the provisions of Clause 23.3.(c), if any amount payable under any of the Financing Agreements shall remain unpaid (whether becoming due on the dates provided for there in or by way of acceleration in accordance therewith) as of the effective date of such termination, KPT shall make payment of the amount due pursuant to Clause 23.4 (a) as follows: first, to the respective Lenders entitled thereto, an amount equal to any amounts as are then due and payable under the Financing Agreements and second, the balance, if any, to TOC or as TOC may direct. For purposes of this Clause 23.4 (c), KPT shall be entitled to rely on a certificate issued by the Lenders (or any person acting on their behalf duly authorized to do so) as to the amount so due and payable to such Lenders.

Article 24 Provisions Applicable to Transfers Generally

24.1 Warranties

After the Transfer Date TOC shall be under no liability whatsoever to KPT in respect of the operation or otherwise of the Terminal by KPT or a person designated by KPT. TOC shall, provided the cost of such subrogation or assignment shall be shared equally by the parties, subrogate or assign to KPT any and all rights and benefits which it is able to subrogate or assign in/to any unexpired warranties in respect of the building, plant and equipment of the Terminal under the Laws of Pakistan or other applicable law.

24.2 Special Indemnification

(a) Except for transfers arising from a termination due to an Event of Default by KPT, TOC shall indemnify KPT from any or all claims, liabilities and charges resulting from acts or omission by TOC in connection with the construction, operation and transfer of the Terminal as of the Transfer Date and defend all suits and legal proceedings by third parties in respect thereof for a period of three (3) years from said Transfer Date.

(b) Except for transfers arising from an Event of Default by TOC, KPT shall indemnify TOC from any and all claims, liabilities and charges resulting from acts or omissions by KPT in connection with the

operation of the Terminal after the Transfer Date (other than claims, liabilities or charges resulting from TOC's acts or omissions) and defend

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all suits and legal proceedings by third parties in respect thereof for a period of three (3) years from said Transfer Date.

(c) The provisions of Clause 9 apply to the indemnification provisions set forth in paragraphs (a) and (b) above.

Article 25 Resolution of Disputes

25.1 Amicable Settlement

If any dispute or difference of any kind whatsoever (the "Dispute") shall arise between KPT and TOC in connection with or arising out of this Agreement (other than the determination of any amount or value pursuant to the Appraisal Procedure), the Parties shall attempt to settle the Dispute, in the first instance, within forty-five (45) Days, by mutual discussions between TOC and KPT.

25.2 Arbitration and Governing Law

(a) If the Dispute cannot be settled by mutual discussions, then the Dispute shall be finally settled under the provisions of Clause 25.2 (c).

(b) The rights and obligations of the Parties under or pursuant to this Agreement shall be governed and construed according to the Laws of Pakistan.

(c) Any Dispute arising out of or in connection with this Agreement shall (regardless of the nature of the Dispute) be referred to arbitration and finally settled in Karachi in accordance with the Pakistan Arbitration Act, 1940 and any statutory modification thereof. Each party shall appoint an arbitrator and the two arbitrators shall jointly select an Umpire before entering upon the reference, but failing the ability of the arbitrators to select an Umpire within one (1) Month, the Umpire shall be appointed by the High Court of Sindh. No arbitrator shall be an employee or agent, present or former, of KPT or The TOC. The award of the arbitrators or Umpire shall be final and binding upon the Parties and judgment upon the award rendered by the arbitrators or Umpire, as the case may be, may be entered in any court having jurisdiction. Arbitration shall be conducted in the English language.

(d) Notwithstanding any provisions under (a), (b) and (c) above, (i) TOC undertakes to continue with the design, engineering, construction, development, operation, maintenance and transfer of the Terminal and

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(ii) KPT accordingly undertakes to continue to perform its services and obligations under this Agreement, without any stoppages/impediments during the discussions between the Parties and pending any arbitration proceeding pursuant to this Article 25.

Article 26 Notices

26.1 All notices or other communications (together with "Notices") to be given or made hereunder shall be in writing, shall be addressed for the attention of the person indicated below and shall either be delivered personally or sent by prepaid post or by telex or fax. All Notices given by telex or fax shall be confirmed in writing delivered or sent as aforesaid, but the failure to so confirm shall not vitiate the original Notice. The addresses for service of Parties and their respective telex and fax number shall be:

(a) In the case of KPT:

Address: Karachi Port Trust

Eduljee Dinshaw Road

Karachi-74000

Pakistan.

Telex No. 2739 KPT PK.

Fax No. 9221-9214329 & 9214330

Attention: General Manager (P & D)

with copy to Chairman KPT.

(b) In the case of Sponsor:

Address: Premier Mercantile Services (Pvt.) Limited

Second Floor, Business Centre

Mumtaz Hassan Road

Karachi-74000

Fax No.: 2400281 / 2414492

Attention: Chief Executive

With copy to: Chairman

(c) In the case of TOC:

Address: _____.

Fax No.: _____

Attention: _____

With copy to: _____

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or such other address, telex number and fax number as either party may previously have notified to other party in accordance with this Clause 26.1.

26.2 Effectiveness of Service

All Notices under this Agreement shall be effective only upon actual delivery or receipt thereof at the addresses for service mentioned in Article 26.

Article 27 Miscellaneous Provisions

27.1 Variations in Writing

All additions, amendments and variations to this Agreement shall be binding only if in writing and signed by duly authorized representatives of the Parties.

27.2 Entire Agreement

This Agreement and the Lease Agreement represent the entire understanding between the parties in relation to the subject matter thereof and supersede any or all previous correspondence, agreements or arrangements between the parties in respect of the Project (whether oral or written).

27.3 Waivers

27.3.1 No waiver by either party of any default by the other in the performance of any of the provisions of this Agreement:

(a) Shall operate or be construed as a waiver of any other or further default whether of a like or different character; or

(b) Shall be effective unless in writing duly executed by an authorized representative of such party.

27.3.2 The failure by either party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or time or other indulgence granted by one party to the other shall not thereby act as a waiver of such breach or acceptance of any variation.

27.4 Termination

This Agreement shall not be terminated except in the circumstances expressly set out in this Agreement.

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27.5 Confidentiality

27.5.1 Each of the parties shall hold in confidence all documents and other information whether technical or commercial which is of confidential nature supplied to it by or on behalf of the other party relating to the construction, operation, maintenance, management and financing of the Project and shall not (save as required by law or appropriate regulatory authorities or to Lenders to, or Investors in, TOC or to the professional advisors of the parties hereto or of such Lenders or Investors as aforesaid) publish or otherwise disclose or use the same for its own purposes, otherwise than as may be required to perform its obligations under this Agreement.

27.5.2 The provisions of Clause 27.5.1 above shall not apply to:

- (a) The information in the public domain otherwise than by breach of this Agreement;
- (b) Information in the possession of the receiving party thereof before divulgence as aforesaid, and which was not obtained under any obligation of confidentiality; and
- (c) Information obtained from a third party who is free to divulge the same, and which is not obtained under any obligation of confidentiality.

27.6 Accounts and Reports

27.6.1 Appointment of Auditors

The Sponsor shall make arrangements for the appointment as auditors to TOC of a firm of independent chartered accountants. KPT shall have the right to conduct special audit only in respect of Royalty payments and KPT Charges collected by pursuant to Clauses 8.1 & 8.4.

27.6.2 Right of Visit and right to information

TOC shall promptly furnish to KPT such information as KPT may from time to time reasonably request and permit representatives of KPT on notice and during TOC's regular business hours to visit the Terminal and any of the other premises where the business of TOC is conducted and to have access to its books of accounts and records for conducting audits in accordance with Clause 27.6.1.

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27.6.3 Periodic Report

(a) TOC shall, as soon as available but in any event within one hundred and eighty (180) Days after the end of each financial year, furnish to KPT two (2) copies of its complete audited financial statement and accounts for such financial year (which are in agreement with its books of accounts and prepared in accordance with accounting principles which are generally accepted in Pakistan and consistently applied) all in accordance with the requirements of the Companies Ordinance, 1984.

(b) TOC shall, as soon as available but in any event within sixty (60) Days of the end of each six (6) Month period of each financial year, furnish to KPT its financial statements for said six (6) Month period and a

report on any factors materially and adversely affecting or which might materially and adversely affect TOC's business and operations or its financial condition.

27.6.4 Reporting of Changes

TOC shall, within fourteen (14) Days of such changes report to KPT any (i) change in its Memorandum and Articles of Association; (ii) change in its financial year; (iii) change in the constitution of its Board of Directors; and (iv) change in the appointment of its Chief Executive/Chief operating officer.

27.6.5 Providing of Lists of Lenders

Within ninety (90) Days of the end of each financial year, TOC shall provide to KPT a list of each of its Lenders to which TOC owes a sum in excess of US Dollars Five Hundred Thousand Only (U.S\$: 500,000) or the equivalent thereof in rupees including the details as to the amounts due each of them. This list shall also indicate any changes, as compared to the list submitted in the previous year that might have occurred.

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27.6.6 Information regarding Statutory Notice/Winding Up Proceeding

(a) TOC shall, within seven (7) Days of receipt thereof, provide a copy of any notice that may have been served under Sections 305 and 306 of the Companies Ordinance, 1984 by any of the Lenders or other creditors.

(b) TOC shall provide to KPT all information in respect of any further actions taken by the Lenders or creditors following the said notices under Section 305 and 306 of the Companies Ordinance, 1984.

27.7 Successors and Assigns

This Agreement shall inure to the benefit of, and be binding upon, the successors and permitted assigns of the parties, including, in the case of TOC, any Nominated Company.

27.8 Liability for Review

No review or approval by KPT of any agreement, document, instrument, drawing, specifications or design proposed by TOC shall relieve from any liability that it would otherwise have had for its negligence in the preparation of such agreement, document, instrument, drawing, specification or design or failure to comply with the applicable Laws of Pakistan with respect thereto, nor shall KPT be liable to any other person by reason of its review or Approval of an agreement, document, instrument, drawing, specification, or design.

27.9 No Third Party Beneficiaries

This Agreement shall not confer any right of suit or action whatsoever on any third party.

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27.10 Affirmation

The TOC declare and affirm that they have not paid nor have it undertaken to pay any commission, bribe, pay-off or kick-back and that they have not in any other way or manner paid any sums, whether in Rupees or foreign currency and whether in Pakistan or abroad, or in any other manner given or offered to give any gifts and presents in Pakistan or abroad, to any person or company to procure this Agreement. The TOC undertake not to engage in any of the said or similar acts during the term of this Agreement.

27.11 Specific Performance

The parties acknowledge that in the event of the failure or refusal of any party to observe or perform the undertakings and agreements to be performed by it under this Agreement, the other party may determine that it would have no adequate remedy at law. Each party waives, to the fullest extent permitted by the Laws of Pakistan, any right it may otherwise have to object to any plea for specific performance of this Agreement or other equitable relief available to the other party in any action brought by such party on account of such failure or refusal.

27.12 Survival

The provisions of Article 9, Clause 15.2, Article 23, Article 24, Article 25 and Clause 27.5 shall survive the termination of this Agreement.

27.13 Counterparts

This agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

27.14 Preference to KPT employees in recruitment

TOC will arrange to employ maximum suitable KPT staff workers on the Project.

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IN WITNESS whereof the parties, acting through their duly authorized representatives, have caused this Agreement to be signed in their respective names in Karachi, Pakistan, on the date written opposite each party's name.

Signed By : _____

Chairman KPT

Name : Rear Admiral Ahmad Hayat HI(M)

In the presence of :

General Manager (P&D), KPT

Name : Brig Syed Jamshed Zaidi

Signed By : _____

1. TRUSTEE

Name : _____

2. TRUSTEE

Name : _____

In the presence of : _____

Secretary, K.P.T.

Name : Gulab Khan

For & on behalf of Premier Mercantile Services (Pvt.) Limited

Signed By : _____

Capt. Zafar Iqbal Awan

Name :

In the presence of :

Name : Capt. Haleem A. Siddiqui Name : Parvez Abbasi