
MANAGEMENT, OPERATION AND MAINTENANCE AGREEMENT

BETWEEN

{....}1
(PROJECT SPV OR IPGCFZ)

AND

{....}2
(OPERATOR)

FOR

Management, Operation and Maintenance (**the 'MOM'**) of the Multipurpose and Container Terminals at First Development Phase of Shahid-Beheshti-Chabahar Port, Islamic Republic of Iran

Dated _____

¹ Please insert name of the company incorporated in Iran by Indian Ports Global Limited

² Please insert name of the company incorporated in Iran by the Selected Bidder

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THE MANAGEMENT, OPERATION AND MAINTENANCE AGREEMENT

THIS **MANAGEMENT, OPERATION AND MAINTENANCE AGREEMENT** (this "**Agreement**") is entered into at _____ and entered into on this _____ day of _____.

BETWEEN:

{.....}3, a company incorporated under the laws of Islamic Republic of Iran, having Company Registration Number {.....} at Companies Registration Office of Tehran and having its registered office at {.....} (hereinafter referred to as "**Project SPV**" or "**IPGCFZ**", which expression shall unless repugnant to the context or meaning thereof, be deemed to mean and include its successors and permitted assigns) of the **ONE PART**;

AND

{.....}4, a company incorporated under the laws of Islamic Republic of Iran, having Company Registration Number {.....} at Companies Registration Office of Tehran and having its registered office at {.....} (hereinafter referred to as "**Operator**", which expression shall unless repugnant to the context or meaning thereof, be deemed to mean and include its successors and permitted assigns) of the **OTHER PART**.

The Project SPV and the Operator shall hereinafter collectively be referred to as "**Parties**" and each individually as a "**Party**".

WHEREAS:

- A. Aria Banader Iranian Port and Marine Services Limited ("**Lessor**") has granted to India Ports Global Limited (previously known as India Ports Global Private Limited) ("**IPGL**"), a lease of the Terminal Area (*hereinafter defined*), and a right to equip and operate the Terminal Area to provide the Terminal Services under 'the Contract for Equipping and Operation of Multipurpose and Container Terminals at First Development Phase of Shahid-Beheshti-Chabahar Port' executed on May 23, 2016 at Tehran ("**Contract**"), a copy of which is appended hereto as '**Appendix – 1**'.
- B. IPGL has incorporated the Project SPV as a special purpose company in the Islamic Republic of Iran. Pursuant to Clause 12 of the Contract, IPGL has assigned the Contract to the Project SPV.
- C. IPGL had resolved to select a private party to take minority shareholding in the Project SPV of IPGL through an entity to be incorporated in Iran by such private party and consequently by virtue of its shareholding in the Project SPV, such entity of the private party will carry out the management, operation and maintenance of the Terminal Area. Accordingly, IPGL had invited proposals in India by its Request for Qualification No. {.....} (the "**RFQ**") for short listing of bidders and had shortlisted certain bidders including, inter alia, the {name of the selected bidder/ consortium comprising and} (the "**Selected Bidder**").
- D. IPGL had invited the offers from the short-listed bidders by its Request for Proposals No. _____

³ Please insert name of the company incorporated in Iran by Indian Ports Global Limited

⁴ Please insert name of the company incorporated in Iran by the Selected Bidder

{.....} (the "**RFP**") and selected the Selected Bidder *vide* its Letter of Award dated {.....} ("**LOA**"). Pursuant to LOA, the Selected Bidder has entered into the Master Agreement with IPGL in India dated _____ ("**Master Agreement**").

- E. Pursuant to the Master Agreement, the Selected Bidder has incorporated the Operator as a subsidiary company with Management Control, which has entered into the Shareholders Agreement (*hereinafter defined*) with the Project SPV to acquire a certain shareholding in the Project SPV.
- F. As per the terms of Master Agreement and by virtue its shareholding in the Project SPV, the Operator has agreed to carry out the management, operation and maintenance of the Terminal Area to provide the Terminal Services as per the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and promises contained herein and other good and valuable consideration the receipt and adequacy of which is hereby acknowledged, the Parties intending to be bound legally, agree as follows:

**ARTICLE 1
DEFINITIONS AND INTERPRETATION**

- 1.1 Capitalized terms used herein but not defined under this Agreement shall have the meanings as ascribed to them under the Contract, unless repugnant to the subject, matter or context thereof. In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:
 - 1.1.1 "**Action**" shall have the meaning as ascribed to the term in Article 4.1.11 of this Agreement.
 - 1.1.2 "**Actual Revenues**" shall mean the actual traffic generated for any Relevant Year multiplied by the applicable terminal handling charges in Approved Tariffs for such Relevant Year, in accordance with the terms and conditions of this Agreement.
 - 1.1.3 "**Affected Party**" shall have the meaning as ascribed to the term in Article 11.15 of this Agreement.
 - 1.1.4 "**Agreement**" means this agreement as of date hereof including the Recitals, Schedules and Appendix hereto, as may be amended, supplemented or modified in accordance with the provisions hereof.
 - 1.1.5 "**Agreement Period**" means the period of this Agreement as specified in Article 2.2 of this Agreement.
 - 1.1.6 "**Applicable Laws**" means all laws in force and effect as of the date hereof and which may be promulgated or brought into force and effect hereinafter in Islamic Republic of Iran, including statutes, rules, regulations, directions, bye-laws, notifications, ordinances and judgments having force of law, or any final interpretation by a Court of Law having jurisdiction over the matter in question as may be in force and effect during the subsistence of this Agreement.

- 1.1.7 “**Applicable Permits**” means any and all permissions, clearances, licenses, authorizations, consents, no-objections, approvals and exemptions under or pursuant to any of the Applicable Laws or from any Government Authority required in connection with the Project and for undertaking, performing or discharging the obligations contemplated by this Agreement or any other Transaction Document.
- 1.1.8 “**Approved Tariffs**” shall have the meaning as ascribed to the term under Article 5.2.1 of this Agreement.
- 1.1.9 “**Arbitration Notice**” shall have the meaning as ascribed to the term under Article 10.1.6 of this Agreement.
- 1.1.10 “**Capping Rate**” refers to the rates adopted by the Port and Maritime Organizations (PMO) – Iran to IPGL, which may be revised/amended from time to time.
- 1.1.11 “**Change in Law**” shall mean repeal or amendment or change in application of the current laws, regulations (for example, any tax laws and regulations), consents or approvals, or legislation of new laws and regulation after the date of Commercial Operation Date.
- 1.1.12 “**Commercial Operation Date**” shall mean the commercial operation date declared as per the terms of the Contract.
- 1.1.13 “**Contract**” shall have the meaning as ascribed to it in Recital A.
- 1.1.14 “**Currency Exchange Rate**” shall mean the lower of the following:
- (a) The reference rate for conversion of 1 USD into equivalent Iranian Rials, as of the relevant calculation date, as per the Sana Exchange Rate (as per Sanarate.ir); and
 - (b) The Capping Rate.
- 1.1.15 “**Deficit Revenues**” shall mean the difference between the Actual Revenues and the Potential MGT Revenues, in accordance with the terms and conditions of this Agreement.
- 1.1.16 “**Dispute**” shall have the meaning as ascribed to the term under Article 10.1.1 of this Agreement.
- 1.1.17 “**Dispute Notice**” shall have the meaning as ascribed to the term under Article 10.1.2 of this Agreement.
- 1.1.18 “**Effective Date**” shall mean the ‘Commercial Operation Date’ as determined under the Contract.
- 1.1.19 “**Empty Container**” means a container which is not either a TEU Loaded Container or a FEU Loaded Container.
- 1.1.20 “**Euro**” shall mean the lawful currency of the European union.

- 1.1.21 "**Encumbrance**" means any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Terminal Area, physical encumbrances and encroachments on the Terminal Area or the Terminal Facilities.
- 1.1.22 "**Event of Default**" shall refer to an Operator Event of Default, Project SPV Event of Default or both as the context may require.
- 1.1.23 "**Execution Date**" shall mean the date of execution of this Agreement by the Parties hereto.
- 1.1.24 "**Expert Group**" means "specialized expert group" comprising of representatives of IPGL, the Project SPV and a mutually appointed specialist.
- 1.1.25 "**Financial Year**" means any twelve (12) months period followed in Iran for purpose of accounting and reporting purposes as per Applicable Laws in Islamic Republic of Iran.
- 1.1.26 "**Force Majeure Affected Party**" shall have the meaning as ascribed to the term in Article 7.2 of this Agreement.
- 1.1.27 "**Force Majeure Event**" shall have the meaning ascribed to it in Article 7.1 of this Agreement.
- 1.1.28 "**FEU**" means the container counting unit which is equal to one 40 ft. container (1 FEU = one 40 feet container).
- 1.1.29 "**FEU Loaded Container**" means a loaded container having capacity of one FEU.
- 1.1.30 "**Good Industry Practice**" means the exercise of that degree of skill, diligence and prudence and those practices, methods, specifications and standards of equipment, safety and performance, as may change from time to time and which would reasonably and ordinarily be expected to be used by a skilled and experienced operator engaged in construction, operation and maintenance of facilities, equipment or systems of the type and size similar to the Terminal Facilities.
- 1.1.31 "**Government Authority**" means the Government of the Islamic Republic of Iran, any governmental ministry, department, commission, board, bureau, agency, authority, instrumentality, directorate, public authority, and administrative body at central or local level or other person having jurisdiction in the Islamic Republic of Iran.
- 1.1.32 "**Handover Date**" shall have the meaning as ascribed to the term under Article 9.6 of this Agreement.
- 1.1.33 "**Handover Plan**" shall have the meaning as ascribed to the term under Article 9.6.1 of this Agreement.
- 1.1.34 "**Indemnitees**" shall have the meaning as ascribed to the term under Article 4.1.11 of this Agreement.

- 1.1.35 “**Insurance Policies**” shall have the meaning as ascribed to the term under Article 6.1.3 of this Agreement.
- 1.1.36 “**Intellectual Property Rights**” shall mean the intellectual rights and ownership related to the technical know – how and operation software of the Terminals, obtained or made and developed by the Operator.
- 1.1.37 “**IPGL**” shall have the meaning as ascribed to it in Recital A.
- 1.1.38 “**Lessor**” shall have the meaning as ascribed to the term in Recital A.
- 1.1.39 “**Liquidated Damages**” shall have the meaning as ascribed to the term under Article 1.3.23 of this Agreement.
- 1.1.40 “**LOA**” shall have the meaning as ascribed to the term in Recital D.
- 1.1.41 “**Master Agreement**” shall have the meaning as ascribed to it in Recital D.
- 1.1.42 “**Minimum Guaranteed Traffic**” shall have the meaning ascribed to it in Article 4.1.10 of this Agreement.
- 1.1.43 “**Miscellaneous Services**” shall means the services which the Operator provides upon receiving the relevant charges in relation to part of the contract services to the clients and shipping lines at the container and multipurpose terminals in addition to the items stipulated in the tariff booklet including, stevedoring, cargo handling, terminal handling services and warehousing services.
- 1.1.44 “**Operator Event of Default**” shall have the meaning as set out under Article 8.1 of this Agreement.
- 1.1.45 “**Operator’s Representative**” shall mean the representative appointed by the Operator from time to time as per Article 2.4 of this Agreement.
- 1.1.46 “**Organisation**” shall mean Ports and Maritime Organization or any other organization which will be port administrator of the Islamic Republic of Iran in future in accordance to the Applicable laws.
- 1.1.47 “**Performance Security**” shall mean the performance security as provided under the Master Agreement.
- 1.1.48 “**Person**” means any individual, company, corporation, partnership, joint venture, trust, unincorporated organization, government or governmental authority or agency or any other legal entity.
- 1.1.49 “**Port**” means Chabahar – Shahid Beheshti port in Sistan & Baluchestan Province of Islamic Republic of Iran.
- 1.1.50 “**Potential MGT Revenues**” shall mean the corresponding level of Minimum Guaranteed Traffic for any Relevant Year multiplied by the applicable terminal handling

charges in Approved Tariffs for such Relevant Year, in accordance with the terms and conditions of this Agreement.

- 1.1.51 "**Project**" shall mean the management, operation and maintenance of the Terminal Area and provision of the Terminal Services in the Terminal Area.
- 1.1.52 "**Project SPV Event of Default**" shall have the meaning as set out under Article 8.2 of this Agreement.
- 1.1.53 "**Project SPV's Representative**" shall mean the representative appointed by the Project SPV from time to time as per Article 2.4 of this Agreement.
- 1.1.54 "**Rial**" means the lawful currency of the Islamic Republic of Iran.
- 1.1.55 "**Rs.**" / "**Rupee**" / "**INR**" means the lawful currency of India.
- 1.1.56 "**RFP**" shall have the meaning as ascribed to it in Recital D.
- 1.1.57 "**RFQ**" shall have the meaning as ascribed to it in Recital C.
- 1.1.58 "**Rules**" shall have the meaning as ascribed to the term under Article 10.1.5 of this Agreement.
- 1.1.59 "**Scope of the Agreement**" shall have the meaning as ascribed to the term in Article 2.1.1 of this Agreement.
- 1.1.60 "**Selected Bidder**" shall have the meaning as ascribed to it in Recital C.
- 1.1.61 "**Shareholders Agreement**" mean the Shareholders Agreement in the form and format as set out in **Schedule – 2** of the Master Agreement.
- 1.1.62 "**Terminal(s)**" shall mean the Terminal/Berth in the Terminal Area.
- 1.1.63 "**Terminal Area**" means the building site and existing property within the Chabahar port area assigned to the Project SPV by the Lessor including: jetty docks, container terminal (about 640 meters in length), multipurpose terminal (about 600 meters in length), and multipurpose cargo yards, administration and welfare buildings, workshops, installations, public utility branching, etc. whose detailed specifications have been provided in Annexure - 4 of the Contract.
- 1.1.64 "**Terminal Facilities**" shall mean collectively:
- (a) the facilities to be made available by the Lessor in connection with the Project, as detailed in Annexure- 7 (*Infrastructure Facilities*) of the Contract;
 - (b) all the equipment to be made available by the Project SPV in connection with the Project, as detailed in Annexure- 9 of the Contract; and
 - (c) all other infrastructure, equipment, facilities as may be installed in the Terminal Area from time to time.

- 1.1.65 **"Terminal Services"** shall mean loading and unloading of cargos and containers from/to ships, planning and storage of cargos and containers in multipurpose and container yards, reefer services, storage of containers containing dangerous goods according to requirements of IMDG CODE, stevedoring, warehousing, cargo and container unloading and loading from/to land transportation vehicles including road and railway vehicles, relocation of containers within the exclusive terminals and yards, stowing and offloading of consignments in the containers, document processing operations and electronic exchange of data and documents with customers and respective establishments and all usual and normal operations in the ports according to the common practice of the leading world ports and shall include the Miscellaneous Services.
- 1.1.66 **"Termination Notice"** shall have the meaning as ascribed to the term in Article 9.2 of this Agreement.
- 1.1.67 **"TEU"** means the container counting unit which is equal to one 20 ft. container (1 TEU = one 20 feet container).
- 1.1.68 **"TEU Loaded Container"** means a loaded container having capacity of one TEU.
- 1.1.69 **"Transaction Documents"** shall mean this Agreement, the Master Agreement, the Shareholder Agreement and any other document, which may be required thereunder.
- 1.1.70 **"Variable Management Fee"** shall have the meaning as ascribed to the term under Article 5.1.1 of this Agreement.

1.2 **Other Defined Terms in this Agreement**

Any word or phrase defined in the body of this Agreement as opposed to being defined in Article 1.1 shall have throughout this Agreement, the meaning assigned to it in such definition, unless the contrary is expressly stated or the contrary clearly appears from the context.

1.3 **Construction**

- 1.3.1 In case of ambiguities or discrepancies within this Agreement, the following shall apply:
- (a) Between two or more Articles of this Agreement, the provisions of a specific Article relevant to the issue under consideration shall prevail over those in other Articles;
 - (b) Between the Articles of this Agreement and the Schedules, the Articles shall prevail;
 - (c) Between any two Schedules, the Schedule relevant to the issue shall prevail;
 - (d) Between the written description on the drawings and the specifications and standards, the latter shall prevail;
 - (e) Between the dimension scaled from the drawing and its specific written dimension, the latter shall prevail; and,

- (f) Between any value written in numerals and that in words, the latter shall prevail;
- 1.3.2 references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- 1.3.3 references to laws of the State, laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- 1.3.4 references to a "**person**" and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- 1.3.5 the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- 1.3.6 the words "**include**" and "**including**" are to be construed without limitation and shall be deemed to be followed by "without limitation" or "but not limited to" whether or not they are followed by such phrases;
- 1.3.7 any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- 1.3.8 any reference to "**hour**" shall mean a period of 60 (sixty) minutes commencing either on the hour or on the half hour of the clock, which by way of illustration means 5.00 (five), 6.00 (six), 7.00 (seven) and so on being hours on the hour of the clock and 5.30(five thirty), 6.30 (six thirty), 7.30(seven thirty) and so on being hours on the half hour of the clock;
- 1.3.9 any reference to a day shall mean a reference to a calendar day. Any reference to a month shall mean a period of 30 (thirty) days starting from the relevant date. Any reference to a year shall mean a period of 365 (three hundred and sixty five) days starting from the relevant date;
- 1.3.10 reference to a "**business day**" shall be construed as reference to a day (other than a Sunday) on which banks in Chabahr, Iran are generally open for business;
- 1.3.11 reference to a "**day**" means the 24 (twenty four) hours period beginning and ending at 12:00 midnight Iran Standard Time;

- 1.3.12 reference to a "**month**" means a calendar month as per Islamic Republic of Iran's solar calendar;
- 1.3.13 any reference to "**quarter**" shall mean a reference to the period of three months, where the first month shall commence from the Effective Date;
- 1.3.14 any reference to any period commencing "**from**" a specified day or date and "**till**" or "**until**" a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- 1.3.15 the words importing singular shall include plural and vice versa;
- 1.3.16 references to any gender shall include the other and the neutral gender;
- 1.3.17 "**indebtedness**" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- 1.3.18 references to the "**winding-up**", "**dissolution**", "**insolvency**", or "**reorganisation**" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors;
- 1.3.19 save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference;
- 1.3.20 any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party in this behalf and not otherwise;
- 1.3.21 the Schedules, the Exhibits and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- 1.3.22 references to Recitals, Articles, Clauses, Sub-clauses, Provisos, Schedules or Exhibits in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses, Provisos, Schedules and Exhibits of or to this Agreement;
- 1.3.23 the damages payable by either Party to the other of them, as set forth in this

Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the "**Liquidated Damages**");

- 1.3.24 time shall be of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence;
- 1.3.25 the rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof or Doctrine of *Contra Proferentem*, shall not apply to this Agreement;
- 1.3.26 references to a Party shall, where the context permits, include such Party's respective Affiliates, legal representatives, successors and permitted assigns; and
- 1.3.27 any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party in this behalf and not otherwise.

1.4 **Language**

The governing language of this Agreement shall be English. Further any communication, notice, letter, etc. issued/exchanged with respect to, in connection with or pursuant to this Agreement shall be in English language only.

ARTICLE 2 SCOPE OF THE AGREEMENT

2.1 **Scope**

- 2.1.1 The scope of this Agreement (the "**Scope of the Agreement**") shall mean management, operation and maintenance of the Terminal Area in accordance with the provisions of this Agreement including but not limited to:
 - (a) operations and maintenance of container terminal (length – 640 meters) and multipurpose terminal (length – 600 meters);
 - (b) development of support infrastructure (drainage system, firefighting, utility etc.) for the berths and paved back up area (33 Ha for container berth & 37 Ha for multi-purpose berth);
 - (c) procure and implement operational, financial software and integrated management system at its own cost and integration of the same with the Lessor's software;
 - (d) develop market for the port so as to meet minimum traffic guarantees;

- (e) work in consonance with the Project SPV during the installation of all equipment for ensuring efficient operation of the terminal;
- (f) refurbishment of the office with basic amenities like furniture, cooling & heating system to name a few and other necessary assets or facilities within the port premises at the space provided by the Lessor/Project SPV at its own expense;
- (g) develop, obtain and maintain applicable permits, insurances, SoPs and comply with all related standards, guidelines, covenants and executive guidelines as approved by the Lessor;
- (h) provide and implement preventive maintenance and Total Productive Maintenance (TPM) plans for the terminal equipment, installations, premises, areas, places and buildings based on the Good Industry Practice, through the Project SPV at its own expense (and acceptable to the Lessor / Organization); and
- (i) undertakes to comply with all related standards, conventions, codes and executive guidelines approved by the Organization which are related to Health, Safety and Environment (HSE), firefighting, security, information technology, repair and maintenance of superstructures and infrastructures.

2.1.2 The Operator shall carry out the Scope of the Agreement and provide the Terminal Services from the Effective Date.

2.1.3 The Operator shall ensure that it performs its obligations under this Agreement in compliance with the Contract. The Operator shall not do anything or permit anything in the Terminal Area which may result in violation of any of the terms of the Contract.

2.2 **Agreement Period**

This Agreement shall come into effect on the Effective Date and shall expire upon completion of a period of 10 (ten) years therefrom, unless terminated earlier in accordance with the provisions of this Agreement. On or before occurrence of the Commercial Operation Date under the Contract, the Project SPV shall intimate the Operator about the same.

2.3 **Project SPV's Representative**

2.3.1 The Project SPV shall appoint a person as the Project SPV's Representative to act on behalf of the Project SPV for all purposes in connection with this Agreement. The Project SPV's Representative shall have no authority to amend this Agreement or to relieve either Party of any of its duties, obligations or responsibilities under the Agreement, unless expressly authorised by the Project SPV by way of a notice to the Operator.

2.3.2 The Project SPV's Representative shall be the Operator's primary point of contact with the Project SPV in relation to the execution of its obligations under this Agreement.

The duties of the Project SPV's Representative shall include, but not be limited to the following:

- (i) inspection, acceptance or rejection of the Terminal Services and performance of other obligations by the Operator under this Agreement;
- (ii) endorsing any documents required to be issued by the Project SPV under this Agreement;
- (iii) review of invoices submitted by the Operator;
- (iv) review other documents, applications and requests submitted by the Operator in accordance with this Agreement;
- (v) maintaining close liaison with the IPGL's Representative in India and the Lessor's Representative in Iran on daily basis.

2.3.3 Notwithstanding any inspection, approval or certification by the Project SPV's Representative, the Operator shall not be relieved of any of its obligations or liabilities under this Agreement, including the obligation to provide the Terminal Services and the rectification of any defects.

2.3.4 The Operator shall give reasonable notice to the Project SPV's Representative for any instruction, direction or approval which it requires for execution of its obligations under this Agreement, to enable the Project SPV's Representative to issue timely instructions, directions or approvals, such that the performance of the obligations by the Operator are not delayed.

2.4 **Operator's Representative**

2.4.1 On or before the Effective Date, the Operator shall submit to the Project SPV for its approval, the name and details relating to qualification and experience of the person whom the Operator proposes to appoint as the Operator's Representative. If the Project SPV objects to the appointment of the proposed representative within 10 (ten) days of receipt of a request from the Operator, the Operator shall propose a replacement within 30 (thirty) days of such objection. This process shall continue until the Project SPV approves the representative proposed by the Operator.

2.4.2 The Operator may replace the Operator's Representative with such person as it may deem fit by giving at least a 30 (thirty) days prior written notice to the Project SPV.

2.4.3 The Operator's Representative shall coordinate all matters relating to this Agreement with the Project SPV and receive all instructions, notices, approvals, certificates and any other communication from the Project SPV or the Project SPV's Representative.

2.4.4 The Operator's Representative shall have full authority to act on behalf of the Operator.

2.4.5 The Operator shall be bound by and fully liable for the acts or omissions of the Operator's personnel.

**ARTICLE 3
PERMISSION TO THE OPERATOR**

3.1 Grant of Permission

The Operator has acquired a part of the shareholding of the Project SPV and thus has become a shareholder of the Project SPV, being eligible to carry out its obligations under this Agreement. In light of this, the Project SPV hereby gives a permission to the Operator for managing, operating and maintaining the Terminal Area and to provide the Terminal Services. In consideration of the same, the Project SPV shall pay the Variable Management Fee to the Operator as per the terms and conditions of this Agreement.

3.2 Acceptance by the Operator

The Operator hereby accepts its obligations and responsibilities to carry out the management, operation and maintenance of the Terminal Area as per the Scope of the Agreement, to provide all Terminal Services and to perform its other obligations in accordance with the provisions of this Agreement. Subject to and in accordance with the provisions of this Agreement and Applicable Laws and Applicable Permits, the Operator shall at its costs, charges, expenses and risk including but not limited to foreign exchange variation risk if any, manage, operate, and maintain the Terminal Area and the Terminal Facilities.

3.3 Permission to use Terminal Area and Terminal Facilities

3.3.1 In consideration of the Operator agreeing to perform and discharge its obligations as set forth in this Agreement, the Project SPV hereby grants to the Operator, the right to enter upon and use the Terminal Area and the Terminal Facilities for the purposes of performing its obligation in accordance with this Agreement.

3.3.2 The Operator shall at its costs, charges, expenses make such development, and improvements in the Terminal Area and the Terminal Facilities as may be necessary or appropriate for providing the Terminal Services in accordance with this Agreement, Applicable Laws and Applicable Permits.

3.3.3 The Operator shall not without the prior written consent or approval of the Project SPV use the Terminal Area and the Terminal Facilities for any purpose other than for providing the Terminal Services and other purposes incidental thereto as permitted under this Agreement or as may otherwise be approved by the Project SPV.

3.4 Information about Terminal Area and Terminal Facilities

3.4.1 The information about the Terminal Area and the Terminal Facilities is provided by the Project SPV in good faith and with due regard to the matters for which such information is required by the Operator.

3.4.2 The Project SPV agrees to provide to the Operator, upon a reasonable request, any further information relating to the Terminal Area and the Terminal Facilities, which the Project SPV may now possess or may hereafter come to possess, as may be relevant

for the Terminal Services. Subject to this, the Project SPV makes no representation and gives no warranty to the Operator in respect of the condition of the Terminal Area and the Terminal Facilities.

3.4.3 The Operator accepts that the Project SPV has given permission to use the Terminal Area and the Terminal Facilities on 'as is where is' basis and confirms having:

- (i) inspected the Terminal Area and the Terminal Facilities, including the berths and all structures there at and its surroundings;
- (ii) satisfied itself as to the nature of the climatic, hydrological and general physical conditions of the Terminal Area and the Terminal Facilities with the form and nature of the Terminal Area and the Terminal Facilities, necessary for the performance of its obligations under this Agreement; and
- (iii) obtained for itself all necessary information as to the risks, contingencies and all other circumstances which may influence or affect the Operator and its rights and obligations under or pursuant to this Agreement.

3.5 After effectiveness of this Agreement, as per agreed time schedule, a joint committee including the representatives of the Lessor and the Project SPV shall be constituted to prepare the Handover Plan in consideration of the current conditions and circumstances with in the provisions of this Agreement. Post decisions made by the Joint Committee and before the commencement of Effective Date, the Project SPV will hand over the Terminal Area and the Terminal Facilities to the Operator to discharge its obligations under this Agreement.

3.6 **Intellectual Property Rights**

3.6.1 All Intellectual Property Rights developed by the Operator shall be transferred to the Project SPV at the request of the Project SPV, upon expiry/termination of this Agreement.

3.6.2 This Agreement does not establish for the Operator and they shall not during or after the Agreement Period, claim any right of business and patronage at the Terminal Area.

3.7 **No title or interest in the Terminal Facilities**

3.7.1 The Operator hereby agree that the juridical and legal title and ownership of the Terminals and all Terminal Facilities and any other existing tangible and intangible assets comprised in the Terminals will always vest in the Lessor or the Project SPV (as the case may be) at all times.

3.7.2 This Agreement is not, and shall not be considered as, a lease, sub – lease, tenancy or sub – tenancy of the Terminal and / or the Terminal Facilities. The Operator shall not at any time claim any tenancy, sub – tenancy in respect of the Terminal and / or the Terminal Facilities under any Applicable Law presently in force and / or any Applicable Law, which may be enacted hereafter.

3.7.3 The Operator shall not at any time create any Encumbrance on comprising the Terminal and / or the Terminal Facilities or any part thereof.

**ARTICLE 4
OPERATION AND MAINTENANCE**

4.1 Obligations of the Operator

4.1.1 In addition to any of its other obligations under this Agreement, the Operator shall manage, operate, maintain and repair the Terminal Area and the Terminal Facilities entirely at its cost, charges, expenses and risk in accordance with the provisions of this Agreement.

4.1.2 The Operator on behalf of the Project SPV, subject to the provisions of this Agreement, shall:

- (i) undertake the responsibility of leading and managing all affairs related to Terminals including management, planning, repair and maintenance of structures and superstructures, installations and equipment, safety, protection, sanitation and environment protection, human resource management and other related affairs shall have the powers required for execution of its duties as per Applicable Laws;
- (ii) establish office equipped with basic amenities like furniture, cooling & heating system to name a few within the port premises at the space provided by Project SPV at its own expense to be undertaken prior to Effective Date;
- (iii) make endeavours to implement an effective marketing and organization plan and also use suitable and modern procedures, and proceed with market development and enhancing traffic, specially transit/tranship traffic, for increasing of direct entrance of vessels and development of safe feeder network to be undertaken prior to Effective Date;
- (iv) develop support infrastructure (drainage system, firefighting, utility etc.) for the berths and paved back up area (33 Ha for container berth & 37 Ha for multi-purpose berth) to be undertaken prior to Effective Date;
- (v) undertake to provide all human resource and manpower necessary for management, operation and maintenance of the Terminal Area and the Terminal Facilities as per Applicable Laws prior to Effective Date;
- (vi) promptly commence operations upon the Terminal Area and the Terminal Facilities being declared by the Project SPV as ready for operations;
- (vii) make efforts to maximise cargo handled so as to achieve optimal utilization of the Terminal Area and the Terminal Facilities;
- (viii) ensure compliance of the Terminal Area and the Terminal Facilities at least with Good Industry Practice;
- (ix) ensure that the Terminal Area and the Terminal Facilities shall adhere to Applicable Laws and there is safe, smooth and uninterrupted flow of traffic normal operating conditions;

- (x) minimise disruption to traffic in the event of accidents or other incidents affecting the safety and use of the Terminal Area and the Terminal Facilities by providing a rapid and effective response and maintaining liaison with emergency services of the Governmental Authority or other agencies;
- (xi) undertake codification of the procedure and mechanism for issuance of statements and simultaneous distribution of revenues and their collection according to the revenue sharing arrangements between the Lessor and the Project SPV;
- (xii) improve the level of services and facilities to the required standards through using financial, technical, technological, managerial, by providing necessary trainings using modern and state-of-the-art hardware and software, and its effective management, and proceed with establishing a customer-oriented system, and other resources for operation, maintenance, repair and replacement of the Terminal Facilities in a timely manner;
- (xiii) ensure maintenance of proper and accurate record/data/accounts relating to operations of the Terminal Area and the Terminal Facilities;
- (xiv) obtain, maintain and comply with Applicable Permits and comply with the Applicable Laws including those relating but not limited to dock side safety, health, environment and labour;
- (xv) subject to the provisions of this Agreement, perform, undertake or provide all Terminal Services which the Project SPV is authorized to perform, undertake or provide under the provisions of the Applicable Laws;
- (xvi) prevent with the assistance of concerned law enforcement agencies, any encroachment or unauthorized use of the Terminal Area and the Terminal Facilities;
- (xvii) undertakes to comply with all related standards, conventions, codes and executive guidelines approved by the Organization which are related to Health, Safety and Environment (HSE), firefighting, security, information technology, repair and maintenance of superstructures and infrastructures;
- (xviii) regarding the goods, which as determined by the relevant authority, expired or abandoned or unclaimed, the Operator undertakes to comply with all related rules and regulations and executive by-laws, the regulations of the Applicable Laws with respect to Sales, Customs and Codes and shall take any and all measures in this regard;
- (xix) assumes full responsibility with respect to payrolls, insurance, social security organization, and compliance with principles of safety, work accidents including firing, incapacity, disability and death during the execution of the Agreement or after its expiration for its Personnel employed by the Operator;
- (xx) undertakes to, before commencement of Effective Date, implement and execute a mechanized operational software system to be approved by the Project SPV / Lessor, in container and multi-purpose cargo field at its own expense;

- (xxi) be directly responsible and liable for its own performance against third parties as per the Applicable Laws and shall regularly inform the Project SPV of its measures in this respect;
- (xxii) all port duties and responsibilities for taking delivery, warehousing and delivery of the goods at the Terminals Area shall be the responsibility of the Operator. The compensation of damages to the goods and the containers within the provision area of Terminal Services, shall be borne by the Operator as required under the instruction manual in Annex 10 of the Contract, as such norms apply to all ports in Iran;
- (xxiii) within maximum one (1) year from the Effective Date, undertakes to prepare and establish an effective customer satisfaction system according to the standards acceptable to the Project SPV and shall use this system in order to inform the Project SPV, rectify the affairs, remove the problems and achieve the customer satisfaction;
- (xxiv) have no right to bring in any additional cargo handling equipment for performance of obligations under this Agreement as per terms hereof without taking prior permission of the Project SPV and if need arises for bringing in additional cargo handling equipment, the Project SPV will facilitate in getting requisite approvals from the Lessor;
- (xxv) undertakes to, periodically and regularly, provide the Project SPV with statistical reports on the operating performance, repair and maintenance (installations, premises and equipment) according to the samples provided in Annexure- 11 of the Contract. Further, if the Project SPV requires ad-hoc reports, the Operator shall provide them within the reasonable time and as specified by the Project SPV;
- (xxvi) undertakes to observe the vessel's productivity indices (loading and unloading norms) and also the unloading and loading criteria notified by the Project SPV which will be determined according to the type and dimensions of the ships, specifications of the jetties, equipment and other effecting parameters, as per Applicable Laws;
- (xxvii) undertakes to, at his own responsibility and expense, obtain certificate of operation safety certificate for the equipment used, from reliable institutes acceptable to the Project SPV and shall provide the Project SPV with the verified copies of such certificates and maintain validity of these certificates till the end of the Agreement Period;
- (xxviii) undertakes to establish integrated management system standards within twenty one (21) months from the Effective Date and shall maintain the validity of related certificates until expiry date of this Agreement;
- (xxix) undertakes to provide and implement preventive maintenance and Total Productive Maintenance (TPM) plans for the terminal equipment, installations, premises, areas, places and buildings based on the Good Industry Practice, through the Project SPV at his own expense (and acceptable to the Lessor / Organization);
- (xxx) maintain the Terminal Facilities as per OEM manuals and prepare these Total

Productive Maintenance (TPM) plans and modify from time to time as applicable / necessary;

- (xxxi) undertakes to comply with the obligations of the international conventions for safety and protection of goods and the containers containing dangerous goods (IMDG CODE), Convention on Safe Containers (CSC), (ISPS CODE) and other related conventions;
- (xxxii) in case of offloading, loading and storage of dangerous containers and goods, the Operator undertakes to comply with the corresponding regulations (including International Maritime Dangerous Goods Code), and shall provide necessary training for his own personnel with respect to the regulations on loading, unloading and shipment of dangerous goods and containers and shall nominate to the Project SPV at least one of his qualified personnel as in charge of shipping, transportation and storage of dangerous goods;
- (xxxiii) undertakes to send all electronic data of the vessels, goods and containers including the information on vessels' arrival and departure, loading, unloading, handling and storage of goods and containers and also the issued invoices to the Project SPV's / Lessor computer data centre in due time and shall provide the Project SPV / Lessor access to the information of the operational software used for the Terminal Services;
- (xxxiv) in case of occurrence of any damage to the installation, buildings and equipment of the Project SPV and goods and ships of customers, as a result of Operator or his personnel's default, the same shall be recovered from the insurance companies to the extent covered by the insurance policies of the Operator. All damages/losses over and above the insurance claims, shall be payable by the Operator. For avoidance of doubt, compensation payable to abovementioned customers arising out of Operator's fault, shall not be limited by materiality;
- (xxxv) undertakes to prepare the information brochures related to documentation of its operational activities in the Terminal Area and the Terminal Facilities and give them to the relevant parties;
- (xxxvi) undertakes to provide optimal protection of the Terminal Area and the Terminal Facilities and fully cooperate with the Project SPV and the Lessor in execution of security regulations and codes as per Applicable Laws. The Operator undertakes to ensure observation of national security considerations to the Project SPV as per Applicable Laws or any other obligations notified by the government authorities based on the circumstances;
- (xxxvii) in order to optimize operation of the Terminal Area and the Terminal Facilities, the Operator undertakes to employ well-trained qualified personnel, who hold valid certificates, according to Annexure- 12 of the Contract. Whilst the Operator may, at its option, employ white collar staff who are Iranian nationals, Indian nationals or of other nationalities, the blue collar staff shall be Iranian nationals;
- (xxxviii) during the Agreement, the Operator shall, at his own cost and under the supervision of the Project SPV or the Lessor, improve the level of knowledge and know-how of the personnel through regular training programs and hold

training courses;

- (xxxix) undertakes to obtain all legal authorizations required for operation of the Terminal Facilities, and shall ensure they are kept valid during the Agreement and the Project SPV shall guide and cooperate with the Operator in this regard;
- (xl) control access to the requisite portions of the Terminal Area subject of the Agreement and use of all roads constructed by the Operator within the Terminal Area (which are not designated as public roads), and shall have the permission to reasonably restrict access in the interest of safety, security and non-interference with the Terminal Area and the Terminal Facilities. Access, if required, shall be granted in coordination with the Port security facility officer as appointed by the Organization;
- (xli) Intellectual Property Rights developed by the Operator shall be transferred to the Project SPV or Lessor, upon expiry/termination of the Agreement;
- (xlii) shall not during or after the Agreement Period, claim any right of business and patronage at the Terminal Area subject of the Agreement;
- (xliii) shall undertake to issue invoices to port users on behalf of Project SPV as per Tariff Manual given Annex 8 of the Contract and according to the Approved Tariffs.
- (xliv) The Operator shall also be handling dry bulk cargo, which includes commodity in loose form (unpacked form) in large quantities and bagged cargo (Palletized or non – palletized). Project SPV shall share 20% revenue of stevedoring charges with the Operator for handling such dry bulk cargo. It is clarified by the Parties that no separate Variable Management Fees shall be paid by the Project SPV to the Operator for handling.
- (xlv) In case of any default and error in entering the information, computing and issuance of invoices including additional or lower charges collected, in respect to the real bill, the Operator undertakes to compensate for loss according to the below conditions:
 - (a) If the issued bill is computed and received lower than the Approved Tariff due to entering wrong information, by the Operator, the Operator shall, compensate the Project SPV for in respect of such deficient amount and shall compensate other beneficiaries, and shall be entitled to raise amended bills on the customers to recover such deficient amounts from the customers.
 - (b) If the issued bill is computed and received higher than Approved Tariff due to entering wrong information, the Operator shall, based on an amended bill to be issued to such customers, deposit the additional revenue so recovered into a designated account held in the name of the Project SPV, for onward transfer to the Lessor or the customers.

4.1.3 Removal / Replacement of Terminal Facilities

Except as provided/authorized under this Agreement, the Operator shall not, without the prior written intimation to the Project SPV and followed by approval from the

Project SPV in this regard, shall remove or replace any assets comprised in the Terminal Facilities. Such intimation shall contain the exact details of the assets / facilities that the Operator intends to remove and/or replace its reasons for doing so and the likely period for replacement.

4.1.4 **Repairs / Restoration of Terminal Facilities**

- (i) In the event of any breakdown of equipment ("**Breakdown Equipment**") due to reasons not attributable to the Operator, the Project SPV shall endeavour to repair, restore and / or replace the Breakdown Equipment within a reasonable time-period ("**Replacement Period**") as mutually agreed by the Project SPV and the Operator in this regard on the basis of the nature and other relevant particulars of the Breakdown Equipment. Further, it is hereby clarified that in the event, the Breakdown Equipment is not repaired, restored and / or replaced within the Replacement Period by the Project SPV, then it shall be the responsibility of the Operator to repair the Breakdown Equipment and the Project SPV shall compensate and / or reimburse any direct costs incurred by the Operator for such replacement, as may be mutually agreed by the Project SPV and the Operator in this regard. In this regard, the Operator shall provide all evidentiary / documentary proof of claims for all such direct costs claimed by the Operator to the Project SPV to the satisfaction of the Operator. For the avoidance of any doubt, it is hereby clarified that nothing stated under this Agreement shall require the Project SPV to incur any liability whatsoever and / or replace any equipment, in case such breakdown of equipment is for reasons attributable to the Operator. Further, it is to be clarified that no extension of the Agreement Period shall be granted to Operator due to stoppage in operation on account of equipment breakdown.
- (ii) The Project SPV shall assist in obtaining compensation from Lessor / Organization for any loss of damage other than normal wear and tear caused to or on account of the infrastructure facilities constructed/provided by the Project SPV for loss of damage which is not caused due to Operator's Event of Default.
- (iii) The Operator shall procure and maintain all Insurance Policies during the Agreement Period from reputed insurer in accordance with Article 6.1.3 of this Agreement in the name of the Project SPV at its sole cost and / or expense. In case of any damages / losses not attributable to the Operator then the same shall be recovered from the Insurance Policies availed by the Operator in the name of the Project SPV in accordance with Article 6.1.3 of this Agreement and in case such damages / losses are not adequately covered under such Insurance Policies, the Operator shall have the sole responsibility to ensure that all such damages / losses are adequately rectified and / or repaired to the satisfaction of the Project SPV.
- (iv) In case of occurrence of any damage to the installation, buildings and equipment of the Project SPV and goods and ships of customers, as a result of Operator or his personnel's default, the same shall be recovered from the insurance companies to the extent covered by the insurance policies of the Operator. All damages/losses over and above the insurance claims, shall be payable by the Operator and the Operator shall ensure that all such damages are rectified/repared at its sole cost. For avoidance of doubt, compensation

payable to abovementioned customers arising out of Operator's fault shall not be limited by materiality.

4.1.5 Access for Inspection

The Operator shall be obliged to extend all co-operation to the "Expert Group" for purposes of verifying that the Terminal Area and the Terminal Facilities are operated and maintained in compliance with the Applicable Laws. Such verification shall be made annually. Additionally, the Operator shall upon prior intimation by the Project SPV provide the authorized representatives of the Project SPV access to the Terminal Area and the Terminal Facilities for inspection and review of operations and also to ascertain compliance with any of the requirements under this Agreement. Without prejudice to the generality of this provision, it is agreed that the Operator shall in particular extend all co-operation and information required by the Expert Group appointed by the Project SPV for conducting a safety audit and verifying that the Terminal Area and the Terminal Facilities are in strict compliance with the Safety Standards.

4.1.6 Reports

The Operator shall provide to the Project SPV, monthly reports on cargo traffic, unit gross output/ discharge rates at berth, daily output rated per vessel, tariff earned and collected in respect of the Terminal Area and the Terminal Facilities and effective working time to waiting within 15 (fifteen) Days following the end of each Month, and any other information relating to operations which the Project SPV or the Supervisory Body may require from time to time. If so desired by the Project SPV or the Supervisory Body, the Operator shall provide the reports in prescribed formats and in electronic form so as to provide online access to the Project SPV or the Supervisory Body and its representatives.

4.1.7 Computer System and Network

The Operator shall install, operate and maintain such computer system and network (such as Electronic Data Interchange and Port Community System) and follow such protocol as the Project SPV may specify from time to time.

4.1.8 Security Arrangements

The Operator may make his own arrangements for security in the Terminal Area and the Terminal Facilities provided the Operator shall abide by the security regulations/ procedures prescribed by Project SPV or the Lessor or a Government Authority from time to time. It shall also conform to and assist the Project SPV or any authority responsible therefor in conforming to the International Ship and Port Facility Security Code and such other codes/requirements of International Maritime Organization as may be applicable to Iran from time to time.

4.1.9 Employment of Personnel

The Operator shall employ qualified and skilled personnel required to operate the Terminal Area and the Terminal Facilities. The terms of employment may be decided as deemed fit by the Operator and the Operator shall comply with all Applicable Laws

and bear all costs in this regard. Without prejudice to the generality of this provision, the Operator shall obtain all requisite approvals for employment of personnel of foreign origin or nationality prior to engaging such personnel. Failure to obtain approval will not amount to a Force Majeure Event. All employees shall always remain the Operator's responsibility. All labour law compliances shall be that of the Operator alone. However, it is clarified that all blue-collar employees shall be Iranian citizens.

4.1.10 **Minimum Guaranteed Traffic**

The Operator hereby unconditionally guarantees the Project SPV annual cargo handling of the levels set out in Annexure- 5 of the Contract ("**Minimum Guaranteed Traffic**") and agrees that except as expressly set out in this Agreement, the Operator shall not be entitled to any relaxation of its guarantee in this respect.

Without prejudice to the foregoing, the Parties hereby agree that in the event, the Operator handles such annual cargo volumes ("**Shortfall Cargo Volumes**") which are less than the corresponding level of Minimum Guaranteed Traffic, for any relevant year ("**Relevant Year**"), post the expiry of a period of 730 (seven hundred and thirty) days from the Effective Date, the Operator shall handle such Shortfall Cargo Volumes within such period (the "**Adjustment Period**"), which shall be the earlier of the following periods, over and above the aggregate level of Minimum Guaranteed Traffic for the Adjustment Period ("**MGT Adjustment Condition**"):

- (i) A period of 1095 (one thousand and ninety – five) days commencing from the date of expiry of the Relevant Period; or
- (ii) The expiry of the Agreement Period.

For the avoidance of any doubt, it is hereby clarified by the Parties that in the event the Operator handles annual cargo volumes ("**Excess Cargo Volumes**") which are in excess of the corresponding level of Minimum Guaranteed Traffic for any Relevant Year, the Operator may, at its discretion, handle the aggregate Minimum Guaranteed Traffic for the Adjustment Period less the Excess Cargo Volume, prior to the expiry of the Adjustment Period.

In the event, that the Operator is in breach / default of the MGT Adjustment Condition as per the requirements of this Agreement, the Operator hereby agrees to pay the Project SPV, the following amounts ("**MGT Liquidated Damages**") as liquidated damages as a genuine pre – estimate of the losses and / or damages incurred by the Operator as stipulated below:

- (i) In the event that such breach / default occurs within a period of 1825 (eighteen thousand and twenty – five) days from the Effective Date, the Operator shall pay the Project SPV, a sum aggregating to the higher of:
 - A. 60% (sixty percent) of the Deficit Revenues; or
 - B. Such amount as may be intimated by the Project SPV to the Operator in this regard.

- (ii) In the event that such breach / default occurs post the expiry of a period of 1825 (eighteen thousand and twenty – five) days from the Effective Date, the Operator shall pay the Project SPV, a sum aggregating to the higher of:
 - C. 70% (seventy percent) of the Deficit Revenues; or
 - D. Such amount as may be intimated by the Project SPV to the Operator in this regard.

For the avoidance of any doubt, it is hereby clarified by the Parties that the MGT Liquidated Damages shall be payable by the Operator to the Project SPV in Iranian Rials.

4.1.11 **Indemnity against Claims for Loss of Goods**

Notwithstanding anything contained in the Applicable Laws for the time being in force, the Operator shall be responsible for meeting any claim, action, suit or proceeding (the "**Action**") by any third party alleging the loss, destruction or deterioration of goods of which charge has been taken by the Operator and indemnify, save and hold harmless the Project SPV and the Lessor, its officers, employees, agents and representatives (the "**Indemnitees**") against all claims which may be asserted against or suffered and legal fees and costs incurred and which relate to any such goods, provided that notice of the Action received by the Indemnitee(s) shall be forwarded to the Operator expeditiously and in any case within 60 (sixty) days of the receipt thereof by any of the Indemnitees. Provided further that the Indemnitees shall have the right but not the obligation, to contest, defend and litigate any Action by any third party alleged or asserted against any of such Indemnitees in respect of, resulting from, related to or arising out of any matter for which it is to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Operator. If the Operator acknowledges in writing its obligation to indemnify the Indemnitees in respect of loss to the full extent, the Operator shall be entitled, at its option, to assume and control the defence of such Action at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnitees and reimburses to them for the reasonable cost and expenses incurred by them prior to the assumption of such defence by the Operator. In such case, the Indemnitees shall not be entitled to settle or compromise any Action without the prior written consent of the Operator, which consent shall not be unreasonably withheld or delayed. This indemnity shall survive termination of this Agreement.

4.2 **Obligations of the Project SPV**

The Project SPV shall facilitate/ provide/ cause to be provided through the Lessor / Organization, to the Operator, the following services:

- (i) permission to use the Terminal Area and the Terminal Facilities to the Operator, without any Encumbrances and in such a manner that the Terminal Area and the Terminal Facilities are "fit for purpose" in order for the Operator to discharge its obligations;
- (ii) ensure that all the Terminal Area and the Terminal Facilities have been

- completed in accordance with Good Industry Practice;
- (iii) shall facilitate to provide and maintain the berth-side draft and access route of the ships to the jetties located at the multipurpose and container terminals for safe receiving of the ships, in proportion to the capacity and depth designed in technical specifications;
 - (iv) shall facilitate to provide berthing and unberthing operations for the ships which come and go to the multipurpose and container terminals according to the announcement of the Project SPV / Operator;
 - (v) shall facilitate to proceed with overall repairs of the jetties located within the assigned area (except for the jetty decks) and public utilities and installations passing through the Terminal Area subject to the Contract;
 - (vi) in case that the traffic at the Terminals increases beyond the estimates of traffic such that the equipment supplied by the Project SPV is insufficient to handle the same, the Operator and Project SPV shall mutually discuss and agree on the modalities of handling such increased traffic including obtaining permission for additional equipment and other requirements from Lessor / Organization;
 - (vii) shall facilitate to provide the public utilities required by the Operator including water, electricity, telephone line, data transferring, etc. The Operator shall be responsible for any further development of utilities/connections within the Terminal Area subject to this Agreement;
 - (viii) shall facilitate to provide the Operator with full road access to the assigned area during the Agreement Period of Agreement;
 - (ix) shall facilitate and assist in obtaining the necessary permanent or temporary permits for gate pass of the managers, local and foreign personnel and all people whom the Operator requests entry or exit to the assigned area of the Agreement, subject and upon the written request of the Operator and observance of the laws and regulations. Evidently, obtaining of the permits related to employment of the foreign citizens shall be directly done at the responsibility and expense of the Operator;
 - (x) shall facilitate assistance for obtaining the approvals for Foreign Investment Protection and Promotion Act (FIPPA) License of Iran, if applicable;
 - (xi) shall facilitate the Operator with necessary water supply, electricity and telephone utilities at the same rate at which such utilities are made available to the Project SPV by the Port. The Operator shall make payment to the Project SPV based on actual consumption of such utilities as indicated by meters installed at the Terminal Area by the Project SPV or the Lessor. The fixed and demand charges payable with respect to any such utilities shall be split amongst the users of the Port on the basis of the proportion of actual consumption against the total consumption. The cost of purchasing and installing of the said meters shall be borne by the Operator;
 - (xii) shall facilitate to provide necessary assistance in respect to obtaining the visa and required permits for every non-Iranian personnel employed by the

Operator according to the laws and regulations of Islamic Republic of Iran;

- (xiii) shall assist the Operator, according to the laws and regulations of the Islamic Republic of Iran, in respect to opening Rial denominated and foreign currency denominated accounts in the banks of the Islamic Republic of Iran;
- (xiv) shall assist in obtaining upon request made by the Operator, make available all records and information, in relation to the Terminal Area and the Terminal Facilities from the Lessor / Organization; and
- (xv) shall facilitate in providing grant approvals / consents sought by the Operator as required under this Agreement subject to the Operator having complied with all Applicable Laws/requirements in this regard.

4.3 Supervisory Body

- 4.3.1 As per the Contract, the Lessor will supervise the activities in the Terminal Area and the Terminal Facilities through a 'Supervisory Body' appointed by the Lessor. Accordingly, the Operator's activities and performance of its obligations shall be subject to the supervision of the Supervisory Body.
- 4.3.2 The Lessor/the Project SPV shall introduce in writing the Supervisory Body and its supervisors along with a job description and the inspection procedure to the Operator.
- 4.3.3 The Operator shall implement all reasonable recommendations provided within the Lessor's communicated reports prepared based on the reports of the Supervisory Body and advised to the Project SPV/the Operator and shall provide the Project SPV with the reports of the action taken. The Operator shall abide by all instructions of the Supervisory Body.

4.4 Liquidated Damages for shortfall in performance

- 4.4.1 In the event the Project SPV observes that the Terminal Area, the Terminal Facilities and the Terminal Services do not comply with the Applicable Laws or fall short of the Applicable Laws, the Project SPV shall calculate the amount of Liquidated Damages payable by the Operator equivalent to the penalties payable by the Project SPV to the Lessor in accordance with Annexure - 13 of the Contract and demand the Operator to pay the same within 30 (thirty) Days on receipt of notice from the Project SPV. Provided that on receipt of the demand, the Operator may make a written representation to the Project SPV which shall be considered by the Project SPV on merits and the Project SPV may waive the Liquidated Damages in part or full, if it is satisfied that the Operator has been carrying out its obligations diligently and efficiently and the shortfall to be waived was on account of reasons beyond the control of the Operator.
- 4.4.2 For avoidance of doubt, it is clarified that this provision does not prejudice the rights of the Project SPV upon Operator's Event of Default including the Project SPV's right to terminate this Agreement which shall remain unaffected.
- 4.4.3 The Operator hereby agrees that the Liquidated Damages payable by it to the Project SPV, as set forth in this Agreement, are mutually agreed genuine pre-estimated loss

and damage likely to be suffered and incurred by the Project SPV and are not by way of penalty.

ARTICLE 5
VARIABLE MANAGEMENT FEES AND TARIFF

5.1 Variable Management Fees

5.1.1 The Project SPV shall pay to the Operator from the Effective Date, the variable management fees ("**Variable Management Fee**") as follows:

- (a) for the TEU Loaded Container handled and invoiced by the Operator – the fees shall be payable at the rates as per **Schedule – 1** of this Agreement ("**Per TEU Loaded Container Fees**");
- (b) for the FEU Loaded Container handled and invoiced by the Operator – the fees shall be payable at the rate of 150% of the Per TEU Loaded Container Fees;
- (c) for the Empty Container handled and invoiced by the Operator – the fees shall be payable at the rate of 50% of the Per TEU Loaded Container Fees;
- (d) ; The Operator shall also be handling dry bulk cargo, which includes commodity in loose form (unpackaged form) in large quantities and bagged cargo (Palletized or non – palletized). Project SPV shall share 20% revenue of stevedoring charges with the Operator for handling such dry bulk cargo. It is clarified by the Parties that no separate Variable Management Fees shall be paid by the Project SPV to the Operator for handling.
- (e) for subsidiary services for which the tariff is set out in the Approved Tariff's booklet, the Operator would be entitled to receive 50% the amounts of the revenue share of the Project SPV therefrom as the Project SPV is entitled to retain under the Contract with the Lessor; and
- (f) for other subsidiary services for which the tariff is not set out in the Approved Tariff's booklet, the Operator would be entitled to receive 50% the amounts of the revenue share of the Project SPV therefrom as the Project SPV may be entitled to retain under the Contract with the Lessor as per the tariffs approved by the Organisation.

It is clarified that the Operator's services for which the Variable Management Fees is payable by the Project SPV to the Operator shall include all terminal handling services including:

- (i) the unloading the cargo from vessel, handling to terminal, stowing in container yard and delivering to transport vehicle arranged by the cargo owner;
- (ii) receipt of cargo from the owner, stowing in container yard, handling to ship and loading on a vessel; and
- (iii) container lashing and unlashng whether it be Quick Release Type or Manual.

Other than the Variable Management Fees, the Project SPV or any other third party shall not be liable to pay any other amount/fee to the Operator for any of the aforesaid services or any other Terminal Services.

5.1.2 It is further clarified that the handling of any transshipment cargo including its entry into and exit from the Port shall be considered as one move for the purposes of the

Variable Management Fees. The transshipment cargo shall include cargo transfer from one ship to another ship in harbour or berth. This transfer may be direct (from ship to ship) or indirect (discharge from one ship at quay and reload to another ship).

- 5.1.3 The Project SPV shall pay the Variable Management Fee to the Operator commencing from the Effective Date, in quarterly instalments within thirty (30) days of completion of every third month of operation and raising of the invoice thereafter by the Operator in this regard. For the avoidance of any doubt, it is hereby clarified by the Parties that the Variable Management Fees shall be payable in Iranian Rials by the Project SPV, which shall be converted from USD to Iranian Rials as per prevalent Currency Exchange Rate.
- 5.1.4 The Operator shall submit the forecasted traffic for each Financial Year to the Project SPV, 30 days prior to the commencement of the next Financial Year.
- 5.1.5 The actual traffic to be referred for final verification/ reconciliation of the Variable Management Fee shall be the traffic handled and invoiced by the Operator as certified by the Independent Auditor at the end of every Financial Year. The verification/ reconciliation of the Variable Management Fee shall be completed within 60 days of the commencement of the next Financial Year and any discrepancy in the Variable Management Fee will be addressed by the way of an adjustment against the Variable Management Fee payable by the Project SPV to the Operator in the next Financial Year.
- 5.1.6 It is clarified that in the last year of the Agreement Period, any reconciliation/verification on Variable Management Fee shall be payable by the Operator or the Project SPV within 30 days at the end of the Agreement Period.

5.2 **Tariff**

- 5.2.1 The applicable tariffs at the Terminals shall be applied by the Operator, according to the tariffs (the "**Approved Tariffs**") approved by the Organisation. For certain services for which the tariff is not set out in the Approved Tariff's booklet, the tariffs shall be subject to approval by the Organisation at its sole discretion.
- 5.2.2 In the event that the Operator proposes any amendments / revisions to the Approved Tariffs, the Operator shall submit the details of such proposed amendments / revisions to the Project SPV, as may be required in this regard by the Project SPV. The Operator shall also provide appropriate rationales along with all necessary information and documents to the Project SPV in this regard. Notwithstanding anything contained under this Agreement, it is hereby clarified by the Parties that, any amendments / revisions to the Approved Tariffs shall be subject to the discretion of the Organization and any decision by the Organization in this regard, shall be final and binding on the Parties hereto. The Parties hereby agree and acknowledge that the Project SPV shall not have any liability to the Operator for any rejection of such proposed amendments / revisions to the Approved Tariffs.
- 5.2.3 The Operator shall apply the Approved Tariffs in respect of the provided services as per the bills issued by the Lessor's financial software and collect from all users of the multipurpose and container terminals, according to the current laws and regulations.

- 5.2.4 The Operator shall issue the relevant bills in respect of the services provided, as per the procedure agreed between the Lessor and the Project SPV for distribution of the revenues. The share of each beneficiary party (i.e. the Lessor and the Project SPV) will be paid and deposited to the respective accounts of each one of the beneficiaries simultaneous with payment of the bill by the customers.
- 5.2.5 The Operator shall not have any share in the Approved Tariffs or any other amount collected from the users of the Terminals. All amounts collected by the Operator from the users of the Terminals shall be directly deposited in the accounts of the Lessor and the Project SPV as per the instructions of the Project SPV.
- 5.2.6 The Operator shall be only entitled to the Variable Management Fee as contemplated in this Agreement.

ARTICLE 6 GENERAL RIGHTS AND OBLIGATIONS

6.1 OF THE OPERATOR

6.1.1 Applicable Permits

The Operator shall at all times during the Agreement Period maintain and comply with the Applicable Permits.

6.1.2 Taxes & duties

The Operator shall during the Agreement Period pay in a timely manner all taxes, duties, levies, cess and charges that may be levied on and / or payable by the Operator in relation to its duties, obligations and responsibilities under this Agreement.

6.1.3 Insurance

The Operator shall procure and maintain the following insurance policies during the Agreement Period from reputed insurer in accordance with the terms and conditions of the Agreement ("**Insurance Policies**") in the name of the Project SPV at its sole cost and / or expense:

- (i) Installations, equipment and assets to be used within the Terminal Area, other than the berth infrastructure constructed / provided by the Lessor; and,
- (ii) Third party liability insurance policies in the name of the Project SPV, for owners of goods, ships and other third parties who shall avail of the Terminal Services.

The insurance policies to be obtained by the Project SPV, shall be finalized by a consultative committee comprising of representatives of the Lessor, the Project SPV and the Iranian insurance company to address the suggestions as per the requirements of the Contract, in a comprehensive manner. The central policy of the Lessor shall be followed for the purpose of obtaining insurance and identifying the insurer.

6.1.4 Indemnification

The Operator shall during the pendency of this Agreement and thereafter until all claims and demands in respect to the acts and omissions during the Agreement Period are duly settled, indemnify and keep indemnified and otherwise save harmless, the Project SPV and / or the Lessor, its agents and employees, from and against all claims, demands made against and/or loss caused and/or damages suffered and/or cost, charges/expenses incurred to and/or penalty levied and/or any claim due to injury to or death of any person and/or loss or damage caused or suffered to property owned or belonging to the Project SPV and / or the Lessor, its agents and employees or third party as a result of any acts, deeds or thing done or omitted to be done by the Operator or as a result of failure on the part of the Operator to perform any of its obligations under this Agreement or on the Operator committing breach of any of the terms and conditions of this Agreement or on the failure of the Operator to perform any of its duties and/or obligations including statutory duties or as a consequence of any notice, action, suit or proceedings, given, initiated, filed or commenced by consignee or owner of goods or vessel owner/agent or its employees or any third party or governmental authority or as a result of any failure or negligence or default of the Operator or its contractor(s), sub-contractor(s), or employees, servants, agents of such contractor(s) and/or sub-contractor(s) and/or invitees as the case may be, in connection with or arising out of this Agreement and/or arising out of or, in connection with the Operator's use and occupation of the Terminal Facilities and Terminal Area, operation and maintenance of the Terminal Facilities and Terminal Area.

6.1.5 Assignability

Except as otherwise provided in this Agreement, the Operator shall not assign its rights, title or interest in this Agreement in favour of any Persons without prior written consent of the Project SPV.

6.2 OF THE PROJECT SPV

6.2.1 Assistance in obtaining Applicable Permits

The Project SPV shall at the written request of the Operator, but without guarantees and/or without assuming any responsibility in that behalf, issue recommendatory letters and make best efforts to assist the Operator in obtaining all the Applicable Permits including renewals thereof. Provided that, nothing contained under this Agreement shall relieve the Operator of its duty and obligation to obtain the Applicable Permits and to keep them in force and effect throughout the Agreement Period.

6.2.2 Taxes and Duties

The Project SPV shall during the Agreement Period pay in a timely manner all taxes, duties, levies, cess and charges that may be levied on and / or payable by the Project SPV in relation to its duties, obligations and responsibilities under this Agreement.

6.2.3 General rights of inspection and verification

The Project SPV may during the subsistence of the Agreement through the Expert Group as either appointed by the Project SPV or itself, verify the performance of duties and obligations of the Operator in accordance with the requirements of this Agreement.

6.3 GENERAL OBLIGATIONS OF THE PARTIES

6.3.1 Compliance with Laws and Regulations

The Parties shall perform their respective duties and obligations under this Agreement in accordance with the Applicable Laws and Applicable Permits.

6.3.2 Rights to Documents

(i) Project SPV's Documents

The documents and computer programs or copies thereof if any as may be provided by the Project SPV to the Operator, shall always remain the property of the Project SPV. Such documents, computer programs and/or copies shall not be used by the Operator for the purposes other than for the Project. Such documents, computer programs and / or copies thereof shall, unless otherwise agreed upon by the Project SPV, be returned by the Operator to the Project SPV on the Handover Date.

(ii) Operator's Documents

Documents and computer programs provided by the Operator, or which are developed (and owned by the Operator) for operation and/or maintenance of the Terminal Facilities and provision of the Terminal Services shall be handed over by the Operator to the Project SPV free of cost on the Handover Date.

6.3.3 Confidentiality

All confidential information and documents (whether financial, technical or otherwise) provided by either Party to the other shall not, unless compelled by law or the process of a Government Authority, be disclosed to any Person without the consent of the other Party with the exception of providing such information to legal advisors/auditors of the concerned party on a need-to-know basis. This covenant shall survive the Agreement Period.

6.3.4 Obligation to Co-operate

The Parties shall mutually cooperate with each other in order to achieve the objectives of this Agreement.

**ARTICLE 7
FORCE MAJEURE**

7.1 Any event or condition or a combination of both which is unpredictable and beyond the control of the affected Party which has adverse impact on the capability of the

affected Party to perform its duties and obligations under this Agreement in whole or in part including the occurrence of any of the following events ("**Force Majeure Events**") shall be deemed to be a force majeure event for the purposes of this Agreement:

- 7.1.1 Natural incidents such as, lightening, fire, earthquake, flood, storm, tide, whirlwind or other natural disasters;
- 7.1.2 Accidents or explosions;
- 7.1.3 Outbreak of epidemic diseases;
- 7.1.4 War (declared or non-declared), military offensive, armed conflict or measures taken by enemies of the country, siege, economic sanctions (in conditions led to severe decline, more than 50% (fifty percent) or stoppage of traffic at the Agreement subjected terminals), rebellion, domestic disturbance, sabotage or terrorist acts against the country;
- 7.1.5 The discovery of geological conditions, toxic contamination or archaeological remains on the Terminal Area that could not reasonably have been expected to be discovered through a site inspection;
- 7.1.6 Radioactive contamination or leakage of ionic radiation;
- 7.1.7 Strikes and other public labour riots which hinders provision of services and entrance into the port (except for strikes or sanctions related to the personnel, agents or representatives or contractors related to the Project SPV and or strikes emerging from any act or omission by such personnel, agents or representatives or contractors);
- 7.1.8 Any act or omission by the governmental bodies of the country or non – issuance of the required licences or revocation of the licences issued for execution of the activities subject of this Agreement which is not resulted from fault or violation of the Project SPV;
- 7.1.9 An expropriation and / or confiscation of the Terminal Facilities and / or the Terminal Area by the Organisation or any other Government Authority; and
- 7.1.10 Change in Laws, which results in material adverse change in duties and obligations of the affected Party and leads to adverse impact on the performance of the duties and obligations of any Party as per the requirements of the Agreement.
- 7.2 Invocation by the affected Party ("**Force Majeure Affected Party**") of the provisions under this Article of this Agreement upon the occurrence of a Force Majeure Event shall be conditional upon the fulfilment of the following terms and conditions:
 - 7.2.1 Despite reasonable efforts of the Force Majeure Affected Party, there is no possibility to prevent occurrence or avoidance of the adverse impact of such Force Majeure Event.
 - 7.2.2 The concerned Force Majeure Event has severe adverse impact on the ability of the Affected Party to perform its duties and obligations under this Agreement.

- 7.2.3 The damage resulted from the concerned Force Majeure Event is not due to any act or omission on the part of the Force Majeure Affected Party in relation to the performance of its duties and obligations under the Agreement.
- 7.2.4 The Force Majeure Affected Party informed the other Party about the occurrence of the Force Majeure Event in accordance with the terms and conditions of this Agreement.
- 7.3 In case of occurrence of Force Majeure Event, in order for the Force Majeure Force Majeure Affected Party to be entitled to any rights and / or benefits under this Article of the Agreement, such Force Majeure Affected Party shall within a period of 10 (ten) days from the date of occurrence of such event or the date of such event coming to the knowledge of such Force Majeure Affected Party, whichever is later, notify the other Party of the occurrence of such Force Majeure Event:
- 7.3.1 Nature, date and time of occurrence as well as the impact of the Force Majeure Event along with all relevant supporting documents and information in this regard;
- 7.3.2 The exact or estimated duration of the adverse impact of the Force Majeure Event on the ability of the Force Majeure Affected Party to perform its duties and obligations as per the terms and conditions of this Agreement;
- 7.3.3 Measures taken by the Force Majeure Affected Party to mitigate the impact of the Force Majeure Event or reduce the extent of damages incurred by such Force Majeure Affected Party; and
- 7.3.4 Other information as may be relevant with respect to the Force Majeure Event.
- 7.4 During the period of subsistence of such Force Majeure Event, the Force Majeure Affected Party shall be exempted from the performance of its duties and obligations under the Agreement, in whole or in part.
- 7.5 The Force Majeure Affected Party shall do all acts, deeds, matters and things as may be reasonable in order to mitigate the adverse impact of such Force Majeure Event. In the event of any failure on the part of the Force Majeure Affected Party to mitigate the impact of such Force Majeure Event, such Party shall not be entitled to any rights and / or benefits under this Article of the Agreement.
- 7.6 The Parties hereby agree that the during the continuance and / or subsistence of any Force Majeure Event, the duties, obligations and responsibilities of the Force Majeure Affected Party shall be deemed to be suspended to the extent so affected, provided that the Force Majeure Affected Party promptly notifies the other Party of the occurrence of the Force Majeure Event and takes all reasonable steps necessary to resume performance of its obligations so interfered with. The Force Majeure Affected Party shall resume performance as soon as practicable after the Force Majeure Event has ceased and the Agreement Period shall be deemed to have been automatically extended for a period equivalent to which the Force Majeure Affected Party's obligations were so suspended due to the occurrence of the Force Majeure Event.

- 7.7 In case the duration of the subsistence of the Force Majeure Event is less than 365 (three hundred and sixty five) days, the Agreement shall stand suspended within this period and upon expiry of such Force Majeure Event, the Agreement shall continue upon to be operational. In case the duration of the Force Majeure Event is more than 365 (three hundred and sixty five) days, the Agreement may be terminated at the written request of any Party.
- 7.8 Each party shall bear its own costs and expenses in relation to the occurrence of any Force Majeure Event.

ARTICLE 8 EVENT OF DEFAULT

8.1 Operator Events of Default

The Project SPV shall have the right to terminate this Agreement upon the occurrence of an Operator Event of Default. Each of the following events or circumstances, to the extent not caused by a Project SPV Event of Default or a Force Majeure Event, shall be considered for the purposes of this Agreement as events of default of the Operator ("**Operator Events of Default**"):

- 8.1.1 The failure of the Operator to perform or discharge any of its duties and obligations in accordance with the terms and conditions of this Agreement;
- 8.1.2 The Terminal Facilities, the Terminal Area and / or the Terminal Services is abandoned for a period of more than 90 (ninety) days during the Agreement Period;
- 8.1.3 The dissolution, insolvency and / or bankruptcy of the Operator as admitted by a court of competent jurisdiction under Applicable Laws;
- 8.1.4 The attachment of the assets and / or properties of the Operator which have material adverse impact on the fulfilment of its duties and obligations under the Agreement and which continues for a period of more than ninety (90) days;
- 8.1.5 Assignment of any of the rights and / or benefits of the Operator under this Agreement by the Operator without the prior written approval of the Project SPV to any third party;
- 8.1.6 The failure of the Operator to perform or discharge any of its duties and obligations, which has or is likely to have a Material Adverse Effect on the Terminal Facilities and / or Terminal Services;
- 8.1.7 Non-payment of any amount due to the Project SPV, which is not paid within a period of 180 (one hundred eighty) days from its due date;
- 8.1.8 Any representation made or warranties given by the Operator under this Agreement is found to be false or misleading;
- 8.1.9 The Operator passing a resolution for its voluntary winding up;

- 8.1.10 Appointment of a provisional liquidator, administrator, trustee or receiver of the whole or substantially whole of the undertaking of the Operator by a court of competent jurisdiction in proceedings for winding up or any other legal proceedings;
- 8.1.11 Levy of an execution or distraint on the assets of the Operator which has or is likely to have a Material Adverse Effect on the Terminal Services and / or the Terminal Facilities and such execution or distraint remaining in force for a period exceeding 90 (ninety) days;
- 8.1.12 Any scheme of merger or amalgamation of the Operator with any other company or reconstruction or transfer of the whole or part of the Operator's undertaking without the prior written approval of the Project SPV; and
- 8.1.13 The Operator engaging or knowingly allowing any of its employees, agents, contractors, sub – contractors and / or representatives to engage in any activity prohibited under this Agreement and / or Applicable Laws or which constitutes a breach of the terms and conditions of this Agreement or a breach of or an offence under any Applicable Laws.

8.2 Project SPV Event of Default

The Operator shall have the right to terminate this Agreement upon the occurrence of a Project SPV Event of Default. Each of the following events or circumstances, to the extent not caused by an Operator Event of Default or a Force Majeure Event, shall be considered for the purposes of this Agreement as events of default of the Project SPV ("**Project SPV Events of Default**"):

- 8.2.1 Failure to pay the Variable Management Fee to the Operator by due date and such default is not cured within a period of 180 (one eighty) days therefrom; or
- 8.2.2 Appointment of a provisional liquidator, administrator, trustee or receiver of the Project SPV by a court of competent jurisdiction in proceedings for bankruptcy, winding up or any other legal proceedings.

**ARTICLE 9
TERMINATION**

9.1 Rights of the Parties to Terminate

- 9.1.1 Upon the occurrence of an Operator Event of Default, the Project SPV shall without prejudice to any other rights and remedies available to it under this Agreement be entitled to terminate this Agreement.
- 9.1.2 Upon the occurrence of a Project SPV Event of Default, the Operator shall without prejudice to any other rights and remedies available to it under this Agreement be entitled to terminate this Agreement.

9.1.3 The Agreement shall automatically stand terminated upon the termination of the Master Agreement and / or the Contract for any reason whatsoever in accordance with the terms thereof.

9.2 **Termination Procedure**

The Party entitled to terminate this Agreement either on account of a Force Majeure Event or on account of an Event of Default of other Party shall do so by issue of a notice in writing ("**Termination Notice**") of at least ninety (90) days to the other Party inter – alia stating the reasons for invocation of the right to terminate the Agreement.

9.3 **Obligations in relation to Termination**

Upon the exercise of the right of termination by any Party in accordance with the requirements of the Agreement, the Parties shall continue to perform such of their respective obligations under this Agreement which are capable of being performed with the object as far as possible of ensuring continued availability of the Terminal Services and Terminal Facilities to the users, failing which the Party in breach shall compensate the other Party for any loss and / or damage occasioned or suffered on account of such breach.

9.4 **Condition Survey**

9.4.1 The Operator agrees that on the service of a Termination Notice or at least 6 (six) months prior to the expiry of the Agreement Period, as the case may be, it shall conduct or cause to be conducted under the supervision of the Project SPV, a condition survey of the Terminal Facilities and Terminal Area in order to ascertain the condition thereof, verifying compliance with the duties and obligations of the Operator under this Agreement and to prepare an inventory of the assets comprised in the Terminal Facilities and Terminal Services. During such period, the designated key personnel of the Project SPV shall be associated with the operations of the Terminal Facilities and Terminal Services (except when the same is impossible due to a Force Majeure Event) in order to facilitate the smooth take – over of the same by the Project SPV on the Handover Date.

9.4.2 If, as a result of the condition survey, the Project SPV shall observe/notice that the Terminal Facilities and the Terminal Area or any part thereof have/has not been operated and maintained in accordance with the requirements therefor under this Agreement (normal wear and tear excepted) the Operator shall, at its cost and expenses, take all necessary steps to put the same in good working conditions well before the Handover Date.

9.4.3 In the event the Operator fails to comply with the provisions of this Agreement, the Project SPV may itself cause the condition survey and inventory of Terminal Facilities and Terminal Area to be conducted. The Project SPV shall be compensated by the Operator for any costs incurred in conducting such survey and preparation of inventory as also in putting the Terminal Facilities and the Terminal Area in good working condition.

9.5 **Consequences of Termination**

- 9.5.1 In case of termination of the Agreement due to the occurrence of an Operator Event of Default, the Performance Security provided in accordance with the Master Agreement shall stand forfeited and shall be encashed as Liquidated Damages as a genuine pre – estimate of the loss and damage caused to the Project SPV.
- 9.5.2 In case of termination of the Agreement due to the occurrence of the Project SPV Event of Default or a Force Majeure Event, the Performance Security provided in accordance with the Master Agreement shall be returned as per the terms and conditions of the Master Agreement.
- 9.5.3 In the event of termination on account of any event/reason, the Operator shall not be entitled to any compensation as damages or otherwise.⁵

9.6 **General Scope of Handover**

The Parties shall perform / discharge their respective duties and obligations in accordance with the terms and conditions of this Agreement which are required to be completed on the Handover Date in their entirety, in order to effectuate the termination of the Agreement. Without prejudice to the generality of the foregoing, upon expiry of this Agreement or early termination (the "**Handover Date**"), the Parties shall be required to do the following acts, deed, matters and things:

- 9.6.1 Six (6) months prior to the termination of the Agreement subsequent to the issuance of the Termination Notice, a committee comprising of the representatives of Lessor / Organization and the Project SPV shall be formed which shall prepare and finalize the handover plan ("**Handover Plan**") providing for the steps to be followed by the Parties for consummating the transfer and hand – over of the management, operation and maintenance of the Terminal Facilities, Terminal Area and the Terminal Services by the Operator to the Project SPV with due consideration to the existing facts and circumstances and the requirements of the Agreement;
- 9.6.2 The Parties hereby agree and acknowledge that the Handover Plan shall be final and binding on the Parties;
- 9.6.3 The Handover Plan shall provide for the steps to be followed by the Parties for consummating the transfer and hand – over of the management, operation and maintenance of the Terminal Facilities, Terminal Area and the Terminal Services by the Operator to the Project SPV so as to ensure the following:
- (i) The implementation of the steps contemplated under the Handover Plan should not lead to any major stoppage or interruption of the normal operation of the terminals;
 - (ii) The withdrawal of Operator's own employees from the Terminal Facilities and Terminal Area;

⁵ It is clarified that the Termination Costs shall be payable in India under the Master Agreement.

- (iii) The hand – over and delivery of the peaceful possession of the Terminal Area and Terminal Facilities free and clear of any encumbrances;
- (iv) Transfer all its rights, titles and interests in the assets comprised in the Terminal Facilities and Terminal Area and execution of such documents and deeds as may be necessary for the purpose by the Operator evidencing such transfer in accordance with Applicable Laws;
- (v) The hand – over and delivery of all documents including all drawings, manuals and records relating to management, operation and maintenance of the Terminal Facilities, Terminal Area and Terminal Services by the Operator;
- (vi) The transfer to the Project SPV of all Applicable Permits which the Project SPV may require and which can be legally transferred;
- (vii) The scrap properties of the Operator shall be moved out of the Terminal Facilities and Terminal Area;
- (viii) The Agreement subjected terminals shall be released from Operator’s possession and handed over to the Project SPV upon considering their normal wear and tear and being in good condition;
- (ix) All information, data and documents related to the Terminal Facilities, Terminal Area and Terminal Services including equipment, existent containers and goods, operation and management, administration, financial, human resources, statistics and other information, except for those related to internal affairs of the Operator, shall stand transferred to the Project SPV on the Handover Date;
- (x) The operational software database related to the management, operation and maintenance of the Terminal Facilities, Terminal Area and Terminal Services by the Operator shall be handed over to the Project SPV to ensure that the operations will continue uninterrupted;
- (xi) All Intellectual Property Rights developed by the Operator shall be transferred to the Project SPV or the Lessor at the request of the Project SPV; and
- (xii) The containers and goods remaining in the Terminal Facilities, Terminal Area and Terminal Services shall be delivered to the Project SPV along with the relevant documents and according to the Handover Plan upon the termination of the Agreement in accordance with the terms hereof.

9.6.4 **Risk**

The risk pertaining to the Terminal Area, Terminal Services and the Terminal Facilities shall remain at the sole risk of the Operator except for any loss or damage caused to or suffered by the Operator due to any act or omission or negligence on the part of the Project SPV under this Agreement, until the consummation of the Handover Plan on the Handover Date in accordance with the terms hereof.

**ARTICLE 10
DISPUTE RESOLUTION**

- 10.1.1 Any dispute, disagreement, difference, controversy or claim arising out of, relating to or in connection with this Agreement (including any question regarding its existence, validity, interpretation, performance, breach or termination) and any dispute relating to any non – contractual obligations arising out of or in connection with it (a “**Dispute**”) shall be settled in accordance with the provisions of this Agreement.
- 10.1.2 In case of any Dispute arising between the Parties out of or in connection with this Agreement, either Party may notify the other Party in writing (“**Dispute Notice**”) that a Dispute has arisen and shall provide a reasonable description of the nature of the Dispute.
- 10.1.3 The Dispute shall be initially referred to amicable settlement through negotiations between the Parties. Within a period five (5) days of receipt of the Dispute Notice, each Party must nominate a duly authorized representative, who is fully authorized to either settle the Dispute amicably or initiate proceedings for resolving the Dispute. Within a period of ten (10) days of receipt of the Dispute Notice (or within such other period as the Parties may agree in writing), the authorized representatives of the Parties shall meet and attempt to resolve the Dispute amicably by way of mediation. Any amicable settlement between the Parties shall be reduced in writing and shall be final and binding on the Parties.
- 10.1.4 In the event that the Parties cannot settle the Dispute within a period of thirty (30) days by way of negotiations, the Dispute shall be referred to the respective chief executive officer/managing director/chairperson of IPGL (India) and the Selected Bidder in India (“**Senior Representatives**”) for settlement in India.
- 10.1.5 In the event that the Senior Representatives cannot settle the Dispute within a period of thirty (30) days, it shall be referred and settled by arbitration to be conducted in accordance with the Rules of Arbitration of the International Chamber of Commerce (the “**Rules**”).
- 10.1.6 The arbitration shall be conducted as follows:
- (i) Any Party raising the Dispute and invoking the arbitration shall send a written notice of arbitration with details of the dispute (“**Arbitration Notice**”) to other Party.
 - (ii) The Party raising the Dispute shall appoint 1 (one) arbitrator and the other Party shall appoint another arbitrator and the 2 (two) arbitrators so appointed shall appoint the presiding arbitrator. In the event, any of the Parties does not appoint an arbitrator or the two arbitrators appointed by the Parties do not appoint third arbitrator within a period of thirty (30) days from the date of the Arbitration Notice, such arbitrator(s) will be appointed in accordance with the Rules.
 - (iii) All proceedings in any such arbitration shall be conducted in English.

- (iv) The seat of the arbitration proceedings shall be Tehran, Iran.
- (v) The arbitrator shall be free to award costs as may be appropriate.
- (vi) The arbitral award shall be a reasoned award and shall be in writing.

- 10.1.7 The arbitral award shall be final and binding on the Parties. The Parties undertake to carry out the award without delay.
- 10.1.8 Pending settlement or determination of the Dispute, the Parties shall continue to perform their obligations under this Agreement to the extent possible notwithstanding the commencement of any arbitration, mediation or other dispute resolution proceedings.
- 10.1.9 This Article shall survive termination of this Agreement.

**ARTICLE 11
GENERAL PROVISIONS**

11.1 Notices

- 11.1.1 Any notice or other communication required or permitted hereunder to any Party shall be in writing and shall be either personally delivered or sent by reputed overnight courier service, or transmitted by facsimile (with confirming copy sent by reputed overnight courier service), or sent by registered post acknowledgment due, or sent by electronic mail. Any notice or other communication shall be sent or delivered to the receiving Party at the address set forth herein, or at such other address as the Parties may from time to time designate in writing:

For the Project SPV:

Address: [•]
Telephone No.: [•]
Fax No.: [•]
Email: [•]
Attention: [•]

For the Operator:

Address: [•]
Telephone No.: [•]
Fax No.: [•]
Email: [•]
Attention: [•]

- 11.1.2 Such notices and other communication duly given shall be deemed to be effective:
 - (i) if sent by personal delivery, upon delivery at the address of the relevant Party;

- (ii) if sent by post (with acknowledgment of receipt), 2 (two) Business Days after the date of posting;
- (iii) sent by reputed overnight courier service 2 (two) Business Days after the date of dispatch;
- (iv) if sent by facsimile, when the activity report confirms successful transmission, or if such day is not a Business Day or after 5 P.M. on any Business Day in the place of delivery, the next following Business Day; and
- (v) if by way of email as soon as the email leaves the system of the sender to be transmitted to the addressee.

11.2 **Entire Agreement**

The Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all or any prior negotiations, representations, or agreements, either written or oral.

11.3 **Governing Law and Jurisdiction**

11.3.1 This Agreement and the rights and obligations of the Parties hereunder shall be construed in accordance with and be governed by the laws of the Government of Islamic Republic of Iran.

11.3.2 Subject to the provisions of Article 10 (*Dispute Resolution*), the courts of Tehran, Iran shall have exclusive jurisdiction to try and entertain and disputes arising out of this Agreement.

11.4 **Waiver**

No failure or delay on the part of any of the Parties to this Agreement relating to the exercise of any right, power, privilege or remedy provided under the Agreement shall operate as a waiver of such right, power, privilege or remedy or as a waiver of any preceding or succeeding breach by the other Party to this Agreement nor shall any single or partial exercise of any right, power, privilege, or remedy preclude any other or further exercise of such or any other right, power, privilege or remedy provided in the Agreement all of which are several and cumulative and are not exclusive of each other or of any other rights or remedies otherwise available to a Party at law.

11.5 **Assignment**

The Operator shall not assign its rights, title or interest in this Agreement in favour of any Persons without prior written consent of the Project SPV.

11.6 **Amendment**

No change or modification of the Agreement shall be valid unless the same shall be in writing and signed by the Parties.

11.7 Severability

Each and every obligation under the Agreement shall be treated as a separate obligation and shall be severally enforceable as such and in the event of any obligation or obligations being or becoming unenforceable in whole or in part. To the extent that any provision of the Agreement is invalid, unenforceable or prohibited by Applicable Laws, the Agreement shall be considered divisible as to such provision and such provision shall be inoperative and shall not be part of the consideration moving from either Party hereto to the other, and the remainder of the Agreement shall be valid, binding and of like effect as though such provision was not included herein.

11.8 Counterparts

This Agreement may be signed by facsimile or in any number of counterparts, each of which is an original and all of which, taken together, constitutes one and the same instrument.

11.9 Relationship

Save as provided in this Agreement none of the Parties shall have any right, power or authority, whether express or implied, to enter into, assume any duty or obligation on behalf of or bind any of the others and nothing in this Agreement shall constitute a partnership or a relationship of principal or agent between any of the Parties.

11.10 Survival

Notwithstanding anything contained herein, the provisions of Article 9 (*Termination*), Article 10 (*Dispute Resolution*) and Article 11 (*General Provisions*), including those provisions of this Agreement that would survive by implication shall survive and remain in full force and effect after the termination/expiry of this Agreement. All accrued rights and outstanding obligations before termination/expiry of this Agreement shall also survive the termination/expiry of this Agreement.

11.11 Construction

Each Party represents, warrants and acknowledges that it has read and understood the terms and conditions of this Agreement and has sought necessary advice in relation to this Agreement and that the Agreement or any or other documentation will not be construed in favour of or against either Party due to that Party's drafting of such documents.

11.12 Set – Off

In the event any amount is due and payable by the Project SPV to the Operator and / or the Selected Entity under this Agreement or under the Master Agreement, the Project SPV shall have the right to set – off the same against any sums payable by it to the Operator and / or the Selected Entity and pay the balance remaining.

11.13 Costs

Each Party shall bear its own fees and expenses in connection with the preparation, execution and performance of the Agreement and the transactions contemplated hereby and thereby, including, without limitation, all fees and expenses of agents, representatives, counsel and accountants.

11.14 **Stamp duty**

Any stamp duty, registration and other related costs payable on the Agreement shall be equally borne by the Parties.

11.15 **Specific performance**

The Parties agree that, to the extent permitted under Applicable Laws, the rights and obligations of the Parties under the Agreement, shall be subject to the right of specific performance and shall be specifically enforceable against the Party having such obligations. The Parties acknowledge that any breach or non – compliance of the provisions of the Agreement by one Party will cause immediate irreparable harm to the other Party (“**Affected Party**”) for which any compensation payable in damages shall not be an adequate remedy. Accordingly, the Parties agree that the Affected Party shall be entitled to immediate and permanent injunctive relief, specific performance or any other equitable relief from a court of competent jurisdiction in the event of any such non – compliance, potential non – compliance, breach or threatened breach by other Party. The Parties agree and stipulate that the Affected Party shall be entitled to such injunctive relief, specific performance or other equitable relief without (i) the necessity of proving actual damages; or (ii) posting a bond or other security. Nothing contained herein shall limit the Affected Party’s right to any remedies at law or in equity, including without limitation the recovery of damages from the other Party.

(SIGNATURE PAGE FOLLOWS)

IN WITNESS WHEREOF the Parties hereto have caused this agreement to be executed on the day and year first hereinabove written and in the manner hereinafter mentioned.

SIGNED, SEALED AND DELIVERED by the within named Project SPV, [**PLEASE INSERT THE NAME OF THE SPECIAL PURPOSE VEHICLE FOR THE PROJECT**], by the hand of _____,
its authorized signatory.

SIGNED, SEALED AND DELIVERED by the within named Operator, [**PLEASE INSERT THE NAME OF THE OPERATOR**], by the hand of _____,
its authorized signatory.

SCHEDULE – 1
VARIABLE MANAGEMENT FEE

For the avoidance of any doubt, it is hereby clarified by the Parties that the Variable Management Fees shall be payable in Iranian Rials by the Project SPV, which shall be converted from USD to Iranian Rials as per prevalent Currency Exchange Rate.

SR. NO.	RELEVANT PERIOD	AMOUNT OF VARIABLE MANAGEMENT FEE (in USD per TEU basis)
1.	For the period of 365 (three hundred and sixty five) days commencing on and from the Effective Date (" First Year of Operations ")	[•] ⁶
2.	For the period of 365 (three hundred and sixty five) days commencing on and from the date of expiry of the First Year of Operations (" Second Year of Operations ")	1.05 X [•] ⁷
3.	For the period of 365 (three hundred and sixty five) days commencing on and from the date of expiry of the Second Year of Operations (" Third Year of Operations ")	1.1025 X [•] ⁸
4.	For the period of 365 (three hundred and sixty five) days commencing on and from the date of expiry of the Third Year of Operations (" Fourth Year of Operations ")	1.157625 X [•] ⁹
5.	For the period of 365 (three hundred and sixty five) days commencing on and from the date of expiry of the Fourth Year of Operations (" Fifth Year of Operations ")	1.21550625 X [•] ¹⁰
6.	For the period of 365 (three hundred and sixty five) days commencing on and from the date of expiry of the Fifth Year of Operations (" Sixth Year of Operations ")	1.27628156 X [•] ¹¹
7.	For the period of 365 (three hundred and sixty five) days commencing on and from the date of expiry of the Sixth Year of Operations (" Seventh Year of Operations ")	1.34009564 X [•] ¹²
8.	For the period of 365 (three hundred and sixty five) days commencing on and from the date of expiry of	1.40710042 X [•] ¹³

⁶ This will be the variable management fees quoted by the Selected Bidder on per TEU basis.

⁷ This will be the variable management fees quoted by the Selected Bidder on per TEU basis.

⁸ This will be the variable management fees quoted by the Selected Bidder on per TEU basis.

⁹ This will be the variable management fees quoted by the Selected Bidder on per TEU basis.

¹⁰ This will be the variable management fees quoted by the Selected Bidder on per TEU basis.

¹¹ This will be the variable management fees quoted by the Selected Bidder on per TEU basis.

¹² This will be the variable management fees quoted by the Selected Bidder on per TEU basis.

¹³ This will be the variable management fees quoted by the Selected Bidder on per TEU basis.

	the Seventh Year of Operations (" Eighth Year of Operations ")	
9.	For the period of 365 (three hundred and sixty five) days commencing on and from the date of expiry of the Eighth Year of Operations (" Ninth Year of Operations ")	1.47745544 X [●] ¹⁴
10.	For the period of 365 (three hundred and sixty five) days commencing on and from the date of expiry of the Ninth Year of Operations (" Tenth Year of Operations ")	1.55132821 X [●] ¹⁵

¹⁴ This will be the variable management fees quoted by the Selected Bidder on per TEU basis.

¹⁵ This will be the variable management fees quoted by the Selected Bidder on per TEU basis.

APPENDIX – 1
A COPY OF THE CONTRACT

(annexed hereto separately)