

REPÚBLICA DEL PERÚ



Autoridad Portuaria Nacional (APN)



ProlInversión

FIRST DRAFT CONCESSION CONTRACT

COMPREHENSIVE PROJECTS TENDER FOR THE
CONCESSION OF THE NEW CONTAINER TERMINAL AT
THE CALLAO PORT TERMINAL - SOUTHERN ZONE

February 2006

Users of this translated document shall take into consideration that in case of discrepancies between versions, the Spanish version shall prevail.

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CONCESSION AGREEMENT

Mr. Notary:

Please insert in your Public Deed Registry, a public deed certifying the Concession Agreement for the Design, Building, Financing, Operation, Maintenance and Exploitation of the New Container Terminal at the Callao Port Terminal – South Zone located adjacent to the South Wave Breaker (hereinafter, the Agreement), subscribed between the State of the Republic of Peru (hereinafter, the GRANTOR), represented by the Ministry of Transportation and Communications, which in turn acts through the National Port Authority (hereinafter, APN), duly represented by _____, identified with National Identity Document (DNI) No. _____, domiciled at _____, duly authorized through _____ dated _____; and, on the other hand, _____, hereinafter the CONCESSIONAIRE, domiciled at _____, duly represented by _____, identified with No. _____, domiciled at _____, duly authorized through _____.

SECTION I: BACKGROUND AND DEFINITIONS

BACKGROUND

- 1.1. Dated March 1st, 2003, Law No. 27943, National Port System Law (hereinafter, LSPN) was published. The regulations for this law were approved through Supreme Decree No. 003-2004-MTC, published on February 4, 2004. These regulations rule the terminal activities and services, infrastructure and facilities that make up the National Port System (hereinafter, SPN).
- 1.2. LSPN creates APN as a decentralized public organism in charge of SPN.
- 1.3. LSPN establishes that APN is responsible for fostering private sector participation, preferably through investment in developing port infrastructure and equipment, to do so it has the support of the Private Investment Promotion Agency (hereinafter, PROINVERSIÓN). In this regard, LSPN regulations provide that APN should lead private investment promotion in national port infrastructure and equipment. To that effect, it should enter into cooperation agreement with PROINVERSIÓN.
- 1.4. Dated March 10, 2005, a Cooperation Framework Agreement was subscribed (hereinafter, the AGREEMENT) through which APN charged PROINVERSIÓN with developing and executing private investment promotion in State-owned port

infrastructure and facilities, which will be carried out according to the promotion plans that had previously been approved by APN following PROINVERSIÓN's proposal, as per the National Port Development Plan guidelines (hereinafter, PNDP) prepared by APN.

- 1.5. Pursuant to Section 3.1.2 of the AGREEMENT, through Official Letter 252-2005-APN/PD, APN requested PROINVERSIÓN to determine the financial economic feasibility and the preparation of Promotion Plans, among others, for the New Container Terminal at the Callao Port Terminal – South Zone.
- 1.6. PROINVERSIÓN's Directive Council, in session held on June 30, 2005, accepted to become charged with promoting private investment in national public port infrastructure and facilities, within the scope of LSPN and Urgency Decree No. 054-2001 and, under the mechanisms and procedures of Supreme Decree No. 059-96-PCM and Legislative Decree No. 674, its regulations and supplements.
- 1.7. In said session, private investment promotion of State-owned port infrastructure was charged to PROINVERSIÓN's Committee for Public Infrastructure and Utilities Projects.
- 1.8. On September 29, 2005, APN approved the Promotion Plan for the New Container Terminal at the Callao Port Terminal – South Zone.
- 1.9. Through Supreme Resolution No. 136-2005-EF, published October 20, 2005, PROINVERSIÓN's Directive Council agreement was ratified. This agreement approved the Promotion Plan for the New Container Terminal at the Callao Port Terminal – South Zone.
- 1.10. As per the September 29, 2005 agreement, PROINVERSIÓN's Committee for Public Infrastructure and Utilities Projects approved the Tender Documents of the Comprehensive Projects for the Concession of the New Container Terminal at the Callao Port Terminal – South Zone.
- 1.11. As per the October 26, 2005 agreement, the APN Board issued a favorable opinion regarding the Tender Documents of the Comprehensive Projects for the Concession of the New Container Terminal at the Callao Port Terminal – South Zone, which were unanimously approved.
- 1.12. As per the October 31, 2005, agreement, PROINVERSIÓN's Committee for Public Infrastructure and Utilities Projects approved the amendment to the Tender Documents of the Comprehensive Projects for the Concession of the New Container

Terminal at the Callao Port Terminal – South Zone, which include APN's observations and comments.

- 1.13. As per PROINVERSION's Directive Council agreement dated November 3rd, 2005, the Tender Documents of the Comprehensive Projects for the Concession of the New Container Terminal at the Callao Port Terminal – South Zone were approved.
- 1.14. As per APN Board's Agreement dated ____ 2006, the Agreement to be subscribed between the State of the Republic of Peru represented by the Ministry of Transportation and Communications, which in turn acts through APN, and the CONCESSIONAIRE, was approved.
- 1.15. As per PROINVERSION's Directive Council's Agreement dated ____ 2006, the Agreement to be subscribed between the State of the Republic of Peru represented by the Ministry of Transportation and Communications, which in turn acts through APN, and the CONCESSIONAIRE was approved.
- 1.16. Dated _____, PROINVERSION's Committee for Public Infrastructure and Utilities Projects awarded the Contract in the Comprehensive Projects Tender for the Concession of the New Container Terminal at the Callao Port Terminal – South Zone to _____, which has certified compliance with conditions foreseen in the Tender Documents to proceed to subscribe the agreement herein.
- 1.17. Through _____ Mr. _____ was authorized to subscribe the Agreement herein on behalf of APN.

DEFINITIONS

- 1.18. In the Agreement herein, the following terms shall have the meanings below:

- 1.18.1 Permitted Creditors

This will be (i) any multilateral credit institution of which the State of the Republic of Peru is a member, (ii) any institution or any governmental agency of any country with which the State of the Republic of Peru keeps diplomatic relations, (iii) any financial institution approved by the State of the Republic of Peru and appointed as First Class Foreign Bank in Circular Letter No. 011-2004-EF-90 dated June 26, 2004, issued by the Central Bank of Peru or any other circular letter amending it, and additionally, those that replace them to the extent that they include new institutions, (iv) any other international financial institution approved by the GRANTOR that has a risk rating of no less than "A", assessed by a well-

known entity accepted by the National Supervising Commission for Companies and Securities (CONASEV), (v) any domestic or international financial institution approved by the GRANTOR, (vi) all institutional investors thus considered by legal regulations in effect that directly or indirectly acquire any kind of movable security issued by the CONCESSIONAIRE; and (vii) any individual or corporation that directly or indirectly acquires any kind of movable security issued by the CONCESSIONAIRE through a public offer.

In case Permitted Guaranteed Indebtedness is agreed upon with the Permitted Creditors different from those comprising (i) and (vi), Permitted Guaranteed Indebtedness must be approved by the GRANTOR, following prior approval by the REGULATOR.

In no circumstance shall the CONCESSIONAIRE shareholders or partners be allowed to become Permitted Creditors, either directly or indirectly.

1.18.2 Concession Assets Handing Over Document

This is the document subscribed by the GRANTOR and the CONCESSIONAIRE, through which the CONCESSIONAIRE is certified to have taken possession of the Concession Area and that the GRANTOR has handed over the Reversible Assets, which will be aimed at executing the Agreement.

1.18.3 Works Reception Certificates

These are documents prepared by the Works Reception Commission. These documents will be signed by the Commission members, the GRANTOR and the CONCESSIONAIRE. These documents will certify total and/or partial reception of Works, as well as execution and installation of equipments as per the Technical File. The Works Reception Certificates must include the dates on which execution and installation were finished.

1.18.4 Concession Assets Reversion Certificate

This is the document the GRANTOR and CONCESSIONAIRE sign through which they certify the handing over of the Concession Assets in favor of the GRANTOR once the Concession expires.

1.18.5 Award Winner

This is the pre-qualified bidder who won the Bid Award.

1.18.6 Private Investment Promotion Agency– PROINVERSION

It is the organ referred to by Supreme Decree No. 027-2002-PCM, amended by Supreme Decree No. 095-2003-EF, which was charged by APN with Bid execution

and development to promote private investment in public port infrastructure and utilities public works, including the New Container Terminal – South Zone.

1.18.7 Berth

Physical space the Terminal assigned for boat mooring.

1.18.8 Mooring and Unmooring

Service supplied to boats at the berth to receive them and fasten the ties, and to change them from a mooring point to another, as well as to unmoor them.

1.18.9 Concession Year

This is the annual period computed from the Agreement subscription date, counted date to date, and ending on a day equal to the one of the year in which calculation started.

1.18.10 APN

It is the National Port Authority, an entity created by the National Port System Law – Law No. 27943. APN is a Public Decentralized Organism in charge of the National Port System, adscribed to the Ministry of Transportation and Communications, with an internal public law legal capacity, own capital and administrative, functional, technical, economic and financial autonomy, as well as regulatory power by delegation of the Ministry of Transportation and Communication. It is in charge of leading promotion of private investment in national state-owned port infrastructure and facilities. Its Organization and Function Regulation has been approved by Supreme Decree No. 034-2004-MTC.

1.18.11 Concession Area

These are areas described in Annex 1 to be granted to the CONCESSIONAIRE as per the Concession.

1.18.12 Mooring

Operation of leading a boat from the port's official anchorage and mooring it to the appointed berth.

1.18.13 Competent Environmental Authority.

It is the General Social Environmental Affairs Directorate of the Ministry of Transportation and Communications, as the competent sector authority to approve the Environmental Impact Assessment referred to on Section 12 of the Agreement.

1.18.14 Governmental Authority

It is any government of national, regional, departmental, provincial or municipal authority or any of its departments or agencies, either regulatory or administrative, or any entity or any of Peru's entities or organisms that, under the law, exercises executive, legislative or judicial powers, belonging to any of the aforementioned governments, authorities or institutions, with jurisdiction on the people or matters in point.

1.18.15 Tender Document

This is the document, including its forms, annexes, appendixes and circular letters, issued by PROINVERSION's Committee for Public Infrastructure and Utilities Projects, that establishes the terms under which the Bid was called, which in its substantial aspects also has APN approval.

1.18.16 Concession Assets

These are Reversible or non Reversible Assets comprised in the execution of the Concession, including the Concession Area.

1.18.17 Reversible Assets

These are movable or real estate goods, communication, security system, among others, which in one way or the other are included in the Concession and affected to this or constitute assets that are inseparable of its object, whether they have been handed over by the GRANTOR at the beginning or during the Concession or those acquired or built by the CONCESSIONAIRE along the Concession effect. Said assets are essential for Service supply and will be reverted to the GRANTOR at the end of the Concession.

1.18.18 Non Reversible Assets

These are non essential assets affected to the Concession which do not impact the quality of the Services supplied by the CONCESSIONAIRE, and which at Concession end will not revert to the GRANTOR.

1.18.19 Concession Termination

It is the end of the Concession due to the causes foreseen in this Agreement or as per the Applicable Laws and Provisions.

1.18.20 Works Execution Schedule

Is the document in which the Works execution programming is certified. It will have to be submitted jointly with the Technical File.

1.18.21 Works Reception Commission

It is the Commission named by the GRANTOR to receive the Works and it will be made up by APN and the REGULATOR. The Commission will be chaired by one of APN's representatives.

1.18.22 Committee

It is PROINVERSION's Committee for Public Infrastructure and Utilities Projects, created by Supreme Resolution No. 444-2001-EF, amended by Supreme Resolution No. 228-2002-EF and by Supreme Resolution No. 009-2003-EF.

1.18.23 the GRANTOR

It is the State of the Republic of Peru, represented by the Ministry of Transportation and Communications (MTC). For any purpose regarding the Agreement herein, the GRANTOR, represented by MTC, will act through APN, who pursuant to Article 24 of LSPN has among its powers the attribution to enter into the contractual commitments with the private sector, as provided by LSPN.

1.18.24 Concession

It is the Public Law juridical relationship established between the GRANTOR and the CONCESSIONAIRE through the subscription of the Agreement, by which the GRANTOR grants the CONCESSIONAIRE the right to get economic profit from the Concession Assets during the Agreement term.

1.18.25 CONCESSIONAIRE

It is the corporation established by the Grantee who signs the Agreement with the GRANTOR.

1.18.26 Bid

It is the procedure regulated by the Tender Documents for granting in concession the New Container Terminal at the Callao Port Terminal – South Zone to the private sector.

1.18.27 Conservation

It is the group of undertaken activities aiming at preserving, recovering or delaying the loss of the original structural and functional conditions of the New Container Terminal at the Callao Port Terminal – South Zone (those with which it was designed or built) and of the Concession Assets, so that the CONCESSIONAIRE may comply with the Service and Productivity Levels set forth in the Agreement herein. Conservation includes routine maintenance, regular maintenance, and emergency maintenance.

1.18.28 Consignee

Individual or corporation to which name the merchandise is declared or who acquires the merchandise by endorsement.

1.18.29 Building

It comprises the necessary activities to implement and commission the New Container Terminal at the Callao Port Terminal – South Zone. The following are included among these activities: (i) execution of different kinds of civil Works; (ii) installation of electric, mechanic or electronic equipment or systems; and (iii) information technology implementation.

1.18.30 Agreement

It is the agreement contained in the document herein, including its annexes, entered into between the GRANTOR and the CONCESSIONAIRE, which rules their relationships.

1.18.31 Technical Dispute

Dispute related to a concrete fact or act, which decision or resolution depends on the exclusive application of rules, criteria, concepts and/or parameters with strictly technical, scientific and/or artistic character.

1.18.32 Non Technical Dispute

Any dispute that is not considered a Technical Dispute.

1.18.33 DBFOT (Design, Build, Finance, Operate and Transfer)

It is the modality under which the Concession Assets are granted to the CONCESSIONAIRE, so that they design, build, finance, maintain, operate and exploit the New Container Terminal at the Callao Port Terminal – South Zone. Said infrastructure and equipment must be transferred to the GRANTOR at Concession end.

1.18.34 Unmooring

Reverse operation to mooring.

1.18.35 Days

Days are the working days, that is, not Saturday, Sunday or holiday in the Provinces of Lima and/or Callao. Holidays are also the days in which the Lima and/or Callao banks do not have to open to the public by provision of the Governmental Authority.

1.18.36 Calendar Days

They are work days, non work days and holidays.

1.18.37 Dollar or US\$

It is the currency or the currency sign that has legal tender in the United States of America.

1.18.38 Exclusive Execution and/or Service Supply

It is the right the CONCESSIONAIRE has been granted to exclusively execute and/or supply the Services set forth in the Agreement herein for Port Infrastructure that makes up the New Container Terminal – South Zone, pursuant to provisions in article 11.3 of LSPN.

1.18.39 Related Companies

They are all the companies related to the CONCESSIONAIRE, which has such relationship that implies a linked behavior, be it because, (i) they make part of the same economic group; (ii) a corporation has, directly or indirectly, a share in the other's corporate capital that allows it to have presence in their board; (iii) a same guarantee supports both corporation's liabilities, (iv) more than 50% of the liabilities of one corporation are guaranteed by the other; or (v) when more than 50% of the liabilities of one of the corporations are the other's credits.

1.18.40 Permitted Guaranteed Indebtedness

It is the indebtedness due to financing operations, and security and/or money issuing taken as a loan from any Permitted Creditor for its investments in the New Container Terminal at the Callao Port Terminal – South Zone, including any renewal or refinancing of said debt that is guaranteed as per what is foreseen in Section X, which main financial terms or informative prospect and issuing agreement, including the principal, interest rate, provision on amortization or other similar terms, have been defined by the GRANTOR, following the REGULATOR's opinion. The approval procedure is pointed out in Section X.

1.18.41 Port Equipment

For what has been foreseen in the agreement herein, they are the mechanic, electric and electronic facilities that qualify as part of the Port Infrastructure of the New Container Terminal at the Callao Port Terminal – South Zone.

1.18.42 Length

The "Length" must be considered as the Maximum Length of the ship as stated in the Registration Certificate issued by the Flag State.

1.18.43 Environmental Technical Specifications

They are the group of techniques, procedures and best practices established in the current regulation, both general and specific, related with the requirements for protecting and conserving the environment, applicable at every stage of the

concession for the execution of works related with the New Container Terminal at the Callao Port Terminal – South Zone.

1.18.44 Environmental Impact Assessment (EIA)

It is the group of technical interdisciplinary studies, aiming at identifying, predicting, interpreting, valuing and communicating the environmental and social effects that the execution, Conservation and Exploitation of the Concession may cause in the different components of the environment, living conditions, cultural and archaeological heritage in the Concession's areas of influence; as well as the impact of same on the Concession. Additionally, it proposes most appropriate corrective measures to prevent environmental impact events that may harm the people's health and wellbeing.

It will be submitted by the CONCESSIONAIRE and approved by the Ministry of Transportation and Communications through Directorial Resolution under the law. EIA will make part of the present Agreement as Annex 14.

1.18.45 Referential Study

It is the project referred to in the PNDP, developed as M1 Phase 1 of the Study called "Final Report-Feasibility Study for New Container Terminal at the Port of Callao-Peru" prepared by Moffatt & Nichol International.

1.18.46 Technical File

It is the document containing necessary and sufficient information to permit the execution and supervision of the Works, which must be prepared by the CONCESSIONAIRE according to the Technical Proposal submitted by the Grantee. Said document must be submitted to APN for approval and it is binding for the execution of the Works.

1.18.47 Exploitation

It comprises the following aspects: operation of the New Container Terminal at the Callao Port Terminal – South Zone; Standard Service and Special Service supply; collection of the Standard Rate Index to End Users in exchange for Standard Service supply; and collection of the Price to End Users in exchange for Special Services along the terms set forth in the Agreement.

1.18.48 Agreement Subscription Date

It is the day and hour in which the Agreement is subscribed and which the Tender Documents call Closing Date.

1.18.49 Trust Fund

It is the trust fund agreement to be entered between a company authorized to act as the trustee, as per article 242 of Law No. 26702, and the CONCESSIONAIRE, through which the latter transfers as trust fund the amount corresponding to the Additional Complementary Investment Amount for its administration and as per the Agreement.

1.18.50 Force Majeure

It is the situation that Section XIX of the Agreement herein regulates.

1.18.51 Performance Bond

These are the Agreement Performance Bond and the Works Execution Performance Bond. Both banking guarantees will be granted to ensure compliance with each and every one of the obligations established in the Agreement, including criminal clauses and sanctions according to what is pointed out in Section X.

1.18.52 Agreement Performance Bond

It is the banking guarantee granted to ensure compliance with each and every one of the CONCESSIONAIRE's obligations set forth in this Agreement, including Exploitation and Works Maintenance, as well as penalties and sanctions.

1.18.53 Works Execution Performance Bond

It is the banking guarantee granted to ensure compliance with each and every one of the CONCESSIONAIRE's obligation, concerning Works execution, pursuant to the Concession Agreement herein, including penalties and sanctions derived from breach of same.

1.18.54 Standard Rate Index

It is the maximum amount which, as rate index expressed in Dollars, the CONCESSIONAIRE can collect for supplying the Standard Services pursuant to Section VIII of the Agreement herein.

1.18.55 Works Progress Reports

These are documents the CONCESSIONAIRE will prepare, as per the provisions in the Agreement herein, and those established by APN, by means of which he will certify that the works are built, rehabilitated, or improved, and the corresponding equipment is implemented. The Works Progress Report will be subject to approval by APN.

1.18.56 Port Infrastructure

These are the civil Works and the mechanic, electric and electronic facilities, both fixed and floating, built or located at the ports to facilitate transportation and modal exchange.

1.18.57 Common Port Infrastructure

It is the one used indifferently by any Port user, operator and administrator of the Callao Port Terminal, to carry out the port activities.

1.18.58 Inventories

They are the initial, annual and final Works Inventories prepared and submitted as per the following terms:

- a) Initial Inventory. It is the list of the Concession Assets that the GRANTOR hands over to the CONCESSIONAIRE through APN. The Initial Inventory will make part of the Final Concession Assets Handing Over Document. This inventory will also include the movable and/or real estate assets handed over to the CONCESSIONAIRE that will have to be decommissioned or torn down according to the regulations established by the REGULATOR, for the correct execution of Works. On the same date, the CONCESSIONAIRE will return the assets he deems unnecessary or inappropriate to the Concession. If it were not possible to return the aforementioned assets physically, the CONCESSIONAIRE has the power to decommission and proceed to tear them down, according to the procedure of commissioning and decommissioning assets set forth to that effect by the REGULATOR.
- b) Works Inventory. It is the list of the Reversible Assets corresponding to the Works executed during the Concession, which, when completed, shall be presented to APN and the REGULATOR by the CONCESSIONAIRE with the Works reception application request referred to in Section VI.
- c) Annual Inventory.- It is the list of Reversible and Non Reversible Assets that the CONCESSIONAIRE shall present to APN and the REGULATOR between the first fifteen (15) days of April each calendar year and agreement termination. This list includes the Reversible and non Reversible Assets the CONCESSIONAIRE has on the closing date of said inventory.
- d) Final Inventory. It is the list of Reversible and non Reversible Assets the CONCESSIONAIRE has on the date of Concession termination. It shall be submitted by the CONCESSIONAIRE to APN and the REGULATOR when, for any reasons, Concession Termination occurs.

1.18.59 Applicable Laws and Provisions

It is the group of Peruvian legal provisions regulating the Agreement. They include regulations with rank of law, regulations, guidelines and resolutions that any competent Governmental Authority can pronounce, which will have mandatory character both for the CONCESSIONAIRE and the GRANTOR.

1.18.60 Maintenance

It comprises the routine, regular and/or corrective activities aimed at Conserving the Concession Assets and required to comply with the Service and Productivity Levels established in the Agreement herein. Types of maintenance are subscribed in Annex VII.

1.18.61 Complementary Investment Amount:

It is the obligation the CONCESSIONAIRE has of contributing an amount for the execution and maintenance of works or services that may help to improve the National Port System (hereinafter, SPN) such as: dredging, wave breakers, systems and others to be established by APN. Their priorities are the necessary common works derived from the new requirements for implementing the New Container Terminal – South Zone. This amount does not include design, building, financing, maintenance, operation and exploitation costs for the New Container Terminal at the Callao Port Terminal – South Zone.

The Complementary Investment Amount will be contributed only once and will not exempt the CONCESSIONAIRE from complying with other payments, payments or taxes under its charge as established by the Applicable Laws and Provisions, the Tender Documents, the Concession Agreement and, generally, the Peruvian legislation.

The Complementary Investment Amount is divided in two:

- **Minimum Complementary Investment:** It is the mandatory investment commitment for executing the common works required by the operation of the New Container Terminal at TPC– South Zone. This investment will consist in executing dredging (access canal and maneuver pool) and in rehabilitating and/or improving the south TPC wave breaker, pursuant to the requirements established through Circular Letter No._____, that makes part of the Agreement herein.
- **Additional Complementary Investment (ICA):** It is the amount that, additionally to the Minimum Complementary Investment, the Grantee offered as a component of his economic proposal.

1.18.62 Dock

Port infrastructure at the sea front, which is especially prepared to load and unload ships and for the traffic of vehicles.

1.18.63 Ship

Any naval construction aimed at sailing, whichever its type, including its core parts and accessory parts, such as rig, spare parts, provisions, machineries, instruments and accessories that, without making part of the ship structure, are used to service it both at sea and at port.

1.18.64 Service and Productivity Levels

They are minimum service quality indicators the CONCESSIONAIRE must achieve and maintain during the New Container Terminal operation, as specified in Annex 3 of the Agreement herein.

1.18.65 Regulatory Standards

These are the regulations, guidelines and resolutions that the REGULATOR can pronounce, and which compliance is mandatory for the CONCESSIONAIRE.

1.18.66 New Container Terminal – South Zone

It is the Port Infrastructure and Equipment that make up a business unit devoted to supplying Services, and that the CONCESSIONAIRE shall execute, implement and exploit exclusively pursuant to the Agreement and according to what is provided in article 11.3 of the LSPN.

1.18.67 Works

It is the result of the Building and Equipment works that shall be executed along the Concession term. Likewise it involves the assets to be used, built, exploited and/or maintained by the CONCESSIONAIRE for the operation, exclusive supply of Services and Maintenance of the Concession Assets, under the Agreement's terms.

1.18.68 Civil Works

Group of activities developed aiming at tearing down, excavating or building infrastructure or a superstructure upon or around which facilities or equipment and finishings are mounted, that permit utilization for the intended goal. It comprises preparing the land, tearing down, dredging the sea floor, filling, cementing, and building the dock and the backup slab.

1.18.69 Exterior Works

It comprises civil works built offshore, such as: shelter dikes, wave breakers,

navigation aids, draining works, etc.

1.18.70 Interior Works

They comprise civil works located inland from the coast line, such as: docks, breakwater, warehouses, container yards, etc.

1.18.71 Party

According to the case, it is the GRANTOR or the CONCESSIONAIRE.

1.18.72 Parties

They are, jointly, the GRANTOR and the CONCESSIONAIRE.

1.18.73 Minimum Share

It is the minimum share with voting rights that the Strategic Partner must have and maintain in the CONCESSIONAIRE, pursuant to the Agreement herein.

1.18.74 Environmental Management Plan

It is made up by the actions, measures and costs so as to prevent, reduce or neutralize the negative environmental impacts that Port Infrastructure and its exploitation exercise in the environment, and cultural and archaeological heritage.

1.18.75 Price

It refers to the considerations the CONCESSIONAIRE charges for supplying Special Services. The price is not subject to regulation.

1.18.76 Works Official Estimated Budget

It is equal to a referential cost of US\$ 175 million (One Hundred and Seventy Five Million Dollars) to implement and commission the New Container Terminal, according to the Referential Study at its first stage. This budget can be applicable only to what is expressly foreseen in the Agreement herein.

1.18.77 Detail Engineering Project

These are the definitive engineering projects the CONCESSIONAIRE shall develop, which will make part of the Technical File.

1.18.78 Port

For the purpose of this Agreement, it is the geographic locality and economic unit of a locality where the terminals, infrastructures and facilities, both land and aquatic, natural or artificial, are located which are conditioned for developing logistics and port activities.

1.18.79 TUO Regulation

It is Supreme Decree No. 060-96-PCM, Uniformed Single Ordered Text Regulation of the Regulations with Rank of Law that regulate the granting in Concession of the public infrastructure and utilities Works to the private sector, and their amending regulations.

1.18.80 REGULATOR

It is OSITRAN (Supervising Agency on Investment in Transport for Public Use), pursuant to Law No. 26917 and its regulatory, complementary and amending norms, which provisions (autonomous regulations, general guidelines, and specific norms, pointed out in article 27 of the regulation approving Supreme Decree No. 010-2001-PCM), are mandatory to observe and comply with for the CONCESSIONAIRE.

1.18.81 Payment

It is the economic consideration which the CONCESSIONAIRE is regularly obliged to pay to the GRANTOR, among the Concession terms, pursuant to Section XVIII of the Agreement.

1.18.82 Services

They are the Standard and Special Services, alike.

1.18.83 Standard Services

They are the services that, pursuant to Section VIII, the CONCESSIONAIRE will supply both to ships and freights for which it will charge the Standard Rate Index. These services will be supplied on a mandatory basis to any User requiring them.

1.18.84 Special Services

They are services different from the Standard Services the CONCESSIONAIRE might supply for which he will be entitled to charge a Price, notwithstanding the right of users to demand Standard Services supply as an alternative.

1.18.85 Strategic Partner

It is the shareholder, sharing party or partner of the CONCESSIONAIRE who, independently, complies with the pre-qualification requirements regarding experience in operation and who holds the Minimum Share in the CONCESSIONAIRE. There must be one Strategic Partner along the Concession term. The Strategic Partner shall comply with each and every requirement under any circumstance pointed out in Section III of the current Agreement.

1.18.86 Works Supervisor

It is the person in charge of Supervising the Works.

1.18.87 Suspension

It is the temporary stoppage of activities related with the Agreement execution, as a result of the occurrence of any suspension cause, pursuant to the Agreement herein and the Applicable Laws and Provisions.

1.18.88 Rate

Payment collected for the use of port infrastructure or standard port service supply.

1.18.89 Terms of Reference

They are the description of the technical conditions and specifications and the scope the CONCESSIONAIRE must consider for preparing the Technical File, aiming at executing and supervising the Works, equipment, their operation, Conservation and Maintenance, as detailed in Annex 6 of the Agreement.

1.18.90 TEU:

Twenty Feet Equivalent Unit. Measure unit equivalent to a 20 feet container.

1.18.91 Exchange Rate

It is the financial system's sale average Exchange Rate established by the Banking and Insurance Superintendence and published in "El Peruano", the official gazette, for conversion of Nuevos Soles to United States of America Dollars and vice versa.

1.18.92 Concession Assets Reception

It is the act through which the CONCESSIONAIRE takes possession of the Concession Area and the Concession Assets handed over by the GRANTOR, to be aimed to Agreement execution. This act is certified by the Final Concession Assets Handing Over Document. The Concession Assets Reception shall be verified as per what is established in Section V of the Agreement herein.

1.18.93 TUO

It is Supreme Decree No. 059-96-PCM, Uniformed Single Ordered Text of the Regulations with Rank of Law that regulate granting in Concession of Public Infrastructure and Utilities Public Works to the private sector, its complementary and amending regulations.

1.18.94 Use of the Berth

Use of Berths by ships, at the Terminal.

1.18.95 Use of the Port Terminal

Use of the Port Area infrastructure to load and/or unload merchandise in containers.

1.18.96 User

It is the individual or corporation that receives the Services supplied by the CONCESSIONAIRE.

SECTION II: JURIDICAL NATURE, OBJECTIVE, MODALITY AND CHARACTER

JURIDICAL NATURE

- 2.1 The Concession which is the subject-matter of the Agreement herein is granted for the design, building, financing, operation, maintenance and exploitation of a public infrastructure work, the New Container Terminal – South Zone, within the private investment promotion process undertaken by the State of the Republic of Peru.
- 2.2 The aforementioned private investment promotion process does not assume transfer in property of the New Container Terminal – South Zone infrastructure, which at every point keeps its public condition.
- 2.3 Considering that the Concession object is the design, building, financing, operation, maintenance and exploitation of a public infrastructure work for certain time, the rights constituted regarding the Concession must be compatible with this nature and approved by the APN, following the REGULATOR's opinion.

OBJECTIVE

- 2.4 As per the Agreement herein, the GRANTOR grants the CONCESSIONAIRE in Concession the design, building, financing, operation, maintenance and exploitation of the New Container Terminal at the Callao Terminal – South Zone. Pursuant to article 11.3 of LSPN, the CONCESSIONAIRE shall be entitled to Exclusive Execution and/or Supply of Services, according to the terms and conditions established in the Agreement herein.
- 2.5 The main Concession activities or provisions, which are the subject-matter rights and duties of the Agreement herein, are the following:

- a) Handing over, using and reversing the Concession Assets regulated in Section V of the Agreement.
- b) Building the New Container Terminal at the Callao Terminal – South Zone, as per Section VI
- c) Conserving and Maintaining the New Container Terminal at the Callao Port Terminal – South Zone, along the terms established in Section VII.
- d) Exploiting the Concession, pursuant to the conditions established in Section VIII, which comprise Exclusive Execution and/or Supply of Services.
- e) When it corresponds, paying the Additional Complementary Investment Amount (ICA), as established in Section IX of the Agreement.

MODALITY

- 2.6 The Agreement's modality is onerous, as pointed out in subsection "a", Article 14 of TUO.

CHARACTERS

- 2.7 Notwithstanding the multiplicity of activities and services in which its object is divided, as described in the preceding Section, the Agreement has a unitary nature and responds to a single cause.
- 2.8 This is a main Agreement of reciprocal provisions.
- 2.9 Considering the public nature of ownership, the Services subject-matter of the Agreement are ruled by the continuity, regularity, non-discrimination principles, according to what is provided by LSPN.
- 2.10 Likewise, pursuant to article 14.3 of LSPN, for exercising the port activities and supplying Services, the CONCESSIONAIRE shall observe the free competition, neutrality, equality under the law, price transfer prohibition, separate accounting and free election principles.

SECTION III: EVENTS ON THE AGREEMENT SUBSCRIPTION DATE

REPRESENTATIONS BY THE PARTIES

- 3.1 The CONCESSIONAIRE guarantees the GRANTOR, on the Agreement Subscription Date, the truthfulness of the following representations:

- a) The Strategic Partner Minimum Share, the bylaws and articles of incorporation of the CONCESSIONAIRE agree to the Tender Documents requirements.
- b) The CONCESSIONAIRE is duly authorized and capable to assume the obligations corresponding to it as per the Agreement, having complied with all the necessary requirements to formalize the Agreement and to comply with the commitments it includes.

The CONCESSIONAIRE does not need to undertake any other act or procedure to authorize subscription and compliance with the obligations corresponding to it as per the Agreement.

- c) There is no impediment for the CONCESSIONAIRE to enter into the Agreement. This means there are no administrative, judicial, arbitral actions or any other current legal procedures, or sentences, arbitration, or any decisions of any kind that have not been executed against it or any of its partners, which object is to prohibit or otherwise impede or limit compliance with the commitments or obligations included in this Agreement.

On the other hand, the CONCESSIONAIRE and its partners expressly, unconditionally and irrevocably waive any diplomatic claim for any dispute or conflict that could arise from the Agreement.

Likewise, there is no legal impediment for the CONCESSIONAIRE, or his partners, to enter into Agreement with the State pursuant to the Applicable Laws and Provisions.

- 3.2. The State of the Republic of Peru, represented by the Ministry of Transportation and Communications, in turn, guarantees the CONCESSIONAIRE, on the Agreement Subscription Date, the truthfulness of the following representations:

- a) That it is duly authorized as per the Applicable Laws and Provisions to act as the GRANTOR in the Agreement. The subscription, hand over and compliance with the commitments included in the Agreement herein by the GRANTOR are comprised within its powers, agree to the Applicable Laws and Provisions, and have been duly authorized by the Governmental Authority. No other action or procedure by the GRANTOR or any other governmental entity is needed to authorize or to comply with the GRANTOR's obligations included in it.

- b) All the administrative acts, requirements, demands and obligations corresponding to its position have been complied with to enter into this Agreement and to duly comply with its stipulations.
- c) There are no current laws preventing the GRANTOR from complying with the obligations stemming from this Agreement. There are neither current or imminent actions, trials, investigations, litigations or procedures before jurisdictional organs, arbitration courts or Governmental Authority that may prohibit, oppose or otherwise impede the subscription or compliance with the Agreement terms by the GRANTOR.
- d) The CONCESSIONAIRE is entitled to exploit the Concession Assets from Possession Taking to Agreement termination. This right will conclude at Agreement termination as foreseen in Section XV of the Agreement herein.
- e) The validity and scope of the Agreement's stipulations have been formulated based upon the Applicable Laws and Provisions.

The GRANTOR has full power to use the Concession Assets, which are not subject to encumbrances of any kind and there is no legal or fact impediment that could disturb, affect or impede its effective handing over to the CONCESSIONAIRE in any way.

- f) There are no liabilities, obligations or administrative, labor, tax, judicial, legal, or any other contingencies that could in any way affect or may affect the Concession, the Concession Assets, or the right for exploitation in the future. In case there were liabilities or contingencies generated before the Agreement Subscription Date, they shall be assumed by the GRANTOR.
- g) As long as the CONCESSIONAIRE and his Investors comply with the Applicable Laws and Provisions, the Juridical Stability Agreement referred to in Legislative Decrees No. 662 and No. 757; and Law No. 27342 shall be granted.
- h) For contractual effects, representations, guarantees and obligations assumed by the GRANTOR in this Agreement shall not be affected by variations in the Applicable Laws and Provisions. The GRANTOR commits to grant the CONCESSIONAIRE the legal formalities needed to provide due effect to the representations contained in this sub-section, within the framework established in Law No. 25570 and its complementary and amending regulations.

CERTIFICATIONS AT THE AGREEMENT SUBSCRIPTION DATE

3.3 On the Agreement Subscription Date, the CONCESSIONAIRE must have complied with the following:

- a) Submit the CONCESSIONAIRE's articles of incorporation and bylaws public deed official transcript, with the registry certification, aiming at certifying it as a new validly incorporated corporation according to the Applicable Laws and Provisions; and that it has the same partners, shareholders or members in the same proportions they had on the date the Contract was Awarded. The CONCESSIONAIRE shall certify a Minimum Corporate Capital equivalent to 20% of the Works Official Estimated Budget, which shall be subscribed and integrated pursuant to the General Corporations Law provisions.

The CONCESSIONAIRE must report the REGULATOR on corporate capital increases and reductions, every time they occur. Capital reductions may not affect the minimum capital pointed out in this Section.

- b) Registry certification corresponding to the powers of the CONCESSIONAIRE's legal representative who will subscribe the Agreement on his behalf and representation.
- c) Submitting a notarized copy of documents certifying that his competent internal organs have approved the Agreement.
- d) Submitting notarized copy of the book entries where the shares are registered or an equivalent document. This copy must include the shareholding arrangement and the CONCESSIONAIRE's shares on the Agreement Subscription Date.
- e) Submitting the insurance policy proposal pursuant to Section XI and a list of sector companies that will cover them, for their approval as per said Section.
- f) The bylaws referred to in the preceding sub-section a) must contain at least the following provisions:
 - (i) A restriction to the free transfer, disposition, or encumbrance of the shares representing the percentage corresponding to the Strategic Partner Minimum Share (51%), in favor of third parties or other partners different from those that make up the Strategic Partner, pursuant to the following paragraph until the fifth Concession year,

except for what Section X foresees regarding the possibility of encumbering the Minimum Share as from the Concession Agreement subscription, aiming at obtaining financing. As from the sixth Concession Year, the Strategic Partner may transfer, dispose of, or encumber such stock or shares in favor of a new Strategic Partner following the GRANTOR's approval with the REGULATOR's opinion. This new Strategic Partner shall comply with the same requirements and conditions established by the original Strategic Partner.

Minimum Share transfers between those who make up the Strategic Partner must follow written approval by the GRANTOR, with the REGULATOR's opinion and shall necessarily keep the established conditions, such as technical operational capacity for Agreement pre-qualification.

The aforementioned restriction does not include transfer of the Strategic Partner Minimum Share to a company of the same economic group, as long as the effective control of both be exercised by the same head office, following Peruvian State authorization through the competent organs and provided that the new Strategic Partner complies with the same requirements and conditions established for the initial Strategic Partner.

- (ii) A restriction is applied to the free transfer, distribution or encumbrance of the stock or shares, different from those of the Strategic Partner, in favor of the bidding corporations or Consortia members that submitted economic proposals during the Bidding, up to the fifth Concession Year, except for what is foreseen in Section X concerning the possibility of encumbering Minimum Share from the start of Concession Agreement subscription, aiming at obtaining finance. As from the sixth Concession Year, the stockholders or shareholders may freely transfer, dispose of or encumber said stocks or shares.

The aforementioned limitation also comprises transfer, disposal or encumbrance of the stocks or shares, in favor of companies that may have a direct or indirect link to or that make part of an economic or control group related to the bidding corporations or to the members of Consortia that submitted economic proposals during the Bidding, pursuant to the definitions in CONASEV Resolution No. 722-EF-94.10 (published on 11.29.1997) and in SBS Resolution No. 445-2000

(published on 07.06.2000), or in the regulations replacing them in the future.

- (iii) Any amendment to the corporate bylaws implying a change in the majority, share class, and proportions regime that partners have to keep among them, of its authorities, and any capital increase, capital reduction, merger, split, transformation or liquidation of the CONCESSIONAIRE during the first five Concession Years, must be approved by the CONCESSIONAIRE's shareholders or partners, representing together, at least, two thirds (2/3) of their corporate capital, both at first and second call.

The CONCESSIONAIRE must submit the general shareholder meeting agreement project to the GRANTOR and REGULATOR, regarding the approval of any of the aforementioned processes. Said agreement project may be authorized by the GRANTOR within 30 Calendar Days, with the REGULATOR's opinion, which must be issued within the first 15 Calendar Days of having received the agreement project. If the GRANTOR does not pronounce itself in the established term, said agreement project will be understood as rejected, notwithstanding request reiteration.

The corporations or shareholders making up the Strategic Partner, on the Agreement Subscription Date, shall have subscribed an agreement among them by which they commit to oppose any proposal submitted by one of the CONCESSIONAIRE's shareholders concerning a corporate capital increase about which the Strategic Partner is not in capacity of exercising his preferential subscription right so that it can, at least, keep the Minimum Share in the CONCESSIONAIRE.

- (iv) The CONCESSIONAIRE's corporate objective must point out its character of State CONCESSIONAIRE and shall exclusively consist in exercising the rights and duties concerning the New Container Terminal, as well as the provision of Services established in the Agreement.
- (v) CONCESSIONAIRE's incorporation, operation and performance shall be strictly regulated by the provisions contained in Peru's legal order.
- (vi) The CONCESSIONAIRE's term must be, as minimum, of 35 years.

- g) Submitting a financial plan to certify it has sufficient funds to carry out the Works and the Equipping. Additionally, submitting financial flow projection for the Concession term.
- h) Submitting the Performance Bond for the Construction of Works and Equipment Implementation and the Performance Bond for the Concession Agreement pursuant Section _X_.
- i) Submitting a written agreement between a corporation or shareholders making up the Strategic Partner through which they commit to comply with the items included in Section _XIII_ of the Agreement herein.
- j) Paying PROINVERSIÓN the amount for the preparation of the private investment promotion process regarding the New Container Terminal, which amounts to _____ of the United States of America (US\$ _____).
- k) When it corresponds, paying the GRANTOR an amount of..... Dollars of the United States of America (US \$) as Additional Complementary Investment Amount, in conformance to the Tender Documents. This amount shall be deposited in a private Trust exclusively created for the execution or maintenance of works or services to improve the port system, such as: dredging, wave breakers, systems and others to be established by APN. Their priority is the necessary common works derived from the new requirements for the implementation of the New Container Terminal – South Zone. This amount does not comprise the cost of designing, building, financing, maintaining, operating and exploiting the New Container Terminal at the Callao Port Terminal – South Zone.

.... % of the aforementioned amount shall be contributed by the CONCESSIONAIRE to the private trust on the date the current Agreement is subscribed, and the other %, shall be paid gradually against APN's requirements, pursuant to the procedure established in Annex 9 of the Agreement herein.

3.4 The GRANTOR, in turn, shall have complied with the following on the Agreement Subscription Date:

- a) Giving back to the CONCESSIONAIRE the Offer Validity, Effectiveness and Seriousness Bond submitted by the Bid Grantee.

- b) Preparing and handing the CONCESSIONAIRE the lists comprising all the Reversible Assets that will be submitted to him through the la Concession Assets Reception, about which the CONCESSIONAIRE shall prepare the initial inventory.

SECTION IV: CONCESSION TERM

4.1 The Concession of the New Container Terminal is granted for a thirty (30) year term, as from the Agreement Subscription Date.

TERM SUSPENSION

4.2 The Concession term may be suspended upon request of any of the parties in the following cases:

- a) Force Majeure, as per Section XIX.
- b) Agreement between the Parties, derived from circumstances that are different to the abovementioned sub-section, in which case it will be necessary to have the prior opinion of the REGULATOR, which must be issued in a term of no more than fifteen (15) Calendar Days.

Any of the Parties may invoke a Concession Term Suspension due to the cause referred to in sub-section a) of this article, through communication addressed to the REGULATOR within the thirty (30) Days following the occurrence of the event subject-matter of the request. The REGULATOR will pronounce itself through a duly grounded resolution within the term of thirty (30) Days as from reception of the Suspension request. Before the REGULATOR's silence, the Suspension request shall be considered as rejected. In case the Party requesting Suspension disagrees with the REGULATOR's decision, said Party may challenge said resolution as foreseen in the current applicable regulation.

Suspension of Agreement term, due to the aforementioned causes, will entitle the CONCESSIONAIRE to expand said term, for a period that equals that of the Suspension.

As long as the REGULATOR does not pronounce itself on the Suspension request, the CONCESSIONAIRE may continue supplying the Services so that End Users may continue utilizing the Port Infrastructure subject-matter of the Concession herein, as long as it is physically possible.

TERM EXTENSION FOR SPECIFIC ACTIVITIES

- 4.3 The CONCESSIONAIRE may submit term extension requests to the REGULATOR as foreseen in this Agreement to execute specific activities or comply with individual services or obligations, provided that said requests do not necessarily imply an extension of the Concession term. The CONCESSIONAIRE shall submit duly grounded requests to the REGULATOR, who shall pronounce itself within thirty (30) Days. In case the extension request is referred to the execution of specific activities related to the Works or its Conservation, the REGULATOR, shall request APN a previous approval of technical aspects. Silence must be interpreted as a refusal of the extension request.

SECTION V: ASSETS REGIME

ASSETS REGIME

- 5.1.- This Section regulates the possession of Reversible and non Reversible Assets granted in the Concession.
- 5.2 Every asset, including the Concession Area, that the GRANTOR is obliged to hand over to the CONCESSIONAIRE under the Agreement herein, shall be handed by the GRANTOR free of charges and encumbrances, free of individuals or corporations, or other occupants, as well as from any other kind of allocation.
- 5.3 During the Concession term, the GRANTOR shall keep ownership of the Concession Assets. Notwithstanding this fact, the Concession herein is sufficient cause for the CONCESSIONAIRE to exercise exclusive Concession Assets Exploitation rights and to have his rights acknowledged vis-à-vis third parties. Similarly, the Concession is also sufficient cause to guarantee economic and any other similar kind of operations of the CONCESSIONAIRE, directly related to this Concession, at the banking and financial system, as per what is established in Section X of the Agreement herein.
- 5.4 The CONCESSIONAIRE shall own, use and enjoy the Concession Assets, Services supply, design and execution of Works and Equipment, and the exercise of any rights needed to comply with his obligations pursuant to the Agreement and Applicable Laws and Provisions.
- 5.5 The Concession's real estate shall be kept free of charges and encumbrances, free of physical occupation by third parties not authorized by the CONCESSIONAIRE for the objective of the Concession during the Concession term, as long as said goods have been handed over by the GRANTOR at Possession Taking.

ASSET POSSESSION TAKING

- 5.6 The GRANTOR and the CONCESSIONAIRE must sign the Final Concession Assets Handing Over Document within ninety (90) Calendar Days of subscribing the Agreement herein, in which it is certified that the CONCESSIONAIRE has taken possession of the land comprised within the Concession Area, as well as of the Reversible Assets that will be aimed at executing the Agreement, specifying their characteristics, locations, state of repair, operation and yield.
- 5.7 The Initial Inventory will make part of the Concession Assets Handing Over Document, as well as any other element that helps to individualize and interpret the handed over object, its condition and state. To that end, new plans of the Concession boundaries shall be included, as well as photographs and schemes.
- 5.8 The Concession Assets Handing Over Document shall be signed in four (4) original copies, two of which shall be submitted to APN and the REGULATOR, respectively, and the other two to the Parties.

INVENTORIES

- 5.9 The CONCESSIONAIRE is obliged to prepare and submit to APN and the REGULATOR the Concession Assets Inventory, which shall point out the characteristics, locations, state of repair, operation and yield of the assets they contain. The Inventories required by the Agreement are of four kinds: a) Initial Inventory; b) Works Inventory; c) Annual Inventory; d) Final Inventory.
- a) Initial Inventory. Within the thirty (30) Days following the subscription of the Final Concession Assets Handing Over Document, the CONCESSIONAIRE is obliged to submit to APN and the REGULATOR a list of the Reversible Assets and other assets he will have so as to start the Building and Exploitation of the New Container Terminal, as well as the land comprised within the Concession Area that the GRANTOR has handed over to him. On the same date, the CONCESSIONAIRE shall proceed to return the assets it deems unnecessary or inappropriate for the Concession. If the return of the aforementioned assets were not physically possible, the CONCESSIONAIRE will be authorized to decommission or tear down the same, according to the asset commissioning and decommissioning procedures established to that effect by the REGULATOR.

- b) Work Inventory. It will be submitted to APN and the REGULATOR by the CONCESSIONAIRE together with the Works reception request referred to in Section VI.
- c) Annual Inventory. It shall be submitted to APN and the REGULATOR by the CONCESSIONAIRE, within the thirty (30) Days that follow the maturity of each Agreement term year until its termination. This list shall include Reversible and non Reversible Assets it has on the closing date of said inventory.
- d) Final inventory. It will be submitted to APN and the REGULATOR by the CONCESSIONAIRE when, due to any cause, Concession Termination occurs. This list shall include the Reversible and non Reversible Assets it has on the date of Concession term.

Each one of these inventories shall imply the preparation and subscription of a document.

USE OBJECTIVES

- 5.10 All the Reversible Assets involved in the Agreement shall be addressed to Building, Operation, Maintenance and Exploitation of the New Container Terminal at the Callao Port Terminal – South Zone, and/or to the Service supply.
- 5.11 Non Reversible Assets shall also be aimed at Building, Operation, Maintenance and Exploitation of the New Container Terminal at the Callao Port Terminal – South Zone, and/or the Service supply, but without the character of indispensable, and they can be unassigned from the Concession by the CONCESSIONAIRE at any time.

REVERSIBLE ASSETS

- 5.12 The Reversible Assets the GRANTOR has for the Design, Building, Financing, Operation, Maintenance and Exploitation of the New Container Terminal at the Callao Port Terminal – South Zone, must be granted on the Concession Assets Reception/Possession Taking in the location and state of repair they are in.
- 5.13 The CONCESSIONAIRE is obliged to carry out activities to preserve, within the term fixed for the Concession, the state of repair and nature of the Reversible Assets received from the GRANTOR. The CONCESSIONAIRE is also obliged to carry out routine, regular and emergency Maintenance and, generally, all the necessary works to keep the Reversible Assets operational and to prevent a negative

environmental impact, as per the scope defined by the Environmental Impact Assessment at Feasibility level. The CONCESSIONAIRE is obliged to make any improvements that are necessary and useful required by the Reversible Assets as per the required service levels. In all these tasks the CONCESSIONAIRE will try to use well-known effective technologies and introduce new technologies.

To this effect, any significant alteration damaging one or more of the environment components caused by anthropic action or natural phenomena in the direct influence area shall be considered negative environmental impacts as defined in the Environmental Impact Assessment.

- 5.14 The CONCESSIONAIRE's main obligation is to replace, at their cost, any Reversible Assets that may result obsolete, lost, technologically lagging or which state of repair does not meet the conditions established in Annex 3, handing them over to the GRANTOR. If it were not possible to physically deliver the aforementioned goods, the CONCESSIONAIRE shall be authorized to decommission or tear them down, according to the asset commissioning and decommissioning procedures established to that effect by the REGULATOR. This obligation to deliver assets shall be understood as complied with by making said assets available to the GRANTOR through written communication in a term that shall not exceed three (3) months after said assets have become worn out or phased out. The CONCESSIONAIRE must send a copy of said communication to APN and the REGULATOR.

The Reversible Assets the CONCESSIONAIRE may include or build during the Concession under any title or modality, including, but not limited to, the financial leasing modality, as long as they are allocated to same, may not be transferred separately from the Concession, mortgaged, pledged, or subjected to encumbrance of any kind, during the Concession term, without previous approval by the GRANTOR and opinion of the REGULATOR.

- 5.15 Whether they have been delivered with the Concession, or acquired, or built during its term, all the Reversible Assets that have not been previously returned to the GRANTOR, shall make part of the Final Inventory and shall be reverted to the GRANTOR.
- 5.16 The new Concession Assets resulting from the Works shall be registered at the respective Real Estate Property Registry, if applicable, under the GRANTOR's name within the maximum term of six (6) months after built or executed, except in case of public administration delay or hold up. To the aforementioned effect, the GRANTOR shall collaborate and make his best efforts whenever necessary. In said case, the CONCESSIONAIRE shall keep an account of intangibles assets with limited duration derived from the rights of using the assets granted in Concession

by the GRANTOR, who will amortize pursuant to the fourth paragraph of Article 22 of TUO.

- 5.17 The Concession Assets, referred to machineries, equipment, and electric, mechanic or electronic systems, and any other movable asset acquired by the CONCESSIONAIRE during the Concession shall be transferred to the GRANTOR or whom he appoints at the Concession term or anticipated termination of same. What is stipulated in Article 22 of TUO shall be applied in what corresponds.

To the effect of the Agreement herein, replaced and acquired assets under the financial leasing modality that qualify as Reversible Assets shall generally receive the same treatment as the Concession Assets do.

- 5.18 Both reversion and return of assets made, due to any cause, by the CONCESSIONAIRE to the GRANTOR is exempted of any tax, charge, encumbrance, compensation payment to the CONCESSIONAIRE, or real or any other kind of duty, existing or to be created, as foreseen by Article 22 of TUO and its amendments, Law No. 27156.
- 5.19 The CONCESSIONAIRE shall be responsible for any damages, harm or loss caused to the Reversible Assets as from Possession Taking, and for acquisition or Building of same until the Concession terminates.
- 5.20 The CONCESSIONAIRE shall hold the GRANTOR harmless concerning any action or exception of legal, administrative, arbitration or contractual nature, or claim of any kind regarding the Reversible Assets, provided that this situation has arisen within the period comprised between the handing over of the assets comprised in the Concession by the GRANTOR to the CONCESSIONAIRE and reversion of same by the CONCESSIONAIRE to the GRANTOR.

The CONCESSIONAIRE shall be responsible before the GRANTOR, APN, the REGULATOR and any corresponding third party, for the correct administration and use of the Reversible Assets, as well as for the inherent damage to same.

- 5.21 The CONCESSIONAIRE is obliged to hire an insurance policy on the Reversible Assets, pursuant to Section XI.
- 5.22 The CONCESSIONAIRE shall be responsible and shall be obliged to pay the taxes, rates, and contributions corresponding to him in connection to the Concession Assets.

LAND COMPRISED IN THE CONCESSION AREA

5.23 The GRANTOR is obliged to make available to the CONCESSIONAIRE the land corresponding to the Concession Areas, within the terms established in the Agreement herein.

The Concession Assets shall be exclusively used by the Concession as per the Applicable Laws and Provisions.

EASEMENT

5.24 The GRANTOR commits to perform any necessary procedure to establish the easement the CONCESSIONAIRE may require to comply with its obligations pursuant to the Agreement herein, following request by the CONCESSIONAIRE, as per the procedure and complying with the requirements foreseen in the corresponding law.

Easement for occupying assets may be:

- a. Temporary occupation of indispensable assets for the Design, Building, Financing, Operation, Maintenance and Exploitation of the New Container Terminal at the Callao Terminal – South Zone.
- b. Transit, for the custody, Conservation and repair of the Works, equipment and facilities.

Once the easement is imposed, it shall be considered as Concession rights.

5.25 Temporary occupation easement gives the serving property owner the right to receive payment for indemnities and compensations provided by the corresponding law and its regulations during the necessary time for the execution of the Works. Any negotiation and payment for the corresponding indemnities, as a result of imposing said rights of passage, shall correspond to the CONCESSIONAIRE.

5.26 The GRANTOR acknowledges the CONCESSIONAIRE the right to prevent or oppose any repair or amendment that any public or private entity may attempt, whether favored or not with an easement and which exercise results incompatible with the Port Infrastructure. The CONCESSIONAIRE may request the GRANTOR to intervene for defending his rights appropriately.

5.27 In case an easement expires for any reasons that can be blamed to the CONCESSIONAIRE and if for this reason there were need of a new easement, the CONCESSIONAIRE shall obtain it on his own risk and account.

If for any reason that cannot be attributable to the CONCESSIONAIRE, he loses the right to any already granted easement, the GRANTOR will support the CONCESSIONAIRE to obtain a new easement that may substitute for the former one.

PROPERTY DEFENSE

5.28 The CONCESSIONAIRE is obliged to exercise any of the following modalities of ownership defense, in case there is an attempt at misappropriation of the area included in the Concession Area, as in the case of activities incompatible with the good use of said area by third parties:

- a) Extrajudicial ownership defense, to repeal any force used against the CONCESSIONAIRE and to be able to recover the assets, with no time interval, if he were dispossessed, but always abstaining from using means that are not justified by the circumstances.
- b) Judicial ownership defense, such as bans and other actions for which the CONCESSIONAIRE shall, in case of any allocation, dispossession, occupation, misappropriation or others, against the Concession, communicate so to APN and the REGULATOR and make use of the judicial mechanisms and resources to hold harmless the GRANTOR's right to the Concession Assets.

The exercise of the aforementioned defenses does not exempt the GRANTOR from responsibility. In case of a supposition such as those described in the preceding paragraph, he shall immediately coordinate with the CONCESSIONAIRE to file the legal actions he has to undertake so as to hold harmless the GRANTOR's rights on the Concession Assets, provided that these claims are caused by facts occurred after said assets were transferred to the CONCESSIONAIRE.

ASSETS RETURN

5.29 Once the Concession terminates due to any reason, the CONCESSIONAIRE is obliged to return the GRANTOR within the following thirty (30) Days, in a single act, all the Reversible Assets, including the Concession Area, which were granted at Possession Taking, as well as those included, allocated to the Concession or that constitute accessory assets inseparable from their objective, excluding those that have already been decommissioned from the inventory and/or torn down. The Concession Assets must be in good state of repair, in use and exploitation condition.

- 5.30 During the return act, the CONCESSIONAIRE and the GRANTOR will subscribe the corresponding Concession Assets Reversion Document, said Document shall be establish the representative's data and the description of the Assets being returned, specifying, for each one or for each one of the components, their characteristics, location, state of repair, operation or yield and other relevant elements.
- 5.31 The list of the Final Inventory Concession Assets and Concession Area shall be part of the Concession Assets Reversion Document, as well as any other element that may help to interpret the returned object and its state of repair. Among the interpretative elements, blueprints, photographs or sketches may be included.

PENALTIES

- 5.32 Breach or infraction by the CONCESSIONAIRE of the obligations pointed out in the Section herein, shall give way to applying penalties. The CONCESSIONAIRE shall not be exempted from responsibility even in the case in which the breach is a consequence of an agreement he entered into with third parties.

In case of a breach of the CONCESSIONAIRE's obligations, the REGULATOR shall notify him about the detected infraction and the Parties shall try to solve the discrepancies that cause the infraction, pursuant to the Direct Dealings procedure foreseen in the Agreement. If it is the case, the penalties mentioned in Annex 17 of the Agreement herein shall be applied.

- 5.33 The penalty amount shall be paid by the CONCESSIONAIRE to the REGULATOR within ten (10) Days as from the notification is received by the REGULATOR, provided that said breach has been previously certified through the sanctioning administrative procedure.

The term foreseen in the Section herein shall be suspended before penalty challenge by the CONCESSIONAIRE, and the term calculation shall restart when the competent authority confirms the penalty.

- 5.34 In case the CONCESSIONAIRE does not comply with paying such penalties within the aforementioned term, the REGULATOR may execute the Performance Bond for the Concession Agreement up to the penalty amount, and the CONCESSIONAIRE must return it, pursuant to Section X of the Agreement herein.

- 5.35 The payment of applicable penalties may not be considered as affecting the Concession financial flow and neither may it be involved to allege economic-financial balance break.

- 5.36 In everything not foreseen in this Section, the Infraction and Sanction Regulations of the Supervising Agency on Investment in Transport for Public Use (OSITRAN), current on the date when the breach occurred, shall be applied in replacement.

- 5.37 In case a contractual infraction included in the Infraction and Sanction Regulations of OSITRAN, or any regulation replacing it, is verified, only the corresponding sanction shall be applied. The sanctioning procedure shall be regulated by the administrative legislation current in that moment.

SECTION VI: INFRASTRUCTURE WORKS

CONCESSIONAIRE'S OBLIGATIONS

- 6.1 The CONCESSIONAIRE shall submit APN, within 300 Calendar Days counted as from the Agreement Subscription Date, the Technical File as per Annex 6 and its Technical Proposal, which shall comply with a minimum parameter pointed out in said Annex 6. The Technical File shall comprise at least what is provided in said Annex.

The Technical File may be partially submitted. To that effect, what corresponds with the conditions established in Annex 6 shall be complied with, so that necessary and sufficient information is available to facilitate Technical File approval. Notwithstanding said submission, the Technical File that contains all the Works shall be submitted within 300 Calendar Days as per the first paragraph of number 6.1 in this section.

During the preparation of the Technical File, the CONCESSIONAIRE shall provide APN any information it requests and facilitate them access to any activities and studies the CONCESSIONAIRE performs to that end.

- 6.2 APN may request the CONCESSIONAIRE to provide additional information related to the documents required pursuant to this Section, which, depending on the type of information requested, shall not exceed ten (10) days counted as from the date in which APN makes the corresponding request in writing.

WORKS DESCRIPTION

- 6.3 The CONCESSIONAIRE is obliged to execute the Works corresponding to the New Container Terminal Concession, pursuant to the Technical File approved by APN, notwithstanding the Conservation and Maintenance activities referred to in Section VII.

Besides what is provided by Annex 6, execution of all the Works comprised in Annex 4 shall be ended at the latest 36 months from the date in which the conditions pointed out in Number 6.16 have been complied with.

- 6.4 What is set forth in the current Section prevails over any contractual provision disagreeing with what is pointed out in the Section herein.

WORKS SUPERVISION

- 6.5 The Works Supervisor shall undertake the Supervision actions under his jurisdiction along the development of the Works. The Works Supervisor appointment shall be informed to the CONCESSIONAIRE in writing in a maximum term of five (5) Days, as from the abovementioned appointment.
- 6.6 The CONCESSIONAIRE must give the Works Supervisor free access to the Concession Area so he can easily perform his works.

DETAIL ENGINEERING PROJECTS

- 6.7 The CONCESSIONAIRE shall prepare the Technical File as per his Technical Proposal and the technical requirements in the Tender Documents and the Agreement, as well as any other technological innovation he deems pertinent, following approval by APN.

The Technical File shall be prepared as per the domestic norms and regulations, and as per international ones in replacement, provided that the latter are superior than the former.

- 6.8 APN shall have a maximum term of thirty (30) Calendar Days as from reception of the Technical File to issue the corresponding observations or approving the submitted file. In case APN does not pronounce itself within the mentioned term, the submitted file shall be understood as approved.

The CONCESSIONAIRE shall have a maximum term of thirty (30) Calendar Days to cure, be it the case, the observations made by APN, as from the date the CONCESSIONAIRE submits the necessary information.

- 6.9 APN shall have thirty (30) Calendar Days to evaluate the curing submitted by the CONCESSIONAIRE. In case APN does not pronounce itself in said term, the submitted file will be understood as approved.

WORKS AND SUGGESTIONS BOOK

- 6.10 As from the start of the Works, the CONCESSIONAIRE is obliged to open and keep a Works Book. The most important occurrences shall be noted down in said Works Book during Building of same, including, among others; list of material sources that are being used; list of suppliers and sub-contractors; copy of the commissioning assay or test results; copy of communications between the CONCESSIONAIRE, APN and/or the REGULATOR; copy of the Progress Reports; copy of monthly cubications; copy of progress schedule compliance; list of events that have affected compliance with the progress schedule; and any other useful information to document the Building process. Finally, the conditions in which the Works are commissioned shall be noted down.
- 6.11 The works and suggestions Books shall be kept in original. Additionally, there shall be two copy sets. The pages shall be notarized, numbered in correlation and typed loose sheets may be adopted.
- 6.12 Both the GRANTOR and APN shall have free access to the works book during construction. Once the work is commissioned, the original shall be handed over to APN and a copy shall remain with the CONCESSIONAIRE.

WORKS CALENDAR AND EXECUTION TIME

- 6.13 The CONCESSIONAIRE shall submit the Works Execution calendar including execution time of all the sub-items related to the works until completion. The Work Execution Calendar shall clearly define the critical road map and ensure maximum time for each activity.
- 6.14 The Work Execution Calendar shall respect the maximum time set forth in the agreement herein, the documents and Annex 6 and shall be submitted in both magnetic and physical support as integral part of the Technical File.

CONSTRUCTION START

- 6.15 The Construction Works shall be started in thirty (30) calendar days counted from the moment in which the following is complied with:
- a) The construction Area has been handed over pursuant to the conditions established in Section V and Annex 1;
 - b) APN has approved the technical file, as per Section VI;
 - c) The GRANTOR has approved the Environmental Impact Study pursuant to Section XII;

WORKS EXECUTION TERM EXTENSION

- 6.16 The Concessionaire may request APN to extend or postpone the partial terms contained in the Works Execution Calendar. When the works execution term amendments are granted due to causes attributable to the CONCESSIONAIRE as per APN's duly grounded opinion through the works supervisor, this shall not be exempted from application of penalties accrued as from the date of noncompliance until the date from which the extension is computed. In case noncompliance due to the CONCESSIONAIRE occurs more than five (5) times on critical route activities, during the construction period, which may affect the total term of the work, the GRANTOR, besides applying the corresponding penalties, may proceed to resolve the agreement, except opinion in contrary of APN, who may establish the new parameters.
- 6.17 The requests to extend the terms referred to in the preceding subsection shall be subjected to the following procedure

The CONCESSIONAIRE shall note down in the Works Notebook any circumstances that merit term extension according to his opinion within fifteen (15) days of the mentioned fact conclusion. The CONCESSIONAIRE shall quantify and ground his extension request before the work supervisor, provided that the delay has really affected the work execution calendar.

Within the seven (7) following days, the supervisor will issue a report expressing an opinion concerning the term extension request and shall send it to APN. APN shall solve said extension in a maximum term of ten (10) days counted from the reception of said report. If there is no response within the seventeen (17) days of reception of the request by the work supervisor, the time shall be considered as extended under APN's responsibility.

The term extension will oblige the CONCESSIONAIRE to submit the Works supervisor an updated work execution calendar within a time that should not exceed ten (10) days of the term extension approval. The work supervisor shall send it to the Entity together with a report stating his opinion.

- 6.18 Approved time extensions shall result in the works execution calendar reformulation and, in said case, the execution term of the corresponding works shall be postponed. In case the start of works is delayed due to a fact attributable to the GRANTOR, the CONCESSIONAIRE shall have the right to extend the Concession term according to said delay.

PENALTIES

- 6.19 Noncompliance or infraction by the CONCESSIONAIRE of the obligations in the section herein shall give way to applying contractual penalties. The CONCESSIONAIRE shall not be exempted of responsibility, including in the cases in which noncompliance is a consequence of agreements entered into with third parties.
- 6.20 In case the CONCESSIONAIRE has not complied with his obligations, the Regulator shall notify him of the infraction detected and may suggest curing mechanism to settle the discrepancies that caused the infraction and shall apply, if it is the case, the penalties pursuant to Annex 17 of the agreement herein.
- 6.21 The penalty amount shall be paid by the CONCESSIONAIRE to the Regulator within ten (10) days counted as from notification received by the Regulator.
- 6.22 The term foreseen in a preceding subsection shall be suspended if the CONCESSIONAIRE challenges the penalty imposition and said term's calculation shall restart when the penalty is confirmed by the competent authority.
- 6.23 In case the CONCESSIONAIRE does not comply with paying the penalties within the mentioned term, the Regulator may execute the agreement's performance bond up to the amount of said penalty and the CONCESSIONAIRE shall comply with what is set forth in section X.
- 6.23 The payment of applicable penalties can not be considered as affecting the concession financial flow, neither can it be invoked as the cause for economic-financial balance break.

- 6.24 In case the contractual infraction included in OSITRAN's Infractions and Sanctions Regulation -or any regulation replacing it- is verified, only the corresponding sanction shall be applied. The sanctioning procedure shall be regulated by the administrative legislation current at that time.

APPROVAL AND COMMISSIONING OF WORKS

- 6.25 Once the CONCESSIONAIRE finishes executing the works, he shall request the works supervisor to receive the works and he shall prepare the corresponding report where he will establish the completion of works pursuant to the approved Technical File. The GRANTOR shall appoint the Works Reception Commission.

For the commissioning the work shall comply with every design, construction, service and productivity technical standards and parameters included in Annex 4 and should also comply with the applicable standards according to internationally accepted port practices and operations.

- 6.27 Within five (5) days of the request, the GRANTOR shall appoint the Works Reception Commission, which in a term of thirty (30) days counted as from the appointment shall pronounce through the Works Reception Documents if execution of works conforms to the agreement and shall determine acceptance or rejection of the works. Once the works are accepted, the authorization for the commissioning of the New Container Terminal shall be understood as granted. If the Works Reception Commission does not pronounce itself within the established term, it will be understood that the work has been accepted.

The Work Reception Commission shall approve the work with observations in case there are any defects, which curing does not represent more than one percent (1.0%) of the Works Estimated Official Budget. In this case, the CONCESSIONAIRE shall have thirty (30) days that can be extended up to a maximum of ninety (90) days to cure the observations, the authorization for works commissioning being granted.

- 6.28 Any of the parties who do not agree with the Works Reception Commission payment may request the dispute to be settled by technical expertise in charge of a civil engineer chosen by common agreement between the GRANTOR and the Concessionaire. After five (5) days have elapsed since the request date and the parties have not appointed the common expert, the dispute shall be considered as not technical and shall be settled according to the respective procedure foreseen in subsection b) of number 16.13.

- 6.29 The Expert's pronouncement shall be issued no later than thirty (30) days as from the date when both parties defended their position, shall have definitive character and cannot be challenged. The expertise cost shall be paid by the party that requested it.
- 6.30 The term pointed out for curing shall be suspended until the expert issues his pronouncement.
- 6.31 In case the works are rejected, be it due to the Works Reception Commission rejection or to the expert's pronouncement referred to in the preceding clause and notwithstanding the penalties described in the section herein, the CONCESSIONAIRE shall comply with raising the objections or curing the irregularities detected by the Works Reception Commission so that the work can be commissioned on the new date fixed by the Regulator, same which in no case shall exceed sixty (60) days.
- 6.32 If the new term fixed for the corresponding curing elapses and the work has not been accepted due to causes attributable to the CONCESSIONAIRE, the GRANTOR shall proceed to resolve the agreement following the Regulator's opinion as foreseen in section XV and to demand corresponding damages, notwithstanding the penalties formerly charged or accrued pursuant to this section's provisions.
- 6.33 Notwithstanding the provisions contained in the preceding clauses concerning acceptance of the work, the CONCESSIONAIRE shall obtain the corresponding licenses to start operating the New Containers Terminal and service supply pursuant to the terms in the agreement herein.

INFORMATION

- 6.34 The CONCESSIONAIRE is obliged to provide APN reports concerning the development of the works execution as per the terms and conditions established by APN. The cost of preparing the reports shall be paid by the CONCESSIONAIRE. Notwithstanding the obligation of submitting other reports mentioned in the agreement, the basic regular information to the providers by the CONCESSIONAIRE shall consist in submitting mostly a work progress report that shall be submitted as per the procedure in annex 6 of the agreement herein. The reports shall be submitted within the first five (5) days of the month following the report.

OFFICES FOR PUBLIC ENTITIES

- 6.35 The CONCESSIONAIRE shall gratuitously provide unfurnished offices to the public entities referred to in Annex 8 which are appropriate for their work.
- 6.36 Each public entity shall pay to the CONCESSIONAIRE for power, water and telephone expenses as well as access to the internet in public networks generated by the use of these areas. The CONCESSIONAIRE shall not generate any profit for these items.
- 6.37 The CONCESSIONAIRE may relocate or reassign said offices provided that it is due to the New Container Terminal operational needs or that it is more profitable for it. At the same time, he will coordinate with the respective entity in advance to make sure the entities' functions are not affected.

CONSTRUCTION ECONOMIC REGIME

- 6.38 The CONCESSIONAIRE shall certify before the GRANTOR, thirty (30) days in advance to works start, that it has the necessary funds to comply with the Works Execution Calendar.
- 6.39 In case the CONCESSIONAIRE certifies that he only has part of the funds referred to in the preceding paragraph, he shall be obliged to submit the Financing Agreement through third parties for the balance, no later than six (6) months after the works have started.
- 6.40 In case the CONCESSIONAIRE does not comply with the Section herein, the GRANTOR, following report issued by the REGULATOR, may declare Agreement resolution as per the procedure described in Section XV.

- 6.41 The loans hired by the CONCESSIONAIRE for financing the works construction shall not have any guarantee by from the GRANTOR.

SECTION VII: CONSERVATION AND MAINTENANCE OF THE CONCESSION ASSETS

- 7.1 The CONCESSIONAIRE is obliged to conserve and maintain the Reversible Assets received from the GRANTOR from Possession Taking date to Concession Termination date, as well as of other Reversible Assets it includes to the Concession, from inclusion dates and during the Agreement's term.
- 7.2 The CONCESSIONAIRE will carry out the Infrastructure conservation and maintenance tasks needed to reach and keep the service levels pursuant to Clause 8.16 of the Agreement herein.
- 7.3 The Conservation and Maintenance tasks to be carried out by the CONCESSIONAIRE are included in Maintenance Plan, which activities must be adjusted to ensure permanent effectiveness and so that the service levels mentioned in Annex 7 are maintained.

CONSERVATION SUPERVISION

- 7.4 APN is in charge of the corresponding technical and operational actions to control the development of Conservation works referred to in this Section of the Agreement.
- 7.5 The CONCESSIONAIRE shall give APN or who it appoints free access to the Concession Area to carry out its work accurately with no obstacles.

CONSERVATION PLANS

- 7.6 The obligation assumed by the CONCESSIONAIRE implies the responsibility for defining the regular Conservation and Maintenance task techniques, procedures and timeliness. To that effect, the CONCESSIONAIRE shall submit APN, together with the technical file, a Conservation and Maintenance Referential Plan for the Concession Assets as per the supervision standard established by the SUPERVISOR. The Plan shall include description and rationale of the policies used, operation schedule, measurement of indexes upon which it is based and its general technical rationale, as per the provisions of Annex 7 herein "Maintenance Scope".

EMERGENCY MAINTENANCE

- 7.7 In case a situation occurs requiring emergency Maintenance, the CONCESSIONAIRE shall proceed in the briefest time possible to take the necessary actions to recover the Terminal's operational level. The CONCESSIONAIRE, in agreement with the GRANTOR and with the REGULATOR's opinion shall define the term required so that the affected Port Infrastructure recovers the service levels established in Annex 7 herein.

INFORMATION

- 7.8 It is the CONCESSIONAIRE's obligation to provide APN with semester reports concerning the development of the Concession Conservation as per the terms and conditions defined by the SUPERVISOR. APN shall control and verify compliance with the Conservation and Maintenance Plan and shall take the relevant measures in case said facts may affect service quality or the useful life of concession assets.

The cost of preparing these reports shall be in charge of the CONCESSIONAIRE as per the terms defined by the SUPERVISOR.

SECTION VIII: CONCESSION EXPLOITATION

CONCESSIONAIRE RIGHTS AND DUTIES

- 8.1 Exploitation of the New Container Terminal by the CONCESSIONAIRE is a right to the extent that it is the mechanism through which the CONCESSIONAIRE recovers his investment in the Works and is a duty to the extent that the CONCESSIONAIRE is obliged to keep said Port Infrastructure operational and supply services to users within the standards specified in the Technical File and Contract Annexes.

It is the CONCESSIONAIRE's duty, within the Contract limits, to respond for the acts or omissions by the personnel in charge of the operation at the New Container Terminal or the Contractors the CONCESSIONAIRE decides to hire.

SERVICE ORGANIZATION

- 8.2 The CONCESSIONAIRE must design and manage the services it will provide the users of the New Container Terminal as per the parameters set forth to that effect in the Agreement and the Technical File.

EXPLOITATION SUPERVISION

- 8.3 The REGULATOR shall carry out the control actions under its jurisdiction to develop the Concession Exploitation works included in this Section of the Agreement herein.

The REGULATOR shall verify compliance with the CONCESSIONAIRE's obligations of supplying the services and observing the quality. Likewise, it shall verify that the supply of Services to Users occurs always within the limits set in Annex 3 of the Agreement.

- 8.4 To that effect, besides being obliged to provide the necessary cooperation for supervising the Exploitation, the CONCESSIONAIRE is obliged to provide information pursuant to Clause 8.5.

INFORMATION

- 8.5 The CONCESSIONAIRE, at his own expenditure, shall submit the REGULATOR, within the terms he establishes, reports concerning the development of the Concession Exploitation, along the terms and conditions set forth by the REGULATOR.

Notwithstanding the reports, the REGULATOR may request as per the General Supervision Regulations, approved by Resolution of Directive Council No. 036-2004-CD-OSITRAN or any regulation replacing it, that the CONCESSIONAIRE submit the REGULATOR the documents and information detailed in Annex 3.

USER RIGHTS AND CLAIMS

- 8.6 The Users of the New Port Terminal shall have the following rights:

- (i) Access to all the Concession Services, for which the CONCESSIONAIRE must respect the principles of continuity, regularity and non-discrimination, as well as those enshrined in article 14.3 of LSPN;
- (ii) Being duly informed about the Standard Rate Index, the Price and scope of Services the CONCESSIONAIRE shall supply, as per the Agreement herein and the provisions issued by the REGULATOR.
- (iii) Receiving the Services in the quality, terms and conditions established in the Agreement and its annexes; and.
- (iv) Others included in the corresponding laws and others that may be established in the Agreement herein.

8.7 The CONCESSIONAIRE shall establish a system to respond to claims according to the provisions issued by the REGULATOR to that effect.

8.8 Once the claim is filed, the CONCESSIONAIRE must pronounce itself within the terms and as per the mechanisms and procedures set forth by the REGULATOR to respond to any claim formulated by users.

In case the CONCESSIONAIRE and the Users do not solve the conflict caused, this has to be solved by the REGULATOR pursued towards legislation on the matter.

INTERNAL REGULATIONS

8.9 The CONCESSIONAIRE shall inform the REGULATOR no more than (90) Calendar Days as from the Agreement Subscription Date about the Rate Regulations and the general standards and 90 days before starting operations of the following regulations for APN 's approval:

- a).- Operational procedures and regulations.
- b).- Supervision and quality control procedures.
- c).- Vigilance and security regulations.
- d).- Accident prevention practices.
- e).- Claim regulations.

The approval procedure of said internal regulations by APN is ruled by provisions on this matter and, as these regulations are being approved, the provisions APN has already passed on this matter are applicable.

EXPLOITATION START

8.10 Exploitation start will be computed as from Works reception, according to the Calendar contained in the Technical File.

The Section herein prevails on any contractual provision disagreeing with what is set forth herein.

8.11 Exploitation can be started only if the CONCESSIONAIRE has complied with presenting the Concession Agreement Performance Bond and the Insurance Policy required in the Agreement.

SERVICE SCOPE

STANDARD SERVICE

8.12 These are the services supplied on a mandatory basis to any user requesting them. They include, in the case of shipping, every service that shall be supplied from the entrance of a container to the Port Terminal until the ship that takes the container is unmoored and is free to set sail. In case of disembarkation, it includes from mooring the ship that arrives in the Terminal until container removal. In both cases, it includes a stay of the container for up to (48) hours in the Terminal backup area.

It is divided in:

| |
|--|
| Ship Services: |
| - Use of Berth (it includes the Mooring and Unmooring Service) |
| - Unloading and/or Loading (It includes the Use of a Gantry Crane and Backup Area Equipment) |

| |
|---|
| Cargo Services: |
| - Use of the Port Terminal (It includes the Weighing Service) |

Payment for these services will be the only consideration the user is obliged to. The CONCESSIONAIRE may not condition this standard service to any other service or additional payment.

a) SHIP SERVICES:

These Standard Services are mandatory. In case of disembarkation, they start with ship mooring until the containers are deposited in the Terminal backup area for their withdrawal. In case of embarkation, they start when the containers are deposited on the backup area and conclude with the ship unmooring.

a.1) USE OF THE BERTH

It comprises use of the Terminal Berth. The Rate for this is applied by ship Length and per Hour. It is calculated for the total time the ship remains moored to the dock, computed from the hour in which the first warp of the mooring operation passes until the time the last warp launches in the unmooring operation. The Rate includes the ship Mooring and Unmooring and this service will be provided by the Terminal's riggers.

a.2) UNLOADING AND/OR EMBARKATION

It comprises the ship's responsibility for handing over or receiving the container to/from the Terminal backup area. It includes the following services:

- The Towing or Untowing Service through the use of the Dock's Gantry Cranes.
 - The Containers Traction Service from the side of the ship to the Terminal backup area. The opposite for embarkation.
 - The Container Handling Service in the Terminal backup area.
- The Rate for this service is applied by TEU to the ship for each loaded or empty container and for each operation.

b) CARGO SERVICES:

USE OF THE PORT TERMINAL

It comprises the use of the Terminal Infrastructure to permit the operation of transporting merchandise from the ship to the Terminal backup area and vice versa in the case of embarkation. The Rate is applied to the cargo consignee, by TEU, and it includes the weighing, entrance/exit to terminal, etc.

The Containers may stay deposited in the Terminal backup area up to (48) hours freely available to the user. If that term elapses and they are still in said place, they will be transported to the storage areas, subject to the payment of the special services they will be supplied.

SPECIAL SERVICES

8.13 Notwithstanding the aforementioned Standard Services, the CONCESSIONAIRE may additionally supply special services to the end users with requesting them. The CONCESSIONAIRE shall have the right to charge a Price for the supplied Special Services.

SERVICE AND PRODUCTIVITY LEVELS

18.14 The CONCESSIONAIRE shall comply, at least, with the Service in Productivity Levels when supplying the Services pointed out in Annex 3.

ECONOMIC REGIME: STANDARD RATE INDEX AND PRICE

- 8.15 In exchange for the Standard Services, the CONCESSIONAIRE is authorized to charge the Standard Rate Index contained in Annex 5 of the Agreement herein. In the same way, for complying with the Special Services, the CONCESSIONAIRE is authorized to charge the Price he freely defines.

The CONCESSIONAIRE is obliged to inform the End Users what is the corresponding Standard Rate Index the REGULATOR establishes.

PAYMENT

- 8.16 As per Article 7, Number 7.1 (b), subsection i) of Law No. 26917, the CONCESSIONAIRE shall pay the GRANTOR, through the REGULATOR, a Payment as consideration for the right granted to exclusively exploit the New Container Terminal - Zone. The Payment amounts to:

US\$.....for embarked or disembarked TEU from commissioning to Concession termination.

To that effect, the CONCESSIONAIRE will make monthly advanced payments amounting to _____, within the first (07) Days of the following month of payment, until the total amount making up the Payment is completed.

Within the () Days following reception, the REGULATOR shall transfer the corresponding percentages to the entities referred to in the Third Complementary Provision of Law N° 27783 and Fifteenth Transitory and Final Provision of LSPN.

ECONOMIC-FINANCIAL BALANCE

- 8.17 The Parties declare their commitment to the economic-financial balance of the Concession along the Agreement term. To do so the Agreement herein is economically and financially balanced as for rights, duties and risks assigned to both Parties.

The Agreement herein stipulates mechanisms to reestablish economic-financial balance to which the CONCESSIONAIRE and the GRANTOR are entitled in case the State of the Republic of Peru modifies the Concession exclusively and explicitly due to changes in the applicable legal and regulatory norms.

If for changes in the Applicable Laws and Provisions and/or for government's acts exclusively related to financial economic aspects linked to:

- a) Investments, ownership or operation of the New Container Terminal; or
- b) The Agreement herein, excepting the provisions related with the Standard Rate Index;

And besides, if the CONCESSIONAIRE's annual gross revenues vary by (10%) or more in the same year or accrue in the maximum period of four consecutive years, as compared to the revenue average of the two prior years of agreement force, or, alternatively the CONCESSIONAIRE's annual cost and/or expenditure vary by (10%) or more in the same year, or accrue in a maximum period of four consecutive years, as compared to the cost and/or expenditure average of the two immediately preceding Concession years or the compound effect of the CONCESSIONAIRE's Gross Revenues variation and if the CONCESSIONAIRE's annual cost and/or expenditure variation produced a result that is equal or higher than any of the two former alternatives, the economic balance of the Agreement herein shall be understood as significantly affected, provided said effects had occurred only as the consequence of changes in the Applicable Laws and Provisions and/or due to government acts.

What is provided by this clause shall not be considered applicable for changes produced as a consequence of provisions issued by the REGULATOR fixing infractions or sanctions, which are considered in the Agreement herein or as a consequence of acts or facts imputable to the CONCESSIONAIRE or resulting from his performance.

In said case, the affected Party may propose in writing to the GRANTOR and with the necessary grounds the solutions and procedures to be followed to reestablish economic balance.

Once the GRANTOR receives an amendment request with the corresponding ground submitted by the CONCESSIONAIRE, it shall be reported to the REGULATOR so he issues his technical opinion within the following (45) Days of reception. The GRANTOR pronounces itself in a maximum term of (30) Days of having received the REGULATOR's technical opinion.

The Parties commit to make their greater and better effort to agree on the amendment that will allow reestablishing economic balance within a ninety (90) Days term.

Any discrepancy on break of economic-financial balance shall be solved pursuant to the dispute settlement mechanisms regulated by Section XVI of the Agreement herein. The discrepancy concerning the proposed measure shall be determined by three independent experts and appointed in the same way as foreseen for the appointment of arbitrators in Section XVI of the Agreement herein. The other provisions of the Sections herein rule in whatever pertinent, except that the proposed solutions may refer to modifying the current Rate Regime, case in which the CONCESSIONAIRE request shall be settled by the REGULATOR as per the procedure established by its Directive Council resolution, since the rate system regulation is a legal function of said organ.

CONCESSION TAX REGIME

- 8.18 The CONCESSIONAIRE is subject to the domestic, regional and municipal tax legislation that is current during the Concession, and he must comply with every tax obligation corresponding to the exercise of his activity. The CONCESSIONAIRE will be obliged, as tax payer, to pay every applicable tax, duty and levy among others for the assets handed over by the GRANTOR or those built or added to the Concession, whether said taxes are issued by the National, Regional or Municipal Government.

Any tax variation including the Income Tax Regime that arises after the Contract Subscription Date including the possibility of not accessing and/or enjoying the General Sales Tax Anticipated Recovery Regime for causes that have not been attributed to the CONCESSIONAIRE and any change in the tax, costumes or social benefits aliquots transferable to the final consumer, shall be taken into consideration for Clause 8.19 on Economic-Financial Balance. In case it corresponds as per the Applicable Laws and Provisions and due to possibility of no access and/or enjoyment of said regime, compensation will be established to said variations.

- 8.19 The CONCESSIONAIRE shall be entitled to subscribe with the State of the Republic of Peru a juridical stability agreement which, pursuant to applicable regulations, has the rank of a law agreement as per the provisions of Legislative Decree N° 662, N° 757 and TUO, following compliance with the conditions and requirements established in said regulations.

Likewise, the CONCESSIONAIRE shall be entitled to request anticipated recovery of the corresponding General Sales Tax following compliance with the requirements and conditions provided by the Applicable Laws and Provisions.

Similarly, and in case the CONCESSIONAIRE shall so request, the GRANTOR shall subscribe the applicable Investment Agreements and Juridical Stability Agreements provided that the CONCESSIONAIRE has complied with the requirements and conditions established in the corresponding current legislation.

SECTION IX: COMPLEMENTARY INVESTMENT AMOUNT

9.1 As per Clause 3.3, subsection I) of the Agreement herein, the Agreement Subscription Date, the CONCESSIONAIRE shall establish a private trust fund aimed at the ends included in said Clause and pursuant to Annex 9 of the Agreement herein.

SECTION X: GUARANTEES

GRANTOR GUARANTEE

10.1 The GRANTOR shall be charged with every procedure and coordination necessary which by virtue of Article 4, in Law N° 26885, Law of Incentives to the Public Utility Infrastructure Works Concessions, the Executive Branch issues the Supreme Decree referred to by Article 2 of Law Decree N° 25570, replaced by Article 6 of Law N° 26438, by which the State will grant a guarantee to backup the GRANTOR's obligations, representations and guarantees established in the Agreement herein.

The GRANTOR shall provide to the CONCESSIONAIRE any support needed to ensure due protection of port infrastructure and Concession assets, so as to guarantee uninterrupted Service supply.

GUARANTEE IN FAVOR OF THE GRANTOR

10.2 Performance Bond:

a. Works Execution Performance Bond:

So as to guarantee each and every one of the obligations established in the Agreement related with the correct execution and handing over of the Works considered in the Technical File, including the payment of penalties and other taxes when it corresponds, the CONCESSIONAIRE shall provide the GRANTOR a Works Execution Performance Bond for an amount equivalent to 20% of the Official Estimated Budget. Said Bond shall be in effect from the Agreement Subscription Date until approval of the Works by the Reception Commission. Notwithstanding the aforementioned, the Bond

may be reduced proportionally to the Work's progress, down to a minimum amount equivalent to 20% of the initial guarantee. To be able to make this reduction, the Bidder must have the approval of the Works corresponding to one berth.

b. Agreement Performance Bond.

So as to guarantee each and everyone of the obligations established in the Agreement, including the Works Exploitation and Maintenance, the CONCESSIONAIRE provides the GRANTOR a Contract Performance Bond for an amount equivalent to ...% of the Works Official Estimated Budget. Said Bond must be in effect from the Agreement Subscription Date to the Concession termination.

EXECUTION OF GUARANTEES

10.3 The Guarantees pointed out in this Section may be totally or partially executed by the REGULATOR, once all or each one of the Agreement obligations related to non-execution of Works has been identified, provided this has not been cured by the CONCESSIONAIRE within the terms established to that end. In case of a partial execution of the Guarantees, the CONCESSIONAIRE shall return or shall have returned them to the established amount. If the CONCESSIONAIRE does not return the Guarantee corresponding to the amount established in clause 10.2, subsection b) within 30 Days as from the date in which the partial execution of same took place, then the REGULATOR shall declare the Agreement resolved and the Concession terminated through a written communication to that effect as from the date of said notification.

10.4 The Works Execution Performance Bond and the Agreement Performance Bond shall be issued or confirmed in substantially similar terms to those on Annex 10.

GUARANTEES IN FAVOR OF PERMITTED CREDITORS

10.5 With the purpose of financing the Design, Building and Exploitation of the Works, the CONCESSIONAIRE may, following authorization by the GRANTOR, with favorable opinion of the REGULATOR, issue guarantee in favor of the Permitted Creditors, to guarantee the Permitted Guarantee Indebtedness on:

- (i) The Concession rights, as per Article 3 of Law N° 26885.

- (ii) The Concession revenues, after Payment, the Regulation Rate referred to in Article 14, subsection a) of Law 26917 and any other amount committed to state entities.
- (iii) The stocks or shares corresponding to the minimum share as per Section III.

The CONCESSIONAIRE accepts and acknowledges that any of said guarantees or fund allocations shall not exempt him from his obligations or the agreement. The GRANTOR accepts and acknowledges that neither the Permitted Creditors or any other person acting on their behalf shall be responsible for complying with the Agreement by the CONCESSIONAIRE until, in their case, the Permitted Creditors favorably exercise the rights mentioned below in Clauses 10.7 and 10.8 concerning execution of mortgage, in which case he who becomes the holder of same as a consequence of the execution, shall assume as the CONCESSIONAIRE the rights and duties of the Agreement herein.

The GRANTOR and the CONCESSIONAIRE guarantee that the rights stipulated in favor of the Permitted Creditors in the Agreement herein cannot be waived and are irrevocable and immutable, except following expressed consent of said Permitted Creditors, understanding that with the single communication by the Permitted Creditors to the GRANTOR and the CONCESSIONAIRE informing that they shall use said rights, the respective acceptance by the Permitted Creditors to which Article 1458 of the Civil Code refers shall be understood as complied.

To the effect of authorizing establishment of the guarantees referred to in the Section herein, the CONCESSIONAIRE shall provide the GRANTOR and the REGULATOR a copy of the agreement projects and other documents related with the operation, as well as a declaration of the possible Permitted Creditors in substantially similar terms to those contained in Annex 11 of the Agreement herein.

PERMITTED GUARANTEED INDEBTEDNESS AUTHORIZATION

10.6 It will be considered as sufficient if the Permitted Creditor is included within categories (i) or (vi) described in the definition of the Permitted Creditors and said Permitted Guaranteed Indebtedness Terms are informed in writing to the REGULATOR and the GRANTOR without any approval by them. In this case, the GRANTOR approval shall be required only to change the main financial terms as originally agreed. Approval can be denied only based on economic harm to the GRANTOR starting from said change.

In the other cases, the CONCESSIONAIRE must submit in writing simultaneous request of approval to the GRANTOR and the REGULATOR, attaching information related to the Permitted Guaranteed Indebtedness.

The GRANTOR shall issue his decision in the maximum time of 20 Days as from the day following the term maturity date for issuing the REGULATOR's technical opinion. The REGULATOR shall have 20 Days counted as from the date of request reception to issue his technical opinion.

For the purpose of evaluation, the REGULATOR may ask for additional information within 15 Days of having received the request. In such case, the maximum term of 20 Days for the REGULATOR's technical opinion issue shall restart to be computed as from the date in which the additional requested information is submitted, provided it has been submitted thoroughly and without deficiencies. Said information must be simultaneously sent to the REGULATOR and the GRANTOR.

In turn, the GRANTOR may request additional information within 15 Days of having received the REGULATOR's technical opinion. In such case, the maximum 20 Days term to issue his decision will restart to be computed from the requested additional information submission date.

In case the terms mentioned in the preceding paragraphs become due without response from the GRANTOR, it will be understood that the GRANTOR has approved the Permitted Guaranteed Indebtedness.

Annex 12 of the Agreement herein contains the terms of the communication that the GRANTOR irrevocably agrees to grant in favor of the Permitted Creditor, consenting to create the guarantees package, as well as, their execution when the Permitted Creditor shall require.

CONCESSION MORTGAGE

10.7. The CONCESSIONAIRE is entitled to grant his Concession right as mortgage as per the Applicable Laws and Provisions, as a guarantee for all the obligations it assumes vis-à-vis the Permitted Creditor. The authorization for establishment application, the guarantee establishment and its respective extra judicial execution shall be governed by the following rules:

10.7.1. Mortgage Establishment Authorization

The Concessionaire may establish mortgage on its concession right provided it has prior authorization by the GRANTOR, with the REGULATOR's favorable opinion. The CONCESSIONAIRE shall submit an authorization request in writing simultaneously to the GRANTOR and the REGULATOR attaching the mortgage contract project and its respective annexes.

The GRANTOR shall issue his decision within the twenty (20) Days that follow the REGULATOR's opinion reception, which shall have thirty (30) Days as from the date the request was received to issue his technical opinion.

In case the REGULATOR requires additional information, it shall be demanded within the TEN (10) Days of having received the request. In said case, the maximum twenty (20) Day term for the REGULATOR's issuing of his technical opinion shall start to be computed as from the day in which the requested additional information was submitted to the total REGULATOR's satisfaction, information that shall be simultaneously sent to the REGULATOR and the GRANTOR.

The GRANTOR may request additional information along a maximum time of fifteen (15) Days before the term for issuing its decision is due. In such case, the maximum thirty (30) day term to issue his decision shall restart to be computed as from the date the requested additional information was submitted.

In case the terms mentioned in the preceding paragraph become due and the GRANTOR has not responded, the CONCESSIONAIRE's request shall be understood as rejected.

To modify the Concession mortgage if necessary, the Parties agree to follow the same procedure.

10.7.2. Mortgage Extra judicial Execution

The mortgage execution shall be made following similar principles and mechanisms as those established for executing the security in Paragraph 10.9, execution procedure that shall be established in the corresponding mortgage contract pursuant to Article 3º of Law Nº 26885.

10.8. Right of Curing the Permitted Creditors

10.8.1. The REGULATOR shall notify the Permitted Creditors at the same time he notifies the CONCESSIONAIRE about the occurrence of any breach of the CONCESSIONAIRE's obligations in Section XV of the Agreement herein, so that the Permitted Creditors may undertake the actions they deem necessary to contribute to thorough compliance with the obligations in charge of the CONCESSIONAIRE.

10.8.2. The GRANTOR acknowledges that the Agreement cannot be resolved or the Concession declared terminated without previously notifying the Permitted Creditors of said intention and without the Permitted Creditors having had the rights to cure the cause that drove the GRANTOR to exercise his right of resolving the Agreement pursuant to the preceding Section and with the procedure below:

- a) In case any of the events mentioned in Section XV of the Agreement occurs and if the CONCESSIONAIRE's term to cure said event is past due and the GRANTOR wished to exercise his right to resolve the Agreement, he shall then send notification in writing to the Permitted Creditors. In said notification, the GRANTOR shall expressly point out the causes for resolving the Agreement. For that notification to be considered valid, it must have a reception slip or be sent by courier, e-mail or fax and its reception will need to be verified.
- b) The Permitted Creditors will have a sixty (60) Day term as from the notification referred to in preceding Sub Section a) to remediate the resolution causes that have been notified. Once said term has elapsed without remediation of the resolution cause, the GRANTOR may exercise his right to resolve the Agreement, assuming the obligations vis-à-vis the Permitted Creditors pursuant Section XV. If the Permitted Creditors do not exercise the power to cure, this shall not affect in any way the benefits and/or rights established in favor of the Permitted Creditors in the Agreement herein.
- c) Intention of curing or curing the cause produced by the Permitted Creditors shall not be in any case understood as assumption by the Permitted Creditors of any of the pacts, agreements or obligations of the CONCESSIONAIRE in the Agreement herein.
- d) In case the Concessionaire cured the resolution cause within the six (6) day term referred to by preceding Sub Section b), the GRANTOR is obliged to notify the Permitted Creditors 72 hours after this event at the latest, reporting that there is no longer cause for resolution.

STOCK OR SHARE SECURITY EXECUTION PROCEDURE

10.9. The stock or share security execution procedure corresponding to Minimum Share which, under the leadership of the Permitted Creditor(s) and with the GRANTOR's participation, shall necessarily be governed by the following rules:

The decision of the Permitted Creditor(s) consisting in exercising his (their) right to execute the stock or share security established in his (their) favor shall be communicated in writing to the GRANTOR and the CONCESSIONAIRE within a 30 day term.

As from that point, (a) the GRANTOR shall be prevented from declaring Agreement termination and will be obliged to immediately start the corresponding coordination with the Creditor(s) aiming at appointing the company which, according to the same terms foreseen in the Concession Agreement and under payment to be agreed with the Permitted Creditor (s), shall act as administrator and shall be temporarily in charge of the Concession operation for the time required by the replacement of the Strategic Partner referred to in the following point; and (b) no act by the CONCESSIONAIRE may suspend the security execution procedure and he will be prevented from executing the obligations that caused execution of said guarantee.

To that effect, the Permitted Creditor(s) may propose qualified operators to the GRANTOR so that they comply with the requirement established in the procedure document, which must necessarily be accepted by the GRANTOR, who will choose one among them to become temporarily charged with the Concession. The appointment of the company that shall act as administrator shall be communicated in writing to the CONCESSIONAIRE. As from such point, the CONCESSIONAIRE shall be obliged to start the corresponding coordination aiming at the most efficient transfer transition.

Temporary operation of the Concession in the hands of the Administrator shall be perfected in a term of no more than 60 Days counted as from the date in which the CONCESSIONAIRE learns about said appointment under his exclusive responsibility.

Once the Concession is under the Administrator's temporary operation the Permitted Creditor(s) shall coordinate with the GRANTOR the complete text of the call and private auction procedure document for the Minimum Share, which shall respect the substantial deadline contained in the Tender Document, especially in what corresponds the general characteristics of the Concession and the Technical File respectively, as long as they do not oppose the nature of the new auction to be undertaken.

Once the text of the private auction call and procedure documents for the Minimum Share is submitted for the GRANTOR's consideration, he shall formulate his observations about the same through a decision that must be issued within 10 Days counting as from the date in which he was reported through said text. Once that term elapses and the GRANTOR does not issue response, the referred text shall be understood as approved.

Once the Permitted Creditor(s) learn about the observations formulated by the GRANTOR, they shall have a term of no more than 10 Days for curing or rejecting them and submitting the text of the call and the procedure documents of the private auction for Minimum Share for the second time. Then, the GRANTOR shall express his conformance with the referred text within 10 Days as from the date in which he was informed through said text. Nevertheless, once the referred term elapses, and if there is no approving response, the referred text shall be understood as approved.

Once the text of the call and private auction procedure documents for Minimum Share are approved, the Permitted Creditor(s) shall start the referred procedure in a term of no more than 10 Days until the moment in which said Creditor(s) grant(s) the award which may not happen after 180 Days counted from the moment in which the GRANTOR was reported about the decision of executing the security unless, as per the case circumstances, said procedure requires a longer term, in which case the extension determined by the GRANTOR shall be applied.

Once private auction award for the Minimum Share is granted, pursuant to the tender document approved by the GRANTOR, as well as by what is provided in the Section herein, said act shall be communicated in writing to both the GRANTOR and the Administrator's corporation. From thereon, the latter shall be obliged to start the respective coordination so that the Concession operation transition is carried out as efficiently as possible. Definitive substitution of the Strategic Partner in favor of the contract award Grantee shall be perfected in no more than 30 Days counted as from the date in which the private auction award was granted under exclusive responsibility of the latter.

Pursuant to the procedure established in advance, the private auction contract award Grantee described above shall be acknowledged by the GRANTOR as the Strategic Partner. To that effect, said Strategic Partner shall be totally replaced in the original Strategic Partner's contractual provisions and shall be subject to the Concession Agreement term described by him for the remaining term. The Parties consent by this act to transfer the Strategic Partner's contractual provisions pursuant to the stipulations of the Section herein. Consequently, the new Strategic Partner shall have the same rights conferred in the Agreement herein.

SECTION XI: INSURANCE REGIME

APPROVAL

11.1 For the purposes of the Agreement herein, the CONCESSIONAIRE shall have the insurance policies required in the section herein but not limited to them. They are considered in any case as a minimum requirement that might be extended and improved by the CONCESSIONAIRE and/or regulator and which final proposal has been duly approved by the Regulator according to the following terms:

- a) Express Approval.- Once the policy proposals referred to in subsection e) of clause 3.3 in section Third are submitted, the Regulator has a three (3) calendar day term for his approval.

If there are any observations, the CONCESSIONAIRE shall have ten (10) calendar days to cure said observations.

- b) Tacit Approval.- If no observation is made by the Regulator within the above mentioned term, the insurance policy proposals shall be understood as a proof and the CONCESSIONAIRE as willing to enter into agreement with the insurance companies mentioned in his proposal.
- c) The Insurance Company appointed by the CONCESSIONAIRE shall have operations and office in the Republic of Peru, have authorizations from the Banking and Insurance Superintendence and shall be supervised by it.

KINDS OF INSURANCE POLICIES

11.2 Along the current Agreement's currency, the CONCESSIONAIRE shall take and keep in effect the following insurances to cover the New Container Terminal, its workers, users, contractors and subcontractors and shall get the necessary endorsements so that the GRANTOR and/or who he appoints as being considered as additionally insured in the respective hired policies so that he aims, in his case, the product of insurance compensation for returning, replacing and repairing damaged assets. The policies shall have the CONCESSIONAIRE as insured and he shall aim the amount due to compensation for any claim, necessarily to compensate the damages caused by said claim. Only if it is physically impossible to return, replace or repair the damaged assets shall the compensation be given to the GRANTOR.

The following includes but is not limited to the coverage it and shall be understood as a minimum requirement:

- 11.3. Personnel Insurances for Worker and Employers. The CONCESSIONAIRE shall comply with hiring and submitting all the policies required by current and/or to be enacted Peruvian government laws and regulations for workers and employees in Peru, covering and protecting the life and health of all the workers directly or indirectly related with the agreement, and Work Accident Insurance, Professional Disease Insurance, Life Insurance Law (D.L. 688) and Risky Work Complementary Insurance (Health and Pensions). The policies shall be hired considering at least the coverage required by Law.
- 11.4. All Risk Insurance for Construction and Assemblage. The CONCESSIONAIRE shall comply with hiring said policy protecting the risk of building and assembling the civil and electromechanical work and all the assets that may suffer material damage of any kind and description, as well as damage to building equipment and machinery, in any place and condition they might be in, including own and third part premises, permanent and/or temporary camps, in open air, underground and at sea.

Among the risks covered by this policy, political risks such as strike, civil turmoil, malicious damage, vandalism and terrorism must be included. Nature risk shall also

be covered as earthquake, volcanic eruption and tsunami. Crash Risks due to Ships, Airplanes and Vehicles shall be included.

The coverage of risks referred to in the former paragraph shall protect against direct, indirect damage and consequences all along the construction and assembling, including the testing period.

Said All Risk Coverage shall also cover damages coming from design failures or mistakes in the definitive project, hidden structural defects.

The Insured Value of this policy shall be the total amount of the construction and assembling investment, both of civil works, facilities, machinery, equipments and stock of any kind and description as replacement as new value.

- 11.5 Completed Civil Works All Risk Insurance, including equipment, machinery and all their facilities, above and underground, submarine piping and facilities at sea and for port operation, as well as underground facilities. The CONCESSIONAIRE shall comply with hiring said policy, protecting the patrimonial risk of completed works and work under operation regarding every port risk, same that starts at the end of coverage against All Construction and Assembling Risk and remains in effect all along the concession period.

Since all the completed civil works and the facilities, machineries, equipments of all kind and description above or underground, piping and submarine facilities, at seas, lakes and river and port operation underground facilities shall be covered against any material damage they suffer to any asset of any kind and description, this coverage shall protect against direct, indirect and consequential damage.

Said coverage against all risks must also cover design failure or mistake risks in a definitive project, hidden structural defects.

Direct, indirect and consequential losses shall also be foreseen in the coverage.

Political risk is among the risks covered by this policy, such as strikes, civil turmoil, malicious damage, vandalism and terrorism. Nature Risks must also be covered such as earthquakes, volcanic eruption and tsunami. Risk due to Ship, Airplane and Vehicle crash shall also be included.

This coverage shall also include Lost Profit, direct, indirect and consequential loss risk due to any kind of claim including expenditures for demolition, cleaning, extra expenses and contingencies.

The CONCESSIONAIRE shall declare the Insurance Company the total reposition value of the work, facilities, equipments and stocks as the total value of risk exposure.

11.6 General, Contractual, Extra-contractual and Employer Civil Responsibility Insurance

The CONCESSIONAIRE shall comply with hiring Civil Responsibility coverage with the following clauses during all the term the agreement is in effect.

- a) General Extra-contractual Civil Responsibility.
- b) Employer Civil Responsibility.
- c) Port Operator Civil Responsibility.
- d) Contractual Civil Responsibility
- e) Crossed Civil Responsibility between the Concessionaire, Contractors, Subcontractors and Users.

Although the Civil Responsibility coverage risk is different during the Construction and Assembling period as compared to that of the Port Operator, the characteristics of said coverage are similar and shall respond to the following specificities:

For all State entities purposes, particularly those of ENAPU S.A., and with the exception of the GRANTOR or who he appoints, they shall be considered as Third Parties for any claim they may file for direct and indirect damages and other economic harm they may suffer as a consequence of the building and further operation of the new Container Terminal due to which any State entity shall have right to legal claim as Third Party for any direct, indirect or consequential harm from the work operation subject matter of the agreement herein and which are legally attributable to the CONCESSIONAIRE or his contractors, subcontractors and/or any other company linked, related or appointed by the CONCESSIONAIRE.

The Insured Amount for covering Civil Responsibility against personal damages and/or material damages both along the Construction and Assembling period and along the Port Operation period shall be defined by the CONCESSIONAIRE at a sufficient level to cover these damages. However, the CONCESSIONAIRE assumes full responsibility for the balance not covered in case any claim exceeds said sum. The fact of not assuming this responsibility diligently and on a timely basis shall be considered as a cause for resolving the Agreement.

11.7 Dishonesty, Disappearance, Destruction (3D) Insurance. The CONCESSIONAIRE shall comply with hiring this coverage, including all the people who supply services to the CONCESSIONAIRE in a temporary or permanent basis, including contractors' and/or subcontractors' and/or security companies' personnel.

11.8 Communications. The policies hired as per the agreement herein shall contain a stipulation obliging the respective insurance company to notify the REGULATOR and the GRANTOR in writing about any non compliance by the CONCESSIONAIRE

The notification obligation established in the Section herein shall also be required in case any insurance is not renewed or cancelled, in which case notification shall be made ten (10) Days in advance. The respective policy shall at the same time establish that it shall be considered past due only if the insurance company has complied with the obligation referred to in the first part of the clause herein.

The CONCESSIONAIRE shall notify the REGULATOR, ten (10) days in advance, about the dates in which it shall renew the corresponding policies so that the REGULATOR can revise and express his opinion concerning the conditions in which they shall be issued.

- 11.9 *The GRANTOR Compensation.* If the CONCESSIONAIRE does not keep the policies current pursuant to the Section herein, the GRANTOR may hire them and pay the premiums at the CONCESSIONAIRE's expense and account. The amount of said premium plus interests from their payment by the GRANTOR until the reimbursement to same, at an annual interest rate equal to the highest interest rate (based upon a 360-day year and upon days elapsed to date), which along said period is effective in the Peruvian financial system for assets operations in Dollars, shall be reimbursed by the CONCESSIONAIRE to the GRANTOR in a maximum term of five (5) days counted as from notification by the GRANTOR, notwithstanding the execution of the Agreement Performance Bond
- 11.10 *Unaffected Obligation.* Hiring the following insurance does not reduce or alter in any way the other obligations assumed by the CONCESSIONAIRE pursuant to the Agreement herein.
- 11.11 *Policy Compliance.* The CONCESSIONAIRE is hereby obliged vis-à-vis the GRANTOR to comply with the terms and conditions of every insurance policy hired pursuant to the agreement herein. In case of claim, the CONCESSIONAIRE shall immediately report it to the insurance company and at the same time notify the GRANTOR about the same. If the insurance coverage is cancelled because there was not timely notification of a claim, the liability incurred shall be to the account of the CONCESSIONAIRE and free the GRANTOR of any liability concerning the equivalence of the amount that should have compensated the insured party if the claim had been notified on a timely basis. The amount corresponding to deductibles will be under the CONCESSIONAIRE's charge.
- 11.12 *Coverage Report.* Within the first thirty (30) Calendar Days of each Concession Year and during its term, the CONCESSIONAIRE shall submit the REGULATOR the following:

- a) A list of the insurance policies to be taken and/or maintained by the CONCESSIONAIRE during the current year pointing out at least coverage of the insurance company, claims made the year before and the current situation; and
 - b) A certificate issued by the insurance company's authorized representative including the policies and coverage the CONCESSIONAIRE hired the year before so as to show compliance with the terms of the Section herein.
- 11.13 *Notwithstanding* the above mentioned, during the Agreement term and every time the REGULATOR so requires, the CONCESSIONAIRE shall present irrefutable proof before the REGULATOR and the GRANTOR of all the insurance policies that are still in effect and duly paid.
- 11.14 If non compliance with the obligation of keeping policies in effect is verified, the GRANTOR may immediately execute the agreement performance bond notwithstanding any eventual action this non compliance causes, among which Agreement Resolution pursuant to Section XV of the agreement herein.
- 11.15 Non Covered Events. Loses and/or damages that are not covered by the mentioned insurance policy or due to any deficiency or lack of coverage shall be in charge of the CONCESSIONAIRE and he shall be the sole responsible vis-à-vis the GRANTOR for any loss and/or damage caused.

CONCESSIONAIRE LIABILITY

- 11.16 Insurance policy hiring by the CONCESSIONAIRE does not reduce his liability. The CONCESSIONAIRE is directly liable for any obligation established in the Agreement beyond any insured liability and is obliged to compensate the GRANTOR before any demand, delay or claim related with his operation.
- 11.17 Notwithstanding what is stipulated in the Section herein and the obligations therein established, the CONCESSIONAIRE shall pay the totality of sums due to any person according to the applicable Laws and Provisions. This implies that in case a claim due to own fraud or guilt, not covered by the mentioned insurance policy, the CONCESSIONAIRE shall be solely responsible for any possible damage caused.
- 11.18 In no case shall the CONCESSIONAIRE be liable for acts or deeds committed by or occurred due to the GRANTOR who, pursuant to the applicable Laws and Provisions, should assume liability.

GRANTOR LIABILITY

- 11.19 In case the GRANTOR receives any reimbursement for damages produced to the assets that make up the Concession Assets, in compliance with the terms agreed upon in the policies referred to in the Section herein, same shall be solely and exclusively aimed at having the CONCESSIONAIRE repair, replace or rebuild said

11.20 In case the GRANTOR receives any reimbursement amount for damages to the assets that make up the Concession Assets in compliance with the terms agreed upon in the policies referred to in the Section herein and said assets cannot be repaired, replaced or rebuilt, the GRANTOR shall not be obliged to reimburse the CONCESSIONAIRE.

SECTION XII: ENVIRONMENTAL CONSIDERATIONS

ENVIRONMENTAL RESPONSIBILITY

12.1 The CONCESSIONAIRE declares to know the current legislation including international regulations and obligations established in this Agreement concerning the environment as they are applicable to the activities regulated by this Agreement. The CONCESSIONAIRE is obliged to comply with such regulations as an indispensable component of his environmental management, implementing the necessary measures to ensure appropriate management at the Terminal and the mechanisms that may allow for proper participation and communication with the citizenry.

12.2 Aiming at minimizing any negative impacts that could be caused to the environment in the Concession Influence Area, the CONCESSIONAIRE is obliged to comply, along the Construction and Exploitation Stages, with the commitments assumed in the Terminal Environmental Impact Assessment that shall be approved by the Competent Environmental Authority, same which will make integral part of the Agreement herein as Annex 14.

12.3 Implementation of the conditions and/or measures set forth in the Environmental Impact Assessment shall be exclusive responsibility and expense of the CONCESSIONAIRE as long as they establish activities under his charge.


12.4 The CONCESSIONAIRE shall be joint and severally responsible with the subcontractors in case of environmental damage caused in the Concession Influence Area. As per Clause 11.12 of the Agreement herein, insurance policy hiring does not decrease the CONCESSIONAIRE's liability

ENVIRONMENTAL LIABILITIES

- 12.5 In no case shall the CONCESSIONAIRE be responsible for environmental pollution or impact that may have been generated outside or inside the Concession Influence Area, as well as in other areas used for installing, using or operating warehouses, offices, workshops, machinery yards, before Possession Taking Date, even if the pollution effect occurred after said date. As for environmental pollution or impact that may be generated outside the Concession Influence Area, as from the Possession Taking Date, the CONCESSIONAIRE shall be liable only in cases in which it is demonstrated that the damage was caused within the Concession Influence Area.
- 12.6 The CONCESSIONAIRE shall identify and evaluate the Environmental Liabilities during the preparation of the Environmental Impact Assessment, which will make part of the environmental baseline assessment study of said assessment. To identify the Environmental Liabilities, the CONCESSIONAIRE may consider the report "Environmental Audit. Callao Port Terminal" prepared by the Dames & Moore consulting company commissioned by Empresa Nacional de Puertos S.A. (ENAPU) dated April 7, 2000.

ENVIRONMENTAL IMPACT ASSESSMENT

- 12.7 In compliance with the General Environmental Law and the National Law for the Environmental Assessment System, the CONCESSIONAIRE shall submit to the Competent Environmental Authority an Environmental Impact Assessment for its approval. The Assessment shall comprise the Construction and Exploitation activities.
- 12.8 The Environmental Impact Assessment shall be submitted before the Competent Environmental Authority for approval within no more than one hundred and twenty (120) Calendar Days, counted as from the Agreement Execution Date.
- 12.9 The Environmental Impact Assessment content is established by the applicable Laws and Provisions and those the Competent Environmental Authority may have approved when it was prepared by the CONCESSIONAIRE.

 Notwithstanding the applicable Laws and Provisions, the Environmental Impact Assessment (EIA) shall include at least the contents of Annex 13.

ENVIRONMENTAL MANAGEMENT

- 12.10 The CONCESSIONAIRE shall comply, as part of its environmental management, with the legal regulations referred to solid waste and hazardous solid waste management, hazardous material management, water use, disposal of water and liquid waste, noise, water quality, air quality, hydrocarbon consumption, zoning, among other environmental aspects regulated by the Applicable Laws and Provisions.
- 12.11 Additionally, in what regards protection of the Nation's Cultural Heritage, the CONCESSIONAIRE shall comply with the following provisions:
- a. Any new building, extension, demolition, restoration, refurbishment or any other involving a real estate asset making up the Nation's Cultural Heritage requires prior authorization from the National Culture Institute.
 - b. If during Construction, any archeological or historical remain is found, the CONCESSIONAIRE is responsible for suspending every activity in the finding area and immediately notifying INC.
 - c. In no case shall the CONCESSIONAIRE acquire ownership or right of any kind on the found archeological or historical material or remain.

The obligations described in the section herein can be invoked by the CONCESSIONAIRE as a cause for suspending the term to conclude with the execution of works, provided that the abovementioned circumstances have been duly certified by the CONCESSIONAIRE.

- 12.12 The CONCESSIONAIRE may include other measures than those required, which according to his opinion, may contribute with the compliance of Building and Exploitation conditions set forth in the Agreement herein concerning environmental protection. If that is the case, such measures shall be based on the Environmental Impact Assessment.
- 12.13 Construction start and later Exploitation start shall be authorized by APN as per the Environmental Management Plan included in the approved Environmental Impact Assessment. The Environmental Management Plan amendment included in the approved Environmental Impact Assessment shall follow the administrative procedure established by the Competent Environmental Authority.
- 12.14 Once the Exploitation is started, the CONCESSIONAIRE shall implement an internationally acknowledged environmental management system that should be subject to auditing and certification by an entity other than the CONCESSIONAIRE. The term for implementing and certifying the environmental management system is two years after the date of exploitation start.

ENVIRONMENTAL REPORTS

- 12.15 During Construction, within the first fifteen (15) Calendar Days following the end of each quarter, the CONCESSIONAIRE shall submit APN an environmental report on the state of the Concession influence area with the respective environmental components that may have been affected by the activities. The CONCESSIONAIRE shall report on the activities undertaken in these reports, explaining the application of the Environmental Technical Specifications referred to in the Environmental Management Plan contained in the Environmental Impact Assessment, pointing at any environmental problem encountered and proposing necessary additional measures to solve them and cure them.
- 12.16 During the first Exploitation year, the CONCESSIONAIRE shall prepare a mid-year environmental report concerning the effectiveness of implementing each measure defined in the General Social Environmental Considerations Clause of the Agreement herein, which shall be submitted to APN during the first fifteen (15) Calendar Days after each semester ends.
- 12.17 As from the second Exploitation year and up to two years before the maximum Concession term expires, the Environmental Report shall be submitted to APN once a year. The CONCESSIONAIRE shall submit the environmental report every semester along the two last years.
- 12.18 The CONCESSIONAIRE shall prepare the environmental report considering at least the contents of Annex 13.

PENALTIES

- 12.19. Breach or infraction by the CONCESSIONAIRE, of any of the Concession Agreement obligations contained in the Twelfth Section herein shall be cause to apply penalties notwithstanding the sanctions established in the Applicable Laws and Provisions.

The CONCESSIONAIRE shall not be exempted of responsibility even in the cases when breach is a consequence of agreements he enters into with third parties.

In case of CONCESSIONAIRE's obligation breach, APN shall notify it about the detected breach and the Parties shall try to solve the discrepancies that gave way to said infraction as foreseen in the Sixteenth Section and, if that is the case, the penalties provided by Annex 17 of the Agreement herein shall apply.

12.20 The penalty amount shall be paid by the CONCESSIONAIRE to the REGULATOR within a term of ten (10) Days counted from the notification received by APN.

The term foreseen in this Section shall be suspended before CONCESSIONAIRE penalty challenge, and the term calculation shall be restarted when its imposition by the current authority is confirmed.

In case the CONCESSIONAIRE does not comply with said penalties to the REGULATOR within the mentioned term, the REGULATOR may execute the Concession Agreement Performance Bond up to the amount of the imposed penalty and the CONCESSIONAIRE must comply with what is foreseen in the second paragraph of Section 10.3.1.

12.21 Payment of the applicable penalties may not be considered as affecting the Concession financial flow and it can neither be invoked as cause of economic financial balance break.

12.22 In case contractual infraction, which is contemplated in the OSITRAN Infractions and Sanctions Regulations, or any regulation replacing it, is verified, only the corresponding sanctions shall be applied. The sanctioning procedure shall be regulated by the administrative legislation current at that point.

SECTION XIII: RELATIONS WITH PARTNERS, THIRD PARTIES AND PERSONNEL

RELATIONS WITH THE STRATEGIC PARTNER

13.1 The Strategic Partner must have and maintain a Minimum Share that can never be less than 51%. The corporations or shareholders making it up on the Agreement Subscription Date must have subscribed an agreement among them by which they commit to oppose any motion submitted by a CONCESSIONAIRE shareholder proposing an increase of corporate capital regarding which the Strategic Partner is not in capacity to exercise his preferential subscription right permitting him, at least, to maintain the Minimum Share in the CONCESSIONAIRE.

13.2 Every act, business, contract and agreement that may imply decreasing the Strategic Partner's Minimum Share, as from the sixth Concession Year, such as share issues—including its fruits and products—in the CONCESSIONAIRE, as a consequence of merger, capital increase and others, shall be previously authorized in writing by the GRANTOR, who shall, in turn, have the prior technical opinion of the REGULATOR.

For the purposes of this authorization, the Strategic Partner shall communicate the GRANTOR and the REGULATOR his decision of participating in an operation as those described in the preceding paragraph. The GRANTOR shall pronounce itself

concerning it in a maximum term of 15 Days as from the communication reception day, after the REGULATOR's technical opinion, which will be released no later than 30 Days after having received the request. Silence from the GRANTOR shall be interpreted as operation approval.

Once the five (5) years term elapses, a new Strategic Partner may start operating, only if he has the prior acceptance of the GRANTOR, through the competent organs. This new Strategic Partner shall comply with the same requirements and conditions established for the initial Strategic Partner.

RELATIONS WITH THIRD PARTIES

13.3 The CONCESSIONAIRE may not transfer his right to the Concession or transfer his contractual position without prior authorization of the GRANTOR, which shall consider the technical opinion the REGULATOR will previously issue.

For the purpose of authorization, the CONCESSIONAIRE shall communicate his intention of transferring his Concession or transferring his contractual position, attaching the following:

- a) Preparatory agreement or transfer or assignment intention letter duly subscribed by the acquirer or assignee.
- b) Documentation certifying the necessary legal capacity of the third party.
- c) Documentation certifying the third party's financial and technical capacity, including appropriate personnel and experience shown in port operation that are sufficient to carry out and assume the CONCESSIONAIRE's obligation as per the Agreement.
- d) Agreement through which the third party assumes any damage and pays any other amount due and payable by the CONCESSIONAIRE.
- e) Agreement through which the Strategic Partner is substituted by one of the third party's shareholders or partners in the contractual position the former occupied in the CONCESSIONAIRE and with the same Minimum Share percentage.

The GRANTOR shall pronounce itself about the operation in a maximum term of 30 Days counted as from the application submission with all the documents required in this Section. The GRANTOR's consent does not free the transferring corporation from responsibility over its right to the Concession or transfers its contractual

position up to a maximum term of 3 years as from assignment approval. This implies that during the period said company shall be joint and severally responsible with the new CONCESSIONAIRE for any act undertaken before the transfer or assignment. Negative response or absence of response implies the operation has been rejected.

CLAUSES IN CONTRACTS

13.4 Any contract the CONCESSIONAIRE may enter into with his partners, third parties and personnel, shall include clauses considering what follows:

- a) The obligation of having the GRANTOR's anticipated consent, with prior opinion of the REGULATOR, as corresponds, concerning his contractual position assignment in favor of a duly qualified third party.
- b) Including a Section by virtue of which it is stipulated that the Concession Termination will imply resolution of the respective agreement because they are accessory to the first.
- c) Limiting the effective term so that in no case shall it exceed the Concession term.
- d) Waiver concerning civil responsibility claims against the GRANTOR, the REGULATOR or their officials.

In no case shall the CONCESSIONAIRE be exempted from any responsibility vis-à-vis the GRANTOR for acts derived from executing the contracts subscribed with third parties that might have any incidence on the Concession.

PERSONNEL RELATIONS

13.5 In these relations with the personnel, the CONCESSIONAIRE shall adjust to the labor regulations effective in the Republic of Peru.

13.6 The domestic personnel or foreign personnel work contracts with the CONCESSIONAIRE, execution of said contracts and resolution of same are subject to the regulations governing labor relations of private activity workers. Likewise, special work regimes shall be applied in case they come up.

The Concessionaire shall strictly comply with the Applicable Laws and Provisions on work matters referred to the employer's formal obligations (payroll books, payment

slips and others), payments and retention of pension fund contributions, as well as contractual and legal obligations referred to occupational safety and hygiene.

Likewise, the CONCESSIONAIRE, as per article 12 subsection i) of LSPN, guarantees constant training and safety for all the workers hired by him to work at the New Container Terminal.

13.7 To this effect, The Regulator is entitled to request any necessary information from the CONCESSIONAIRE on a regular basis to certify the normal development of the Concession.

13.8 In case the Concession is terminated, the CONCESSIONAIRE is exclusively responsible to pay every labor benefit, such as remunerations, working conditions and other conventional or unilateral benefits payable to his workers until that date. Pursuant Section XV, the GRANTOR shall not be responsible for said debt in any case.

In case the GRANTOR is judicially mandated to pay any labor debt, generated during the concession time, he may repeat against the CONCESSIONAIRE.

13.9 The CONCESSIONAIRE shall freely determine the number of people required to hire for Building, Operating and Exploiting the New Container Terminal.

SECTION XIV: ADMINISTRATIVE COMPETENCIES

COMMON PROVISIONS

14.1 Exercise of the functions that by virtue of this agreement and the pertinent legal regulations the GRANTOR, APN and the Regulator must comply, shall in no case be subject to obligations, permits or any expression of will by the CONCESSIONAIRE. He shall offer all his cooperation to facilitate compliance with said functions, and any fault in this respect shall be interpreted as an infraction subject to sanction. The GRANTOR, APN and the Regulator shall carry out inspection, revision and similar actions trying not to hamper or obstructing service supply.

The following rules shall be respected in the cases foreseen in this agreement in which exercising the functions that the GRANTOR, APN or the Regulator must comply with requires prior opinions, with a binding character or not, of any of the mentioned entities,: i) in cases in which one of the entities is responsible for formulating an opinion, the term the other party shall have to issue his opinions shall be half the term the competent entity has to pronounce itself as per the

agreement herein. If not, the latter may do without said opinion so as to comply with issuing his position within the contractually foreseen term, and ii) in cases in which entities are responsible for issuing an opinion, the CONCESSIONAIRE shall submit the reports, information and, generally, any similar necessary document to issue opinions before the GRANTOR, APN and the Regulator on the same date.; iii) the term to formulate the opinion shall be counted as from the date after the application submission date to the corresponding entities. In case the same application is submitted at different dates, the date of the last application shall be considered; iv) in case more information is required to issue an opinion, APN, the Regulator and the GRANTOR may apply to suspend the term while the CONCESSIONAIRE sends information or requests extensions to the foreseen term.

Any opinion or approval issued by the GRANTOR, APN or the Regulator, when communicated to the CONCESSIONAIRE, shall be sent as a copy to the other entity depending on each case.

- 14.2 The CONCESSIONAIRE shall comply with all the information requirements and procedures established in the agreement herein or to be established by the GRANTOR, APN and the Regulator in matters of their jurisdiction.

The CONCESSIONAIRE shall submit the regular reports, statistics and any other information concerning his activities and operations and the ways and terms established by the GRANTOR, APN and the Regulator in the respective requirement.

The CONCESSIONAIRE shall facilitate revision of his documents, files and other information that the GRANTOR, APN and the Regulator may require so as to surveying and having the terms of the agreement herein in force.

APN'S AND REGULATOR'S POWERS

- 14.3 APN and the REGULATOR are authorized to exercise all the powers and functions the Agreement and Applicable Laws and Provisions confer them, as per Law No. 26917, and Law No. 27943 and the other current legislation regulations.

SUPERVISION POWERS

- 14.4.- The fees and expenses directly stemming from the supervision activities incurred by the Works Supervisor, such as implementing the necessary space to install offices and works stands in the construction area, shall be paid by the CONCESSIONAIRE up to an amount not exceeding seven million five hundred thousand US dollars (US\$ 7'500,000.00). The Works Execution Schedule referred

to in Number 8.12 of the Agreement shall be taken into account for the purposes of defining payment time.

In case the CONCESSIONAIRE does not cancel the abovementioned amounts, the GRANTOR may execute de Agreement's Performance Bond up to the amount mentioned thereon.

14.5.- The Works Supervisor shall have the following functions, among others:

- a) Controlling the Agreement in every aspect related to Works Building, Maintenance, and Conservation;
- b) Inspecting the project's designs, studies and specifications, verifying their conformance with the CONCESSIONAIRE's Technical File for his approval or rejection, as may correspond;
- c) Approving, rejecting and requesting amendments, as may correspond, to the schedules, projects, plans, programs, and other documents submitted by the CONCESSIONAIRE. Notwithstanding the approval of some project or document, the CONCESSIONAIRE shall continue being responsible for compliance of the standards established in the Agreement by the Works once they are built;
- d) Controlling compliance with the environmental considerations contained in the Environmental Impact Assessment;
- e) Verifying and demanding compliance with the Works Execution Schedule submitted by the CONCESSIONAIRE;
- f) Verifying and demanding compliance with security and safety standards;
- g) Verifying compliance with handing over of the land needed for the Works execution with due registration in the Works Book;
- h) Proposing application of the penalties established in the Agreement;
- i) Ordering Works stoppage in cases the necessary projects for their execution have not been approved or they are being executed without conformance to approved projects;
- j) Keeping the corresponding Works Book;
- k) All those related to engineering in the projects and Construction, when the Works are executed;
- l) Any other activities during the Works Construction Period as per the Annexes herein.

In case some non-compliance of the CONCESSIONAIRE's obligation is detected, the Works Supervisor may request the necessary curing.

The Works Supervisor shall not have directly or indirectly supplied any kind of services in favor of the CONCESSIONAIRE, his shareholders or Related Companies in the last five (5) years in Peru or abroad.

14.6.- A Conservation Supervisor shall be appointed, who will perform among others, the following:

- a) Controlling the Agreement in any aspect related with Concession Assets Conservation;
- b) Controlling compliance with Works Conservation technical regulations;
- c) Controlling compliance with the approved annual Conservation plan;
- d) Submitting the GRANTOR any reports he requires concerning the Works Conservation activities;
- e) Reporting detected non-compliance to the REGULATOR, as corresponds so that he applies the respective sanctions and penalties;
- f) Approving, rejecting and suggesting changes to schedules, projects, plans, programs and other documents referred to Works Conservation, submitted by the CONCESSIONAIRE. Notwithstanding approval of some project or document, the CONCESSIONAIRE shall continue being responsible for the Works' complying with standards pursuant Annex 6 of the Agreement herein;
- g) Keeping the corresponding Conservation Works Book;
- h) Controlling compliance with technical Regulations on Works Conservation and Maintenance;
- i) Any other activity related to Works Conservation, as established in the Agreement herein.

In case any non-compliance with the CONCESSIONAIRE's obligations is detected, the Conservation Supervisor may request the necessary cure.

The Conservation Supervisor shall not have directly or indirectly supply any kind of services to the CONCESSIONAIRE, his shareholders or Related Companies in the last five (5) years in Peru or abroad.

14.7.- The REGULATOR may appoint an Exploitation Supervisor who shall perform the following activities among others:

- a) Controlling the Agreement during the Concession Exploitation period;
- b) Revising statistical information submitted by the CONCESSIONAIRE ;
- c) Submitting the GRANTOR any report he requests concerning Concession management;
- d) Carrying out relevant analyses on the background to be submitted by the CONCESSIONAIRE;
- e) Controlling compliance with Service operation;
- f) Controlling compliance with the CONCESSIONAIRE's annual work;
- g) Controlling compliance with technical standards on the Concession operation;
- h) Controlling correct collection of rates and compliance with the rate regime;
- i) Verifying and demanding compliance with the Bid's economic conditions;
- j) Applying penalties;
- k) Verifying and demanding compliance with information submission at the Exploitation stage;
- l) Controlling and surveilling compliance with the juridical, accounting, administrative aspects and, generally, with any other aspect stemming from the Agreement's documents;
- m) Any other activity necessary for appropriately controlling the Agreement at the Exploitation stage;
- n) Verifying and demanding compliance with service levels as included in Annex 4 of the Agreement herein;
- o) Ascertaining when a service supplied by the CONCESSIONAIRE becomes a service supplied under free competition conditions.

The Exploitation Supervisor functions, in case of appointment, shall be exercised pursuant to the powers conferred by the REGULATOR.

In case of detecting any breach in the CONCESSIONAIRE's obligations, the REGULATOR may require the necessary curing and impose the corresponding penalties as per Sections V to XII of the Agreement.

The Exploitation Supervisor may not have directly or indirectly supplied any kind of services to the CONCESSIONAIRE, its shareholders or Related Companies in the last five (5) years in Peru or abroad.

The fees and expenses directly derived from the supervision activities in which the Conservation Supervisor and the Exploitation Supervisor incur shall be paid by the

CONCESSIONAIRE up to an amount not exceeding __ percent (__%) of the Works Official Estimated Budget.

14.8.- The CONCESSIONAIRE shall provide the REGULATOR:

- a) Quarterly and annual corporate financial statements. The annual financial statements shall be audited. Quarterly information shall include General Balance, Profits and Losses Statement, Cash Flow, Trial Balance and any other accounting and/or financial information which may reasonably be requested by the REGULATOR. Likewise, the CONCESSIONAIRE shall submit the REGULATOR the accounts plan and any amendments to it. Additionally, the REGULATOR may request the CONCESSIONAIRE to include divisions or sub-divisions to the Account Plans.
- b) CONCESSIONAIRE's organizational and managerial personnel, every time there is a change.
- c) Information about the annual environmental management, as per the minimum environmental management plan.
- d) Monthly information on claims submitted by Users, identifying the User and the claim.
- e) Information of all the revenues received by the CONCESSIONAIRE. This information shall be submitted every __, within the first __ Days of each month. Each type of revenue must be presented separately.
- f) Any other additional information that the REGULATOR may require to control appropriate compliance with the Agreement.

14.7.- Among other activities, the REGULATOR shall control compliance with the following obligations by the CONCESSIONAIRE:

- a) Controlling compliance with the CONCESSIONAIRE's financial statements submission.
- b) Reporting on compliance with Applicable Laws and Provisions.
- c) Performing pertinent analyses on the information to be submitted by the CONCESSIONAIRE.
- d) Controlling compliance with what is established in Annex 3 of the Agreement.
- e) Revising the statistics information supplied by the CONCESSIONAIRE
- f) Controlling compliance with Payment.

SANCTIONING POWER

14.8.- The REGULATOR shall be authorized to apply sanctions to the CONCESSIONAIRE in case of non-compliance with its obligations, as per Law No. 26917 and regulations on that matter.

14.9.- To exercise the sanctioning power granted by this Agreement, the REGULATOR shall be subject to the provisions it issues on this matter, pursuant to his regulatory and normative powers. The CONCESSIONAIRE shall proceed to pay the fines within the term said provisions establish.

The provisions considered in Infractions and Sanctions Regulations approved by the REGULATOR referred to foreseen hypotheses in the Agreement herein shall prevail over them. In this regard, contractual penalties for the cases regulated in the referred regulations shall not be applicable.

14.10.- Administrative sanctions stemming from the execution of the Agreement herein shall be applied to the CONCESSIONAIRE independently from the contractual penalties established in same and notwithstanding the obligations of responding for damages resulting from his breach.

REGULATION RATE

14.11.-The REGULATOR shall be authorized to charge the CONCESSIONAIRE the regulation rate referred to by Article 14 of Law No. 26917 or any regulation amending or replacing it. Said rate shall be calculated and charged in the terms and amounts referred to by said legal provisions and the respective regulatory norms.

SECTION XV: CONCESSION TERMINATION

TERMINATION CAUSES

15.1 Additionally to the cases foreseen in the Agreement herein, it may be declared terminated only if one of the following occurs:

15.1.1 Termination Due to Term Expiration

The Concession shall terminate when the term expires as per Section IV.

15.1.2 Termination by Mutual Agreement

The Agreement shall terminate at any time following written agreement between the CONCESSIONAIRE and the GRANTOR, with the REGULATOR's technical opinion and consulting the Permitted Creditors.

15.1.3 Termination by Concessionaire Breach or Abandonment

The Agreement shall terminate in advance in case the CONCESSIONAIRE incurs in serious breach of its contractual obligation. The following, among which are causes expressly pointed out in the Agreement, shall be considered as causes for serious obligation breach, notwithstanding the corresponding penalties:

- a) Insolvency, dissolution, liquidation, bankruptcy representation, or appointment of administrator on the CONCESSIONAIRE's side, as per the legal regulations on the matter. In these cases, the Contract resolution shall occur when the REGULATOR learns about the insolvency, dissolution, liquidation, bankruptcy or others foreseen in this clause and notifies in that regard, provided that these occurrences have not been cured pursuant to the law within the sixty (60) Calendar Days that follow said notification, or within a longer term the REGULATOR might have fixed in writing, which shall be granted when there are reasonable causes, except if it is proved that the insolvency, dissolution, liquidation, bankruptcy representation or administrator appointment has been fraudulent.
- b) Not attending the Concession Assets Reception/Possession Taking in the term and modality foreseen to that effect.
- c) The serious disturbance of the environment, historical heritage and/or natural resources, as a result of not following the recommendation of the Environmental Impact Assessment.
- d) Committing any criminal breach by the CONCESSIONAIRE's personnel that may derive in a commission of public action crime against the User, the GRANTOR and/or REGULATOR.
- e) Transferring the CONCESSIONAIRE's rights, as well as assigning his contractual position without prior written authorization by the GRANTOR.
- f) Starting, by recommendation of the CONCESSIONAIRE, a corporate, administrative or judicial process for its dissolution or liquidation.
- g) The CONCESSIONAIRE's breach concerning granting or renewing the Performance Bond or the insurance policies required in the Agreement herein or if any of them were issued in terms and conditions different from those agreed herein.
- h) Disposing of the Concession Assets differently from what the Agreement foresees by the CONCESSIONAIRE, without prior written authorization by the GRANTOR.

- i) Filing of a consented or executed judicial order for causes attributable to the CONCESSIONAIRE that prevent him from carrying out a substantial part of his business or if the order imposes an embargo, encumbrance or sequestration that totally or partially affects the Concession Assets or a substantial part of them by the CONCESSIONAIRE and if any of these measures is in effect for more than sixty (60) Calendar Days.
- j) Committing, by the CONCESSIONAIRE of three (3) or more serious infractions, as per the regulations approved by the REGULATOR in a twelve-month term (12), or six (6) or more serious infractions in thirty six (36) months.
- k) Partial, tardy or defective compliance not justified to the REGULATOR's satisfaction, by the CONCESSIONAIRE in Port Infrastructure Building and Exploitation exceeding the maximum terms set forth for the application of penalties due to a default or for security concerning determined agreements.
- l) Not supplying the service, due to CONCESSIONAIRE's responsibility, for three (3) consecutive Days and/or six (6) non consecutive Days in a term of one (1) month.
- m) Non compliance with the Strategic Partner participation rules as per Section III of the Agreement.
- n) Three (3) consecutive non compliances and five (5) non consecutive non compliances in Payment of the monthly account within one year term.
- o) Not curing the Services and Standards Commissioning in the established terms according to what is pointed out in Section VI of the Agreement herein.
- p) No financial structuring due to the CONCESSIONAIRE's responsibility as per the Building Economic Regime of Section VI, in the Agreement herein.

The application of causes referred to in the last three sub-sections is among the GRANTOR's powers, following the REGULATOR's opinion, which shall be issued in no more than 30 days.

15.1.4 Termination by the GRANTOR Breach

The CONCESSIONAIRE may terminate the Agreement in advance in case the GRANTOR incurs in serious breach of his obligations as follows:

- a) Unjustified breach by the GRANTOR of the procedure foreseen for reestablishing the economic-financial balance pursuant to Section VIII of the Agreement herein.
- b) Unjustified GRANTOR's breach in maintaining the common works at the Callao Port Terminal, so that it drastically reduces efficiency or operations, harming the CONCESSIONAIRE.

15.1.5 The GRANTOR's Unilateral Decision

For duly grounded public interest reasons, the GRANTOR is authorized to resolve the Concession following prior written notification to the CONCESSIONAIRE no less than six (6) months before the term foreseen for termination. He shall notify of said decision to the Permitted Creditors in equal terms.

Said communication shall also be subscribed by the competent State of the Republic of Peru organ in charge of such public interest issue.

Along said six (6) months, the CONCESSIONAIRE shall not be obliged to comply with the obligations concerning additional investments established in the Agreement herein, except Routine Maintenance.

15.1.6 Force Majeure or Act of God - Concessionaire's Unilateral Exit

The CONCESSIONAIRE may have the option of exiting the agreement unilaterally due to Force Majeure or Act of God events provided that it is verified that any of the following events are verified, which must have produced a certain, current and definable damage, that is duly grounded and certified and caused by an inevitable event out of reasonable control by the CONCESSIONAIRE, who, in spite of all the efforts he may make to mitigate its effects, cannot prevent a non-compliance situation as direct and necessary consequence of said event:

There is a Force Majeure or Act of God event whenever an event, condition or circumstance with an extraordinary, unforeseeable, and irresistible nature, which cannot be attributed to the Parties, occurs, which: (i) prevents any of the Parties from complying with the obligations under their charge or causing partial, tardy or defective compliance for a term of more than six (6) continuous months; and, (ii) whenever they cannot cater for more than 50% (fifty percent) of the TEUs recorded in the last twelve (12) months. Damage must be certain and current, duly grounded and certified, caused by an inevitable event out of the reasonable control of the Party invoking the cause, who, in spite of the efforts he might make to prevent or mitigate this effect, cannot prevent the non-compliance situation, as a direct and necessary consequence of said event. In case a Force Majeure or Act of God occurs, the Parties agree that, except if they agree in writing to grant an event curing term, the Agreement shall be automatically resolved:

The following shall be considered as specific Force Majeure or Act of God cases:

- a) Any external act of war (declared or not declared), invasion, armed conflict, revolution, blockage, mutiny, insurrection, civil unrest, terrorist acts or civil war, preventing compliance with the Agreement.
- b) Total destruction of the works by nature's acts such as earthquakes, tremors, volcanic eruption, tsunamis, typhoons, hurricanes, cyclones, landslides or any other nature or atmospheric disturbances with those characteristics.

- c) Eventual total destruction of the works or damages to the assets that may result in their total destruction and the impossibility of recovery, caused by any public authority due to causes that cannot be attributed to the CONCESSIONAIRE.
- d) Findings of archaeological remains of such magnitude that prevent the CONCESSIONAIRE to definitely comply with the obligations under its charge.
- e) Any work stoppage or strike of workers that do not keep a labor relationship with the CONCESSIONAIRE, and which directly affects the CONCESSIONAIRE for causes beyond his reasonable control or that are unforeseeable.

15.1.7 Other Causes that may not be Attributable to the Parties

Not executing obligations or partial, tardy or defective compliance due to causes that cannot be attributed to the Parties different from Acts of God, shall produce Agreement resolution only if their execution becomes impossible. Only if their execution becomes impossible, the harmed Party loses interest in it or it is not any longer useful for the Party, and after direct dealings referred to in Section XVI are ruled out.

PROCEDURES TO CURING

- 15.2 Non-compliance due to cause attributable to one of the Parties shall entitle the affected Party to resolve the Agreement and request compensation for damages, as per the liquidation procedure described in the Section herein. The breaching Party shall have a thirty (30) Calendar Day term that can be extended for thirty (30) additional Calendar Days counted from the reception date of the request to cure said breach situation, except different term established in the Agreement for expressly granted extension in writing by the Party that enforces his resolution rights.

PROCEDURE TO DEFINE THE MAXIMUM APPROVED BUDGET FOR TERMINATION

- 15.3 To determine the Base Maximum Approved Budget for termination (PMAB, in Spanish), the following are considered:
- a) For Works, Equipment and Minimum Complementary Investment, the lower amount shall be considered between the Works Budget submitted by the GRANTOR in his Detail Engineering Project and the Works and Equipment Official Estimated Budget.
 - b) One hundred percent (100%) shall be added to the Additional Complementary Investment (ICA, in Spanish) effectively paid by the CONCESSIONAIRE.
 - c) One hundred percent (100%) of the process expenditure effectively paid by the CONCESSIONAIRE shall be added.

- 15.4 If termination occurs before building started, the Maximum Approved Budget for termination (PMA), the amount resulting from sub-sections b) and c) of the preceding clause shall be considered.
- 15.5 If termination occurs at the building stage, the Maximum Approved Budget for termination (PMA) shall be considered as the amount resulting from applying the works progress percentage amount resulting from sub-section a) of clause 15.3, to which sub-sections b) and c) of the same clause shall be added.

To define the works progress percentage, the following procedure shall be applied:

Within the thirty (30) Days that follow notification of termination to the CONCESSIONAIRE, it shall certify before the GRANTOR the broken down amount of the investments made in the Works.

To define the amount of investment made to the Agreement Termination date, the following shall hold:

- a) The CONCESSIONAIRE shall submit the corresponding liquidations, duly verified by the Works Supervisor;
 - b) The Works Supervisor shall have a fifteen (15) Day term to submit any observation. Once said term elapses, the liquidation shall be understood as conformant.
 - c) The CONCESSIONAIRE shall have (15) Days to raise any of the Works Supervisor's observations or to modify the liquidation.
 - d) The Works Supervisor shall calculate the works progress percentage obtained by the amount of the investment made within the Works Budget submitted by the GRANTOR in his Detail Engineering Project.
- 15.6 If termination occurs once the building stage is completed, the Maximum Approved Budget for termination (PMA) shall be calculated as follows:
- a) The weighted average cost of the different capital sources shall be calculated as:

$$r = \% D * k_d * (1 - T) + \% C * k_e$$

Where:

- r = weighted average cost of different capital sources
 %D = debt percentage as proportion of one, calculated as a function of the Permitted Guaranteed Indebtedness, concerning PMAB obtained in clause 15.3
 k_d = Monthly Effective Permitted Guaranteed Indebtedness Rate

T = Income Tax Rate

%C = Capital Percentage, in proportion for one, 1- %D

ke = Monthly Return Effective Rate for the investor. It varies as per the termination cause and is specified in clauses 15.15 al 15.17

- b) Based upon the Works Budget submitted by the GRANTOR in his Detailed Engineering Project, the percentage composition represented by both infrastructure works and equipments is calculated.
- c) Applying the percentages obtained in the former sub-section referred to the Works, Equipment and Minimum Complementary Investment accepted budget of sub-section a) in clause 15.3, we obtained the Budgetary Limits per type of investment in Infrastructure and Equipments. The investment in infrastructure shall be sub-divided as per the work progress percentages during construction with a regularity of no more than six (6) months by means of a procedure similar to the one established in clause 15.5. If we add cash investment specified in sub-sections b) and c) of clause 15.3, we obtain the Budgetary Limits per type of Investment (Li).
- d) Each Budgetary Limit (Li) shall become monthly installments according to the following formula (or its equivalent, the function PAYMENT in Excel):

$$C_{Li} = Li * \left[\frac{r * (1 + r)^n}{(1 + r)^n - 1} \right]$$

Where:

C_{Li} = Equivalent monthly installment of each Budgetary Limit

Li = Budgetary Limit of each type of investment obtained in the former sub-section

R = Weighted average cost of the different capital sources as per sub-section a) of the clause herein

N = Number of months between the investment and the asset's economic life:

- i. For infrastructure: Number of months between the calculation date for works progress and total concession term.
- ii. For Machinery, Furniture and Equipment: Number of months between investment and equipment useful life.
- iii. For other assets: Number of months between investment and total concession term.

- e) Once termination occurs, the present value of installments required to cover C_{Li} from termination to the initially stipulated end of term, shall be calculated according to the following formula (or its equivalent, VA functions in Excel).

$$VA_{CLi} = C_{Li} * \left[\frac{(1 + r)^{n1} - 1}{r * (1 + r)^{n1}} \right]$$

Where:

| | | |
|------------|---|---|
| VA_{CLi} | = | Current Value of the installments needed to cover C_{Li} |
| C_{Li} | = | Equivalent monthly installments of each Budgetary Limit |
| R | = | Weighted average cost of the different capital sources as per sub-section a) of the clause herein |
| $n1$ | = | Number of months between termination and the final term with which n was calculated in the abovementioned sub-section |

- f) The amount resulting from adding each Li Current Values shall be considered as Maximum Approved Budget for termination (PMA).

In case of future expansion, the same logic proposed in the clause herein shall be followed.

TERMINATION EFFECTS

- 15.7 Concession Termination results in the CONCESSIONAIRE's obligation to return all the areas comprised within the Concession Area, as well as the Concession Reversible Assets to the GRANTOR, as per Section V.

Sixty (60) Calendar Days before Concession Term expiration, the final inventory of assets shall be started, with the participation of the REGULATOR and it must be included ten (10) Calendar Days before the Concession term expiration date.

In case of a mutually agreed termination, the final inventory shall make part of this agreement as an annex of the Agreement to be subscribed to that effect.

Sixty (60) Calendar Days before the curing term elapses in cases of resolution due to non-compliance, the final asset inventory shall be started with the REGULATOR's participation and it shall be concluded ten (10) Days before the curing term is due.

In case curing occurs before the term elapses, the inventory shall be automatically suspended. If it has been completed, it will have no effect.

- 15.8 Once the Concession is terminated, the CONCESSIONAIRE's activity ceases and his right to exploit the port infrastructure expires. This right is reassumed by the GRANTOR notwithstanding acknowledgment of rights corresponding to the Permitted Creditors as established by Section X of the Agreement herein.

Likewise, all agreements referred to in Section XIII of the Agreement herein, expire, except for those the GRANTOR has expressly decided to keep current and about which he has assumed the CONCESSIONAIRE's contractual position.

- 15.9 Once the Concession Termination occurs, the GRANTOR or the new CONCESSIONAIRE appointed by him shall be charged with the operation and the REGULATOR shall be in charge of carrying out the final liquidation pursuant to the term of the Section herein.

PROCEDURES FOR TERMINATION

- 15.10 The Agreement shall be resolved and the Concession shall terminate in full right provided that the Parties, as per each case, have previously complied with all their obligations and procedures foreseen in the Agreement herein concerning Agreement resolution or Concession termination, including, but not limited to, the obligations of notifying and the right of curing by the Permitted Creditors referred to in Section X.
- 15.11 Any warning, requirement and/or decision of Agreement resolution the Parties may file, shall be reported to the REGULATOR and the Permitted Creditors at the same time, so that they can take any measure they deem necessary to protect their interests and/or to profit from the Concession's continuity and clearance. This notification shall be made sixty (60) Calendar Days in advance of the date foreseen for anticipated termination concerning the Agreement resolution.
- 15.12 Concession Termination, in full right, shall occur by the sole merit of the Party or REGULATOR initiative as per each case:
- (i) When the term fixed in Clause 15.2 elapses and the infringing Party has cured non-compliance to the satisfaction of the damaged Party; or
 - (ii) At reception by the CONCESSIONAIRE of written communication in which the GRANTOR reports him his decision of revoking the Concession as per Clause 15.1.5, except different provision in the Section herein or special term granted by communication.
 - (iii) Other Concession Termination Cases.

AGREEMENT LIQUIDATION

LIQUIDATION DUE TO AGREEMENT EXPIRATION

- 15.13 When the Concession Termination occurs, because the agreed term has expired, the liquidation shall not consider consideration or compensation for the investments in Works and facilities in the land comprised within the Concession Area, as well as for the Reversible Assets, or any compensation amount for eventual damages that Concession Termination may generate for any of the Parties.

LIQUIDATION BY MUTUAL AGREEMENT

- 15.14 If the Agreement terminates due to mutual agreement between the Parties, this agreement shall contain the Concession liquidation mechanisms. To that effect, the time elapsed since Agreement Subscription, the investment not amortized amount, the Works and facilities in the land comprised in the Concession Area, the Concession Assets value, still to be depreciated, and the existing circumstances on the date in which the Parties make this decision, shall be considered as criteria to

determine the liquidation mechanism. No compensation amount shall be considered for damages the Concession Termination may imply for the Parties.

For this procedure, the REGULATOR shall take into account the opinion of the Permitted Creditors who are effectively financing the Concession when the Termination Agreement occurs.

LIQUIDATION BY CONCESSIONAIRE NONCOMPLIANCE

15.15 If the contract resolution or Concession termination occurs due to the CONCESSIONAIRE's responsibility, the GRANTOR shall execute the corresponding Performance Bond. It is understood that the GRANTOR is expressly authorized to charge and retain the guarantee amount with no right to any reimbursement to the CONCESSIONAIRE.

The GRANTOR will acknowledge the CONCESSIONAIRE at most the Maximum Approved Budget for termination (PMA), less the CONCESSIONAIRE's liquidation or rescue.

For this case, Rate Ke of subsection a), clause 15.6 shall be XX% equivalent to a financial rate acceptable for the State.

g) In a term no longer than one (1) year, payment shall be made according to the mentioned order for the case of rescue, clause 15.18. If any balance remains for the CONCESSIONAIRE (SC, in Spanish) it shall be converted in monthly installments according to the following formula:

$$C_A = SC * \left[\frac{r * (1 + r)^{n1}}{(1 + r)^{n1} - 1} \right]$$

where:

- C_A = monthly installment to be paid to the CONCESSIONAIRE.
- SC = Balance in favor of the CONCESSIONAIRE
- r = Monthly effective rate used in subsection a) clause 15.6.
- $n1$ = Number of months between termination and Concession term.

Notwithstanding the corresponding sanctions, the monthly payment referred to in the preceding subsection could be suspended or cancelled if serious irregularities are found in infrastructure construction

LIQUIDATION BY THE GRANTOR NONCOMPLIANCE OR UNILATERAL DECISION

15.16 If the Concession termination occurs due to rescue, revoking or causes that can attributed to the GRANTOR, he shall pay the CONCESSIONAIRE directly and for a single time, in no more than one (1) year counted from the date in which the contract resolution occurred, a compensation equivalent to the maximum Approved Budget for termination (PMA), less the CONCESSIONAIRE's liquidation or rescue.

For this case, Rate Ke of subsection a), clause 15.6 shall be YY% equivalent to an acceptable return rate for the capital.

LIQUIDATION BY FORCE MAJEURE OR ACT OF GOD OR OTHER CAUSES NOT ATTRIBUTABLE TO THE PARTIES

15.17 To exercise the power considered in the clause herein, the CONCESSIONAIRE must observe the following procedure:

- a) The CONCESSIONAIRE shall report, through an official report, to the GRANTOR and the REGULATOR the occurrence of some of the aforementioned circumstances within the thirty (30) Calendar Days following occurrence of same. Such report shall contain:
 - o A grounded description of the cause invoked and its economic or juridical effects.
 - o A proposal of the procedure to be followed to terminate the Agreement.
- b) Such proposal must be submitted to the GRANTOR, the REGULATOR and the Permitted Creditors, who will have a twenty (20) day term to make their observations.
- c) In case there are discrepancies related to the procedure proposed by the CONCESSIONAIRE, they shall be submitted to an Arbitrator established in Section XVI of the Agreement herein.

In case the CONCESSIONAIRE exercises the option herein, he shall receive compensation as a payment for the works and services supplied similar to that obtained in case of noncompliance by the CONCESSIONAIRE, explained in the aforementioned clause.

PROCEDURE FOR RESCUE IN CASE OF AGREEMENT RESOLUTION

15.18 The procedure below shall be followed if the GRANTOR invokes Concession Agreement resolution for any reason, except for what is foreseen in the cases of termination due to term expiration and mutual agreement termination:

- a) The REGULATOR shall name a corporation to act as administrator, who will be in charge of Exploiting the Concession and shall comply with the CONCESSIONAIRE's obligation while his replacement by a new CONCESSIONAIRE corporation occurs. The REGULATOR will be obliged to transfer the Concession, the CONCESSIONAIRE's rights, as well as all the Concession assets and liabilities committed in it, including the Permitted Guaranteed Indebtedness.
- b) The CONCESSIONAIRE shall be replaced by a new CONCESSIONAIRE corporation through public bid, called by the GRANTOR, according to the following:
 - i) The public bid and Concession award to the new CONCESSIONAIRE corporation shall take place in the maximum term of one (1) year counted from agreement resolution or Concession termination.
 - ii) The Awardee shall be the one submitting the best economic proposal for the economic use of the Concession assets according to a competition factor determined by the GRANTOR on a timely basis.
 - iii) The new CONCESSIONAIRE corporation shall subscribe an agreement with the GRANTOR under the same terms of the agreement herein, due to which they shall unconditionally assume all rights and obligations of the CONCESSIONAIRE corporation as per the agreement herein.
 - iv) The Concession shall be transferred to the new CONCESSIONAIRE corporation as a whole and establishing an economic unit, so that the Concession assets may continue being used by the new CONCESSIONAIRE corporation to supply the corresponding Concession services uninterruptedly.
- c) The GRANTOR is obliged to pay, with the resources referred to in chapter ii) following the public bid for choosing the new CONCESSIONAIRE corporation, the following obligations in the order herein:
 - i) The CONCESSIONAIRE's labor liabilities;
 - ii) The amounts of money that shall be paid to the entities that had granted qualified credit as Permitted Guarantee Indebtedness;
 - iii) Taxes, except for those guaranteed by Applicable Laws and Provisions;
 - iv) Any fine or other penalty not satisfied by the CONCESSIONAIRE.
 - v) Any other CONCESSIONAIRE liability in favor of the GRANTOR;

- vi) Expenditures derived from convoking and executing the public bid referred to in the clause herein;
- vii) Any other liability the CONCESSIONAIRE may have vis-à-vis third Parties in connection with the Concession provided that said liabilities do not derive from obligations hired with companies related to the CONCESSIONAIRE.

In case the preceding figure has been paid with funds coming from the payment of the new CONCESSIONAIRE corporation, the balance, if any, shall be given to the CONCESSIONAIRE without exceeding the Maximum Approved Budget for Termination (PMA).

15.19 The payment obligations established in this subsection shall not be demandable in case the new CONCESSIONAIRE corporation has entered into an obligation assumption agreement with the creditors, including the Permitted Creditors.

In exceptional cases, where there is Concession suspension or Concession termination, so as to prevent total or partial stoppage of service, the Regulator may temporarily hire the services of specialized individuals or corporations to totally or partially operate the Concession for no more than one calendar year until a new Concession agreement is subscribed.

SECTION XVI: DISPUTE SETTLEMENT APPLICABLE LAW

16.1.- The Agreement shall be ruled and interpreted according to the applicable law. Therefore, it express that the content, execution, conflicts and other consequences coming from it shall be ruled by said legislation, same which the CONCESSIONAIRE declares to know.

APPLICATION SCOPE

16.2.- This section regulates the settlement of disputes generated during the Concession and those related with the agreement resolution and Concession termination.

INTERPRETATION CRITERIA

16.3.- In case there is divergence in interpreting this agreement, the Parties should follow the order below to settle that situation:

- a) The Agreement; and,
- b) The tender documents.

16.4.- The Agreement is solely subscribed in Spanish. If there is any difference between the agreement translation and it, the Spanish text of the agreement shall prevail. Translation of this agreement shall not be considered for the purpose of its interpretation.

16.5.-The established terms shall be computed in days, months or years as corresponds.

16.6.- The titles contained in the Agreement have a sole purpose of identification and shall be considered as part of the Agreement to limit or expand its contents or to determine the Parties' rights and duties.

The terms in singular include the same terms in plural and vice versa. The terms in masculine include the terms in feminine and vice versa.

16.7.- The use of the disjunction "or" in an enumeration shall be understood as comprising exclusively some of the elements of such enumeration.

16.8.- The use of the conjunction "and" in an enumeration shall be understood as comprising all the elements of such enumeration or list.

16.9.- All the revenues, costs, expenses and similar the CONCESSIONAIRE might be entitled to for supplying the services shall be charged in the corresponding currency pursuant to the applicable laws and provisions and to Agreement terms.

WAIVER OF DIPLOMATIC CLAIMS

16.10.-The CONCESSIONAIRE and his partners expressly, unconditionally and irrevocably waive any diplomatic claim for controversies or conflicts that may arise from the Agreement.

DEFINITION OF PARTIES FOR THE SECTION HEREIN

16.11.- For the purpose of the entire Section XVI, when the Parties are mentioned, this term shall indistinctly comprise the CONCESSIONAIRE and the GRANTOR, the conflicts referred to in the section herein may arise between the CONCESSIONAIRE and the GRANTOR.

DIRECT DEALING

16.12.-The Parties declare it is their will that any conflict or any uncertainty that has juridical relevance and may arise regarding the interpretation, execution, compliance and any aspect related to the existence, validity or effectiveness of the agreement or Concession termination (except as referred by the applicable regime to the Standard Rate Index, regulated by the Regulator which claim solution is the administrative channel or other decisions by this organ while exercising its administrative functions) shall be settled by direct dealing between the implied Parties within 15 Days term counted since the day in which one of the Parties communicates the other in writing the existence of a dispute or an uncertainty that has juridical relevance.

The term referred to in the preceding paragraph can be extended by joint decision of the Parties, an agreement that shall be made in writing, provided there are real possibilities that, if there were this additional term, the dispute would be settled through direct dealing.

In case the Parties, within the direct dealing term, did not settle the dispute or uncertainty arisen, they will define it as a technical or non-technical dispute or uncertainty, as per the case. The technical disputes or uncertainties (each one "Technical Dispute") shall be solved pursuant to the procedure stipulated in Clause 16.13 a). The disputes or uncertainties which do not have a technical character (each one "Non-Technical Dispute") shall be solved pursuant to the procedure stipulated in Clause 16.13. b). In case the Parties did not agree within the direct dealing term concerning the fact that the dispute or controversy arisen is a technical dispute or non-technical dispute, then said dispute or uncertainty shall be considered as a non-technical dispute and will be solved according to the respective procedure foreseen in Clause 16.13 b).

When the Parties do not agree about the nature of the dispute, both Parties shall ground their position in a written communication they will send their counterpart. In said communication they shall explain the reason for which they consider that the controversy has a technical or a non-technical character. In these cases, as long as the Parties do not reach an agreement concerning the nature of the dispute, it shall be settled by an Arbitrator appointed by the Parties to the agreement.

ARBITRATION

16.13.-Arbitration procedure modalities:

- a) Conscience Arbitration.- Each and every one of the Technical Disputes that may not be directly resolved by the Parties within the direct dealing term

shall be submitted to conscience arbitration as per Article 3 of the Peruvian General Arbitration Law, in which the arbitrators shall settle according to their best knowledge and understanding. Arbitrators may be domestic or foreign experts, but in all cases, they shall have broad experience in the respective technical controversy subject and shall not have any conflict of interests with any of the Parties when they are appointed as arbitrators and afterwards.

The Arbitration Court may request the Parties to provide the information it deems necessary to settle the technical dispute to be settled and the result is that it can submit the Parties a conciliation proposal which may or may not be accepted by them. The Arbitration Court may use all the proofs and request from the Parties or third Parties any proof it considers necessary to settle the formulated claims. The Arbitration Court shall prepare a preliminary decision that it will notify to the Parties within the thirty (30) Days that follow their installation, and the Parties will have a five (05) day term to prepare and submit their comments to the court concerning said preliminary decision. The Arbitration Court shall issue its final decision on the technical dispute that arose within ten (10) days following reception of comments of the Parties to its preliminary decision or at expiration of the term to submit such comment, whatever occurs first. The procedure for settling a technical dispute shall take place in the city of Lima, Peru. Exceptionally, and due to the specific case nature, the arbitration court may be taken to another locality solely with the aim of proving with an expertise, and ocular inspection and any other proof necessary to be verified in other locality, for a term no longer than ten (10) days.

Court members shall keep absolute reserve and maintain confidentiality on all the information they learned because of their participation in settling a Technical Dispute.

- b) Law Arbitration.- Non technical disputes shall be solved through a law arbitration, pursuant to Article 3 of the Peruvian General Arbitration Law, procedure by which the arbitrator shall settle that dispute according to the Peruvian law applicable. The arbitration by law may be local or international as per the following:

- (i) When Non-technical disputes involve an amount that exceeds Five Million Dollars of the United States of America (US\$ 5 000 000.00) or their equivalent in domestic currency, or the Parties do not agree on

the amount of the disputed matter, disputes may be settled by any foreign law arbitration, through a procedure followed with the conciliation and arbitration rules of the International Center for Settlement of Investment Disputes ("ICSID"), established in the Agreement on Settling Investment Disputes between the State and Nations of other States approved in Peru through Legislative Resolution N° 26210, to which regulation the Parties submit unconditionally.

To the effects of proceeding with the international law arbitration, as per ICSID's arbitration rules, the GRANTOR, on behalf of the State of the Republic of Peru declares that the CONCESSIONAIRE be considered as a "national from another contracting State" for being subjected to foreign control as per subsection b) Number 2, Article 25 of the agreement on Settlement of Investment Disputes between States and nationals of other States and the CONCESSIONAIRE accepts to be considered as such.

The arbitration shall take place in the city of Washington D.C., United States of America and shall be conducted in Spanish. The arbitration decision must be issued within sixty (60) days following the arbitration court installation. Exceptionally, the decision may be issued outside this term when the arbitration court considers it indispensable to present proofs such as expertise or ocular inspection outside the city where the arbitration procedure takes place, for a term no longer than ten (10) days.

If for any reason, ICSID decided not be competent or declines assuming the arbitration submitted to them by virtue of the section herein, the Parties accept beforehand to subject to UNCITRAL arbitration rules any non technical dispute which (a) amount to more than Five Million Dollars of the United States of America (US\$ 5 000 000.00) or their equivalent in domestic currency, or (b) the Parties do not agree on the disputed amount. In that case, arbitration will take place in Lima Peru.

Otherwise, the Parties may agree to submit the dispute to a different jurisdiction than ICSID if they so deem convenient.

The Parties express their anticipated and irrevocable consent to submit any dispute of this nature to any of the arbitration courts mentioned in the preceding paragraph.

- (ii) The Non-Technical Disputes in which the involved amount is equal or less than Five Million Dollars of the United States of America (US\$ 5 000 000.00) or their equivalent in domestic currency and those purely law disputes that are not measurable in money, shall be settled through law arbitration by means of a procedure conforming with the conciliation and arbitration regulation of the National and International Arbitration Center of the Chamber of Commerce of Lima, to which regulations the Parties unconditionally subject, and first the Peruvian General Arbitration Law and then the Civil Procedural Code of Peru can be applied as complement.

Arbitration shall take place in the city of Lima Peru and shall be conducted in Spanish. The corresponding arbitration decision must be issued within sixty (60) days following the arbitration court installation. Exceptionally, the decision may be issued outside this term when the arbitration court considers indispensable to present proofs such as expertise or ocular inspection outside the city where the arbitration procedure takes place, within a term of no more than ten (10) days.

COMMON PROCEDURAL RULES

16.14.-Both for the Conscience Arbitration referred to in Clause 16.13 a) and for the Law Arbitration referred to in Clause 16.3 b) whether in its international or domestic modality, the following general provisions shall equally apply:

- a) The Arbitration Court shall be made up of three (03) members. Each party shall appoint an arbitrator and the third shall be appointed by agreement of the arbitrators appointed by the Parties who in turn shall act as President of the Arbitration Court. If the two arbitrators do not reach an agreement on the appointment of the third arbitrator within ten (10) days following the second arbitrator appointment date, the third arbitrator shall be appointed, following request of any of the Parties by the Chamber of Commerce of Lima, in the case of the conscience and domestic law arbitration or by ICSID in the case of internal law arbitration. If one of the Parties does not appoint its respective arbitrator within ten (10) days counted from the respective appointment request reception date, it shall be considered that the Party has waived his right and the arbitrator shall be appointed by the Chamber of Commerce of Lima or by ICSID, as per the case, by request of the other Party.

- b) Arbitrators may solve any difference or gap in the legislation or in the agreement as per their judgment, by applying the law's general principles.
- c) The Parties agree that the decision issued by the Arbitration Court shall be definitive and non appealable, in this regard, the Parties shall consider it as a last instance decision, with the authority of judged matter. Consequently, the Parties waive every replacement, appeal, annulment, cassation or any other challenging means against the arbitration decision, declaring that it shall be mandatory, of definitive compliance and immediate execution, except in the case foreseen inclusively in Article 73 of the Peruvian General Arbitration Law.
- d) Along arbitration, the Parties shall continue performing their contractual obligations to the extent possible, including those referred to the arbitration. If the arbitration matter were the breach of obligations guaranteed by the Performance Bond, as applicable, the respective term will be suspended and such guarantee may not be executed for the reason that caused the arbitration and shall be kept effective along the arbitration procedure.
- e) All the expenditures the settlement of a Technical or Non-technical dispute causes, including the arbitrator fees, shall be covered by the losing party. The same rule applies in case the claiming or counterclaiming party yields or acknowledges the claiming or counterclaiming pretension. The claiming or counterclaiming party shall assume all the expenses if he abandons his pretension. In case the procedure ends without a decision on the content of the pretensions due to transaction or conciliation, the referred expenses shall be covered in equal parts by the claiming and the counterclaiming parties. Costs and expenditures such as advisor fees, internal cost or other attributable to an individual Party are excluded from what is provided in this Section.

SECTION XVII: AMENDMENTS TO THE AGREEMENT

17.1.- Every amendment, addition or modification request concerning the agreement herein shall be submitted to the REGULATOR with a copy to the other party including due ground. The GRANTOR or the CONCESSIONAIRE shall solve the request taking into account the Regulator's opinion. The amendment agreement shall be mandatory for the Parties only if made in writing and signed by the Parties' duly authorized representatives.

As per article 33 of the TUO Regulation, the GRANTOR may modify the agreement herein, following agreement with the CONCESSIONAIRE, when necessary, respecting as possible its nature, the economic and technical conditions

contractually agreed to and the economic financial balance of provisions in charge of the Parties.

Considering the preceding paragraph, the Parties expressly agree that the GRANTOR may amend the agreement herein following agreement with the CONCESSIONAIRE and with prior opinion of the REGULATOR, provided it is necessary and duly grounded:

- i) Permit the CONCESSIONAIRE to obtain the Permitted Guaranteed Indebtedness; or
- ii) Relate the agreement with the nature of the guarantee granted through the Permitted Creditors pursuant to Section X herein; or
- iii) Adapt the agreement to technological changes or new circumstances that may occur along the Concession term or its extensions and that the Parties may not have reasonably known or foreseen on the Agreement Subscription Date.

SECTION XVIII: Domiciles

FIXING

18.1.- Except as otherwise expressed, mentioned in the agreement herein, all the modifications, summons, petitions, demands, claims and other communications related to the agreement shall be made in writing and shall be considered as validly made when they have a respective reception proof or when sent by courier, by telex or by fax or if reception has been verified to the following addresses:

If it is addressed to the GRANTOR:

Name: ___
Address: ___
To: ___

If it is addressed to the CONCESSIONAIRE

Name: ___
Address: ___
To: ___

If it is addressed to APN:

Name: Autoridad Portuaria Nacional
Address:

To:

If it is addressed to the REGULATOR:

Name: Organismo Supervisor de la Inversión en Infraestructura de
Transporte de Uso Público – OSITRAN

Address: Torre del Centro Cívico, Av. Bolivia 144, Piso 19, Lima, 1

To: General Manager

DOMICILE CHANGE

18.2.- Every domicile change shall be communicated in writing to the other party in the agreement and to the REGULATOR at least 15 Calendar days in advance within Lima or Callao. This new domicile shall be fixed complying with the preceding section's requirements.

SECTION XIX: FORCE MAJEURE

FORCE MAJEURE EVENTS

19.1.- For the purpose of this agreement, there shall be a Force Majeure or Act of God situation when there is an event, condition or circumstance that cannot be attributed to the Parties, preventing any of them from complying with the obligations under their charge or causing total or partial noncompliance, or tardy or defective compliance. The event shall be beyond reasonable control of the Parties invoking said cause, who in spite of all the reasonable efforts to prevent it or to mitigate its effects, cannot prevent total, or partial noncompliance or defective compliance.

Force Majeure includes but is not limited to the following:

- (i) Any external, internal or civil acts of war (declared or not declared), invasion, armed conflict, blockage, revolution, mutiny, insurrection, civil turmoil or terrorist act.
- (ii) Any work stoppage or worker strike directly affecting the CONCESSIONAIRE for causes beyond his reasonable control or which are unforeseeable.
- (iii) Any earthquake, flood, hurricane, tornado, electric storm, fire, explosion or similar event provided it directly affects the Concession assets total or partially.

- (iv) Partial destruction of the Port infrastructure and/or the New Container Terminal due to an external event that cannot be attributed to the CONCESSIONAIRE, which repair would demand an investment higher than ten percent (10%) of the Work Official Estimated Budget, provided that the damage has not been covered by the insurances referred to in Section XI.
- 19.2.- By request of any of the Parties, the REGULATOR shall qualify an event or fact as Force Majeure. The REGULATOR must issue his decision in a term of no more than 30 Calendar Days counted from the date the qualification request was submitted. Once the REGULATOR certifies the Force Majeure event, he will have a term of 30 Calendar Days to pronounce itself on the Concession suspension term.
- 19.3.- The obligations affected by a Force Majeure fact, as well as the agreement term shall be automatically suspended as from the occurrence of the Force Majeure event and while this event lasts, and the agreement term shall be extended to a term that equals that of the suspension.
- 19.4.- The Force Majeure shall not free the Parties from complying with obligations that are not suspended due to such events.
- 19.5.- The party affected by a Force Majeure event shall report the other party on:
- i) The facts that make up such Force Majeure event, 72 hours after the event occurred or the party learned about it, as per the case; and
 - ii) The total or partial restriction estimated period concerning his activities and the foreseen degree of impact. Additionally, he shall keep the other party informed about the development of such events.
- 19.6.- The Parties shall make their best effort to ensure restart of obligation compliance in the least time possible after the occurrence of such events.
- 19.7.- In case the agreement herein is resolved due to a Force Majeure event, the Agreement liquidation shall be ruled by Section XV.
- 19.8.- For a Force Majeure to be considered as resolution cause, this should prevent any of the Parties from complying with the substantial obligations under their charge or causes partial, tardy or defective compliance during a 12 month period, provided that the damaged party loses interest in it or if it is no longer useful for him and communicates the other party his decision of resolving the agreement.

19.9.- In case one of the Parties did not agree with the event qualification as Force Majeure, he can have recourse to the dispute settlement as per Section XVI.

In witness hereof, the parties hereto have signed the Agreement herein in four identical original copies by _____ in the city of Lima on ____ day of the month of _____ 2006.

By _____, acting as legal representatives:

By APN, acting as representative of the GRANTOR:

UNOFFICIAL TRANSLATION

ANNEX 3
SERVICE AND PRODUCTIVE LEVEL

- **Idle time at berth:** No more than one (1) hour in total, counted from the moment in which the ship is moored to the dock and the start of its embarking operations and from the end of such operations and the starting time for its unmooring.
- **Towing or Untowing Operation Performance:** no less than thirty (30) containers per hour per dock gantry crane, as annual average for each crane, calculated quarterly as summation of all the ships served, as follows:
 - Number of containers moved in the last twelve (12) months/ effective operation accrued time (1) in hours corresponding to the period/ number of cranes in service. It must be equal to or higher than 30.

In the first year of operation, computation shall be by accrued quarters, with an index of no less than 25 containers/ hour.

- **Service time to Users for removing the merchandise:** No more than thirty (30) minutes¹ counted from the time in which the user requests his merchandise removal after having paid the received services and the time in which the Terminal makes it available to him. Once the first six months of operation have elapsed, the Terminal shall hand the merchandise to the user within a term of no more than fifteen (15) minutes.
- **Occupation Rate:** Not higher than a seventy percent (70%) ratio of the berth annual total occupation time and the annual total availability time.

Its estimation defines the time in which the CONCESSIONAIRE shall have the new infrastructure and/or additional equipment operative.

¹ NOTE: Effective operation time is established from the start of loading and unloading operation and when they conclude. If we add “idle time at the berth” the total time of stay at the berth is obtained.

ANNEX 4
MANDATORY TECHNICAL PARAMETERS FOR THE WORKS AND EQUIPMENT

I.-Capacity to serve ships: The terminal must be designed to serve at least 2 ships at the same time during 24 hours per day (on work days, Sundays and holidays).

II.-Dock infrastructure: The terminal must be designed with at least two berths of 300m each one and a minimum water depth of 14 m as compared to the average level of mean low water spring (MLWS). The dock cementation must be ready to dredge operation area at -16 m. as compared to MLWS. At the beginning of operation, the backup area at the dock cannot be less than 145 000 m². Dock cementation shall be made with steel pile, reinforced concrete piles, concrete bins or blocks.

III.-Equipment: The dock must have at least two new gantry cranes per berth, with an effective average annual capacity of 30 containers per hour and per crane. As demand increases and to be able to comply with the service and productivity levels, more cranes shall be conditioned to increase the Terminal's capacity. The terminal shall have at least six (6) cranes within the Concession term. The transfer and yard equipment shall maintain, in capacity and yield the required pace to optimize the logistic chain times. In his technical proposal, the bidder shall detail the characteristics he commits to acquire.

ANNEX 6 REFERENCE TERMS

I. GENERAL ISSUES

The CONCESSIONAIRE shall design, build, maintain and exploit the new container terminal – South Zone. The works shall include at least demolition of dock 9, withdrawal of rubble and obstacles from the sea bottom, dredging of the maritime Concession area, fill up of the backup area, berth and backup area works, inland Concession area works, equipping, maintenance plans for the maritime area, maintenance plans for infrastructure and superstructure civil works, facilities and equipment including the environmental mitigation program.

II. MARITIME WORKS FILE

2.1.- Dredger Selection

In this section the criteria for selecting the dredger, the calculation reports, the hold size if it were the case, the selection of pump and dredging cycle shall be calculated.

2.2.- Descriptive Report

It shall include areas and volumes to be dredged, dump location, general description of the Works to be executed and the predominantly used fill-up materials.

2.3.- TECHNICAL SPECIFICATIONS

They will detail the nature of materials to be dredged, depths, fill-up and liquefaction, slopes, transition areas, dredger possibilities, dredging procedures, quality control, approvals, among others.

2.4.- Metering Grid

It shall be made up based on the necessary headings to execute the Works, including metering in logical building units. The metering grid shall be based on the corresponding calculation reports.

2.5.- Unit Price Analysis

It will be made for each one of the headings making up the dredger value. The Complementary Equipment List to execute the Works shall include the amount, characteristics and power of the equipment.

2.6.- General Execution Schedule

It shall detail the sequence and duration of each heading and total term.

2.7.- Works Blueprints

They shall show at a convenient scale every work to be executed, including type and quality of material to be dredged and procedures to be followed in agreement with technical specifications.

III.- CIVIL WORKS FILES

In this File the CONCESSIONAIRE shall submit the studies and designs of every infrastructure, port and electric, sanitary and every other facility works necessary for the project to be completed within the term foreseen in the Agreement.

3.1.- Design criteria

The CONCESSIONAIRE will take into account the requirements established in the Tender Document, when preparing the detail engineering, considering that the project is localized in a seismic zone and the infrastructure useful life of the berth must be of no less than 50 years.

The CONCESSIONAIRE shall submit the Supervisor the calculation reports of all the project that have structure, electric and sanitary facilities blueprints, studies (soils, hydrographic, power demand, water sources, etc) measurement, etc. that the CONCESSIONAIRE requested from the Consultants responsible for the works design. Detail engineering shall consider calculation of every port infrastructure.

3.2.- Descriptive Report

It shall include the Project location and its nature, generally describing the works to be executed, the procedures and the predominant materials.

3.3.- Technical Specifications

They include the nature of the material to be used, the constructive procedures, stages, quality controls, approvals, payment modalities, etc. that will be used to comply with the correct execution of works and actions corresponding to Supervision.

3.4.- Metering Grid

It will be based on the necessary heading to execute the works including metering in logical building units, so that the Supervisor can revise the Concessionaire's proposal.

3.5.- Unit Price Analysis

It shall be made for each one of the parties making up the works Value. No heading with global or estimated character shall be accepted. Labor, materials, equipments, etc. inputs will be equally detailed in quantities.

3.6.- Works value

It shall be configured in strict agreement between metering, Unit Prices, and overhead.

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3.7.- Minimum Equipment List

It is the indispensable equipment to execute the works; quantity and characteristics of the equipment shall be included.

3.8.- General Execution Schedule

It will detail the execution sequence, duration of each heading and works total execution term..

3.9.- Works Blueprints

They will show at convenient scale all the works to be executed, including type and quality of materials to be used and procedures to be followed in agreement to technical specifications.

IV.- EQUIPMENT TECHNICAL FILE

In this section, the Concessionaire shall submit the studies and designs of the Gantry Cranes he will install at the berths and the complementary equipment he will use in the backup area. Likewise, he shall submit the terminal operations Plan and a model showing he will meet the service and efficiency level established in his proposal

4.1.- Design Criteria

Since the project is located in a seismic zone, the Concessionaire shall submit and support the criteria taken into account to establish capacity, path, exterior reach, back reach, clearance for the containers, hoisting height, distance between butts, base width, number of wheels to support, crane operation weight according with the requirements set forth in the Tender Document and the CONCESSIONAIRE's technical proposal. Special attention shall be given to establish the arm counterweight and the container weight, (spectrum of the last seism occurred in the region).

The Concessionaire shall submit the Supervisor the calculation report of any project that has sanitary, electric, structure etc blueprints.

The Concessionaire must specify the characteristics and numbers of complementary equipment he will use to transport containers from the dock to the backup area and vice versa. Generally, he will point out the type of yard cranes he will use in the backup area.

He will attach the design parameters and spreadsheets of the gantry cranes

metallic structures.

He shall submit the assembly plan for the Gantry cranes and the yard cranes, as well as for the placement of the complementary equipment at the terminal.

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4.2.- Descriptive Report

It shall comply with the general report and that of each one of the specialties.

4.3.- Technical Specifications

They will detail the nature of the material, constructive procedures, engines, power, types, equipment, included measurement standards, measurement units, stages, quality controls, approvals, etc. that will be used to comply with the correct execution of work and supervision actions.

4.4. - Metering Grid

It will be based on the necessary headings to execute each one of the cranes components, and equipment in the backup area, including the number, parts, among others, so that the Supervisor may revise the Concessionaire's technical proposal.

4.5.- Unit Price Analysis

It will be performed for each one of the headings making up the value of the equipment. Inputs, material, equipment, etc. shall be detailed in quantities, and no general estimations shall be accepted. The Value of gantry and yard cranes and complementary equipment shall be configured by metering, Unit Prices and Overhead addition.

4.6.- General Execution Schedule

It will detail the execution sequence, each heading's duration, and the total execution term of the equipment.

4.7.- Works Blueprints

They will show a convenient schedule of the works to be executed concerning the crane and assembly, including type and quality of materials to be used and procedures to be followed in agreement with technical specifications.

The Concessionaire shall be responsible for the mistakes, omissions, defects or failures in the Technical File that give way to additional terms not foreseen by the GRANTOR. Therefore, it is understood that the revision and approval of the Technical File by APN does not exempt him from his responsibility.

The following aspects shall be complied with to carry out the Works:

- The port operations cannot be stopped during execution of works.
- Considering that the works will be built within the Callao port area, the Concessionaire is obliged to make every the relevant coordination with the Callao Port Terminal Management and APN.

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ANNEX 7

CONCESSION WORKS MAINTENANCE PLANS AND PROGRAMS

Introduction

The Port Infrastructure Maintenance Program shall adapt to the type of work, equipment and facility, according to its use intensity, critical character, operation and conditions, and environmental conditions; so as to comply with the minimum services set forth in the Agreement herein.

The criteria for choosing the solutions for the different structures, as well as for choosing the Equipments, are directed towards defining standard equipments or structures and be ready to allocate important amounts for maintenance, including equipment replacement or else acquiring equipment and designing more robust and durable structures.

Based on the preceding paragraph, the Concessionaire shall prepare his Maintenance plans and programs and submit them to APN for their evaluation and approval.

The Maintenance plans and programs shall be aimed at least to the following Port Infrastructure:

1.- Port Equipment:

- Proposing a preventive Maintenance program for the Gantry Cranes and yard cranes as a result of an established Inspection Program.
- The elements to be inspected and inspection frequency.
- Necessary repairs when the equipment is at stoppage.
- Replacement of parts submitted to wearing out, changed at the end of useful life term, independently from the apparent state of repair.
- Proposing a Maintenance Program for the mobile equipment comprising
 - o Cleaning and greasing to prevent wear out and corrosion.
 - o Adjustment to maintain the equipment in the foreseen conditions.
 - o Revision to replace worn out parts on a timely basis.
- Within the Maintenance Plan it shall propose the construction of a workshop with a bridge crane, as well as availability of special tools, ditches, hydraulic hoists, equipment for traction tests, and perform cable verification, among others.

2.- Interior Works:

Proposing a preventive maintenance program for:

- The reinforced concrete works, piles, slabs, beams and other concrete elements of the berths and buildings in the new Terminal.
- Metal Structures (piles are used in the berth, special attention should be given to open air ones that are wetted by the tide)
- Bitts and other mooring elements.
- Office Buildings, paints, waterproofing, water and sewage facilities.
- At Warehouses (light coverage).
- On natural or artificial paving stones, flexible pavements made of asphalted agglomerate or flexible with superficial treatment and rigid concrete pavement (most of the maintenance shall focus on cracks and joints to prevent water from entering interior layers or the reinforcement steel).
- Water networks, valve courses, faucets, leak control, among others.
- High and low voltage power lines, signaling, renewal plans due to breakage or age.
- Electric stations, sub stations and switchboards.
- Telephony and telecommunications services.
- Drain water Network or extraordinary surge drainage water.
- Gantry crane rails.

3.- Exterior Works:

Propose the maintenance program of:

- Operational depth.- knowledge on the sedimentation behavior of the access canal and Port Area.
- Programming of the possible dredging works.
- Aid to navigation.- Buoys course, alignment towers, beacons, change of light lamps and other aids to navigation.
- Shelter works.- Inspection Plans and wave breaker maintenance.

ANNEX 7

Appendix 1: Maintenance Scope

As per Section I, the routine, regular and/or corrective activities aimed at conserving the Concession Assets and required to comply with at least the minimum service levels established in the Agreement herein concerning port operations.

It comprises the following:

Preventive Maintenance: Maintenance scheduled work carried out to prevent Port Infrastructure failures or an efficiency decrease. It may be routine or regular.

Routine Maintenance These are activities performed on a permanent basis aimed at protecting and maintaining the Port Infrastructure in good operational condition so that traffic is kept at the required Service Levels.

Among others, it comprises the following activities:

1.- Port Equipment

- Equipment exterior cleaning.
- Interior cleaning.- oil, oil filters, air filters change.
- Revision and replacement of oil, water, batteries, etc.
- Inspection and maintenance of metal structures, welding, painting, adjustment of bolts, wedges, etc.
- Bearing mechanisms, lubrication and greasing.
- Operational task of all greasing points.
- Parts Change.
- Minor repairs.

2.- To Interior Works

Generally, the civil works of the Port Infrastructure are designed for a 50-year useful life. However, it is necessary to make routine and variable inspections at 6 months and 12 months periods to the following elements.

- Reinforced Concrete Structures.
- Cementation piles, made of steel or concrete.
- Manufacturing.
- Warehouses.

- Reinforced concrete and flexible pavement, and natural or artificial paving stones.
- Administration and Maintenance Buildings and Offices.
- Water, Power, Telephony, Communications and other Networks.
- Sewage and Rain Water Drainage Network.
- Lighting.
- Electric Sub-Stations, switch boards Transformers.

3.- Exterior Works.

As in the preceding case, they are designed for a 50-year useful life. Adaptation of these works shall demand Scheduled Inspections and Controls to learn about the state of repair. Therefore, it will be necessary to perform at least the following activities:

- Operational depth inspection and measurement in the access canal, Maneuver Area and Berths.
- Buoys, Position Lights, alignment inspection and maintenance.
- Wave breaker stability inspection.

Regular Maintenance These are larger preventive maintenance tasks made to ensure operation and integrity of port infrastructure as designed. These are tasks foreseeable in time, with a scheduled frequency, which execution is determined by programming. They comprise, among others:

1.- Port Equipment

- Major repairs (over haul)
- Manufacture repair and paint.
- Tire change.
- Bearing change.
- Structure painting.

2.- Interior Works

- Gantry Crane rail inspection.
- Maintenance to the Pavement in Backup and Storage Areas.
- Inspections and sealing of superficial cracks in concrete or steel works located in the Rolling Zone depending on Tide or Rough Sea Variation,
- Maintenance and course of Water Lines (piping, valves, faucets, among others)

- Maintenance and Course at Electric Sub-Stations, Transformers, High and Low Voltage Lines.
- Light lamps change and Lighting System course.
- Drainage System Sealing and Cleaning.
- Maintenance of the Port's Interior Roads.

3.- Exterior Works

- Dredger for Maintaining Design Depth.
- Shelter Works Maintenance.
- Maintenance and course of Buoys and Nautical Signs Support Structures.

Corrective Maintenance: Occasionally performed tasks of an extraordinary character aimed at recovering a function or integrity of Port Infrastructure when lost due to the weather, nature or other factor different from the usual Port Infrastructure wear and tear.

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ANNEX 10
WORK EXECUTION PERFORMANCE BOND MODEL
(Copy of the Work Execution Performance Bond Model shall be attached)

Lima, 200....

Messrs
Ministry of Transportation and Communications

Ref.: Warrant Bond N°.....
Date due:

Gentlemen,

This is to certify that at the request of our client, (name of corporation) we have issued this joint and several, irrevocable, unconditional and automatic execution warrant bond without benefit of excussio or division up to the amount of..... in favor of the Ministry of Transportation and Communications to guarantee the correct and timely compliance of the execution of works according to the Technical Proposal and Concession Agreement for the New Container Terminal at the Callao Port Terminal – South Zone, subscribed between the State of the Republic of Peru and our clients.

To honor this Warrant Bond in your favor a notarized written request sent by the Supervising Agency on Investment in Transport for Public Use (OSITRAN) shall suffice which must be signed by the Chairman of your Directive Council or any present person duly authorized by this organ. Payment will be effective within 24 hours following your request at our offices located at

All delays on our part will result in interest accruing to you at the maximum LIBOR rate plus a 3% spread. The LIBOR rate will be published by Reuter Cable daily in Lima at 11:00 hours and interests will accrue as from the date of the request to honor until the date of payment.

Our obligations pursuant to this guarantee will not be affected by any dispute between you and our clients.

This Warrant Bond will be in force from 200..., to..... 200..., inclusive.

Sincerely,

Signature

Name

Banking Entity

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ANNEX 10
AGREEMENT PERFORMANCE BOND MODEL
(Concession Agreement Performance Bond Model shall be attached)

Lima, 200....

Messrs
Ministry of Transportation and Communications

Ref.: Ref.: Warrant Bond N°.....
Date due:.....

Gentlemen,

This is to certify that at the request of our client, (name of corporation) (herein after the Concessionaire) we have issued this joint and several, irrevocable, unconditional and automatic execution warrant bond without benefit of excussio or division up to the amount of..... in favor of the Ministry of Transportation and Communications to guarantee the correct and timely compliance with each and every obligation under the charge of the Concessionaire, including operation and maintenance derived from the subscription of the Concession Agreement for the New Container Terminal at the Callao Port Terminal – South Zone (hereinafter “the Agreement”),

This Warrant Bond shall also guarantee correct and timely compliance with the obligations under the charge of the Concessionaire set forth by the provisions contained in the Single Uniformed Text of Regulations with a Rank of Law regulating the granting in concession of public infrastructure and utility works to the private sector approved by Supreme Decree N° 059-96-PCM.

To honor this Warrant Bond in your favor a notarized written request sent by the Supervising Agency on Investment in Transport for Public Use (OSITRAN) shall suffice which must be signed by the Directive Council Chairman or any person duly authorized by this organ. Payment will be effective within 24 hours following your request at our offices

located at
.....

All delays on our part will result in interest accruing to you at the maximum LIBOR rate plus a 3% spread. The LIBOR rate will be published by Reuter Cable daily in Lima at 11:00 hours and interests will accrue as from the date of the request to honor until the date of payment.

Our obligations pursuant to this guarantee will not be affected by any dispute between you and our clients.

This Warrant Bond will be in force from 200..., to..... 200..., inclusive.

Sincerely,

Signature

Name

Banking Entity.....

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ANNEX 11
PERMITTED CREDITOR STATEMENT MODEL

Lima, _____ 2006

Messrs
Ministry of Transportation and Communications
Av. 28 de Julio 800
Lima 1, Lima – Perú

Permitted Creditor:.....

1.11. Reference: Concession Agreement for the New Container Terminal at the Callao Port Terminal – South Zone.

Pursuant to Clause 10.5 of the Concession Agreement for the New Container Terminal at the Callao Port Terminal – South Zone. We hereby represent under oath that:

- a) We are not subjected to impediments or restrictions (contractual, judicial, arbitral, administrative, legislative or other), to assume and comply with the commitments of financing..... (CONCESSIONAIRE) up to the amount of _____, so that he is able to comply with the obligations corresponding to him as per Concession Agreement_____.
- b) That our competent internal organs have approved the credit line for up to the amount of _____, in favor of..... (CONCESSIONAIRE), aimed at complying with the obligations derived from the Concession Agreement for the New Container Terminal at the Callao Port Terminal – South Zone.
- c) That we comply with all requirements set forth in the Concession Agreement for the New Container Terminal at the Callao Port Terminal – South Zone, as well as, with all those required by the applicable regulations, to be ranked as Permitted Creditors, as per the terms that the Concession Agreement assigned to this definition.

Sincerely,

Signature:.....

Name:.....

Permitted Creditor Representative.

Entity:
Permitted Creditor.

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ANNEX 12

APPROVAL IN FAVOR OF THE PERMITTED CREDITOR LETTER MODEL

_____2006

Messrs.
.....

1.12. Ref: Permitted Creditor _____: Concession Agreement for the New Container Terminal at the Callao Port Terminal – South Zone.

As per Clause 10.6 of the Concession Agreement for the New Container Terminal at the Callao Port Terminal – South Zone we hereby declare the following in his favor:

- a) That we have been notified of the loan of up to Dollars (US\$) of capital and every interest, commission, and any other expenditure or payment related to the credit granted by the Permitted Creditor to the CONCESSIONAIRE.
- b) That we confirm our approval concerning compliance set forth in the Concession Agreement for the New Container Terminal at the Callao Port Terminal – South Zone, as well as all others required by Applicable Laws and Provisions to rank as Permitted Creditor.
- c) That we approve fully and unrestrictedly, as per Clause 10.6 of the Agreement each and every one of the guarantees that shall be constituted in our favor to backup the aforementioned loan, same that are mentioned as references in the attach Annex.
- d) That we give an anticipated consent so that all or part of the guarantees established in our favor be executed as the loan contract and other related and/or complementary contract provide. Execution of these guarantees shall not require any prior approval or later confirmation and you will have the right to execute them in the way, opportunity and modality that best suits your interests.

Sincerely,

Ministry of Transport and Communications.

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ANNEX 13
MINIMUM CONTENT OF THE ENVIRONMENTAL IMPACT ASSESSMENT

I. Introduction:

- i General Background:
 - a. Area.
 - b. Construction and dredging to be carried out.
 - c. Exploitation.
- ii Rationale.
 - a. Reason for selecting the aquatic and dredging facility placement area.
 - b. Proposed technology to develop the project to be built and dredged.
 - c. Applicable environmental standards.
- iii EIA Objectives (includes main assessments, objectives, both general and specific)
- iv Applied methodology to develop the EIA (describe methods and techniques to be applied at different stages of Environmental Impact Assessments: office, field and laboratory)

II. Project Description

Total description of the activities to be developed at the Construction and Exploitation stages, including, at least, the following information:

- i Location and structure of facilities, water depth in the area considered for placing the facility and the area to be dredged and involved adjacent areas, number and type of ships for which the aquatic facility is foreseen, water, power, fuel, and others supply, including the dredger, access roads and facilities for maintaining and repairing ships.
- ii Origin of the material to build the wave breaker and/or silos and dredging execution.
- iii Selected areas for evacuating dredged materials.
- iv System to remove dredging waste.
- v Rehabilitated zone. Origin of the fill-up material.
- vi Drainage and sewer system, system to dispose off solid waste.
- vii Foreseen amount of sanitary waste and means to dispose off it.
- viii Description and schedule of the proposed building and dredging stages.
- ix Description of the normal operation foreseen for the aquatic facility and dredging including maintenance and measurement of water quality.

III. Environmental Characterization.

This is the environmental characterization (base line assessment) of the Concession Area and the Construction and Exploitation activities influence area, which identifies the existing environmental liabilities before Possession Taking.

This characterization shall include at least the following:

- i Geomorphology (site characteristics) that shall be supplemented with:
 - a) Topographic map of the land coastal zone and the batimetric plan of the maritime coastal zone of the site and its surroundings at 1:5000 or 1:2500 scale comprising at least 2 coast kilometers in each direction and down to the water depth appropriate to the project and 200 meters inland from the coast line.
 - b) Details about the proposed of existing marine zone structures in a 5 km radio from the proposed place.
 - c) Physiographic characteristics such as cliff, terraces, beach, rock, dunes.
- ii Hydrographic, Hydrology and Meteorology.
 - a) Wind speed and intensity.
 - b) Characteristics of tides and probability of extreme conditions.
 - c) Wave and current patterns at the proposed site, including probability of extreme conditions.
 - d) Hydrologic conditions of the canals and exits to the sea, both natural and artificial.
 - e) Nutrient concentration (top and bottom)
 - f) Dissolved Oxygen (DO) Distribution in the water column, vertical cut.
 - g) Solids in suspension (top and bottom)
 - h) Water color and turbidity.
- iii Information on sediments.
- iv Biological Conditions
 - a) Identification in maps by coastal habitats and at those located in the aquatic area of influence.
 - b) Ascertainment of the species that might be used as indicators of the ecosystem condition.
 - c) Location of the main habitat elements, such as feeding, shelter and reproduction zones, and of the importance zones for migrating species.
 - d) Protected of rare biological species.
- v Current and future uses of sea and beaches.
 - a) Location and size of nearby human settlements.
 - b) Location and description of existing cultural assets in the project area.
 - c) Vehicle access system and roads.
 - d) Hydrobiological exploitation zones, including main exploited species.
 - e) Existence of beach resorts and beaches used by beachgoers in immediate proximity.
- vi Social-Economic Factors

IV. Environmental Impact

This section shall define the possible environmental impacts and their assessment, both the positive and the negative impact as foreseen or predicted, using generally accepted standards whenever possible, including at least the following:

- i Topographic and batimetric changes, provision of same during construction and after it until stability conditions are reestablished.
- ii Sand movement and places where sand accumulation and coastal erosion will probably increase.
- iii Possible oceanographic changes along a 10-year period, including risk of location and wave deviation to adjacent coast, concentration of wave and current energy may endanger swimming or disturb fishers.
- iv Marine pollution risk inside and outside the area to be built.
- v Possible effects of the project in the area's flora and fauna.
- vi Repercussion in the current or proposed uses of nearby lands and aquatic area to be affected.
- vii Social-cultural effects.
- viii Repercussion in the production and safety of sea food.
- ix Repercussion in the quality of bathing water and sand, mud or similar cleaning up at beaches, or seashore, if any.

V. Environmental Management Plan

This Plan will contain at least the following:

- i Description of the methodologies and procedures that the CONCESSIONAIRE will develop at different Concession stages aiming at implementing all the measures established in the Agreement herein and in the Environmental Impact Study.
- ii The specific activities and/or actions to implement the mitigation measures, risk production plan, accident control and environmental follow up plan that the CONCESSIONAIRE will adopt taking into account the conditions and requirements pursuant to the Agreement herein and the Environmental Impact Assessment, including detail of the terms and those responsible for said implementation.
- iii Identification of estimated procedures, responsible people and dates for submission of Environmental Reports, as per the form defined in Annex 12.
- iv Security and Hygiene Risk Prevention Plan.
- v Plan of Accident or Contingency Control Measures.
- vi Description and specification of the training, information and environmental education program implementation procedures, as well as, those regarding labor safety in favor of his personnel.
- vii Description and specification of the permanent program to inform and communicate with the community that will be directly affected by the works and users, and the action and response mechanisms to eventual claims and/or problems reported.

- viii Description of the team of professionals who will be in charge of executing this Environmental Impact Study, including their organization, work methodology and the procedure they will use to adopt the mentioned plans and measures.
- ix Description and specification of implementation procedures regarding the permanent environmental information and education programs to the community adjacent to the Concession, aiming at promoting natural resources and cultural heritage protection.
- x Specific activities and/or actions (Environmental Technical Specification) for implementing the mitigation measures, risk prevention plans, accident control, and environmental follow up plan, which the CONCESSIONAIRE will adopt along these stages, including detail of the terms and people responsible for said implementation.

VI. Identification of Applicable National Environmental Quality and Maximum Permissible Limits Standards (Surveillance and Control)

- i Physical
- ii Chemical
- iii Biological

VII. Conclusions and Recommendations

VIII. Name and signature of those responsible for the study and of EIA participants, including profession and number of association of membership, as corresponds.

Content of the Environmental Reports

| | |
|----------------------------|---|
| 1. INTRODUCTION | |
| 1.1 General Aspect | CONCESSIONAIRE name, comprised period (quarter, semester, year), correlative N° of submitted environmental report, relevant observations related to the ending and starting period (quarter, semester, year) and general schedule of works in the case of Construction. |
| 1.2 Brief description work | Main characteristics, committed and completed works in the quarter, etc. |
| 1.3 Performed Activities | Field work, inspections, report or document submission, description of new work. |
| 1.4 Environmental Aspects | Description of the main environmental problems in the period (quarter, semester, year) and compliance with the observations made to the former environmental report. |

Description of the Environmental Impact Assessment application submitted as per the Agreement.
 The first Environmental report shall include the parameters to be used as baseline for air, noise and water quality management.

2. INVOLVED ENVIRONMENTAL PERMITS (LIST APPLICATION AND APPROVAL)

ANNEXES

Photographs, plans, maps, etc.
 Environmental follow-up matrixes.
 Certificates, permissions, etc.

3. WORKS PROCESS STATE (ONLY FOR CONSTRUCTION)

| | |
|------------------------------------|---|
| <p>3.1 Works</p> | <p>Brief description of the areas with a current work front, including progress and activities to be performed (for example, demolitions, temporary built works, closing of a work front, etc.).</p> <p>State and progress regarding compliance with Social Environmental Specifications of the current agreement and Environmental Management Plan contained in the EIA, emphasizing:</p> <ul style="list-style-type: none"> • Implemented mitigation measures (solution proposals, measure application calendars, involved permits). • Follow-up and Monitoring Plan. |
| <p>3.2 Machinery Yard Workshop</p> | <p>Brief description of installed plant, their technology and location.</p> <p>State and progress of Environmental Management Program related to this activity, emphasizing:</p> <ul style="list-style-type: none"> • Implemented mitigation measures (solution proposals, measure application calendars, involved permits). • Follow-up and Monitoring Plan. |

| | |
|---|--|
| <p>3.3 Dredged Material Deposit (DMD)</p> | <p>Brief description of the Decanting Pools of the Dredged Material (DMD), both active and closed, their characteristics and location.</p> <p>Brief description of the final Deposit for the dredging decanted material, characteristics and location.</p> <p>State and progress of the Environmental Management Program related to this activity, emphasizing:</p> <ul style="list-style-type: none"> • Implemented mitigation measures (solution proposals, measure application calendars, involved permits). • Follow-up and Monitoring Plan. |
| <p>3.4 Warehouses and offices.</p> | <p>Brief description of camps made or closed for the different works, their characteristics and location.</p> <p>State and progress of the Environmental Management Program related to this activity, emphasizing:</p> <ul style="list-style-type: none"> • Implemented mitigation measures (solution proposals, measure application calendars, involved permits). • Follow-up and Monitoring Plan. |

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