



Feasibility Study of New Terminal  
Facilities in the Georgian Ports  
**Privatisation Concept -  
Attachments**  
July 1998

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\* These contracts have not yet been discussed with any parties potentially involved.



## Draft Shareholder Agreement for the first privatisation (Container and RoRo activities)



# DRAFT SHAREHOLDERS AGREEMENT





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## PREAMBLE

**THIS AGREEMENT** (the Agreement) is made between the following parties (the Shareholders): with the purpose to found a Joint Stock Company (JSC) in accordance with the Georgian Law

1. Port of Poti, 52, D. Agmashenebeli Str., Poti, Georgia 2.

2.

**WHEREAS** the JSC operates all container and RORO activities (including the Rail Ferry activities). The first development phase includes following areas of the Port of Poti: Berth 2 and the area behind berth 1 and 2, Berth 6 and 7 and the Berths 12, 13, and 14, as indicated in the plan attached hereto as Annex 1;

**WHEREAS** the Georgian and Foreign shareholders wish to improve the operation and financial performance of the Container and RoRo Operations, and, to this end, have agreed to form a joint stock company (JSC) to lease, operate and manage the container and RoRo activities exclusively in the Port of Poti pursuant to the terms of this Agreement, a Charter is attached hereto;

**WHEREAS** the JSC leases the wharf structure of the berths 2, 6, 7, 12, 13, and 14 as well as the area behind the berth No.1 (hereunder called "Terminals") and certain related infrastructure located in this areas from the Port of Poti pursuant to a lease agreement dated ... 19..., a copy of which is attached hereto;

**WHEREAS** the Port of Poti has obtained the Rights to Ownership with respect to all immovable property located in the areas of the berths 1, 2, 6, 7, 12, 13 and 14;

**WHEREAS** the appropriate governing of the Shareholders have duly approved the signature and performance by the Shareholders of this Agreement, including without limitation the participation by the Shareholders in JSC, the contribution by the Shareholders of their respective capital contributions to JCS and the signature by JSC of the various agreements referred to herein. (copies of the respective Protocols of the governing bodies are attached hereto as Annex 2);

**NOW THEREFORE**, the Shareholders hereto agree as follows:

### ARTICLE 1 - FORMATION AND PURPOSES OF JSC

1.1 The Parties shall establish JSC as a joint stock company under the laws of Georgia in accordance with this Agreement and the Charter of JSC executed simultaneously herewith. The name of the JSC shall be .

Poti Container and RoRo Terminals.

1.2 The principal purpose of JSC is to operate the Terminals in accordance with state-of-the-art international industrial, economic and environmental standards, to facilitate the movement of cargo through the Port of Poti, to increase the volume of goods imported through the Port of Poti into Georgia and the transit goods via the TRACECA route and to provide an acceptable return to the Shareholders on their investment into JSC.

- 1.3 At a later stage, and subject to market demand and financial viability as agreed by the Shareholders, JSC may engage in the construction, equipment and operation of an new container terminal in the development area of the Port of Poti as well as additional cargo terminals within the Port of Poti. To this effect, as soon as possible following registration of JSC, the Management of JSC (as defined in Art. 3.1 below) shall prepare and submit to the Board of Directors of JSC (as defined in Art. 3.1 below) for approval a development program for the future development of JSC based on the Port Master Planning of the Tacis TRACECA Project "Feasibility Study of New Terminal Facilities in the Georgian Ports" . The Development Plan shall determine the long-term development goals of JSC consistent with the principles outlined in the Business Plan.
- 1.4 The wharf structure associated with the "Terminals", certain buildings and equipment associated with the "Terminals" and the land plot associated with the Terminal (consisting of .....m2 as set forth in Annex 3 hereto) shall be leased/subleased by JSC from the Seaport for a 49-year renewable term pursuant to a Lease/Sublease Agreement hereto (the Lease Agreement). Lease payments pursuant to such Agreement shall be equal to US\$ 1 (one) per square meter and year.
- 1.5 The Sea Port shall obtain all permits, approvals and registrations required to ensure that the Lease/Sublease Agreement enters into effect pursuant to applicable law and remains in effect for the duration of its term, including any extensions thereof.
- 1.6 All activities of JCT shall be carried out pursuant to the Business Plan as well as such other business plans as may be adopted by the Shareholders during the period of existence of JSC.
- 1.7 The Shareholders shall cause JSC to carry out its activities in accordance with applicable legislation, this Agreement, the Charter, the Business Plan and other business plans adopted by JSC.

## ARTICLE 2 - CHARTER CAPITAL OF JSC

- 2.1 The initial charter capital of JSC shall be the Lari equivalent of US\$ 37.5 Million..... (.Thirty seven million five hundred thousand US dollars), contributed by the Shareholders and divided into 1000 (one thousand) shares of common (ordinary) stock of one class, each share having a nominal value in Lari equal to thirty seven thousand and five hundred US dollars (US \$ 37,500). The above Lari-US dollar equivalencies shall be established using the official exchange rate of the Georgian Central Bank on the date hereof.
- 2.2 The Charter Capital is divided between the Shareholders as follows:
- |                  |   |
|------------------|---|
| the Port of Poti | 480 (four hundred eighty) shares of common stock representing 48 % of the Charter Capital |
| the EBRD         | 270 (two hundred seventy) shares of common stock representing 27 % of the Charter Capital |
| Others           | 250 (two hundred fifty) shares of common stock representing 25 % of the Charter Capital   |

- 2.3 The contributions of the Port of Poti to the Charter Capital shall consist of equipment, investments into the "Terminals" as well as a goodwill for the existing business the port brings into the JSC. This is specified in Annex 4 hereto. The contributions of the other Shareholders to the Charter Capital shall consist of US dollars. Each Shareholder shall make its contributions at the time of registration of JSC.

### ARTICLE 3 - MANAGEMENT OF JSC

JSC shall be administered by the general assembly of shareholders, the supervisory board, the board of directors and the management, all in accordance with applicable law, the provisions of the Charter, and the terms, conditions and principles set forth below.

#### 3.1 The General Assembly

- 3.1.1 All matters before the General Assembly shall be decided by affirmative vote minimum 51 % (fifty one percent) of the shareholders present at a meeting, in person or by proxy.
- 3.1.2 A quorum shall exist, and a meeting of the General Assembly shall be deemed duly constituted, if shareholders (their representatives) holding a total of more than 50 % of the issued voting shares of JSC registered for the participation in the General Assembly.
- 3.1.3 The first General Assembly of JSC shall be held within sixty (60) days of the registration of the Charter of JSC. Thereafter, a meeting of the General Assembly shall be held at least quarterly. Meetings of the General Assembly shall be called pursuant to the procedure provided in the Charter.
- 3.1.4 The meetings are to be guided by the chairman of the supervisory board. In case of his (her) absence the meeting is headed by the deputy-chairman. In case of absence of the deputy chairman the meeting is headed by one of the directors. The minutes of the meeting are to be composed by a notary.

#### 3.2 Supervisory Board

- 3.2.1 The supervisory board is nominated for 4 years. The Supervisory board has to elect a Chairman and a deputy Chairman. Members of the supervisory board cannot be at same time directors of same enterprise.
- 3.2.2 The number of members of the supervisory board has to be a figure which could be divided by three.
- 3.2.3 The minimum number has to be 3 and the maximum number has to be 21
- 3.2.4 All the members of the supervisory board are to be nominated by the general assembly if the general assembly decides so. (Alternatively but not obligatory, the general assembly also can decide to have one third of the members of the supervisory board out of the employees).
- 3.2.5 The supervisory board has to meet minimum once every three months. The Chairman has to invite the members of the Supervisory Board at the latest 2 weeks before the meeting.

### 3.3 The Board of Directors

- 3.3.1 The Supervisory Board shall appoint a Board of Directors consisting of four (4) voting members. The Port of Poti shall be entitled to nominate two (2) of the voting members. The other Shareholders shall be entitled to nominate the other 2 of the voting members. The Shareholders hereby agree that they will at all times during the existence of JSC vote their shares in JSC to elect the before mentioned nominees (or such replacements as may be nominated by the respective Shareholders) as directors of JSC. Directors shall be appointed for 2-year terms, subject to renewal and removal as provided in the Charter.
- 3.3.2 The Chairman of the Board of Directors shall be appointed from the members of the Board nominated by the Port of Poti. The Board shall designate Financial Controller (as defined in Art. 3.4.2 below) as Secretary of agendas, notices, minutes and other documents relating to meetings of the Board.
- 3.3.3 A quorum shall exist, and meetings of the Board of Directors shall be deemed duly constituted, if all members of the Board participate in a meeting, in person or by telephone or other electronic means among the participating Board members. Each member of the Board of Directors shall have 1 (one) vote with respect to all issues to be decided by the Board. All matters before the Board of Directors shall be decided by unanimous vote. The General Director of the Port of Poti shall be invited to participate in all meetings of the Board.
- 3.3.4 Each member of the Board of Directors shall be entitled to reimbursement of his reasonable documented travel and other expenses to assure attendance at a meeting of the Board of Directors (such expenses to be confirmed by receipts for accounting purposes) payable in US\$ promptly following each meeting of the Board. In addition each Board Member shall receive compensation equal to US\$ 10,000 (ten thousand US dollars) per year. This compensation shall be paid in US\$ in four rates in February, May, August and November of each year. JSC shall withhold such tax payments from such compensation as may be required by applicable law. The Shareholders agree to approve the above compensation scheme at the first General Meeting of Shareholders of JSC.

### 3.4 Management

- 3.4.1 The executive management of JSC shall be performed pursuant to a Management Services Agreement hereto to be signed concurrently with this Agreement between JSC and (Management Company) , a company organised and existing under the laws of . The Management Agreement shall have a duration of 25 (twenty-five) years.
- 3.4.2 The executive body of JSC (Management Company) shall consist of a General director, a Financial Controller and Operations Manager and a Technical Manager to be appointed by the Management company pursuant to the Management Agreement. The Management shall be headed by the General Director. Each of the above individuals shall have experience in managing international container terminals operated by western companies. The rights and responsibilities of each of the members of Management shall be set forth in the Management Agreement and the Charter.

- 3.4.3 As set forth in further detail in the Management Agreement, JSC shall reimburse the Management company (at cost) for all of its documented expenses incurred in connection with its activities under such Agreement and shall in addition pay the Management Company a management fee equal to 8% (eight percent) of the revenues derived by JSC from the first 80,000 (eighty thousand) TEU per year processed by JSC minimum US\$ ..... and 12% (twelve percent) of all additional annual revenues collected by JSC from any source. The before mentioned payments shall be exclusive of VAT or similar taxes. VAT and such similar taxes shall be added so such payments to the extent required by law.
- 3.4.4 A procedure for monitoring the performance of the Management company shall be set forth in the Management Agreement.

#### **ARTICLE 4 - REPRESENTATIONS AND WARRANTIES**

- 4.1 The Shareholder hereby represents and warrants that:
- 4.1.1 Neither the signing of this Agreement, the Charter or any other Annexes to this Agreement or other related agreements, nor the realisation of the purposes of JSC or the performance of the obligations imposed by this Agreement (including its Annexes) JSC shall violate or conflict with the rights of any third person.
- 4.1.2 The execution and performance of this Agreement (including its Annexes) will not result in any violation, or be in conflict with any agreement or instrument of the Shareholders, law, statute or other normative act applicable to it.
- 4.1.3 There are no claims or arbitration, administrative or legal or other proceedings or investigations pending or threatened against or affecting it before any court, tribunal or regulatory authority which would, if adversely determined, have a material adverse effect on its ability to carry out its obligations under this Agreement (including its Annexes) or on the ability of JSC to carry out its activities or to take any actions envisaged herein.
- 4.2. The persons signing this Agreement on its behalf have full power and authority to do so, and such signing is in compliance with all applicable legislation; Shareholders further confirm that the powers and number of here signatories to this Agreement are in conformity with all requirements of applicable legislation and that, when executed, this Agreement shall be a valid and legally binding obligation of the shareholders, enforceable in accordance with here terms.
- 4.3 The above representation and warranty shall be deemed continuously repeated for the term of the existence of JSC. Each of the Shareholders agrees to indemnify and hold the other Shareholders and JSC harmless against any and all costs, damages and liabilities, including attorneys fees, arising out of or in connection with any inaccuracy in or breach of any of the indemnifying Shareholders representations and warranties as described above.
- 4.4 JSC shall indemnify and hold harmless the Shareholders, the Management Company, the members of the Board of Directors of JSC and the members of Management of JSC against all criminal, civil and administrative liability under Georgian law to which they may be exposed as the result of any

acts or failures to act of JSC. The General Assembly shall adopt an official policy in this regard promptly following establishment of JSC.

## ARTICLE 5 - LICENSES AND APPROVALS

- 5.1 The Port of Poti shall ensure that JSC shall obtain on a timely basis:
- 5.1.1 All licenses, approvals and registrations from the competent municipal and federal governmental bodies necessary to allow for the commencement and ongoing activities of JSC, including without limitation the operations of the Terminal and the construction and operations of any further terminals especially a terminal in the extension area of the Port of Poti and other facilities as may be determined by JSC.
  - 5.1.2 All long-term lease or sublease agreements, permissions, licenses and registrations necessary to grant land use rights to all land plots associated with the terminals to be developed by JSC; and
  - 5.1.3 All long-term lease agreements with the Marine Administration (or permissions from the Marine Administration with respect to sublease agreements between the Port of Poti and JSC) necessary to assure the long-term use by JSC of all wharf structures and other infrastructure and other property located on the balance sheet of the Marine Administration and necessary for the activities of the terminals to be developed by JSC, such lease agreements (or sublease agreements) to be on terms no less favourable than terms offered by the Marine Administration to the Port of Poti for similar property.

## ARTICLE 6 - RIGHTS ON FIRST REFUSAL

- 6.1 Subject to any limitations that may be imposed under Georgia anti-monopoly legislation, the Port of Poti agrees that it will not, directly or indirectly (through a subsidiary or otherwise) either on its own or together with one or more third parties, undertake the development, construction, operation and/or management of any additional project involving containerised cargo handling facilities within the area of the Port of Poti without offering such project first to JSC.
- 6.2 In the event that the Seaport wishes (directly or indirectly as provided above) to undertake a new project involving the development, construction, operation and/or management of a container terminal within the area of the Port of Poti or in the event that the Port of Poti wishes to develop a container terminal located in the development area of the Port of Poti, it shall promptly advise JSC in writing (with copies to the Shareholders) of the terms under which it intends to pursue such project, including the details of all bona fide offers from third parties to participate in such project which the Port of Poti wishes to accept. JSC shall, within forty-five (45) days following receipt of such notice, advise the Port of Poti whether or not JSC wishes to undertake the project on terms substantially equivalent to those proposed by the Port of Poti. The decision of JSC whether or not to undertake such project and/or sign a management agreement with respect to a container terminal within the development area of the Port of Poti shall be taken by the General Assembly of JSC without participation of the Port of Poti as an interested party in such project. In the event that the Port of Poti wishes to alter the terms pursuant to which it wishes to undertake such project, the revised terms must once again be



offered to JSC before such project may be undertaken independently by the Port of Poti and/or third parties.

- 6.3 The Shareholders acknowledge that the participation by JSC in any such project shall be subject to the provisions of the Georgian Law on Joint Stock Companies.

## **ARTICLE 7 - OTHER ASSISTANCE OF THE PARTIES**

- 7.1 In addition to their other obligations set forth herein, the Parties shall provide reasonable assistance to the JSC in all matters required to ensure its successful operation.

## **ARTICLE 8 - ACCOUNTS AND AUDITING**

- 8.1 Financial records, statistical, accounting and periodic financial reports of JSC shall be prepared and, to the extent required, submitted to the competent governmental authorities, to the Board of Directors and to the General Assembly in conformity with the Charter and accounting principles mandated by applicable law. In addition, periodic financial reports shall be prepared according to generally accepted international accounting principles and practices. All Georgian accounting records shall be prepared in the Georgian language and all international financial reports shall be prepared in the English language.
- 8.2 In addition to the balance sheet of JSC and profit and loss statement and other current financial information prepared and filed by JSC with the competent authorities in Georgia, JSC shall prepare and submit to the Board, at its direction, periodic and annual budgets, financial reports and balance sheets, in Georgian and English, in a form or forms acceptable to the Board.
- 8.3 JSC financial results shall be stated in Lari and US Dollars. Currency conversions shall be recorded in accordance with applicable law and generally accepted international accounting principles and practices.
- 8.4 A statutory shall be imposed on the right of any Shareholder or its authorised representatives to take copies or duplicate originals of financial information and other documents outside Georgia to the extent necessary for incorporation in any tax returns and financial reports prepared by such Shareholder or for other legal purposes.

## **ARTICLE 9 - TRANSFER OR PLEDGE OF SHARES**

- 9.1 Each Shareholder shall have a right of first refusal to purchase it pro-rata portion of the shares of another Shareholder wishing to sell such shares to a third person, plus, if not all Shareholders exercise their right of first refusal, a pro-rata portion of the shares not claimed by other Shareholders. The JSC shall have the right of first refusal to purchase any such shares not claimed by the Shareholders. No right of first refusal shall exist for sales or other transfers of shares by one Shareholder to another Shareholder or by one Shareholder to a company wholly owned by such Shareholder or wholly owned by the same persons or entities owning such Shareholder.

- 9.2 The Shareholder wishing to sell its shares shall notify the other Shareholders and General Director of the Company of its intention with complete information as to the terms of the proposed transfer. Within thirty (30) days of receipt of the notice of transfer of shares, each of the other Shareholders may notify the selling Shareholder of its intention to purchase its pro-rata portion of such shares plus a pro-rata portion of any shares not claimed by other Shareholders, at the price and subject to the terms contained in the notice of transfer.
- 9.3 The JSC shall have the right to purchase any shares with respect to which the Shareholders fail to exercise their above rights of first refusal at a price and subject to the terms contained in the notice of transfer. The JSC shall exercise such right at an extraordinary meeting of the General Assembly (to be held promptly following expiration of the thirty (30) day period referred to in Art. 9.2 above). The decision for the company to acquire such shares shall be made without participation of the Shareholder whose shares are being acquired.
- 9.4 In each particular case, the transfer or assignment of any shares of stock in JSC shall be reflected by an entry in the corporate Register of Shareholders of the JSC, cancellation of old and issuance of new share certificates and, if necessary, amendment of the Charter, with subsequent notification to the competent Georgian authorities as provided under applicable law.
- 9.5 Any purchaser of shares of JSC shall be bound by the present Agreement and the Charter, as then in effect, as well as by all agreements, resolutions or acts there fore adopted or concluded in the name of JSC relating to the rights and obligations of the Shareholders and shall execute an accession agreement to this effect.

## ARTICLE 10 - INSURANCE

- 10.1 JSC property and interests shall be insured by an appropriate insurance company selected by the Board of Directors or, to the extent permitted by applicable law, JSC may elect to self-insure all or a part of such property and interests.
- 10.2 The insurance coverage for JSC may comprise:
- 10.2.1 insurance for equipment installation, operations and construction work;
  - 10.2.2 property insurance against fire, natural hazard, theft or other risks;
  - 10.2.3 liability insurance;
  - 10.2.4 transport insurance; and
  - 10.2.5 such other coverage as shall be determined to be necessary by a resolution of the Board.
- 10.3 The Board may authorise insurers to reinsure risks covered under the above policies with acceptable re-insurers and on terms agreed by the Board.
- 10.4 The policies shall name the Shareholders, as their interests may appear, as additional insured.

**ARTICLE 11 - TERM AND TERMINATION; CONSEQUENCES OF BREACH**

- 11.1 This Agreement shall enter into effect upon its signature by the Shareholders and shall remain in full force and effect unless terminated in accordance with the terms hereof.
- 11.2 In the event that a Shareholder does not make full payment for the shares to be issued to it pursuant to Art. 2.2 above within the time period required in Art. 2.3 above, such Shareholder shall forfeit any partial payment made with respect to said shares and all shares issued to such Shareholders shall be placed at the disposal of JSC, with entry of a corresponding notation in the Registry of Shareholders of JSC.
- 11.3 If any Shareholder commits a breach of its other material obligations hereunder, including without limitation breach of its representatives and warranties under Article 5, or breach of its non-competition obligations under Article 6, either of the remaining Shareholders may provide such Shareholders with written notice of such breach (with copies to be sent to all other Shareholders), demanding that such breach be cured within thirty (30) days from the date of receipt of such notice. If the defaulting Shareholder may vote at an extraordinary meeting to issue to the defaulting Shareholder a demand that such Shareholder transfer its shares to JSC as provided in Article 11.4 below.
- 11.4 Each of the Shareholders expressly agrees that in the event that it commits a breach of its material obligations hereunder and fails to cure such breach within thirty (30) days of the notice provided under Article 11.3 above, upon demand such Shareholder will transfer to JSC its entire share interest in NCT at a price equal to the lesser of (i) its investment in the Charter Capital of JSC (as valued in US dollars at the time of the investment) plus its proportionate share of retained earnings, and minus its proportionate share of any losses or (ii) its proportionate share of the market value of JSC, as determined by an independent licensed appraiser appointed by the other Shareholders.
- 11.5 Notwithstanding its exclusion from JSC pursuant to Article 11.2 hereof or the transfer of its shares to JSC in accordance with Article 11.3 hereof, any defaulting Shareholder shall remain bound by all obligations contained in Article 9 (Transfer of Shares), Article 15 (Resolution of Disputes) and Article 16 (Confidentiality) hereof. Such Shareholder shall in addition remain bound by any agreements entered into between such Shareholders and JSC, unless such agreements are terminated by JSC in accordance with their respective terms.
- 11.6 Any Shareholder who is excluded from JSC or whose shares are transferred to JSC as provided above shall be liable to JSC and the other Shareholders for any costs and damages (including lost profits) incurred by JSC or such Shareholders as a result of its breach. JSC shall have the right to withhold such costs and damages from any sums due to the defaulting Shareholder in return for its shares. To the extent that such sums are insufficient to cover such costs and damages, the defaulting Shareholder shall remain liable for any excess.
- 11.7 The remedies set forth in this Art. 11 shall be in addition to any further remedies provided by applicable law.
- 11.8 Following the exclusion of a defaulting Shareholder as provided in Article 11.2 above or the transfer of such Shareholders shares to JSC in accordance with Article 11.3 above, the shares of such

Shareholders may be reissued by JSC to one or more existing or new shareholders as determined by a 75% (seventy-five percent) majority vote of the then remaining members of the General Assembly.

- 11.9 If, following a period of 1 (one) year after the exclusion of one or more Shareholders, or the transfer of their shares to JSC, the remaining Shareholders are unsuccessful in locating and agreeing upon a substitute shareholder or shareholders (or the re-issuance of the defaulting Shareholders shares to the remaining Shareholders) then the Shareholders hereby agree to cancel the shares of the defaulting Shareholder and reduce the Charter Capital of JSC accordingly.
- 11.10 This Agreement shall automatically terminate upon occurrence of any of the events specified in Article 24 of the Charter. In addition, the Port of Poti shall have the right to terminate this Agreement by written notice to the other Shareholders in the event that JSC fails to secure the limited recourse financing for the Project described in Art. 2.4 above on terms reasonably acceptable to the Shareholders within one year following the date hereof. The shareholders shall each have the right to terminate this Agreement by written notice to the other Shareholders in the event that JSC fails to obtain all licenses, approvals, permissions and other documents referred to in Article 5 hereof within one hundred and eighty (180) days hereof or if any of such licenses, approvals, permissions or it her documents are revoked at some later time and not renewed. Each Shareholder shall have the right to terminate this Agreement by written notice to the other Shareholders if JSC shall become subject to any additional federal or local taxes (including increases in existing taxes or revocation of any tax holidays applicable to JSC) or regulations (including price controls) which would materially and adversely affect the profitability of its operations.
- 11.11 Upon termination of this Agreement for any reason whatsoever:
- 11.11.1 All rights granted to JSC by any of the Shareholders shall revert to the grantor and JSC shall cease to make any use of such rights;
- 11.11.2 Agreements between any of the Shareholders and JSC, and all rights thereunder, shall immediately terminate in accordance with the respective terms specified therein;
- 11.11.3 Within thirty (30) days of termination, the Shareholders agree to organise an extraordinary meeting of the General Assembly at which the Shareholders hereby agree that they will vote in favour of the dissolution and liquidation of JSC and distribute its assets in accordance with Article 24 of the Charter;
- 11.11.4 The Shareholders shall cease to benefit from the rights contained in this Agreement, except that they will continue to benefit from and/or bound by the provisions of Articles 15 and 16 (Dispute Resolution and Confidentiality).

## **ARTICLE 12 - FORCE MAJEURE**

- 12.1 As used herein, force majeure shall mean: a) natural disasters such as fire, explosion, flood, earthquake and b) risks of war, occupation, civil war, civil disturbances, and other such circumstances, beyond the control of any of the Shareholders or JSC, and which shall prevent a Shareholder or JSC from performing its obligations under this Agreement.

- 12.2 Should force majeure occur and prevent any Shareholder or JSC from timely performance of its obligations hereunder, the Shareholders and JSC shall be excused from the performance of their obligations hereunder until the cessation of the force majeure shall promptly notify the other Shareholders (and JSC) in writing of said occurrence supplying sufficient information to allow the other Shareholders (or JSC) to verify independently the existence and circumstances thereof.

## **ARTICLE 13 - ADVERSE CHANGES**

- 13.1 If following the date of this Agreement there should occur any adverse change which materially affects JSC, the Shareholders and/or the Port of Poti and which is not remedied by applicable legislation, including but not limited to the repeal or amendment of any legislation now in force, the cancellation, limitation or non-renewal of any rights, licenses, authorisations or approvals required for JSC to carry on its activities and its business, or any increase in tax rates or imposition of new taxes then the Shareholders shall use their best efforts to obtain an exemption therefrom for JSC the Western Shareholders or the Seaport, as may be required, or otherwise take such action as may be necessary to negate the adverse result of the occurrence of the Adverse Change, and shall consult with appropriate ministries and organisations, as well as with other appropriate governmental bodies, with the aim of agreeing upon mutually acceptable measures to restore the original economic benefits of JSC and the Shareholders.
- 13.2 If the Shareholders are unable to obtain such exemption or take such action so as to negate the adverse effect on JSC or the Shareholders of the Adverse Change, then the Shareholders shall re-negotiate and amend this Agreement in good faith so as to achieve the same economic benefits for JSC and the Shareholders as may have been anticipated but for the Adverse Change.

## **ARTICLE 14 - FAVOURABLE CHANGES**

- 14.1 Should legislation in Georgia relating to investments with foreign participation as contemplated by this Agreement and to the relations established thereby, including but not limited to tax treatment, labour regulations, currency convertibility, exchange controls, property rights, and other areas, be amended so as to be more favourable to JSC or to the Shareholders, then, provided neither JSC nor any of the shareholders are put at a disadvantage thereby, this Agreement shall be amended to take advantage of such new laws, regulations, rulings, concessions or conditions.

## **ARTICLE 15 - RESOLUTION OF DISPUTES**

- 15.1 The Shareholders and JSC shall attempt to resolve all disputes arising out of this Agreement and the activities of JSC by friendly negotiations. In the event that the Shareholders or JSC fail to resolve a dispute, the matter may, upon the application of either party to the dispute, be referred to and resolved exclusively by arbitration in Vienna, Austria in accordance with UNCITRAL rules, without recourse to courts of law.
- 15.2 Arbitration will be established as follows:

- 15.2.1 The party (or parties) wishing to submit the matter to arbitration shall notify the other party (or parties) by facsimile (with a confirmation copy sent by air courier), naming its (their) arbitrator, who may be a citizen of any country, stating the arbitrators address, and advising the subject of the dispute with pertinent details.
- 15.2.2 Within thirty (30) days of receipt of such notification, the other party (or parties) shall appoint its (their) arbitrator, who also may be a citizen of any country, and shall inform the first party (or parties) by facsimile (with a confirmation copy sent by air courier) of the arbitrators name and address.
- 15.2.3 If the arbitration is brought by several parties and such parties are unable to agree upon an arbitrator or if the party (or parties) summoned to arbitration fail to appoint an arbitrator within the above mentioned time, such arbitrators shall be appointed by the President of the Vienna Chamber of Commerce, at the request of any of the parties having submitted the matter to arbitration.
- 15.2.4 The two arbitrators shall choose a third arbitrator, who shall be designated as the chief arbitrator.
- 15.2.5 If within thirty (30) days after they have been nominated, the initial two arbitrators fail to agree upon the choice of a chief arbitrator, then the latter shall be appointed at the request of either party by the President of the Vienna Chamber of Commerce.
- 15.3 The official language of the arbitration shall be English; however, written submissions and testimony may be presented to the arbitrage tribunal in English and Georgian.
- 15.4 The award shall be decided by majority vote. This Agreement and the rights and obligations of the Parties hereunder shall be construed in accordance with the terms and conditions of this Agreement and the substantive law of Georgia (excluding choice of law rules). The arbitrators shall be free to determine the most suitable procedural rules for the arbitration. The arbitrators shall have the power to render declaratory judgement and to issue injunctive orders, as well as to award monetary damages.
- 15.5 The arbitrators shall endeavour to issue their award within three (3) months after the Chief Arbitrator has been chosen. The award shall state the reasons for the decision, identify the composition of the arbitration tribunal, date and place of the decision, and allocation of costs and expenses of the arbitration between the parties.
- 15.6 The Shareholders and JSC hereby irrevocably waive any right of sovereign immunity which they or it might now have or at any time hereafter assert in connection with this Agreement, the performance of their obligations hereunder and the execution of any judgement or award in connection therewith.
- 15.7 The arbitration award shall be final and binding upon the parties and may be enforced in any court of competent jurisdiction.
- 15.8 Notwithstanding the foregoing, the shareholders shall have the right to bring any action arising out of or in connection herewith in which the defendant is the Port of Poti or JSC before the Arbitration Court of the Georgia.

## ARTICLE 16 - CONFIDENTIALITY

- 16.1 Each of the Shareholders agrees to use any and all confidential information and documentation received from another Shareholder or JSC (including without limitation information relating to the structure, business connections and activities of JSC or the Shareholders) for the purpose of JSC's duly authorised business activities. The transfer of such confidential information and documentation to third party entities or persons is strictly prohibited except as may otherwise be agreed to in writing by the Party which is the subject of the confidential information to be disclosed. Each Shareholder undertakes to exert its best efforts to prevent such unauthorised disclosure by any of its past or present directors, officers, employees, agents and representatives.
- 16.2 The confidentiality provision contained in Art. 16.2 above shall not apply to:
- 16.2.1 Information which had become, at the time of its disclosure to the third party, part of the public domain through no fault of JSC or the disclosing Shareholder (including their past or present directors, officers, employees, agents and representatives);
  - 16.2.2 Information which was known by JSC or the disclosing Shareholder from outside sources prior to its disclosure by the party which is the subject of such information (provided that this fact is promptly communicated to such party upon receipt of the already known information);
  - 16.2.3 Required disclosures to governmental bodies regarding JSC or the Shareholders as well as any disclosures in response to inquiries of government authorities, courts, or other bodies to which JSC or the disclosing Shareholder is responsible.
- 16.3 JSC shall obtain from its concerned directors, officers, employees, suppliers, agents and representatives non-disclosure and non-use agreements in a form established by the Shareholders.
- 16.4 All confidential information, technical data and trade secrets, and copies of any documents containing them, shall be returned to JSC or the Shareholder providing such information within thirty (30) days following the expiration or termination of this Agreement.

## ARTICLE 17 - NOTICES

- 17.1 Except as otherwise expressly provided, any notice, consent, agreement or other communication to be given hereunder shall be in written form either by personal delivery or by cable, telefax or telex and confirmed by registered mail (for notices provided in Georgia) or air courier (for international notices) sent within two (2) business days of such delivery, cable, telefax or telex to the addresses of the Shareholders and JSC as set forth below, as may hereafter be changed by notice. All notices shall be deemed effective upon receipt.

17.2 The addresses of the Shareholders and JSC for notice purposes are as follows:

...

with a copy to:

17.3 The telex, telefax, and telephone numbers of the Shareholders and NCT are as follows: .....

## **ARTICLE 18 - MISCELLANEOUS**

- 18.1 This Agreement (including its Annexes) constitutes the entire understanding among the Shareholders with respect to the subject matter hereof and supersedes all prior written and oral understandings or agreements among the Shareholders with respect thereto.
- 18.2 Amendments or additions to this Agreement shall be valid only if in writing and signed by the authorised representatives of the Shareholders. Consents or waivers issued in connection with this Agreement shall be valid only if in writing and signed by the Shareholder granting such waiver or consent.
- 18.3 No consent to any breach or default in the performance of any obligations under this Agreement shall be deemed to be a consent to any other breach or default in the performance of the same or any other obligations hereunder and no waiver of any rights hereunder shall be deemed to be a waiver of any other rights hereunder. Delay by any Shareholder in the enforcement of any of its rights hereunder irrespective of how long such delay continues, shall not constitute a waiver of such rights.
- 18.4 The invalidity or un-enforceability of any one or more of the provisions of the Agreement shall not affect the validity or enforceability of the Agreement as a whole. If any provision of this Agreement should, in whole part, be declared invalid or unenforceable for any reason, such invalidity or un-enforceability shall affect only the portion of such provision so declared, and the Shareholders shall use their best efforts to amend this Agreement to replace such invalid or unenforceable provision with a valid provision reflecting the original agreement of the Shareholders and preserving the economic and legal interests of the Shareholders as originally intended.
- 18.5 The rights and obligations arising from this Agreement may not be transferred in whole or in part by any of the Shareholders without the prior written consent of the other Shareholders, except as otherwise expressly provided herein. All rights and obligations arising from this Agreement shall transfer to the respective legal successors of the Shareholders.
- 18.6 Nothing contained in this Agreement shall be construed to authorise any of the Shareholders to act as agent for any other Shareholder, or to permit any Shareholder to undertake any contracts or other obligations for any other Shareholder.
- 18.7 The Shareholders and JSC agree to execute all documents and take all actions that may be necessary to give full effect to the provisions of this Agreement, including without limitation, the obtaining of any additional authorisations, approvals, permits and consents from any governmental bodies or authorities.



- 
- 18.8 The Shareholders shall cause JSC to accede to the provisions of this Agreement promptly following the registration of the Charter.
- 18.9 In all their dealings with each other and with JSC, the Shareholders shall act strictly in good faith and in accordance with fair commercial principles.

**IN WITNESS WHEREOF**, the Shareholders have approved and signed the present Agreement in the City of ..... this .... day of ....., 1998 in ( ) originals, .... ( ) in Georgian and ...( ) in English, both versions being equally valid.



**ANNEXES:**

ANNEX 1      PLAN OF TERMINAL\*

ANNEX 2      PROTOCOLS OF SHAREHOLDERS\*\*

ANNEX 3      LAND PLOT\*\*

ANNEX 4      SPECIFICATION OF CONTRIBUTION\*\*

\* as per report

\*\* to be developed by the contract partners



Draft Charter for the first joint stock company



**DRAFT**

**CHARTER**

**OF THE JOINT STOCK COMPANY  
(hereafter called company)**

**Poti Container and RoRo Terminals (working title)**

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**ARTICLE 1 - GENERAL PROVISIONS**

1.1 A joint stock company is formed in Georgia by the following founders (the shareholders)

Port of Poti, organised and existing under laws of Georgia, and having its office address at 52 D..Agmashenebeli Str.,Poti., Georgia.(the Port of Poti).....

others Shareholders

1.2 The Company is governed by the present Charter, the agreement signed on the date hereof between the Shareholders of the Company relating to the affairs of the Company, the Shareholder Contract and applicable laws and other normative acts of Georgia.

1.3 The duration of the Company shall be unlimited unless liquidated pursuant to the present Charter and applicable law.

**ARTICLE 2 - NAME AND LOCATION OF THE COMPANY**

2.1 The full registered name of the Company is:

Poti Container and RoRo  
Terminals (working title).....  
.....  
.....

The short form registered name of the Company is:

.....

2.2 The Company's location is ..... and its place of state registration is ..... The Company shall notify the competent registration authorities of its postal address and changes thereto as required by applicable law.

2.3 At the time of its foundation the Company has no registered branches or representation offices.

**ARTICLE 3 - PURPOSE AND ACTIVITIES OF THE COMPANY**

3.1 The basic purpose of the Company shall be to operate and manage the container and RoRo terminals located in berts 2,6,7,12,13 and 14 (as well as, at a later stage, a new Container and RoRo Terminal ind the extension area of the Port of Poti.in accordance with state-of-the-art international industrial, economic and environmental standards, to facilitate the movement of cargo through the Port of Poti to increase the volume of goods imported through the Port into Georgia and the TRACEA States and to provide an acceptable return to the Shareholders on their investments into the Company.

3.2 The Company may engage in the following activities in order to carry out its basic purposes as set forth in Article 3.1 above, all within the confines of applicable law and subject to obtaining all necessary licenses or permits:

- 3.2.1 conduct all activities related to the construction, equipment, management and operation of container terminals;
- 3.2.2 engage in construction activities of all kinds, either in its own name or on the basis of construction agreements signed with third party entities;
- 3.2.3 engage in cargo shipment and handling operations of all kinds, including the use of cargo cranes and other equipment;
- 3.2.4 engage in equipment maintenance and repair, warehousing, storage (including the establishment and use of customs warehouses), truck and rail transport, customs and documentation services, communications services, vessel berthing, husbanding and other vessel support services, security services and information technology development and applications;
- 3.2.5 engage in import and export activities with respect to any equipment materials, supplies and spare parts for use by or in connection with the activities of the Company on terms most favourable to the Company;
- 3.2.6 purchase, lease and/or otherwise acquire buildings, production facilities and other structures, and land rights thereunder or separately therefrom; construct renovate and repair buildings, production facilities and other structures, and make structural alterations, additions and improvements thereon; rent, sublease, let, mortgage, transfer, assign and/or otherwise dispose of buildings, production facilities and other structures, or any portion thereof, or land rights, on a remunerative basis, in Laries in accordance with applicable law;
- 3.2.7 invest in, and facilitate investments in, outside companies and partnerships, including the acquisition of shares or share interests therein as determined to be in the interests of the Company;
- 3.2.8 obtain convertible currency and laries financing necessary for projects to be implemented by the Company on the basis of loan agreements to be signed with banks and other financial institutions;
- 3.2.9 conduct marketing and advertising activities of all kinds, both in Georgia and abroad, with respect to services offered by the Company, organise or participate in exhibitions, seminars or trade fairs; and
- 3.2.10 carry out all other ancillary and necessary activities not prohibited by the present Charter and applicable law within and outside of Georgia for the accomplishment of the Company's purposes.

#### **ARTICLE 4 - LEGAL STATUS OF THE COMPANY**

- 4.1 The Company, as a joint stock company, is a legal entity under the laws of Georgia. The Company shall maintain books of account. It shall have the right to open bank accounts in its own name, to enter into contracts, to acquire proprietary and non-proprietary personal rights, to enter into and perform obligations, to sue and be sued in courts, arbitration courts and arbitral tribunals in Georgia and abroad and to establish branches, subsidiaries and representation offices in Georgia and abroad.

- 4.2 The Company shall acquire the status of a legal entity upon its state registration in accordance with applicable law. The activity of the Company shall commence as of the date of said registration.
- 4.3 The Company shall be liable for its obligations only to the extent of its assets and shall not be liable for the obligations of its Shareholders. Notwithstanding the above, the Company shall be liable for obligations incurred by the Shareholders with respect to the Company's creation, provided such obligations are ratified by the General Assembly of Shareholders of the Company .
- 4.4 The Shareholders shall not be liable for the Company's obligations and shall bear the risk of losses related to the Company's operations only within the limits of the value of shares belonging to them, except to the extent and under the circumstances expressly provided by applicable law. The Shareholders shall be jointly and severally liable with the Company with respect to the Company's obligations, up to the value of the unpaid portion of shares belonging to them.
- 4.5 The Company shall have a circular corporate seal, a specimen of which shall be approved by the Board of Directors. The corporate seal shall specify the location and the full name of the Company in Georgia. The corporate seal may also contain the name of the Company in a foreign language and may contain such trade or service mark, symbol, logo or other representation as is approved by the General Assembly.
- 4.6 The Company shall register and/or inform the competent registration authorities of any amendments to the present Charter in the manner and within the time period established by applicable law.
- 4.7 The Company shall be autonomous, independent and self-managed, and shall maintain books of account and bank accounts (in Laries and convertible currency in its own name).
- 4.8 The Company shall be the private owner of all property and other rights acquired by it, including without limitation in the form of contributions by the Shareholders to its Charter Capital.
- 4.9 The Company shall have the right to purchase, lease and/or otherwise acquire buildings and land rights; to construct, renovate and repair buildings and other structures and make structural alterations, additions and improvements thereon; to rent, sublease, let, mortgage, transfer, assign and/or otherwise dispose of buildings or any portion thereof, or land rights, on a remunerative basis in freely convertible currency and in Laries in accordance with applicable law;
- 4.10 The Company shall have the right to establish branches, subsidiaries and representation offices in Georgia, the CIS and abroad;
- 4.11 The financial plans of the Company shall be established for each fiscal year. They shall reflect all anticipated Laries and convertible currency receipts and disbursements of the Company.
- 4.12 Within the limits of applicable law and of exchange control regulations, the Company may provide goods or services for payment in convertible currency to local and foreign enterprises, associations, organisations and other entities, governmental bodies or physical or legal persons which have convertible currency means at their disposal.

- 4.13 The Company shall be responsible for the safe-keeping of documents related to its financial and economic activities, management, personnel etc. as provided by applicable law. The Company shall maintain and use documents related to its activities as provided by applicable law.

## **ARTICLE 5 - CHARTER CAPITAL**

- 5.1 The registered charter capital of the Company is the equivalent in Laries of 37.5 Million US\$ (Thirty eight million five hundred thousand.) US\$.
- 5.2 All shares in the Company are registered shares. The Charter Capital is divided into one thousand (1,000) shares of common stock, each share having a nominal value of ...37.500 US\$. (Thirty seven thousand five hundred.....)
- 5.3 The Charter Capital may be increased by decision of the General Assembly by affirmative vote of holders of at least seventy five per cent (75%) of the issued and outstanding common shares in the Company calling for: (i) an increase in the nominal value of the Company's issued shares of common stock, or (ii) the authorisation and issuance, in one or more instalments, of additional common or preferred shares, with corresponding amendment of the Charter.
- 5.4 The Charter Capital may be decreased by decision of the General Assembly by affirmative vote of at least twenty-five per cent (75%) of the issued and outstanding common shares in the Company calling for a decrease in the nominal value of the Company's shares or the purchase by the Company of a portion of the issued shares for the purpose of reducing their total number outstanding. The General Assembly shall be entitled to adopt a decision to decrease Charter Capital only in the event that the total nominal value of all shares remaining in circulation does not fall below the minimum Charter Capital requirement established by applicable law. The Charter Capital may only be decreased after notification of all of the Company's creditors, in accordance with applicable law.
- 5.5 The initial Charter Capital must be paid at the time of registration of the Company . Any increase in the Charter Capital made through an increase in the nominal value of issued shares or by the issuance of additional shares must be paid within the time period specified in the decision to increase the Charter Capital, but no later than one year from the date of acquisition of such shares.
- 5.6 The value of contributions in-kind to the Charter Capital at the time of the founding of the Company shall be determined by the Shareholders. The determination of the value of any in-kind contributions shall be based upon actual cost (including the cost of transportation, insurance and installation) of the property, property rights or other rights contributed. The value of any subsequent contributions in-kind to the Charter Capital shall be determined by the Board of Directors in accordance with applicable law. In cases provided by law such valuation shall be based on appraisal by an independent expert appointed by the Board of Directors.
- 5.7 Contributions to the Charter Capital denominated or valued in foreign currency shall be reflected in the charter capital account of the Company in Laries according to the legally applicable exchange rate on the date of signature of this Charter (or, with respect to increases in the Charter Capital, at the time of subscription for the relevant shares). Any change in the exchange rate between a given foreign currency and the Laries between the time of subscription of shares and payment therefor shall be reflected in the Company's books in accordance with applicable Georgian accounting procedures, but shall have no effect on the number or value of shares issued or the Charter Capital of the Company.

- 5.8 Existing shares of the Company's stock are subject to split or consolidation, with corresponding adjustment in nominal value, pursuant to a decision of the General Assembly and corresponding amendment of the Charter.
- 5.9 If, at the end of the second fiscal year following the Company's formation and each subsequent fiscal year thereafter, the balance sheet value of the Company's net assets is less than its registered Charter Capital, the Company shall be required to reduce its Charter Capital to the value of the net assets on the Company's books. In the event that the value of the Company's net assets is less than the minimum charter capital specified by law, the Company shall be liquidated as provided for herein and by applicable law.
- 5.10 The Company may acquire its own shares in the circumstances and in the manner provided by applicable law. If the Company acquires its own shares pursuant to a decision to reduce its Charter Capital by purchasing part of the issued shares for the purpose of reducing their total number, such shares shall be cancelled immediately upon their acquisition by the Company. All other shares acquired by the Company in accordance with the present Charter and applicable law shall be sold within twelve (12) months of acquisition or, failing such sale, the General Assembly shall decide to reduce the Charter Capital by cancelling such shares or to increase the nominal value of the remaining shares at the expense of the cancellation of the acquired shares, keeping the amount of the registered Charter Capital unchanged. Shares held by the Company shall not be entitled to vote or be included in determining the number of shares entitled to vote for purposes of determining the quorum or voting majority required for decisions of the General Assembly, nor shall such shares be entitled to receive dividends for so long as they remain within the disposition of the Company.
- 5.11 Subject to applicable Georgian law, no customs duty, import taxes or other levies or charges shall be payable by the Shareholders or by the Company on the importation into Georgia of contributions in kind to the Charter Capital.

## **ARTICLE 6 - RIGHTS AND OBLIGATIONS OF SHAREHOLDERS**

- 6.1 Each share of the Company's common stock shall entitle its Shareholder an equal measure of rights. Each share of the Company's common stock confers upon the holder thereof one vote at the General Assembly. Shares shall not confer voting rights until they have been fully paid, except for shares acquired by the Shareholder at the time of the founding of the Company.
- 6.2 Each share of the Company's common stock entitles the holder thereof to an appropriate portion of the distribution of the Company's profits (dividends), as declared from time to time by the General Assembly, in accordance with the present Charter, and to a proportionate part of the distribution of the Company's assets upon liquidation.
- 6.3 In the event that a Shareholder does not make full payment for shares within the required time period, the Shareholder shall forfeit any partial payment made with respect to said shares and the shares shall be placed at the disposal of the Company, with entry of a corresponding notation in the Registry of Shareholders of the Company. In addition, the Company may impose a penalty or fine on such Shareholder in accordance with applicable law.
- 6.4 Shareholders shall be entitled to participate in a capital increase by making additional contributions to the Charter Capital or purchasing newly-issued shares in proportion to the number of shares held by them. If any Shareholder is unable or unwilling to subscribe to its pro rata portion of shares issued

pursuant to a duly-decided capital increase, such un subscribed shares may be subscribed by the remaining Shareholder(s) on a pro rata basis with respect to the other Shareholder(s) exercising the right to subscribe said shares.

- 6.5 Shares of the Company's stock may be transferred only in accordance with Article 20 below.
- 6.6 A Shareholder shall have such other rights and obligations as established by the present Charter and applicable law.

## **ARTICLE 7 - STOCK CERTIFICATES AND THE SHAREHOLDERS= REGISTRY**

- 7.1 The Company shall issue shares in documentary form (stock certificates). Stock certificates representing the Company's shares shall be issued promptly upon transfer to the Charter Capital by each such Shareholder of all or any portion of the payment for the shares subscribed. All of the Company's shares shall be issued in registered form.
- 7.2 Stock certificates shall contain the following information: the Company's full name and its legal address, the share's type (common or preferred) and class (if there are multiple classes of preferred shares), the issuance's state registration number, the process by which the shares have been issued (open or closed subscription, sale of treasury shares, etc.), the number of shares confirmed by said certificate, the total number of shares issued with the given state registration number, and the name of the Shareholder.

The stock certificate must also contain: (i) an imprint of the Company's seal, (ii) the signatures of two authorised persons of the Company, (iii) the signature of the person issuing the certificate, and (iv) other mandatory requirements established by Georgian legislation or normative acts. In addition, the stock certificate must contain statements to the effect that the Company: (i) shall ensure the protection of the shareholder's rights in accordance with the requirements established by applicable legislation, and (ii) may not require the use of a centralised depository for share certificates held by shareholders.

- 7.3 Within one month from the date of its state registration, the Company shall establish and maintain a Shareholders Registry in accordance with the requirements established by applicable law. The General Assembly of Shareholders shall designate a person or body responsible for maintaining the Shareholders Registry. The Shareholders Registry shall include the name and address of each Shareholder, the number and classes of shares, the date of acquisition of the shares and the nominal value as well as other information required by applicable law.
- 7.4 Shareholders shall be responsible for informing the Company of any changes in their names and mailing addresses. The Company shall not be liable for any losses suffered by Shareholders which have failed to notify the Company of said changes.

## **ARTICLE 8 - THE RESERVE FUND AND OTHER FUNDS**

- 8.1 The Company shall establish and maintain a Reserve Fund equal to ten percent (10%) of the Charter Capital. The Reserve Fund shall be funded by means of annual allocations of not more than twenty five percent (25%) of the Company's net profit until it has reached the level established by the present Charter. The Reserve Fund shall be used to cover losses, debt obligations of the Company, the



redemption of the Company's shares if other assets are not available and for such other purposes as permitted by applicable legislation.

- 8.2 The General Assembly shall determine annually, by majority vote, the sums to be allocated to the Reserve Fund.
- 8.3 The General Assembly may decide on the creation of and allocations to other funds of the Company, as well as the use of the resources allocated to said funds in accordance with the purposes thereof and the interests of the Company.

## **ARTICLE 9 - ADMINISTRATION OF THE COMPANY**

- 9.1 The Company shall be administered by the General Assembly, Board of Directors, and the Management. The composition and functions of these management bodies are set forth in detail below and shall remain at all times in accordance with the principles set forth herein.
- 9.2 In the conduct of the Company's business activities and operations, the members of the Board and of the Management, employees and agents of the Company shall at all times act in the best interests of the Company and comply with all applicable laws and regulations. Any Shareholder holding alone or together with its affiliates twenty percent (20%) or more of the Company's voting shares or any member of the Board of Directors or the Management which has an interest in a transaction with the Company, as defined in the Georgian Law, shall be obliged to notify the Board of Directors and each of the Shareholders of such interest to the extent and in the manner required by applicable legislation.

## **ARTICLE 10 - MEETINGS OF THE GENERAL ASSEMBLY**

- 10.1 The Company shall hold an annual meeting of the General Assembly no earlier than March 1 and no later than June 30 of each year. The annual meeting of the General Assembly shall be called by the Board of Directors of the Company and shall consider those matters set forth in Article 11 below, as well as any other matters within the competence of the General Assembly as defined by the present Charter and applicable law.
- 10.2 All meetings other than the annual meeting of the General Assembly shall be extraordinary meetings. Extraordinary meetings may be called by the Board of Directors or by the Supervisory Board on its own initiative or at the request of the Company's independent auditor, the Audit Commission or Shareholders holding no less than ten percent (10%) of the issued voting shares of the Company, in the manner established by applicable law.
- 10.3 Any resolution or action within the competence of the General Assembly may be decided by written ballot in lieu of a meeting, except those matters specified in Article 11.2 of the present Charter. Written ballots shall be prepared and circulated to the Shareholders by the Board of Directors and must state the name of the Company, the questions presented for decision and the date, time and procedure for submitting signed ballots to the Board of Directors. Written ballots shall be distributed to the Shareholders no later than thirty (30) days prior to the date on which the ballots must be returned to the Board of Directors.
- 10.4 The agenda for annual meetings of the General Assembly shall be established by the Board of Directors. Shareholders holding in the aggregate two percent or more of the voting shares of the

Company shall have the right to propose agenda items for annual meetings of the General Assembly, provided such proposals are received by the Board of Directors not later than thirty (30) days following the end of the fiscal year and otherwise comply with the requirements established by applicable law. The agenda for extraordinary meetings of the General Assembly shall be established by the Board of Directors. In addition to items proposed by the Board of Directors, the agenda shall include items duly proposed for consideration by the Audit Commission, the Company's independent auditor and/or one or more Shareholders holding not less than ten percent (10%) of the issued voting shares of the Company. Only items included in the agenda may be voted upon at meetings of the General Assembly.

- 10.5 Written notice of the calling of a meeting of the General Assembly shall be sent to the Company's independent auditor and to each Shareholder entitled to participate at the meeting no later than thirty (30) days prior to the date thereof, by telex, telefax or cable and confirmed by registered letter, to the address indicated in the Shareholders' Registry. Notices of a meeting of the General Assembly shall include: (i) the Company's name and location, (ii) the date, time and place of the meeting, (iii) the record date for determining which Shareholders are authorized to participate in the meeting, (iv) the agenda for the meeting, and (v) the time, place and manner in which Shareholders may obtain or review information (materials) relating to items on the agenda of the meeting. Meetings of the General Assembly may be held in any location within Georgia, as determined by the Board of Directors of the Company.
- 10.6 The record date for determining which Shareholders are entitled to participate in a meeting of the General Assembly shall be fixed by the Board of Directors, but may not be prior to the date of the decision by the Board of Directors to call the meeting nor more than sixty (60) days prior to the date fixed for the meeting. All Shareholders listed in the Company's Shareholders Registry as of the record date shall be entitled to receive notice of and participate in the meeting of the General Assembly.
- 10.7 Meetings of the General Assembly shall be presided over by the Chairman of the Supervisory Board or his Deputy. In cases both are not able to preside, a Chairman of the meeting can be one of the Directors of the Joint Stock Company. The General Assembly shall also elect a Secretary of the meeting from among the Shareholders with voting shares present at the meeting by simple majority vote.
- 10.8 Any Shareholder may waive notice of any meeting of the General Assembly before, during or after the meeting by submitting a written waiver to the Chairman of the meeting. Attendance at a meeting shall constitute a waiver of notice of a meeting unless such attendance is for the express purpose of objecting, at the commencement of the meeting, to the transaction of any business slated for discussion on the grounds that the meeting was not lawfully noticed or convened.
- 10.9 A quorum shall exist, and a meeting of the General Assembly shall be deemed duly constituted, if Shareholders holding not less than fifty percent (50%) of the issued and outstanding shares of the Company entitled to vote (regardless of class), or their authorized representatives, are present in person or by proxy.
- 10.10 If a quorum is not achieved within a half hour following the scheduled commencement of a meeting of the General Assembly, the meeting shall be postponed for a period established by a majority of the Shareholders present, but not for more than thirty (30) days, on the condition that all Shareholders eligible to vote under Article 10.13 of this Charter and applicable law are sent notification not less than ten (10) days prior to the commencement of the rescheduled meeting. The rescheduled meeting is

considered duly constituted regardless of the number of voting shares represented. Only issues on the initial agenda may be discussed at the rescheduled meeting.

- 10.11 A meeting of the General Assembly at which a quorum is present may be suspended for up to thirty (30) days by simple majority vote of the shares entitled to vote by Shareholders present in person or by proxy at the meeting. At the reconstituted meeting, only items on the original agenda may be decided.
- 10.12 Matters are decided at a meeting of the General Assembly by vote (one voting share equals one vote). If a Shareholder does not attend but wishes to vote at a meeting of the General Assembly, the Shareholder must submit a proxy for voting to another Shareholder or to such representative named in the proxy for presentation to the Chairman of the meeting. If a proxy is not submitted prior to the commencement of any vote taking place during the course of the meeting, the Shareholder shall be deemed not to have participated in the voting.
- 10.13 A Shareholder with voting shares or his representative may attend and vote during a meeting only if the shares to be voted are fully paid-up, provided however that shares comprising the initial Charter Capital issued upon the creation of the Company may be voted immediately upon the Company's inception if payment for such shares is not in arrears under applicable law and the terms of this Charter.
- 10.14 A representative of a Shareholder with voting shares may participate in the meeting and may vote only if it is named in a proxy prepared in accordance with applicable law.
- 10.15 One copy of written minutes in English and in Russian shall be prepared by a notary public of the meeting within fifteen (15) days following each meeting of the General Assembly and shall be circulated to each Shareholder no later than forty-five (45) days after the end of the meeting of the General Assembly. Such minutes shall contain such information required by applicable law and be deemed the official minutes of the meeting of the General Assembly when signed by the Chairman and the Secretary of the meeting.

## **ARTICLE 11 - COMPETENCE OF THE GENERAL ASSEMBLY**

- 11.1 The General Assembly is the supreme governing body of the Company. It shall have competence over those matters described below and such other matters as defined by applicable law.
- 11.2 The following matters are within the exclusive competence of the annual meeting of the General Assembly and shall be approved by simple majority vote of the shares entitled to vote held by Shareholders present or duly represented at the annual meeting:
- 11.2.1 the election of the Supervisory Board in accordance to Georgian Law.
- 11.2.2 the election of the Audit Commission, approval of the remuneration of its members and the approval of the Company's independent auditor; and
- 11.2.3 upon presentation by the Board of Directors, the approval of the Company's annual report, balance sheet, profit and loss statement and allocation of the Company's profits and losses, including the declaration of annual dividends, if any, based on the recommendation of the Board of Directors and subject to the provisions of Article 21 of the present Charter.

- 11.3 The adoption of any matter before the General Assembly shall require the vote of holders of at least seventy-five percent (75%) of the common shares held by the Shareholders present at any meeting at which a quorum is present.
- 11.4 The following matters shall be submitted to each annual meeting of the General Assembly:
  - 11.4.1 Approval of the annual balance sheet and financial statements of the Board of Directors;
  - 11.4.2 Election of members of the Supervisory Board and Audit Commission of the Company;
  - 11.4.3 Designation of the outside auditor and approval of the proposed remuneration for their services;
  - 11.4.4 Approval of the final dividend subject to the relevant provisions of this Charter.
- 11.5 In addition to the matters to be decided by the General Assembly at the annual Shareholders meeting in accordance with clause 11.4, the following matters shall be within the exclusive competence of the General Assembly:
  - 11.5.1 Modification of the Charter, including increases or decreases in the Charter Capital or adoption of a restated Charter of the Company;
  - 11.5.2 Reorganisation of the Company;
  - 11.5.3 Liquidation of the Company, appointment of the liquidation committee and approval of the interim and final liquidation balance of the Company;
  - 11.5.4 Determination of the number of members of the Supervisory Board of the Company, pre-term dismissal of members of the Supervisory Board and members of the Audit Commission of the Company;
  - 11.5.5 Decisions regarding the issuance and redemption by the Company of bonds], and other securities, determination of the amount of authorised but unissued shares of the Company, granting options or any other rights over all or part of the share capital of the Company;
  - 11.5.6 Appointment and pre-term dismissal of the Executive Management of the Company and determination of their respective terms of remuneration; transfer of the functions of the Executive Management to a commercial organisation. As far as the Georgian Law foresees the involvement of the Supervisory Board, the General Assembly will inform and instruct the Supervisory Board accordingly.
  - 11.5.7 Decisions with respect to the transfer of any shares or other securities of the Company, the exercise of any rights of first refusal granted to the Shareholders with respect to the purchase of shares or other securities of the Company and decisions with respect to the purchase or redemption by the Company of its own shares;
  - 11.5.8 Determination of any procedures to govern the conduct of meetings of the General Assembly, in addition to those set forth in this Charter;

- 11.5.9 Determination of the manner in which the Company shall provide information and materials to the Shareholders (to the extent not already set forth in the various notice provisions of this Charter);
  - 11.5.10 Decisions regarding the implementation of large transactions or transactions involving interested parties pursuant to applicable law;
  - 11.5.11 Participation in holding companies, financial-industrial groups and other associations of commercial organisations.
- 11.6 The General Assembly may not delegate powers placed within its exclusive competence to other management bodies of the Company or exercise authority over matters not placed within its competence pursuant to this Charter or applicable law.

## **ARTICLE 12 - ELECTION, COMPOSITION AND REMOVAL OF MEMBERS OF THE BOARD OF DIRECTORS**

- 12.1 The initial Board of Directors shall consist of four (4) members knowledgeable and experienced in the field of activity of the Company.
- 12.2 The members of the Board of Directors shall be elected by the Supervisory Board for one year terms, renewable an unlimited number of times. If the new membership of the Board of Directors is not elected for any reason, then this shall signify the extension of the authority of the existing membership of the Board of Directors until the election (re-election) of new members of the Board of Directors. A member of the Board of Directors may be removed before the expiration of his or her term by the Supervisory Board in line with the instructions of the General Assembly, with or without cause.
- 12.3 The Chairman of the Board of Directors shall be nominated by the Supervisory Board. Such appointment shall be renewable an unlimited number of times. The Chairman of the Board of Directors shall organise the work of the General Assembly and of the Board of Directors, call meetings of the Board of Directors, prepare all necessary documents and exercise oversight over the day-to-day activity of the Board of Directors in accordance with the Charter and applicable law. The Chairman of the Board of Directors may be removed at any time by unanimous vote of the Supervisory Board in line with the instructions of the General Assembly, with or without cause.
- 12.4 The Board shall designate the Financial Comptroller (as described in Art. 15.2 below) as Secretary of the Board. The Secretary shall be responsible for the preparation of agendas, notices, minutes and other documents relating to meetings of the Board.
- 12.5 Members of the Board of Directors shall be entitled to verify any of the Company's records, accounts or documents at any time and to receive from the Board, the Management or any person who is a member of these bodies, any information which may be requested on any matter related to the Company's activity.
- 12.6 Members of the Board of Directors shall be entitled to verify any of the Company's records, accounts or documents at any time and to receive from the Board, the Management or any person who is a member of these bodies, any information which may be requested on any matter related to the Company's activity.

- 12.7 Each member of the Board of Directors shall be entitled to reimbursement of his reasonable documented travel and other expenses to assure attendance at a meeting of the Board of Directors (such expenses to be confirmed by receipts for accounting purposes) and shall in addition receive compensation in amounts approved by the General Meeting of Shareholders.

### **ARTICLE 13 - MEETINGS OF THE BOARD OF DIRECTORS**

- 13.1 Meetings of the Board of Directors shall take place as often as necessary subject to the requirements of applicable law and may be held in any location within or outside of Georgia, as determined by the Board of Directors or its Chairman. Any member may participate and vote by telephone or similar electronic means if unable to be physically present at a meeting and the Chairman shall take all steps required to implement such telephone or other electronic connections if requested to do so. In addition, any Board resolution or action may validly be taken by written consent in lieu of a meeting.
- 13.2 The time, date, place and agenda of regular meetings of the Board of Directors are determined by the Board of Directors at a preceding regular meeting. The time, date, place and agenda of any regular meeting may be changed by the Chairman of the Board of Directors, subject to notification of the members of the Board of Directors by telex or telefax, confirmed by registered mail, sent not later than fourteen (14) days prior to the date set for the meeting.
- 13.3 Special meetings of the Board of Directors may be convened by the Chairman on his own initiative or at the request of any member of the Board of Directors, the Audit Commission, the Company's independent auditor or the Company's General Director, for the discussion of one or more specific issues. Notification of such a meeting must be sent to the members of Board of Directors in accordance with the provisions of Article 13.2 of this Charter and must include an agenda with a list of the issues to be discussed at the meeting.
- 13.4 A quorum for meetings of the Board of Directors shall be all four (4) directors, present in person or by telephone, or other similar electronic means. Should the number of members of the Board of Directors become less than the number necessary to constitute a quorum as a result of the removal, retirement or death of one or more of its members, the remaining members shall promptly convene an extraordinary meeting of the General Assembly to elect one or more new Board members.
- 13.5 A member of the Board of Directors may waive notice of regular or special meeting of the Board of Directors and/or the right to protest any irregularity in notification by submitting a written waiver, and such waiver shall be considered valid if submitted before, during or other the meeting.
- 13.6 All decisions of the Board of Directors shall require the unanimous vote of the Board members participating in the meeting except where provided otherwise by the present Charter or applicable law. No member of the Board of Directors may grant a proxy to another member of the Board. Each member of the Board shall have one vote.
- 13.7 Minutes of meetings of the Board of Directors shall be prepared by the Secretary of the Board in English and in Georgian within ten (10) days of the conclusion of the meeting and shall be reviewed and signed by the Chairman of the Board. The Chairman of the Board shall be responsible for ensuring the accuracy of all such minutes.

## **ARTICLE 14 - COMPETENCE OF THE BOARD OF DIRECTORS**

- 14.1 The Board of Directors shall be responsible for the overall administration of the Company's activities, except with respect to matters assigned to the exclusive competence of the General Assembly by the Charter or applicable law.
- 14.2 The following matters are within the exclusive competence of the Board of Directors and shall be decided by unanimous vote of the Board members present at a duly-constituted meeting of the Board of Directors, unless otherwise provided by the present Charter or applicable law:
- 14.2.1 the determination of priority goals of the Company's activity;
  - 14.2.2 the calling of annual and extraordinary meetings of the General Assembly;
  - 14.2.3 the approval of the agenda for meetings of the General Assembly;
  - 14.2.4 the determination of the date for preparation of the list of Shareholders eligible to vote at meetings of the General Assembly as well as the performance of other functions in connection with the calling and conduct of such meetings;
  - 14.2.5 the submission of proposals to the General Assembly;
  - 14.2.6 The issuance by the Company of bonds and other securities;
  - 14.2.7 the determination of the market value of property and shares of the Company in those cases required by applicable legislation;
  - 14.2.8 the acquisition of shares, bonds and other securities issued by the Company, in cases provided by applicable law;
  - 14.2.9 the confirmation of all agreements pursuant to which the Company transfers the function of the executive management of the Company to a commercial organisation;
  - 14.2.10 recommendations to the General Assembly regarding the remuneration of members of the Audit Commission as well as the remuneration of the Company's independent auditor;
  - 14.2.11 recommendations to the General Assembly regarding the amount and manner of payment of dividends;
  - 14.2.12 the use of the Company's Reserve Fund and other funds;
  - 14.2.13 the adoption of internal documents defining operating procedures for the Company's management bodies;
  - 14.2.14 the establishment of branches and opening of representation offices;
  - 14.2.15 the adoption of decisions on the Company's participation in other organisations;
  - 14.2.16 the approval of major transactions involving the direct or indirect acquisition or alienation of assets, whether by a single transaction or a series of related transactions outside of the ordinary course of the Company's business, having a total value exceeding 25% of the book

value of the Company's assets but not exceeding 50% of said value, as well as recommendations to the General Assembly regarding the approval of such transactions having a total value of greater than fifty percent (50%) of the book value of the Company's assets, in each case as determined in accordance with applicable law.

14.2.17 the conclusion of any transaction or series of related transactions with interested parties having a value not exceeding two percent (2%) of the book value of the Company's assets, as well as transactions in excess of this amount which constitute loans in favour of the Company or transactions carried out in the ordinary course of the Company's business with parties which did not have the status of interested parties at the time the transaction was concluded.

14.2.18 the issuance of voting stock or securities convertible into stock having voting rights which do not exceed two percent (2%) of the previously issued and outstanding voting shares of the Company's stock;

14.2.19 the delegation to members of the Management of specific tasks and/or powers relating to any issues not within the exclusive competence of the Board of Directors; and

14.2.20 other matters assigned to the competence of the Board of Directors by applicable legislation.

14.3 Decisions relating to the matters set forth in Article 14.2.17 shall be taken by simple majority vote of the disinterested members of the Board of Directors, as defined by applicable law.

14.4 The Board of Directors shall have the right to establish committees of its members and the Company's employees responsible for the accomplishment of specific tasks. The Board of Directors may not delegate to the Management matters placed within its exclusive competence by applicable law or the present Charter.

## **ARTICLE 15 - APPOINTMENT, COMPOSITION AND REMOVAL OF MEMBERS OF THE MANAGEMENT**

15.1 The executive management of the Company shall be performed pursuant to a Management Agreement to be signed between the Company and Terminal Management Services a company to be nominated. The Management Agreement shall have a duration of 25 (twenty-five) years.

15.2 Pursuant to the Management Agreement, the Management Company shall appoint a General Director, a Financial Controller, an Operations Manager and a Technical Manager to manage the day-to-day activities of the Company. The Management shall be headed by the General Director. Each of the above individuals shall have experience in managing international container terminals operated by western companies.

## **ARTICLE 16 - FUNCTIONS OF THE MANAGEMENT**

16.1 The Management operates within the framework and on the basis of the General Assembly's and the Board of Directors guidelines and resolutions, the present Charter, the Management Agreement and applicable law. The General Director and other members of the Management shall represent the Company in all relations with any and all third persons within the limits of their competence as defined



in the present Charter, the resolutions of the General Assembly and the Board of Directors, and the Management Agreement. The General Director shall be assisted in conducting the daily operations of the Company and in performing his other functions as set forth herein by other members of the Management. The General Director may not simultaneously be the Chairman of the Board. Members of the Management may not comprise a majority of the Board of Directors.

- 16.2 The General Director shall be responsible for implementing the policies of the Board of Directors, for maintaining good business relationship with Georgian organisations, enterprises, trade unions and other persons or entities, and making such periodic reports and recommendations to the Board of Directors as the board may require.
- 6.3 The General Director shall oversee the day-to-day operations of the Company and represent the Company in all relations with any and all third persons within the limits of his competence as defined in the present Charter, the resolutions of the Board and the Management Agreement. The General Director shall, within such limits, have the authority to negotiate, execute and supervise the performance of all contracts made pursuant to the Company's business plans with all suppliers and other entities; hire, promote, oversee, and discharge personnel; and ensure that the standards for facilities and services to be provided by the Company as set forth in the Company's business plans are strictly observed and achieved.
- 16.4 The General Director shall prepare, in consultation with the assistance of the competent Management personnel, all programs, budgets, sales and operation plans, development plans, wage plans, annual accounting and financial reports, as well as an annual report on the Company's activity and shall submit the annual budget, capital investment budget and the annual report to the Board for its preliminary approval.
- 16.5 The Director General shall, to the extent such powers are not reserved to the General Assembly or the Board of Directors by the present Charter or applicable law and are not otherwise limited by decisions of the General Assembly or the Board of Directors:
- 16.5.1 control the disposition of the property of the Company, including its monetary resources;
  - 16.5.2 conclude contracts on behalf of the Company, and ensure the fulfilment thereof;
  - 16.5.3 Open and close bank accounts of the Company in convertible currency and in Laries
  - 16.5.4 Pay promptly and when due all uncontested costs and expenses incurred in connection with the day-to-day operations of the Company as well as other payments required by law in respect of the day-to-day operations of the Company (provided that all tax payments would be made in consultation with the Financial Director);
  - 16.5.5 Represent the Company before governmental and other relevant authorities with respect to matters arising from the day-to-day operations of the Company;
  - 16.5.6 Hire, direct and discharge all contractors, consultants, employees and other personnel of the Company (with the exception of the Financial Director, the Operations Manager and the Technical Manager) and determine reasonable compensation fur such contractors consultants, employees and other personnel, and procurer all services, materials, supplies and equipment for the day-to-day operations of the Company;

- 16.5.7 Acquire for the benefit of the Company all facilities and rights required or desirable for the conduct of the day-to-day operations of the Company;
  - 16.5.8 effect transactions and legal acts on behalf of the Company, including the initiation of court or arbitral proceedings in the name of the Company in accordance with decisions of the Board;
  - 16.5.9 be responsible for the development of personnel policies, presenting them for the approval of the Board and for ensuring their fulfilment once approved;
  - 16.5.10 establish job descriptions and divisions of responsibility of employees of the Company;
  - 16.5.11 make decisions and issue orders concerning operational questions of the internal activity of the Company;
  - 16.5.12 prepare necessary materials and proposals for consideration of the Board and ensure the fulfilment of decisions by the Board;
  - 16.5.13 represent the Company in relation with governmental organisations and institutions;
  - 16.5.14 ensure compliance by the Company with Georgia and local law; and
  - 16.5.15 Make decisions on all other questions concerning the day-to-day Director, the activity of the Company necessary for the accomplishment of its objectives which are not within the exclusive competence of the General Assembly or the Board and which are not delegated to the Financial Operations Manager or the Technical Manager.
- 6.6 The Financial Controller, within the limits of applicable legislation and to the extent not reserved for action by the General Director, the Board or the General Assembly, shall:
- 16.6.1 Assist the General Director in preparing all annual business plans and budgets, annual accounting and financial reports as well as an annual report on the Company's activity;
  - 16.6.2 Supervise the accounting and financial record-keeping activities of the Company;
  - 16.6.3 Supervise the payment of taxes by the Company and the relations of the Company with the relevant tax authorities;
  - 16.6.4 Supervise the relationship of the Company with its external auditors;
  - 16.6.5 Perform such other functions in connection with the financial affairs of the Company as would be delegated to him by the General Director.
- 16.7 The Operations Manager, within the limits of applicable legislation and to the extent not reserved for action by the General Director, the Board or the General Assembly, shall be responsible for the day-to-day operations of the Terminal (as well as other terminals to be managed by the company in the future). The Operations Manager shall report to the General Director.

- 16.8 The Technical Manager, within the limits of applicable legislation and to the extent not reserved for action by the General Director, the Operations Manager, the Board or the General Assembly shall be responsible for all technical aspects of Terminal operations. The Technical Manager shall report to the General Director.
- 16.9 All banking transactions would require the signatures of the General Director and the Financial Controller provided that if one of them were not available the second signature could be supplied by the Operations Manager or the Technical Manager.
- 16.10 The Chief Accountant of the Company shall, under the supervision of the Financial Controller, be responsible for maintaining the books and financial records of the company and for certifying the completeness and accuracy of the Company's financial statement. The Chief Accountant shall be appointed by the General Director and possess the necessary qualifications under applicable law.
- 16.11 Formal meetings of the Management shall be held as necessary. The General Director shall arrange for the preparation of the minutes of formal meetings of the Management. Such minutes shall be available for inspection by any Shareholder and member of the Advisory Board at the company's headquarters during normal business hours.

#### **ARTICLE 17 - AUDIT COMMISSION AND INDEPENDENT AUDITOR**

- 17.1 An Audit Commission shall be established consisting of three (3) persons who shall be elected by the General Assembly for the purpose of control over the financial and economic activity of the Company. Members of the Audit Commission may not be members of the Board of Directors or the management.
- 17.2 The Audit Commission shall conduct examinations of the results of the Company's activity for the year. The Audit Commission may also conduct other examinations of the Company's activity on its own initiative pursuant to decision of the General Assembly or the Board of Directors, or at the request of Shareholders collectively holding not less than ten percent (10%) of the shares of the company entitled to vote. Remuneration of members of the Audit Commission, if any, shall be established by the General Assembly.
- 17.3 In carrying out its functions, the Audit Commission may require the production of documents regarding the financial and business operations of the Company from persons occupying management positions within the Company.
- 17.4 The Audit commission submits the results of its verifications to the General Assembly. The Audit commission may call an extraordinary meeting of the General Assembly in the event that the Board of Directors fails to call such a meeting following submission of a request by the Audit Commission.
- 17.5 The company's independent auditor shall verify the financial records of the Company in accordance with applicable legislation and other normative acts.

#### **ARTICLE 18 - INDEMNIFICATION**

- 18.1 Insofar as is permitted by the legislation of Georgia, all members of the Company's Board of Directors, Management and Audit Commission, as well as personnel representing or seconded to the Company by a Shareholder, shall be indemnified by the Company to the maximum extent permitted by Georgian

law against all criminal, civil and administrative liability under Georgian law to which they may be exposed in the course of fulfilling their duties or as a result thereof, but excluding liability in respect of acts or omissions involving gross negligence or wilful default.

- 18.2 The Company shall obtain and maintain in force insurance coverage (so far as is available) in amounts determined by the General Assembly so as to fulfil its obligations as set forth in Article 18.1 above.

## **ARTICLE 19 - FINANCIAL RECORDS, ACCOUNTS AND AUDITING**

- 19.1 The fiscal year of the Company shall be the calendar year. The first fiscal year shall end with the end of the calendar year during which the Company is registered.
- 19.2 The Company's accounts shall be maintained and its financial results shall be stated in Laries and US dollars. Currency conversions shall be recorded in accordance with applicable law and generally accepted international accounting policies and practices.
- 19.3 Financial records, statistical, accounting and periodic financial reports shall be prepared and, to the extent required, submitted to the competent governmental authorities and to the General Assembly in conformity with the present charter and generally accepted Georgian accounting principles. All Georgian accounting record shall be prepared in the Georgian language. Further periodic accounting reports shall be prepared in English according to generally accepted international accounting principles. In addition, the Company shall prepare on a quarterly basis in both Georgian and English a balance sheet, profit and loss statement and other current financial
- 19.4 The Management shall be responsible for the organisation, preparation and maintenance of the Company's accounts, the authenticity of information contained therein and the timely submission of annual accounts and financial statements to the Board of directors and the General Assembly for approval.
- 19.5 The authenticity of information in the annual financial statements, balance sheet and profit and loss statement shall be confirmed by the Audit Commission. In addition, an audit of such annual financial statements and accounting documents shall be performed by an independent auditor designated by the General Assembly. Such independent auditor shall present its conclusions on the conformity of the annual financial statements, balance sheet and profit and loss statement of the Company with applicable accounting regulations and generally accepted accounting principles.
- 19.6 Following approval by the Audit commission and the Company's independent auditor, the Management shall submit the annual financial statements and accounts to the Board of Directors for preliminary approval and to the General Assembly for final approval at the annual meeting of the General Assembly.
- 19.7 The Company shall maintain and make available to the Shareholders during normal business hours at the Company's principal office, accounting and financial documents and information, including annual financial statements and reports, balance sheets, profit and loss statements, reports of the Audit Commission and independent auditor, as well as minutes of meetings of the General Assembly, the Board of Directors and the Management and such other corporate, financial and accounting documents as required by applicable law. In addition, the Shareholder shall have the right, at its own expense, to send its duly appointed auditors, accountants, attorneys and other experts employed or engaged by them onto the Company's premises during normal business hours for the purpose of

inspecting any or all records and assets of the Company, and the Company shall provide its assistance and co-operation in facilitating the conduct of such inspections. No restriction shall be imposed on the right of said Shareholder and its authorised representatives to take copies of financial information and other documents, including outside Georgia, to the extent necessary for incorporation in any tax returns and financial reports prepared by such Shareholder or for other proper purposes.

## **ARTICLE 20 - TRANSFER OF SHARES**

- 20.1 Each Shareholder shall have a right of first refusal to purchase its pro-rata portion of the shares of another Shareholder wishing to sell such shares to a third person, plus, if not all Shareholders exercise their right of first refusal, a pro-rata portion of the shares not claimed by other Shareholders. The Company shall have a right of first refusal to purchase any such shares not claimed by the Shareholders. No right of first refusal shall exist for sales or other transfers of shares by one Shareholder to another Shareholder or by one Shareholder to a company wholly owned by such Shareholder or wholly owned by the same persons or entities owning such Shareholder.
- 20.2 The Shareholder wishing to sell its shares shall notify the other Shareholders and General Director of the Company of its intention with complete information as to the terms of the proposed transfer. Within thirty (30) days of receipt of the notice of transfer of shares, each of the other Shareholders may notify the selling Shareholder of its intention to purchase its pro-rata portion of such shares plus a pro-rata portion of any shares not claimed by other Shareholders, at the price and subject to the terms contained in the notice of transfer.
- 20.3 The Company shall have the right to purchase any shares with respect to which the Shareholders fail to exercise their above rights of first refusal at a price and subject to the terms contained in the notice of transfer. The Company shall exercise such right at an extraordinary meeting of the General Assembly (to be held promptly following expiration of the thirty (30) day period referred to in Art. 20.2 above). The decision for the Company to acquire such shares shall be made without participation of the Shareholder whose shares are being acquired.
- 20.4 In each particular case, the transfer or assignment of any shares of stock in the Company shall be reflected by an entry in the corporate Register of Shareholders of the Company, cancellation of old and issuance of new share certificates and, if necessary, amendment of this Charter, with subsequent notification to the competent Georgian authorities as provided under applicable law.
- 20.5 Any purchaser of shares of the Company shall be bound by the present Charter, as then in effect, as well as by all agreements, resolutions or acts therefore adopted or concluded in the name of the Company relating to the rights and obligations of the Shareholders and shall execute an accession agreement to this effect.

## **ARTICLE 21 - INSURANCE**

- 21.1 The company's property and interests shall be insured by an appropriate insurance company selected by the Board or, to the extent permitted by applicable legislation, the company may elect to self-insure all or a part of such property and interests.
- 21.2 The insurance coverage for the Company shall comply with applicable legislation and may comprise:

- 21.2.1 insurance for equipment installation, operations and construction work;
  - 21.2.2 property insurance against fire, natural hazard and other risks;
  - 21.2.3 liability insurance;
  - 21.2.4 transport insurance; and
  - 21.2.5 such other coverage as shall be determined to be necessary by a resolution of the Board.
- 21.3 The Board may authorise insurers to reinsure risks covered under the above policies with acceptable re insurers on terms agreed by the Board.
- 21.4 The policies shall name the Shareholders, as their interests may appear, as additional insured.

## **ARTICLE 22 - DIVIDENDS, PROFITS AND LOSSES**

- 22.1 The Company may, at the discretion of the General Assembly, pay out quarterly or semi-quarterly interim dividends to the Shareholders based on the estimated net profits of the Company for the fiscal year in progress.
- 22.2 Annual dividends may be declared and paid by the Company out of its undistributed net earnings remaining after provisions to the reserves and payment of all taxes, due, pursuant to a decision of the General Assembly taken at its annual meetings based on the recommendations of the Board of Directors, the financial results of the prior fiscal year and the payment of interim dividends, if any. The amount of the annual dividend may not be greater than that recommended by the Board of Directors nor less than the total amount of interim dividends paid with respect to the year in question. In addition, no dividend may be declared if the Company's Charter Capital is not fully paid, if the value of the Company's net assets is less than the amount of its Charter Capital, Reserve Fund, and in other circumstances provided by applicable law.
- 22.3 A list of Shareholders entitled to receive interim and annual dividends shall be prepared by the Board of Directors. The list shall include all Shareholders registered in the Shareholders Register as holding fully-paid shares entitled to a dividend on the record date for determining the Shareholders entitled to participate in the annual meeting of the General Assembly. No dividends shall be paid on shares which are held on the balance sheet of the Company.
- 22.4 Dividends may be paid in the form of cash (by check, bank payment order, postal transfer or other authorised means), shares, bonds or goods, as determined by the Board of Directors.
- 22.5 The payment date for interim dividends shall be determined by decision of the Board of Directors but shall not be less than thirty (30) days after the date of the decision to declare such dividends. The payment date for annual dividends shall be fixed by the General Assembly, acting in its own discretion.
- 2.6 The amount of the declared dividend shall not take into account the Shareholders withholding taxes, if any. The Company shall withhold and transfer to the state budget any applicable withholding taxes prior to main payment of dividends to the Shareholders, to the extent required by law. Dividends paid to any foreign Shareholder may be remitted abroad in freely convertible currency in accordance with the laws of Georgia and as guaranteed by Georgian law and applicable treaty obligations of Georgia.

## **ARTICLE 23 - CONFIDENTIALITY**

- 23.1 Confidential information, technical data and trade secrets, including but not limited to all specifications, plan designs, information and ideas, belonging to the Company or disclosed by any Shareholder, officer or employee of the Company to any other person or to the Company shall be used solely for the purposes of the Company's business activities and shall be subject to the disclosure limitations set forth below.
- 23.2 During the existence of the Company and thereafter, the Company and its past and present Shareholders shall keep confidential, protect and not disclose to any third persons, and shall exert their best efforts to prevent such disclosure by any of its past or present Shareholders, officers, employees, agents and representatives of the discussions and deliberations of the Board of directors and/or Management, as well as of any and all Confidential Information relating to any Shareholder or the Company received during the existence of the Company, except for:
- 23.2.1 Information which had become, at the time of its disclosure, part of the public domain through no fault of the Company or the disclosing Shareholder;
  - 23.2.2 Information which was known by the Company or the disclosing Shareholder from outside sources prior to its disclosure by the Transferor (provided that this fact is promptly communicated to the Transferor upon receipt of the already known information);
  - 23.2.3 Disclosures in response to official inquiries of government authorities, courts, or other bodies to which the Company or the disclosing Shareholder is responsible, to the extent that any such disclosures are mandatory after the Company or its shareholders have exhausted any and all judicial or administrative remedies it/they has/have deemed appropriate to prevent or limit such disclosure; or
  - 23.2.4 Disclosures made with the prior written consent of the Transferor.
- 23.3 The Company shall obtain from its concerned Shareholder, officers, employees, suppliers, agents and representatives non-disclosure and non-use agreements in a form established by the General Assembly.
- 23.4 All Confidential Information and copies of any documents containing them, shall be returned to the Transferor within thirty (30) days following the dissolution and liquidation of the Company or, in the case of withdrawal of a Shareholder, within thirty (30) days of such withdrawal.

## **ARTICLE 24 -REORGANISATION AND LIQUIDATION OF THE COMPANY**

- 24.1 The company may be reorganised by merger, consolidation, split-up, split-off or transformation, or liquidated voluntarily or by order of a court. Reorganisation and liquidation of the Company shall be carried out in accordance with the present Charter and applicable law.
- 24.2 The Company may decide to reorganise or liquidate by a seventy five percent (75%) majority vote of the Company's voting share present or represented at a duly-constituted meeting of the General Assembly. In the case of reorganisation, the General Assembly shall approve a transfer act and restated balance sheet, whereupon the General Assembly shall notify all of the Company's creditors of its reorganisation. In the case of a liquidation, the General Assembly shall appoint a liquidation

commission consisting of three (3) members, subject to confirmation by the competent registration authorities.

- 24.3 The Liquidation Commission shall be responsible for notifying creditors of the liquidation of the Company, collecting debts owned to the Company, preparing and submitting for approval of the General Assembly provisional and final liquidation accounts and, in accordance therewith, settling outstanding claims of the Company's creditors, and if the Company lacks sufficient monetary funds to satisfy the claims of creditors, the Liquidation Commission shall sell other assets and distribute the final liquidation balance to the Shareholders in accordance with the number and classes of shares held, all in accordance with applicable provisions of law. The Liquidation Commission shall have full authority to manage the activities, including representation of the Company before courts and arbitration courts and arbitral tribunals. Should the Liquidation Commission fail to agree upon the value of the assets of the Company, such valuation shall be made by the offices a accounting firm Shareholder may unanimously agree), with the costs of such determination to be borne by the Company.
- 24.4 The Liquidation Commission shall promptly notify the competent registration authorities, on behalf of the General Assembly, of the decision to liquidate the Company and the appointment of the Liquidation Commission. The Liquidation Commission shall also submit the provisional and final liquidation accounts to the competent registration authorities for approval and, following settlement of all creditors claims and distribution of the liquidation proceeds among the Shareholders, shall terminate the state registration of the Company with the competent registration authorities, close the Company's bank accounts and de register the Company with all other competent governmental bodies and administrations.
- 24.5 The Company shall cease to exist from the moment of entry of a notice of liquidation in the State registry maintained by the competent registration authority.
- 24.6 A Shareholder shall have the option to receive its investment restitution and liquidation balance in kind, in the form of all or a portion of any of the remaining tangible assets it shall have contributed to the Charter Capital of the Company following settlement of creditors claims and distribution of liquidation proceeds in satisfaction of senior rights of other Shareholders in accordance with applicable law. In the event that a Shareholder exercises such option, the Liquidation Commission shall arrange for the accomplishment of all related formalities, including those relating to re-export of the tangible assets, and shall assure to the extent possible the re-export of such assets on a duty-free basis, unless the Shareholder directs that such assets be disposed of otherwise.
- 24.7 The value of any such assets distributed to a Shareholder in liquidation shall be their value on the books of the Company at the time of the decision to liquidate and shall be deducted from the total amount of the liquidation proceeds payable to the corresponding Shareholder.
- 24.8 Payment to a foreign Shareholder of its investment restitution and liquidation balance pursuant to this Article shall be in freely convertible currency and/or in kind, and may be freely repatriated abroad in accordance with applicable Georgian law and international treaty obligations.
- 24.9 In the event of liquidation by decision of a court, the court shall appoint a liquidation commission and shall liquidate the Company in accordance with the terms of the present Charter, applicable law and instructions of the court.



24.10 If no successor of the Company is designated upon the liquidation of the Company, documents which are to be maintained perpetually shall be deposited into the archive of the relevant state archive agency. Documents relating to Company personnel (i.e. resolutions on appointments, personnel files, etc.) shall be deposited in the archive for the administrative jurisdiction in which the Company is located. The Company shall deposit the documents and organise them at its own expenses as required by relevant state archive agencies.

## **ARTICLE 25 - APPLICABLE LAW AND ARBITRATION**

25.1 The Shareholders and the Company shall attempt to settle all disputes arising out of this Charter and the activities of the Company through friendly negotiations. In the event that the Shareholders or the Company fail to resolve a dispute, such matter may, upon the application of either party to the dispute, be referred to and resolved exclusively by arbitration in Vienna, Austria in accordance with UNCITRAL rules, without recourse to courts of law.

25.2 Arbitration will be established as follows:

25.2.1 The party (or parties) wishing to submit the matter to arbitration shall notify the other party (or parties) by facsimile (with a confirmation copy sent by air courier), naming its (their) arbitrator, who may be a citizen of any country, stating the arbitrator's address, and advising the subject of the dispute with pertinent details.

25.2.2 Within thirty (30) days of receipt of such notification, the other party (or parties) shall appoint its (their) arbitrator, who also may be a citizen of any country, and shall inform the first party (or parties) by facsimile (with a confirmation copy to be sent by air courier) of its (their) arbitrator's name and address.

25.2.3 If the arbitration is brought by several parties and such parties are unable to agree upon an arbitrator, or if the party (or parties) summoned to arbitration fails to appoint an arbitrator within the above mentioned time, such arbitrators shall be appointed by the President of the Vienna Chamber of commerce, at the request of any of the parties having submitted the matter to arbitration.

25.2.4 The two arbitrators shall choose a third arbitrator, who shall be designated as the Chief Arbitrator.

25.2.5 If within thirty (30) days after they have been nominated, the arbitrators fail to agree upon the choice of a Chief Arbitrator, then the latter shall be appointed at the request of either party by the President of the Vienna Chamber of commerce.

25.3 English shall be the official language of the arbitration; however written submissions and testimony may be presented to the arbitral tribunal in English and Georgian .

25.4 The award shall be decided by majority vote. The rights and obligations of the parties hereunder shall be construed in accordance with the terms and conditions of the present Charter, the laws and regulations of Georgia pertaining to joint stock companies and foreign investments and, to the extent not covered thereunder, the substantive law of Austria(excluding choice of law rules). The arbitrators shall be free to determine the most suitable procedural rules for the arbitration. The arbitrators shall

have the power to render declaratory judgement and to issue injunctive orders, as well as to award monetary damages.

- 25.5 The arbitrators shall endeavour to issue their award within six (6) months after the Chief Arbitrator has been chosen. The award shall state the reasons for the decision, identify the composition of the arbitration tribunal, date and place of the decision, and allocation of costs and expenses of the arbitration between the parties.
- 25.6 The Shareholders and the Company hereby irrevocably waive any right of sovereign immunity which they or it might now have or at any time hereafter assert in connection with this Agreement, the performance of their obligations hereunder and the execution of any judgement or award in connection therewith.
- 25.7 The arbitration award shall be final and binding upon the parties. Judgement upon the award may be entered in any court of competent jurisdiction.

## **ARTICLE 26 - MISCELLANEOUS**

- 26.1 The Management shall ensure that originals (or notarised copies) of the following corporate records and documents are maintained by the Company: (i) the Charter, amendments and additions thereto which have been registered in the established manner, the decision on the establishment of the Company, and the certificate on the State registration of the Company; (ii) documents confirming the Company's rights to property located on its balance sheet; (iii) internal documents approved by the General Assembly and other management bodies; (iv) regulations of the Company's branch(s) or representation office(s); (v) annual financial statements; (iv) prospectuses for the emission of shares; (vii) accounting documents; (viii) documents on financial reporting presented to the appropriate bodies; (ix) minutes of meetings of the General Assembly, Board of Directors, Audit Commission, and Management; (x) lists of affiliated persons of the Company indicating the number and category (type) of shares belonging to each such person; (xi) reports of the Audit Commission, independent auditor of the Company, and State and municipal financial oversight; (xii) documents on the Company's personnel; and (xiii) other documents as required by applicable law.
- 26.2 Except as otherwise expressly provided herein, any notice, consent, agreement or other communication to be provided hereunder shall be in written form either by personal delivery or by cable, telefax or telex, all with return receipt or machine confirmation, as appropriate, and confirmed promptly by registered mail (for notices provided in Georgia) or air courier letter (for international notices) to the addresses indicated below or such other address as may from time to time be notified in writing to the Company. All notices shall be deemed effective upon receipt.
- 26.3 The addresses and other details of the Shareholders and the Company for notice purposes are as follows:
- .....
- with a copy to:
- .....
- 26.4 The titles of the articles herein shall not affect the interpretation of the Charter.

26.5 The present charter shall enter into force upon registration of the Company with appropriate government bodies.

**IN WITNESS WHEREOF**, the Shareholders have approved and signed the present Charter in .....on this ... day of .... 199 in six (6) originals, three (3) in Georgian and three (3) in English, each language version having the same legal force and effect.



Draft Lease / Sublease Contract for the berths 2, 6, 7, 12, 13 and 14



# DRAFT LEASE/SUBLEASE AGREEMENT





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**THIS LEASE/SUBLEASE AGREEMENT** (the "Agreement") is entered into between the following parties (the "Parties"):

Port of Poti, organised and existing under the laws of Georgia, having its legal address at 52, D.Agmashenebeli Str., Poti Georgia,... (the "Seaport"); and

Poti Container and RoRo Terminals, a joint stock company organised and existing under the laws of Georgia, having its legal address at .  
.. ("JSC).

**WHEREAS** JSC was established by the following shareholders:

<b>Company name</b>	<b>existing under the laws of</b>	<b>registered office</b>	<b>Shareholder of - --- % of the Lessee's shares</b>
Poti Port	Georgia	52,D.Agmashenebeli Str. Poti,Georgia	48 %
EBRD	Great Britain		

pursuant to a Shareholder's Agreement signed on \_\_\_\_\_, 199 to operate the Container and RoRo activities at Berth No 2,6,7,12,13,14 and the adjacent part behind the Berth No 1, and the adjacent plot of land of an area of \_\_ square meters, the boundaries of which are defined in Annex ----- in the Port of Poti

**WHEREAS** pursuant to Art. 3 of the Shareholders' Agreement and Art. 15 of the Charter, the shareholders of JSC agreed that JSC would sign a lease/sublease agreement pursuant to which the Port of Poti would lease/sublease to JSC Berth No 2,6,7,12,13,14 and the adjacent part behind the Berth No 1, and the adjacent plot of land of an area of \_\_ square meters, the boundaries of which are defined in Annex ----- in the Port of Poti and other facilities owned by the Seaport and relating to the Terminal, sublease to JSC the wharf structure and other infrastructure leased by the Port of Poti.

**NOW THEREFORE**, the Parties agree as follows:

## **ARTICLE I - LEASE/SUBLEASE OF PREMISES AND TRANSFER OF LAND RIGHTS**

- 1.1 The Port of Poti hereby grants to JSC, its successors and assigns, and JSC hereby accepts, on the terms and conditions set forth herein (i) a lease for the full, free and exclusive use and possession of certain equipment (the "Equipment") and Buildings (the "Buildings") (together on "Objects of Lease") located within the Terminals, such Equipment being described in Annex 1 (a) hereof (to be developed) and such Premises being depicted on the plan attached hereto as Annex 1(b); (to be developed) (ii) a sublease for the full, free and exclusive use and possession of the wharf structure at the Terminal and certain other infrastructure depicted in the plan attached hereto as Annex 2 (the "Objects of Sublease" {to be developed}) and (iii) a sublease for the full, free and exclusive use and possession of the land plot associated with the Terminal measuring \_\_\_\_\_ m2 (\_\_\_\_\_ square metres) and depicted in the plan attached hereto as Annex 3 (the "Land Plot {to be developed}"). The Objects of Lease, Objects of Sublease and Land Plot shall hereafter be collectively referred to as the "Terminal Premises".
- 1.2 The ownership rights of the Port of Poti to all Buildings forming part of the Objects of Lease are registered in the Land Register of the City Poti. under the land register numbers set forth in Annex 1 (b) hereto. The lease rights of the Seaport to the Objects of Sublease are reflected in a lease agreement signed between the Port of Poti and the .....on \_\_\_\_\_, 19\_\_\_\_ and registered with Committee on Land Resources and Land Management (the "Land Committee") on \_\_\_\_\_, 199\_\_ (the "Wharf Lease Agreement"). The lease rights of the Port of Poti to the Land Plot are reflected in a lease agreement signed between the Port of Poti and the .....(the "Property Committee") on \_\_\_\_\_, 19\_\_\_\_ (the "Land Lease Agreement").
- 1.3 The Terminal Premises shall include all existing fixtures installed in and all underground or above-ground electricity, water, sewage and other installations, utility lines, hook-ups, pipes and conduits located in or servicing such Terminal Premises.
- 1.4 Promptly upon entry into effect of this Agreement, the Port of Poti shall provide JSC with copies of all plans, specifications and technical drawings in possession of the Port of Poti and relating to the Terminal Premises, including fixtures and underground or above-ground installations as far as they are not included in the tender documents developed within the Feasibility Study of New Terminal Facilities of the Georgian Ports.
- 1.5 The JSC, its employees and invitees shall have full rights of access at all times for pedestrians and vehicles to and from the Terminal Premises, and such other rights which may from time to time accompany JSC's rights of use and possession of the Terminal Premises, including without limitation servitude and other rights of passage over or other use of all land parcels and other objects contiguous to the Terminal Premises.
- 1.6 The Port of Poti shall physically transfer the Terminal Premises to JSC within \_\_\_\_\_ (\_\_\_\_\_) days of entry into effect of this Agreement in a condition described in the Feasibility Study of New Terminal Facilities of the Georgian Ports. JSC's further equipment therein and commencement of JSC's operations. The physical transfer from the Port of Poti to JSC of the rights of use and possession of the Terminal Premises shall be evidenced by a separate simple written Act of Transfer-Acceptance in the form attached hereto as Annex 4, to be executed on the date of

transfer in accordance with applicable legislation. A similar act shall be executed on the date of transfer in accordance with applicable legislation. A similar act shall be executed between the Parties upon due termination of this Agreement and relinquishment by JSC to the Port of Poti of physical use and possession of the Terminal Premises under Article IX below.

## **ARTICLE II - PERMITTED USES OF THE TERMINAL PREMISES**

- 2.1 The JSC may use the Terminal Premises for the purpose stated in its Charter, including, without limitation, to operate and manage the Terminals in accordance with state-of-the-art international, economic and environmental standards.
- 2.2 It is agreed that JSC, at its own expenses (and subject to receipt of necessary construction permits and approvals), may, without limitation, repair, renovate, reconstruct, refurbish and otherwise improve the Terminal Premises for such purposes as described in the Port Master Plan and the Port Development Plan (first development project) in the opinion of , including without limitation the construction of buildings, roads and railroads, loading and unloading facilities and the like. In addition, JSC shall be entitled to demolish any buildings or other structures forming part of the Terminal Premises as are, as described in the first development plan or the Port of Poti. All such works shall together be referred to as the "Improvements".
- 2.3 The Company shall have the right to station its security staff at the front gate of the Seaport to control all incoming and outgoing traffic relating to JSC's activities as well as to station security staff in other areas of the Terminal at JSC's option.
- 2.4 All movable Improvements to the Terminal Premises (including, in particular, JSC's removable fixtures, equipment, supplies, raw material, finished products, and all other movable property at all times and may be removed by JSC at any time during the term of this Agreement, and upon its termination, in accordance with Article IX below, subject to any obligation by JSC for repair of the Terminal Premises of compensation which may apply pursuant to Section 6.1.4 below. The Seaport shall not have any rights with respect to such movable Improvements.
- 2.5 The Port of Poti shall assist JSC in obtaining any permits, licenses, approvals, authorisations and consents of any bodies of authority in Poti and Georgia ("Government Bodies") required in connection with the Permitted Uses and the construction of any Improvements and shall take all available measures to assure their due and timely issuance in accordance with applicable legislation.
- 2.6 The activities of JSC described in Art. 2.1, 2.2 and 2.3 above shall correlatively be referred to as the "Permitted Uses".

## **ARTICLE III - TERM OF THE AGREEMENT**

- 3.1 This Agreement shall enter into effect on the date of its registration with appropriate Government Bodies, provided that on or before such date, the Port of Poti shall have provided to JSC:

- 3.1.1 A resolution of the appropriate governing body of the Port of Poti approving the signature and performance of this Agreement;
  - 3.1.2 A letter from the Georgian Anti-Monopoly Committee approving this Lease Agreement (if required by law);
  - 3.1.3 Notarised copies of Certificates of Ownership with respect to all Buildings forming part of the Objects of Lease duly issued in the name of the Port of Poti;
  - 3.1.4 A notarised copy of the Wharf Lease Agreement together with a letter from the Marine Administration approving the sublease of the wharf and related infrastructure pursuant to this Agreement.
- 3.2 The initial term of this Agreement is 49 (forty-nine) years from the date of its entry into effect, unless terminated earlier under Article IX below.
- 3.3 The JSC shall have the right to renew this Agreement for additional 49 (forty-nine) year terms on the same terms and conditions (including the same amount of lease payment) as those contained in this Agreement.

#### **ARTICLE IV - LEASE PAYMENTS**

The agreed total lease payment (the "Lease Payment") for the Premises shall be the Lari equivalent of US\$ 1,-- per square meter (US\$ One) for total ..... square meters (.....quare meters

- 4.2 In addition, JSC shall reimburse to the Port of Poti the direct cost of all utilities provided by the Port of Poti pursuant to Art. 5.1.7 below, plus a mark-up of 10 % to cover administrative expenses.
- 4.3 The aforementioned payments shall be exclusive of VAT or similar taxes. Such taxes shall be added to such payments to the extent required by law.
- 4.4 The payment obligations under this Agreement shall commence upon the transfer of the Terminal Premises by the Port of Poti to JSC. in accordance with the conditions described in Art. 1.6 above.
- 4.5 The Base Rent shall be paid monthly in advance in equal instalments no later than 5 (five) banking days following the first day of every calendar month. Partial payments shall be made for any calendar months covered only partially by this Agreement.. In the event of a payment delay, interest on overdue Base Rent shall become payable at 6 % (six percent) per year. All Lease Payments shall be subject to such deductions as are provided under this Agreement. All payments (and all deductions) shall be in Georgian Laries at the official exchange rate of the Georgian Central Bank prevailing on the date of the relevant payment or deduction) and shall be made into (or from the authorised bank account of the Port of Poti.
- 4.6 The amount of the Lease Payment described herein shall be final and non-revisable throughout the Term and any extension thereof.

## ARTICLE V - RIGHTS AND OBLIGATIONS OF THE SEAPORT

- 5.1 The Port of Poti shall have the following rights and obligations in addition to its other rights and obligations set forth in this Agreement:
- 5.1.1 The Port of Poti shall take any and all measures necessary to maintain this Agreement in force during its Term and any extensions thereof and to permit JSC to use and possess the Terminal Premises in accordance with this Agreement, including without limitation: (a) the maintenance in full force and effect for the Term and any extensions thereof of its ownership rights to the Objects of Lease as well as its lease rights under the Wharf Lease Agreement and the Land Lease Agreement and (b) the procurement and maintenance in effect of all permits, licenses approvals, authorisations and consents as may be required.
  - 5.1.2 The Port of Poti shall not in any manner hinder or interfere with, or permit the hindrance or interference by any person with JSC's use of the Terminal Premises in accordance with the Permitted Uses. The Port of Poti shall provide JSC with free access by road and by rail to the Terminal Premises for the movement of containers and other Permitted Uses, and the Port of Poti shall maintain such access in such condition as to facilitate the passage of trains and vehicles at all times.
  - 5.1.3 The Port of Poti shall ensure that the port is kept open to shipping all times, ensuring that the wharf structures at the Terminal Premises are accessible for use by JSC and its clients for the Permitted Uses. The Port of Poti shall maintain (or shall ensure the maintenance by third parties) of the wharf structure at the Terminals in a condition of complete safety and good repair at all times, in full compliance with applicable Georgian and international construction and safety standards and shall undertake (or ensure that third parties undertake) regular dredging alongside such structure to maintain at all times a minimum depth of 9.5 (nine and a half) metres to a distance of 30 (thirty) metres from the quay wall giving allowance for slope.
  - 5.1.4 All taxes, lease payments, levies, fees, assessments and other charges imposed by Government Bodies relating to rights of ownership, use or possession of the Terminal Premises, including, without limitation, property tax, lease payments, land rent and/or land tax and similar expenses shall be payable by the Port of Poti. The Port of Poti shall ensure that neither the Terminal Facilities nor the Improvements nor any portion thereof are placed under arrest or forcibly removed from the ownership or lease of the Port of Poti due to debts of the Port of Poti to the national or local budgets, non-budgetary funds or to any other parties.
  - 5.1.5 The Port of Poti shall ensure the free and unencumbered access to the Terminal Premises at all times by JSC, its employees, representatives, tenants, business invitees and other invitees. The Port of Poti shall use its best efforts to cause the appropriate government bodies and other third persons to maintain the roads, railroads, sidewalks and other improvements up to the boundaries of the Seaport at no expense to JSC and at a standard similar to western European Ports (this standard will be reached after execution of all work necessary in accordance with the first development plans of the port and the corresponding tender documents. The Seaport shall give JSC notice not less than fourteen (14) days in advance of any repair or maintenance work on such improvements which would have the effect of hindering or limiting access to the Terminal Premises or interfering with operations of JSC.

- 5.1.6 The Seaport shall be responsible at its own cost and expense (a) to maintain and make all current and capital repairs as necessary to all walks, drives, railroads and other improvements within the territory of the Port of Poti leading up to the boundaries of the Terminal Premises, and (b) to maintain and make all current and capital repairs as necessary to all underground or above-ground gas, electricity, water, sewage, drainage and other installations, services, utility lines, hook-ups, pipes and conduits serving the Terminal Premises (regardless of whether such installations, services, utility lines, hook-ups, pipes and conduits are within or outside the Land Plot), keeping all of the foregoing in structurally sound and good operating condition, in cosmetically attractive appearance and in a condition meeting all norms of relevant government bodies, including, without limitation, health and safety requirements, environmental approvals and environmental laws. The Port of Poti shall apply its best efforts to secure for JSC any necessary or appropriate permits, licenses, approvals, authorisations or consents for the installation or relocation of hook-ups and utility lines as requested by JSC.
- 5.1.7 The Port of Poti shall procure for JSC, and maintain and guarantee the regular and continuous supply of water, sewage, gas, steam, electricity, ventilation, heating, compressed air, waste treatment and other utilities and services to the Terminal Premises in quantities sufficient for the requirements of the Terminal Premises and the Permitted Uses, (provided, that the actual running costs for such utilities plus a mark-up of 10 % shall be reimbursed to the Port of Poti by JSC, pursuant to Art. 4.2);
- 5.1.8 Initially the Port of Poti shall ensure the full security of the Terminal Premises including the staffing of all security checkpoints on the outside perimeter of such Premise. JSC will have the right to establish and operate its own Terminal Security System.
- 5.1.9 In carrying out its obligations under this Article V, the Port of Poti shall cause its employees and agents (a) to use due care and not to damage any improvements relating to the Terminal Premises, underground or above-ground electricity, water, sewage and other installations, utility lines, hook-ups, pipes or conduits, any equipment or other property owned or used by JSC serving or located on or around the Terminal Premises, and (b) to comply with such security procedures as JSC may impose from time to time. The Port of Poti shall give JSC no less than twenty-four (24) hours advance notice of any required maintenance or repair work relating to the Terminal Premises, except in case of emergency not permitting such notice and the Port of Poti shall use its best efforts to undertake such maintenance or repairs at times that do not cause undue inconvenience to JSC. No work relating to the Terminal Premise shall be carried out by the Port of Poti, its employees or agents in any event without JSC's prior written consent, such consent not to be unreasonably withheld.
- 5.1.10 The Port of Poti shall transfer to JSC the exclusive use of \_\_\_( ) telephone lines currently being used by the Seaport )provided that JSC shall reimburse the Port of Poti for the ongoing use charges for such lines in accordance with Article 6.2 below). \_\_\_( ) or such lines shall be transferred promptly upon entry into effect of this Agreement. The remaining \_\_\_ ( ) lines shall be transferred no later than \_\_\_\_, 199\_\_. The Port of Poti shall assist JSC in procuring all necessary permits, licenses, approvals, authorisations or consents and technical means for the hook-up of additional direct municipal, national and international telecommunications links including, without limitation, telephone, telefax, telex, and cable. The JSC shall reimburse the JSC for any pre-approved direct out-of-



pocket costs incurred by the Port of Poti in procuring such additional permits, approvals, authorisations or consents.

- 5.1.11 The Port of Poti shall assure ecological protection, in accordance with standards and norms established by applicable legislation, of the Terminal Premises and the surrounding land plots occupied by the Port of Poti from sources in, on or around the Terminal Premise or such land plots existing at the moment of signature of the present Agreement and shall indemnify, defend and hold JSC harmless from any claims by third persons for damages which may have resulted from such source.
- 5.1.12 The Port of Poti shall use its best efforts to ensure that JSC's rights hereunder are not limited or restricted by government bodies or by other third persons, whether through construction planning, land planning, architectural or designated permitted use requirements or other restrictions of any sort with respect to land, structures thereon or in the use or possession thereof.
- 5.1.13 The Port of Poti shall take all measures within its control to prevent any activity from being carried out on other sites adjacent to or in close proximity with the Terminal Premises which may damage the Terminal Premises, impair their value or otherwise render them less suitable for the permitted Uses.
- 5.1.14 The Port of Poti shall not transfer or assign in whole or in part any of its rights under this Agreement without JSC's prior written consent. In the event that JSC consents to such a transfer or assignment, the present Agreement shall continue in effect, and the Port of Poti shall cause the respective transferee/assignee to undertake in writing to observe all of the terms and conditions of this Agreement. Neither the transfer of rights of ownership to property being leased, nor the reorganisation of the Port of Poti shall be a basis for the change or termination of this Agreement.
- 5.1.15 The Seaport shall not pledge or otherwise encumber, lease, sell or otherwise transfer all or any part of the Terminal Premises without the prior written approval of JSC.
- 5.1.16 The Port of Poti shall at its own cost and expense secure any and all permits, licenses, approvals, authorisations or consents from government bodies and other persons that are necessary or appropriate for performing its own obligations hereunder.
- 5.1.17 In the event that any repairs are required to be made or arranged by the Port of Poti pursuant to Art. 5.1.3, 5.1.6 and/or 5.1.11 above to avoid a stoppage, a material limitation of or other material risk to any of the Permitted Uses and the Port of Poti is unable to arrange implementation of and payment for such repairs, then JSC may, at its option, either (a) terminate this Agreement immediately under Section 9.1 below, or (b) perform or procure the performance of such repairs at its own expense, and within five (5) business days of the Port of Poti's receipt of JSC's written notice of such performance with evidence of payment, the Port of Poti shall reimburse JSC for all expenses related to such performance or procured performance.

## ARTICLE VI - RIGHTS AND OBLIGATIONS OF THE COMPANY

- 6.1 The JSC shall have the following rights and obligations in addition to its other rights and obligations set forth in this Agreement:
- 6.1.1 The JSC shall take reasonable care of the Terminal Premises and use them only in accordance with the Permitted Uses. Except as otherwise provided herein, JSC shall be responsible for all capital and current repairs to the Equipment and Buildings, the maintenance of roads and railroad tracks located on the Land Plot as well as for the general cleaning and maintenance of areas under its sole control and the repair of any damage caused by it to the Terminal Premises.
- 6.1.2 The JSC shall timely make all lease payments in the form and within the periods set forth in Article IV of this Agreement, reimburse the Port of Poti for the running costs for all utilities consumed by it in connection with its operations (plus a mark-up of 10 %) and pay all taxes in respect of its carrying out the Permitted Uses other than taxes payable by the Port of Poti under Article 5.1.4 above. With respect to electrical power, existing telephone service, steam, heat, water and sewage, the service contracts shall (unless the Parties agree otherwise) remain in the Port of Poti's name with the respective suppliers throughout the Term, provided that the Port of Poti shall open sub-subscriber accounts for JSC with each of such suppliers. JSC shall pay the relevant amounts to the Port of Poti within ten (10) business days following the Port of Poti's monthly presentation of true copies of such suppliers' invoices. Promptly following entry into effect of this Agreement, the Port of Poti shall (subject to reimbursement of the cost by JSC) install within the Terminal Premises separate counters to monitor JSC's use of all utilities. Any additional telephone service (satellite or otherwise) installed by JSC shall operate according to service contracts in JSC's name.
- 6.1.3 Upon expiration of the Term or termination of this Agreement under Article IX, JSC shall surrender the Terminal Premises to the Port of Poti in no worse condition than following the Improvements to be made by JSC in accordance with Section 2.1 above (or shall compensate the Port of Poti for expenses necessary to restore the Terminal Premises to such condition to the extent that JSC is responsible for such repair hereunder), ordinary wear and tear, obsolescence and damage from the elements, fire or other casualty excepted.
- 6.1.4 If the Port of Poti fails to perform timely and in full any of its obligations under this Agreement (including without limitation payment of lease payments, land tax, land rent or property tax under Article 5.1.4 above, payment for all utilities under Article 5.1.7 above and performance of any repairs under Article 5.1.3, 5.1.6 or 5.1.11 above), or otherwise incurs debts that might lead to the arrest or confiscation of all or part of the Terminal Premises, JSC may perform and pay or procure the performance of such obligations or debts at its own expense, and within five (5) business days of the Port of Poti's receipt of JSC's written notice of such performance with evidence of payment, the Port of Poti shall reimburse JSC for all expenses related to such performance or procured performance.
- 6.1.5 If the Port of Poti fails to reimburse JSC for any of the reimbursable expenses described herein, without prejudice to its other rights or remedies, JSC may deduct the respective amount(s) from future Lease Payments owing the Port of Poti hereunder.

- 6.1.6 The JSC shall not be responsible for any injury, loss or damage to personnel or property of the Port of Poti occurring in the Terminal Premises unless directly caused by the negligent or willful act or omission of JSC or its employees or agents in the course of duly performing their duties.
- 6.1.7 The JSC shall have the right to sublease or assign its rights under this Agreement to third parties in whole or in part following written notice to the Port of Poti, provided that JSC shall continue to guarantee all Lease Payments to be made hereunder.
- 6.1.8 JSC shall have a right of first refusal to sublease or otherwise acquire from the Port any land plots adjacent to the Land Plot, as well as the land plot associated with Berths 2,6,7,13,14,15, and the area behind Berth 1 at the Port of Poti on the same terms upon which such land plots are offered by the Port of Poti to any third parties. In order to enable JSC to exercise such right, the Port of Poti shall notify JSC of any bona-fide offers to sublease or otherwise acquire such land plots which the Port of Poti receives from third parties and wishes to accept, with complete information as to the terms of such offers. Within thirty (30) days of receipt of such notice, JSC may notify the Port of Poti of its intention to sublease or otherwise acquire the land plot in question upon the terms contained in the notice provided by the Port of Poti. In such event, the JSC and the Port of Poti shall conclude an agreement reflecting the terms set forth in the original notification provided by the Port of Poti.

## **ARTICLE VII - PRESENTATION AND WARRANTIES; INDEMNIFICATIONS AND DEDUCTIONS**

- 7.1 The Port of Poti hereby represents and warrants to JSC that:
- 7.1.1 The Port of Poti is an State owned entity duly registered, validly established and validly existing under Applicable Legislation and has the legal capacity and authority to conclude the present Lease Agreement on the terms set forth herein and to perform its obligations hereunder;
- 7.1.2 The persons signing this Agreement on the Port of Poti's behalf have full power and authority to do so and their signing has been duly authorised and is in compliance with applicable legislation, all actions necessary under the Port of Poti's charter and resolutions adopted pursuant thereto have been taken to permit the signing of this Agreement and the assumption and performance by the Port of Poti of its obligations hereunder; the powers and number of the Port of Poti's signatories hereto are in conformity with all requirements of applicable law and, when executed, this Agreement shall be a valid and legally binding obligation of the Port of Poti, enforceable in accordance with its terms;
- 7.1.3 The Port of Poti has in full force and effect full, valid and exclusive rights of ownership of the Objects of Lease, and the full, valid and exclusive lease rights for the Terms hereof to the Objects of Sublease and the Land Plot, neither the Objects of Lease nor the Port of Poti's rights to the Objects of Sublease or the Land Plot have been pledged, assigned, sold or otherwise transferred to any other party; such Objects and rights are free of any

arrest, charge, lien or encumbrance and the Port of Poti has the full right to transfer the Terminal Premises to JSC pursuant to the terms of this Agreement.

- 7.1.4 Neither the signing of this Agreement by the Port of Poti nor the performance by the Port of Poti of its obligations hereunder will violate or conflict with any legislation to which it is subject, any agreement or instrument to which it is a party or by which it or its assets or properties are or may be bound, or any provision of any judgment, writ, decree, order, law, statute, or governmental regulation applicable to it.
  - 7.1.5 The Port of Poti has obtained all decisions, decrees, consents and approvals from appropriate government bodies required for the execution and performance of this Agreement and no other authorisations, approvals, permits, decisions or decrees by any government body or any consent or agreement from any other person is necessary for the Port of Poti validly to enter into the present Agreement and perform its obligations hereunder;
  - 7.1.6 The JSC is assured the use of the Terminal Premises free of any hindrance, interruption or disturbance by third persons, and there are no claims by any person with respect to the ownership or right to possess, use or dispose of the Terminal Premises or any part thereof which conflict with the rights granted to JSC hereunder or which could result in the dissolution of this Agreement or the incurring by JSC of additional expenditures;
  - 7.1.7 The Permitted Uses are in conformity with the authorised uses for the Terminal Premises as established by the competent government bodies;
  - 7.1.8 The Terminal Premises fully comply with all applicable legislation for property of this nature, including, without limitation, all environmental laws, environmental approvals, architectural, health, safety, fire inspection regulations and other norms, and there are no architectural, health, safety, fire, ecological or other obstacles to the realisation of the Permitted Uses for the Terminal Premises as of the time of executing hereof;
  - 7.1.9 The Port of Poti has not been entered onto the list of monopoly enterprises maintained by the Georgian Anti-Monopoly Committee.
  - 7.1.10 The Port of Poti is not in a state of bankruptcy or insolvency and none of its property or assets has been subject to attachment or arrest of any kind.
- 7.2 The above representations and warranties shall be deemed continuously repeated throughout the Term hereof or any extensions thereto. The Port of Poti shall indemnify and hold JSC harmless against any and all losses suffered by JSC resulting from (a) any breach of a representation or warranty made by the Port of Poti herein; (b) the Port of Poti's failure to perform timely and in full its obligations under this Agreement; (c) any claims of any persons or entities now or hereafter claiming any right to possess, use or dispose of the Terminal Premises or any portion thereof; (d) any claims by third persons from events arising prior to the entry into force of this Agreement or hereafter arising out of the Port of Poti's actions or failure to perform properly any of its obligations or faults in the Terminal Premises which existed but which were not apparent before the entry into force hereof; and (e) any clean-up by JSC of soil, groundwater and/or other contamination by harmful substances in the Terminal Premises which contamination is in existence as of the date of transfer of the Terminal Premises to JSC, or other similar remedial measures relating to any set of facts existing on such date, pursuant to any order by a Government Body. In the event of the Port

of Poti's failure to indemnify JSC for any of the above losses, without prejudice to its other rights or remedies JSC may deduct the respective amounts(s) from future Lease Payments owing the Port of Poti hereunder.

## **ARTICLE VIII - DAMAGE TO THE PREMISES**

- 8.1 If the Terminal Premises, Improvements, other objects or rights granted JSC under this Agreement shall be damaged or interfered with so as to be unfit for the Permitted Uses though no fault of JSC, then JSC shall provide notification of such fact to the Port of Poti, and the Lease Payments or a corresponding portion thereof, according to the nature and extent of the damage or interference as determined by JSC, shall cease to be payable from the date of the damage or interference until it has been rectified and the Terminal Premises are again fit for the carrying out of the Permitted Uses by JSC. The Port of Poti shall in such case be responsible for making its portion of capital and current repairs to the Terminal Premises as provided in Art. 5 above. JSC shall be responsible for making such capital and current repairs as are provided for in Art. 6 above.
- 8.2 If the Lease Payment for any such period as described in Section 8.1 above has been paid in advance, the Port of Poti shall promptly reimburse the corresponding amount to JSC upon JSC's written demand, in immediately available funds.
- 8.3 If the Terminal Premises, Improvements, other objects granted to JSC under Article 1 hereof or any substantial part thereof are destroyed or damaged and the Party responsible for repairing such damage fails to do so within a reasonable period, then the other Party shall have the right to terminate this Agreement in accordance with Article IX. If the Terminal Premises, Improvements, other objects granted to JSC under Article 1 hereof or any substantial part thereof are destroyed or damaged to the extent that repairs are not possible or economically feasible then JSC shall have the right, at its election, to terminate this Agreement in accordance with Article IX.

## **ARTICLE IX - TERMINATION**

- 9.1 Notwithstanding anything to the contrary herein, this Agreement may be terminated without prejudice to the other rights of either Party:
- 9.1.1 By JSC:
- (a) In the event an act of any government body or other person results in the total or partial confiscation, withdrawal or seizure of the Terminal Premises, including any Improvements (other than as a result of non-payment by the Port of Poti of taxes, lease payments or other debts), or otherwise interferes with, inhibits or prevents the carrying out of the Permitted Uses in the Premises, including without limitation acts which (i) significantly reduce the value of the Lease or the Terminal Premises, or (ii) result in the failure to obtain, revocation, breach, suspension or failure to renew any permit, license, approval, authorisation or consent required for the use of the Terminal Premises or for the carrying out of the Permitted Uses;

(b) In the event of a material breach of the Port of Poti's obligations, representations or warranties under this Agreement which remains uncured for a period of 90 (ninety) days (or such longer period as may reasonably be required to cure such breach) following the JSC's notice to the Port of Poti, which notice shall set forth in reasonable detail the facts forming the basis of the breach, including, without limitation, in the event that (i) any person challenges the validity or legality of this Agreement, in full or in part, or otherwise acts in violation of this Agreement or adversely towards JSC's rights hereunder, which challenge or action is not revoked or eliminated, without expense to JSC, within a reasonable time following the date of challenge or action, (ii) any valid claim of a third person to the Terminal Premises, or any part thereof, adversely affecting JSC's rights hereunder is discovered or (iii) the Terminal Premises or any part thereof are placed under arrest or otherwise forcibly taken from the ownership of or lease by the Port of Poti due to the failure of the Port of Poti to pay its taxes, lease payments or other debts as they come due;

(c) As specified in Section 8.3 above; or

(d) At JSC's election upon 90 (ninety) days' prior notice to the Port of Poti in writing in the event that (i) JSC shifts its activities to another area ( extension area) of the Port of Poti or (ii) JSC terminates its business activities.

9.1.2 By the Port of Poti in the event of a material breach of this Agreement by JSC which remains uncured for 90 (ninety) days (or such longer period as may reasonably be required to cure such breach) following the Port of Poti's notice to JSC, which notice shall set forth in reasonable detail the facts forming the basis of the breach.

9.2 In the event of fire, flood, earthquake or other natural calamity, war revolution, civil unrest, state of emergency or similar circumstance preventing a Party from performing its obligations under this Agreement, the affected Party shall be relieved of its obligations hereunder during the pendency of such circumstance, provided that the affected Party shall have notified the other Party of the existence, nature, commencement date and anticipated date of the cessation pertaining to such circumstance within ten (10) days of its occurrence. If such circumstance prevents the performance of this Agreement for more than 180 (hone hundred and eighty) days, then either Party may terminate this Agreement by written notice to the other Party. No Lease Payments shall be payable (and the Seaport shall reimburse any pre-paid Lease Payments) with respect to any periods during which the Port of Poti is relieved from performing its obligations under this Section 9.2.

9.3 This Agreement may be terminated by either party by written notice to the other Party in the event of pre-ter termination of the Management Agreement signed between JSC and Terminal Management Services on the date hereof.

## **ARTICLE X - CONSEQUENCES OF EXPIRATION OR TERMINATION OF THE LEASE AGREEMENT**

10.1 Upon termination of the Agreement for any reason, JSC shall relinquish the Premises to the Port of Poti, JSC shall pay to the Port of Poti all accrued but unpaid Throughput Fees and the Port of Poti shall make all reimbursements owing JSC hereunder and repay JSC any prepaid Base Rent

for periods following the effective date of termination. In addition, the Port of Poti shall pay any compensation owing to JSC under Section 10.2, and JSC shall pay the Port of Poti any compensation owing to the Port of Poti under Section 6.4. In those cases where compensation is payable to JSC under Section 10.2(a), the right of use and possession of the Terminal Premises shall pass to the Port of Poti only upon full payment of such compensation.

10.2 In the event this Agreement is terminated under the circumstances set forth in Sections 9.1(a)-(c) above (except in the event of confiscation by a Government Body pursuant to Section 9.1(a)), then the Port of Poti shall pay to JSC the sum total of the amounts described in parts (a) and (b) below of this Section 10.2, wherein:

(a) shall equal either:

- (i) the market value in Georgia of the Improvements realised by JSC; or at JSC's election,
- (ii) the total expenditures of JSC in realising the Improvements, indexed for inflation from the time the expenditure was incurred according to available official inflation statistics, as well as any expenses incurred by JSC in terminating any construction contract, service contract, sublease agreements or other agreements relating to the Terminal Premises or the Improvements in effect at the time of termination of this Agreement; and

(b) shall equal either:

- (i) the market value of the lease rights for the remaining Term (taking into account JSC's right to renewal); or, at JSC's election,
- (ii) lost profits of JSC resulting from the termination.

All such amounts shall be determined in all cases by an accounting firm with offices in Georgia, whose conclusions shall be final and binding upon the Parties and whose corresponding fees shall be borne by the Port of Poti.

10.3 All compensation payable to JSC under Section 10.2 shall be in the currency in which the investments, expenditures or payments were originally made. If payment in foreign currency is not permitted under applicable legislation, payment shall be in Georgian Laries in an amount equivalent to the foreign currency amount converted into Laries at the official Georgian Central Bank exchange rate on the date of payment to JSC of said compensation.

10.4 If any government body should declare the necessity for payment of taxes on the Port of Poti's payment to JSC of compensation or indemnification under this Agreement, the Port of Poti agrees that the amount it must pay shall be automatically increased by that additional amount which, after payment of the relevant taxes, leaves JSC with the entire amount to which it would otherwise be entitled under the Agreement had the amount in question not been subject to payment or withholding of taxes.

## **ARTICLE XI - DISPUTE RESOLUTION AND GOVERNING LAW**

11.1 The Parties shall attempt to settle all disputes arising out of this Agreement through friendly negotiations. In the event that the Parties fail to resolve a dispute, such matter may, upon the

application of either party to the dispute, be referred to and resolved exclusively by arbitration in Vienna Austria in accordance with UNCITRAL rules, without recourse to courts of law.

11.2 Arbitration will be established as follows:

11.2.1 The party wishing to submit the matter to arbitration shall notify the other party by facsimile (with a confirmation copy sent by air courier), naming its arbitrator, who may be a citizen of any country, stating the arbitrator's address, and advising the subject of the dispute with pertinent details.

11.2.2 Within thirty (30) days of receipt of such notification, the other party shall appoint its arbitrator, who also may be a citizen of any country, and shall inform the first party by facsimile (with a confirmation copy to be sent by air courier) of its arbitrator's name and address.

11.2.3 If the party summoned to arbitration fails to appoint an arbitrator within the above-mentioned time, such arbitrator shall be appointed by the President of the Vienna Chamber of Commerce, at the request of the party having submitted the matter to arbitration.

11.2.4 The two arbitrators shall choose a third arbitrator, who shall be designated as the Chief Arbitrator.

11.2.5 If within thirty (30) days after they have been nominated, the arbitrators fail to agree upon the choice of a Chief Arbitrator, then the latter shall be appointed at the request of either party by the President of the Vienna Chamber of Commerce.

11.3 English shall be the official language of the arbitration; however written submissions and testimony may be presented to the arbitral tribunal in English and Georgian.

11.4 The award shall be decided by majority vote. The rights and obligations of the parties hereunder shall be construed in accordance with the terms and conditions of this Agreement and the laws and regulations of Georgia (excluding choice of law rules). The arbitrators shall be free to determine the most suitable procedural rules for the arbitration. The arbitrators shall have the power to render declaratory judgements and to issue injunctive orders, as well as to award monetary damages.

11.5 The arbitrators shall endeavour to issue their award within six (6) months after the Chief Arbitrator has been chosen. The award shall state the reasons for the decision, identify the composition of the arbitration tribunal, date and place of the decision, and allocation of costs and expenses of the arbitration between the parties.

11.6 The Parties hereby irrevocably waive any right of sovereign immunity which they or it might now have or at any time hereafter assert in connection with this Agreement, the performance of their obligations hereunder and the execution of any judgement or award in connection therewith.

11.7 The arbitration award shall be final and binding upon the parties. Judgement upon the award may be entered in any court of competent jurisdiction.



- 11.8 Notwithstanding the foregoing, JSC shall have the right to bring any action arising out of or in connection herewith before the Arbitration Court of Georgia.

## ARTICLE XII - NOTICES

- 12.1 Any notice, consent or agreement to be given hereunder shall be in written form either by personal delivery or by telefax or telex and promptly confirmed by registered mail letter to the addresses indicated below, as may hereafter be changed by notice. All notices shall be deemed effective upon receipt.

The Port of Poti:

(...)

Attn.: ...

telefax: \_\_\_\_\_

telephone: \_\_\_\_\_

the JSC:

(...)

Attn.: ...

telefax: \_\_\_\_\_

telephone: \_\_\_\_\_

## ARTICLE XIII - MISCELLANEOUS PROVISIONS

- 13.1 The present Agreement (including its Annexes) constitutes the entire understanding of the Parties and supersedes all prior written or oral understandings with respect to the subject matter hereof.
- 13.2 Amendments or additions to this Agreement shall be valid only if in writing duly signed by the authorised representatives of the Parties.
- 13.3 The invalidity or unenforceability of any one or more of the provisions of the Agreement shall not affect the validity or enforceability of the Agreement as a whole. If any provision of this Agreement should, in whole or in part, be declared invalid or unenforceable for any reason, such invalidity or unenforceability shall affect only the portion of such provision so declared, and the Parties shall use their best efforts to amend this Agreement to replace such invalid or unenforceable provision with a valid provision reflecting the original agreement of the Parties and preserving the economic and legal interests of the Parties as originally intended.
- 13.4 The failure by any Party to enforce any of its rights hereunder shall not be deemed a waiver of such rights or of any other rights hereunder. No term or condition of this Agreement shall be deemed to have been waived unless such waiver is in writing.
- 13.5 The Parties agree to execute all documents and take all actions that may be necessary to give full effect to the provisions of this Agreement, including without limitation, the obtaining of any

additional authorisations, approvals, permits and consents from any governmental bodies or authorities.

13.6 In all their dealings with each other the Parties shall act strictly in good faith and in accordance with fair commercial principles.

**IN WITNESS WHEREOF**, this Agreement has been signed by or on behalf of each of the Parties hereto as of the date first above written, in four (4) original copies each in the English and G languages, both of which languages shall have full force and effect.

**Port of Poti**

**Poti Container and RoRo Terminals (JSC)**

\_\_\_\_\_  
Name:

Title:

\_\_\_\_\_  
Name:

Title:

\_\_\_\_\_  
Name:

Title:

\_\_\_\_\_  
Name:

Title:

(SEAL)

(SEAL)

- ANNEX 1 -- Objects of Lease to be specified by the Parties involved
- ANNEX 2 -- Objects of Sublease (Berth 2,6,7,12,13 and 14)
- ANNEX 3 -- Land Plot (To be developed by the Port of Poti)
- ANNEX 4 -- Act of Transfer

**ANNEX 4:**

Act of Transfer

The Port of Poti, a legal entity organised and validly existing under legislation of Georgia, and the joint stock company Poti Container and RoRo Terminals entity organised and validly existing under legislation of Georgia (the JSC) have entered into a lease/sublease agreement dated \_\_\_\_\_, 199\_\_ (the "Agreement").

In accordance with Section 1.3 of the Agreement and 583 and 585 of the Georgian Civil Code, the Port of Poti hereby transfers factual use and possession of the Terminal Premises described below to JSC, and JSC hereby accepts such transfer from the Port of Poti.

(Description of the Terminal Premises Conveyed)

IN WITNESS WHEREOF; this Act of Transfer has been signed by or on behalf of each of the parties hereto as of the date first above written, in four (4) original copies each in the English and Georgian languages, both of which languages shall have full force and effect.

Port of Poti

Poti Container and RoRo Terminals

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Name:

Title:

Title:

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Name:

Title:

Title:

(SEAL)

(SEAL)

Draft Management Contract for the management of the first joint stock company



# DRAFT MANAGEMENT SERVICES AGREEMENT





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## DRAFT MANAGEMENT SERVICES AGREEMENT

**THIS MANAGEMENT SERVICES AGREEMENT** is entered into this \_\_\_ day of \_\_, 199 between the following parties:

Poti Container Terminal

and

Terminal Management Company (TMC)

**WHEREAS the Port of Poti** existing under the laws of Georgia and the below stated Shareholders:

have established JSC pursuant to a Charter and Shareholders Agreement signed on \_\_\_\_\_, 199 to operate on Berths 2, 6, 7, 13, 14 and 15 of the Port of Poti (the Terminals), RoRo and container activities and all activities related hereto.

**WHEREAS** pursuant to Art. 3 of the Shareholders Agreement and Art. 15 of the Charter, the Shareholders cause JSC to sign a Management Agreement pursuant to which would provide certain management services to JSC;

**NOW THEREFORE**, the Parties agree as follows:

### ARTICLE 1 - PURPOSE OF AGREEMENT

- 1.1 Pursuant to the terms of this Agreement, TMC shall be responsible for the design and implementation of management procedures necessary for the efficient operation and maintenance of the Terminal, including commercial and financial management, development and implementation of safety policies, training of personnel, marketing, information systems and computerisation, technical operation of the Terminal, rail transfer operations and other logistics, maintenance and administrative matters.
- 1.2 The management services provided by TMC shall include the following:
  - 1.2.1 Consulting services to assist JSC in the efficient development, operation and management of the Terminals;
  - 1.2.2 Selecting qualified management and other executive personnel to be involved in the operation of JSC;
  - 1.2.3 Assisting JSC in the preparation of business plans for the development and operation of the Terminals;
  - 1.2.4 Making recommendations to JSC from time to time with respect of tariff policy;
  - 1.2.5 Assisting JSC in the preparation budgets, capital investment plans, wage plans, annual accounting and financial reports;

- 1.2.6 Assisting JSC in the preparation of operational plans to ensure efficient use of Terminal facilities as well as in the preparation of annual reports on the activities of \_\_\_\_\_;
- 1.2.7 Advising JSC in connection with marketing and business development with respect to its operations;
- 1.2.8 Assisting JSC in implementing effective operational, accounting and information systems;
- 1.2.9 Assisting JSC in the procurement, development and use of communications facilities and electronic data interchange systems;
- 1.2.10 Establishing a management information system / executive management information system to provide JSC with regular detailed information regarding operational and financial matters of JSC, including without limitation budgets, forecasts; monthly profit and loss accounts, capital requirements, commentaries on operational results and reports on variances from budgets;
- 1.2.11 Assisting JSC in the selection of foreign engineers, contractors and other consultants, service providers and professionals for the construction and operation of its container facilities in line with the Port Master Plans, the Port Development Plans and the tender documents hereto.
- 1.2.12 Providing JSC with regular updates regarding container handling systems to ensure maximum possible utilisation of the Terminal facilities;
- 1.2.13 Preparing and assisting in the implementation of training and safety programs for all JSC personnel;
- 1.2.14 Identifying and procuring on behalf of JSC suitable container handling and other equipment, materials and supplies for the operation of the Terminal in line with the Port Master Plans, Port Development Plans and the tender documents hereto and assisting in the installation, start-up and operation of such equipment;
- 1.2.15 Preparing maintenance programs for Terminal facilities; and
- 1.2.16 Such other services as may be required in the reasonable opinion of JSC for the efficient and profitable operations of the Terminal.

## **ARTICLE 2 -PAYMENT OF MANAGEMENT FEE AND EXPENSES**

- 2.1 In consideration of the management and consulting services provided hereunder, JSC shall pay to TMC a management fee equal to:
  - 2.1.1 8 % (eight percent) of all gross revenue accrued JSC in connection with the first 80,000 (eighty thousand) TEU of handling rates and others incomes per year processed by the JSC; and

2.1.2 12 % (twelve percent) of all gross revenue accrued in connection with all freight in excess of 80,000 (eighty thousand) TEU per year processed by the Terminal.

The minimum Fee shall be .....

- 2.2 The Management Fee shall be payable in US dollars or such other currency as may be agreed by TMC and shall be based upon data provided by the Chief Accountant of JSC based on the official books and records of JSC. In order to calculate the Management Fee, the value in the currencies of the Management Fee of any portion of gross revenues accrued by CT in currencies other than the currency of the Management Fee shall be established using the exchange rate applied by TMC's bank to the sale of such other currency and the purchase of the Currency of the Management Fee on each date on which the Management Fee becomes payable pursuant to Art. 2.5 below.
- 2.3 The Management Fee shall be adjusted based on annual audits on JSC's books and records. If it is determined pursuant to such audit that the revenues of JSC for the period in question were undervalued, then JSC shall, within one month from the completion of such audit, make a payment to TMC to adjust the Management Fee accordingly. If it is determined pursuant to such audit that the revenues of JSC were overvalued for the relevant period, then JSC shall be entitled to deduct from any future payments to TMC an amount equal to the amount previously overpaid. No penalties or interest shall be paid with respect to adjustments to the Management Fee made pursuant to the paragraph.
- 2.4 TMC shall have the right to examine any an all documents of JSC necessary to verify the revenues of JSC.
- 2.5 In addition to payment of the Management Fee, JSC shall reimburse TMC (or its affiliates) for all reasonably documented expenses incurred by TMC (or such affiliates) in connection with its activities pursuant to this Agreement. Such Expenses shall be reimbursed at their original cost to TMC (without mark-up of any kind) and shall include without limitation, Expenses incurred in connection with (i) the secondment to JSC of Management Personnel and Expert Staff as provided in Art. 3 below, (ii) travel, food and lodging of trainees as provided in Art. 4.5 below, (iii) preparatory expenses, costs and disbursements incurred by TMC in connection with this Agreement prior to the date of entry into effect hereof, including employment costs, travelling expenses, food and lodging, secretarial and administrative expenses, and such other expenses as TMC may necessarily have incurred in preparing for the implementation of this Agreement. If, for any reason beyond the reasonable control of TMC, activities under this Agreement fail to commence following signature of this Agreement by the Parties, JSC agrees to reimburse to TMC all amounts expended by TMC in connection with this Agreement following its date of signing. All reimbursements shall be made in the currency or currencies in which the relevant expense was incurred, or in such other currency as may be agreed by TMC. Currency equivalencies shall be calculated at the exchange rates applied by TMC's bank.
- 2.6 To the extent required by applicable law, VAT and similar taxes shall be added to all Management Fees and Expenses payable by JSC hereunder.
- 2.7 At the close of each calendar month, TMC shall provide JSC with an invoice setting forth the above Management Fee and related Expenses for the month in question. Each invoice shall state VAT and similar taxes (to the extent payable) as a separate line item. All invoices shall be payable by bank transfer to TMC's account listed on the relevant invoice no later than 5 (five) days following receipt of such invoice by JSC. Each invoice shall be deemed paid on the date on which the relevant funds are

credited to the account of TMC. JSC shall assist TMC in making all tax filings required to ensure that no income withholding tax will be due in Georgia in connection with such payments.

- 2.8 In the event of a delay in payment of all or any part of the Management Fee or the Expenses, interest on such overdue payment shall become payable at 6 % (six percent) per year.

### **ARTICLE 3 - PROVISION OF AND APPROVAL OF MANAGEMENT AND OTHER PERSONNEL**

- 3.1 The executive management personnel of JSC shall consist of a General Director, a Financial Comptroller, an Operations Manager, a Technical Manager and other such Directors or Managers as the Parties may agree from time to time. The powers of such Management Personnel are set forth in Annex 1 hereto. JSC agrees to appoint to the above-described positions such individuals as are recommended by TMC, provided that all such individuals shall have experience in managing international container terminals operated by western companies.
- 3.2 At the option of TMC, all Management Personnel shall either be employed by JSC or seconded to JSC or TMC or one of its affiliates. All secondments shall be implemented pursuant to secondment agreements in form of Annex 2 hereto. The cost to be charged to TMC in connection with the Management Personnel is set forth in the Business Plan appended to the Shareholder Agreement.
- 3.3 TMC may from time to time provide JSC with additional expert staff to the extent required and for specific limited periods as deemed necessary in the reasonable opinion of the Manager. TMC shall notify the Board of Directors of JSC of all persons to be appointed as Expert Staff setting out their names, qualifications, experience, the task they are to perform, the duration of the visit and similar matters. All Expert Staff shall be seconded to JSC by TMC or its affiliates pursuant to secondment agreements to be developed.
- 3.4 TMC shall provide JSC with annual budgets for Expert Staff for approval by the General Assembly of Shareholders of JSC. Such budgets shall reflect the cost to TMC (without mark-up) of providing such Expert Staff plus travel and accommodation expenses. If actual cost of Expert Staff in any given year exceeds the figure approved in the relevant budget, TMC shall submit an amendment to the relevant budget to the General Assembly for approval, which approval shall not be unreasonably withheld. TMC shall review from time to time the use of Expert Staff to ensure that their number and quality are appropriate to meet the objectives of JSC.
- 3.5 If JSC and TMC jointly agree that any Management Personnel or Expert Staff appointed in accordance with this Art. 3 are incompetent, unsuitable or unfit to discharge their duties, or if any member of the Management Personnel or Expert Staff contravenes a material provision of this Agreement or of applicable law, the Parties shall remove such individual from his position with JSC and TMC shall, as soon as reasonably practicable, provide a suitable replacement.
- 3.6 JSC shall employ all other employees necessary in the reasonable opinion of TMC to operate the Terminal facilities and to provide repair and maintenance, administration and other ancillary services, as required. Salaries shall be determined by the General Assembly in the course of their annual budget approval, based upon recommendations of TMC.
- 3.7 JSC shall provide all necessary Visa support and obtain work permits for all Management Personnel and Expert Staff provided pursuant to this Article.

## **ARTICLE 4 - TRAINING OF PERSONNEL**

- 4.1 TMC shall ensure on-the-job training of Georgian management personnel by the Expert Staff and other Management Personnel in the design and implementation of procedures necessary for the efficient and economic operation of the Terminals.
- 4.2 TMC shall provide the Board of Directors of JSC for its approval with training schedules setting forth the number of management personnel to be trained, their qualifications and experience, the areas of expertise in which they are to be trained, the Georgians and/or overseas locations at which such training is to take place. All such training shall be at no additional cost to JSC, provided that JSC shall pay travel, food and lodging costs with respect to all training that is to take place in locations other than the Terminals.
- 4.3 TMC shall provide all necessary Visa support in connection with the training of Company personnel in Western Europe.

## **ARTICLE 5 - ACCESS TO FACILITIES**

- 5.1 JSC shall provide TMC, its Expert Staff and their authorised representatives at all times with free and unencumbered access to all Terminals and other Company facilities, including without limitation buildings, offices and structures, land plots, terminal facilities and equipment as reasonably required by TMC, the Expert Staff or such representatives to carry out their obligations hereunder.

## **ARTICLE 6 - PROPRIETARY RIGHTS IN REPORTS AND RECORDS**

- 6.1 All reports and relevant data and supporting records or materials compiled or prepared by TMC and/or JSC pursuant to this Agreement shall be confidential and shall be the exclusive property of JSC. JSC shall be entitled to make use of all such reports and data for any purpose without further charge.
- 6.2 TMC may retain a copy of the data and documentation described in Art. 6.1 above for its own records but shall not use the same for purposes unrelated to this Agreement without the prior written approval of JSC. TMC agrees to deliver all such data and documents to JSC upon expiration or termination of this Agreement for any reason.

## **ARTICLE 7 - MONITORING OF AND CLAIMS AGAINST TMC**

- 7.1 JSC shall have the right to monitor the activities of TMC by requesting periodic reports from TMC and reviewing documents of TMC prepared in connection with this Agreement.
- 7.2 TMC shall not be liable to JSC for any loss, damage, expense or liability suffered or incurred as a result of any act done or omitted by TMC or any entities or individuals acting on behalf of TMC in good faith in performance of their duties hereunder or for error in judgement unless such act or omission results from gross negligence or wilful misconduct of TMC or persons or entities acting on its behalf.

## ARTICLE 8 - REPRESENTATIONS AND WARRANTIES

### 8.1 TMC hereby represents and warrants that:

- 8.1.1 It is legal entity, duly organised and validly existing under the laws of . The persons signing this Agreement on its behalf have full power and authority to do so, and such signing is in compliance with all applicable laws; TMC further confirms that the powers and number of its signatories to this Agreement are in conformity with all requirements of applicable law and that, when executed, this Agreement shall be a valid and legally binding obligation of TMC, enforceable in accordance with its terms.
- 8.1.2 Neither the signing of this Agreement nor the performance of the obligations imposed upon TMC by this Agreement shall violate or conflict with the rights of any third person.
- 8.1.3 The execution and performance of this Agreement will not result in any violation, or be in conflict with any agreement or instrument to which TMC is a party or by which it is bound or any provision of any judgement, writ, decree, order, law, statute or other normative act applicable to it.
- 8.1.4 There are no claims or arbitration, administrative or legal or other proceedings or investigations pending or threatened against or affecting it before any court, tribunal or regulatory authority which would, if adversely determined, have a material adverse effect on its ability to carry out its obligations under this Agreement.

### 8.2 NCT hereby represents and warrants that:

- 8.2.1 It is a legal entity, duly organised and validly existing under the laws of the Russian Federation, all actions necessary under its foundation documents have been taken to permit the signing of this Agreement and the assumption and performance by NCT of its obligations hereunder, the persons signing this Agreement on its behalf have full power and authority to do so, and such signing is in compliance with all applicable laws; NCT further confirms that the powers and number of its signatories to this Agreement are in conformity with all requirements of applicable law and that, when executed, this Agreement shall be a valid and legally binding obligation of NCT, enforceable in accordance with its terms.
- 8.2.2 Neither the signing of this Agreement nor the performance of the obligations imposed on NCT by this Agreement violate or conflict with the rights of any third person or with any Russian legislation or any plan or agreement to which NCT or assets or properties owned or leased by it are or may be bound.
- 8.2.3 The execution and performance of this Agreement will not result in any violation or be in conflict with any agreement or instrument to which NCT is a party or by which it is bound or any provision of any judgment, writ, decree, order, law, statute or other normative act applicable to it.
- 8.2.4 There are not claims or arbitration, administrative or legal or other proceedings or investigations pending or threatened against or affecting JSC before any court, tribunal or regulatory authority which would, if adversely determined, have a material adverse effect on its ability to carry out its obligations under this Agreement.



- 8.2.5 JSC has obtained and will maintain in effect all environmental, fire, safety, operations and other licenses and approvals from the competent municipal and/or federal governmental bodies necessary to allow for the operation and maintenance of the Terminals.
- 8.3 The above representations and warranties shall be valid and shall be deemed continuously repeated throughout the Term of this Agreement and any extensions thereof. Each of the Parties agrees to indemnify and hold the other harmless against any and all costs, damages and liabilities, including attorneys fees, arising out of or in connection with any inaccuracy in or breach of any of the indemnifying Party's representations and warranties as described above.

## ARTICLE 9 - ARBITRATION

- 9.1 The Parties shall attempt to resolve all disputes arising out of this Agreement by friendly negotiations. In the event that the Parties fail to resolve a dispute, the matter may, upon the application of either Party to the dispute, be referred to and resolved exclusively by arbitration in Vienna, Austria, in accordance with UNICITRAL rules, without recourse to courts of law.
- 9.2 Arbitration will be established as follow:
- 9.2.1 The party wishing to submit the matter to arbitration shall notify the other party by facsimile (with a confirmation copy sent by air courier), naming its arbitrator, who may be a citizen of any country, stating the arbitrator's address, and advising the subject of the dispute with pertinent details.
- 9.2.2 Within thirty (30) days of receipt of such notification, the other party shall appoint its arbitrator, who also may be a citizen of any country, and shall inform the first party by facsimile (with a confirmation copy sent by air courier) of the arbitrator's name and address.
- 9.2.3 The two arbitrators shall choose a third arbitrator, who shall be designated as the Chief Arbitrator.
- 9.2.4 If within thirty (30) days after they have been nominated, the arbitrators fail to agree upon the choice of a Chief Arbitrator, then the latter shall be appointed at the request of either party by the President of the Vienna Chamber of Commerce.
- 9.3 The official language of the arbitration shall be English; however, written submissions and testimony may be presented to the arbitrage tribunal in English and Georgian.
- 9.4 The award shall be decided by majority vote. This Agreement and the rights and obligations of the Parties hereunder shall be construed in accordance with the terms and conditions of this Agreement and the substantive law of Georgia (excluding choice of law rules). The arbitrators shall be free to determine the most suitable procedural rules for the arbitration. The arbitrators shall have the power to render declaratory judgements and to issue injunctive orders, as well as to award monetary damages.
- 9.5 The arbitrates shall endeavour to issue their award within three (3) months after the Chief Arbitrator has been chosen. The award shall state the reasons for the decision, identify the composition of the

arbitration tribunal, date and place of the decision, and allocation of costs and expenses of the arbitration between the Parties.

- 9.6 The arbitration award shall be final and binding upon the parties and may be enforced in any court of competent jurisdiction.
- 9.7 Notwithstanding the foregoing, TMC shall have the right to bring any action arising out of or in connection herewith before the Arbitration Court of Georgia.

## **ARTICLE 10 - FORCE MAJEURE**

- 10.1 As used herein, force majeure shall mean: a) natural disasters such as fire, explosion, flood, earthquake and b) risks of war, civil disturbances, and other such circumstances, beyond the control of any of the Parties, and which shall prevent a Party from performing its obligations under this Agreement.
- 10.2 Should force majeure occur and prevent any Party from timely performance of its obligations hereunder, the Parties shall be excused from the performance of their obligations hereunder until the cessation of the force majeure in question, provided, however, that any Party subject to force majeure shall promptly notify the other Party in writing of said occurrence supplying sufficient information to allow the other Party to verify independently the existence and circumstances thereof.

## **ARTICLE 11 - ADVERSE CHANGES**

- 11.1 If following the date of this Agreement there should occur any adverse change which materially affects one or both of the Parties and which is not remedied by applicable legislation, including but not limited to the repeal or amendment of any legislation now in force, the cancellation, limitation or non-renewal of any rights, licenses, authorisations or approvals required for the Parties to carry on their activities and business, or any increase in tax rates or imposition of new taxes then the Parties shall use their best efforts to obtain an exemption therefrom, or otherwise take such action as may be necessary to negate the adverse result of the occurrence of the Adverse Change, and shall consult with appropriate ministries and organisations, as well as with other appropriate governmental bodies, with the aim of agreeing upon mutually acceptable measures to restore the original economic benefits of the Parties hereunder.
- 11.2 If the Parties are unable to obtain such exemption or take such action so as to negate the adverse effect on the Parties of the Adverse Change, then the Parties shall re-negotiate and amend this Agreement in good faith so as to achieve the same economic benefits for the Parties as may have been anticipated but for the Adverse Change.

## **ARTICLE 12 - GOVERNMENT ACQUISITION**

- 12.1 In the event that the property and/or operations of JSC or any part thereof at any time become the subject matter of or are included in any notice, notification or declaration concerning or relating to acquisition by the RF government or any governmental authority or if the Georgian government or governmental authority shall seize or otherwise expropriate all of any substantial part of the property

or other assets or control of operations of JSC or shall have assumed custody or control of such property or other assets such that JSC or its officers would be prevented from carrying out the operations of its business or a substantial part thereof, JSC shall forthwith inform TMC or the same and hereby undertakes to take all necessary steps and measures to ensure that JSC and TMC are awarded appropriate compensation for the duration of such acquisition and JSC further undertakes to indemnify TMC for all loss, damage, costs and expenses incurred by TMC as a result of such acquisition.

## **ARTICLE 13 - FAVORABLE CHANGES**

- 13.1 Should legislation in Georgia relating to investments with foreign participation as contemplated by this Agreement and to the relations established thereby, including but not limited to tax treatment, labour regulations, currency convertibility, exchange controls, property rights, and other areas, be amended so as to be more favourable to one or both of the Parties, then, provide that neither of the Parties are put at a disadvantage thereby, this Agreement shall be amended to take advantage of such new laws, regulations, rulings, concessions or conditions.

## **ARTICLE 14 - TERM AND TERMINATION**

- 14.1 This Agreement shall enter into effect on the date upon which the Terminals are transferred to JSC (such date to be fixed in a relevant Act of Transfer) and shall remain in force for a period of ( )years from such date unless terminated in accordance with this Article.
- 14.2 If any of the Parties hereto breaches its representations or warranties or otherwise fails to perform any of its material obligations hereunder to the reasonable satisfaction of the other Party, then the other Party shall have the right to provide the Defaulting Party with a notice in writing specifying the default or the breach within a ninety (90) days or such further period as the Parties may agree. If such default or breach is not remedied within such period, the Aggrieved Party may refer the matter to arbitration, as set out in Article 9 hereof to establish the measure of damages to be paid, and, if requested by the Aggrieved Party, to terminate this Agreement.
- 14.3 Upon termination of this Agreement pursuant to Art. 14.1 above, all rights and obligations hereunder shall terminate, provided that the provisions of Art. 15 (Confidentiality), and the obligations of JSC to pay any sums due and payable on or prior to the date of such termination shall survive termination hereof.
- 14.4 The above remedies shall be in addition to any remedies provided by applicable law.
- 14.5 In addition, either Party may immediately terminate this Agreement by written notice to the other Party in the event of the other Party's bankruptcy or insolvency, or in the event that the other Party makes a general assignment for the benefits or creditors, or in the event that a petition is filed against the other Party under a bankruptcy law, a corporate reorganisation law, or any other law for the relief of debtors (or similar law analogous in purpose or effect), or in the event that JSC or TMC for any reason discontinue their business.

## ARTICLE 15 - CONFIDENTIALITY

- 15.1 Each of the Parties agrees to use any and all confidential information and documentation received from another Party (including without limitation information relating to the structure, business connections and activities of the other Party) exclusively for the purpose of the activities contemplated hereunder. The transfer of such confidential information and documentation to third party entities of persons is strictly prohibited except as may otherwise be agreed to in writing by the Party which is the subject of the confidential information to be disclosed. Each Party undertakes to exert its best efforts to prevent such unauthorised disclosure by any of its past or present directors, officers, employees, agents and representatives.
- 15.2 The confidentiality provision contained in Art. 15.1 above shall not apply to:
- 15.2.1 Information which had become, at the time of its disclosure to the third party, part of the public domain through no fault of the disclosing Party (including its past or present directors, officers, employees, agents and representatives);
  - 15.2.2 Information which was known by the disclosing Party from outside sources prior to its disclosure by the party which is the subject of such information (provide that this fact is promptly communicated to such Party upon receipt of the already known information);
  - 15.2.3 Required disclosures to governmental bodies regarding the Parties as well as any disclosures in response to inquiries of government authorities, courts, or other bodies to which the disclosing Party is responsible.
- 15.3 The Parties shall obtain from their concerned directors, officers, employees, suppliers, agents and representatives non-disclosure and non-use agreements in a form established by the Parties.
- 15.4 All confidential information, technical data and trade secrets, and copies of any documents containing them, shall be returned to the Party providing such information within thirty (30) days following the expiration or termination of this Agreement.

## ARTICLE 16 - NOTICES

- 16.1 Any notice, consent or agreement to be given hereunder shall be in written form either by personal delivery or by cable, telefax or telex and confirmed by air courier sent within two (2) business days of such delivery, cable, telefax or telex to the addresses of the Parties as set forth below, as may hereafter be changed by notice. All notices shall be deemed effective upon receipt.
- 16.2 The addresses of the Parties for notice purposes are as follows:
- If to JSC to:
- (...)

If to TMC to:

(...)

with a copy to:

## ARTICLE 17 - MISCELLANEOUS

- 17.1 This Agreement constitutes the entire understanding among the Parties with respect to the subject matter hereof and supersedes all prior written and oral understandings or agreements among the Parties with respect thereto, provided that the Shareholders Agreement and Charter shall continue in full force and effect.
- 17.2 Amendments or additions to this Agreement shall be valid only if in writing and signed by the authorised representatives of the Parties.
- 17.3 No consent to or waiver of any breach or default in the performance of any obligations under this Agreement shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance of any of the same or any other obligations hereunder. Failure on the part of either Party to complain of any act or failure to act by the other Party or to declare the other Party in default, irrespective of how long such failure continues, shall not constitute a waiver of rights hereunder, and no waiver hereunder shall be effective unless it is writing, executed by the party granting such waiver.
- 17.4 The rights and obligations arising from this Agreement may not be transferred in whole or in part by either Party without the prior written consent of the other Party. Notwithstanding the preceding sentence, TMC shall have the right to transfer its rights and obligations hereunder (in whole or in part) to a company affiliated with TMC.
- 17.5 The invalidity or unenforceability of any one or more of the provisions of this Agreement shall not affect the validity or enforceability of this Agreement as a whole. If any provision of this Agreement should, in whole or in part, be declared invalid or unenforceable for any reason, such invalidity or unenforceability shall affect only the portion of such provision so declared, and the Parties shall use their best efforts to amend this Agreement to replace such invalid or unenforceable provision with a valid provision reflecting the original agreement of the Parties and preserving the economic and legal interests of the Parties as originally intended.
- 17.6 The Parties agree to execute all documents and take all actions that may be necessary to give full effect to the provisions of this Agreement, including without limitation, the obtaining of any additional authorisations, approvals, permits and consents from any governmental bodies or authorities. The Parties shall promptly advise each other on any industrial or political issues which may have an impact on this Agreement or the activities of the Terminal.
- 17.7 In all their dealings shall be signed in two (2) originals in English and two (2) originals in Russian, each language version being of equal legal validity.



IN WITNESS WHEREOF the Parties have hereto set their hands and seals on the \_\_ day of \_\_\_\_\_ 199\_\_.

ON BEHALF OF:

JSC JOINT STOCK COMPANY

TERMINAL MANAGEMENT COMPANY

\_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Name:  
Title:

(SEAL)

(SEAL)

## ANNEXES:

ANNEX 1: POWERS OF MANAGEMENT PERSONNEL \*

ANNEX 2: SECONDMENT AGREEMENTS

\* to be developed by the contract partners







