

# **CONCESSION AGREEMENT OF THE MAPUTO PORT**

**CELEBRATED BETWEEN**

**THE GOVERNMENT OF THE  
REPUBLIC OF MOÇAMBIQUE**

**AND**

**PORTOS E CAMINHOS DE FERRO DE  
MOÇAMBIQUE E.P.**

**AND**

**MPDC - SOCIEDADE DE DESENVOLVIMENTO  
DO  
PORTO DE MAPUTO S.A.R.L.**

## **Table of Contents**

1.	DEFINITIONS AND INTERPRETATION .....	2
2.	CONDITIONS PRECEDENT.....	18
3.	TERM.....	21
4.	GRANT OF RIGHTS TO THE COMPANY .....	22
5.	TRANSFER PROCEDURES .....	25
6.	CONTRACTS.....	29
7.	EMPLOYEES AND PENSIONS .....	30
8.	PORT INCOME .....	31
9.	PORT CONCESSION AREA AND CONSENTS .....	32
10.	SUPPORT OF THE CONCEDED AUTHORITY AND CFM.....	34
11.	IMPLEMENTATION OF THE PROJECT BY THE COMPANY .....	36
12.	FEES.....	37
13.	INDEPENDENT INSPECTOR.....	39
14.	REHABILITATION WORKS .....	39
15.	DEVELOPMENT WORKS - DEVELOPMENT PLAN AND THE JOINT PLANNING COMMITTEE .....	42
16.	OPERATION AND MAINTENANCE .....	44
17.	WARRANTIES .....	48
18.	GENERAL OBLIGATIONS OF THE PARTIES .....	53
19.	INSURANCE.....	58
20.	HANDBACK.....	59
21.	CONFIDENTIALITY .....	60
22.	LIABILITY .....	61
23.	INDEMNIFICATION .....	61
24.	EXPATRIATE WORKERS/IMMIGRATION CONTROLS .....	64
25.	SECURITY PROTECTION .....	64
26.	IMPORT CONTROLS.....	64
27.	FOREIGN CURRENCY EXCHANGE AND TRANSFER OF FUNDS .....	65
28.	ASSIGNMENT.....	65
29.	RESTRICTIONS ON ACQUISITIONS AND TRANSFERS OF SHARES AND ASSETS .....	66
30.	FORCE MAJEURE.....	67
31.	CHANGE IN CIRCUMSTANCES.....	71
32.	RELEVANT TAXES, CHANGES IN RELEVANT TAX AND CHANGES IN COSTS .....	72
33.	TERMINATION .....	74
34.	RIGHTS AND OBLIGATIONS OF PARTIES UPON TERMINATION.....	80
35.	GOVERNING LAW AND RESOLUTION OF DISPUTES .....	82
36.	MISCELLANEOUS PROVISIONS .....	82

SCHEDULE 1 .....	87
Consents.....	87
SCHEDULE 2 .....	91
Arrangements for the transfer of responsibility.....	91
SCHEDULE 3 .....	94
Contracts .....	94
SCHEDULE 4 .....	95
Dispute Resolution Procedure .....	95
SCHEDULE 5 .....	99
Initial Investors .....	99
SCHEDULE 6 .....	100
Special Licence.....	100
SCHEDULE 7 .....	102
Port Concession Area.....	102
SCHEDULE 8 .....	103
Port Jurisdiction Area.....	103
SCHEDULE 9 .....	104
Port Services .....	104
SCHEDULE 10 .....	107
Rehabilitation Bond.....	107
Maintenance and Performance Bond .....	110
SCHEDULE 11 .....	113
Handback - Transfer of Port on Termination .....	113

SCHEDULE 12 .....	120
SCHEDULE 13 .....	123
Part 1 Form of Legal Opinions .....	123
Part 2 Minimum Content of Lgal Opinion to be provided by the Conceding Authority to the Company.....	123
SCHEDULE 14 .....	124
Form of Assignment of Contracts .....	124
SCHEDULE 15 .....	126
Training Policy and Programme.....	126
SCHEDULE 16 .....	127
Maintenance and Performance Standards & the associated Penalty Regime.....	127
SCHEDULE 17 .....	136
Rail and Port Interface Principles.....	136

## **CONCESSION AGREEMENT OF THE MAPUTO PORT**

**THIS CONCESSION AGREEMENT** (hereinafter referred to as this “**Agreement**”) is made this 22<sup>nd</sup> of September of 2000

### **BETWEEN**

- (1) **THE GOVERNMENT OF THE REPUBLIC OF MOZAMBIQUE** represented by Mr. Tomás Augusto Salomão **THE MINISTER OF TRANSPORT AND COMMUNICATIONS** acting in the name and on behalf of the Mozambican State as per Decree nº 22/2000 dated 25<sup>th</sup> July (hereinafter referred to as the “Conceding Authority”); and
- (2) **PORTOS E CAMINHOS DE FERRO DE MOÇAMBIQUE, E.P.** a state-owned company incorporated as per Decree nº 40/94 dated 13<sup>th</sup> September, with its principal office at Praça dos Trabalhadores, Estação Central in Maputo represented by Mr. Rui Cirne Plácido de Carvalho Fonseca, Chairman of the Board of Directors and Mr. Miguel José Matabel, Executive Director, (hereinafter referred to as “CFM”); and
- (3) The company **Maputo Bay Development Company Limited**, comprised by the companies The Mersey Docks and Harbour Company, Skanska BOT AB, Liscont – Operadores de Contentores S.A and MG - Moçambique Gestores S.A.R.L, hereby represented by Mr. Ken Wharton (hereinafter referred to as the “Company”), and **CFM** represented by Mr. Rui Cirne Plácido de Carvalho Fonseca, Chairman of the Board of Directors and Mr. Miguel José Matabel, Executive Director;

### **WHEREAS**

- (A) GOM is desirous of promoting investment and participation by the private sector in the development of the port situated at Maputo in the Republic of Mozambique.
- (B) Pursuant to Decree No 40/94 of September 1994, GOM has delegated the right to CFM to use, operate and develop part of the public domain consisting of land, buildings, superstructure, infrastructure and equipment situated on the Port with all public service obligations related thereto.
- (C) GOM has the authority to grant concession rights relating to the Port and Railways to entities with established expertise.

- (D) A request for international tender offers was commenced for private sector participation in the concessioning of certain parts of the Port and the railways of Limpopo Line, Ressano Garcia Line, Goba Line including the Salamanga Branch, the joint sections and marshalling yard, and the workshop (the “Invitations to Tender”).
- (E) In response to the Invitations to Tender, the companies The Mersey Docks and Harbour Company, Liscont – Operadores de Contentores S.A., Skanska BOT AB and MG - Mozambique Gestores jointly submitted to GOM an offer for the Project dated 17 December 1997 (the “Tender Offer”).
- (F) The Company has been incorporated with its Initial Investors being as detailed in Schedule 5 and CFM.
- (G) The purpose of this Agreement is to grant to the Company the right to finance, rehabilitate, operate, manage, maintain, develop and optimise, at its own cost and risk, the Port Concession Area as provided in this Agreement. The exclusivity of rights to be granted to the Company shall be subject to the provisions of Schedule 9.
- (H) Having the terms of this Concession Agreement been approved by Decree n° 22/2000 dated 25<sup>th</sup> July.

**IT IS AGREED** as follows:

## **1. DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions**

The definitions set out in this Clause 1.1 shall apply to this Agreement, unless the subject or context otherwise requires.

**“Additional Consents”**: means the approvals, authorisations or other requirements not listed in Schedule 1 which are required from the Relevant Authorities under the Laws of Mozambique for the Company, the Lenders, the Investors and the Contractors with respect to the Project Agreements, each being an Additional Consent.

**“Administrative Court”**: means the court established under law no. 5/92 of 6 May 1992.

**“Affiliate”**: means with respect to the company or entity in question, a company or entity that (a) owns and controls the company or entity in question, or (b) is owned and controlled by the company or entity in question, or (c) is owned and controlled by the same company or entity that owns and controls the company or entity in question.

**“Agreement”**: means this Concession Agreement and the Schedules hereto which are an integral part hereof.

**“Agreement Date”**: means the date of signing of this Agreement.

**“Assets”**: means all the property and assets detailed in the Assets Register comprising the Company Assets, the Conceded Assets and the Leased Assets.

**“Auditors”**: means an auditing firm to be agreed between the Conceding Authority and the Company as soon as practicable after the Date of Operations to audit the Completion Accounts as prepared by or on behalf of the Company.

**“Banking Day” or “Business Day”**: means any Day on which banks are open for business in Mozambique.

**“Base Rate”**: means, in the case of Foreign Currency, LIBOR and, in the case of Meticaís, MAIBOR.

**“Book Debts”**: means all books and other debts owing to CFM in respect of the Port Operations up to the Date of Operations.

**“CFM Shares”**: means the shares to be allocated to CFM pursuant to Clause 5.8.

**“CFM Employees”**: means the employees employed by CFM immediately prior to the Date of Operations.

**“Change in Circumstances”**: has the meaning given to that expression in Clause 31.1.

**“Change in Circumstances Amount”**: means an amount equal to:

- (a) the total amount outstanding to the Lenders (other than any amounts due to the Lenders and payable, but not paid by the Company, prior to the date on which the Change in Circumstances occurred) under the Financing Agreements (including interest thereon to the date of payment); and
- (b) the total amount of any other outstanding debt incurred by the Company (other than any amounts due and payable, but not paid by the Company, prior to the date on which the Change in Circumstances occurred) that was approved by CFM and/or the Conceding Authority.

**“Change in Law”**: means:

- (a) the coming into force, modification, repeal, or change in the interpretation which differs from the interpretation of the Relevant Authority which passed the relevant Law of Mozambique, or application, of any Laws of Mozambique after the Agreement Date;

- (b) the modification, repeal, or change in interpretation which differs from the interpretation of the Relevant Authority which granted the Concession Approval Decree or Investment Project Authorisation, or application of the Concession Approval Decree or Investment Project Authorisation after the Agreement Date;
- (c) the imposition by any Public Sector Entity or Relevant Authority of any Additional Consent which was not required under the Laws of Mozambique as at the Agreement Date; or
- (d) the imposition by any Public Sector Entity or Relevant Authority of any change in the terms and conditions of any Consent after the Agreement Date,

insofar as it results in the Company being obliged to comply with requirements or obligations in relation to the Project materially more restrictive or more onerous than the requirements or obligations in effect as of the Agreement Date. For the avoidance of doubt, "Change in Law" shall not include any "Change in Relevant Tax".

**"Change in Relevant Tax":** has the meaning given to that expression in Clause 32.2.

**"Code of Operations":** means Regulamento de Exploração N1 until it may be replaced in accordance with Clause 16.4.

**"Company Assets":** means those assets purchased by the Company pursuant to this Agreement or otherwise brought on to the Port Concession Area by the Company during the Term comprising the Movable Assets and Immovable Assets and any additional value resulting from any rehabilitation or improvement of any Conceded Asset carried out during the Term.

"[REDACTED] [CONFIDENTIAL]

(a)

(i)

(ii)

less:

48463.01



(b) [REDACTED]

**"Company Event of Default"**: means an event as described in Clause 33.1.

**"Company Fixed Asset Register"**: has the meaning given to that expression in Clause 5.11.1.

**"Completion Accounts"**: means accounts prepared in accordance with Clause 5.16 and Schedule 2.

**"Conceded Assets"**: means those assets conceded by the Conceding Authority to the Company pursuant to this Agreement.

[REDACTED] [CONFIDENTIAL]

(a) [REDACTED]

(i) [REDACTED]

(ii) [REDACTED]

(iii) [REDACTED]

(b) [REDACTED]

(c) [REDACTED]

**"Conceding Authority Event of Default"**: has the meaning given to that expression in Clause 33.2.

**"Concession Approval Decree"**: means Decree n° 22/200 dated 25<sup>th</sup> July approving the terms of this Agreement and granting the Company the relevant powers required to carry out (i) its obligations, rights and duties under this

Agreement within the Port Concession Area, and (ii) its obligations, rights and duties as the port authority within the Port Jurisdiction Area.

**“Concession Fees”:** means the fees to be paid by the Company to the Conceding Authority comprising the Entry Fee, the Fixed Fee and the Variable Fee, each payable in accordance with Clause 12.

**“Concession Rights”:** means the rights granted to the Company pursuant to Clause 4.

**“Consent”:** means any Specified Consent.

**“Contractors”:** means any direct contractors and any of their direct sub-contractors involved in the Project, each being a Contractor.

**“Contracts”:** means those contracts entered into with the concessionaires listed in Schedule 3.

**“CPI”:** means the Investment Promotion Centre of the Republic of Mozambique.

**“Customs Duties”:** means customs duties, fees or taxes levied under the official “Pauta Aduaneira” and other applicable fiscal legislation in force in the Republic of Mozambique.

**“Date of Operations”:** means the date on which the Company starts to be responsible for all Port Operations pursuant to Clause 2.2.

**“Day”:** means each twenty-four (24) hour period beginning at 12.00 midnight Mozambican time.

**“Detailed Notice”:** has the meaning given to that expression in Clause 30.2.1(ii).

**“Development Plan”:** means the Development Plan to be prepared by the Company and delivered to the Conceding Authority, as more particularly described in Clause 15.1.

**“Development Works”:** means the new works and facilities ancillary to the Port Operations to be developed by the Company in the Port Concession Area as proposed and detailed in the Development Plan pursuant to Clause 15.

**“Dispute”:** has the meaning given to that expression in paragraph 1 of Schedule 4.

**“Dispute Resolution Procedure”:** means the procedure for the resolution of Disputes set out in Schedule 4.

**“Dollar” or “American Dollar”—or “USD” or “\$”:** means the lawful currency of the United States of America.

**“Encumbrances”:** means a mortgage, charge, pledge, option, restriction, right of first refusal, right of pre-emption, third party right or interest, other encumbrance or security interest of any kind or another type of preferential arrangement including without limitation, a title transfer or retention arrangement having similar effect.

**“Entry Fee”:** means the fee to be paid by the Company to the Conceding Authority as described in Clause 12.1.

**“Environmental Liabilities”:** means all liabilities, losses, damages, and expenses (including, without limitation, the costs of investigation, testing, containment, removal, cleanup, abatement or remediation and consultants’ fees and costs), whether or not quantified in amount, relating to the presence in the environment of Hazardous Materials attributable to the Port Concession Area in the period from and after, the Day on which the Port Concession Area is made available to the Company pursuant to Clause 5.4 whichever is the later and/or the violation by the Company, its agents or employees of any environmental Law of Mozambique excluding, for the avoidance of doubt, Prior Environmental Liabilities.

**“Financial Closing”:** means the first date on which both of the following conditions has been fulfilled:

- (a) the execution and delivery of the Financing Documents; and
- (b) all conditions precedent to the initial availability of funds under the Financing Documents are satisfied to the extent they have not been waived.

**“Financing Documents”:** means the loan or credit agreements, notes, indentures, security agreements, counter indemnities, common terms agreements, guarantees, any Step-In Agreements, inter-creditor agreements, security trust deeds and other documents relating to the financing (including any refinancing) of the Project or any part thereof.

**“Fixed Fee”:** means the fixed fee payable by the Company to the Conceding Authority in accordance with Clause 12.2 a).

**“FM Restoration”:** means the remedying or repair of damage caused to the Port or any part thereof as a result of a Force Majeure Event so as to restore the Port (as much as it is possible to do so) to the condition it was in immediately prior to the occurrence of that Force Majeure Event.

“[REDACTED] [CONFIDENTIAL]

(a)

[REDACTED]

(b)

[REDACTED]

**"Force Majeure Events":** has the meaning given to that expression in Clause 30.1.

**"Foreign Currency":** means the US Dollar or any other currency freely convertible and referenced in the US Dollar.

**"Foreign Investors":** means as defined by the Investment Law.

**"Foreign Lenders":** means those Lenders, which are not resident in the Republic of Mozambique, providing Foreign Currency loans to the Company under the Financing Documents.

**"GOM" or "Government":** means the Government of the Republic of Mozambique.

**"Government Entity":** means any entity, department, authority, or agency subject to the overall control or direction as to matters of policy, of GOM, or which is otherwise under control by GOM and includes Local Government.

**"Group Company":** means in relation to a company, any Subsidiary, Holding Company or any other Subsidiary of its Holding Company.

[REDACTED]  
[REDACTED] [CONFIDENTIAL]

**"Handback and Termination Management Committee" or "HTM Committee":** means the committee more fully described in paragraph 2 of Schedule 11.

**"Handback Bond":** means a bond in the form set out in Schedule 12 together with such amendments as may be agreed by the Parties.

**"Handback Certificate":** means the certificate which may be issued pursuant to paragraph 7 of Schedule 11.

**"Handback Date":** means the earlier of:

(a) the last Day of the Term; or

(b) the date on which the Port is transferred back to the Conceding Authority by the Company.

**“Handback Inspection”:** has the meaning given to that expression in paragraph 7.1 of Schedule 11.

**“Handback Requirements”:** has the meaning given to that expression in paragraph 1 of Schedule 11.

**“Hazardous Material”:** means any pollutant, contaminant, solid waste, hydrocarbon product, toxic or hazardous substance, waste or emission or any flammable, explosive or radioactive materials regulated under, or subject to, any applicable Laws of Mozambique and ratified International Conventions and instruments.

**“Holding Company”:** means a company having one or more Subsidiaries.

**“Immovable Assets”:** means those Assets which are immovable including, without limitation, permanent quay installations, bunkering facilities and fixed external storage facilities.

**“INAHINA”:** means Instituto Nacional de Hidrografia e Navegação.

**“Independent Auditor”:** means the independent firm of auditors, of repute, appointed by the HTM Committee in accordance with Schedule 11.

**“Independent Inspector”:** means the independent firm of consulting engineers, or engineering company, of international repute who is appointed in accordance with Clause 13.1 for the purposes of monitoring the execution of the Rehabilitation Works and Development Works and any other technical issues required pursuant to this Agreement.

**“Independent Plant Inspector”:** means the independent firm of consulting engineers, or engineering company, of repute who is appointed by the HTM Committee.

**“Indexed”:** means an adjustment based on December 1998 Dollar amounts for the rate of inflation or deflation as measured by the US Department of Commerce Consumer Price Index.

**“Initial Inspection”:** has the meaning given to that expression in paragraph 3 of Schedule 11.

**“Initial Investors”:** means the shareholders of the Company referred to in Schedule 5.

**“Insurance Policies”:** means the policies of insurance arranged by the Company pursuant to its obligations under this Agreement.

**“Intellectual Property Rights”:** means patents, trade marks, service marks, trade names, rights in designs (including registered designs and design rights), copyright (including rights in computer software and moral rights), rights in know-how and all other intellectual property rights, in each case whether registered or unregistered and including applications for the grant of any of the foregoing and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world.

**“Investment Law”:** means law no. 3/93 of 24 June 1993 including all regulations promulgated thereto.

**“Investors”:** means the Initial Investors which submitted the successful Tender Offer and all other holders from time to time of Share Capital.

**“Invitations to Tender”:** has the meaning given to that expression in Recital (D).

**“Joint Planning Committee” or “JP Committee”:** has the meaning given to that expression in Clause 15.2.1.

**“Joint Transitional Management Group”:** means that group which is responsible for the management of the transition of the business of the Port pursuant to this Agreement appointed by the agreement of the Parties.

**“Lapse of Consent”:** means where any Consent:

- (a) is revoked by the Relevant Authority which issued it;
- (b) is not issued, renewed or, having lapsed, is not re-issued to the Company as a result of a failure by the Conceding Authority or any Public Sector Entity to comply with any of its obligations under Clauses 9.1 and 10.1;
- (c) is not issued, renewed or, having lapsed, is not re-issued to the Company within six (6) Months of the filing of an application by the Company for it to be issued, renewed or (as the case may be) re-issued, and, as a result, the Company’s ability to perform its obligations under any document included within the Security Package to which it is party are materially and adversely affected; or
- (d) is made subject, subsequent to its grant, upon renewal or otherwise, to any terms or conditions which materially and adversely affect the Company’s ability to perform its obligations under any document included within the Security Package to which it is party,

in each of the above circumstances, except where such circumstance has arisen due to an act, omission or default by the Company, or through the exercise by the Conceding Authority or any Relevant Authority of its powers under the

Laws of Mozambique in the circumstances contemplated by Clause 10. Lapsed where used in the context of a Consent shall be construed accordingly.

**“Law on Public Expenses Control”**: means law no. 13/97 of 10 July 1997.

**“Laws of Mozambique”**: means the National, and Local laws and all orders, rules, regulations, statutory regulations, ratified International Conventions, statutory regulatory orders, executive orders, decrees, judicial decisions, ordinances, notifications or any other similar directives or standards made pursuant thereto where a compliance is mandatory, and all such laws, rules, regulations, statutory regulatory orders, executive orders, decrees, judicial decisions, ordinances and notifications as may be amended from time to time.

**“Leased Assets”**: means those Assets leased by CFM to the Company pursuant to lease contracts.

**“Lenders”**: means the banks and other financial institutions and agencies party to the Financing Documents including any security agent or trustee together with their respective successors and assignees.

**“Levels of Service”**: means the requirements and standards to be achieved by the Company as set out in Schedule 16.

**“LIBOR”**: means in respect of a Business Day the three month Dollar interbank rate as published in the Financial Times on that Business Day.

**“Licences”**: means the licences to be granted by the Relevant Authorities to the Company under the relevant Laws of Mozambique.

**“Local Government”**: means any entity which has, under the Laws of Mozambique, powers to administer or govern a legally defined territory or part of it.

**“Loss”**: means any loss, damage, liability, fine, penalty, payment and obligation (excluding any indirect or consequential loss, damage, liability, payment or obligation), and all expenses (including, without limitation, reasonable legal fees) and Losses shall be construed accordingly.

**“MAIBOR”**: means, in respect of a Business Day, the Maputo Interbank Offered Rate as determined and officially published for that Business Day.

**“Maintenance and Performance Bond”**: means a bond in the form set out in Part 2 of Schedule 10 together with such amendments as may be agreed by the Parties.

**“Materials”**: means all materials and movable equipment which the Company may bring on to the Port Concession Area in order to carry out its obligations under this Agreement.

**“Metical”**: means the lawful currency of the Republic of Mozambique.

**“Month”**: means a month according to the Gregorian calendar.

**“Movable Assets”**: means those Company Assets which are movable, including, without limitation, mobile cranes, forklifts, motor vehicles and office equipment.

**“Notice of Approval”**: has the meaning given to that expression in Clause 5.3.

**“Notice of Intent to Terminate”**: means a written notice of intention to terminate this Agreement issued by the Conceding Authority or the Company, as the case may be, pursuant to Clause 33.3.1.

**“Parties”**: means the Conceding Authority, CFM and the Company.

**“Party”**: means the Conceding Authority or CFM or the Company, as the case may be.

**“Permitted Encumbrances”**: means minor imperfections of title and encumbrances in respect of the Port Concession Area or land over which Ancillary Rights are granted that in the aggregate taking into account all other Permitted Liens are not substantial in amount, do not increase the cost of undertaking the Project or decrease the revenues arising from its operation or impair the ability of the Company to perform its obligations under this Agreement, and existed at the Date of Operations or have arisen only in the ordinary course of business and are consistent with Prudent Industry Practice.

**“Port”**: means the whole site of the Port Concession Area including all lands, and any buildings, fixtures, movable and non-movable assets with rights attached thereto.

**“Port Authority Powers”**: means those powers and rights granted to the Company as the port authority within the Port Jurisdiction Area pursuant to the Concession Approval Decree.

**“Port Concession Area”**: means the area marked in red in the plan set out in Schedule 7.

**“Port Income”**: means the port duties and tariffs in consideration for the Port Operations and all fees payable under the Contracts.

**“Port Jurisdiction Area”**: means the area delineated and outlined in blue set out in Schedule 8.

**“Port Operations”**: means the business of operating the Port and providing the Port Services in the Port Concession Area.



**“Port Services”:** means the provision of the facilities and services or the conduct of the activities described in Schedule 9.

**“Prescribed Fee”:** means with respect to a particular Consent, the fee, if any, (including all information and details) prescribed by the Laws of Mozambique for the application for, or renewal of, such Consent.

**“Prescribed Form”:** means with respect to a particular Consent, the form, if any, (including all information and details) prescribed by the Laws of Mozambique for the application for, or renewal of, such Consent.

**“Prior Environmental Liabilities”:** means all liabilities, losses, damages and expenses (including, without limitation, the reasonable costs of investigation, testing, containment, removal, clean up, abatement or remediation and consultants’ reasonable fees and costs), incurred as a result of complying with mandatory provisions of any Laws of Mozambique or a legally enforceable obligation, or which are necessary to enable the Company to perform its obligations under this Agreement (whether or not quantified in amount) relating to the presence in the environment in the period prior to the Port Concession Area being made available to the Company pursuant to the Special Licence, of Hazardous Materials attributable to the Port Concession Area.

**“Priority Works”:** means the works specified in the Rehabilitation Plan to be undertaken by the Company for the immediate rehabilitation of the Port to a satisfactory level in accordance with Prudent Industry Practice in accordance with Clause 14.2.1.

**“Project”:** means the management, operation and maintenance of the Port Concession Area, the completion of the Rehabilitation Works and, in accordance with the Development Plan, the implementation of the Development Works, in accordance with this Agreement.

**“Project Agreements”:** means this Agreement, the agreements and/or contracts entered into as a result of the Rail and Port Interface Principles and all other agreements, other than Financing Agreements, that are required to be executed in connection with the concession, operation or maintenance of the Port or the conduct of the Port Operations, as the same may be amended from time to time.

**“Prudent Industry Practice”:** means the practices, methods and acts engaged in or approved by a significant portion of the international port operation and maintenance industry for facilities similar to the Port that, from time to time, in the exercise of a reasonable judgement in light of the facts known or that reasonably should be known at the time a decision is made, would be expected to accomplish the desired result in a manner consistent with Laws of Mozambique, regulations, and the requirements of reliability, safety, environmental protection, economy and expedition. With respect to the Port

Operations, Prudent Industry Practice shall include, but shall not be limited to, taking reasonable steps to ensure that:

- (a) adequate materials, resources and supplies, are available to meet the needs of the operation of the Port Concession Area under normal conditions and reasonably anticipated abnormal conditions;
- (b) sufficient operating personnel are available and are adequately experienced and trained to operate the Port Concession Area properly, efficiently and within the relevant guidelines and specifications issued by the manufacturer of any equipment or machinery used by them and are capable of responding to emergency conditions;
- (c) preventative, routine and non-routine maintenance and repairs are performed on a basis that ensures reliable long-term and safe operation, and are performed by knowledgeable, trained and experienced personnel utilising proper equipment, tools, and procedures;
- (d) such internationally admitted guidelines for quality services and productivity rates in port and cargo handling operations are respected and followed; such guidelines to include without limitation, the CNUCED Guidelines; the European Norm E.A.U. 1990; and
- (e) all Laws of Mozambique are applied by the Company.

**“Public Sector Entity”:** means at any particular time, any Government Entity, any Local Government or parastatal entity with jurisdiction over the Company, the Contractors, the Lenders, the Project or any part thereof, and any department, authority or agency of GOM, of a Government Entity or of a Local Government.

**“Rail and Port Interface Principles”:** means those principles set out in Schedule 17.

**“Railways”:** means separately and collectively, the three following rail lines - Limpopo Line, Ressano Garcia Line and Goba Line (including the Salamanga branch), the joint sections and marshalling yard, and the workshop.

**“Railway Companies”:** means the incorporated companies where the majority of its share capital is held by successful bidders to the international tender which was launched simultaneously with the Invitations to Tender referred to in Recital E, but concerning the Railways or, a company or companies established to undertake the operation, management, upgrade and repair of the Railways.

**“Records”:** means the books and records relating to the Port, maintained in the case of CFM, prior to the Date of Operations and, in the case of the Company, after the Date of Operations.

[CONFIDENTIAL] “

“**Regulation on Stevedoring Services in Commercial Ports**”: means Decree 5/98 of 24 February 1998.

“**Rehabilitation Bond**”: means a bond in the form set out in Part 1 of Schedule 10 together with such amendments as may be agreed by the Parties.

“**Rehabilitation Contracts**”: means the agreements entered into between the Company and the Rehabilitation Contractors for the performance of the Priority Works and Rehabilitation Works.

“**Rehabilitation Contractors**”: means the persons selected and appointed by the Company as contractors to carry out the Priority Works and Rehabilitation Works under the terms of the Rehabilitation Contracts, their successors and permitted assignees.

“**Rehabilitation Plan**”: means the plan to be prepared by the Company and delivered to the Conceding Authority in accordance with Clause 14.1 detailing the Priority Works, the Rehabilitation Works and the Rehabilitation Programme.

“**Rehabilitation Programme**”: means the programme for completion of the Priority Works and Rehabilitation Works in the Rehabilitation Plan.

“**Rehabilitation Works**”: means the works (other than Priority Works) concerning the reconstruction, repair and improvement of the Assets and the Port Concession Area which are to be undertaken by the Company pursuant to Clause 14.1 under the supervision of the Independent Inspector.

“**Relevant Authority**”: means the department, authority, agency, Government Entity or any other relevant entity from which a Consent is to be obtained from time to time and any authority, body or other person having jurisdiction under the Laws of Mozambique with respect to the Company, the Port or the financing, operation or maintenance of the Project.

“**Relevant Taxes**”: means any tax, levy, duty or imposition of any nature whatsoever and wherever and whenever charged, levied or imposed including any interest and penalties in relation thereto arising out of the implementation of the Project by the Company including, for the avoidance of doubt, Customs Duties and stamp duty.

“**Renewal Amount**”: means the cost of carrying out the Renewal Works as agreed or determined in accordance with Schedule 11.

“**Renewal Programme**”: means the programme for carrying out the Renewal Works over the remainder of the Term following the Initial Inspection, as

agreed or determined in accordance with Schedule 11, as such programme may be revised or amended at any time in accordance with Schedule 11.

**“Renewal Report”**: has the meaning given to that expression in paragraph 6.1 of Schedule 11.

**“Renewal Works”**: means the works of renewal, reconstruction, repair or reinstatement required, as agreed or determined at any time in accordance with Schedule 11, to be carried out in order to procure that the Assets will, on the Termination Date, satisfy the Handback Requirements.

**“Restoration”**: means the remedying or repair of damage caused to the Port or any part thereof or any modification or capital addition required to be made to the Port or any part thereof as a result of a Change in Circumstances so as to restore the Port (as much as it is possible to do so) to the condition it was in immediately prior to the occurrence of a Change in Circumstances.

**“Security Package”**: consists of:

- (a) this Agreement;
- (b) the Financing Documents;
- (c) the Insurance Policies;
- (d) the Consents;
- (e) the Special Licence;
- (f) the Contracts;
- (g) the Rail and Port Interface Principles; and
- (h) Step-In Agreements (if any).

**“Share Capital”**: means the shares of the Company.

**“Special Licence”**: means the licence or other instrument issued by GOM, in the form set out in Schedule 6 together with such amendments as may be agreed by the Parties, granting to the Company the right to use the land contained in the Port Concession Area for the purposes of carrying out the Company’s obligations under this Agreement including all necessary rights of access to the Port Concession Area which the Company reasonably requires in order to perform its obligations under this Agreement.

**“Specified Consents”**: means the approvals, consents, authorisations, notifications, concessions, acknowledgements, licences, permits or decisions referred to in Schedule 1 including, without limitation, the Licences, each a Specified Consent.

**“Step-In Agreements”:** means any letters, or other instruments relating to the Project issued by, or entered into directly by, and binding on, the Company, the Lenders and the Conceding Authority.

**“Subsidiary”:** means a company where another company (its “Holding Company”):

- (a) holds a majority of the voting rights in it; or
- (b) is a member of it and has the right to appoint or remove a majority of its board of directors; or
- (c) is a member of it and controls and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in it,

and “Subsidiary” shall include a company which is a Subsidiary of a company which is itself a Subsidiary of that Holding Company.

**“Technical Dispute”:** means a dispute which a Party considers it necessary to be referred to an expert in accordance with paragraph 3 of Schedule 4.

**“Tender Offer”:** means the tender offer prepared and submitted by the Investors to GOM on Wednesday December 17, 1997 for the Project, as referred to in Recital E.

**“Term”:** means the period referred to in Clause 3.1 or as extended in accordance with this Agreement.

**“Termination Date”:** the date of termination of this Agreement.

**“Termination Notice”:** a written notice of termination of this Agreement issued by the Conceding Authority or the Company, as the case may be.

**“Transfer of Responsibility Committee” or “TR Committee”:** has the meaning given to that expression in Schedule 2.

**“Transfer Notice”:** means the notice served by a Party under Clause 34.5.

**“Transfer Point”:** has the meaning given to that expression in Schedule 2.

**“Transferring Employees”:** means those CFM Employees who have been invited and have consented to their transfer to the Company with effect from the Date of Operations.

**“Turnover”:** has the meaning given to that expression in Clause 12.5.

**“Utilities”:** means water, sewerage, electricity, gas and telecommunications.

**“User”:** means any user of the Port Services, or any counterparty under the Contracts, including ship owners, shippers, freight agent, logistics and distribution agents, importers, exporters and manufacturers.

**“Vacant Possession”:** means the exclusive occupancy and use of land by the Company where the land is cleared of any third party occupiers and buildings, and free of any Encumbrances, right and claim of the occupation or possession thereof, or any other hindrance and disturbance which may in any respect impede the implementation of the Project.

**“Valuation”:** means an independent valuation reached by an independent valuer to be agreed between the Conceding Authority and the Company.

**“Variable Fee”:** means the fee payable by the Company to the Conceding Authority in accordance with Clause 12.2(b).

**“Year”:** means a year according to the Gregorian calendar.

## **1.2 Interpretation**

1.2.1 The Schedules to this Agreement shall form an integral part hereof and references to Schedules shall be to Schedules to this Agreement unless otherwise stated.

1.2.2 The headings of Clauses to this Agreement and the Table of Contents are inserted for convenience of reference only and shall not in any way affect the interpretation of this Agreement.

1.2.3 References to any party or person referred to in this Agreement include references to its respective successors and permitted assignees.

1.2.4 The words “include”, “includes”, and “including” shall at all times be construed as if followed by the words “without limitation”.

1.2.5 References to Days, Weeks, Months and Years are references to days, weeks, months and years of the Gregorian calendar.

1.2.6 Any reference to a public organisation shall include a reference to any permitted successor to such public organisation or any organisation or entity which has taken over any or all of the functions, the responsibilities and the property and assets of such public organisations.

## **2. CONDITIONS PRECEDENT**

### **2.1 Effectiveness of this Agreement**

This Agreement is conditional (save for Clauses 1, 2, 3, 4.2, 4.3, 5, 6.2, 6.3, 9, 10.1, 17, 18.1, 18.2, 18.3, 18.12, 20.1, 21, 22.1, 24, 26, 27, 28, 29, 30, 31, 33, 34, 35 and 36 which shall have effect from the Agreement Date) upon the prior or concurrent satisfaction of each of the following conditions:

- 2.1.1 the Articles of Association of the Company being in form and substance satisfactory to the Parties;
- 2.1.2 the Conceding Authority shall have entered into or shall be simultaneously entering into either:
  - (a) concession agreements in relation to the Railways which reflect the terms and content of the Rail and Port Interface Principles; or
  - (b) contractual arrangements with the responsible rail operators or concessionaires with regard to the operation, management, upgrade and repair of the Railways; or
  - (c) until the Conceding Authority is able to complete the concessioning process of the Railways, contractual relationships with the Company and the existing operator, CFM in regard to the operation, management, upgrade and repair of the Railways and associated resources in a form consistent with the terms of this Agreement. The contracts shall be subject to approval by the relevant Government Entity. The terms and conditions of such contracts must be acceptable to the Company.
- 2.1.3 the Company and the Railway Companies shall have agreed the terms and content of the Rail and Port Interface Principles which will be subject to the prior approval of the relevant Government Entity;
- 2.1.4 the delivery by the Company to the Conceding Authority and CFM of a written notice stating its satisfaction in all respects with its due diligence in relation to the Assets and the Records; and
- 2.1.5 all necessary approvals, regulations and any other necessary decrees from the Conceding Authority relating to the execution of this Agreement shall have been granted and copies forwarded to the Company.

## **2.2 *Date of Operations***

The Date of Operations shall be conditional on the following further conditions being concluded to the satisfaction of both the Conceding Authority and the Company on or before the notification of that date by the Conceding Authority pursuant to Clause 5.3:

- 2.2.1 The company MPDC - Sociedade de Desenvolvimento do Porto de Maputo S.A.R.L is duly incorporated and registered and the assignment of the contractual position foreseen in Clause 28.1.1 is executed.
- 2.2.2 CFM and the Company shall have jointly produced a register which identifies and independently values the Conceded Assets;
- 2.2.3
- (i) issue of the Investment Project Authorisation by the Relevant Authority and notification by CPI in relation to the Investment Project Authorisation, as required by the Investment Law; and
  - (ii) declaration by the Administrative Court confirming the general effectiveness of the Agreement and its conformity with the Laws of Mozambique as required by the Law on Public Expenses Control; and
  - (iii) grant of a stevedoring licence by the Conceding Authority to the Company, in relation to the Port Concession Area as required by the Regulation on Stevedoring Services in Commercial Ports; and
  - (iv) approval and publication of the Concession Approval Decree where the necessary powers of authority are granted to the Company.
- 2.2.4 issue of a Special Licence by the Conceding Authority granting to the Company the right to use the land contained in the Port Concession Area.
- 2.2.5 delivery to the Company of a legal opinion by the Conceding Authority's legal adviser;
- 2.2.6 delivery to the Conceding Authority of a legal opinion by the Company's legal adviser ;
- 2.2.7 Financial Closing shall have been achieved;
- 2.2.8 agreement to pay the Entry Fee to the Conceding Authority pursuant to Clause 12.1; and
- 2.2.9 delivery of the Certificate of Insurance in accordance with Clause 19.4.

### **2.3 *Support of the Parties to achieve Date of Operations***



The Conceding Authority, CFM and the Company (as the case may be) shall make all reasonable efforts to ensure that they achieve or procure satisfaction of each condition set out in Clauses 2.1 and 2.2 to achieve the effectiveness of this Agreement and the Date of Operations as the case may be.

### **3. TERM**

#### **3.1 *Initial Term***

Subject to Clause 2.1, this Agreement shall commence and be effective on the Agreement Date and, unless terminated earlier in accordance with the terms of this Agreement, shall, subject to Clauses 3.2, 3.3 and 3.4, continue in full force and effect for a period of fifteen (15) Years from the Date of Operations (the “Term”).

#### **3.2 *Extension of the Term***

The Company may request, no later than thirty (30) Days following the tenth anniversary of the Date of Operations, an extension to the Term for a further period of ten (10) Years. This request shall be granted by the Conceding Authority subject only to:

- 3.2.1 agreement between the Conceding Authority and the Company on the level of Concession Fees;
- 3.2.2 there being no subsisting Company Event of Default; and
- 3.2.3 the Company being substantially in compliance with the Development Plan.

3.3 In the event that an extension to the Term is granted pursuant to Clause 3.2, the Company may request no later than five Years prior to the expiry of the Term a further extension to the Term (in addition to the extension provided in Clause 3.2) if the Company can, to the satisfaction of the Conceding Authority prepare, and deliver to the Conceding Authority, a proposal detailing the requirement for such an extension in terms of further Development Works, the number of Years requested and the level of Concession Fees to be paid by the Company in such period.

3.4 The Parties shall acknowledge any extension to the Term by signing an addendum to this Agreement reflecting such agreed changes to the terms of this Agreement.

## **4. GRANT OF RIGHTS TO THE COMPANY**

### **4.1 *Grant of Concession***

4.1.1 The Conceding Authority hereby grants to the Company the right to conduct the Port Operations and finance, manage, operate, maintain, develop and optimise, at its own cost and risk the Port Concession Area and perform the Rehabilitation Works and the Development Works in accordance with the terms and conditions contained in this Agreement, the Rehabilitation Plan, the Development Plan, the Project Agreements and the Laws of Mozambique from the Date of Operations until the expiry of the Term or earlier termination of this Agreement.

4.1.2 The Company's rights pursuant to this Agreement shall be at the Company's own cost and risk and without recourse to any credits or guarantees of the Conceding Authority or CFM. The exclusivity granted by the Conceding Authority pursuant to this Agreement shall be subject to the provisions of Part 1 of Schedule 9.

### **4.2 *Exclusion from Port Jurisdiction Area***

For the avoidance of doubt, the following berths or quays (shown edged yellow on the plan attached as Schedule 8) do not form part of the Port Concession Area or Port Jurisdiction Area and are therefore excluded from the application of Clauses 4.3 and 4.4:

- (a) oil terminal;
- (b) cereals terminal; and
- (c) Mozal's aluminium terminal.

### **4.3 *Competing Interests***

During the Term, the Conceding Authority shall ensure, through all necessary legislative and regulatory process that:

4.3.1 no discriminatory economic measures are imposed, that might adversely affect fair competition and, consequently, either the Company's rights and obligations arising under the terms of this Agreement or the financial viability of the Project, or both, as the case may be; and

- 4.3.2 the rail, road, and port infrastructure systems are developed and regulated in a manner which encourages fair competition within and among these infrastructure systems.

#### **4.4 *Development of the Port Jurisdiction Area***

GOM recognises and shall procure that any development of the Port Jurisdiction Area shall be in accordance with the following principles:

- 4.4.1 the Company shall be entitled to engage in the development and operation of any new port facilities, including specialised cargo terminals, within the Port Jurisdiction Area, subject to delivering to GOM for approval such detailed plans, engineering designs, feasibility studies and other information requested by GOM;
- 4.4.2 in the event that GOM, based on its own initiative or as a result of an approach by an investor, industrialist or developer (a Promoter”), plans to develop and/or operate any new port facilities within the Port Jurisdiction Area and outside the Port Concession Area, GOM shall grant the Company a first right of refusal, to be exercised within 60 Days following the receipt of the information pursuant to Clause 4.4.2(b) (or any other longer period as may be agreed), making itself available to:
- (a) discuss such proposal with the Company;
  - (b) deliver to the Company adequate information in relation to the proposal in order to allow the Company to review the terms thereof.
- 4.4.3 in the event that the Company does not exercise its right of first refusal, pursuant to Clause 4.4.2 within 60 Days (or such longer period as may be agreed), GOM may pursue such development and/or operation of the new port facilities with interested third parties, provided always that:
- (a) such development and/or operation is carried out on terms which are no more favourable than those discussed with the Company pursuant to Clause 4.4.2(a);
  - (b) the development of the port facilities within the Port Jurisdiction Area is complimentary to the activities and business of the Port, concentrating on specialised cargo terminals and on the provision of “sole user” berths and/or quays dedicated in each case to specific industrialist’s needs.

- 4.4.4 the development of the facilities of the Port Jurisdiction Area shall be developed in a co-ordinated way so as to ensure that both the Company's investment and commitment to the Port is optimised and the employment, infrastructure and investment opportunities in the Port Jurisdiction Area are also maximised.

## **5. TRANSFER PROCEDURES**

### **5.1 *Business up to Date of Operations***

Notwithstanding that the Term shall not commence until the Date of Operations, from the Agreement Date until the Date of Operations the Conceding Authority and CFM shall:

- 5.1.1 authorise and allow necessary access for the Company to proceed with its due diligence in relation to the Assets and the CFM's Records;
- 5.1.2 in respect of the Assets, co-operate with the Company to:
  - (a) ensure the efficient continuation of management of the Port; and
  - (b) prepare for the introduction of the Company's normal working procedures in readiness for the Date of Operations;
- 5.1.3 not without the prior written consent of the Company or the Transfer of Responsibility Committee:
  - (a) dispose of, or agree to dispose of, an Asset except in the usual course of business or assume or incur, or agree to assume or incur, a liability, obligation or expense (actual or contingent) exceeding US\$10,000 except in the usual course of business;
  - (b) except in the ordinary course of business, create, or agree to create, an Encumbrance over the Assets;
  - (c) take any action which would result in Port Operations being undertaken other than in the ordinary course of business;
  - (d) enter into, vary, extend or terminate any agreement in relation to any development or investment project in respect of the Port Operations; or
  - (e) increase or otherwise vary the terms and conditions of employment of the CFM Employees save for reasonable increases or variances.

### **5.2 *Notification by Company***

The Company shall notify the Conceding Authority when it is satisfied that:

- 5.2.1 it has entered into all of the agreements that it requires to implement the Project; and

- 5.2.2 all of the conditions precedent set out in Clause 2.2 have been satisfied.

### **5.3 *Notification by the Conceding Authority of Date of Operations***

Upon receipt of the notice delivered pursuant to Clause 5.2 and after notification by the Transfer of Responsibility Committee that the objectives, tasks and responsibilities of the Joint Transitional Management Group have been satisfactorily achieved and delivered, the Conceding Authority shall notify the Company in writing of the Date of Operations within fourteen (14) Days ("Notice of Approval"). The Conceding Authority shall not withhold notification pursuant to this Clause 5.3. The Date of Operations shall be a Business Day falling not earlier than fourteen (14) Days, nor later than twenty eight (28) Days, after the date of the Notice of Approval.

### **5.4 Completion matters for Date of Operations**

On or before the Date of Operations, the Conceding Authority shall in addition to the conditions contained in Clauses 2.1 and 2.2:

- 5.4.1 ensure that the Company has Vacant Possession of the Port Concession Area pursuant to Clauses 9.1.1 and 9.1.2;
- 5.4.2 subject to the provisions of Clause 5.8, give the Company possession of those Company Assets which are transferable by delivery and otherwise vest in the Company those Company Assets which are not transferable by delivery and shall confirm this in writing; and
- 5.4.3 jointly ensure with the Company that the Company Fixed Asset Register and the record of Conceded Assets, Leased Assets and other Assets which are not required by the Company is available and complete in accordance with Clause 5.11;
- 5.4.4 give the Company an executed assignment of the Contracts substantially in the form set out in Schedule 14.

### **5.5 *Failure to achieve Date of Operations - Termination***

The Company may terminate this Agreement by giving written notice to the Conceding Authority following six (6) Months after the Agreement Date if:

- 5.5.1 any Consent for which an application is submitted is refused or is granted subject to conditions that, in the judgement of the Company, are likely to so delay the development of the Project as to adversely affect the financial viability of the Project;
- 5.5.2 the Conceding Authority has failed to complete those matters referred to in Clauses 5.4.1 to 5.4.4 (inclusive) within six (6) Months after the Agreement Date; or

5.5.3 the Conceding Authority fails to notify or delays the Notice of Approval in excess of ten (10) Days pursuant to Clause 5.3,

and within 30 Days after this Agreement is terminated by the Company in accordance with this Clause 5.5, CFM and the Conceding Authority shall be jointly and severally liable to reimburse to the Company from the date of the 14th October 1999 the costs incurred by or on behalf of the Company in relation to any civil and marine survey or study of the Port Concession Area up to the sum of US\$350,000. A copy of such civil and marine survey or study shall be delivered to the Conceding Authority.

5.6 The Conceding Authority may terminate this Agreement by giving written notice to the Company following twelve (12) Months after the Agreement Date if the Company has not, after satisfaction of all other conditions, satisfied the conditions referred to in Clauses 2.2.5, 2.2.7 and 2.2.8 and within thirty (30) Days after this Agreement is terminated by the Conceding Authority pursuant to this Clause 5.6, the Company shall reimburse to the Conceding Authority the proper costs incurred since 14th October 1999 by or on behalf of the Conceding Authority in negotiations with the Company in relation to this Agreement up to the sum of US\$350,000.

5.7 If the Company has not given the notice referred to in Clause 5.5 within twelve (12) Months after the Agreement Date (or such longer period as the Parties may agree) either the Company or the Conceding Authority may terminate this Agreement by giving written notice to the other. The Company or the Conceding Authority may, prior to the end of such twelve-Month period, give a written notice to the other stating that in the opinion of the Company or the Conceding Authority, as the case may be, it will not be possible for the notice referred to in Clause 5.5 to be given within such twelve-Month period or thereafter and seeking the agreement of the other that this Agreement should be immediately terminated.

#### 5.8 *Company Assets*

The consideration for the Company Assets transferred to the Company by CFM at the Date of Operations is the issue by the Company to CFM of the CFM Shares and in the event that the Valuation of those Company Assets is in excess of 33% of the total value of equity in the Company, the Company shall pay to CFM such balance. In the event that the Valuation is less than 33% of the total value of equity in the Company, the Parties shall agree a method by which such balance is to be paid in kind to the Company.

5.9 If title to any of the Company Assets is not effectively vested in the Company at the Date of Operations, CFM shall hold those Company Assets in trust for the Company until title is effectively vested in the Company.

5.10 On the Date of Operations the Company shall:

- 5.10.1 allot the CFM Shares to CFM (or its nominee); and
- 5.10.2 deliver to CFM (or its nominee) the share certificates in respect of the CFM Shares and register CFM, or its nominee, as the holder of the CFM Shares.

#### **5.11 *Fixed Assets***

Until the Date of Operations CFM and the Company shall jointly produce the documents specified below, which shall have been audited in accordance with the provisions of Schedule 2:

- 5.11.1 a Company Fixed Asset Register for the Company specifying all Company Assets which come under the ownership of the Company through sale or in consideration of shares as specified in Clause 5.8.
- 5.11.2 a record and independent valuation of all Conceded Assets.
- 5.11.3 a record of all Leased Assets which will be subject to separate lease contracts.
- 5.11.4 a record of all the assets within the Port Concession Area which are not required by this Company and are the responsibility of CFM to dispose of in accordance with Clause 5.13 of this Agreement.

#### **5.12 *Excluded Assets and Liabilities***

There shall be excluded from the sale and purchase of the Assets pursuant to this Section 5 and retained by CFM:

- 5.12.1 the Book Debts together with all cheques, bills, notes and securities receivable for the same;
  - 5.12.2 cash in hand or at the bank at the Date of Operations;
  - 5.12.3 any amounts recoverable in respect of taxation, including value added tax, attributable to periods ending on or before the Date of Operations;
  - 5.12.4 the benefit of any such insurance claim as is mentioned in Clause 19.2.
- 5.13 CFM shall at its own cost, prior to the Date of Operations and with the minimum inconvenience and damage to the Company and to its property and business, sever and remove any asset which is situated at, or on, or forms part of, the Port Concession Area on the Date of Operations and which is not included in the sale of Assets hereunder.
- 5.14 Any such asset as is mentioned in Clauses 5.11.4 and 5.13 which remains at or on the Port Concession Area after the Date of Operations shall be at the risk of



CFM and after a period of six (6) Months, the Company may, following notification to CFM, dispose of it for such reasonable price and on such terms as the Company may reasonably determine. For such six (6) Month period after the Date of Operations the Company shall make available to CFM an agreed area of land on which such assets may be stored prior to removal by CFM. In the event of this occurrence, the Company shall account to CFM for any proceeds of sale, after deducting costs of dismantling, severance, removal and sale. If such costs, however, exceed the value of the asset, the Company will be entitled to recover the difference in value from CFM.

#### **5.15 *Completion Mechanics and Accounts***

The Parties agree that the mechanics detailed in Schedule 2 shall apply in relation to the matters to be dealt with on or around the Date of Operations.

- 5.16 Forthwith or as soon as practicable after the Date of Operations, CFM, the Conceding Authority and the Company shall use their respective best endeavours to cause the Auditors to audit the Completion Accounts as at the Date of Operations. The Completion Accounts shall be prepared in accordance with Schedule 2.
- 5.17 Immediately after the Completion Accounts have been finalised, the Auditors shall issue a certificate showing the aggregate consideration payable by the Company or the Conceding Authority and/or CFM to the other Parties hereunder. Any monies payable by the Conceding Authority and/or CFM to the Company or from the Company to the Conceding Authority and/or CFM shall be paid to the relevant Party by banker's draft within fourteen (14) Days of the agreement of the amount payable hereunder.

### **6. CONTRACTS**

#### **6.1 *Subject to Clause 6.3, after the Date of Operations the Company shall:***

- 6.1.1 perform all of CFM's obligations which arise after the Date of Operations under each Contract in accordance with the terms of that Contract; and
- 6.1.2 indemnify CFM against each loss, liability and cost which CFM may incur as a result of the Company's non-performance of CFM's obligations referred to in Clause 6.1.1 under each Contract to the extent that the loss, liability or cost is attributable to the Company's act or omission after the Date of Operations (including, without limitation, each loss, liability and cost incurred as a result of defending or settling a claim alleging such a liability).
- 6.2 CFM shall indemnify the Company against each loss, liability and cost which the Company may incur as a result of CFM's non-performance under any of the Contracts to the extent that the loss, liability or cost is attributable to CFM's act

or omission prior to the Date of Operations (including, without limitation, each loss, liability and cost incurred as a result of defending or settling a claim alleging such a liability).

6.3 If a Contract cannot be transferred to the Company except by an assignment made with a specified person's consent or by a novation agreement:

6.3.1 this Agreement does not constitute an assignment or an attempted assignment of the Contract if the assignment or attempted assignment would constitute a breach of the Contract;

6.3.2 both before and after the Date of Operations each Party shall make all reasonable efforts to obtain the specified person's consent to the assignment of the Contract;

6.3.3 until the consent is obtained, the Conceding Authority and/or CFM shall do each act and thing reasonably requested of it by the Company to enable performance of the Contract and to provide for the Company the benefits of the Contract (including, without limitation, enforcement of a right of CFM against another party to the Contract arising out of its termination by the other party or otherwise); and

6.3.4 if the arrangements in Clauses 6.3.2 and 6.3.3 cannot be made in respect of the Contract within ninety (90) Days after the Agreement Date:

(a) each Party shall make all reasonable efforts to ensure that the Contract is terminated without liability to either Party; and

(b) neither Party has any further obligation to the other relating to the Contract.

## **7. EMPLOYEES AND PENSIONS**

7.1 Following the Date of Operations, the Company shall select the required national personnel from the CFM Employees to create its work-force, which will initially number approximately 1550 personnel in accordance with the Tender Offer and the provisions of Clause 7.4. In the event that it is demonstrated that for certain specific skills required by the Company, CFM Employees are not suitable or sufficiently qualified, the Company is free to recruit such personnel from another source. The Company may vary the total complement of the work force at its entire discretion in accordance with business demand, new working practices and productivity improvements, subject to suitability, qualifications and salary.

7.2 Each Transferring Employee shall enter into a contract of employment with the Company which contains no worse terms and conditions of employment to that which the Transferring Employee had with CFM prior to the Date of Operations.

- 7.3 The Company shall at all times maintain contributions to the pension scheme in relation to the Transferring Employees after the Date of Operations, as provided in the contracts of employment of those Transferring Employees in force at the Date of Operations.
- 7.4 In the Company's employment of personnel on the Date of Operations it shall give priority to employment of CFM's permanent and casual employees subject to suitability, qualifications and availability.

## **8. PORT INCOME**

### **8.1 *Company's Entitlement to Port Income***

- 8.1.1 The Company shall, from the Date of Operations, be entitled to charge and collect, directly, payment of all port dues and tariffs in accordance with the terms of this Agreement.
- 8.1.2 All expenses relating to collection of port dues and tariffs shall be borne by the Company.
- 8.1.3 The Company may set and collect tariffs for auxiliary operations and may adjust such tariffs.

### **8.2 *Tariff Levels***

- 8.2.1 The tariffs charged by the Company for any Port Service shall at all times be sufficient to cover the long-term costs to the Company in providing the Port Services, except in the case of any promotional offer which may be offered by the Company and which is intended to increase the long-term profitability of the Company and which is available for a reasonably limited period of time.
- 8.2.2 Subject to the foregoing, the Company shall be free to set and revise the tariffs charged for its Port Services in order to take into account the costs it incurs and/or the situation of the transportation market. The tariffs may include reductions intended to increase traffic and should improve the profitability of the Company.
- 8.2.3 On foreign ships and transit traffic, the Company shall be allowed to charge and collect tariffs in foreign currencies such as Dollars.
- 8.2.4 On Mozambican ships on voyage in the Republic of Mozambique coastal waters tariffs shall be charged and collected in Meticaís.

### **8.3 *Notice of Changes in Tariffs***

The Company shall provide Users with at least thirty (30) Days' notice of any changes to tariff levels during the Term, and advise the Conceding Authority of any alterations to charges/tariffs.

#### **8.4 *Users Exempt from tariffs***

Officers and agents of the ambulance, fire, police, immigration, health, coastguard and customs services when performing their public duties shall be exempt from the obligation to pay tariffs for using the facilities and services of the Maputo Port Concession Area. Also, foreign navy vessels on short-term courtesy visits shall be exempt from such tariffs.

### **9. PORT CONCESSION AREA AND CONSENTS**

#### **9.1 *Availability of Port Concession Area and Consents***

9.1.1 The Conceding Authority shall (at its own expense) make available Vacant Possession of the Port Concession Area, subject to the Contracts, and the Consents to the Company pursuant to the provisions of this Clause 9 by the Date of Operations. The Port Concession Area shall be made available free from any Encumbrance or restriction (other than Permitted Encumbrances), and free from all Prior Environmental Liabilities. The Conceding Authority shall ensure that the Port Concession Area and the Consents to be issued by the Relevant Authorities are so made available as follows:

- (a) in the case of the Port Concession Area by the grant of the Special Licence, to be annexed to Schedule 6;
- (b) in the case of the Consents, by the grant or issue of the Consents.

9.1.2 The Conceding Authority and CFM acknowledge and agree that they will be jointly and severally responsible for any compensation which becomes payable for any damage that results from it making the Port Concession Area available to the Company under this Clause 9. The Conceding Authority and CFM on the one part, and the Company on the other part shall indemnify and hold each other harmless from any compensation which this Clause 9.1.2 and the following Clause 9.2 provided it has responsibility for any reasonable costs and expenses the other incurs in connection with the defence of any claim, action, suit or proceeding relating to the payment of such compensation.

#### **9.2 *Applications for Specified Consents***

9.2.1 The Company shall make or cause to be made, in a timely fashion, all applications (whether initial or renewal applications) for the Specified Consents listed in Schedule 1 which, as at the Agreement Date, have

not already been obtained in the Prescribed Form and with the Prescribed Fee to the appropriate Relevant Authorities and shall diligently pursue all such applications unless the Company reasonably considers that the continued pursuit of such application is unlikely to result in it being successful. The information supplied in the applications shall be complete and accurate in all material respects and shall satisfy the substantive and procedural requirements of the Laws of Mozambique applied in a non-discriminatory manner. The Company shall maintain in effect all Specified Consents listed in Schedule 1, whether obtained before or after the Agreement Date (but shall be excused from this obligation where any such Specified Consent has expired), and shall give all notices and allow all inspections required from time to time under such Specified Consents.

9.2.2 The Conceding Authority shall obtain, if so required by the Laws of Mozambique, and shall assist the Company in obtaining the granting or issuing by the Relevant Authorities of the Specified Consents listed in Schedule 1 which, as at the Agreement Date, have not already been obtained. The Company shall supply to the Conceding Authority such information in relation to the Project and the Company (and shall obtain such information as necessary from the Lenders, the Investors and the Contractors) as the Relevant Authorities reasonably request from the Company and as required by the substantive and procedural requirements of the Laws of Mozambique (applied in a non-discriminatory manner) or otherwise in order to enable it to obtain or procure the granting or issuing of such Specified Consents. The Relevant Authorities shall maintain in effect all Specified Consents listed in Schedule 1, whether obtained before or after the date of this Agreement, provided that they shall not be in breach of this obligation where, and for as long as, any of such Specified Consents cease to be in force because of a breach by the Company of any of the terms and conditions attaching to such Specified Consent.

9.2.3 The Company and the Conceding Authority shall keep the other informed on a regular basis of the status of its Specified Consent applications, and the notifications it receives of the granting or denial of any Specified Consent.

### **9.3 Additional Consents**

9.3.1 Subject to Clause 9.3.2, the Company shall make or cause to be made all applications (whether initial or renewal applications) for any Additional Consents which may be required from time to time, and shall maintain in effect any such Additional Consents on the same basis as that prescribed under Clause 9.2.1 in respect of the Specified Consents listed in Schedule 1.

- 9.3.2 The Conceding Authority shall assist the Company in the obtaining, or the granting or issuing of, and maintaining in effect of any Additional Consents relating to environmental matters which may be required from time to time, on the same basis as that prescribed under Clause 9.2.2 in respect of the Specified Consents listed in Schedule 1.

## **10. SUPPORT OF THE CONCEDEDING AUTHORITY AND CFM**

### ***10.1 Support to Obtain Consents and Additional Authorisations***

Upon request by the Company, the Conceding Authority and CFM shall support and use all best endeavours to expedite the consideration and the granting by the Relevant Authorities of applications by the Company for the issue or renewal of Consents which are made in accordance with its obligations under Clauses 9.1.1 and 9.2.1 (in respect of the Specified Consents listed in Schedule 1) and 9.3.1 (in respect of Additional Consents). Such support shall include the provision by the Conceding Authority and CFM of advice as to the content of such applications and liaison with and between the Company and the Relevant Authorities as to the progress of such applications. Notwithstanding the foregoing, the Conceding Authority and CFM shall be under no obligation to renew or procure the renewal of any Consent which has been revoked by a Relevant Authority due to a failure by the person to whom the relevant Consent had been issued to abide by any material and remediable term or condition attached to such Consent which remains unremedied. Any request for support under this Clause 10 shall be accompanied with copies of the application for the relevant Consent, any notice that the issue or renewal of the Consent was denied or deferred, and a statement of the Company's efforts in obtaining the issue or renewal of such Consent.

### ***10.2 Conditions to Consents***

- 10.2.1 The Conceding Authority or any Relevant Authority may attach such non-discriminatory terms and conditions to the issue or renewal of any of the Consents as are reasonably required to ensure compliance with the Laws of Mozambique and the attachment of such non-discriminatory terms and conditions shall not in and of itself constitute a breach of this Agreement by CFM or the Conceding Authority, a Force Majeure Event under Clause 30.1, a Change in Circumstances under Clause 31.1 (unless it constitutes a Change in Law), or a Conceding Authority Event of Default under Clause 33.2, but may constitute a Change in Law.
- 10.2.2 The Company shall comply, and shall procure that the Contractors comply, with such terms and conditions of any Consent. If the Company, or any of the Contractors fail to abide by any of the terms or conditions of any Consent, then the Conceding Authority or any Relevant Authority may exercise any power available to it pursuant to

the Laws of Mozambique in respect of such failure and such exercise shall not of itself constitute a breach of this Agreement by CFM or the Conceding Authority, a Force Majeure Event under Clause 30.1, a Change in Circumstances under Clause 31.1 or a Conceding Authority Event of Default under Clause 33.2.

### **10.3 *Support for Obligations***

- 10.3.1 Upon request by the Company, the Conceding Authority and CFM shall use their best endeavours to support the Company's performance of its obligations to design, construct, insure, finance, operate and maintain the Port. By agreeing to use such good offices to support the Company's efforts, the Conceding Authority and CFM have not relieved, and do not relieve in any way, the Company of its obligations or potential liability under this Agreement, and the other documents comprising the Security Package or oblige the Conceding Authority and/or CFM to incur expenditure or liabilities which the Company or the Investors are otherwise obliged to incur.
- 10.3.2 CFM undertakes that it shall procure the proper performance of INAHINA in relation to the necessary provision of navigation lights, leading marks, buoys and other aids to navigation to facilitate the Port Operations meeting Prudent Industry Practice. CFM shall procure that INAHINA monitors such navigational aids and promptly advises the Company of any defects or non-conformance after INAHINA itself becomes aware of such defect or non-conformance. In the event of any failure by INAHINA to meet such standards the Company shall notify CFM of such failure and, in the event that such failure has not been remedied within a period of seven (7) Days from the date of notice by the Company, the Company shall have the ability to contract for the remedy of such failure at its cost and to set off such sum from any other sum payable to CFM hereunder.

### **10.4 *Rail and Port Interface Principles***

The Conceding Authority undertakes that it shall:

- 10.4.1 procure the proper performance of the responsible rail operators, concessionaires and other counterparties in relation to their obligations and duties pursuant to those concession agreements and/or contractual relationships in regard to the operation, management, upgrade and repair of the Railways and the Port reflecting the terms and content of the Rail and Port Interface Principles;
- 10.4.2 use its best endeavours to properly perform, or to procure the performance of, the obligations and duties of a regulatory authority in accordance with the Rail and Port Interface Principles and the Laws of Mozambique.

## **11. IMPLEMENTATION OF THE PROJECT BY THE COMPANY**

11.1 Under the terms of this Agreement, without limitation to the rights granted pursuant to Clause 4, the Company shall be responsible for and shall have the unrestricted ability to:

11.1.1 negotiate terms and conditions of all necessary contracts with all suppliers, commercial service providers and Users in respect of the Port Operations including the Contracts; and

11.1.2 establish and harmonise a tariff policy in conjunction with the Railway Companies, it being understood that the Company and the Railway Companies should mutually agree upon the terms and conditions of their co-operation in establishing tariffs policy and general co-ordination pursuant to the Rail and Port Interface Principles.

### **11.2 *Obligations of the Company***

Subject to the terms of this Agreement, the Company accepts the responsibility for the conduct of the Port Operations and the financing, management, operation, maintenance, development and optimisation of the Port Concession Area and the performance of the Priority Works, the Rehabilitation Works and the Development Works in accordance with the terms and conditions contained in this Agreement, the Rehabilitation Plan, the Development Plan, the Project Agreements and the Laws of Mozambique from the Date of Operations until the expiry of the Term or earlier termination of this Agreement.

11.2.1 The Company shall, in accordance with Prudent Industry Practice:

- (a) conduct the Port Operations in all material respects in the manner contemplated by this Agreement and the Development Plan, the Project Agreements and the Laws of Mozambique;
- (b) carry out the Port Operations in a manner which takes account of the reasonable interests or requirements of customers and Users of the Port;
- (c) provide free access to the Port Concession Area and to any part thereof to the Independent Inspector in order for him to carry out his responsibilities and co-operate in good faith with any representative or agent of CFM and Company; and
- (d) properly operate and maintain the Assets.

### **11.3 *Dredging***

11.3.1 The Company shall have the obligation and responsibility to ensure that, within one Year from the Date of Operations, adequate and



regular dredging is carried out in order to attain project design depth (cotas) of 9.40m (9.40 metres of depth, ie, below the hydrographical zero) at a minimum channel width of 100 (one hundred) metres as well as to perform the necessary dredging in the access channels, basins and inner harbour at the project design depth. During the first Year of the Term, the Company shall carry out dredging of such area up to a maximum volume of 1,000,000 (one million) cubic meters. In subsequent years of the Term the Company is obliged to maintain the access channels, inner harbour and basins to the project design depths at a maximum cost of \$2.07 million. The figure of \$ 2.07 million is calculated at September 1998 Dollar values and shall be Indexed each Year in accordance with USA CPI. Any further costs resulting from dredging over such amount in any Year of the Term shall be borne by the Conceding Authority, and shall be deducted from the Variable Fee payable in that Year. Any contract that the Company enters into in respect of dredging is subject to approval by the Conceding Authority, such approval not to be withheld. In the event that the Company decides to perform additional dredging, in excess of 9.40m depth, in the area mentioned above, and through contractors performs such dredging to a depth in excess of 9.40m, the responsibility of the Conceding Authority, as provided in this Clause 11.3 shall no longer apply for the remainder of the Term and the total costs of depth and maintenance dredgings are to be borne by the Company

- 11.3.2 The dredging needs in respect of which the Company is responsible for ensuring the dredging in accordance with Clause 11.3.1 refer to the Port Concession Area and is edged in red on the plan attached as Schedule 7. The Company, unless it elects to do so for commercial reasons, or the Conceding Authority, shall not be responsible for the cost of dredging activities resulting from the development and operation of new port facilities, either in the site of the new facility or in the access channels, in terms of maintenance dredging outside the Port Concession Area edged in red on the plan attached as Schedule 7.

## **12. FEES**

In consideration for the granting of the Concession Rights, the Company shall pay to the Conceding Authority the Concession Fees made up of the Entry Fee, a Fixed Fee and a Variable Fee, as follows:

### **12.1 Entry Fee**

- (a) the Entry Fee shall be \$5,000,000 (five million);
- (b) the Company shall pay the Entry Fee to the Conceding Authority no later than seven (7) Days following receipt of the Notice of Approval.

## **12.2 Further Fees**

From the Date of Operations, and until the expiry of the Term, and subject to the terms of this Agreement, the Company shall pay to the Conceding Authority further fees to be determined as follows:

- (a) a fixed fee (“Fixed Fee”) of \$5,000,000 (five million Dollars) per annum payable in advance on a quarterly basis, with a grace period for the first Year following the Date of Operations and Indexed on each anniversary of the Date of Operations;
- (b) a variable fee (“Variable Fee”) based on the turnover of the Company (the “Turnover”) payable on account at the end of each quarter and calculated each quarter as follows:
  - (i) From the first to the fifth Year: a sum equivalent to 10% (ten percent) of the Turnover;
  - (ii) From the sixth to the tenth Year: a sum equivalent to 12.5% (twelve point five percent) of the Turnover; and
  - (iii) From the eleventh to the fifteenth Year and any further Year on any renewal pursuant to Clause 3.2: a sum equivalent to 15.0% (fifteen percent) of the Turnover, and

The final payment of the Variable Fee in any Year shall reconcile any variation to the amount of the Variable Fee payable for that Year as determined by the Turnover figure detailed in the audited accounts of the Company against the Variable Fee already paid to the Conceding Authority on account in that Year.

- 12.3 The Company may on notice to the Conceding Authority defer up to a maximum of 40% (forty percent) of the Fixed Fee otherwise payable in the second and third Years until the seventh and eighth Years when any amount so deferred shall be paid in equal tranches on the date of payment of the Fixed Fee in that Year. Any deferred sum shall be Indexed from the date when such amount was payable until the actual date of payment.
- 12.4 The Company may in the case of a lack of available cash, postpone, up to a maximum of \$1m each year of the sum otherwise payable in the fourth and fifth Years. Any sum so deferred shall be payable in equal tranches on the date of the Fixed Fee payment in the sixth and seventh Years. Any sum deferred during this period shall attract interest, which the Company is liable to pay, at an annual rate equal to LIBOR (London Interbank Offered Rate) for \$ plus 3.5 (three and a half) percentile points.
- 12.5 For the purposes of calculating the Variable Fee in any Year, the “Turnover” of the Company shall be the gross turnover, exclusive of Government taxes,

generated by Port Operations (including any fixed, variable and other fees payable to the Company pursuant to the Contracts).

- 12.6 The Company accepts the principle held by CFM and the Conceding Authority that there should be no further development of sub-concessioned terminals within the Port Concession Area. The Company however reserves the right to seek agreement from the Conceding Authority to relax this restriction if there is a demonstrable case that the development of a sub-concessioned business opportunity will increase the profitability of the Company and increase the Conceding Authority's financial return and/or is advantageous both in terms of the development of the Port and the country's infrastructure or encourages employment and investment opportunities.

### **13. INDEPENDENT INSPECTOR**

#### **13.1 *Appointment/Replacement of Independent Inspector***

13.1.1 The Independent Inspector shall be appointed, as soon as practicable following the Date of Operations, and replaced if necessary, by the Conceding Authority after consultation with the Company.

13.1.2 The fees and expenses of the Independent Inspector shall be borne equally by the Company and the Conceding Authority.

#### **13.2 *Role of the Independent Inspector***

13.2.1 The Independent Inspector shall act as an independent and objective reporter to the Conceding Authority on the progress and condition of the Rehabilitation Works, the Development Works and the operation, maintenance and development of the Port Concession Area and on any other matters relating to the Project.

13.2.2 The Parties hereby undertake to each other that they shall grant to the Independent Inspector such access to the Port Concession Area, the Rehabilitation Works and any other place or information relating to the Project as he may reasonably require in order to carry out its obligations. The Parties shall not at any time seek to influence the Independent Inspector's independence and objectivity. The aforesaid undertakings shall survive the termination of this Agreement.

14. [REDACTED] [CONFIDENTIAL]

14.1 [REDACTED]

[Redacted]

**14.2** [Redacted]

14.2.1 [Redacted]

14.2.2 [Redacted]

14.2.3 [Redacted]

14.2.4 [Redacted]

14.2.5 [Redacted]

14.3 [Redacted]

14.4 [Redacted]

**14.5** [Redacted]

14.5.1 [Redacted]

14.5.2 [Redacted]

48463.01

14.6 [REDACTED]

14.6.1 [REDACTED]  
[REDACTED]

14.6.2 [REDACTED]  
[REDACTED]

14.6.3 [REDACTED]  
[REDACTED]

14.7 [REDACTED]

14.7.1 [REDACTED]

(a) [REDACTED]

(b) [REDACTED]  
[REDACTED]

14.7.2 [REDACTED]  
[REDACTED]

14.8 [REDACTED]

14.8.1 [REDACTED]  
[REDACTED]

14.8.2 [REDACTED]  
[REDACTED]

48463.01

- 14.8.3 [REDACTED]
- 14.8.4 [REDACTED]
- 14.8.5 [REDACTED]
- 14.8.6 [REDACTED]

**15. DEVELOPMENT WORKS - DEVELOPMENT PLAN AND THE JOINT PLANNING COMMITTEE**

- 15.1 The Company shall prepare and deliver to the Conceding Authority and CFM the Development Plan within forty-eight (48) Months after the Date of Operations. It is agreed by the Parties that the Development Plan should address the following:
- 15.1.1 Socio-economic issues: this section of the Development Plan will outline the importance of the Port in the context of the local and national development of the Republic of Mozambique, and the Company's responsibilities and strategies to encourage industrial growth, infrastructure improvement and employment opportunities.
- 15.1.2 Optimisation of land use: this section of the Development Plan will describe the Company's strategies for maximising the commercial and social advantages of encouraging the development of industrial and commercial activities within the Port Concession Area. The opportunities to develop sites outside of the Port Concession Area which may benefit the development of the Port Jurisdiction Area and community as a whole, will also be addressed.

- 15.1.3 Port activities: this section of the Development Plan will examine the historic development of the Port, and the changing patterns of trade. It will also forecast the traffic categories and volumes considered achievable throughout the Term, and at a strategic planning level, recommend changes in the cargo mix, charging arrangements or Port infrastructure necessary to maximise the Port's attractiveness to existing and new markets.
- 15.1.4 Environmental issues: this section of the Development Plan will analyse the existing Port environment and identify the present and future environmental impact of the Conceding Authority, CFM and Company proposals on both the Port and the Port Jurisdiction Area.
- 15.1.5 Inland distribution links and Port access: this section of the Development Plan will identify the road and rail infrastructure and services necessary to support the Port Jurisdiction Area's development plans, and identify potential capacity constraints and investment needs. It will also address the transportation needs within the Port Concession Area throughout the Term.
- 15.1.6 Support services and emergency procedures: this section of the Development Plan analyses the existing and future emergency response requirements within the Port Concession Area, the support administrative and operational services, and the necessary utilities, power, water supply and maintenance facilities.

## **15.2 *Joint Planning Committee***

- 15.2.1 No later than six (6) Months after the Date of Operations a Joint Planning Committee (the "JP Committee") composed of a maximum of seven (7) people, up to a maximum of three (3) from the Company, up to a maximum of three (3) from the Conceding Authority plus the Independent Inspector shall be constituted.
- 15.2.2 Save as provided in Clause 13.1.2, each Party shall bear the costs of its representation on the JP Committee, but the Company shall accept responsibility for the administration of the JP Committee, which decisions shall be taken by simple majority, including the provision of office facilities, preparation and keeping of minutes, etc.
- 15.2.3 The JP Committee shall within thirty (30) Days of its constitution pursuant to Clause 15.2.1, agree and record in writing its terms of reference. The JP Committee shall also agree and record in writing the allocation of tasks and responsibilities within the JP Committee and shall deliver such records in writing to the Conceding Authority and the Company for their joint approval.

- 15.2.4 Each Party may remove or replace any of its members on the JP Committee at any time upon no less than seven (7) days' notice to the other Parties. The Independent Inspector shall only be replaced in accordance with Clause 13.1.1.
- 15.2.5 The JP Committee may be supportive in terms of advice and assistance in relation to the Rehabilitation Plan and Rehabilitation Programme for the Port, but neither its formation nor the activities undertaken in anyway relieve the Company from its obligations hereunder.
- 15.2.6 The JP Committee shall have the following developmental, review, and approval responsibilities:
- (a) approval of the Transfer of Responsibility Committee's final reports, prior to referral to the Conceding Authority;
  - (b) initial discussions and evaluation of the Rehabilitation Plan;
  - (c) responsibility for monitoring, in conjunction with the Conceding Authority and the Independent Inspector, of the Company's three-Year Rehabilitation Plan and Rehabilitation Programme;
  - (d) initial review of requests to vary from the Rehabilitation Programme;
  - (e) jointly monitor, support and review the Development Plan for the Port and make initial recommendations to the Conceding Authority on new developments;
  - (f) assume responsibility for the constitution, monitoring, reporting, receipting and reviewing of the activities of the Handback and Termination Management Committee;
  - (g) assume the responsibility outlined in Schedule 16 relating to penalties in connection with the Maintenance and Performance Bond and the Rehabilitation Bond.
- 15.2.7 Any recommendation made by the JP Committee pursuant to this Clause 15.2 shall be submitted to GOM for approval.

## **16. OPERATION AND MAINTENANCE**

### ***16.1 Public Service Authorities***



Subject to Clause 25, the public police and coastguard service and the measures necessary in order to ensure the protection of persons and property in the Port and Port Concession Area shall be undertaken by the appropriate Government Entities at their own cost. Each of these Government Entities shall ensure that the level of law enforcement in the Port Concession Area is consistent with prevailing Laws of Mozambique and practice.

## **16.2 *Inspection and Maintenance***

- 16.2.1 Within six (6) Months of the Date of Operations, the Company shall prepare a manual for inspection and maintenance of the Port Concession Area in Portuguese and English which shall be such as to meet Laws of Mozambique on safety and which shall include procedures and schedules for carrying out periodical and annual inspections, routine preventive maintenance, heavy repair maintenance and annual maintenance, and for adjusting and improving the inspection and maintenance program. In drafting such a manual, the Company shall give due consideration to the usual standards and practices which are applicable on an international basis and particularly in the Republic of Mozambique's neighbouring countries, as well as per application of Southern Africa Transport and Communications Commission (SATCC) rules. The Company shall provide a copy of the manual to the Conceding Authority and the Independent Inspector and shall incorporate their comments. Thereafter such manual shall not be modified without the prior approval of the Conceding Authority which shall be given by the Conceding Authority to the Company within one (1) Month after receipt or otherwise the approval shall be deemed to have been given.

## **16.3 *Availability of the Port Concession Area***

- 16.3.1 Without prejudice to Clause 9, following the Date of Operations, the Company shall ensure that the Port Concession Area is available and open to Users and that the Port Services are offered such that Users and the Assets are safe at all times in all weather conditions. The Company shall not be considered in breach of its obligations under this Clause 16.3 to the extent that all or any part of the Port Concession Area is not available to users as a result of: (i) a Force Majeure Event; (ii) a Change in Circumstances, (iii) a breach of this Agreement by CFM or the Conceding Authority; (iv) measures taken in accordance with this Agreement to ensure the safety of the Port Concession Area (including maintenance); or (v) compliance with a request of the Conceding Authority or CFM, the effect of which is to close all or part of the Port Concession Area. Notwithstanding the foregoing, the Company shall keep all unaffected parts of the Port Concession Area that can be safely operated open to Users at all times.

#### ***16.4 Code of Operations***

- 16.4.1 No later than six (6) Months after the Date of Operations the Company shall have prepared and shall have submitted to the Conceding Authority the Code of Operations. The entry into effect of the Code of Operations shall be subject to the prior written approval of the Conceding Authority which shall not be unreasonably withheld. The Company shall be entitled to modify the Code of Operations during the Term, provided that the entry into effect of any modification shall be subject to the prior written approval of the Conceding Authority which shall be given by the Conceding Authority to the Company within one (1) Month after receipt or otherwise the approval shall be deemed to have been given.
- 16.4.2 Until issuance of such Code of Operations the existing “Regulamento de Exploração N1” and any relevant and applicable circular or instructions shall apply.
- 16.4.3 The Company shall give to the Users due notice of the Code of Operations and at least fourteen (14) Days’ notice of any modification thereto.

#### ***16.5 Operating Reports***

- 16.5.1 Every three (3) Months the Company shall submit to the Conceding Authority a report in Portuguese and English in the format to be agreed upon between the Conceding Authority and the Company.
- 16.5.2 In case there is a marked increase or decrease in turnover, traffic levels or activity from one Year compared to the other, the Company shall immediately inform the Conceding Authority, and it shall give all detailed comments and explanations thereof.

#### ***16.6 Hire of Assets and Personnel to Users***

If the Company hires out Assets and personnel to users pursuant to this Agreement, the Company shall ensure that:

- 16.6.1 the users of such Assets engage sufficient personnel to allow the safe and proper use of the Assets; and
- 16.6.2 the Assets are only used for the purposes for which they are intended; and
- 16.6.3 the user of such Asset is made responsible for any improper use and holds adequate insurance.

## ***16.7 Return of Conceded Assets during the Term***

- 16.7.1 The Company shall not be entitled to sell any of the Conceded Assets. In the event that the Company wishes to return any of the Conceded Assets to the Conceding Authority during the Term it shall deliver to the Conceding Authority a notice stating the relevant Conceded Asset and the provisions of Clause 5.14 shall thereafter apply, mutatis mutandis, to such Conceded Assets which are the subject of such notice.
- 16.7.2 In addition, in the case of any sale of Company Assets to any third party, the Company shall offer to the Conceding Authority a first right of refusal. Accordingly, such Company Assets may only be sold to third parties provided that the Company has first given notice of the terms of the intended sale to the Conceding Authority and provided that the Conceding Authority does not present, within thirty (30) Days after receipt of such notice, an offer to purchase such Assets and provided that the sale of such Company Assets to any third party is made on no more favourable terms and conditions than those offered to the Conceding Authority.

## ***16.8 Warehousing and Storage of Goods***

- 16.8.1 Warehouses, terminals and storage yards shall be kept locked and secure outside normal working hours and access thereto shall be restricted to properly authorised persons, such as police officers, guards, customs or immigration authorities and coastguard.
- 16.8.2 The Company shall carry out a visual inspection and such other measures as may be necessary to ensure that goods stored in warehouses at the Port Concession Area conform to the applicable health and safety standards and all Laws of Mozambique and shall be entitled to refuse to store goods which do not so conform.
- 16.8.3 The Company shall take appropriate measures to avoid cross-contamination of goods stored in warehouses and terminals.

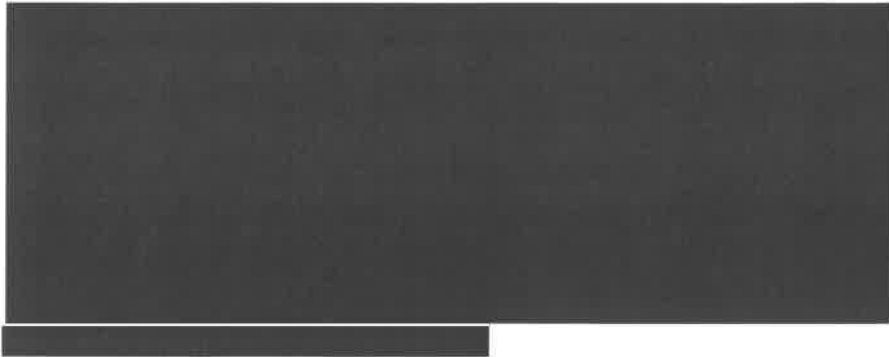
## ***16.9 Claims Register***

The Company shall maintain a record of claims and complaints received from Users. The Company shall make available such register to the Conceding Authority within fourteen (14) Days of a request to do so.

## ***16.10 Levels of Service - Standards and Performance Measurements and Penalties***

- 16.10.1 The Company undertakes to operate and maintain the Assets in accordance with the standards outlined in Schedule 16, and also to provide service to the Users of a minimum standard as specified in Schedule 16.

[CONFIDENTIAL] 16.10.2



16.10.3 Following the adoption of the procedures outlined in Schedule 16 the financial penalties specified in Schedule 16 shall apply to the Company, and the Conceding Authority will be entitled to draw down the relevant financial penalty from either the Rehabilitation Bond, specified in Clause 14.8 of this Agreement, or the Maintenance and Performance Bond specified in Clause 16.10.2. In both cases, the JP Committee shall deliver the “Default Notice” specified in Annex A of Schedule 10, to the Conceding Authority, signed by two authorised signatories of the JP Committee stating:

- (a) that the Company has breached its obligations under Schedule 16 in relation to the rehabilitation or the maintenance and performance of the Port as the case may be, and
- (b) the amount of the penalty payable to the Conceding Authority, determined in accordance with Schedule 16.

Such Default Notice shall accompany the Conceding Authority’s demand for payment under the Rehabilitation Bond or the Maintenance and Performance Bond, as the case may be.

## **17. WARRANTIES**

17.1 The Conceding Authority and CFM warrant to the Company that each Warranty set out below is true, accurate, complete and not misleading at the Agreement Date:

17.1.1 Mr. Tomás Augusto Salomão, Eng. Rui Cirne Plácido de Carvalho Fonseca and Eng. Miguel Matabel have full power and authority to execute this Agreement on behalf of the Conceding Authority and CFM respectively. The Conceding Authority and CFM have full power and authority to perform their respective obligations hereunder. The execution and performance of this Agreement by or on behalf of the Conceding Authority and CFM (i) has been duly authorised by all requisite action on the part of the Conceding Authority and CFM, and (ii) will not (A) violate the Laws of Mozambique or (B) violate, be in conflict with, result in a breach of or constitute (with due notice or

lapse of time or both) a default under any indenture, agreement for borrowed money, bond, note, instrument or other agreement to which the Conceding Authority or CFM is a party or by which the Conceding Authority or CFM or its property is bound, excluding defaults or violations that would not individually or in the aggregate, have a material adverse effect on the properties or financial condition of CFM or the Conceding Authority or on its ability to perform its obligations hereunder. This Agreement has been duly executed by the Conceding Authority and CFM on behalf of the Conceding Authority and CFM respectively; assuming it constitutes a legal, valid and binding obligation of the Company, this Agreement constitutes a legal, valid and binding obligation of the Conceding Authority and CFM enforceable against each of them in accordance with its terms subject to general principles of the Laws of Mozambique;

- 17.1.2 there is no filing or restriction on filing or registration which may prevent or no notice, permit, authorisation, consent or approval of any person required for, and the execution or performance of this Agreement by the Conceding Authority or CFM except for such permits, authorisations, consents or approvals as have been obtained;
- 17.1.3 neither the Conceding Authority nor CFM is in default under any agreement or instrument of any nature whatsoever to which it is a party or by which it is bound in any manner that would have a material adverse effect on its ability to perform its obligations hereunder or the validity or enforceability of this Agreement;
- 17.1.4 there is no action, suit, proceeding or investigation pending, or to the Conceding Authority's or CFM's knowledge, threatened, against the Conceding Authority or CFM which, if adversely determined, would have a material adverse effect on its ability to perform its obligations hereunder or validity or enforceability of this Agreement;
- 17.1.5 each of the Conceded Assets are legally and beneficially owned by the Conceding Authority free from any Encumbrance;
- 17.1.6 none of the Contracts in force entitle the third party or third parties, as a result of a purported assignment pursuant to this Agreement, to terminate the Contract or impose or require the adoption of terms which are less favourable to the Company than the current terms;
- 17.1.7 there are no agreements or contracts to which the Conceding Authority or CFM is party which purport to sell, transfer or grant an option in respect of the Conceded Assets, Leased Assets and those Company Assets transferred to the Company by CFM at the Date of Operations to a third party;

- 17.1.8 there is appurtenant to the Port Concession Area each right and easement necessary for its proper and existing use. No right or easement is restricted in any way (including, without limitation, a restriction on hours of use) or is capable of being lawfully interrupted or terminated by any person;
- 17.1.9 each service necessary for the Port's existing use (including, without limitation, electricity and water supplies, sewerage and telecommunications lines) is available to the Company, upon arrangements being concluded by the Company with the providers thereof for their respective use;
- 17.1.10 CFM and/or the Conceding Authority is entitled to and has, subject to the Contracts and the Consents, exclusive Vacant Possession of the Port Concession Area;
- 17.1.11 there is no material litigation, arbitration or other proceedings outstanding, pending, or, to the best of the Conceding Authority's or CFM's knowledge and belief, threatened against the Assets or in connection with the Port Operations. No distress, execution or other process has been levied on any of the Assets and there is no unsatisfied judgement or court order outstanding against any of the Assets;
- 17.1.12 all the information relating to the Port Concession Area made available to the Company, as well as that resulting from the due diligence carried out by the Company, including contracts with suppliers and Users, is true and accurate and is not misleading in any material respect based on the facts and information available to the Conceding Authority and/or CFM at the Agreement Date;
- 17.1.13 save for consents and permits required under Laws of Mozambique in respect of operational matters from time to time, this Agreement grants and/or provides all necessary rights to operate the Port Operations in accordance with its terms; and
- 17.1.14 all Port Income shall accrue directly to the Company.
- 17.2 At the Date of Operations, the Conceding Authority and CFM are deemed to warrant to the Company that each Warranty is true, accurate, complete and not misleading. Where in a Warranty there is an express or implied reference to the "Agreement Date", that reference shall, for the purpose of the Warranty to be given pursuant to Clause 17.1 and this Clause 17.2, be construed as a reference to the Date of Operations, mutatis mutandis.
- 17.3 The Conceding Authority and CFM acknowledge that the Company is entering into this Agreement in reliance on each Warranty which has also been given as a

representation and with the intention of inducing the Company to enter into this Agreement.

- 17.4 Each Warranty is to be construed independently and (except where this Agreement expressly provides otherwise) is not limited by a provision of this Agreement or another Warranty.
- 17.5 Without restricting the rights of the Company or the ability of the Company to claim damages on any basis available to it in the event of any breach or non-fulfilment of any of the Warranties, the Conceding Authority and CFM jointly and severally undertake to the Company that the Conceding Authority and CFM will on demand pay to the Company:
- 17.5.1 an amount equal to any shortfall or diminution in the value of any of the Assets which results from the inability of the Company to use such Assets to carry out its rights and obligations under this Agreement and an amount corresponding to losses suffered or costs incurred by the Company resulting from or in relation with any act, issue, circumstance or other constituting a breach of any of the declarations and Warranties provided hereunder; and
- 17.5.2 all costs, expenses and disbursements suffered or incurred by the Company, directly or indirectly as a result of or in relation to any such breach or non-fulfilment of any of the Warranties.
- 17.6 The Company shall (without prejudice to its other rights hereunder) be entitled to set off against any amount otherwise payable to the Conceding Authority and/or CFM under this Agreement any amount due by the Conceding Authority and/or CFM to the Company under or by reason of any breach of the terms of this Agreement provided that such set-off is acknowledged by the Conceding Authority and/or CFM or is legally enforced against the Conceding Authority and/or CFM, and the amount so set off shall satisfy the liability concerned.
- 17.7 The Company warrants to the Conceding Authority and CFM that each Warranty set out below is true, accurate, complete and not misleading at the Agreement Date:
- 17.7.1 Eng. Rui Cirne Plácido de Carvalho Fonseca, Eng. Miguel Matabel and Mr. Ken Wharton have full power and authority to execute this Agreement and has full power and authority to perform its obligations hereunder. The execution and performance of this Agreement by or on behalf of the Company (i) has been duly authorised by all requisite action on the part of the Company, and (ii) will not (A) violate the Laws of Mozambique or (B) violate, be in conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any indenture, agreement for borrowed money, bond, note, instrument or other agreement to which the Company is a party or by which the Company or its property is bound, excluding defaults

or violations that would not individually or in the aggregate, have a material adverse effect on the properties or financial condition of the Company or on its ability to perform its obligations hereunder. This Agreement has been duly executed. Assuming it constitutes a legal, valid and binding obligation of the Conceding Authority and CFM, this Agreement constitutes a legal, valid and binding obligation of the Company enforceable against it in accordance with its terms subject to general principles of the Laws of Mozambique; and

- 17.7.2 the Company is a private limited company duly incorporated and registered in the Republic of Mozambique;
  - 17.7.3 the Company has provided all permits, authorisations, consents or approvals required under its articles of association or any legal or contractual instruments binding on it, for the valid execution or performance of this Agreement by the Company;
  - 17.7.4 the Company is not in default under any agreement or instrument of any nature whatsoever to which it is a party or by which it is bound in any manner that would have a material adverse effect on its ability to perform its obligations hereunder or the validity or enforceability of this Agreement; and
  - 17.7.5 there is no action, suit, proceeding, material litigation, arbitration, other proceedings or investigation pending, or to the Company's knowledge, threatened, against the Company which, if adversely determined, would have a material adverse effect on its ability to perform its obligations hereunder or validity or enforceability of this Agreement;
  - 17.7.6 the Company is using its best endeavours to conclude arrangements with the providers of each service necessary for the Port's existing use (including, without limitation, electricity and water supplies, sewerage and telecommunications lines) in order that such services are available to the Company;
  - 17.7.7 all the information relating to the Port Concession Area made available to the Company by the Conceding Authority and CFM for the purpose of due diligence has been acknowledged by the Company in writing;
- 17.8 At the Date of Operations, the Company is deemed to warrant to the Conceding Authority and CFM that each Warranty is true, accurate, complete and not misleading. Where in a Warranty there is an express or implied reference to the "Agreement Date", that reference shall, for the purpose of the Warranty to be given pursuant to Clause 17.7 and this Clause 17.8, be construed as a reference to the Date of Operations, mutatis mutandis.



- 17.9 The Company acknowledges that that Conceding Authority and CFM are entering into this Agreement in reliance on each Warranty which has also been given as a representation and with the intention of inducing the Conceding Authority and CFM to enter into this Agreement.
- 17.10 Each Warranty is to be construed independently and (except where this Agreement expressly provides otherwise) is not limited by a provision of this Agreement or another Warranty.
- 17.11 Without restricting the rights of the Conceding Authority or CFM or the ability of the Conceding Authority or CFM to claim damages on any basis available to them in the event of any breach or non-fulfilment of any of the Warranties, the Company undertakes to the Conceding Authority and CFM that the Company will on demand pay to the Conceding Authority
- 17.11.1 an amount corresponding to losses suffered or costs incurred by the Company resulting from or in relation with any act, issue, circumstance or other constituting a breach of any of the declarations and Warranties provided hereunder;
- 17.11.2 all costs, expenses and disbursements suffered or incurred by the Conceding Authority and/or CFM due to an inability to carry out the obligations of the Conceding Authority and/or CFM pursuant to this Agreement, directly or indirectly as a result of or in relation to any such breach or non-fulfilment of any of the Warranties.
- 17.12 The Conceding Authority and/or CFM shall (without prejudice to its other rights hereunder) be entitled to set off against any amount otherwise payable to the Company under this Agreement any amount due by the Company to the Conceding Authority and/or CFM under or by reason of any breach of the terms of this Agreement provided that such set-off is acknowledged by the Company or is legally enforced against the Company, and the amount so set off shall satisfy the liability concerned.

## **18. GENERAL OBLIGATIONS OF THE PARTIES**

### ***18.1 Compliance With Laws of Mozambique***

The Parties shall at all times observe and comply with all Laws of Mozambique in carrying out their obligations under this Agreement. The Parties shall be deemed at all times to have full knowledge of the relevant laws and regulations of the Republic of Mozambique.

### ***18.2 No Interference by the Conceding Authority or Government Entity***

- 18.2.1 Subject to the provisions of this Agreement, the Conceding Authority undertakes not to do, and the Conceding Authority undertakes that no Government Entity does, anything which materially prevents or

adversely affects the Company's ability to perform its obligations under this Agreement or the operation of or free access for Users or the collection by the Company of tariffs from Users save as may be necessary on the grounds of national security, public safety or for the discharge and performance of their respective duties under any Laws of Mozambique.

- 18.2.2 If any operation or action is to be carried out by the Conceding Authority or its designees on the grounds of national security, public safety or for the discharge and performance of their duties under any Laws of Mozambique, which will materially prevent or adversely affect the Company's ability to perform its obligations under this Agreement or the operation of or free access for Users or the collection by the Company of tariffs from Users, the Conceding Authority shall ensure that, except in the case of an emergency, written notice thereof is first given to the Company with a reasonable period of time in advance so that such persons shall discuss with the Conceding Authority (or its respective designees) and the Company the method of carrying out such operations or action to ensure the least practicable disruption to the Company within the limits imposed by the prevailing requirements of national security, public safety or law. Nevertheless, if any such action by the Conceding Authority or its respective designees does cause delay, the Term shall be extended by an appropriate time period as determined by the Parties.

### ***18.3 Assurance Against Discriminatory Action***

The Conceding Authority shall not, and shall procure that neither any Public Sector Entity nor CFM, take any discriminatory action which materially and adversely affects the Project or the performance of the Company's or the Contractors' obligations or the enjoyment of their rights or the interests of the Lenders or the Investors under this Agreement or the Security Package, except as hereinafter provided, repossess the Port Concession Area, or the Conceded Assets or expropriate the Company or the Company Assets, whether in whole or in part. Nothing in the foregoing shall apply to any actions taken by the Conceding Authority, CFM or any Public Sector Entity pursuant to their respective rights and obligations arising directly or indirectly under this Agreement, including, for the avoidance of doubt the Special Licence, the Consents and the other documents comprising the Security Package.

### ***18.4 Assistance by the Conceding Authority***

Throughout the Term, the Conceding Authority shall allow the Company, its employees and agents and any other person authorised by the Company and in possession of a confidentiality agreement:

- 18.4.1 to inspect any of the Records that are being retained by them at all reasonable times during usual business hours; and

18.4.2 to take copies of any of those Records it reasonably requires.

18.5 Each Party shall immediately give to the other all payments, notices, correspondence, information or enquiries in relation to the Assets which it receives after the Date of Operations and which belong to the other.

18.6 Throughout the Term, the Conceding Authority shall give to the Company any information and assistance which the Company reasonably requires in connection with the Assets.

#### **18.7 *Environmental Protection***

In the performance of its obligations under this Agreement the Company shall ensure that appropriate measures are taken to protect the environment of and around the Port Concession Area from pollution, noise and other results of its operations in accordance with the Laws of Mozambique.

#### **18.8 *Utilities***

18.8.1 The Company shall, from the Date of Operations, pay for Utilities at normal commercial rates. CFM shall have the responsibility to ensure that facilities necessary for provision of Utilities are available to the Port Concession Area. The Company shall not be responsible for any costs associated with the provision of the Utilities to the Port, unless these are associated with:

- (a) a specific need of the Company and the provision is within the Port Concession Area; or
- (b) subject to Clause 16.1 and Clause 25, a specific request by the Company for any Public Sector Entity to be present, on a permanent, or long-term basis within the Port Concession Area.

18.8.2 The Company shall at its own cost and risk, after the Date of Operations be responsible for the clearance, relocation and diversion of all Utilities on the Port Concession Area affecting the Rehabilitation Works or necessary to operate and maintain the Port Concession Area.

#### **18.9 *Access by the Conceding Authority to the Port Concession Area***

18.9.1 The Conceding Authority or any designated representative thereof may from time to time with a minimum of 24 hours' notice (subject and without prejudice to Clause 16.2) enter any part of the Port Concession Area in order to:

- (a) ascertain whether the Priority Works, Rehabilitation Works and/or any Development Works are likely to become unsafe or dangerous;
- (b) observe tests of materials, equipment or plant, with the Independent Inspector;

18.9.2 A limited and pre-determined number, to be agreed with the Company, of the Conceding Authority personnel shall be authorised by the Company to enter the Port Concession Area without prior notice to determine generally the compliance by the Company with the terms of this Agreement.

### ***18.10 Archaeological Finds***

18.10.1 The Company hereby acknowledges that any fossils, coins, articles of value or antiquity and structures and other remains or things of geological or archaeological interest present on the Port Concession Area are and shall remain the property of the Conceding Authority. In the event of the discovery of any such items the Company shall immediately inform the Conceding Authority and shall:

- (a) if the items discovered are movable, allow the Conceding Authority, at the Conceding Authority's cost, to enter the Port Concession Area and effect their removal; or
- (b) if the items are immovable allow the Conceding Authority, at its own cost, to effect such investigation as the Conceding Authority may reasonably require.

18.10.2 All costs arising from such protective measures shall be borne by the Conceding Authority, and the Conceding Authority shall, reimburse the Company an amount equal to the additional costs, payments, expenses and disbursements incurred in relation to such protective measures or shall grant such extension of the concession period provided that the obligation of the Conceding Authority under this Clause 18.10.2 is subject to the obligation of the Company to use its best endeavours at all times to avoid or minimise such delays and increases in costs.

### ***18.11 Unforeseeable Manmade Environmental Hazards***

The Conceding Authority shall defend, indemnify and hold the Company harmless from and against all liabilities, damages, losses, expenses and claims caused by or related to the existence on or affecting the Port Concession Area at the Date of Operations of any dangerous dumpsites, shipwrecks, hazardous chemical contamination or deposit, munitions, mines, or other man-made environmental hazards. In the event of discovery, of any such hazards prior to

the Date of Operations which, in the opinion of the Company, necessitate an extension of the concession period and/or an increase in costs, payments, expenses and disbursements the Company shall give notice of the same to the Conceding Authority and to the Independent Inspector together with all supporting information. The Conceding Authority shall grant such extension of the concession period and reimburse to the Company an amount equal to the additional costs, payments, expenses and disbursements incurred in relation to the relevant hazard, provided that the Company shall use its best endeavours at all times to avoid or minimise such delays and increases in costs.

#### ***18.12 Safety and Security on Port Concession Area***

The Company shall ensure that its operations on the Port Concession Area comply with all applicable health and safety standards under the Laws of Mozambique.

#### ***18.13 Financial Statements and Reporting***

18.13.1 The Company shall carry on its business and affairs with due diligence and efficiency and in accordance with sound international financial and commercial standards and practices and shall fully account for all aspects of its business by preparing financial statements and delivering them to the Conceding Authority as follows:

- (a) at the end of each financial Year, the Company shall prepare and submit to the Conceding Authority the Company's balance sheet, a profit and loss account and a statement of cash flow each denominated in Dollars and Meticaís, drawn up in accordance with generally accepted international accounting practices and Laws of Mozambique and certified by qualified corporate auditors registered in the Republic of Mozambique;
- (b) the Company shall prepare and submit to the Conceding Authority a quarterly statement of the Company's revenues and disbursements, expected trends for the next quarter, progress concerning current investment and proposed additional investments;
- (c) the Company shall prepare for submission to the Conceding Authority such other information of the financial position of the Company as the Conceding Authority may from time to time reasonably request to monitor compliance with the Laws of Mozambique and with this Agreement.

18.13.2 At the end of each financial Year the Conceding Authority shall be entitled to appoint, at its own expense, its own qualified auditor to

verify the information provided by the Company and the Company shall provide all reasonable assistance to such auditor.

#### ***18.14 Republic of Mozambique Services, Goods and Labour***

18.14.1 The Company shall use Mozambican services and goods whenever they are competitive in terms of quality, service, relevant expertise, delivery schedule and price. The Company shall include Mozambican contractors in invitations for competitive bidding for contracts if they produce services and goods of the kind and quality required and shall require their Contractors to do the same with respect to sub-contracts. When evaluating bids for contracts generally, the Company shall take into account the extent to which the bidders use Mozambican services and goods.

18.14.2 The Parties recognise that training citizens of the Republic of Mozambique in the design, operation, maintenance and management of the Project and maximising technology transfer are central to the interests of the Conceding Authority in the Project. The Company shall, therefore, employ or cause to be employed citizens of the Republic of Mozambique, to the greatest reasonable extent, for the design, operation, maintenance and management of the Project and provide to its employees a series of training courses as described in Schedule 15.

### **19. INSURANCE**

#### ***19.1 Scope of Insurance***

19.1.1 From the Date of Operations and until the expiry of the Term, the Company shall at its own cost obtain and maintain in force insurance coverage relating to the Project.

19.1.2 The Conceding Authority shall have the benefit of any claim under any insurance which shall have been made but not paid or settled at the Date of Operations.

#### ***19.2 Application of Proceeds***

19.2.1 The Company shall ensure that the Conceding Authority shall be named as additional insured under the policies covering third party liability.

19.2.2 The Company shall, subject to the Financing Agreements, apply or will procure the application of the proceeds of any claims under the property all risks insurance policies in the first instance to the repair or restoration of any damage to the Port, the Conceded Assets or any other insured property of the Company.

19.2.3 The Company shall apply or will procure the application of the proceeds of any claim under the third party liability insurance to the person entitled to the indemnity.

### **19.3 Best Available Terms**

The Company shall maintain the aforementioned insurance on the best terms available in the national and international insurance market with reliable insurers of adequate financial strength and experience.

### **19.4 Certificates of Insurance**

Prior to the relevant inception dates thereof, the Company shall cause its insurers or agents to provide the Conceding Authority with certificates of insurance evidencing the policies and endorsements listed above. Failure by the Company to obtain the insurance coverage or certificates of insurance required by this Clause 19.4 shall not in any way relieve or limit the Company's obligations and liabilities under any provision of this Agreement. If the Company shall fail to procure or maintain any insurance required pursuant to this Clause 19.4, then the Conceding Authority shall have the right to procure such insurance in accordance with the requirements of this Clause 19.4 and the Company shall reimburse the Conceding Authority for the costs of the same forthwith.

## **20. HANDBACK**

20.1 Subject to the provisions of Clauses 3, 33 and 34, the Conceding Authority or the Company (as the case may be) shall give a minimum of twelve (12) Months' notice to the other Party of its intention to terminate this Agreement.

20.2 No later than twelve (12) Months before the anticipated Handback Date, or as soon as practicable following notice of termination in accordance with Clause 20.1, the Company shall, in order to guarantee the timely and proper performance of its obligations pursuant to Schedule 11, deliver the Handback Bond to the Conceding Authority which will remain valid until its release in accordance with Clause 20.4. In the event of a default by the Company in relation to its obligations under Schedule 11, the Conceding Authority shall be entitled to make a demand for payment under the Handback Bond. The HTM Committee shall deliver the "Default Notice" specified in Annex A of Schedule 12 to the Conceding Authority, signed by two authorised signatories of the HTM Committee, stating:

20.2.1 that the Company has breached its obligations under Schedule 11 in relation to the handback of the Port to the Conceding Authority, and

20.2.2 the amount of the penalty payable to the Conceding Authority, determined in accordance with Schedule 11.

Such Default Notice shall accompany the Conceding Authority's demand for payment under the Handback Bond.

20.3 Following receipt of the Handback Bond in accordance with Clause 20.2 and unless there is any accrued liability pursuant to the Maintenance and Performance Bond, the Conceding Authority shall undertake to fully and expeditiously assist the Company in procuring the release of any remaining obligations under the Maintenance and Performance Bond.

20.4 Following whichever is the later of (a) the Handback Date, or (b) the satisfaction of the Company's obligations pursuant to Schedule 11, the Conceding Authority shall use its best endeavours to fully and expeditiously assist the Company in procuring the release of the Company from any obligation under the Handback Bond.

21. [REDACTED] [CONFIDENTIAL]

21.1

[REDACTED]

[REDACTED]

[REDACTED]

(a)

[REDACTED]

(b)

[REDACTED]

(c)

[REDACTED]

21.2

[REDACTED]





## **22. LIABILITY**

### **22.1 *Limitation of Liability***

Except as provided in Clauses 23 and 30, no Party shall be liable to the other Parties in contract, tort, warranty, strict liability, or any other legal theory for any indirect, consequential, incidental, punitive or exemplary damages, nor shall any Party be liable to the other Parties for any fines and penalties incurred by that other Party. No Party shall have any liability to the other Parties except as expressly provided in, or for breach of, this Agreement; provided, however, that this provision is not intended to constitute a waiver of any rights of one Party against the other with regard to matters unrelated to this Agreement or to any activity not contemplated by this Agreement.

## **23. INDEMNIFICATION**

### **23.1 *By the Conceding Authority***

The Conceding Authority shall defend and indemnify the Company and its directors, officers and employees against, and hold the Company and its directors, officers and employees harmless from, at all times after the Date of Operations, any and all Losses incurred, suffered, sustained or required to be paid, directly or indirectly, by, or sought to be imposed upon, the Company and its directors, officers and employees for personal injury or death, to persons or damage to property arising out of the negligent or intentional act or omission of the Conceding Authority in connection with this Agreement.

### **23.2 *By CFM***

CFM shall defend and indemnify the Company and its directors, officers and employees against, and hold the Company and its directors, officers and employees harmless from, at all times after the Date of Operations, any and all Losses incurred, suffered, sustained or required to be paid, directly or indirectly, by, or sought to be imposed upon, the Company and its directors, officers and employees for personal injury or death, to persons or damage to property arising out of the negligent or intentional act or omission of the CFM in connection with this Agreement.

### **23.3 *By the Company***

The Company shall defend and indemnify the Conceding Authority, GOM and its ministers, officers and employees against, and hold CFM and its directors, officers and employees harmless from, at all times after the Date of Operations, any and all Losses incurred, suffered, sustained or required to be paid, directly or indirectly, by, or sought to be imposed upon, the Conceding Authority, GOM and its ministers, officers and

employees and CFM and its directors, officers and employees, for personal injury or death to persons or damage to property arising out of the negligent or intentional act or omission of the Company in connection with this Agreement.

#### **23.4 *By joint negligence***

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

23.1.5 The provisions of this Clause 23 shall survive for a period of five (5) Years following the termination of this Agreement, or for such longer period as may be required by the Laws of Mozambique (or until such later date as the Company vacates the Port Concession Area).

#### **23.6 *Notice of Proceedings***

Each Party shall promptly notify the other Parties of any Loss or proceeding in respect of which it is or may be entitled to indemnification under this Clause 23. Such notice shall be given as soon as reasonably practicable after the relevant Party becomes aware of such Loss or proceeding.

23.7 [REDACTED] [CONFIDENTIAL]

[REDACTED]

#### **23.8 *Defence of Claims***

23.8.1 The indemnifying Party shall be entitled if the legal procedures of the particular jurisdiction so allow, at its option and expense, and with counsel of its selection, to assume and control the defence of any claim, action, suit or proceeding in respect of, resulting from, relating to or arising out of any matter for which it is obliged to indemnify the other Parties hereunder, provided it gives prompt notice of its intention to assume such defence acknowledging its obligation so to indemnify, and reimburses the indemnified Party or Parties forthwith for the reasonable costs and expenses incurred by the indemnified Party in connection with the defence of such claim, action, suit or proceeding prior to the assumption by the indemnifying Party of such defence.

- 23.8.2 Unless and until the indemnifying Party acknowledges in writing its obligation to indemnify the indemnified Party or Parties and assumes control of the defence of a claim, suit, action or proceeding in accordance with Clause 23.8.1, the indemnified Party or Parties shall have the right, but not the obligation, to contest, defend and litigate, with lawyers of its own selection, any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and the reasonable costs and expenses thereof shall constitute Losses subject to the indemnification obligations of the indemnifying party under this Clause 23.
- 23.8.3 No Party shall be entitled to settle or compromise any such claim, action, suit or proceeding without the prior written consent of the other Party or Parties, such consent not to be unreasonably withheld; provided, however, that after acknowledging in writing under Clause 23.8.1 its obligation to indemnify the indemnified Party or Parties, the indemnifying Party may settle or compromise any claim without the approval of the indemnified Party or Parties. Except where such consent is unreasonably withheld, if a Party settles or compromises any claim, action, suit or proceeding in respect of which it would otherwise be entitled to be indemnified by the other Party or Parties without the prior written consent of the other Party or Parties, the other Party or Parties shall be excused from any obligation to indemnify the Party making such settlement or compromise in respect of such settlement or compromise.
- 23.8.4 Following the acknowledgement of the indemnification and the assumption of the defence by the indemnifying Party, the indemnified Party or Parties shall have the right to employ its or their own lawyers and such lawyers may participate in such action, but the fees and expenses of such lawyers shall be at the expense of such indemnified Party or Parties, when and as incurred, unless (i) the employment of lawyers by such indemnified Party or Parties has been authorised in writing by the indemnifying Party, (ii) the indemnified Party or Parties shall have reasonably concluded that there is a conflict of interest between the indemnifying Party and the indemnified Party or Parties in the conduct of the defence of such action, (iii) the indemnifying Party shall not in fact have employed independent lawyers reasonably satisfactory to the indemnified Party or Parties to assume the defence of such action and shall have been so notified by the indemnified Party or Parties, or (iv) the indemnified Party or Parties shall have reasonably concluded and specifically notified the indemnifying Party either that there may be specific defences available to it or them that are different from or additional to those available to the indemnifying Party or that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement. If (ii), (iii) or (iv) of the preceding sentence shall be

applicable, then the lawyers for the indemnified Party or Parties shall have the right to direct the defence of such claim, action, suit or proceeding on behalf of the indemnified Party or Parties and the reasonable fees and disbursements of such counsel shall constitute Losses subject to the indemnification obligations of the indemnifying Party under this Clause 23.

#### **24. EXPATRIATE WORKERS/IMMIGRATION CONTROLS**

In accordance with the provisions of the relevant Laws of Mozambique, the Relevant Authorities will expeditiously grant, when so requested, applications of the Company and the Contractors, for visas, work permits, residence permits as necessary, for individuals involved in the Project. Notwithstanding the foregoing, however, the Relevant Authority may, in any individual case, decline to grant an application, or expel a person previously admitted, to protect the national security interests or public health and safety of the Conceding Authority for reasons considered by the Conceding Authority to be good and sufficient in accordance with and to the extent permitted under the Laws of Mozambique.

#### **25. SECURITY PROTECTION**

In carrying out its obligations in relation to the Project under this Agreement, the Company shall take all reasonable precautions to protect the Port Concession Area, which precautions shall include the provision of non-military professional security personnel for the protection of the Port Concession Area and the employees of the Company and the Contractors at a level which is in accordance with customary business practice in the Republic of Mozambique. Where the Company considers that damage to the Port Concession Area, adverse impact on the provision of any of the Port Services or injury to persons working in or around the Port Concession Area or employed by the Company or the Contractors or the families of such persons is reasonably anticipated and the security personnel employed by the Company are not themselves capable of dealing with such a threat, the Conceding Authority shall, at the oral or written request of the Company or its Contractors, afford such additional security personnel or armed security forces which, at the Conceding Authority's complete discretion, it sees fit. All such additional security personnel or armed security forces shall remain under the exclusive control, cost and direction of the Conceding Authority. The provision by the Conceding Authority of such additional security personnel shall not be deemed of itself to be an admission or agreement by the Conceding Authority that a Force Majeure Event or a Change in Circumstances has occurred.

#### **26. IMPORT CONTROLS**

48463.01

### **26.1 *Right to Import***

The Company and its Contractors shall incorporate as much locally produced material, equipment, and supplies as possible in relation to the Project. Nonetheless, throughout the Term, the Company and its Contractors may in accordance with the relevant Laws of Mozambique import, subject to the provisions of Clause 32.1, import certain items required for the construction, operation and maintenance of the Project.

### **26.2 *Repairs***

The Company and the Contractors shall be entitled to re-export without restriction throughout the Term all items of plant and machinery which have been imported by it pursuant to Clause 26.1 for permanent installation in the Port for the purpose of repair or refurbishment outside the Republic of Mozambique and to re-import the same subject to the applicable Laws of Mozambique.

## **27. FOREIGN CURRENCY EXCHANGE AND TRANSFER OF FUNDS**

### **27.1 *Foreign Exchange Regulation***

The foreign currency exchange and the transfer abroad of all funds related to the Project shall be subject to the provisions of the Investment Project Authorisation and applicable Laws of Mozambique.

## **28. [REDACTED] [CONFIDENTIAL]**

### **28.1 [REDACTED]**

#### **28.1.1 [REDACTED]**

(a) [REDACTED]

(b) [REDACTED]

(c)

[REDACTED]

28.1.2

[REDACTED]

[REDACTED]

28.1.3

[REDACTED]

[REDACTED]

29.

[REDACTED]

[REDACTED]

[CONFIDENTIAL]

29.1

[REDACTED]

[REDACTED]

29.2

[REDACTED]

29.2.1

[REDACTED]

29.2.2

[REDACTED]

(a)

[REDACTED]

(b)

[REDACTED]

(c)

[REDACTED]

(d)

[REDACTED]

### 30. FORCE MAJEURE

#### 30.1 *Definition*

A Force Majeure Event shall mean any event or circumstance or combination of events or circumstances that is beyond the control of a Party and which, or the effects of which, materially and adversely affects the performance by that Party of its obligations under or pursuant to this Agreement; provided, however, that any such event or circumstance, or combination of events or circumstances, shall not constitute a Force Majeure Event hereunder if its effects could have been prevented by the affected Party through the exercise of reasonable diligence and reasonable care.

For the purpose of this Clause 30, it is understood and agreed that reasonable care includes acts or activities to protect the Port from an event which, but for the exercise of such reasonable care would be a Force Majeure Event, and which is reasonable in light of the likelihood of such event, the probable effect of such event if it should occur, and the likely efficacy, cost and cost-effectiveness of protection measures. Force Majeure Events hereunder shall include, but shall not be limited to, each of the following events and circumstances, but only to the extent that each satisfies the above requirements:

30.1.1 events or circumstances or any combination of events and/or circumstances of the following types (except to the extent they constitute, or are caused by, a Change in Circumstances):

- (a) earthquake, tsunami, flood, storm, cyclone, typhoon, tornado or lightning;
- (b) fire, explosion or chemical contamination;
- (c) epidemic or plague;

- (d) any strike, work-to-rule or go-slow (other than a strike, work-to-rule or go-slow falling within Clause 33.2.7(c));
- (e) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, act of terrorism or act of a political nature (other than those events or circumstances included in Clause 33.2.7(a));
- (f) radioactive contamination or ionising radiation originating from a source outside the Republic of Mozambique,

30.1.2 a delay in the performance of any Contractor which results directly from any of the Force Majeure Events specified in Clause 30.1.1 shall itself constitute a Force Majeure Event to the extent that it satisfies the requirements for a Force Majeure Event specified in the preamble to Clause 30.1.

## 30.2 *Notification Obligations*

30.2.1 If by reason of a Force Majeure Event a Party is wholly or partially unable to carry out its obligations under this Agreement, the affected Party shall:

- (i) give the other Parties notice of the Force Majeure Event(s) as soon as practicable, but in any event, not later than seventy-two (72) hours after the affected Party becomes aware of the occurrence of the Force Majeure Event(s) or, if means of providing such notice within such period is not available, not later than six (6) hours after the resumption of means of providing such notice; and
- (ii) give the other Parties a second notice (“Detailed Notice”), describing the Force Majeure Event(s) in reasonable detail and, to the extent that it can be reasonably determined at the time of the second notice, providing a preliminary evaluation of the obligations affected, a preliminary estimate of the period of time that the affected Party will be unable to perform the obligations, and other relevant matters as soon as practicable, but in any event, not later than seven (7) Days after the initial notice of the occurrence of the Force Majeure Event(s) is given by the affected Party.

30.2.2 When appropriate, or when reasonably requested to do so by one of the other Parties, the affected Party shall provide further notices to the other Parties more fully describing the Force Majeure Event(s) and its or their cause(s) and updating the Detailed Notice in relation to the



efforts of the affected Party to avoid and/or to mitigate the effect(s) of such event, the cessation of the event, and the timing and efforts for the re-commencement of the performance of the affected Party's obligations.

- 30.2.3 Failure by the affected Party to give notice of a Force Majeure Event to the other Parties within the periods required by Clause 30.2.1 shall not prevent the affected Party from giving such notice at a later time; provided however, that in such case, the affected Party shall not be excused pursuant to Clause 30.4.1 from any failure or delay in complying with its obligations under or pursuant to this Agreement until the notice required by Clause 30.2.1 has been given. If such notice is given within the seventy-two (72) hour period or six (6) hour period as required by Clause 30.2.1, the affected Party shall be excused from such failure or delay pursuant to Clause 30.4 from the date of commencement of the relevant Force Majeure Event.

### 30.3 *Duty to Mitigate*

The affected Party shall, at its own cost, take all steps reasonably required to restore its ability to perform its obligations under this Agreement which are affected by a Force Majeure Event, and shall continue to perform its obligations under this Agreement insofar as they are not so affected. This Clause 30.3 shall not oblige the affected Party to settle any labour dispute.

### 30.4 *Delay Caused by a Force Majeure Event*

Upon the occurrence, and during the continuance of a Force Majeure Event, and the effects thereof:

- 30.4.1 subject to Clause 30.2.3, the affected Party shall not be liable for any failure or delay in performing its obligations (other than an obligation to make a payment, save in respect of a payment of the Concession Fees) under or pursuant to this Agreement to the extent that such failure or delay in performance has been caused or contributed to by one or more Force Majeure Event(s), or its or their effects, or by any combination thereof; and
- 30.4.2 the following shall be extended Day-for-Day for as long as the affected Party is unable to comply, or is delayed in complying, with its obligations hereunder because of the occurrence of, or the effects of that Force Majeure Event:
- (a) the time limits and deadlines for the performance by the affected Party of its obligations under this Agreement which are affected by such Force Majeure Event; and
  - (b) the time limits and deadlines for completion of the Priority Works and the Rehabilitation Works provided in Clause 14.2,

provided, however, that no relief, including without limitation, the extension of performance deadlines and the Term, shall be granted to the affected Party pursuant to this Clause 30.4 to the extent that such failure or delay in performance arises as a result of a failure by the affected Party to comply with its obligations under Clause 30.3 or would have nevertheless been experienced by the affected Party had the Force Majeure Event not occurred. Other than for breaches of this Agreement by the other Parties, and subject to the provisions of Clause 30.5 and Clause 34, the other Parties shall not bear any liability for any loss or expense suffered by the affected Party as a result of a Force Majeure Event or its effects.

### **30.5 Restoration**

- 30.5.1 In the event that, as a result of one or more Force Majeure Event(s), or its or their effects or by any combination thereof, the rehabilitation, development or operation of the Port or any part thereof is affected and is not restored or remedied within thirty (30) Days following the date that the Company becomes aware of the Force Majeure Event(s), then the Parties shall meet to enter into discussions in order to agree the nature of the FM Restoration with the intent that such FM Restoration can be completed as soon as possible after the cessation of the relevant Force Majeure Event(s).
- 30.5.2 Subject to Clause 30.5.3 and 30.5.4, the Company shall proceed with the FM Restoration. The cost of the FM Restoration shall be the sole responsibility of the Company and no compensation shall be payable by the Conceding Authority to the Company in respect of any damage to the Port as a result of that Force Majeure Event. The Term shall be extended Day-for-Day for so long as the affected Party is unable to comply or is delayed in complying with its obligations hereunder because of the occurrence of, or effects of, that Force Majeure Event.
- 30.5.3 If restoration or remedying of the construction or operation of the Port, as required by Clause 30.5.1, is not technically feasible or, taking into account the insurance proceeds the Company is entitled to receive in respect of any loss or damage to the Port as a result of the relevant Force Majeure Event(s), and any additional finance the Company is able to raise, is not financially viable, then the Company shall have the right to terminate this Agreement (by delivering a Termination Notice to the other Parties, in which case the Company shall not be entitled to any compensation from the Conceding Authority. This provision does not prejudice what is established in Clause 34.2.
- 30.5.4 Where the Company is prevented from complying with its obligations under this Agreement as a result of one or more Force Majeure Event(s) or its or their effects or by any combination thereof, for a

continuous period of one hundred and eighty (180) Days, then any Party shall have the right to terminate this Agreement (by delivering a Termination Notice to the other Parties). Upon any such termination the Company shall not be entitled to any compensation from the Conceding Authority in respect of such termination. This provision does not prejudice what is established in Clause 34.2

### **30.6 *Restoration Consents***

Notwithstanding any provision to the contrary, the Company shall not be obliged hereunder to proceed with any FM Restoration unless and until the Company has received all necessary Additional Consents and renewals of existing Consents in connection therewith in accordance with Clause 9. If the Company does not receive any of such Additional Consents or renewals of Consents for any reason (other than an act, omission or default of the Company) within six (6) Months after the date that the Company becomes obliged to proceed with the relevant FM Restoration, then either the Conceding Authority or the Company shall have the right to terminate this Agreement (by delivering a Termination Notice to the other). Upon any such termination, the provisions of Clause 34.4.1 or (as the case may be) Clause 34.4.2 shall apply.

## **31. CHANGE IN CIRCUMSTANCES**

### **31.1 *Definition***

31.1.1 A Change in Circumstances shall mean a significant change in the circumstances upon which the Parties based their decision to enter into this Agreement, which was not foreseeable at the Agreement Date, and which was not caused by, or contributed to by, any act or default of any Party, and in respect of which, had the Parties been aware prior to the execution of this Agreement that such Change in Circumstances would arise, they would not have entered into this Agreement on the basis that such Change in Circumstances would have adversely affected the relevant Party's ability to carry out its obligations and duties hereunder or would have adversely affected the Referential Financial Balance.

31.1.2 A delay in the performance of any Contractor which results directly from any Change in Circumstances shall itself constitute a Change in Circumstances to the extent that it satisfies the requirements for a Change in Circumstances specified in Clause 31.1.1.

### **31.2 *Obligations of the Parties following Change in Circumstances***

31.2.1 The Parties shall, at their own cost, take all steps reasonably required to restore its ability to perform its obligations under this Agreement which are affected by a Change in Circumstances, and shall continue

to perform its obligations under this Agreement insofar as they are not so affected.

31.2.2 Within ten (10) Days of the occurrence of a Change in Circumstances, the Parties shall meet and shall, following a fifteen (15) Day period of consultation, take all adequate measures to restore:

- (a) the ability of the relevant Party to carry out its obligations and duties affected by the Change in Circumstances, and
- (b) the Referential Financial Balance.

31.2.3 In the event that the Parties do not reach an agreement within the fifteen (15) Day period referred to in Clause 31.2.2 on the fact that the Referential Financial Balance is adversely affected or on the nature or extent of the measures to be taken by the Parties in accordance with Clause 31.2.2, the Conceding Authority and the Company agree that such a dispute shall be submitted to an expert. For the avoidance of doubt, any such dispute shall not constitute a Dispute and the provisions of Schedule 4 shall apply, save for the fact that any recommendation of the expert shall be final and binding on the Parties. Any failure by the Conceding Authority and the Company so to agree to terminate this Agreement is without prejudice to the provisions of Clause 31.3.

### **31.3 *Termination by the Company after 180 Days***

Notwithstanding anything herein to the contrary, in the event of:

- 31.3.1 the occurrence of a Change in Circumstances that continues for a period exceeding one hundred and eighty consecutive (180) Days (not including the effects thereof);
- 31.3.2 a series of related Changes in Circumstances that continue in the aggregate for a period that exceeds one hundred and eighty (180) consecutive Days (not including the effects thereof) during any Year,

the Company shall have the option to terminate this Agreement after such one hundred and eighty (180) Day period by delivering a Termination Notice to the Conceding Authority and, upon such termination, the provisions of Clause 34.3 shall apply.

## **32. RELEVANT TAXES, CHANGES IN RELEVANT TAX AND CHANGES IN COSTS**

### **32.1 *Taxes Applicable to the Company***

The Conceding Authority acknowledges that the Project and the Company's execution of this Agreement is based upon assumptions and concessions as to the application and rates of Relevant Taxes to be borne by the Company and the Contractors.

### **32.2 *Changes in Relevant Tax***

If, after the Agreement Date as a result of any application of Relevant Taxes in Mozambique which differs from the assumptions established in the Dispatch approving the investment project or otherwise the Company becomes obliged to pay or commences indirectly to bear any Relevant Taxes which as at the Agreement Date did not exist or did not affect the Company, or incurs any increase in cost because the rate of any Relevant Taxes which the Company was obliged to pay or to indirectly bear as at the Agreement Date is subsequently increased (each such event or circumstance constituting a Change in Relevant Tax); then Clauses 32.3 to 32.6 (inclusive) shall apply.

### **32.3 *Notice of Change***

The Company shall give to the Conceding Authority full details of the existence of any Change in Relevant Tax as soon as practicable after it becomes aware of it, including the amount of and date any payment is due.

### **32.4 *Reimbursements***

Subject to the provisions of Clause 32.2, if the Company by notice to the Conceding Authority so elects, the Conceding Authority shall pay or cause to be paid (by the date the Company is due to pay the Change in Relevant Tax as notified in Clause 32.3 above) an amount equal to all additional costs, payments, expenses and disbursements incurred or made by the Company as a result of such Change in Relevant Tax. If such payment is not paid, the Company shall be authorised to deduct the same amount from (i) any outstanding amount owed by the Company to the Conceding Authority; or (ii) in the event that any of the Concession Fees payable in that Year or any succeeding Year refer to extension of the Term/expansion of opportunity until such payment has been met in full.

### **32.5 *Appropriate Endeavours***

The Company shall use all appropriate endeavours to minimise the effects of any Change in Relevant Tax under Clause 32.2 provided, however, that:

- 32.5.1 the Company shall not thereby be obliged to alter the manner in which the Port is operated or maintained by it; and
- 32.5.2 the Company shall not thereby be obliged to incur any expenditure or any actual or potential loss or to forego any actual or potential benefit or savings.

### **32.6     *Dispute Resolution***

If there is any difference or dispute between the Parties in connection with any adjustments which fall to be made under this Clause 32, the matter shall be resolved in accordance with the procedures set out in Schedule 4.

## **33.     TERMINATION**

### ***Termination by the Conceding Authority for Company Default***

33.1 Each of the following events shall be an event of default by the Company (each a “Company Event of Default”), which, if not cured within the time period permitted (if any) to cure, shall give rise to the right on the part of the Conceding Authority to terminate this Agreement pursuant and subject to Clause 33.3; provided, however, that no such event shall be a Company Event of Default (i) if it results from a breach by the Conceding Authority and/or CFM of this Agreement; (ii) if it occurs as a result of a Force Majeure Event; (iii) if it occurs as a result of a Change in Circumstances; or (iv) if it occurs as a result of an act or omission of the Conceding Authority and/or CFM:

33.1.1 the failure of the Company to achieve the Date of Operations within one (1) Year from the Agreement Date;

33.1.2 the abandonment by the Company of the performance of its obligations under Clauses 11.2 and 11.3 of this Agreement either to construct, operate or maintain the Port for a period of thirty (30) consecutive Days, without prior notice to, and the prior written consent of the Conceding Authority; provided however, that the Company shall not be deemed to have ceased to carry out such obligations so long as it is doing all it reasonably can in the circumstances to resume its performance;

33.1.3 save as may be permitted by this Agreement, the assignment or transfer of any of the Company’s rights or obligations in relation to the Assets without obtaining the prior written consent of the Conceding Authority or the transfer, conveyance, loss or relinquishment of the Company’s right to carry out the Project or any material part thereof to any person (other than where required by the Conceding Authority or any Public Sector Entity) without the prior written approval of the Conceding Authority;

33.1.4 except for the purpose of amalgamation or reconstruction of the Company’s Share Capital (provided, that such amalgamation or reconstruction of the Company’s Share Capital does not affect the ability of the amalgamated or reconstructed entity, as the case may be, to perform its obligations under this Agreement), the occurrence of any of the following events:

- (i) the passing of a resolution by the shareholders of the Company for the dissolution or winding up of the Company;
  - (ii) the voluntary filing by the Company of a petition of bankruptcy, moratorium or other similar relief;
  - (iii) the appointment of a provisional liquidator for the winding up of the Company after notice to the Company and due hearing, which appointment has not been set aside or stayed;
  - (iv) the making by a court with jurisdiction over the Company of an order winding up the Company that is not stayed or reversed by a court of competent jurisdiction;
  - (v) the dissolving of the Company; or
  - (vi) the Company ceasing, or threatening to cease, to carry on business; or
  - (vii) any event analogous to those in (i) to (vi) above;
- 33.1.5 a failure to commence any action required for compliance with any final decision reached as a result of mediation or arbitration in accordance with Schedule 4 within a period established between the Parties or by the arbitrator or mediator in accordance with Schedule 4.
- 33.1.6 any statement, representation, or warranty by the Company in this Agreement proving to have been incorrect, in any material respect, when made or when deemed to have been made and such failure or incorrect statement, representation, or warranty having a material and adverse effect on the Company's ability to perform its obligations under this Agreement;
- 33.1.7 any material breach by the Company of any its obligations under this Agreement (other than as a result of inadvertent mistake arising in good faith) which is not capable of remedy or, if capable of remedy, is not remedied within sixty (60) Days after notice from the Conceding Authority giving reasonable details of the nature of the breach and demanding remedy thereof, or within such longer period which the Parties agree is reasonable to remedy such breach.

### **33.2 *Termination by the Company for Default by the Conceding Authority***

Each of the following events shall be an event of default by the Conceding Authority (each a "Conceding Authority Event of Default"), which, if not cured within the time period permitted (if any) to cure shall give rise to the

right on the part of the Company to terminate this Agreement pursuant to Clause 33.3.1; provided, however, that no such event shall be a Conceding Authority Event of Default (i) if it results from a breach by the Company of this Agreement, or (ii) if it occurs as a result of a Force Majeure Event, or (iii) if it occurs as a result of a Change in Circumstances, or (iv) if it occurs as a result of an act or omission of the Company:

- 33.2.1 the expropriation, compulsory acquisition, or nationalisation by GOM, or any Government Entity of (i) any shares in the Company, or (ii) any material asset or right of the Company (except as provided under Clause 34.2);
- 33.2.2 save as provided in Clause 28.1, the reorganisation or reconstruction of the Conceding Authority where all of the Conceding Authority's obligations under this Agreement are not assigned pursuant to law, or contractually assumed by the entity or entities which own(s) and/or (as the case may be) operate(s) the undertaking of the Conceding Authority in succession to the Conceding Authority, which entity or entities have the technical capability, creditworthiness and operating experience sufficient to perform the obligations under this Agreement which it/they will thereby assume;
- 33.2.3 save as provided in Clause 28.1, the dissolution, pursuant to law, of CFM which adversely affects the performance of the Company of its rights and obligations under this Agreement and/or adversely affects the financial viability of the Project, except for a dissolution, amalgamation, reorganisation, reconstruction or privatisation where all of CFM's obligations under this Agreement are assigned pursuant to law to, or contractually assumed by, GOM (or its designee) or a Government Entity;
- 33.2.4 any material breach by either the Conceding Authority or any Public Sector Entity of any of their respective obligations under this Agreement (other than as a result of inadvertent mistake arising in good faith) which is not capable of remedy or which, if it is capable of remedy, is not remedied within sixty (60) Days after notice from the Company, giving reasonable details of the breach and demanding remedy thereof or within such longer period which the Parties agree is reasonable to remedy such breach;
- 33.2.5 any Change in Law or Change in Relevant Tax (i) making unenforceable, invalid, or void any material obligation of the Conceding Authority under this Agreement, or (ii) making it unlawful for the Company, the Contractors, the Lenders or the Investors to make or receive any payment, to perform any material obligation or to enjoy or enforce any material right under this Agreement or any other document in the Security Package;



- 33.2.6 any Change in Law or Change in Relevant Tax which places any material restrictions or limitations (beyond those restrictions or limitations that are in existence prior to such change) on the ability of the Company to carry out any of its rights, obligations or commitments under this Agreement or in relation to the Project in Foreign Currency, including payments and remittances abroad, or on the ability of the Foreign Investors to repatriate any dividends (or distributions of capital not arising in connection with a breach of this Agreement) from the Company to the Foreign Investors, or on the ability of the Foreign Investors to receive other payments in Foreign Currency, which restrictions or limitations remain in place for more than one hundred and eighty (180) Days without an arrangement being provided which causes such restrictions or limitations not to adversely affect the Company or its Foreign Investors;
- 33.2.7 events or circumstances or any combination of events and/or circumstances of the following types that occur inside the Republic of Mozambique:
- (a) any riot, insurrection, civil commotion, act or campaign of terrorism from a source inside the Republic of Mozambique or act of a political nature, such as, by way of example and not limitation, actions associated with or directed against the Company (or the Contractors) for which GOM has the responsibility to combat, avoid or deal with, and has failed so to do, which materially affects the performance of only the Company of its rights and obligations under this Agreement and/or has an adverse effect on the financial viability of only the Project;
  - (b) a Lapse of Consent that:
    - (i) shall itself have existed for twenty-six (26) Days or more; or
    - (ii) together with any and all other Lapses of Consent that have occurred in the same Year, shall have existed in the aggregate for thirty (30) Days or more in such Year; or
    - (iii) together with any and all other Lapses of Consents that have occurred in the same Year and in the two (2) immediately preceding Years, shall have existed, in the aggregate, for thirty-five (35) Days or more;
  - (c) any strike, work-to-rule or go-slow which materially affects the performance of only the Company of its rights and obligations under this Agreement, or which has an adverse effect on the

financial viability of only the Project, or which has an adverse effect on the performance of only the Company of its rights and obligations under this Agreement and the financial viability of only the Project and which:

- (i) is not primarily motivated by a desire to influence the action of an enterprise so as to preserve or improve conditions of employment; or
- (ii) is by the employees of any Public Sector Entity in response to the coming into force, modification, repeal or change in the interpretation of any Laws of Mozambique after the date of this Agreement;

33.2.8 any Change in Law, or any direct effects resulting from any Change in Law, any or all of which materially affect the performance of the Company of its rights and obligations under this Agreement and/or have an adverse effect on the financial viability of the Project;

33.2.9 the imposition of import controls or duties which are materially more onerous than those imposed on the Company, under the terms of this Agreement;

33.2.10 any of:

- (i) the revocation or termination of the Special Licence (other than where such revocation or termination is due to an act, omission or default of the Company or the Contractors); or
- (ii) any unlawful act or omission by any Public Sector Entity; or
- (iii) failure by the grantor of the Special Licence to observe the terms and conditions thereof,

which results in the Port Concession Area ceasing to be available to the Company;

33.2.11 a revocation of any of the Licences required under this Agreement;

33.2.12 a failure by the Conceding Authority to issue the Concession Approval Decree or Investment Project Authorisation, or both (as the case may be), in a form which is acceptable to the Company and which allows the performance of the rights and obligations of the Company hereunder; and

- 33.2.13 any approval or authorisation by GOM of any development of the Port Jurisdiction Area which is in conflict with the principles set out in Clauses 4.3 and 4.4.

### **33.3 Termination Notices**

- 33.3.1 Upon the occurrence of a Conceding Authority Event of Default or a Company Event of Default, as the case may be, that is by its nature not capable of remedy, or which, if it is capable of remedy, is not cured within the applicable period for cure if any, the non-defaulting Party may, at its option, initiate termination of this Agreement by delivering a notice (a “Notice of Intent to Terminate”) of its intent to terminate this Agreement to the defaulting Party. The Notice of Intent to Terminate shall specify in sufficient detail the Company Event of Default or Conceding Authority Event of Default, as the case may be, giving rise to such notice.
- 33.3.2 Following the delivery of a Notice of Intent to Terminate, the Conceding Authority and the Company shall consult for a period of up to forty-five (45) Days in case of the Event of Default being a failure by either Party to make payments when due, and up to ninety (90) Days with respect to any other Event of Default (or such longer period as the Conceding Authority and the Company may mutually agree), as to what steps shall be taken with a view to mitigating the consequences of the relevant Event of Default taking into account all the circumstances. During the period following the delivery of the Notice of Intent to Terminate, the Party in default may continue to undertake efforts to cure the default (if it is capable of being remedied), and if the default is cured at any time prior to the delivery of a Termination Notice in accordance with Clause 33.3.3, then the non-defaulting Party shall have no right to terminate this Agreement in respect of such cured default.
- 33.3.3 Subject to the provisions of Clause 33.4, upon expiration of the consultation period described in Clause 33.3.2 and unless the Conceding Authority and the Company shall have otherwise agreed or unless the Event of Default giving rise to the Notice of Intent to Terminate shall have been remedied, the Party which gave the Notice of Intent to Terminate may terminate this Agreement by delivering a Termination Notice to the other Party, whereupon this Agreement shall immediately terminate and Clause 34 shall apply.

### **33.4 Other Remedies**

- 33.4.1 Subject to Clause 33.4.2, the exercise of the right of a Party to terminate this Agreement, as provided herein, does not preclude the Party from exercising other remedies that are provided herein or are available under the Laws of Mozambique. Remedies are cumulative,

and the exercise of, or failure to exercise; one or more remedy by a Party shall not limit or preclude the exercise of or constitute a waiver of any other remedies by that Party, provided that no Party shall have any right to terminate this Agreement other than in accordance with the express provisions of this Agreement.

33.4.2 If the Company exercises its option to transfer the Port to the Conceding Authority or its designee pursuant to Clause 34.1.2 following a Conceding Authority Event of Default, it shall have no other remedy in respect of that Event of Default, other than to be paid the Conceding Authority Default Amount.

### **34. RIGHTS AND OBLIGATIONS OF PARTIES UPON TERMINATION**

#### **34.1 *Termination following an Event of Default***

##### **34.1.1 *Company Event of Default***

In the event that the Conceding Authority terminates this Agreement under Clause 33.1 as a result of a Company Event of Default, then the Company shall hand back the Conceded Assets, and those Company Assets purchased with monies drawn down pursuant to the Financing Documents which debt remains outstanding to the Lenders on the date of termination pursuant to this Clause 34.1.1, to the Conceding Authority, offer for sale to the Conceding Authority, at the Company's option, any other Company Assets not referred to above in this Clause 34.1.1, surrender the Special Licence and assign the Contracts to the Conceding Authority or its designees and the Conceding Authority shall pay to the Company the Company Default Amount.

##### **34.1.2 *Conceding Authority Event of Default***

In the event that the Company terminates this Agreement under Clause 33.2 as a result of a Conceding Authority Event of Default, then the Conceding Authority or its designees shall, take back the Conceded Assets and those Company Assets purchased with monies drawn down pursuant to the Financing Documents which debt remains outstanding to the Lenders on the date of termination pursuant to this Clause 34.1.2, have the option to purchase, at the Company's option, any other Company Assets not referred to above in this Clause 34.1.2, and shall pay to the Company the Conceding Authority Default Amount and shall assume all of the obligations of the Company pursuant to the Contracts.

#### **34.2 *Termination Following a Force Majeure Event***

If following a Force Majeure Event, either the Company terminates this Agreement in accordance with Clause 30.5.3 or any Party terminates this Agreement in accordance with Clause 30.5.4, then the Company shall transfer the Port to the Conceding Authority, or its designee, for the Force Majeure Amount.

### **34.3 *Termination Following a Change in Circumstances***

If following a Change in Circumstances pursuant to Clause 31.3, the Company terminates this Agreement by delivering a Termination Notice to the Conceding Authority, then the Company shall transfer the Port to the Conceding Authority or its designee for the Change in Circumstances Amount.

### **34.4 *Termination Following Failure to Obtain Consents***

34.4.1 Subject to Clause 34.4.2, if this Agreement is terminated pursuant to Clause 30.6 as a result of the Company's inability to obtain a necessary Additional Consent or renewal of an existing Consent due to a default by the Conceding Authority, then the Company shall, at its option, transfer the Port to the Conceding Authority or its designee for the Conceding Authority Default Amount.

34.4.2 If this Agreement is terminated pursuant to Clause 30.6 as a result of the Company's inability to obtain a necessary Additional Consent or renewal of an existing Consent and where such inability arose due to a default by the Company, then the Company shall transfer the Port to the Conceding Authority or its designee for the Company Default Amount.

### **34.5 *Handback Notice***

The Conceding Authority and the Company may exercise any option they have under this Clause 34 to terminate this Agreement and to require the transfer of the Port by giving the Transfer Notice to the other Party at any time within sixty (60) Days after the Day on which this Agreement is terminated.

### **34.6 *Transfer Procedures***

When a Transfer Notice is issued, the Parties will follow the procedures set out in Schedule 11 to effect the transfer of the relevant Assets to the Conceding Authority or its designee.

### **34.7 *Obligations Upon Termination***

Upon the expiration or earlier termination of this Agreement, the Parties shall have no further obligations or liabilities hereunder except for obligations or liabilities that arose prior to or arise upon such expiration or termination and obligations or liabilities that expressly survive such expiration or termination pursuant to this Agreement, provided, however, that notwithstanding anything to

the contrary in this Agreement, the rights and obligations set out in Clause 22 (Liability), Clause 27 (Foreign Currency Exchange and Transfer of Funds), Clause 34 (Rights and Obligations of the Parties upon Termination), Clause 35 (Governing Law and Resolution of Disputes) and the Schedules to this Agreement referred to in such Clauses shall survive such termination or expiration until all provisions are fulfilled and all funds payable hereunder by the Conceding Authority and CFM to the Company upon the sale or other disposal of the Assets related to the Project are so paid.

#### **34.8     *Restriction on the Conceding Authority***

The Conceding Authority shall not be entitled to exercise its rights or perform its obligations to transfer any part of the Port pursuant to this Clause 34 and the provisions of Schedule 11 following a Force Majeure Event, a Change in Circumstances or a Conceding Authority Event of Default if the Company can demonstrate that such event was instigated by the Conceding Authority primarily so as to procure such transfer.

### **35.     GOVERNING LAW AND RESOLUTION OF DISPUTES**

#### **35.1     *Governing Law***

This Agreement and the rights and obligations of the Parties hereunder shall be governed by and construed in accordance with the Laws of Mozambique.

#### **35.2     *Dispute Resolution by Parties***

Save as otherwise may be provided in this Agreement, any dispute or difference between the Parties arising out of or in connection with this Agreement shall be resolved in accordance with the provisions contained in Schedule 4.

### **36.     MISCELLANEOUS PROVISIONS**

#### **36.1     *Primacy of the Concession Agreement***

This Agreement shall govern all aspects of, and all contractual relationships relating to, the Project as between the Parties. The Company shall ensure that the provisions of all agreements relating to the Project are consistent with the terms hereof. In the event of conflict between this Agreement and any agreement on a matter affecting the Parties, including all questions of interpretation, this Agreement shall prevail.

#### **36.2     *Variations in Writing***

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

### **36.3 *Entire Agreement***

This Agreement, including the Schedules attached hereto, represents the entire agreement between the Parties in relation to the subject matter thereof and supersedes any or all previous agreements or arrangements, whether oral or written, between the Parties in respect of the Project, the Port and the Concession Rights or the other contents of this Agreement.

### **36.4 *Severability***

If any part or parts of this Agreement are agreed by the Parties or declared by any competent tribunal to be invalid, the other parts shall remain valid and enforceable.

### **36.5 *Non-Waiver***

None of the provisions of this Agreement shall be deemed waived by either party except when such waiver is given in writing. The failure by any Party to insist upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights under this Agreement shall not be construed as a waiver of any such provisions or the relinquishment of any such rights for the future.

### **36.6 *Interest***

Any Party in default of payment of any amount due hereunder shall pay interest thereon at [a rate calculated as 2 % above the Base Rate. Such interest shall be computed on a daily basis (on the basis of a 365 Day Year) from and including the Day after the due date payment until but excluding the date when the relevant amount together with accrued interest is fully paid by the defaulting Party.

### **36.7 *Representatives***

36.7.1 The Conceding Authority has appointed Mr. Tomás Augusto Salomão to be the Conceding Authority's representative during the Term.

36.7.2 CFM has appointed Mr. Rui Fonseca to be its representative during the Term.

36.7.3 The Company has appointed Mr. Tim Hansford to be its representative during the Term.

36.7.4 Each Party shall give to the other Parties written notice of its intention to change its representative and the date upon which such change is

proposed to have effect, which date shall not be earlier than two (2) Months after the date of the notice. If the other Parties do not object to such change within twenty-eight (28) Days of this notice, the appointment shall be confirmed.

### **36.8 Notices**

Unless otherwise stated, notices to be given under this Agreement shall be in both Portuguese and English, in writing and shall be given by hand delivery, recognised international courier, mail, telex or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below:

The Conceding Authority:

MINISTÉRIO DOS TRANSPORTES E COMUNICAÇÕES  
Attention: General-Secretary, Mr. David Abílio Portimão  
Rua Mártires de Inhaminga, nº 336, 10<sup>th</sup> floor  
Telephone: (00) 42 62 36  
Fax: (00) 43 15 39  
Postal Box 276

Company:

MPDC – SOCIEDADE DE DESENVOLVIMENTO DO PORTO DE  
MAPUTO S.A.R.L.

Rua João de Barros n. 127, Maputo  
Attention: Mr. Tim Hansford

Telephone: (01) 31 20 62/5  
Fax: (01) 49 76 99  
Telex: [ ]

CFM:

PORTOS E CAMINHOS DE FERRO DE MOÇAMBIQUE E.P.  
Praça dos Trabalhadores, Maputo, Moçambique  
Attention: Mr. Rui Fonseca, Chairman of the Board of Directors  
Telephone: (01) 43 17 06/7  
Fax: (01 42 77 46)  
Telex: [ ]

or such other address, attention, telex number, or facsimile number as may be notified by that Party to the other Party from time to time, and shall be deemed to have been made or delivered (i) in the case of any communications made by



letter, when delivered by hand, by recognised international courier or by mail (registered, return receipt requested) at that address and (ii) in the case of any communications made by telex or facsimile, when transmitted properly addressed to such telex number or facsimile number.

### **36.9 *Language***

This Agreement is made in the Portuguese and English languages. In the event of differences between the two, the Portuguese language version shall prevail.

**This Agreement is hereby executed by the authorized representatives of the Parties:**

**In representation of the GOM:**

---

**Tomáz Augusto Salomão**  
(Minister of Transports and Communications)

**In representation of CFM, E.P.:**

---

**Rui Cirne Plácido de Carvalho Fonseca**  
(Chairman of the Board of Directors)

---

**Miguel José Matabel**  
(Executive Director)

**In representation of MPDC – Sociedade de Desenvolvimento do Porto de Maputo S.A.R.L.:**

---

**Rui Cirne Plácido de Carvalho Fonseca**

48463.01

(Chairman of the Board of Directors of CFM E.P.)

---

**Miguel José Matabel**

(Executive Director of CFM E.P.)

---

**Ken Wharton**

(Representative of Maputo Bay Development Company Limited)

## SCHEDULE 1

### Consents and Authorizations

Document	Relevant Authority	Laws of Mozambique
<p>Temporary licence for:</p> <p>1) non-mozambican companies performing activities as building constructing companies (contractors) for public works to be executed in accordance with a public tender and within the scope of a concession</p> <p>2) non-mozambican companies performing activities as building constructing companies (contractors) for public works selected within the Investment Project as per Law n° 3/93 dated June 24<sup>th</sup> 1993</p> <p>3) Foreign sub-Contractors for a period not exceeding 6 months</p>	<p>Authorisation by the Minister for Public Works and Housing;</p> <p>and</p> <p>Granting of a temporary licence by the Committee in charge of the Enrolment and Classification of the Building Constructing Companies - <i>Comissão de Inscrição e Classificação de Empreiteiros</i></p>	<p>Decree n° 68/99 dated October 5<sup>th</sup> 1999</p>
<p>Definitive Licence/<i>alvará</i> for Mozambican building constructing companies (contractors) for public works</p>	<p>Granting of a definitive licence – <i>Alvará</i> - by the Committee in charge of the Enrolment and Classification of the Building Constructing Companies – <i>Comissão de Inscrição e Classificação de Empreiteiros</i></p>	<p>Decree n° 68/99 dated October 5<sup>th</sup> 1999</p>
<p>Enrolment of the technicians (engineers and architects) employed by building constructing companies (contractors) for public works.</p>	<p>Committee in charge of the Enrolment and Classification of the Building Constructing Companies – <i>Comissão de Inscrição e Classificação de Empreiteiros</i></p>	<p>Decree n° 68/99 dated October 5<sup>th</sup> 1999</p>

Stevedoring Licence for the Contractors	Ministry of Transports and Communications – National Marine and Port Directorate	Decree n° 5/98 dated February 24 <sup>th</sup> 1998
Environmental Licence	Ministry for the Co-ordination of Environmental Action	Decree n° 76/98 dated December 29 <sup>th</sup> 1998
Licence for the establishment of Electrical facilities	Ministry for Mineral Resources and Energy – National Energy Directorate	Decree n° 27 071 dated October 7 <sup>th</sup> 1936 and its Enforcement Diploma, and Provincial Decree n° 67/74 dated August and its Enforcement Diploma
Licence for the exploitation of Electrical facilities	Ministry for Mineral Resources and Energy – National Energy Directorate	Decree n° 27 071 dated October 7 <sup>th</sup> 1936 and its Enforcement Diploma, and Provincial Decree n° 67/74 dated August 1974 and its Enforcement Diploma
Authorisation of the Labour Contract	Prior positive statement by the Ministry of Transports and Communications; and subsequent authorisation by the Labour Ministry	Law n° 8/98 dated July 20 <sup>th</sup> 1998 and Decree n° 25/99 dated May 24 <sup>th</sup> 1999
Permission of work (for those exercising management and direction functions)	Prior positive statement by the Ministry of Transports and Communications; and subsequent authorisation by the Labour Ministry	Law n° 8/98 dated July 20 <sup>th</sup> 1998 and Decree n° 25/99 dated May 24 <sup>th</sup> 1999
Working Visa	Mozambican Embassy/Consulate	Decree n° 26/99 dated May 24 <sup>th</sup> 1999
License for the private use of public waters	Ministry for Public Works and Housing – National Water Directorate	Law n° 16/91 dated August 31 <sup>st</sup> 1991
Declaration of commencement of activity of the Company	City Labour Directorate and National Institute of Social Insurance/Pension	Law n° 8/98 dated July 20 <sup>th</sup> 1998
Approval of 1) Timetable 2) Personnel 3) Internal Regulation	1) City Labour Directorate 2) Approval by the Labour Ministry 3) Approval by the Labour Ministry	Law n° 8/98 dated July 20 <sup>th</sup> 1998

Enrolment of MPDC and its employees at the National Institute of Social Insurance/Pension	City Labour Directorate and National Institute of Social Insurance/Pension	Law n° 8/98 dated July 20 <sup>th</sup> 1998 and Ministerial Diploma n° 45/90 dated May 9 <sup>th</sup> 1990
Authorisation for the constitution of private pension schemes complementary to the social insurance/pension scheme		Law n° 8/98 dated July 20 <sup>th</sup> 1998
Registration of the authorised Investment Project	Central Bank/ Bank of Mozambique	Law n° 3/96 dated January 4 <sup>th</sup> 1996 and its Regulation n° 5/66BM/96
Authorisation for the Import and Export of private capitals as defined in art. 18 of the Foreign Exchange Law's Regulation (ie, foreign loans)	Central Bank/ Bank of Mozambique	Law n° 3/96 dated January 4 <sup>th</sup> 1996 and its Regulation n° 5/66BM/96
Document evidencing the discharge of investment and tax obligations for the authorisation for the transfer of net profits or dividends	Ministry of Planning and Finance	Law n° 3/96 dated January 4 <sup>th</sup> 1996 and its Regulation n° 5/66BM/96
Authorisation for the transfer of net profits or dividends	Central Bank/ Bank of Mozambique	Law n° 3/96 dated January 4 <sup>th</sup> 1996 and its Regulation n° 5/66BM/96
Request for the issuance of a registration bulletin for import/export operations of goods and services and for the transfer of the expatriate's salaries over 5.000,00 USD	Central Bank/ Bank of Mozambique	Law n° 3/96 dated January 4 <sup>th</sup> 1996 and its Regulation n° 5/66BM/96
Approval and subsequent registration	Ministry of Planning and Finance;	Law n° 3/96 dated January 4 <sup>th</sup> 1996 and its Regulation

of the Technical Assistance Service Agreements with foreign companies	And Central Bank	n° 5/66BM/96
---	------------------	--------------

## **SCHEDULE 2**

### **Arrangements for the transfer of responsibility**

#### **Transfer of Responsibility Committee**

As from 00.01 on the Date of Operations the Company will take legal and operational responsibility for the Port Concession Area.

Three (3) Months prior the Date of Operations, or at an earlier date if the Company and CFM jointly agree, a Transfer of Responsibility Committee (the “TR Committee”) will be constituted to over-see the responsibilities outlined below.

This TR Committee, where the decisions will be taken by simple majority, will comprise four (4) representatives from the Company and four (4) from CFM, plus any co-opted members considered necessary. The Independent Inspector and the Independent Auditor (jointly funded and acceptable to both the Company and CFM) will be co-opted onto this TR Committee on an as required basis.

#### **Revenue and Costs**

All periodical charges and out-goings of the Port, including but not limited to electricity, water, telephone charges, licence fees and royalties, insurance premiums and all liabilities in relation to salaries, wages, accrued holiday pay, national insurance, pension contributions and all other payments to or in respect of the Transferring Employees, shall be apportioned on a time basis so that such part of the relevant charges attributable to the period ended on the day prior to the Date of Operations shall be borne by CFM, and such part of the relevant charges attributable to the period commencing on the Date of Operations shall be borne by the Company. All rents, licence fees, royalties, payment for Port Services and other similar sums receivable in respect of Port Services shall be apportioned between CFM and the Company on the same basis.

Prior to the Date of Operations the TR Committee shall agree a time and methodology for apportioning all costs and income due, the time shall as far as practicable coincide with the commencement of the Date of Operations (the “Transfer Point”).

CFM will be responsible for the collection of any monies due to them for services provided up to the Transfer Point, and CFM will be liable and take administrative responsibility for any claims resulting from services provided up to the transfer point. Any monies collected by the Company in relation to services provided by CFM up to the Transfer Point shall be reimbursed to CFM.

All pre-payments made to CFM for services to be provided after the Transfer Point shall be recorded and credit passed to the Company.

The TR Committee will assume responsibility for ensuring that all Agents deposits bonds etc. are adequate to meet both interim CFM needs and the requirements of the Company at the commencement of the Date of Operations.

48463.01

CFM will be responsible for settling accounts for any services or goods supplied up to the Transfer Point.

### **Fixed Assets and Inventory**

The TR Committee shall assume responsibility for producing and overseeing the auditing of the Company Fixed Asset Register and the record and valuation of the Conceded Assets, as specified in Clause 5.11 of this Agreement and will oversee the transfer/lease/sale of these assets prior and post the Date of Operations. In addition CFM shall provide an inventory list of all stocks and consumables, which the TR Committee shall verify by means of a stock take. This will enable the generation of an agreed stock record and valuation of the stock and consumables transferring to the Company.

### **Personnel**

The TR Committee shall agree the timing of the transfer of personnel to the employment of the Company, in accordance with Clause 7 of this Agreement. The transfer shall be at the commencing shift nearest to the Transfer Point. CFM will be responsible for all CFM Employee payments and benefits up to and including the last shift prior to the Transfer Point.

### **Utilities, Services etc.**

The TR Committee shall assume responsibility for arranging the reading of meters, the apportionment of telephone accounts, etc and the calculation of charges payable by CFM up to the Transfer Point and by the Company from the Transfer Point.

### **Work in Progress**

#### **Civils**

To simplify the transfer arrangements CFM should be encouraged to limit major works to those which can be completed prior to the Date of Operations. Any work in progress at the time of the transfer will be identified by the Committee and the Independent Inspector, and costs will be apportioned on an agreed basis, taking account of any contract commitment entered into by CFM, the quality of work undertaken and expected completion costs and timescale.

#### **Plant**

CFM should not undertake any major refurbishment work which cannot be completed prior to the Date of Operations.

Maintenance or refurbishment of plant on-going at the Date of Operations must be the responsibility of CFM to complete to the Company's satisfaction.

The TR Committee and the Independent Inspector shall also, commencing two (2) months prior to the Date of Operations, examine the programme of work planned in the



following two months to ensure that a normal maintenance programme has and will be undertaken prior to the transfer of responsibility.

### **Vessels part loaded/discharged**

Any vessel berthed in the Port Concession Area on the Date of Operations will be contractually the responsibility of CFM. All income and costs relating to these vessels will be the responsibility of CFM. The TR Committee will oversee this process.

### **Committee Responsibilities**

Within a timescale to be agreed between the Company and CFM, the TR Committee shall have completed all the above tasks and have provided such information as is necessary to allow the finalisation by the Company of the Completion of Accounts and their approval by CFM, and the issue by the Auditors of the certificate specified in Clauses 5.16 and 5.17 of this Agreement.

## **SCHEDULE 3**

### **Contracts**

[List of contracts to be assigned to the Company by CFM to be annexed prior to Financial Closing]

1. Matola Coal Terminal celebrated on the 29<sup>th</sup> December 1996 between CFM and *Terminal de Carvão da Matola Ltd.*
2. Containers Terminal celebrated on the 30<sup>th</sup> July 1995 between CFM and *Moçambique International Port Services S.A.R.L.*
3. Sugar Terminal celebrated on the 25<sup>th</sup> February 1994 between CFM and *Sociedade Terminal de Açúcar de Maputo Ltd*
4. Citrus terminal celebrated on the 7<sup>th</sup> September 1994 between CFM and AutoSpan International Ltd.

## **SCHEDULE 4**

### **Dispute Resolution Procedure**

#### **1. Notice of Dispute.**

In the event that there arises between the Parties any dispute, controversy or claim arising out of or relating to this Agreement or the breach, termination or validity thereof (“**Dispute**”), the Party wishing to declare a dispute shall deliver to the other Party a written notice identifying the disputed issue.

#### **2. Resolution by Parties.**

Within 30 Days of delivery of a notice of a dispute, the Parties shall attempt in good faith to settle such dispute by discussions among those representatives of each Party with the appropriate decision-making authority. In the event that such individuals are unable to reach agreement within 30 Days, or such longer period as they may agree, then either Party may refer the matter to an expert in accordance with paragraph 3 of this Schedule 4 or, if the dispute is not a Technical Dispute, commence arbitration of the dispute in accordance with paragraph 4 of this Schedule 4.

#### **3. Mediation.**

3.1 In the event that the Parties are unable to resolve a Technical Dispute in accordance with paragraph 2 of this Schedule 4, then either Party may refer the Technical Dispute to an expert for consideration of the Technical Dispute and to obtain a recommendation from the expert as to the resolution of the Technical Dispute. The expert shall have demonstrated expertise in the area to which such Technical Dispute relates and shall not be an agent, employee, or contractor or a former agent, employee or contractor of either Party involved in the Technical Dispute. In the event that the Parties cannot agree within 10 Days as to whether a dispute falls within the definition of a Technical Dispute, then this paragraph 3 of this Schedule 4 shall not be used to resolve this dispute and the Parties shall proceed directly to arbitration under paragraph 4 of this Schedule 4 to resolve the dispute.

3.2 The Party initiating submission of the Technical Dispute to the expert shall provide the other Party with a notice stating that it is submitting the Technical Dispute to an expert and nominating the individual it proposes to be the expert. The other Party (“the receiving Party”) shall, within 15 Days of receiving such notice, notify the initiating Party whether such individual is acceptable. If the receiving Party fails to respond or notifies the initiating Party that the individual is not acceptable, the Parties shall meet and discuss in good faith to agree upon an individual to be the expert. If the Parties have been unable to agree within a period of 10 Days from the date when the receiving Party responded or ought to have responded, the receiving Party shall by the end of such 10 Day period

nominate a individual to be an expert, whereupon the two nominated experts shall meet and agree upon a third individual who shall be the expert. If the experts fail to agree upon who should be the expert within 10 Days of the nomination of the second expert, either Party may request {the International Chamber of Commerce } to nominate the third individual, who shall be the expert.

- 3.3 Consideration of the Technical Dispute by an expert shall be initiated by the Party seeking determination of the Technical Dispute submitting within 10 Days of the appointment of the expert to both the expert and the other Party written materials setting forth (i) a description of the Technical Dispute, (ii) a statement of the initiating Party's position, and (iii) copies of records supporting the initiating Party's position. Within 10 Days of the date that a Party has submitted the materials described in the preceding sentence, the responding Party may submit to the expert (a) a description of the Technical Dispute, (b) a statement of the responding Party's position, and (c) copies of any records supporting the responding Party's position. In addition to the material provided to the expert by the initiating Party, the expert shall consider any such information submitted by the responding Party within such 10 Day period and, at the expert's discretion, any additional information submitted by either Party at a later date. Any materials submitted by a Party to the expert shall be simultaneously submitted by such Party to the other Party.
- 3.4 Each Party shall designate one individual knowledgeable about the issues in dispute who shall be available to the expert to answer questions and provide any additional information requested by the expert. Except for such individual, a Party shall not be required to, but may, provide oral statements or presentations to the expert or make any particular individuals available to the expert.
- 3.5 The proceedings shall be without prejudice to either Party and any evidence given or statements made in the course of this process may not be used against a Party in any other proceedings. The process shall not be regarded as an arbitration, and the laws relating to commercial arbitration shall not apply.
- 3.6 When consideration of the Technical Dispute by an expert is initiated, the expert shall be requested to provide a recommendation within 15 Days after the 10 Day response period provided in paragraph 3.3 above of this Schedule 4 has run. If the expert's recommendation is given within such 15 Day period, or if the expert's recommendation is given at a later time and no Party has at such time initiated any other proceeding concerning the Technical Dispute, the Parties shall review and discuss the recommendation with each other in good faith for a period of 10 Days following delivery of the recommendation before proceeding with any other actions.
- 3.7 If any Party does not accept the recommendation of the expert with respect to the Technical Dispute, it may initiate arbitration proceedings in accordance with paragraph 4 of this Schedule 4. Similarly, if the expert has not submitted such recommendation within the time period provided in paragraph 3.6 of this

Schedule 4, either Party may initiate arbitration proceedings in accordance with paragraph 4 of this Schedule 4.

- 3.8 If the expert does not provide a recommendation as foreseen in paragraph 3.7 of this Schedule 4, the expert shall not be entitled to the payment for services rendered under mediation.
- 3.9 The costs of engaging an expert and each Party's costs in preparing materials for, and making presentations to, the expert shall be paid by the losing Party or as otherwise provided by the expert.

#### **4. Arbitration**

- 4.1 If the dispute, controversy or claim arises out of or relates to issues which are purely commercial in nature or matters of private law, including investment-related issues, or the breach, termination or validity thereof that is not resolved pursuant to paragraph 2 or paragraph 3 of this Schedule 4 or is not within the purview of paragraph 3 of this Schedule 4 shall, subject to paragraph 4.2 of this Schedule 4, be finally settled by arbitration in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce ("ICC Rules").
- 4.2 The seat of the arbitration shall be Maputo and, unless otherwise agreed by the Parties, the number of arbitrators shall be three. Each Party shall choose one arbitrator, and such arbitrators shall together select the third arbitrator in accordance with ICC Rules. The arbitration agreement contained in paragraph 4 of this Schedule 4 shall be governed by and construed in accordance with the Laws of Mozambique.
- 4.3 If the dispute, controversy or claim arises out of or relates to issues which are purely matters of public service or of an administrative nature, or the breach, termination or validity thereof that is not resolved pursuant to paragraph 2 or 3 of this Schedule 4 or is not within the purview of paragraph 3 of this Schedule 4 shall be submitted to arbitration by an arbitration tribunal, which shall be constituted by one arbitrator appointed by each Party and a third arbitrator to be appointed by the Administrative Court of the Republic of Mozambique under the terms of the relevant arbitration legislation.
- 4.4 The decision of the arbitrators shall be final and binding upon the Parties. Either Party may petition any court having jurisdiction to enter judgment upon the arbitration award. At the request of either Party, the arbitrator shall cause such arbitration award to be filed with the Administration Court. Any monetary award shall include interest from the date of any breach or other violation of this Agreement to the date on which the award is paid, at the Base Rate.
- 4.5 The language at any arbitration under this Agreement shall be Portuguese.
- 4.6 The Parties hereby irrevocably waive and agree to exclude any rights of application or appeal to the courts or rights to state a special case for the opinion

48463.01

of the court to the fullest extent permitted by the Laws of Mozambique in connection with any question of law arising in the course of the arbitration or with respect to any award made. The Parties hereby, to the fullest extent permitted by law, also irrevocably waive any right to challenge or contest the validity or enforceability of this arbitration agreement or any arbitration proceeding or award brought in conformity with this paragraph 4 of this Schedule 4.

**SCHEDULE 5**

[REDACTED]

[CONFIDENTIAL]

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

## **SCHEDULE 6**

### **Special License**

#### **License annexed in the Approval Decree n° 22/2000 dated 25<sup>th</sup> July Terms and Conditions**

**Licencee:** [The Concessionaire's complete identification].....

**Term:** Granted for the period of the Concession Agreement of the Maputo Port, and renewable under its terms.

**Purpose:** Licensing of the exercise of the performance of the Port Public services as established in the Concession Agreement and, at the ~~own~~ risk and cost of the Licencee, to perform the activities of rehabilitation, operation, management, maintenance, development, construction and optimising of the Port Concession Area as provided for in the Concession Agreement.

**Object:** The Licencee is hereby entitled to:

1. Any access to the Port Concession Area
2. To carry out the following services, whether in land and/or in water:
  - a) towage;
  - b) berthing and harbouring;
  - c) stevedoring;
  - d) cargo handling and storage services;
  - e) warehousing;
  - f) bunkering
3. To guarantee the execution of following works, whether in land and/or in water:
  - a) works of rehabilitation;
  - b) works of construction;
  - c) works of maintenance;
  - d) dredging.



4. To carry out any other services, activities or works which have been duly authorised for the fulfilment of the purpose herein stated.

**Record of the Licence:** The present Special Licence has to be recorded at the *Serviços Nacionais de Geografia e Cadastro* and any amendment to or transfer of the Special Licence ~~duly~~ duly registered at that same department.

**Special conditions:**

1. The present Special Licence shall follow the regime established in the Concession Agreement in regard to the duration, amendment, renewal and termination of rights and obligations assumed therein.
2. In case of transfer of the Concession Agreement, the present Special Licence shall also be transferred together with the Concession Agreement to the new beneficiary of the Concession Agreement.
3. The detailed map with the description of the boundaries of the Port Concession Area/Partially Protected Zone (Schedule A) is an integral part of this Special Licence.

**Issuing Authority**

The Minister of Agriculture and Rural  
Development

The Minister of Transports  
and Communications

---

## **SCHEDULE 7**

### **Port Concession Area**

[Map annexed to the Approval Decree n° 22/2000 dated 25<sup>th</sup> July]

## **SCHEDULE 8**

### **Port Jurisdiction Area**

[Map annexed to the Approval Decree n° 22/2000 dated 25<sup>th</sup> July]

## **SCHEDULE 9**

### **Port Services**

#### **Part 1**

**Services to be exclusively provided by the Company  
within the Port Concession Area as per the Concession Approval Decree n°  
22/2000 dated 25<sup>th</sup> July**

1. Services:
  - (a) pilotage services;
  - (b) towage services;
  - (c) stevedoring services;
  - (d) cargo handling services; cargo storage services;
  - (e) warehousing services;
  - (f) bunkering services;
  - (g) berthing services.

**Part 2**  
**Services to be provided exclusively**  
**within the Port Jurisdiction Area, including in the Port Concession Area and**  
**powers of authority granted as per the Concession Approval Decree n° 22/2000**  
**dated 25<sup>th</sup> July**

1. Services:
  - a) berthing services;
  - b) pilotage services; and
  - c) towage services.
2. Port Authority Powers as specified in the Concession Approval Decree. (Decree n° 22/2000 dated July 25<sup>th</sup>)

**Part 3**  
**Other services which the Company**  
**may provide within the Republic of Mozambique after being duly licensed**

1. road and rail distribution services;
2. any ancillary vessel services such as water provision, ship handling; etc.
3. services or activities not falling expressly within any of the foregoing categories but which are reasonably ancillary or incidental thereto;
4. such other activities as may be licensed by the Conceding Authority or GOM or any other Relevant Authority;
5. any other associated services to a port operation of similar characteristics with the Port.

**SCHEDULE 10** [CONFIDENTIAL]

**Part 1**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1.

[REDACTED]

2.

[REDACTED]

3.

[REDACTED]

4.

[REDACTED]

5.

[REDACTED]

6. [REDACTED]

7. [REDACTED]

8. [REDACTED]  
[REDACTED]

9. [REDACTED]

[REDACTED]



## **Annex 10.A**

### **Default Notice**

To: [Conceding Authority]  
ATT: [Name]

We hereby state that:

- (i) the Company has failed to comply with its obligations in relation to the rehabilitation of the Port of Maputo under Clause 14 of the Concession Agreement and/or the Rehabilitation Plan; and
- (ii) a penalty of \$[ ] is payable to the Conceding Authority (such penalty having been determined under Clause 14.8.5 of the Concession Agreement).

Maputo, this [ ] day of [ ]

---

SP Committe member

---

SP Committe member

## SCHEDULE 10

### Part 2 Maintenance and Performance Bond

We, [Bank's name and address], are aware that the Government of the Republic of Mozambique (hereinafter referred to as the "Conceding Authority") has executed a concession agreement (the "Concession Agreement") with the Sociedade de Desenvolvimento do Porto de Maputo S.A.R.L. [] (hereinafter referred to as the "Company") for the operation, maintenance, financing and development of the Port Concession Area. We have been informed that the Company has undertaken to perform in accordance with certain indicators/Levels of Service regarding the maintenance of port infra-structures and equipment.

Furthermore, we understand that, by the terms of the of the Concession Agreement, the Company must provide a Maintenance and Performance Bond.

1. **1. Guarantee.** , We hereby independently and irrevocably undertake to pay any sum to the Conceding Authority in its quality of Beneficiary upon the decision of the SPCommittee declaring that a Company Event of Default occurred in relation with the Company not fulfilling its rehabilitation obligations under the Concession Agreement.
2. **Request for Payment:** Any demand for payment must be sent to us in writing in the form set out in Annex A of Schedule 10 to the address provided hereunder. Such claim and such statement shall be accepted as conclusive evidence that the amount claimed is due to you under this guarantee.
3. **Authorised Signatories:** Claims and statements as aforesaid must bear the confirmation of your Bankers that the signatories thereon are authorized so to sign.
4. **Duration:** This guarantee shall come into force on [Date], (the "Effective Date") being the date of issuance, and will expire at close of banking hours at this office three (3) years after such Effective Date (the "Expiry Date"), or until the Maintenance and Performance Bond is released by the Conceding Authority, whichever is earlier.
5. **Limitation of Liability:** Our liability is limited to your claim which must be received in writing at this office before the Expiry Date. After such Expiry Date, no demand for payment will be honoured by us, whether or not this undertaking has been returned to us.
6. **Termination.** Upon the Expiry Date this guarantee shall become null and void, whether returned to us for cancellation or not and any claim or statement received after the Expiry Date shall be ineffective.

7. **No Transfer of Assignment.** This guarantee is personal to yourselves and is not transferable or assignable to any third parties.
8. **Applicable Law.** This guarantee is subject to the Uniform Rules of the International Chamber of Commerce for Demand Guarantees (ICC publication no.458). Any question not settled by these Rules will be submitted to the Laws of Mozambique.
9. **Dispute Settlement.** Any dispute related to the validity, interpretation or enforceability of this guarantee will be subject to the jurisdiction of the competent courts of the Republic of Mozambique.

## **Annex 10.A**

### **Default Notice**

To: [Conceding Authority]  
ATT: [Name]

We hereby state that:

- (i) the Company has failed to comply with its obligations in relation to the maintenance and performance of the Port of Maputo under Schedule 16 of the Concession Agreement; and
- (ii) a penalty of \$[ ] is payable to the Conceding Authority (such penalty having been determined under Schedule 16 of the Concession Agreement).

Maputo, this [ ] day of [ ]

---

SP Committe member

---

SP Committe member

## **SCHEDULE 11**

### **Handback - Transfer of Port on Termination**

#### **1. Handback Requirements**

- 1.1 The use and control of the Conceded Assets and Immovable Assets shall be handed back by the Company to the Conceding Authority on the Handback Date in a condition capable of permitting continued operation of the Port so as to maintain the Levels of Service for a period of not less than three (3) Years after the Handback Date assuming that such Assets are operated and maintained to standards no less than those applicable under this Agreement during such three (3) Year period (the “Handback Requirements”).
- 1.2 For the avoidance of doubt, the Handback Requirements do not apply to the Leased Assets. The requirements for handback of the Leased Assets are provided within the relevant contract relating to such Leased Assets.

#### **2. Handback and Termination Management Committee (“HTM Committee”)**

- 2.1 Not less than twelve (12) Months prior to the expected Handback Date or as early as possible, a committee shall be constituted to oversee the transfer of responsibility for Port Operations, Assets and personnel from the Company to the Conceding Authority or its designee for such purpose, in accordance with this Schedule 11 (the “HTM Committee”).
- 2.2 The HTM Committee, where the decisions are taken by simple majority, will comprise:
  - a) four (4) of the Company’s personnel;
  - b) four (4) of the Conceding Authority’s or its designee for such purpose's personnel;
  - c) the Independent Inspector;

The Independent Auditor and Independent Plant Engineer will be co-opted on to the HTM Committee on an as required basis, and their costs shall be borne equally between the Company and the Conceding Authority.

#### **3. Initial Inspection**

Not less than ten (10) Months nor more than twelve (12) Months prior to the expected Handback Date, the HTM Committee shall conduct an inspection (the “Initial Inspection”) of all elements of the Port Concession Area.

#### **4. Renewal Programme**

- 4.1 Within thirty (30) Business Days after the completion of the Initial Inspection, the HTM Committee shall provide a report on the condition of the Assets referred to in paragraph 3 of this Schedule 11 (the “Handback Report”) providing details of:
- 4.1.1 proposals as to the Renewal Works;
  - 4.1.2 proposals as to the Renewal Programme;
  - 4.1.3 an estimate of the Renewal Amount; and
  - 4.1.4 written valuations for all Assets which are to be offered for sale to the Conceding Authority or its designee for such purpose,.
- 4.2 If no agreement is reached by the HTM Committee as to any matter referred to in the Handback Report within the period referred to in paragraph 4.1 of this Schedule 11, then any of the Company or the Conceding Authority, or its designee for such purpose, may refer the matter to the Dispute Resolution Procedure for determination:
- 4.2.1 in the case of any objection in respect of the Renewal Works, whether or not the objection is justified and whether any alternative proposals by the Company, the Conceding Authority or its designee for such purpose, are more appropriate to ensure that the relevant Assets will satisfy the Handback Requirements on the Termination Date;
  - 4.2.2 in the case of any objection in respect of the Renewal Programme, what programme would be reasonable for the implementation of the Renewal Works; and
  - 4.2.3 in the case of any objection in respect of the Renewal Amount, what amount would represent the reasonable cost of carrying out the Renewal Works, on the assumption that such Renewal Works will be carried out in accordance with Prudent Industry Practice.
- 4.3 Upon an agreement or any determination in accordance with the Dispute Resolution Procedure of the Renewal Works and the Renewal Programme, the Company shall procure that the Renewal Works are carried out in accordance with the Renewal Programme. For the avoidance of doubt, the Company shall procure at its own cost that the Renewal Works are carried out notwithstanding that the actual cost of the Renewal Works may be higher than the Renewal Amount.
- 4.4 For the avoidance of doubt, neither the agreement of the Conceding Authority, or its designee for such purpose, to any Renewal Works, Renewal Programme or Renewal Amount nor the participation of the Conceding Authority, or its designee for such purpose, in any inspection under this Schedule 11 nor the complete or partial carrying out of the Renewal Works shall relieve or absolve the Company from:

- 4.4.1 its obligations under paragraph 1 of this Schedule 11; or
- 4.4.2 any obligation to conduct any other inspection or perform any other works in accordance with the Levels of Service.

## **5. Second Inspection**

Not less than four (4) Months nor more than six (6) Months prior to the expected Handback Date, the HTM Committee shall conduct an inspection (the “Second Inspection”) of all elements of the Port Concession Area.

## **6. Revised Renewal Programme**

- 6.1 Within twenty (20) Business Days after the completion of the Second Inspection, the HTM Committee shall provide a report on the condition of the Assets (the “Renewal Report”) providing details of:

- 6.1.1 proposals as to any revisions or additions to the Renewal Works (including without limitation those referred to in paragraph 4.3 of this Schedule 11) required in order to procure that all elements of the Assets will, on the Termination Date, satisfy the Handback Requirements;
- 6.1.2 proposals as to any revisions to the Renewal Programme resulting from such revisions or additions to the Renewal Works;
- 6.1.3 an estimate of any changes in the Renewal Amount resulting from such revisions or additions to the Renewal Works; and
- 6.1.4 any revisions to the valuations provided pursuant to paragraph 4.1.4 of this Schedule 11.

- 6.2 If no agreement is reached by the HTM Committee as to any matter referred to in the notice given in the Renewal Report within the period referred to in paragraph 6.1 of this Schedule 11; then any of the Company or the Conceding Authority, or its designee for such purpose, may refer the matter to the Dispute Resolution Procedure for determination:

- 6.2.1 in the case of any objection in respect of any revisions or additions to the Renewal Works, whether or not the objection is justified and whether any alternative proposals by the Company, the Conceding Authority, or its designee for such purpose, are more appropriate to ensure that each element of the Assets will satisfy the Handback Requirements on the Termination Date;
- 6.2.2 in the case of any objection in respect of any revisions to the Renewal Programme, what programme would be reasonable for the implementation of the Renewal Works (as revised or added to in accordance with the provisions of this paragraph 6); and

- 6.2.3 in the case of any objection in respect of any change in the Renewal Amount, what amount would represent the reasonable cost of carrying out the Renewal Works (as revised or added to in accordance with the provisions of this paragraph 6).
- 6.3 Upon agreement or any determination in accordance with the Dispute Resolution Procedure of any revision or addition to the Renewal Works or the Renewal Programme, the Company shall procure that the Renewal Works (as so revised or added to) are carried out in accordance with the Renewal Programme (as so revised). For the avoidance of doubt, the Company shall procure at its own cost that the Renewal Works (as so revised or added to ) are carried out notwithstanding that the actual cost of the Renewal Works may be higher than the Renewal Amount (as changed in accordance with this paragraph 6).
- 7. Handback Inspection**
- 7.1 Not later than twenty (20) Business Days after the Handback Date, the HTM Committee shall conduct an inspection of the Assets (the “Handback Inspection”).
- 7.2 Within ninety (90) Days after the completion of the Handback Inspection, the Conceding Authority, or its designee for such purpose, shall either:
- 7.2.1 issue to the Company a Handback Certificate; or
- 7.2.2 notify the Company in writing of the decision not to issue the Handback Certificate, and state the reason for such decision.
- 7.3 The Conceding Authority, or its designee for such purpose, may refuse to issue the Handback Certificate if:
- 7.3.1 the Company shall have failed to complete all of the Renewal Works; or
- 7.3.2 the Assets for any other reason do not comply with the Handback Requirements in all respects.
- 7.4 Any notice given by the Conceding Authority, or its designee for such purpose, in accordance with paragraph 7.2.2 of this Schedule 11 shall set out each respect in which the Renewal Works have not been completed or the Assets do not comply with the Handback Requirements and shall state the Conceding Authority’s, or its designee for such purpose’s estimate of the cost of completing such Renewal Works and/or of procuring that the Assets comply in all respects with the Handback Requirements.
- 7.5 The Company may, within ten (10) Business Days after receipt of a notice given in accordance with paragraph 7.2.2 of this Schedule 11, by notice to the Conceding Authority, or its designee for such purpose, object to any matter set out in the Conceding Authority’s, or its designee for such purpose’s notice. The



notice from the Company shall give details of the grounds for such objection and shall give the Company's proposals in respect of such matters.

7.6 If no agreement is reached between the Company and the Conceding Authority, or its designee for such purpose, as to any matter referred to in the notice given in accordance with paragraph 7.5 of this Schedule 11 within sixty (60) Days of the date of receipt by the Conceding Authority, or its designee for such purpose, of such notice, then either the Company or the Conceding Authority, or its designee for such purpose, may refer the matter to the Dispute Resolution Procedure for determination, as the case may be:

7.6.1 whether the Renewal Works have been complete;

7.6.2 whether the Assets comply in all respects with the Handback Requirements; and

7.6.3 of the estimated cost of procuring that such Renewal Works are completed and that the Assets comply in all respects with the Handback Requirements.

7.7 If it is agreed or determined in accordance with the Dispute Resolution Procedure that the Company has not completed the Renewal Works or that the Assets do not comply in all respects with the Handback Requirements, then without prejudice to any other right or remedy of the Conceding Authority, the Company shall pay to the Conceding Authority an amount equal to the estimated cost of completing such Renewal Works or procuring that the Assets comply in all respects with the Handback Requirements, as agreed or determined in accordance with paragraph 7.6 of this Schedule 11 (the "Handback Amount"). Such payment shall be made not later than fourteen (14) Days after such estimated cost has been agreed or determined in accordance with this paragraph 7.

## **8. Personnel**

8.1 The HTM Committee shall ensure that up-to-date records are available of Company personnel, their competences, conditions of service and entitlements.

8.2 The HTM Committee shall also identify those employees whom the Conceding Authority or its designee for such purpose, would wish to transfer to their employment, and a procedure for accomplishing this.

8.3 The HTM Committee shall make recommendations to the Company and the Conceding Authority, or its designee for such purpose, on the policy to be adopted for Company personnel who will not transfer including redundancy arrangements, alternative employment opportunities, resettlement packages etc.

8.4 The HTM Committee shall also identify and ensure the fulfilment of any training needs of the Conceding Authority's, or its designee for such purpose's

personnel necessary to ensure the safe and efficient management of the Port for the period not less than six (6) Months prior to the expected Handback Date.

**9. Transfer/Assignment of Contracts, Insurances and Contractor Warranties**

9.1 Following the review by and recommendation of the HTM Committee, the Company shall assign to the Conceding Authority, or its designee for such purpose, on the Handback Date all Contracts and unexpired guarantees or warranties.

9.2 The HTM Committee shall be responsible in conjunction with the Parties' legal advisers for ensuring that all necessary insurances are in place, taking account of the transfer of responsibility.

**10. Port Administration Manuals and Documentation**

Prior to the Handback Date the HTM Committee shall inspect and report on the status of all Port documentation, and recommend any changes necessary to ensure the safe and efficient operation of the Port on and from the Handback Date.

**11. Removal of Objects Owned by the Company**

The HTM Committee shall provide a register of all Movable Assets which remain within the Port Concession Area on the Handback Date, and ensure that these objects are removed from such Area, at the Company's cost, within thirty (30) Business Days of the Handback Date.

**12. Utilities/Services, etc.**

The HTM Committee shall assume responsibility for arranging the reading of meters, apportionment of telephone accounts etc, and the calculation of charges payable by the Company up to the Handback Date.

**13. Revenue and Costs**

13.1 All periodic charges and out-goings of the Port, including but not limited to electricity, water, telephone charges, licence fees and royalties, insurance premiums, and all liabilities in relation to salaries, wages, accrued holiday pay, national insurance, pension contributions and all other payments to, or in respect of, the Company employees who are transferring back to the Conceding Authority's or its designee for such purpose's employment, shall be apportioned on a time basis so that such part of the relevant charges attributable to the period ended on the Handback Date shall be borne by the Company, and such part of the relevant charges attributable to the period on the day following the Handback Date shall be borne by the Conceding Authority, or its designee for such purpose.

- 13.2 All rents, licence fees, royalties, payments for Port Services and other similar sums receivable in respect of Port Services shall be apportioned between the parties on a similar basis as provided in paragraph 13.1 of this Schedule 11.
- 13.3 Prior to the Handback Date, the HTM Committee shall agree a time and methodology for apportioning such costs and income due and the time shall, as far as practicable, coincide with the Handback Date.
- 13.4 The Company will be responsible for the collection of any monies due to them for services provided up to and including the Handback Date, and the Company will be liable and take administrative responsibility for, any claims resulting from services provided up to and including the Handback Date.
- 13.5 The HTM Committee will assume responsibility for ensuring that all Agents deposits bonds etc. are adequate to meet both interim Company needs and the requirements of the Conceding Authority, or its designee for such purpose, on the commencement of the Handback.
- 13.6 The Company will be responsible for settling accounts for any services or goods supplied up to the Transfer Point.

#### **14. Civils Work in Progress**

To simplify the transfer arrangements, the Company should be encouraged to limit major works to those which can be completed prior to the Handback Date and those works necessary to meet the requirements of the Handback Bond. Any works, other than those associated with the Handback Bond requirements, in progress at the time of the transfer will be identified by the HTM Committee, and costs will be apportioned on an agreed basis, taking account of any contract commitment entered into by the Company, the quality of work undertaken and expected completion costs and timescale.

**SCHEDULE 12 [CONFIDENTIAL]**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1. [REDACTED]

2. [REDACTED]

3. [REDACTED]

4. [REDACTED]

5. [REDACTED]

6. [REDACTED]

7. [REDACTED]

48463.01

8. [REDACTED]

9. [REDACTED]

[REDACTED]

[REDACTED]

## **Annex A**

### **Default Notice**

To: [Bank]  
ATT: [Name}

We hereby state that:

- (i) the Company has failed to comply with its obligations in relation to the handback of the Port of Maputo to the Conceding Authority under Schedule 11 of the Concession Agreement; and
- (ii) a penalty of \$[ ] is payable to the Conceding Authority (such penalty having been determined under Schedule 11 of the Concession Agreement).

Maputo, this [ ] day of [ ]

---

HTM Committe member

---

HTM Committe member

## **SCHEDULE 13**

### **Part 1**

#### **Form of Legal Opinions**

Form of Legal Opinion to be provided by the Company to the Conceding Authority

[Clause confirming (among other things) that the Company is duly incorporated and existing under Mozambique law, that there are no proceedings pending, or to the best of its knowledge, threatened for the liquidation of the Company, and that this Agreement and all other agreements entered into by the Company in connection with the Project have been duly authorised, executed and delivered by it and constitutes its legal, valid and binding obligations;]

### **Part 2**

#### **Minimum Content of Legal Opinion to be provided by the Conceding Authority to the Company**

The legal opinion to be provided by the Conceding Authority shall contain, at least, the following matters: powers and legitimacy of the parties and conformity with the Mozambican Legislation in force at the Date of the Agreement.

## **SCHEDULE 14**

### **Form of Assignment of Contracts**

**THIS DEED OF ASSIGNMENT** is made on [ ]

**BETWEEN:**

- (1) PORTOS E CAMINHOS DE FERRO DE MOZAMBIQUE, E.P. a state-owned company with its principal office at Praça dos Trabalhadores, Estação Central in Maputo represented by [ ] and [ ] (“CFM”);
- (2) [MAPUTO PORT DEVELOPMENT COMPANY S.A.R.L., a newly created joint stock company registered in Mozambique under number [ ] having its principal office at [ ] (the “Company”);
- (3) [Counterparty to Contract to be assigned], a company incorporated under the laws of [ ] under number [ ] having its [principal] [registered] office at [ ] (the “Counterparty”).

**WITNESSED BY:**

THE GOVERNMENT OF THE REPUBLIC OF MOZAMBIQUE represented by [ ] (hereinafter referred to as the “Conceding Authority”);

**WHEREAS:**

- (A) The Conceding Authority has agreed to grant to the Company by way of concession the right to operate facilities at Maputo Port pursuant to a Concession Agreement dated [ ] 1999 (the “Agreement”).
- (B) CFM is party to each of the Contracts as set out in the Schedule attached hereto.
- (C) The Conceding Authority and CFM pursuant to the obligation under Clause 5.4.4 of the Agreement wish to formally assign the Contracts.

**THE PARTIES AGREE AS FOLLOWS;**

- (1) Pursuant to the Agreement, CFM as beneficial owner assigns to the Company the Contracts together with CFM’s rights and interests in respect of the Contracts.
- (2) The Counterparty agrees to be bound by the terms of this Deed.



(3) All terms not defined in this Deed shall have the meanings ascribed to them in the Agreement.

Signed as a deed by [CFM] )  
.....

acting by [authorised signatory] )  
and [authorised signatory] )  
.....

Authorised Signatory

Authorised Signatory

Signed as a deed by [Company] )  
.....

acting by [authorised signatory] )  
and [authorised signatory] )  
.....

Authorised Signatory

Authorised Signatory

Signed as a deed by [Counterparty] )  
.....

acting by [authorised signatory] )  
and [authorised signatory] )  
.....

Authorised Signatory

Authorised Signatory

Witnessed by [the Conceding Authority] )  
.....

acting by [authorised signatory] )  
and [authorised signatory] )  
.....

Authorised Signatory

Authorised Signatory

## **SCHEDULE 15**

### **Training Policy and Programme**

#### Training

As the Company believe their employees to be valuable assets of the business, the Company will adopt a policy designed to ensure:

1. That the skill levels of employees in their current working levels are established, and that any training needs required to bring an individual up to the accepted skills and performance levels are identified and the necessary training is provided.
2. To encourage flexibility within the workforce and to create individual career paths for advancement, employees will have regular career reviews with their managers to:
  - (a) establish their potential for advancement;
  - (b) identify the need for training in areas outside their normal work to develop a multi-skilled capability.

#### Training Programme

During the selection process and immediately following the Date of Operations the Training Manager will require from all managers an assessment of the skills and training needs of each employee under their supervision.

From this the Training Manager will arrange a series of “on the job” training courses as appropriate and together with the appropriate manager prepare a training programme to cover the needs of each employee and every work activity within the Port Concession Area. Following this initial programme the Training Manager will establish the programme necessary to provide for “refresher courses” for existing staff and induction programmes for new recruits or employees transferring to new positions.

In addition to this, each employee will have an annual performance review and assessment with the relevant manager. Part of this process will incorporate the manager’s assessment of each employee’s training needs, both for their current employment and for career advancement.

From the information supplied the Training Manager will devise an annual programme to reflect the training needs of all employees to ensure the safe and efficient operation of the Port and the career development of individual employees.

**SCHEDULE 16 [CONFIDENTIAL]**

- [REDACTED]
- [REDACTED]
1. [REDACTED]
- [REDACTED]
- [REDACTED]
2. [REDACTED]
- 2.1 [REDACTED]
- [REDACTED]
- 2.2 [REDACTED]
- [REDACTED]
- 2.3 [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- 2.4 [REDACTED]
- [REDACTED]
- 2.5 [REDACTED]
- [REDACTED]
- 2.6 [REDACTED]
- [REDACTED]
3. [REDACTED]
- 3.1 [REDACTED]

[REDACTED]

3.2

[REDACTED]

[REDACTED]

3.3

[REDACTED]

[REDACTED]

3.4

[REDACTED]

4.

[REDACTED]

4.1

[REDACTED]

[REDACTED]

4.2

[REDACTED]

[REDACTED]

5.

[REDACTED]

[REDACTED]

6.

[REDACTED]

6.1

[REDACTED]

[REDACTED]

6.2

[REDACTED]

[REDACTED]

6.3

[REDACTED]

6.4 [REDACTED]  
[REDACTED]

6.5 [REDACTED]  
[REDACTED]

7. [REDACTED]

7.1 [REDACTED]

7.2 [REDACTED]

a) [REDACTED] s  
[REDACTED] t

• [REDACTED]

• [REDACTED]

b) [REDACTED]

• [REDACTED]

• [REDACTED]

• [REDACTED]

• [REDACTED]

- [REDACTED]  
[REDACTED]

7.3

[REDACTED]  
[REDACTED]

8.

[REDACTED]

8.1

[REDACTED]

8.1.1

[REDACTED]

a)

[REDACTED]  
[REDACTED]

•

[REDACTED]  
[REDACTED]

•

[REDACTED]  
[REDACTED]

b)

[REDACTED]  
[REDACTED]

•

[REDACTED]  
[REDACTED]

c)

[REDACTED]

•

[REDACTED]

48463.01

[REDACTED]

- [REDACTED]

d) [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

8.1.2 [REDACTED]

a) [REDACTED]  
[REDACTED]

- [REDACTED]

[REDACTED]

[REDACTED]

•

[REDACTED]

[REDACTED]

b)

[REDACTED]

•

[REDACTED]

[REDACTED]

c)

[REDACTED]

•

[REDACTED]

[REDACTED]

•

[REDACTED]

[REDACTED]

d)

[REDACTED]

•

[REDACTED]



[REDACTED]

- [REDACTED]

- [REDACTED]

8.2 [REDACTED]

8.2.1 [REDACTED]

8.2.2 [REDACTED]

8.2.3 [REDACTED]

8.3 [REDACTED]

8.3.1 [REDACTED]

8.3.2 [REDACTED]  
[REDACTED]

8.3.3 [REDACTED]  
[REDACTED]

8.3.4 [REDACTED]  
[REDACTED]

8.3.5 [REDACTED]  
a) [REDACTED]

[REDACTED]

[REDACTED]	
a) [REDACTED]	[REDACTED]
b) [REDACTED] [REDACTED]	[REDACTED] [REDACTED]
c) [REDACTED]	[REDACTED] [REDACTED]
[REDACTED]	
a) [REDACTED]	[REDACTED]
b) [REDACTED]	[REDACTED]
[REDACTED]	
a) [REDACTED]	[REDACTED]
b) [REDACTED]	
---	
---	
[REDACTED]	
[REDACTED]	

1)	
2)	

#### INTERNATIONAL CONVENTIONS:

CONVENÇÕES ASSINADAS	DATA DE ASSINATURA
IMO Convention	1948
SOLAS Convention: International Convention for the Safety of Life at Sea	1974
LL 1966: International Convention on Load Lines	1966
International Convention on Tonnage Measurements	1969
COLREG 1972: International Regulations for preventing Collisions at Sea	1972
STCW 1978: International Convention of Standards of Training, Certification and Watchkeeping for Seafarers	1978
SAR 1979: International Convention on Maritime Search and Rescue	1979
INMARSAT 1976: Convention on the International Maritime Satellite Organisation	1976
CLC 1969: International Convention on Civil Liability for Oil Pollution Damage	1969
CLC Protocol 1976	1976

## **SCHEDULE 17**

### **Rail and Port Interface Principles**

#### **1. Rail and Port Interface Principles Objective**

The total operating and commercial responsibility for freight moving by rail and the handling of port cargo, within Mozambique, and for freight moving by rail to or from the neighbouring border countries has historically rested, with exclusive rights, with CFM.

Following the commercialisation of the Port of Maputo and the Ressano Garcia, Limpopo and Goba rail networks, these responsibilities will be spread between diverse private operators, GOM and the Port and rail Concessionaires or operators have accepted the need for a matrix of regulatory and contractual relationships to be in place to ensure that safety and operational standards are maintained and that the Government's objectives in relation to the concessioning of the management of the operations to the private sector are achieved. GOM and the Concessionaires have always recognised that it is essential that the rail and port concessions are developed in a co-ordinated manner and that each concessionaire honours the commitments made in terms of service levels, resource and infrastructure investment, and does not hinder or prevent the development of another concession through non-performance in either financial or operational terms.

GOM and the Concessionaires recognize that it may not prove possible or feasible to implement the port concession and the rail concessions simultaneously, Therefore there must be contractual commitment and regulatory protection to ensure any interim operator of such infrastructures and related operations has the financial and operational resource to meet the business specifications of those concessions. There should be a clear outline of the timescale for converting the operation to the private sector, and contractual commitment that the agreements in force with the other concessions will be assigned intact and will be a condition of the accreditation of any new private sector operator.

#### **2. Contractual Commitments**

Due to the fact that at present there are three contractual " Business Agreements" in force between CFM and :-

- (a) Transnet
- (b) Swaziland Railway ( SR)
- (c) National Railway of Zimbabwe (NRZ),

GOM and the Concessionaires have recognised the need to adapt these Business Agreements to reflect the changing operations management of both the port and rail services within Mozambique, and the potential for a change of management of neighbouring countries rail and/or port operations.

GOM and the concessionaires have therefore constituted a Joint Working Group, comprising members of GOM ( MTC & MP&F), *Sociedade de Desenvolvimento do Porto de Maputo*, Consortium 2000 and CFM. This Group shall have the responsibilities to recommend to GOM by no later than 31 August 2000 the Regulatory Framework contractual relationships necessary to ensure compliance with the terms of the various Concession Agreements. This will incorporate the ability of the Group to ensure the following:-

- There is contractual commitment between the port and rail operators/concessionaires in terms of service levels, pricing, necessary resource availability etc.
- There is commitment that the port and rail operators/concessionaires have the financial and operational resource to invest in port infrastructure and equipment, locomotives, rolling stock and rail infrastructure to meet the annual tonnage forecast to and from the Port by rail or road.
- There is commitment that where a rail operator/concessionaire chooses not to invest in wagon resource for a particular traffic flow, that the option is available to the cargo generator/customer or the Port to seek alternative means of resource provision ( i.e. hire, lease customer/port purchase). The rail operator/concessionaire will fairly reflect the cost of this resource provision in their pricing strategy.
- There is commitment that where one rail operator requires access to rail infrastructure under the control of another that this access is fairly allocated and charged for.
- That the existing contractual commitment in place with the neighbouring countries rail operators, the port and the rail operators operating in Mozambique which specifies service levels, resource commitment and an agreed throughout pricing strategy will be adapted and maintained in the change from public to private sector operation.
- That through inter-Governmental liaison between the SADC countries the development of the Maputo Corridor concept receives "cross-border" support and that neighbourhood railways will not through poor service levels, a lack of resource availability or pricing action seek to disadvantage the Port of Maputo in favour of alternative ports.
- That the Regulatory Authority ascertain that the parties, port and rail operators or Concessionaires establish between themselves contractual relationships that bind them to the compliance with the terms of the

concessions and agree in the penalty/compensation regime in cases of non compliance.

- Commitment that there are penalty/compensation clauses within the contracts between the rail and port operators and Concessionaires which encourage best practice and efficiency in the movement of freight and passengers.
- There is GOM support in the encouragement of Governments of neighbouring countries that the contractual agreements with their public sector rail organisations will be coordinated, complied with and maintained through assignment in the event of these rail operations being privatised.

### **3. Conditions Precedent**

GOM and MPDC recognise that the achievement of the above objectives and the associated contractual commitment is a Conditions Precedent to this Agreement as specified in Clause 2.1.3. of this Agreement.