



PORT AGREEMENT TEMPLATES

April 2018

This document was produced for review by the United States Agency for International Development. It was prepared by Nathan Associates for the Cap Haitian Port (CHP) Regulatory Strengthening Project, contract number AID-521-C-16-00003.

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INTRODUCTION

This document describes the main contracts that may be concluded by the port authority with private operators for the development and/or operation of port infrastructures and the provision of port services.

It contains the main clauses to be included in the agreement, which precise terms and conditions shall be negotiated on a case-by-case basis taking into account the context in which these contracts are concluded.

The contract templates described in this document that can be used by APN will need to be adapted and adjusted, as appropriate. Thus, the following elements shall be taken into account:

- the nature of the activity to be carried out;
- the object of the contract;
- the status of the operator (legal private entity, group of companies, etc.);
- the allocation of risks between the parties to the contract;
- the extent of the obligations and responsibilities to be borne by the private operator;
- payment mechanisms

It is important to emphasize that these contracts shall in any case be subject to a competitive bidding process in accordance with the provisions of the Public Procurement Code and any other laws and regulations applicable to the management and operation of the Port domain in Haiti.

The port Agreement models described below are:

- 1) The concession contract for the financing, construction and operation of a terminal
- 2) The contract for the management and operation of a terminal or public tools
- 3) The authorization of the port domain temporary occupation

I. AGREEMENT FOR TERMINAL DEVELOPMENT AND OPERATION

Under a concession for the operation of a terminal, the port authority enters into an agreement with a private operator for the construction of a terminal specific to certain types of activities including the yards, the tools, and necessary installations for unloading, loading, handling, and storage operations related to the ships.

Listing of the different parts of the contract

This Agreement is made between:

APN/SONAGEP, represented by its Director General, hereinafter referred to as the “**Contracting authority**”; on one hand

and

....., a company governed by law having its registered office at duly represented by, hereinafter referred to as the

“**Concessionaire**”, on the other hand

The Contracting Authority and the Concessionaire are hereinafter individually referred to as “Party” and collectively referred to as “Parties”

Preamble

It has been previously described as follows:

WHEREAS, the Contracting authority launched an international competitive bidding process and solicited proposals from reputable and experienced contractors and port operators to design, supply, construct, finance, manage and operate *(Insert here the nature of the infrastructures concerned)* (hereinafter referred to as the “**Project**”) in the *(insert here the location in the port)* in accordance with the provisions of the Public Procurement Code c t and the laws in force in Haiti *(insert here all applicable laws and regulations)*

WHEREAS, after evaluation of the proposals submitted, the Contracting Authority has selected the *(name of the Concessionaire)* as the preferred bidder to whom the Project was awarded.

WHEREAS, the Contracting authority hereby wishes to enter into this Agreement with the Concessionaire for the purpose of executing the Project in accordance with the terms and conditions set forth in this Agreement.

Now therefore it is hereby EXPRESSLY AGREED AS FOLLOWS:

Article I – Definitions

For the purposes of this Agreement, the following terms and expressions, as used in the singular or plural, shall have the meanings defined in the Preamble and in this Article I, unless the context clearly requires a different construction :

“Contracting Authority” means the SONAGEP/APN;

“Agreement” means this Convention for the construction, financing, management and operation of the terminal and the provision of the services relating thereto, as modified or renewed from time to time by mutual agreement of the Parties;

“Leasing Agreement of Concession Perimeter” means []

“Construction Guarantee” means

“Performance Guarantee” means

“Service fee” means []

“Existing infrastructures” means []

“Common area” refers to those area that are administered and controlled by the Contracting authority and that are not subject to a lease, a concession or a temporary occupation authorization;

“Perimeter of the concession” means: *[insert the description of the Perimeter to which the concession applies]*

“Work Plan” means []

“Construction Program” means []

“Project” means []

“Port” means the port of _____ in which the Contracting Authority has a rental interest;

“Technical Specifications/ Terms of Reference”: means []

“Terminal” means the zone defined in the land registry plan delimiting the perimeter of the terminal and its location within the Port area as attached in Appendix (.....) to this Agreement.

Article 2 – Purpose of the Agreement

Concession of exploitation of an area of the public domain, including the management and investments in new infrastructures

The purpose of this Agreement is to define the conditions of:

- financing;
- building;
- operation; and
- maintenance

of the Terminal by the Concessionaire in accordance with the Technical Specifications, the applicable law and regulations as well as with the norms and standards applicable to the performance of the Project and the good industry practices as described in this Agreement.

Concession of exploitation of a public domain space including the management of existing infrastructure and/or investments

The purpose of this Agreement is to define the conditions of:

- Operation;
- Maintenance of the Terminal; and
- Financing the Terminal's modernization/rehabilitation works by the Concessionaire in accordance with the Technical Specifications, the applicable laws and regulations, as well as with all norms and standards applicable to the performance of the Project and good industry practices as described in this Agreement.

Granting or not an exclusive operation right

No exclusivity: This Agreement shall not prevent the Contracting authority from authorizing, by any unilateral decision or by means of an agreement with other companies, the same activities or traffic in other parts of the port/Port area.

Exclusivity clause: Subject to the provision of this Agreement, the Contracting authority grants to the Concessionaire the exclusive right to undertake the Project as described in this Agreement and to enter, occupy, possess, enjoy the advantages and use of the terminal, existing infrastructure (if applicable) and real properties for the duration of this Agreement or for a period not exceeding [X] years.

Article 3 – Performance Objectives

The Terminal's traffic objectives and the service quality objectives, as well as their respective time frame to meet them, are defined in Appendix (...) herein.

The Concessionaire shall ensure that the new port facilities/Terminal meet the applicable performance indicators and the required capacity described in the Technical Specifications.

The Parties shall, at least every (...) Years, review jointly the conditions for achieving these objectives. Upon the competent authorities' approval, the objectives and their deadlines may be revised without affecting the general economic balance of this Agreement to take into account, in particular, the evolution of Terminal traffic and new port service demands.

Commented [M1]: These performance objectives shall be determined and reviewed according to a procedure defined in the contract. Failure to meet these objectives by the Concessionaire shall result in the application of performance penalties

Article 4 – Duration

This Agreement is concluded for a period of [...] *(Maximum 30 years as defined in the pending port reform and is determined by taking into account the nature, amount and normal depreciation period of the investments made in the facilities implemented by the Concessionaire pursuant to the present terms and conditions of this Agreement), this period running from the date of approval of the said Agreement by the authorities concerned under Haitian law).*

Article 5 – Conditions precedent to coming into force

(These provisions are not exhaustive and shall be adjusted according to the specificities of the Project)

5.1. Precedent conditions

- This Agreement shall come into force and the contractual time for completion shall be calculated as of the date when all of the following conditions have been fulfilled: Signature of this Agreement by the Parties;
- Obtaining of all authorizations, permits and licenses issued by the competent authorities for the implementation of the Project as required by Haitian law and, in particular, the approval of this Agreement by ANAREP/APN;
- Undertaking of an environmental and social impact study and of a protection of the environment and the Haitian cultural heritage survey in accordance with the laws and regulations in force in Haiti ;
- Submission of certificates and/or resolutions adopted by the shareholders of the Concessionaire authorizing the signature by the Concessionaire of this Agreement and financial agreements for the performance of the Project.
- Notification of the signing of the financial Agreements (bank loans, equity and quasi-equity contributions) and the fulfillment of the conditions precedent for the financing of the Project *(In case of financing/investments made by the Concessionaire)* ;
- Access to the Concession perimeter for the commencement of the execution of the Terminal construction works and signature of the lease Agreement for the Concession Perimeter as defined in this Agreement;
- Submission by the Concessionaire of a performance bond issued by a senior international bank as approved by the Contracting Authority in the form and amounts specified in the Annex to this Agreement;

Commented [M2]: •Conditions precedent to entry into force: the conditions to be fulfilled for the performance of the contractual obligations of the Parties and the beginning of the contractual periods shall be specified. They must include the approval of the competent authorities, the obtaining of the various permits, licenses and authorizations, the setting up of the guarantees and the financings as well as all the elements necessary for the commencement of the contract.
The conditions under which the execution of the contract may begin before the financing agreements are finalized or where the conditions for entry into force are not met should also be specified.

- Provision of insurance policies by the Concessionaire in accordance with the provisions of this Agreement.

5.2. Obligations of the Parties and coming into force

Each Party expressly commits, at its own cost and expense, to proceed diligently and expeditiously with all necessary steps to satisfy and fulfill all the precedent conditions for the entry into force of this Agreement.

In the event that the coming into force of this Agreement does not occur within a period of month from the date of the Project award to the Concessionaire (or) the signature of this Agreement by the Parties, the Parties shall mutually agree upon the conditions necessary to maintain the validity of this Agreement. Failing to reach such Agreement within a period of (X) months from the date of the award of this Agreement, the Contracting Authority shall be entitled to terminate this Agreement.

Article 6 – Lease Agreement of the Concession Perimeter

The Contracting Authority shall grant free access and peaceful use, occupation of the Concession area to the Concessionaire for the Project implementation during the term of this Agreement in accordance with the terms and conditions of the Concession Perimeter Lease Agreement entered into between the Parties as annexed (...) to this Agreement.

If this Agreement is terminated or extended in accordance with the provisions of Article [4 - Duration] above, the duration of the Lease Agreement/Temporary Occupation Agreement for the Port Area shall automatically be terminated or extended or, where appropriate, renewed mutatis mutandis for that period.

Commented [M31]: In addition to this terminal agreement, the terms and conditions of use of the land / space within which the terminal and related infrastructure are installed shall be the subject of a lease agreement between the port authority and the concessionaire.

Article 7 – Terminal Construction

7.1. Obligations of the Concessionaire

7.1.1. Nature of construction works/Terminal works

The Concessionaire undertakes to carry out the design, financing, construction/improvement/renewal/or rebuilding, supply, testing and commissioning of the Terminal and all equipment and materials necessary for the safe, reliable and efficient operation of the Terminal in accordance with the Technical Specifications and Good Industry Practices as defined herein.

7.1.2. Construction Completion Schedule/Terminal Works

The Concessionaire shall undertake all activities necessary to enable the construction and commissioning of the Terminal in accordance with the Construction Program set out in Schedule [], which sets out the milestones dates for the main phases of the Terminal construction work completion.

The Concessionaire shall:

- prepare and maintain a complete report describing the execution of construction work during the construction period;
- promptly inform the Contracting Authority or the Contracting Authority's technical representative of any significant deviation from the milestones dates stipulated in the construction implementation schedule; and
- provide the Contracting Authority or the Contracting Authority's technical representative with monthly written reports on the progress of the work based on the milestones dates and tasks specified in the Construction Program.

7.1.3. Extension of construction deadlines

The Concessionaire shall be entitled to request an extension of the date of completion of the construction works or a key milestone date of completion thereof if such work has been delayed or the Concessionaire considers that this work will be delayed and demonstrates to the Contracting Authority's technical representative of that the completion date of the proposed construction work has been or will be delayed due to:

- a breach by the Contracting Authority of its obligations under this Agreement;
- an event of force majeure as defined herein;
- a significant delay in obtaining or renewing any permit required for carrying out the construction work as described in Article [] of this Agreement, provided that such delay does not result from the incapacity or failure of the Concessionaire to comply with the conditions for obtaining or renewing the permits and authorizations required under the law in force as described herein ;
- any other fact or event expressly stipulated in this Agreement giving the Concessionaire an extension of time.

Article 8 – Application of norms, standards, and regulations

8.1. The Concessionaire shall comply with all applicable norms and standards for the performance of the Project, the operation and maintenance services and all related activities and to ensure that all equipment and operation and maintenance services provided during the execution of the Project comply with these norms and standards and all applicable laws that relate to all or part of the Project and related activities.

8.2. The regulations in force at the Port are applicable within the limits of the Concession Perimeter.

The Concessionaire shall comply in particular with the decisions that the Port and the competent authorities take for the purpose of preserving port public security and port operation safety.

Article 9 – Procedure/Mechanism of Quality Management

- 9.1. The Concessionaire shall establish a quality management procedure for the works and the provision of terminal operation and maintenance services to demonstrate compliance with the requirements of this Agreement. This procedure must conform to the specifications described herein.
- 9.2. The Contracting authority shall have the right to check any aspect of the quality management procedure.
- 9.3. The terms and conditions of all compliance procedures and documents shall be submitted to the Contracting Authority for information before each phase of execution of the tasks to be carried out by the Concessionaire under the present Agreement.
- 9.4. Compliance with the quality assurance system shall not relieve the Concessionaire of its obligations and responsibilities under this Agreement.

Article 10 – Supervision of construction work

The Contracting Authority's technical representative or one of his duly authorized agents may, during the execution of the construction of the Terminal, monitor the progress of the construction works and the erection of the Terminal facilities, provided that the Concessionaire will be notified in writing by the Contracting Authority's technical representative or one of its agents shall notify in writing to the Concessionaire before any inspection.

The Concessionaire shall ensure that the Contracting Authority's technical representative or one of its agents has access to the Concession Perimeter or the factory where the materials are supplied, manufactured, stored and/or assembled for the purpose of performing the construction works as well as all plans, designs, data, annexes, manuals related to the construction of the Terminal.

Article 11 – Equipment and manufacturing

The Concessionaire warrants that the construction works of the Terminal and each of their components:

- are designed, manufactured and constructed by professional contractors who are qualified and experienced in carrying out work of a similar nature as construction works carried out under this Agreement;
- include only equipment, materials and new equipment and materials, of quality in accordance with the Technical Specifications and adapted to the operation of the Terminal and services to be provided by the Concessionaire as defined in this Agreement;
- are appropriate to meet the performance objectives set out herein and, in particular, during the period specified in this Agreement and have a level of deterioration in accordance with industry norms and standards and Technical Specifications ;
- shall be designed, manufactured and constructed in such a way that the construction works:
 - (i) meet the performance criteria set out in this Agreement;

- (ii) are reliably, economically and efficiently operated and maintained in accordance with the requirements of this Agreement without any risk to the health and well-being of the persons who use or participate in the construction, operation, maintenance or management thereof; and
- (iii) do not cause any danger to the environment.

Article 12 – Testing and commissioning

The Concessionaire shall give the Contracting Authority and the Concessionaire Technical Representative at least [] days' prior notice of the date and time at which the Concessionaire will be ready to perform the tests after completion of the Terminal construction work as described in the Technical Specifications and the Construction Program in Annex []. This notification shall be accompanied by operation and maintenance manuals in sufficient details for the Contracting Authority to operate, maintain, dismantle, reassemble, adjust and repair the Terminal's facilities and by all documentation pertaining to the performance tests required for the commissioning and commercial operation of the Terminal.

Article 13 – Terminal Operation and maintenance

13.1. Terminal Operation

The Concessionaire shall carry out the technical and commercial operation of the Terminal as well as the maintenance and repair of the Terminal's facilities and the uninterrupted provision of services, with the exception of planned and scheduled interruptions for the maintenance of the Terminal's facilities.

Accordingly, the Concessionaire:

- shall be responsible for all unloading, loading, handling and storage operations related to the vessel and the cargo;
- shall recruit the necessary personnel as well use the appropriate technical means and shall be in charge of the coordination thereof with its own clients;
- shall build the facilities, tools and, where appropriate, the yards required for the maintenance and development of the activity under the conditions set out in Article [];
- maintains the yards, facilities and tools in accordance with the provisions of article [];
- assures the operator's liability with regard to all the laws and regulations in force, in particular those relating to classified installations, water management and the protection of the environment as described in Article (....) of the Agreement.

13.2. Terminal Maintenance

The Concessionaire shall, at its own expenses, be responsible for all activities related to:

- Life cycle maintenance; (To be reviewed by the technical expert)
- Routine/preventive maintenance; and
- Responsive maintenance, (To be reviewed by the technical expert)

that are required to maintain and repair terminal facilities.

Commented [M4]: The conditions of repair and maintenance of the Terminal must be defined expressly in the contract.

13.3. Subcontracting

The Concessionaire shall operate directly on its behalf the Terminal object of the present Agreement. The Concessionaire is required to occupy without discontinuity any real estate located within the Perimeter of the Concession.

However, the Concessionaire may, upon the Contracting Authority's approval, entrust to a third party the execution of part of the activities related to the operation of the Terminal. In this case, the Concessionaire shall remain liable to the Contracting Authority and to third parties for the proper performance of all its obligations as set out in this Agreement.

Any total or partial transfer of the activity carried out by the Concessionaire on the Terminal without the Contracting Authority's consent, will result in the termination of this Agreement.

The Concessionaire shall notify the Contracting Authority of any change in the participation of the partners, the composition of its capital, or the distribution of the voting rights that could lead to the change of the control of the Concessionaire.

13.4. Environmental norms and standards

13.4.1. The Concessionaire is required to design, build, operate and maintain the Terminal in accordance with applicable norms and standards and applicable environmental, health and safety laws, regulations and standards in Haiti as well as international norms and standards as defined in this Agreement.

13.4.2. The Concessionaire shall also:

- oversee all aspects of its environmental compliance and performance in the fulfilling its obligations under the Agreement; and
- comply with all the requirements of the environmental and health authorities concerned.

Article 14 - Perception of handling and use rights

Commented [M5]: APN shall set fees for port services to be published in a format accessible to users and the public at all times

14.1. During the Operational Period, subject to the provisions of this Operating and Maintenance Agreement, the Concessionaire shall have the right to collect from the users the rates and charges listed in Appendix () to this Agreement payable by the users of the Terminal. The Concessionaire shall be entitled to collect said tariffs and fees in (insert currency). The applicable rates and fees will be published by the Concessionaire in a format accessible to users and the public at all times.

- 14.2. The Concessionaire may collect from users only the amount of the tariffs and fees calculated in accordance with the terms and conditions set out in Appendix () to this Agreement that defines the rights, tariffs and charges payable by the users of the Terminal. The Concessionaire may grant discounts to users as long as they are granted for commercial reasons and in accordance with industry best practices. The Concessionaire may not grant such reductions to a user who is affiliated with its own corporate group or who holds interests in the said group, unless the reduction is granted in a non-discriminatory manner.
- 14.3. Fees and charges collected by the Concessionaire during each accounting period will be paid into one or more bank account(s) opened in the name of the Concessionaire with a Haitian bank and a branch located in Haiti and shall remain until such time as the amounts payable by the Concessionaire to the APN for such Accounting Period have been determined by the Parties in accordance with the terms and conditions set out herein or have been established under the dispute resolution process, and shall have been paid in full to the APN.

Article 15 – Provision of port services See clause on the rates charged by the concessionaire

- 15.1. The Concessionaire shall provide operation and maintenance services to any person and to all shipping companies, shippers, receivers and shippers in accordance with the terms of this Agreement without interference or interruption by the Contracting authority, except as provided in Articles () throughout the life of this Agreement.
- 15.2. The Concessionaire shall provide operation and maintenance services to any user and abstain from any unfair or discriminatory practices against a given user.

Article 16 – Employees – Terminal Staff

- 16.1. The Concessionaire shall comply with the terms and conditions of the Work Plan as approved by the Contracting Authority described in Annex [] herein and in accordance with Haitian law in force.
- 16.2. The Concessionaire shall, from the effective date of operation of the Terminal as set out in Annex [] of this Agreement, take into consideration the list of employees set out in the Work Plan who participated in the provision of the operation services and maintenance of the Port's old infrastructure in accordance with the financial conditions that comply with the provisions of the Labor Plan.

Article 17 – Concession Fee

- 17.1. As part of the granting of the rights of use and exploitation of the Terminal referred to in Article 2 above and in accordance with the provisions of Haitian law and regulations governing the amount and terms of payment of the Concession fee in relation to the Terminal's operating activities and the provision of related port services, the Concessionaire shall pay the Contracting Authority an annual fee in USD equal to [X] per cent of the gross revenue as defined herein, for the duration of this Agreement.

Commented [M6]: / Pricing and pricing structure depending on the type of partnership envisaged (see: PPP concept definition above)

The principles governing user fees and the user rate calculation elements as well as the methods of review and modification should be clearly defined. These provisions will be applicable in the case where the private operator is responsible for the management and / or operation of the structure and is remunerated according to operating revenue.

Commented [M7]: •Terms of remuneration of the private operator:

These should specify the conditions under which the private partner is paid, the elements to be taken into account in the calculation of his remuneration (investment costs (CAPEX), operating costs (OPEX), financing), and the terms of payment (due date, default interest).

•The conditions for reviewing and adjusting the private co-trader's remuneration (periodicity, calculation elements and indexing method).

•The conditions for granting an adjustment in the event of economic conditions jeopardizing the economic and financial equilibrium of the contract

Financial conditions (tariffs, indexing formula, deadlines for the payment of receipts by the delegate to the delegator, deadlines for payments from the delegate to the delegatee, tax clauses)

- 17.2. The fee shall be paid [*insert: payment schedule*] for any year during the term of this Agreement based on the Concessionaire's quarterly management accounts starting the first full quarter following the date of operation of Terminal facilities described in Article [].
- 17.3. Throughout the term of this Agreement and not later than [] of each calendar year, the Concessionaire shall provide the Contracting Authority with an independent audit report on its activities, assets, liabilities and financial position during the last fiscal year. The report must include all information necessary to evaluate the Concessionaire's activities and verify the payments made or due to the Contracting Authority.
- 17.4. The conditions for determining, setting out the level of the fee and its payment terms may be modified from time to time by ANAREP/APN in accordance with the laws in force.

Article 18 – Delay in Payment

In the event that the Concessionaire fails to pay the fee within the time limits set forth herein for any reason other than the Concessionaire's objection to the amount of the fee, the Contracting Authority may claim payment of late payment interest on any amount unpaid at the rate of [] per cent above [] per year if payment is made within one (1) month from the due date and [] per cent above [] per year if payment is made within two (2) months of the due date; and [] percent above [] per year if payment is made after a period of two (2) months from the prorated due date for the period from the due date to the date where the Contracting Authority actually receives the payment of the fee amount due.

Article 19 – Service Fee

- 19.1. The Concessionaire may collect and recover Service Fees or other charges from customers who use the services provided by the Concessionaire during the term of this Agreement, in accordance with Annex (...).
- 19.2. The Concessionaire is required to directly recover the Service Charge from its customers.
- 19.3. Subject to the determination of the Service Fees in accordance with this Article 19, the Concessionaire is free to collect all Service Fees from its customers, either itself or through a collection agency recruited by the Concessionaire.

Article 20 – Concessionaire Liability and Penalties

- 20.1. The Concessionaire shall be responsible and liable to repair any damage resulting from the design, construction, operation and maintenance of the Terminal, which it or its subcontractors caused and as a consequence of which the Contracting Authority, a third party or a user have suffered damages as a result of the performance of the activities and obligations incumbent on it under this Agreement.
- 20.2. The Concessionaire shall repair the damages caused to third parties within the scope of the Concession perimeter and shall indemnify, defend and release the Contracting Authority and any governmental authority against any claim by third parties for the damages suffered by the Contracting Authority or any governmental authority resulting or not from the

default, negligence or omission of the Concessionaire in the performance of its obligations under this Agreement.

20.3. Penalties for delay

The Concessionaire expressly agrees that any delay of the Concessionaire, its subcontractors, employees, consultants or agents in carrying out the construction work or in the commercial operation of the Terminal and the port facilities within the time schedule set out in the Work Plan shall cause actual damage to the Contracting Authority. In the event that such delay occurs, the Concessionaire shall be required to pay delay penalties to the Contracting Authority as set out in Annex () for each day of delay until the date of actual completion of the construction works.

In the event that the Concessionaire is unable to pay the delay penalties within the time schedule as described above, the Contracting Authority shall be entitled to collect payment of the amount(s) of the penalties owed by the Concessionaire by means of calling upon the Construction Guarantee.

In the event that the amount of the loss caused by the Concessionaire exceeds the amount of the Construction Warranty, the Concessionaire shall be required to pay the remainder of the penalty amount due directly to the Contracting Authority.

- 20.4. Any payment of damages shall be made by the Concessionaire to the Contracting Authority within (...) days of the Concessionaire's receipt of the Contracting Authority's written notification mentioning the amount of the delay penalties.

20.5. Default in the operation of the Terminal

In the event that the Concessionaire doesn't fulfill its obligations under this Agreement or, it is unable to operate and maintain the Terminal and the port facilities in accordance with the operating standards described in the attached Technical Specifications, as modified or adjusted as the case may be by the Parties, the Concessionaire shall pay the technical penalties calculated in accordance with the terms and conditions set out in Annex (.....).

20.6. Civil liability

The Concessionaire shall be liable and shall indemnify the Contracting Authority and/or governmental authorities against any claims by third parties the Contracting Authority or any other governmental authority, including the Contracting Authority's employees, agents and subcontractors for any bodily or material injury including real property and assets of the Contracting Authority made available to the Concessionaire and against any action, claim, cost, fee and expense resulting directly or indirectly from the design, construction, operation or maintenance and transfer of the Terminal during the term of this Agreement or resulting from any action or omission or breach of the Concessionaires' obligations, its employees, agents or subcontractors and their respective employees under this Agreement.

20.7. Exclusion of liability

The Concessionaire shall not be liable for any bodily injury or property damage, loss, cost and expense caused by the negligence or willful misconduct of the Contracting Authority or Government Authorities, their employees, agents and representatives.

Article 21 – Construction guarantee

21.1. The Concessionaire shall provide the Contracting Authority a Construction Guarantee as defined under this Agreement to ensure the fulfillment of its obligations to carry out the construction of the Terminal and the port facilities in accordance with the time schedule set forth herein and the Technical Specifications.

The Construction Guarantee shall be issued by a financial institution acceptable to the Contracting Authority.

21.2. The Concessionaire may call the Construction Warranty to the extent that:

- the Concessionaire or the company in charge of the construction of the Terminal fails to build the port facilities and/or to start the operation of the Terminal within the time period set out herein that cause damage to the Contracting Authority; or
- it becomes obvious that the design of the port facilities and the Terminal do not comply with the Technical Specifications and that the design defect is not corrected by the Concessionaire and/or the company in charge of the construction of the Terminal in a timely manner and in accordance the Contracting authority or his technical representative instructions.

21.3. Any delay or significant design defect shall be assessed by the Contracting Authority's technical representative.

21.4. The Concessionaire shall return the Construction Guarantee, to the extent that it has not been used for the purpose of providing the performance guarantee, to the Concessionaire no later than () days after the commercial commissioning of the Terminal and the port facilities and the issuance of the Performance Guarantee in accordance with the terms and conditions of this Agreement.

Article 22 – Performance Guarantee

22.1. The Concessionaire shall provide the Concessionaire with a Performance Guarantee for the proper performance of the operation of the facilities in accordance with applicable norms and standards and the technical specifications set forth herein upon the commercial operation of the Terminal and the port facilities.

22.2. The Contracting Authority may call the Performance Guarantee if the Concessionaire or the company in charge of the operation and maintenance of the Terminal fails to provides its services in accordance with the time schedule set forth herein and/or does not meet the norms and applicable standards and the technical specifications described herein that are causing damages to the Contracting Authority.

- 22.3. The Performance Guarantee will be reduced by ... (…%) percent of its total value upon the fifth anniversary of the date of the Terminal commercial operation and will be reduced by ... (…%) from its initial total value upon the tenth Anniversary of the date the Terminal commercial operation, provided however, that the operation of the Terminal meets the performance objectives to the satisfaction of the Contracting Authority.
- 22.4. The Concessionaire shall return the Performance Guarantee no later than (...) days according to the following conditions:
- the expiry of the term of this Agreement and the approval by the technical and financial representatives of the Contracting Authority;
 - the end of the provision of port services by the Concessionaire, other than that caused by a failure of the latter; or
 - the termination of this Agreement resulting from the default of the Contracting Authority in fulfilling its obligations hereunder.

Article 23 – Insurance

- 23.1. The Concessionaire shall subscribe all insurance policies relating to the fulfillment of its obligations under this Agreement as defined in the Annex (). It shall provide the Contracting Authority with a copy of the insurance contracts and any supporting documents.
- 23.2. The Concessionaire shall not be entitled to cancel or substantially amend the insurance policies as defined in the Annex () and shall subscribe said policies in due time.
- 23.3. If the Concessionaire fails to subscribe or maintain an insurance policy required under this Article 23 and in accordance with the Annex (...), the Contracting Authority shall be entitled to subscribe the required insurance policy at the Concessionaire's cost after having first notified the Concessionaire of its intention to exercise this right within (.....) days following said notification.
- 23.4. In the event that the Concessionaire fails to reimburse the Contracting Authority's costs it incurred, the Contracting Authority shall be entitled to the payment of its costs by calling the Construction Warranty and/or the Performance Guarantee, as the case may be.
- 23.5. The Contracting Authority shall be mentioned on the insurance policies as a beneficiary thereof.

Article 24 – Ownership of property

- 24.1. Existing Infrastructures or existing tools (land, buildings, structures, fixed installations), as well as all movable assets financed, acquired, serviced or installed by the Contracting Authority after the date of entry into force of this Agreement shall remain the property of the Contracting Authority for the duration of this Agreement. The Concessionaire shall have exclusive rights and rights of use of Existing Infrastructures and existing tools as made available by the Contracting Authority for the term of this Agreement.

- 24.2. The rights of ownership, use and exploitation of all movable property, Project assets, brought into or installed in the Concession Perimeter by the Concessionaire for the purpose of performing its obligations under this Agreement shall remain its own property.

Article 25 – Force majeure event

- 25.1. For the purposes of this Agreement, an event of force majeure is any event, circumstance or combination of events or circumstances that is beyond the a Party's reasonable control and that has a significant impact on the Party's performance of its obligations under the present Agreement and for which the damage caused could not have been prevented, overcome or limited by the affected Party should all reasonable measures to mitigate its impact on the performance of its own obligations be undertaken as soon as possible.
- 25.2. Events of force majeure include, the following events and circumstances, but only to the extent that each meets the requirements set out in Article 25.1 above:
- i. any act of war (declared or not), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil unrest, act of terrorism or sabotage;
 - ii. strikes, slowdowns or working rules that are generalized or national in scope or of a political nature, unless it the Concessionaire or his contractors (or their subcontractors of any level) or their respective employees are only affected or caused by them;
 - iii. important archaeological discoveries within the Perimeter of the Concession;
 - iv. lightning, fire, earthquake, flood, storm, cyclone, typhoon, tornado or other natural calamity;
 - v. explosion or chemical contamination (other than as a result of an act of war) by war ammunition, explosive materials, ionizing radiation or radioactivity contamination, except as may be attributable to the use of ammunition, explosives, radiation or radioactivity;
 - vi. epidemic or plague; or
 - vii. Expropriation, requisition or nationalization, significant restrictions on importation imposed by any authority, under any law.
- 25.3. Force Majeure does not expressly include the following cases unless they result from a Force Majeure event as listed above:
- i. the unavailability, late delivery or modification of the cost of equipment, materials, spare parts necessary for the execution of the Project;
 - ii. a delay in the performance of any supplier or subcontractor; or
 - iii. normal wear and tear, random failures or breakdowns of materials and equipment used in the execution of the Project.
- 25.4. Notification (To be completed)

25.5. Right of the Parties (To be completed)

Article 26 – Termination of the Concession Agreement

This Agreement may be terminated in one of the following cases:

26.1. Termination due to a force majeure event

Either Party may give notice of its intention to terminate this Agreement to the other Party if the implementation of the Project is substantially affected or prevented for a continuous period of [days] by reason of an event of Force Majeure of which notice has been given in accordance with Article 25.1 above.

26.2. Compensation due to an event of force majeure.

If this Agreement is terminated due to Force Majeure, as described in Article 25 above, the Concessionaire shall be entitled to receive compensation in an amount equal to the amount of: (To be completed)

26.3. Termination in the event of a breach by the Concessionaire

The Contracting Authority may terminate this Agreement when the Concessionaire fails to fulfill the obligations hereunder, and in particular when:

- the Concessionaire does not respect the specificity of the Terminal traffic and operate the terminal by treating traffics different from those specified herein;
- the Concessionaire does not make the investments required under Article [] herein in accordance with the specified time period;
- the Concessionaire does not comply with the Construction Program and the Work Plan;
- the quality of the services does not comply with the objectives defined in Article 3 hereinabove;
- the Concessionaire is the subject of a judicial bankruptcy procedure within the meaning of the Haitian law governing corporate bankruptcy and liquidation.
- The judicial liquidation of the company automatically entails the termination of this Agreement

Termination shall be pronounced after the Concessionaire fails to remedy the breach of its obligations within the time specified in the notice of termination and shall take effect upon the expiration of a period of not less than [] months from the notification of the aforesaid notice.

26.3.1. Compensation due to the Concessionaire

In the event that this Agreement is terminated in accordance with Article 26.4, the Contracting Authority shall pay to the Concessionaire an amount corresponding to the principal of all "senior" debts subscribed by the Concessionaire for the design,

construction, commissioning, operation and maintenance of the Terminal as from the date of termination from which all costs directly incurred by the Contracting Authority shall be deducted in order to ensure the continuity of the Project.

26.4. Termination in the event of a breach by the Contracting Authority

The Concessionaire shall have the right to terminate this Agreement in the event of a breach by the Contracting Authority of its obligations under this Agreement and for which there is no remedy within the time specified in the notice of termination and shall take effect on the expiry of a period of not less than [] months from the notification of the aforesaid notice.

In the event that this Agreement is terminated in accordance with this Article 26.4, except in case of this Agreement termination due to force majeure, the Contracting authority shall pay the Concessionaire the following:

(To be defined)

Article 27 – Terminal goods/works at the expiry of the Agreement

On the expiry of this Agreement, for whatever reason, the fate of the property operated by the Concessionaire in the Perimeter of the Concession and the works of the Terminal made by the Concessionaire including:

- raw materials,
- spare parts;
- the intangible movable property of the Concessionaire, including intellectual property rights necessary for the provision of port services and the operation of the Terminal;
- all drawings, and documents relating to the results of technical tests as set out herein;
- all warranties relating to the materials and equipment of the Concessionaire;
- all the contractual rights and the insurance policies rights of the Concessionaire; and
- all rights relating to any insurance policy payable, including amounts due to the Concessionaire and not paid upon the date of the transfer of the Terminal and port facilities;

is governed by the following provisions:

27.1. Yards (facilities and tools if necessary) made available to the Concessionaire

The yards, (*existing equipment and tools*) made available to the Concessionaire, shall be returned to the Contracting Authority in good working condition and maintenance in accordance with the terms and conditions of transfer of the Terminal stipulated in Annex []. In the event of a breach of the Concessionaire's obligations, the repair works may be carried out ex officio by the Contracting Authority at the Concessionaire's own expense and risk.

27.2. Terminal works

The Concessionaire shall ensure that, at the date of transfer, each Terminal facilities and component complies with the transfer terms and conditions as described in Annex (...) of this Agreement.

[] month before the planned transfer date, the designated representative for the control of the Terminal transfer shall carry out an inspection of the Terminal works carried out within the Concession Perimeter in accordance with the transfer terms and conditions as described in Annex (...) of this Agreement.

Upon the expiry of the term of this Agreement, such property shall automatically become the property of the Contracting Authority free of all liens and mortgages.

27.3. Movable Property belonging to the Concessionaire

The Contracting Authority has a right of first refusal on all or part of the movable property belonging to the Concessionaire and installed on the Terminal, evaluated on the basis of their residual book value.

The Concessionaire shall remove, at his own expense and without delay, any movable property belonging to it in respect of which the Contracting Authority has not exercised his preemptive right, and to restore in their original conditions the spaces on which they were installed.

27.4. At least (...) months before the date of transfer, the Concessionaire shall prepare and submit to the Contracting Authority for approval a training program, including operating manuals, for a sufficient number of the Contracting Authority's personnel (or personnel designated by the Contracting Authority or the new Terminal Operator) to operate and maintain the Terminal.

At least (...) months before the transfer date, the parties shall meet in order to agree:

- the terms and conditions of the transfer and the guarantees and securities pertaining to the operation and maintenance of the Terminal; and
- the inventory of all appliances, accessories, equipment, vehicles, spare parts and materials required for the continued operation of the Terminal after the date of transfer;
- the volume and quality of spare parts, consumer goods and other materials required for (...) months of operation of the Terminal.

Article 28 – Intellectual property rights

28.1. Upon expiration of the term or termination of this Agreement for any reason whatsoever, the Concessionaire and its shareholders grant hereby to the Contracting Authority an irrevocable, non-exclusive, royalty-free license (granting the right to sublicense) in order to:

- use the Concessionaire and its shareholders' intellectual property rights; and

- allow any third party to use the Concessionaire and its shareholders' intellectual property rights.

In each case for the purpose of continuing the operation and maintenance of the Terminal and the provision of any related services.

28.2. Where third party software is a part of the Concessionaire and its shareholders' intellectual property rights, the Concessionaire shall take all reasonable steps to obtain a license of use of such software to the benefit of the Contracting Authority under the same conditions as the license granted under this Article 28.

28.3. In the event that the Concessionaire is unable to obtain this license, it shall be entitled to offer another software of equivalent functionality to replace this third-party software and proceed to the granting of a license in the same terms as described in Article 28.2 hereinabove.

Article 29 – Taxes

From the date of entry into force of this Agreement, the Concessionaire shall bear all taxes, including those that ordinarily remain the of the owner's responsibility, in particular the land tax, to which are presently subjected or could be subjected all grounds, yards, land development and equipment provided to the Concessionaire or built or developed by the latter, whatever their extent and nature

The Concessionaire shall also, if applicable and under tis responsibility, declare new constructions or changes in content or in the nature of the assignment provided for by applicable laws and regulations governing the fiscal regime.

Article 30 – Applicable law

This Agreement shall be governed by and construed in accordance with the law of the Republic of Haiti.

Article 31 – Settlement of disputes

31.1. Any dispute between the Parties relating to the Project performance under this Agreement shall be resolved in accordance with this Article 31.

31.2. If a dispute over the performance of the Project arises, the Party that becomes aware of it shall notify the other Party and undertakes to discuss with the other Party in good faith in order to settle the dispute amicably.

31.3. If the Parties fail to resolve the dispute amicably within ... (...) days after the receipt of the notification of the dispute alleged by one of the Parties, either Party may refer the matter to a group of experts (the "Expert Commission") selected in accordance with the provisions of Article 31.4 below.

31.4. Establishment, composition, and procedure of the Commission of Expertise (To be completed)

Commented [M8]: Mechanisms for the settlement of disputes between the parties shall include a procedure for the amicable settlement of the disputes, providing for the possibility of recruiting qualified mediators to resolve technical, economic or financial problems.
The procedure for jointly appoint an expert to hear the dispute, the powers conferred on him/her for its settlement and the enforceability of his/her decision should also be clearly established in the contract.

31.5. If either Party is dissatisfied with the decision of the Expert Commission, either Party may, if it does not agree, refer the matter to arbitration for final settlement. Therefore, any dispute, controversy or claim arising out of or in connection with this Agreement, or the termination or invalidity thereof, shall be finally settled by arbitration in accordance with the Rules of (Insert the Institute of Arbitration). The arbitral tribunal shall be composed of three (3) arbitrators.

The arbitration shall take place in Port-au-Prince, Republic of Haiti and the arbitration proceedings shall be conducted in French.

Miscellaneous provisions (To be completed)

Supervision and Audit of the Contract

Commented [M9]: •Contract supervision procedure:

The conditions that allow the public company to carry out periodic audits concerning compliance with the performance objectives and conditions under which the contract is performed and more generally the control of all the technical and accounting elements contributing to the management of the service delegated public will have to be defined precisely in the contract.

2. LEASE AGREEMENT - TERMINAL OPERATION AND MANAGEMENT AGREEMENT

This contractual mode applied to port activities includes the following contracts :

- (i) *The management and operation contract of a terminal by a private operator with or without limited investment in the renewal of assets whose operation has been delegated by the public sector);*
- (ii) *The public tool management contract where the tools are provided by the port authority and subsequently leased to the private operator for their operation and the supply of services to the goods;*
- (iii) *Warehouse lease contract owned by the Port Authority*

Listing of the different parts of the contract

This Agreement is concluded between:

APN/SONAGEP , represented by its Director General, hereinafter referred to as the “**Contracting Authority**”; on one hand

and

..... , a company governed by the law having its registered office at duly represented by , hereinafter referred to as

The “**Operator**”, on the other hand.

(The Contracting Authority and the Operator are hereinafter referred to individually as “Party” or collectively as “Parties”)

Preamble

WHEREAS, the Contracting Authority initiated a bidding process and solicited proposals from reputable and experienced designers and port operators to manage and operate (*Insert the nature of the relevant infrastructure here*) (hereinafter called the “**Project**”) in the (*insert here the location in the port*);

WHEREAS, after evaluation of the bidders’ proposals received, the Contracting Authority selected (name of the private operator) as the preferred bidder to whom the Project was awarded;

WHEREAS the Contracting Authority hereby wishes to enter into this Agreement with the Concessionaire for the purposes of the Project performance in accordance with the terms and conditions and subject to the conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the premises and undertakings herein contained, it is **HEREBY AGREED** as follows:

Article I - Definitions

For the purposes of this Agreement, the following terms and expressions, as used in the singular or plural, shall have the meanings defined in the above statement and in this Article I, unless the context clearly requires a different interpretation :

“Contracting Authority” refers to **APN/ SONAREP**;

“Agreement” refers to this Agreement for the management and operation of the Terminal and the provision of the Services thereto, as modified or renewed by mutual decision of the Parties;

“New infrastructures” refers to

“Common parts” refers to those portions that are administered and controlled by the Contracting authority and that are not subject to a lease, concession or license of occupation;

“Project” refers to

“Port” refers to: the port of _____ in which the Contracting Authority has a rental interest;

“Technical Specifications /Terms of Reference”: refers to

“ Terminal ” refers to *(Define the specialty of the terminal: in the following type(s) of traffic, defined by the mode of conditioning or by the nature of the product)* the zone defined in the overall cadastral plan showing the delimitation of the terminal and its location in the Port constituency as annexed to this Agreement.

“Concession area/Perimeter” refers to: *[insert the description of the area to which the concession applies];*

Article 2 – Purpose of the Agreement

Delegation of operation rights of public domain space including the management of existing infrastructure and/or investments

The purpose of this Agreement is to define the conditions of the:

- operation;
- maintenance of the Terminal; as well as

- financing by the Concessionaire of the Terminal modernization/rehabilitation in accordance with the Technical Specifications, applicable law, all norms and standards applicable to the Project performance and industry best practices.

An overall cadastral plan showing the boundaries of the terminal and a plan specifying its location in the port are annexed to this Agreement.

Granting or not granting of an exclusive right of exploitation

Non exclusivity: This Agreement shall not prevent the Contracting Authority from authorizing, by any unilateral decision or agreement concluded with other operators, the same activities or traffic in other parts of the port area.

Exclusivity clause: Subject to the provisions of the Agreement, the Contracting Authority hereby grants to the Concessionaire the exclusive right to undertake the Project as defined in this Agreement and to enter, occupy, possess, enjoy the benefits and the use of the Terminal, existing infrastructure (if any) and existing real property for the duration of this Agreement or for a period not exceeding ☒ years.

Article 3 – Conditions of entry into force

(These provisions are not exhaustive and will have to be adjusted according to the particularities of the project.)

This Agreement shall come into force and the contractual time for completion shall be calculated as of the date when all of the following conditions have been fulfilled:

- Signature of the Agreement by the Parties,
- Obtaining of all authorizations, permits and licenses issued by the competent authorities for carrying out the Project as required by Haitian legislation and, in particular, the approval of this Agreement by ANAREP/APN;
- Undertaking of an environmental and social impact study and of a protection of the environment and the Haitian cultural heritage survey in accordance with the laws and regulations in force in Haiti ;
- Submission of certificates and/or resolutions adopted by the shareholders of the Operator authorizing the signature by the Operator of this Agreement and financial agreement(s) for the carrying out of the Project
- Notification of the signing of the financial agreement(s) (bank loans, equity and quasi-equity contributions) and the fulfillment of the conditions precedent for financing the Project implementation (*In case of financing/investments made by the Contracting Authority*);
- Provision by the Operator of the required insurance policies in accordance with the provisions of this Agreement.

In the event that the entry into force of this Agreement does not occur within (.....) month from the date of its award to the Operator, the Parties shall agree on the conditions necessary to

maintain the validity of this Agreement. Failing to reach such Agreement within a period of (X) months from the date of the award of the Project, the Contracting Authority shall be entitled to terminate the Agreement.

Commented [M10]: It is necessary to allow some flexibility in obtaining the necessary permits and authorizations by setting a deadline beyond which the parties mutually agree to terminate the contract or extend the time period to fulfill the precedent conditions.

Article 4 – Terminal traffic objectives

In order to ensure the development of the activity within the Port, the Terminal's traffic objectives and service quality objectives, as well as their respective deadlines, are as follows:

4.1. Traffic Objectives

Commented [M11]: It will be appropriate here to set the performance objectives with regard to the capabilities of the operator and the market.

4.2. Service quality Objectives

The Parties shall, at least every years, carry out a joint examination of the conditions for achieving these objectives. Following ANAREP/APN's Agreement, the objectives and their timelines may be revised without affecting the general economic balance of this Agreement, to take into account in particular market developments and new demands for services.

Article 5 - Terminal operation by the Concessionaire/Operator

5.1. Technical and commercial operation of the terminal

The Operator shall be responsible for the technical and commercial operation of the terminal, and, more specifically for the following:

- a) all unloading, loading, handling and storage operations related to the vessel and the cargo;
- b) to put in place the appropriate human resources and technical means in coordination with its clients ;
- c) construction, and development of the facilities,, tools and, where appropriate, the yards required for the maintenance and development of the activity under the conditions set out in Article 7;
- d) maintenance of the yards, installations and tools in the manner provided for in Article 8;
- e) compliance with all legislative and regulatory provisions in force, in particular those relating to classified installations, water management and environmental protection.

5.2. The personalized nature of the exploitation and the subcontracting

The Operator shall operate directly on its behalf the Terminal object of this Agreement.

He is required to occupy himself and without discontinuity real estate in the right of way of the Terminal.

However, the Operator may, after prior agreement in writing from the Contracting Authority, entrust to a third party the execution of a part of the operations related to the operation of the Terminal. In this case, the Operator shall remain liable to the Contracting

Authority and to third parties for the performance of all the obligations imposed by this Agreement.

Any total or partial transfer of the Terminal I without the Contracting Authority's prior written consent shall result in the termination of this Agreement.

The Operator shall notify the Contracting Authority of any change in the participation of the partners, the composition of its capital, or the distribution of voting rights that could lead to the change of the control of the Operator.

5.3. Services provided by the Contracting Authority

The Contracting Authority may at the request of the Operator, provide some services. The terms and conditions for the provision thereof shall be determined by special agreement.

5.4. Dock use priority

Subject to the provisions of the port legislation and regulations in force as well as the port operating regulations, and except in case of force majeure or safety reasons, the Operator shall be granted permanent priority for the use of the dock(s) whose characteristics are specified below:

The Operator shall inform the Harbor Master's Office in a timely manner of the desirable berthing order of the vessels at the Terminal.

Article 6 – Resources and capacity to be put in place by the Operator (where applicable)

The Operator undertakes to set up within the Terminal Zone as delimited in Article I the following according to the schedule detailed below:

1. Real property assets:
2. Moveable property assets:

Article 7 – Resources made available by the Contracting Authority

The Contracting Authority shall make available to the Operator the following:

- (a) lands or yards, served by one or more platforms or accessible to vessels by any other method, including the following categories:
 - Public domain spaces, leased or owned by the Contracting Authority;
 - Private domain spaces, leased or owned by the Contracting Authority;
- (b) land organizations and developments, if need;
- (c) tools, if need be.

The listing of lands or yards, indicating their area and their allocation between lots and parcels of the port public domain and those of the private domain. The list of facilities and the list of tools are annexed to this Agreement.

The granting of access of lands, yards, installations and tools is jointly recorded and registered in writing by the Contracting Authority and the Operator.

Modifications of the resources made available by the Contracting Authority to the Operator, in particular in the case of withdrawal provided for in Article 16, shall be recorded in minutes drawn up in the same form, after obtaining the approval of the Ministry of Economy and Finance. The lists annexed to this Agreement shall be adjusted accordingly. The modifications shall be mentioned in the next amendment to this Agreement.

The granting of right of use and occupation of lands, yards, port facilities and tools by the Contracting Authority shall not in any case not entail any transfer of ownership to the Operator or creation of rights *in rem* in favor of the Operator.

Article 8 – Creation of rights *in rem* in favor of the Operator

The Operator enjoys rights *in rem* in immovable property that it develops within the public domain pursuant to this Agreement.

Article 9 – Work Costs

9.1. Work relating to the resources made available to the Operator (where necessary)

Renovation, modification and renewal of the yards, arrangements and tools made available to the Operator shall be authorized by the Contracting Authority. They will be funded according to the terms defined below:

They will be carried out according to modalities defined in a specific Agreement.

9.2. Other works and achievements

Works and achievements other than those mentioned in article 9-1 above are under the sole responsibility of the Operator.

The works and real estate that will be carried out by the Operator in addition to those provided for in Article 6 above are subject to the prior written authorization of the Contracting Authority.

Article 10 – Maintenance

10.1. Responsibility for work maintenance

When, pursuant to the provisions of Article 10.2 and 10.3 herein below, a Party fully bears the cost of maintaining works, yards, installations or tools, it assumes full responsibility for their maintenance.

Where maintenance costs are apportioned between the Parties, a specific agreement shall determine the Parties' respective responsibilities, particularly with regard to the safety rules, as well as the modalities for carrying out maintenance work. Such agreement shall also specify the procedures for repairing damages in relation thereof.

10.2. Docks and other means of access to the Terminal

The expenses relating to the maintenance of the platform(s) or other means of access of the vessels to the Terminal and the corresponding deficiencies may be covered in the following manner: (TBD).....

10.3. The yards, installations, and tools made available to the Operator (where necessary)

The expenses relating to the maintenance of the yards, installations and tools made available to the Operator by the Contracting Authority shall be borne in the following ways: (TBD).....

10.4. The yards, installations, and tools developed by the Operator

The Operator undertakes to maintain at his own expense the yards, installations and tools that it has made in good maintenance and operation conditions.

Article 11 - Regulatory compliance

The general and specific regulations in force on the Port are applicable within the Perimeter/area of the Terminal.

The Operator shall comply, in particular, with the decisions that the Contracting Authority and the competent authorities made in the interest of public safety and the safety of port operations.

Article 12 - Responsibility. - Insurance

- 12.1. Without prejudice to the provisions of Article 10 hereinabove, the Operator shall be liable for any damage resulting from the operation of the Terminal, whether caused by him/her or by one of its subcontractors including any damage it has suffered from, the Contracting Authority, a third party or a user. The Operator undertakes to repair such damage.
- 12.2. The Operator undertakes to repair the damage that are caused by third parties within the Terminal Perimeter and shall be responsible for any claim against such third parties.
- 12.3. The Operator shall subscribe all insurance policies pertaining to its obligations and responsibilities hereunder and, in particular, under the provisions of this article 12 and of articles 7 and 8 hereinabove. It shall transmit to the Contracting Authority a copy of the insurance policies as well as all supporting documents.

Article 13 – Fees and other remuneration

13.1. State fee

The Operator shall pay the accounting officer of the Contracting Authority an annual fee for the occupation of the estate (land, plots and fittings) made available to him by the Contracting Authority. The amount, the conditions for the payment and revision of this fee are as follows: (TBD).....

13.2. Other remunerations (where necessary)

The Operator shall pay such fee according to the same methods for the tools made at its disposal by the Contracting Authority fees whose amounts, conditions of payment and revision thereof are determined, according to the following modalities:.....

Commented [M12]: If the methods of payment and revision of the tools made available are not described in the port regulations. These conditions should be set in the contract

Article 14 – Taxes

The Operator shall bear all taxes as from the date of entry into force of this Agreement, including those ordinarily applicable to the Port Authority, and in particular, the property tax, to which the land is currently subject or could be subject, landings, yards and tools made available to it or made by it, whatever the extent and nature thereof.

The Operator shall also, if applicable and under its responsibility, declare new constructions or changes in content or in the nature of the assignment provided for by applicable laws and regulations governing tax matters.

Article 15 – Duration

The Agreement is concluded for a period of..... (determined by taking into account the amortization period of the investments to be borne by the undertaking pursuant to Article 4), this period running from the date of approval of the Agreement by the ministers responsible for ports and the budget.

Article 16 – Financial penalties

In the event of breach by the Operator of its obligations under this Agreement, the Contracting Authority shall give formal notice, by written notification, to the Operator to remedy the situation within a period of not less than (3) three months, save in case of emergencies. At the expiration of the prescribed period and in the absence of regularization, the Operator shall be liable to payment of a penalty, the amount of which shall be determined by the Contracting Authority not exceeding twice the average of the monthly value of the fees and other charges and other remuneration paid pursuant to Article 13 hereinabove during the twelve (12) months preceding the aforementioned notice.

Article 17 – Termination of the Agreement

17.1. Termination at the initiative of the Operator

If the Operator decides to terminate this Agreement, it shall notify the Contracting Authority at least (1) one year in advance by written notice. It shall pay to the Contracting Authority, before the termination takes effect, the indemnity provided for in Article 17.4. herein below.

17.2. Termination on the initiative of the Contracting Authority

a) The Contracting Authority may terminate the Agreement when the Operator is the subject of a judicial bankruptcy procedure according to the meaning of the law applicable to the companies' bankruptcy and liquidation in force in Haiti

The judicial liquidation of the Operator shall automatically entail the termination of this Agreement.

b) The Contracting Authority may terminate the Agreement when the Operator does not fulfill the obligations arising from this Agreement, and in particular, if:

- the Operator does not comply with the specificity of the Terminal traffic by processing traffics different from those specified in Article 1 hereinabove;
- the Operator does not make the investments required under Article 4 within the timeframe set out in this Agreement e i (if applicable) ;
- during consecutive years, traffic on the Terminal is lower than % to the objectives set out in Article 4 or if the quality of the services does not comply with the objectives set out in Article 4 hereinabove.

Save in the case of emergency, the Contracting Authority shall give formal written notification to the Operator to remedy the situation within a period of not less than three (3) months. At the end of such period and in the absence of regularization, this Agreement termination may be pronounced after the Operator has been given the opportunity to submit his observations and after a hearing if it so requests.

c) The Contracting Authority may terminate this Agreement on a ground of general interest.

Except in the case of urgency, the Agreement termination shall be pronounced after the Operator has been given the opportunity to submit its observations and, if it so requests, has been heard and shall take effect upon the expiry of a period of at least three (3) months from the written notification of the termination decision.

17.3. Termination by mutual Agreement

At any time, the Contracting Authority and the Operator may agree to a termination of this Agreement under conditions determined by them. Termination cannot take effect without prior agreement of the Board of Directors of the Contracting Authority, the concerned Ministry and the Court of Auditors and Administrative Disputes.

Commented [M13]: The termination of the contract is approved by the competent authorities under Haitian law in force should be clearly specified in the contract.

17.4. Indemnity

No indemnity shall be due to the Operator by the Contracting Authority when this Agreement is terminated pursuant to the provisions of Articles 5.2, 17.1, 17.2 (a) and 15.2 (b) hereinabove.

When the contract is terminated pursuant to Article 17.2 (c), the Operator shall be indemnified according to the conditions to be determined in connection with investments made for which rights in rem were granted taking into account certain material direct damages suffered as well as damages directly resulting from the contract early termination.

When the termination is made pursuant to Articles 5.2, 15.1 and 15.2 (b), the Operator shall pay compensation equal to times the annual amount fees and other charges paid pursuant to section 13 during the three (3) years preceding this Agreement termination.

Article 18 – Partial removal of yards, installations, and tools made available and priority of dock use

18.1. For reasons of obsolescence or safety rendering them unfit for their use, the Contracting Authority may terminate the provision of certain installations and tools referred to in Article 7.

18.2 (optional). If the traffic on the Terminal is less than% to the objectives set in Article 4 herein above during in consecutive years, without being less than the level specified in Article 15.2 (b) allowing the termination of this Agreement, the Contracting Authority may terminate the provision of the yards, the following facilities and tools: as well as the priority of use of the following wharfs :

The fees and other remuneration referred to in Article 13 are therefore amended under the following conditions:

The objectives defined in Article 4 are (where appropriate) amended under the following conditions:

18.3. The partial withdrawals referred to in Articles 18.1 and 18.2 hereinabove shall take occur within two (2) months after the Operator has been first given written notice of the Contracting Authority's decision, if within two (2) months the Operator has requested it after a hearing. These partial withdrawals do not qualify for compensation.

Article 19 – Treatment of assets upon Agreement term expiration

Upon the expiration of this Agreement, for whatever reason, the treatment of the property is governed by the following provisions:

19.1. Yards, facilities and tools made available to the Operator (if applicable)

The yards, facilities and tools made available to the Operator shall be returned to the Contracting Authority in perfect working order and maintenance, unless otherwise stipulated in the special Agreement referred to in Articles 9.1 and 10.3 hereinabove. In the event of a breach by the Operator of its obligations, the refurbishment may be carried out ex officio by the Contracting Authority at the Operator's own expense and risk of the.

19.2. Moveable assets owned by the Operator

The Contracting Authority shall have a right of pre-emption on all or part of the movable property belonging to the Operator and installed on the Terminal, calculated on the basis of their residual book value.

Except in the case where the new operator of the Terminal takes over these goods, the Operator is compelled to remove at his own expense and without delay those on which the Contracting Authority has not exercised his right of pre-emption, and return the aforesaid good to their original conditions where they were installed.

19.3. Real Property developed by the Operator

The Contracting Authority shall draw up a list of the yards and improvements made by the Operator that he wishes to keep. At the end of the term of this Agreement, these improvements and installations become by right the property of the Contracting Authority free of charge, and clear of all liens and mortgages. The other improvements and installations shall be demolished, either by the Operator or at the latter's expense.

The list referred to in above shall be sent to the Operator one (1) year before the normal term of this Agreement. In the event of early termination, the Contracting Authority shall forward it at the latest before the decision to terminate this Agreement takes effect.

When the Operator has carried out, with the authorization of the Contracting Authority, works other than those provided for in Article 4 hereinabove and necessary for the continuation of the Project, until the end of this Agreement, the Authority Contracting party may grant to the Operator upon the termination of this Agreement an indemnity, the amount of which shall not be greater than the residual book value of such work as determined at the end of this Agreement.

The compensation thus granted shall not prevent the Contracting Authority from transferring the responsibility to pay such indemnity to another operator that will continue to operate the Terminal at the expiration of this Agreement.

Article 20 – Land registration

Where the present Agreement creates rights *in rem*, this Agreement shall be registered to comply with land advertisement in accordance with the law applicable to the present Agreement. The registration costs shall be borne by the Operator.

Article 21- Disputes

- 21.1. Any dispute between the Parties arising out of the Project performance and of this Agreement shall be settled in accordance with this Article 21.
- 21.2. If a dispute over the execution of the Project arises, the Party that becomes aware of it shall notify the other Party and undertakes to consult the other Party in good faith to settle the dispute amicably.
- 21.3. If the Parties fail to resolve the dispute amicably within ... (...) days after the receipt of the notification of the dispute alleged by one of the Parties, either Party may refer the matter to a group of experts (the "Expert Commission") selected in accordance with the provisions of Article 21.4 below.
- 21.4. Constitution, composition and procedure of the Commission of Expertise (to be completed)
- 21.5. If either Party is dissatisfied with the decision of the Expert Commission, either Party may, refer the matter to arbitration for final settlement. Therefore, any dispute, controversy or claim arising from or in connection with this Agreement, or the termination or invalidity thereof, shall be finally settled by arbitration in accordance with the Rules of (Insert the Institute of Arbitration). The arbitral tribunal is composed of three (3) arbitrators. The arbitration shall take place in Port-au-Prince, Republic of Haiti and be conducted in French.

3. TEMPORARY OCCUPATION AUTHORIZATION CONTRACT OF THE PORT DOMAINE

This contract can be entered into by the port authority in the case of a concession or leasing contract under which a portion of the port area is leased to a private contractor to carry on its activities. It may concern the state-owned port public domain or private port domain.

Title I – PARTICULAR CONDITIONS

Part I.1 - Nature of occupation

Article I.1.1 – Purpose of the Agreement

The purpose of this Agreement is to determine the procedures for the temporary occupation permit which characteristics are defined below.

Article I.1.2 - Definition of the purpose of the Agreement

The occupant is authorized to occupy, on the terms set out below, one (define the leased property) with a total area of (..... m²).

This property is located at/in (Define the area) on the cadastral parcel. The occupation is delimited in accordance with the attached plan.

Article I.1.3 - Public Domain

The site, subject of this Agreement, is part of the Port Domain.

In light of the public ownership of the land, this Agreement is governed by the law applicable to the public domain in force in Haiti.

Legislation concerning rural leases and renting leases of buildings or premises for commercial, professional or residential purposes does not apply to it.

The Occupant may not, under any circumstances, rely on the provisions on commercial property or any other regulation, which may confer a right to maintain occupancy and occupation and some other rights.

I.1.3.1 Constitution of real rights

This Agreement authorizing the temporary occupation of the Public Domain of the Port of Cap-Haitien does not create I rights *in rem* within the meaning of the applicable legislation and regulations in force in Haiti.

I.1.3.2 Precariousness

This Agreement is issued on a precarious and revocable basis.

It may be renewed at the written request of the Occupant. However, it is a simple option and not an obligation of the APN. The Occupant shall not be entitled to maintain and renew its occupation title.

When an Agreement of occupation of the public domain is expired and has not been renewed, if the Occupant remained on the public domain by tolerance of the APN/**Port of Cap-Haitien** upon the expiration of the occupation authorization, this situation shall not constitute the renewal of the aforesaid authorization.

Article I.1.4 - Designation of Occupant activity

This authorization is granted for the administrative activity of freight transport.

Article I.1.5 - Description of the goods made available to the Occupant

Land and real estate which list is drawn up below, are made available to the Occupant for the duration of this Agreement, defined in Article I.1.7 - Duration and entry into force of the Agreement.

Kind of good :

Characteristics :

Area:

Commented [M14]: Define here the type of property (land, warehouse etc ..)

Article I.1.6 - Description of the equipment provided to the Occupant

The materials, listed below, are made available to the Occupant for the duration of this Agreement, as defined in Article I.1.7 - Duration and Entry into Force of the Agreement.

Article I.1.7 - Duration and entry into force of the Agreement

This Agreement takes effect as of *(insert date)*

The Authorization is granted for a period of *(insert duration... years)* and will end *(insert expiration date)*, except in the event of early termination resulting from one of the events listed in Article II.2.6 - Termination of authorization before expiry of the normal period of validity.

It cannot be extended by tacit consent and cannot exceed the life of the Occupant's company.

After expiry, the Occupant shall not in any case claim a right to keep the premises or renewal of the Agreement. However, from *(Insert date of notice) and at the latest before ...)* the Occupant shall have the opportunity to request the APN to grant a new authorization. This request shall be made by registered letter with acknowledgment of receipt.

Part I.2 - Exploitation of the site purpose of the Agreement

Article I.2.1 Boundary and fence

Any boundary and closure costs shall be borne by the Occupant.

Article I.2.2 - Ground preparation

APN does not support any charge related to the viability of the land object of the present Agreement.

I.2.2.1 Drinking water supply

The water connection and subscription procedures are to be carried out and are the sole responsibility of the Occupant.

The Occupant shall also fulfill its obligations with respect to periodic maintenance, inspections and regulatory audits.

Since the building, which is the subject of this application, is not individually connected to the drinking water supply network and has a shared meter, APN will charge a supply of drinking water to the Occupant, pro rata the occupied area.

I.2.2.2 Wastewater drainage

The procedures for connection to the wastewater treatment network shall be made, where applicable, with the Municipality of Cap-Haitien and are the sole responsibility of the Occupant.

Local taxes relating to the disposal of wastewater (particularly those relating to connection to the network and the share of consumption of drinking water) are the sole responsibility of the Occupant.

The work that may be required for the rehabilitation or compliance of sewage disposal facilities shall be carried out at the expense of the Occupant.

I.2.2.3 Electricity

Connection and subscription procedures must be carried out, where applicable, with an energy access provider and are the sole responsibility of the Occupant.

The Occupant shall also perform all maintenance, controls and periodic regulatory audits in relation thereto.

In the event that the building, which is the subject of this Authorization, is not individually connected to the electricity supply network, the APN will charge the supply of electricity to the Occupant, in proportion to the area used by it.

Article I.2.3 Maintenance and repairs

Save the maintenance of the covers, the cleaning of the gutters and gutters which charges will be re-invoiced in proportion to the surface used (*insert size of the surface*). The Occupant shall carry out all repairs, and all mandatory regulatory and/or technical controls according to the legislation in force throughout the duration of the occupation as well as the lifting of reserves,

whatever the importance as well as all work necessary to keep the premises in good maintenance conditions, use and appearance, including the constructions and installations the Occupant has carried out..

These provisions are also applicable to fences and yards.

In the event that the Occupant fails to comply with the provisions of this article 1.2.3, it shall comply with APN's instructions within the time allotted to it, failing which, the APN may issue a notice in writing.

In case the Occupant does not remedy such failure pursuant to APN's written notice APN may take possession of the premises and proceed ex officio, at the expense of the Occupant, to the necessary work to safeguard the operation of the premises. Under no circumstances shall the Occupant be entitled to compensation for the temporary disturbance caused by the execution of this work.

Article 1.2.4 - Specific conditions for carrying out work

None.

Article 1.2.5 - Easements (In the case where the premises are occupied by several tenant companies)

The premises leased under this Agreement is occupied by several tenants. The operation of the site must take into account the activities and risks related to other occupants with respect to each other's activities and taking into account the risks specific for each activity.

APN shall maintain access to the occupant portions of the building under this Agreement.

Article 1.2.6 - Environmental legislation

The Occupant shall comply with environmental legislation. In particular, the Occupant shall prior to the start of its activity, ensure that the site it occupies and the processes he uses are compliant

The Occupant shall transmit to APN, copy of the declaration, registration or authorization files that it established and the authorizations granted to it, for the activities planned on the site, leased under this Agreement. It shall transmit at least every year the results of environmental actions and controls carried out in compliance with regulatory requirements.

Part 1.3 - Financial and accounting provisions

Article 1.3.1 - Amount to be charged

This authorization is granted and accepted for a fee calculated as follows:

Property type Surface (m²)

- Payable fee (HTG HT/m²/year)
- Total (HTG HT/year)
- Office
- Total

The overall annual fee is (.....) *Excluding taxes per year (HTG HT/year).*

I.3.1.2 Review of the fee

The fee mentioned in Article I.3.1 - Fees shall be revised every year, on January 1st, according to the variation of the Index (*Insert the index here...*).

I.3.1.3 Payment terms

The Occupant shall pay APN the fee mentioned in I.3.1 - Fee, as follows: semi-annually.

The payment of the fee mentioned in Article I.3.1 - Fee shall be made thirty (30) days end of month as from the date of the invoice.

I.3.1.4 Late payment penalties

In case of delay in the payment of the fee mentioned in Article I.3.1 - Fee, penalties shall be applied at the annual interest rate applicable to the State domain.

The payment of penalties and interests shall not prejudice the rights of APN to the provisions of Article II.2.6 - Termination of Authorization Prior to the Expiration of the Following Period of Validity, hereinafter

Invoices shall be sent to: (*Insert name and address*)

APN must be informed as soon as possible of any change to this address.

Article I.3.2 - Security Deposit

None

Article I.3.3 - Deposit

None.

Commented [M15]: APN as Lessor is entitled to request the provision of a bond or bank guarantee

Part I.4 - Administrative provisions

Article I.4.1 - List of documents to be sent to APN

The Occupant agrees to forward the following documents to APN on a periodic basis as follows:

- i. Copy of the company registration form of less than three (3) months (on the day of entry in the premises and upon each change);
- ii. Copy, if applicable, of the proxy for signing the application and this Agreement;
- iii. The specific insurance certificates covering this occupation (on the day of entry into the premises and then annually), clearly showing the name of the site, for the guarantee of: "risks related to " material damage to the estate property made available "," "Civil liability" risks, " damage to the environment" risks;
- iv. Copy, if applicable, of the authorizations issued pursuant to the environmental regulations that are granted to the Occupant for the site object of this Agreement (on the day of

obtaining the said authorizations and then each new modification);

- v. Copy of the building permit application filed (at each file instruction);
- vi. Copy of the development permit applications filed (at each file instruction);
- vii. Copy of license application records to demolish, if applicable (at each file instruction).
- viii. Copy, if applicable, of the authority's response regarding the building permit application, the planning permission application, the preliminary work declaration and the demolition permit (at each file instruction).
- ix. Copy of the electricity contract(s) (annually).
- x. Copy of the certificate of connection to the drinking water supply network (on the day of entry into the premises).
- xi. Copy of the document certifying the connection to the potable water supply system (as of the 1st day of entry in the premises)
- xii. Copy of the sewage network connection certificate (on the day of entry into the premises).
- xiii. Copy of the fire safety equipment control certificate (annually).
- xiv. Copy of the electrical network control certificate (annually).
- xv. Copy of mandatory regulatory inspection certificates (annually).
- xvi. Copy of intervention statements for periodic maintenance visits, particularly with regard to roofs, gutters, etc. and repairs to building structures (annually, for each intervention completed in the past year).

Article I.4.2 Procedures for submission of documents and documents to be provided under Article I.4.1 - List of documents to be transmitted to APN

Documents and documents must be handed over to APN, against a receipt, on a periodic basis as follows:

A daily penalty in the amount of (insert the amount of the daily penalties ...) may be applied for failure to submit the documents listed above in accordance with the set deadlines.

Title II – TERMS AND CONDITIONS

Part II.1 - Purpose of the occupation

Article II.1.1 Occupant Activity

The authorization is granted personally for the carrying out of the professional activity mentioned in Article I.1.4 - Designation of the activity of the Occupant.

APN shall retain the right to oppose the carrying out of an activity other than the one for which the authorization has been granted in particular, in case of environmental nuisance or in case the new activity no longer has a connection sufficient with the port activity or the activities useful for the life and the development of the industries existing in the port area.

Under no circumstances may the activity of the Occupant have a detrimental impact on the general organization of the port area.

Article II.1.2 Modification of the nature of occupation by APN

APN shall be entitled, for reasons of public interest, to modify the nature of the occupation without the Occupant being able to oppose it.

Under the same terms and in the context of the coherence of the activities carried out in the Port Domain with regard to public safety and environment protection, the APN may modify the geographical situation of this Agreement, for the purpose of grouping by type of activity in the port or other reason of general interest. This amendment shall not give rise to compensation.

Article II.1.3 Change of status of the Occupant

The Occupant shall inform APN of any change in the form, purpose or apportionment of its registered capital within fifteen (15) days of the registration of such change in the corporate register.

Any total or partial transfer and any contribution in kind to a company's registered capital will be brought to the knowledge of APN by written notification.

Any change of occupant resulting in particular from the total or partial transfer of assets, or any contribution in kind to the registered capital, without change of the activity defined in Article I.1.4 - Designation of the activity of the Occupant, shall be approved expressly by APN.

The transferee or recipient organization shall sign a written undertaking directly to APN to carry out all the obligations set out in this Agreement.

Part II.2 - Validity of the contract

Article II.2.1 Election of domicile

For the execution of this Agreement, the Parties elect domicile in their respective office headquarters mentioned above or the last known domicile, or the municipality of the last known domicile.

Article II.2.2 Occupation

II.2.2.1 Occupation

APN declares that the site, subject of this Agreement, is free of any rental, occupation or requisition.

II.2.2.2 Occupation by the Occupant

The Occupant is required to occupy and use without interruption the goods made available to him.

Article II.2.3 - Personal character of the Agreement. This Agreement is granted for the exclusive use of the Occupant.

The Parties agree that the occupation by the Occupant is of an exclusively private nature.

Therefore, the authorization to occupy the maritime public domain of the port is strictly personal. As such, it is the responsibility of the Occupant, party to this Agreement to occupy the premises itself.

The activity carried out in the port area under this Agreement shall not in any case be considered as an activity of public service.

Article II.2.4 Transfer to a third party In accordance with Article II.2.3 - Personal character of this Agreement

As the private occupation of the APN's public maritime domain is strictly personal, this Agreement cannot be assigned or transferred to a third party.

Any transfer or contribution to a third party, in any capacity and under any form whatsoever (including in the event of death), of all or part of the rights conferred by this Agreement, is therefore prohibited.

Article II.2.5 - Under-occupation

Any provision by the Occupant for the benefit of a third party of all or part of the goods (Article I.1.5 - Description of the goods made available to the Occupant) and materials (Article I.1.6 - Description of the equipment provided provision of the Occupant) objects of this Agreement, whether for a consideration or free of charge, is strictly prohibited.

In the event that the Occupant provide to a third party all or part of the goods (Article I.1.5 - Description of the goods made available to the Occupant) or materials (Article I.1.6 - Description of the equipment made available to the Occupant) object of this Agreement, whether for a consideration or free of charge, this Agreement shall be automatically terminated, in accordance with Article II.2.6 - Termination of authorization before expiry of the normal period of validity.

Article II.2.6 Termination of authorization before expiry of the normal period of validity

II.2.6.1 Termination by the Occupant

The Occupant may terminate this Agreement upon three (3) months' prior notice, to APN by registered letter with acknowledged receipt.

The termination of this Agreement shall not give right to payment of any indemnity.

The occupation fee shall remain due until the restoration of the premises object of this Agreement.

II.2.6.2 Termination by APN

a. APN may terminate this Agreement after a three (3) months prior notice to APN, which remained unsuccessful in the following cases:

- disappearance of the activity which had justified the authorization of implantation in port area;

- definitive withdrawal of the authorizations pursuant to the regulations in force for the carrying out of the professional activity, mentioned in Article I.1.4 - Designation of the activity of the Occupant, and referred to in Article II.1.1 - Occupation of the occupier;
- criminal conviction rendering the Occupant unable to continue its activities;
- cessation of activity following a receivership or liquidation of assets proceedings against the Occupant, . The Occupant shall inform APN of any collective proceedings that may be brought against it;
- non-compliance, for any reason, with any provision of this Agreement;
- conversion of the site leased for activities of another nature.

b. Failure by the Occupant to pay the royalties due, this Agreement may be terminated by APN, one (1) month after a formal notice notified by the APN and remained ineffective.

II.2.6.3 Termination by reason of general interest

Notwithstanding the duration provided for in Article I.1.7 - Duration and Entry into Force of the Agreement, this Agreement may be terminated if the general interest so requires, by decision of APN Board of Directors.

II.2.6.4 Occupant indemnity

No compensation shall be payable by APN in connection with all cases of termination referred to in II.2.6.1 Termination by the Occupant and II.2.6.2 Termination by the APN:

In the event of termination resulting from the non-performance of this authorization terms and conditions by the Occupant, the fees paid in advance by the Occupant shall be retained by the APN without prejudice to the right of the latter to claim the payment of any sums that may be due to it.

The indemnity shall be calculated in accordance with the following terms (insert **calculation mode**), based on the investment evaluation expressly proposed by the Occupant, authorized by the APN and included in this authorization, excluding all indemnities related, in particular, to any other investment not included in this authorization, to the Occupant's revenue, the profits or to the operation of the Occupant in general.

Article II.2.7 End of occupation

The Occupant shall be required to evacuate the premises on the date of termination or termination of this Agreement as defined in Article I.1.7 - Duration and Entry into Force of the agreement or Article II .2.6 - Termination of Authorization Prior to the Expiration of the Normal Period of Validity above.

Consequently, the Occupant shall take all necessary measures to abide by the date of the end of actual occupation, failing which the Occupant shall pay a compensation to APN calculated on the basis of the monthly fee plus **50%**.

Part II.3 - Administrative, legislative, and regulatory obligations

Article II.3.1 Obligations of the Occupant

II.3.1.1 Obligation to inform

The Occupant shall inform, without delay, APN of any fact (even if it does not result in any apparent damage), damage or deterioration, likely to affect the public maritime domain made available to it .

II.3.1.2 Compliance with laws and regulations

The Occupant shall comply with the laws and regulations in force or to be promulgated, in particular those governing its activity, as well as the various regulatory requirements (in particular those relating to the public hygiene, labor I safety, environment protection, urban planning, etc.) as well as those provided for in the texts in force.

The Occupant's default in complying with these laws and regulations shall in no event engage the responsibility of APN.

In general, the Occupant declares that it is aware of the laws and regulations applicable to the Port Domain (operation regulations, compliance with the safety and security rules, etc.), which it shall strictly adhere to.

This Agreement shall not be considered as an authorization under the different policies mentioned above. In the event of construction works, this Agreement shall not be considered as granting a building permit and does not exempt the Occupant from the declaration required in such case.

The Occupant shall also obtain all necessary authorizations for the activities exercised at all times, so that the responsibility of the APN can never be involved. APN cannot in any case be implicated by the Occupant in the event that the required authorizations for which the Occupant applied are not granted to it and in particular those relating to the regulations related to classified installations for environmental protection.

The Occupant shall, at his own risk and expense, carry out all work or installations resulting therefrom.

II.3.1.3 Respect of the rules of safety and hygiene, respect for the environment

The Occupant shall carry out its activity by taking all necessary guarantees to comply with the legislation in matters of public hygiene, public safety and the environment protection.

a) Health and safety at work: Access to fire safety equipment must be permanent.

Access to emergency exits must be free of any obstruction, and this, permanently.

b) **Environment:** The Occupant shall be solely liable for the waste resulting from its activities and prevents any risk of pollution. It must in particular collect, store, remove and process all its waste in accordance with applicable laws and regulations.

In general, the Occupant must take all measures to protect the environment against any pollution by spill, discharge, direct or indirect deposit of any kind. To this end, the Occupant shall implement the best available techniques and seeks continuous improvement.

Article II.3.2 APN Statements

II.3.2.1 Natural risks

APN declares that the building/premises, object of the present Agreement, is potentially located in an area covered by a prescribed or approved plan for prevention of foreseeable natural risks.).

Commented [M16]: APN should ensure that a disaster risk prevention plan is in place.

II.3.2.2 Disasters

APN declares that, to the best of its knowledge, the real estate object of this Agreement has not suffered any loss resulting in the payment of an insurance indemnity guaranteeing the risks of natural or technological disasters.

Article II.3.3 Insurance - Liability

The Occupant shall remain directly liable for any damage that may occur to the goods made available, whether by it or by a third party acting on its behalf.

In the absence of compensation by the Occupant, any damage caused by it or by a third party acting on its behalf may be repaired by the APN after contradictory finding at the expense of the Occupant and without the need for it to wait f the end of the occupation term, at the expense of the Occupant to undertake an action, if necessary, against the responsible third parties.

In the event of a claim, the Occupant and its insurers waive all recourses that they entitled to against the APN and its insurers, except in the case of APN's gross negligence. .

The Occupant shall be responsible for repairing damage caused by itself or its contractors to the road works, miscellaneous and general development networks carried out by APN.

The Occupant shall be directly liable for accidents of any kind that may occur to its employees and workers or to any third party due to the use of the goods and assets made available. It shall guarantee and subscribe an insurance policy to preserve APN against all consequences of the actions, or claims against APN arising out these accidents or their consequences.

The Occupant shall be required to subscribe an insurance policy covering the rental risks of the site made available. The Occupant shall also subscribe an insurance policy covering the risks of "damage to the environment". The Occupant shall also subscribe a policy guaranteeing civil liability risks. The Occupant shall be required to provide annually the insurance policies certificates to APN (Article I.4.1 - List of Documents to be transmitted to the APN).

APN shall also subscribe a comprehensive multi-risk warranty covering its own built facilities.

Article II.3.4 Taxation

The Occupant shall, for the duration of the occupation defined in Article I.1.7 - Duration and Entry into Force of the Agreement, pay all taxes and duties of all kind applicable to the building(s), accommodation(s) and facility(s), regardless of size and nature that are used under this Agreement.

The Occupant shall also, if necessary and under his responsibility, declare new constructions or changes of nature or assignment provided for by tax legislation.

Article II.3.5 Litigations– Disputes

Any disputes that may arise between the Parties concerning the application or interpretation of this Agreement shall first be subject to an attempt at an amicable Agreement.

Part II.4 – Site Observation**Article II.4.1 Access rights of the APN**

APN reserves the right to visit the property/premises subject of this Agreement. APN's representatives shall be able to enter the site as needed (safety, maintenance of works, annual visit, etc.).

Article II.4.2 Premises entrance

A report containing the inventory is drawn up jointly by APN and the Occupant at the time of signing this Agreement.

These minutes recording the condition of the access to the premises shall be annexed to this Agreement.

The Occupant takes the place “as is” at the time of its entry in the premises and shall not be entitled to claim any compensation for any reason whatsoever, or any work of improvement throughout the term of this Agreement.

Article II.4.3 Site Exits**II.4.3.1 Rehabilitation of goods and materials made available**

Upon the expiration of this Agreement provided for in Article I.1.7 - Duration and Entry into Force of the Agreement or upon its Termination Under Article II.2 .6 - Termination of Authorization Prior to Expiry of the Agreement normal period of validity, the buildings, objects of this Agreement, shall be rehabilitated by the Occupant without compensation from APN.

In the event that the Occupant does not comply with APN instructions, APN shall, at the Occupant's expense, proceed to the restoration of the premises.

At the request of the Occupant, APN may accept the outright abandonment of the work of various installations, installations or improvements made by the Occupant.

II.4.3.2 Exit conditions

A report recording the exit condition is established jointly by APN and the Occupant at the end of the occupation provided for in Article I.1.7 - Duration and entry into force of the Agreement or in case of early termination of this Agreement provided for in Article II.2.6 - Termination of Authorization before expiry of the normal period of validity.

These minutes recording the site condition shall be annexed thereto.

In all cases, the fees provided for in Article I.3.1 - Fees above shall be due until the date of the complete restoration of the buildings/premises occupied.

Article II.4.4 Condition of soils and basements

The Occupier shall expressly acknowledge the state of the visible soil.

APN does not provide any guarantee as to the technical characteristics of the basement to the Occupant. However, APN shall, at the request of the Occupant, transmit any document in its possession without any guarantee as to its reliability. Before any necessary intervention or work, the Occupant undertakes to carry out, at his exclusive expense, the studies and analyzes necessary to assess the state of the soil and subsoil.

Part II.5 - Projects and works

Article II.5.1 Prior approval of projects

The Occupant undertakes to submit to APN's approval all projects of construction and execution or development of the premises made available, as well as the positioning of the structures and buildings envisaged.

In all cases, APN shall notify its decision within one (1) month as from the date of the Occupant's request.

Any new work subsequent to the present Agreement shall be the subject of an amendment.

All information provided by the Occupant is strictly confidential and cannot be disclosed by APN without the express permission of the Occupier.

The Occupant shall submit, prior to any construction, a building permit or work permit application, which will be submitted to APN for acceptance together with the corresponding cost estimate.

In the same way, the general plans of the installations as well as all the projects of development of the ground will have to be presented to APN for approval.

The constructions and renovations shall be built in accordance with the regulatory provisions and adapted to a possible renovation charter including landscaping. These works must not, except express Agreement of the APN, modify or degrade the possible existing property installations.

Any amendment or addendum to the initial project must first be submitted to APN, with the corresponding cost estimate.

Article II.5.2 Execution calendar

The Occupant shall provide a provisional execution schedule to the APN for all projects of construction and execution or development of the premises made available.

Article II.5.3 Contravention

Works erected in contravention of this Agreement the provisions shall be demolished at the Occupant's expense and risk after formal notice issued by APN to the Occupant by registered letter with acknowledged of receipt.

If the Occupant fails to demolish works erected in contravention of this Agreement provisions, APN may terminate this Agreement in whole or in part without any compensation in accordance with the procedures set out in Article II 2.6 - Termination of the authorization before expiry of the normal period of validity.

Article II.5.4 Storage of materials and equipment needed for construction sites

During the period of carrying out the of the Occupant's installations, duly authorized by t APN, the materials necessary for this task shall not in any case be stored outside the boundaries of the fields put at its disposal.

Article II.5.5 Documents required in the official acceptance of work

Upon completion of the work, the Occupant shall justify the actual amount of work performed and the depreciation schedule in the form of a statement certified by the Company's Statutory Auditors or a document certified by a certified public accountant.

As soon as the work is completed, the Occupant must submit the certificate of conformity and a copy of the file of the works executed.