

## TERMINAL SERVICES STANDARD TERMS AND CONDITIONS ("STANDARD CONDITIONS")

**THE USER'S ATTENTION IS DRAWN TO SPECIFIC CLAUSES HEREOF WHICH EXCLUDE OR LIMIT THE TERMINAL OPERATOR'S LIABILITY AND THOSE WHICH REQUIRE THE USER TO INDEMNIFY THE TERMINAL OPERATOR IN CERTAIN CIRCUMSTANCES AND THOSE WHICH LIMIT TIME BEING CLAUSES 5, 6 AND 10**

### 1. DEFINITIONS AND INTERPRETATION

1.1 In these Standard Conditions, unless the context otherwise requires, the following words and expressions shall have the following meanings:

"**Agent**" shall have the meaning given to it in Condition 8.1.

"**Berth**" means a safe mooring place along-side the quay used for stevedoring operations.

"**Cargo**" means goods of any kind, size or weight/measurement whatsoever, transported or to be transported in a Container, or an Out of Gauge Container and includes any Non-containerised Cargo carried on a Vessel.

"**Charges**" shall have the meaning given to it in Condition 9.1.

"**Confidential Information**" means the provisions of these Standard Conditions and all information in any form or medium which is secret or otherwise not publicly available (either in its entirety or in part including the configuration or assembly of its components) including commercial, financial, marketing, or technical information, know-how, trade secrets, business methods and other information in any form or medium whether disclosed orally or in writing, together with any reproductions of such information in any form or medium or any part(s) of this information;

"**Container**" means any full, partly loaded or empty standard ISO container 20', 40', 45', 53' in length, 8' in width and 8'6"/9'6" in height including, but not limited to, dry, flat-rack, open top, artificial 'tween deck, pallet-wide, platform, reefer and tank containers with ISO recommended lifting arrangements and consistent with the safety requirements of CSC (Convention for Safe Containers), and which can be handled by means of a container spreader;

"**Concession Contract**" refers to the Contract for the Design, Financing, Construction, Conservation, Operation and Exploitation of the Container and General Cargo Terminal of Puerto Cortés in the Republic of Honduras, signed on March 21, 2013.

"**Custody**" means:

- (a) in respect of import Containers (laden or empty) or Non-containerised Cargo: (i) the period which begins when the Container or Non-containerised Cargo is physically lifted off from the Vessel's deck, hold or from the top of other Containers on the Vessel and ends when the Container or Non-containerised Cargo is mounted onto the withdrawing truck by the Terminal Operator's cargo handling equipment for delivery to consignee, or if shorter, (ii) the period during which the User is responsible for the Cargo under the bill of lading or other transport document if one has been issued;

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- (b) in respect of export Containers (laden or empty) or Non-containerised Cargo the period which begins when the Container or Non-containerised Cargo is physically lifted off from the truck by the Terminal Operator's cargo handling equipment for stacking at the container yard of the Terminal and ends when the Container or Non-containerised Cargo is laid to rest on the Vessel's deck, hold or on top of another container on the Vessel.
- (c) in respect of transshipment Containers (laden or empty) or Non-containerised Cargo the period which begins when the Container or Non-containerised Cargo is physically lifted off from one Vessel's deck, hold or from the top of the Containers on one Vessel and ends when the Container or Non-containerised Cargo is laid to rest on another Vessel's deck, hold or on top of another container on another Vessel.

"**EDI**" means electronic data interchange between the Parties.

"**Health and Safety Rules**" means the health and safety rules of the Terminal Operator notified to the User from time to time.

"**SOLAS**" Safety of Life at Sea Convention

"**Liabilities**" means any and all costs (including the costs of investigating and defending any claims), expenses, claims, demands, losses, damages, liabilities, orders, awards, fines, penalties, proceedings and judgments of whatsoever nature.

"**Non-containerized Cargo**" means Cargo not contained in a Container, accepted for transport/carriage on a Vessel which cannot be handled by means of normal use of a container spreader even with special attachments.

"**Out of Gauge Container**" means a Container where Cargo protrudes beyond the standard dimensions of the Container which must be handled with the use of special attachments to a container spreader.

"**Operating Regulations**" refers to the operating regulations of Puerto Cortes, claims procedures, commercial and operating policies of the Terminal, which have been communicated to all customers, Users and the general public through the Terminal Operator's website, and which are available at <http://www.opc.hn/comunicados/> or upon request of the User at the offices of the Port Terminal Operator of Puerto Cortes located at: 15 Calle Este, between Primera Avenida and Zona Libre, Puerto Cortes, Honduras.

"**Services**" means any services that are provided by or arranged by the Terminal Operator, including without limitation the handling of Containers and Cargo.

"**Standard Services**" are Services subject to the Maximum Regulated Rates as set forth in the Concession Agreement and Schedule 15 thereto.

"**Special Services**" are all port services other than Standard Services that the Operator is entitled to provide directly or through third parties.

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Operator is entitled to provide directly or through third parties.

**"SOLAS"** Safety of Life at Sea Convention

**"Tariff"** means the rates for Standard Services and for Special Services, established in Annex 15 of the Concession Contract and in the tariff in force, which are updated on an annual basis. Annex 15 of the Concession Contract and in the tariff in force, which are updated annually as established in the annually in accordance with the provisions of the Concession Contract.

**"Terminal Operator"** means the terminal facilities at Operadora Portuaria Centroamericana, S.A. de C.V.

**"TEU"** means twenty feet equivalent unit and in calculating TEUs, a 20' Container comprises one (1) TEU and a 40' and a 45' Container each comprises two (2) TEUs respectively.

**"User"** means (i) any person who receives or benefits from the Services, including, without limitation, the owner of, charterer (of whatsoever nature) of, or any other person who is or may become interested in a Vessel calling at the Terminal, the Vessel's master and any person who has control of the operation of such Vessel, the owner or any other person who is or may become interested in the Cargo; (ii) the owner, or any other person who is or may become interested in, the Containers, or in any plant, machinery, package, case, pallet; (iii) the owner, or any other person who is or may become interested in, any road or rail vehicle which enters the Terminal; and (iv) any person who drives or operates such vehicle and any person who uses and/or enters the Terminal; and

**"Vessel"** means any Container Ship fitted for the carriage of Containers, Out of Gauge Containers and/or Non-containerized Cargo whether above or below deck, including all lashing equipment required for the proper securing of Containers on board *or any* vessel owned, chartered, operated, or leased by the User availing of Terminal Operator's services.

1.2 The parties agree that the provisions of the General Conditions listed in the following shall apply to the provision of the Services by the Terminal Operator. If any part of these General Conditions is set out in the Concession Contract to any extent, such part shall be void to that extent and to no other extent.

1.3 In these Standard Conditions:

1.3.1 a statutory provision includes a reference to the statutory provision as modified or reenacted or both from time to time and any subordinate legislation made or other thing done under the statutory provision or under such re-enactment.

1.3.2 a person includes a reference to a government, state, state agency, corporation, body corporate, association, or partnership.

1.3.3 a person includes a reference to that person's legal personal representatives, successors and permitted assigns.

1.3.4 the singular includes the plural and vice versa (unless the context otherwise requires);

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1.3.5 any words following the word "**including**" shall be interpreted without limitation to the generality of the preceding words.

1.3.6 a reference to a **Condition**, unless the context otherwise requires, is a reference to a clause of these Standard Conditions.

1.4 The headings in these Standard Conditions do not affect their interpretation.

## **2. SERVICES**

2.1 The Terminal Operator will:

2.1.1 provide the Services subject to and in accordance with these Standard Conditions.

2.1.2 provide the Services using reasonable care and skill.

2.1.3 comply with all laws and regulations in force and applicable to the relevant Services.

2.1.4 obtain all necessary licenses and permits required to operate as a terminal operator and provide the Services.

2.1.5 when applicable, use EDI on terms and procedures agreed between the Parties, and when financially practicable keeping pace with the current industry standards.

2.1.6 perform any other services agreed or to be agreed between the Terminal Operator and the User based on Rates in Condition 9, or as otherwise agreed upon in writing.

2.2 Subject to specific written instructions given by the User and accepted by the Terminal Operator in writing, the Terminal Operator reserves to itself complete freedom in respect of the means and procedures to be employed in the provision of the Services. The Terminal Operator may deviate from the User's instructions (whether or not accepted by the Terminal Operator) in any respect if the Terminal Operator considers it is necessary in the interest of the User and the User shall reimburse the Terminal Operator with all reasonable expenses incurred thereby.

2.3 The Terminal operates twenty-four (24) hours a day, every day of the year. Except for December 24, when operations stop at 18:00 hours and return on December 25 at 15:00 hours, the same rule is applicable for December 31.

2.4 The hours for the provision of loading and unloading services shall be 24 hours a day, 365 days a year. While the request for the provision of services shall be provided within the hours of Monday to Friday from 8:00 hours to 18:00 hours from Monday to Friday and Saturdays from 8:00 hours to 15:00 hours and on Sundays from 1:00 pm to 4:00 pm.

2.5 Standard Services are the Services that the Terminal Operator shall provide to all Users who request them, in accordance with the terms and conditions contained in the Concession Contract and its annexes.

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### **Standard Services are divided into:**

(a) Vessel Services. –

Refers to the services provided by Empresa Nacional Portuaria, which include: towing, pilotage, mooring, vessel stay (at Piers 4 and 5) and potable water. Except for the stay service at Pier 6.

b) Cargo Services. -

Refers to the operational Services provided by the Terminal Operator for Containers and general cargo (including, but not limited to breakbulk cargo, RORO cargo, etc), these services include:

- i. Loading/unloading service, including stevedoring/unloading, using the necessary port infrastructure and equipment.
- ii. Lashing/unlashing service of the Containers and general cargo and on the Vessel.
- iii. Transfer service between the side of the Vessel and the storage area or vice versa in the loading.
- iv. Dispatch/reception service in the storage area, yard and vessel: for the reception of the cargo from the Vessel and dispatch to the means of transportation designated by the User, or vice versa in the shipment.
- v. Cargo verification service for the identification plate, including electronic transmission of information.
- vi. Weighing service, which may include the transmission of the information.

### **Standard Services with Maximum Regulated Tariffs include:**

- i. Container Storage Service: Permanence of the merchandise in the areas of the Contract, its charge begins to be computed from the end of the free time defined in three (3) calendar days.
- ii. Electric power service (reefer) to Containers: Includes the connection/disconnection, power supply and monitoring of the Containers that require refrigeration during the storage period.
- iii. Horizontal Container Movement: Container Movement not contemplated in the Standard Service, at the request of the User or the authorities.
- iv. ISPS (International Ship and Port Facility Security) Fee for full Containers: Fee applied for maintenance of port security for full Containers. In the case of full Transshipment Containers, the defined fee will only be applied once. Empty Containers shall be exempt.

2.6 Special Services. The Operator may offer these Services from the beginning of the operation of the Terminal, provided that they are compatible with the safety and operations of the same.

The Services defined in this condition do not limit the Terminal Operator to provide other services not defined. In case the User requires a non-defined service, he may refer to the Contingency Tariffs that appear in the approved tariff available on the Terminal Operator's web page.

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### **3. SCOPE AND APPLICATION OF THESE STANDARD CONDITIONS**

3.1 These Standard Conditions shall apply to:

3.1.1 all Services provided to the User;

3.1.2 the use by any User of the Terminal and/or the facilities at the Terminal;

3.1.3 all Vessels which berth at the Terminal;

and also shall be binding on all Users who receive or benefit from the Services, use and/or enter the Terminal.

### **4. REQUEST FOR A BERTH**

4.1 The Users shall request authorization from the port authority for the berthing of vessels. The Terminal Operator shall assign the berth in accordance with the berthing windows agreed with the Users.

4.2 The User or its representative shall communicate via e-mail to ENP, no less than seventy-two (72) hours in advance, the arrival of its vessel with the express indication, including but not limited to: date and time, draft, type of operation and preliminary loading and unloading information. The user or his representative shall also inform OPC with due notice and coordinate with the terminal Operator directly the assignment of the berth, date and time of berthing, which shall be planned by the Operator (arrival windows).

4.3 If a Vessel arrives at the Container Terminal outside its berthing window, the Terminal Operator shall make reasonable efforts to provide a berth as soon as possible, in accordance with Terminal operations, without affecting other Users and observing the provisions of the Port Act.

4.4 With respect to each Vessel, the User shall also inform the Terminal Operator of all relevant details of the Containers, Over Over Over Hold Containers ("OOG") and/or non-containerized cargo to be loaded or discharged, at least 24 hours in advance of the Vessel's estimated time of arrival (ETA). Such details shall include at least destination, temperature, humidity and ventilation information for reefer containers, as well as information on containers with hazardous cargo. In the event that the reference information is not provided with the required advance notice, the Vessel shall await authorization to dock at the Terminal, once the required 24-hour period has elapsed.

All information provided by the Users must comply with the applicable legislation and with the requirements of the Customs and Sanitary Authorities. The Terminal Operator shall not be held liable when incorrect and/or incomplete information has been provided for loading and unloading.

### **5. USER'S OBLIGATIONS AND WARRANTIES**

5.1 The User shall submit all documents and information required in the Puerto Cortes Operations Regulations (within the deadlines stipulated therein) available at: <http://www.opc.hn/> or upon request of the User at the Operator's offices at the Port Terminal of Puerto Cortes 15 Calle Este, between Primera Avenida and Zona Libre, Puerto Cortes, Honduras.

5.2 At all times when a Vessel is berthed at the Terminal, the User shall ensure that the Vessel:

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5.2.1 furnishes adequate lighting and safe ingress and egress (for the Terminal Operator's personnel);

5.2.2 maintains appropriately qualified and experienced officers and crew aboard in order to maintain an alert watch and respond to emergencies and to enable the Terminal Operator to provide the Services;

5.2.3 maintains engines in a state of readiness to respond to emergency situations and to avoid delays in vacating the berth;

5.2.4 and its crew members adhere at all times to all Health and Safety Rules;

5.2.5 complies with all applicable laws and legal requirements relating to them, the Cargo, the Containers, their activities and the use of the Terminal; and

5.2.6 shall not drift away from the Terminal while berthing or otherwise; and should this occur, it shall be the sole responsibility of the master of the ship and the User.

5.3 The User and the master of the ship shall be in sole charge of the ship while using any of the berths or wharves in the Terminal, and her safety shall be the sole responsibility of the User. The User shall be held responsible for any loss and/or damage that may arise from faulty navigation, or by reason of her breaking adrift from her moorings. No instruction or direction given, or act performed by the Terminal Operator or its officers, employees or sub-contractors shall place any responsibility upon the Terminal Operator, with respect to the security or safety of such ship.

5.4 The User will be solely responsible for complying with all formalities, procedures and regulations prescribed by the relevant customs authority and any governmental authority or other agency having legal jurisdiction over the relevant matter and which arises in connection with the Cargo, Containers and/or the Vessel and for obtaining all necessary licenses, and authorisations required for the transportation, exportation or importation of the Cargo. The Terminal Operator shall not be liable whatsoever in this regard. The User shall be solely responsible for taking actions to carry out the corresponding proceedings and obtaining the licenses and permits required by law. By virtue of the foregoing, the User agrees to hold the Terminal Operator harmless from any claims, fines, penalties, charges, payoffs or otherwise resulting from any breach to this provision.

5.5 The User shall:

5.5.1 take out and maintain adequate hull and machinery and protection and indemnity (P&I) Insurance with Fixed and Floating Object cover in respect of its Vessel/s, the latter from a Club being a member of the International Group of P& I Clubs, together with insurances adequate to cover its liabilities under this Standard Conditions.

5.5.2 If so requested, provide the Terminal Operator with a copy of the certificate of insurance confirming that these insurance requirements have been complied with. Such request or

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absence of such a request shall in no way be construed as waiving the User's obligations to obtain insurance required by law or under this Standard Conditions.

5.5.3 The Terminal Operator reserves the right to not allow those vessels to berth, which have not complied with the insurance requirements herein.

### 5.6 User's Warranties

5.6.1 The User warrants and represents that:

- (a) it is authorised to contract with the Terminal Operator on the terms of these Standard Conditions in respect of the Vessel, the Cargo and the Containers, and that it is accepting these Standard Conditions not only for itself, but also as agent for and on behalf of the owners of the Vessel (if it is chartered by the User), Cargo and Containers or any other person who is or may become interested in the Cargo;
- (b) all the documentation and information provided by the User or its representatives in relation to any Cargo and/or Containers is full and accurate.

5.6.2 In respect of all Cargo and Containers, the User warrants and represents that they:

- (a) are properly and sufficiently prepared, packed, stowed, labelled and/or marked, and that the preparation, packing, stowage, labelling and marking are appropriate to any operations or transactions affecting the Cargo and the Containers;
- (b) are, for goods that need refrigeration, properly contained in reefer containers with the required temperature settings;
- (c) are liable to give off any injurious dust, gas, fumes, liquid or radiation;
- (d) are not infested, verminous, leaking, rotten or subject to fungal attack and not liable to become so while at the Terminal;
- (e) are not over-heated or under-heated or liable to become so while at the Terminal;
- (f) will not contaminate or cause danger, injury or pollution or damage to any person, the Terminal, any other cargo, equipment or ship or the environment adjacent thereto or generally;
- (g) require for their safekeeping no special protection (other than as may be agreed in writing between the parties) arising from vulnerability to heat, cold, moisture, salt, pilferage or proximity to other cargo or from inflammability but will remain safe if left standing in the open or in covered accommodation at the Terminal if agreed in writing with the Terminal Operator;
- (h) contain no drugs, prohibited or stolen goods, contraband, pornographic or other illegal matter; and

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- (i) are fit for their intended purpose and in a fit and proper condition to be handled or otherwise dealt with by the Terminal Operator.

### **5.7 Indemnity**

5.7.1 The User shall promptly indemnify the Terminal Operator against any and all Liabilities howsoever assumed, incurred or suffered by the Terminal Operator (including its wharf, port, fender, mooring bollards, quay cranes as well as other infrastructure and equipment), its customers (including other Users, Vessel and third parties) its employees, servants, agents, insurers or re-insurers as a result of or in connection with any of the following:

- (a) any breach by the User of the obligations, representations and/or warranties given in Condition 5;
- (b) the Terminal Operator acting in accordance with the User 's instructions;
- (c) any damage to the wharf and or/to the port, Terminal, equipment, fenders, mooring bollards, ships, vessels belonging to the Terminal or any third party, caused during or arising from the act of berthing or unberthing, whether by reason of incompetence or negligence of the pilot in-charge of the ship belonging to the User, or as a result of improper mooring of the ship while alongside the wharf/berths, and shall hold the Terminal Operator indemnified, by payment on demand, against all claims, demands, losses, costs and expenses arising from any such damage, except it is solely and directly caused by gross negligence or wilful misconduct of the Terminal Operator, its servants or sub-contractors.

## **6. DANGEROUS CARGO**

6.1 Except with the Terminal Operator's express prior consent in writing, the Terminal Operator will not accept to deal with Cargo which is or may become dangerous (whether or not so listed in international codes or manuals), inflammable, damaging, injurious (including radioactive materials), noxious or which are or may become liable to damage any property or person whatsoever. Where the Terminal Operator expressly accepts in writing to deal with Cargo of a dangerous nature:

6.1.1 the User shall promptly provide the Terminal Operator with such information as is necessary for it to perform its obligation in connection with such Cargo in accordance with all applicable laws, regulations and/or requirements, including without limitation information about the nature of the Cargo, the appropriate manner and method of storage, handling and transportation; and

6.1.2 the Container must be distinctly marked on the outside so as to indicate the nature and character of any such Cargo and so as to comply with all applicable laws, regulations and/or requirements.

6.2 If the User fails to provide such information and the Terminal Operator is unaware of the dangerous nature of the Cargo and the necessary precautions to be taken and if, at any time, it is deemed to be a hazard to life or property, it may be destroyed or rendered harmless, as circumstances may require, without

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compensation, and the User shall be liable for any and all Liabilities arising out the Services, the destruction or rendering the Cargo harmless. The burden of proof that the Terminal Operator knew the exact nature of the danger constituted by the carriage of the Cargo shall rest upon the User.

6.3 The User shall indemnify and hold harmless the Terminal Operator against any Liability howsoever arising from any breach of the provisions of this Condition 6.

### **7. TERMINAL OPERATOR'S RIGHTS**

7.1 The Terminal Operator may at any time inspect any Vessel, vehicle, Cargo, Container, equipment or other property in the User's possession or control for the purposes of ensuring compliance with these Standard Conditions.

7.2 The Terminal Operator reserves the right to suspend the provision of any Services in the event of any breach of these Standard Conditions.

7.3 The Terminal Operator may refuse acceptance of damaged or distorted Containers or of any Container which in its opinion is in an unsatisfactory condition.

7.4 The Terminal Operator may refuse to handle any Container or Cargo with a weight which exceeds its stated weight or the safe working load of any cargo handling equipment. Should any of the Terminal Operator's cargo handling equipment be used in handling an overweight Container or Cargo, the User shall indemnify and hold harmless the Terminal Operator against any Liability howsoever arising from any loss or damage to property or death or personal injury arising out or caused by the handling of the overweight Container or Cargo.

7.5 The Terminal Operator may install, operate and maintain recordings of any surveillance device to protect the safety and security of its property and that of its customers and third parties and to assist in the investigation and/or prosecution of any illegal act or any alleged breach of these Standard Conditions.

### **8. AGENT**

8.1 The User may, subject to prior notification in writing to the Terminal Operator, appoint an agent in respect of the Services (in this Condition the "**Agent**"), in which event the User shall be deemed to have authorised the Agent to act on the User's behalf in respect of all matters hereunder including to pay to or receive from the Terminal Operator all sums due under these Standard Conditions unless the User notifies the Terminal Operator to the contrary at any time hereafter and:

8.1.1 the Terminal Operator shall be entitled at any time and from time to time hereafter, to act upon any instruction, request, notice or other communication from the Agent without prior reference to the User and to receive from and to pay to the Agent any sums due under these Standard Conditions (including any rebate);

8.1.2 any payment made by the Terminal Operator to the Agent pursuant to these Standard Conditions shall be held by the Agent in trust for the User and the receipt by the Agent of such payment shall be a full and sufficient discharge of the Terminal Operator in respect of such payment; and

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8.1.3 the power granted to the Terminal Operator under Condition 8.1.1 above shall continue until the Terminal Operator receives written notice from the User to cease acting upon such communication or to cease the receipt and/or making of such payments from and to the Agent thereafter.

### **9. RATES AND PAYMENT**

9.1 As consideration for the provision of the Services, the User shall pay the Rates available at: <http://www.opc.hn/tarifas/> or upon request of the User at the offices of the Operator at the Port Terminal of Puerto Cortes 15 Calle Este, between Primera Avenida and Zona Libre, Puerto Cortes, Honduras.

9.2 Unless otherwise agreed in writing with the User all Charges are payable in advance prior to the provision of the Services.

9.3 All Rates are exempt from Sales Tax and any other tax, duty or fee imposed by any government or other authority at any time, which shall be paid by the User at the rate and in the manner prescribed by Law (except in specific cases where exemptions or benefits granted by the Government of Honduras are evidenced).

9.4 All payments due from the User under these Standard Conditions shall be made in full without any set-off, abatement, restriction or condition and without any deduction in respect of bank charges or otherwise or withholding for or on account of a counter claim.

9.5 The Terminal Operator reserves the right to charge interest at the maximum rate used in the banking system of Honduras, calculated on a daily basis on all amounts not received by the due date for payment.

9.6 Without prejudice to any other rights and remedies the Terminal Operator may have under these Standard Conditions or otherwise, the Terminal Operator shall have a general as well as a specific lien on the Cargo, the Containers and any documents relating thereto for all sums whatsoever due at any time to the Terminal Operator under these Standard Conditions or otherwise. To enforce and satisfy the Terminal Operator's lien, the Terminal Operator shall have the right, at the User's expense, to sell the aforementioned Cargo, Containers and documents by public auction or private treaty, without notice to the User and without any liability towards the User and to apply the proceeds in or towards the payment of such sums. The Terminal Operator shall, upon accounting to the User for any balance remaining after payment of any sum due to the Terminal Operator, and for the cost of sale and/or disposal and/or dealing, be discharged of any liability whatsoever in respect of the Cargo, Containers or documents.

### **10. LIABILITY**

#### **10.1 Vessel**

10.1.1 The Terminal Operator shall only be liable for loss of or damage to any Vessel including its gear and all other equipment to the extent the same was caused by the negligence or wilful misconduct of the Terminal Operator or any other party for whom the Terminal Operator is responsible.

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10.1.2 The Terminal Operator's liability under Condition 10.1.1 shall be limited to the lesser of: (a) the reasonable repair cost or replacement cost (with an item of the same age and in the same condition) of the Vessel and (b) [US\$3,000,000] per incident or series of connected incidents.

### 10.2 Containers

10.2.1 The Terminal Operator shall only be liable for loss of or damage to any Container to the extent that the same has been caused by the negligence or reckless misconduct of the Terminal Operator or any other party for which the Terminal Operator is responsible.

10.2.2 The Terminal Operator's liability under Condition 10.2.1 shall be limited to the lesser of the repair or replacement value (with an item commensurate with the age, use and in the same condition) of the Container;

### 10.3 Cargo

10.3.1 The Terminal Operator (or any other party for whom Terminal Operator is responsible) shall be entitled to avail itself of the defences, limitations and exclusions of liability which are available to the User under the bill of lading or other transport documents, evidencing a contract of carriage, which has been issued in respect of Cargo carried by the User.

10.3.2 Where no bill of lading or other transport document as aforesaid has been issued in respect of the Cargo, the Terminal Operator shall only be liable for loss of or damage to any Cargo to the extent the same is caused by negligence or wilful misconduct of the Terminal Operator or any other party for whom the Terminal Operator is responsible, and such liability shall be limited to the lesser of: (a) the reasonable repair cost or replacement cost (with an item of the same age and in the same condition) of the Cargo; and (b) 2SDRs per kilo of gross weight of the Cargo lost or damaged.

### 10.4 Delay

10.4.1 The Terminal Operator accepts no responsibility whatsoever and howsoever arising (including negligence) with regard to any failure to adhere to any timeframe any or any delay in the performance of the Services (including to Containers, Cargo or Vessels).

10.4.2 Without prejudice to Condition 10.4.1, if the Terminal Operator is found liable for loss or damage caused by delay or if the Terminal Operator fails to adhere to timeframes agreed under Condition 10.4.1, the Terminal Operator's liability for the same shall not in any circumstances whatever exceed a sum equal to the amount of the Charges in respect of the Services provided in relation to the relevant Containers, Cargo or Vessels.

### 10.5 Exclusions

10.5.1 The Terminal Operator shall not be liable for loss of or damage to any Vessel, Container or Cargo under the provisions of this Condition 10 unless the User can establish that the loss or

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damage was directly caused by the Terminal Operator or any other party for whom the Terminal Operator is responsible whilst (in respect of Cargo or Containers) the same was in the Custody of the Terminal Operator or any other party for whom the Terminal Operator is responsible. If the loss or damage was contributed to by the act or omission of the User or any other person, the Terminal Operator shall be exonerated from liability under Condition 10 to the extent that such act or omission contributed to the loss or damage.

10.5.2 The Terminal Operator shall not be liable for loss of or damage to any Vessel, Container or Cargo under the provisions of this Condition 10 unless the Terminal Operator's cargo handling equipment was used.

10.5.3 Save as set out in Condition 10, the Terminal Operator shall not be liable for loss of or damage to any Vessel, Cargo or Container howsoever arising (whether caused by negligence or otherwise).

### 10.6 General liability

10.6.1 Notwithstanding any other provision of these Standard Conditions, the Terminal Operator shall have no liability for any loss of profit, loss of sales, loss of business, loss of goodwill or reputation, third party claims (in each case whether direct or indirect) or for any indirect or consequential loss in respect of all claims, losses or damages, whether arising from tort (including negligence), bailment, breach of contract, breach of statutory duty or otherwise under or in connection with these Standard Conditions, performance or any failure or delay in performance of the Services or any obligation under these Standard Conditions (including delay to a Vessel or Cargo) or termination of the agreement constituted by these Standard Conditions.

10.6.2 Nothing in these Standard Conditions shall exclude or restrict the Terminal Operator's liability for death or personal injury caused by its negligence or any other act or omission, liability for which may not be excluded or limited under applicable law.

10.6.3 The User waives any right to bring actions against COALIANZA, the Trustee, the Superintendence of Public-Private Partnership, Technical Committee, its officers, agents, consultants, and employees in accordance with the provisions of the Concession Contract of the applicable laws.

### 10.7 Applicability to actions in tort

10.7.1 The defences, exclusions and limits of liability provided for in these Standard Conditions shall apply in any action against the Terminal Operator whether the action be found in tort, bailment, contract, breach of express or implied warranty or otherwise.

10.8 Notification of claims: Users shall observe the provisions of the Claims Procedure available at <http://www.opc.hn/reclamos/> or upon request at the Operator's offices at the Port Terminal of Puerto Cortés 15 Calle Este, between Primera Avenida and Zona Libre, Puerto Cortés, Honduras.

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10.8.1 Any claim by the User against the Terminal Operator arising in respect of any Service provided for the User, or which the Terminal Operator has undertaken to provide, must be made and notified by formal written complaint to the Terminal Operator within a reasonable time, : (i) (90) ninety calendar days, with respect to equipment; and (ii) (45) forty-five calendar days, with respect to billing, both periods counted from the date of the occurrence of the event or occurrence that allegedly gave rise to the fact that is the basis of the action against the Terminal Operator or from the respective billing date, following the claims procedure corresponding to the claim. 10.8.2 The parties agree that any claim not made and notified in accordance with Condition 10.8.1 shall be deemed to be waived and absolutely barred.

10.8.2 The parties agree that any claim not made and notified in accordance with Condition 10.8.1 shall be deemed waived and absolutely time-barred claim.

### 10.9 Time limit for claims

10.9.1 Notwithstanding the provisions of Condition 10.8, the Terminal Operator shall be relieved of all liability in respect of any Service which has been provided to the User, or which the Terminal Operator has undertaken to provide to the User, unless any legal proceedings are instituted and written notice is given to the Terminal Operator in accordance with the provisions of the Complaints Procedure.

### 10.10 Indemnity for excess liability

10.10.1 The User shall promptly indemnify the Terminal Operator against any and all Liabilities howsoever assumed, incurred or suffered by the Terminal Operator, its employees, servants, agents, insurers or re-insurers as a result of or in connection with any claim made by any third party (including without limitation a claim made by the owner of the Cargo or any other person who is or may become interested in the Cargo or any customs authority) (in this Condition a "**Third Party Claim**"):

- (a) when the Third Party Claim arises from or in connection with the Services (whether caused by the Terminal Operator's negligence or otherwise); and
- (b) to the extent the Third Party Claim exceeds the Terminal Operator's liability to the User under the Standard Conditions.

10.11 Without prejudice to any other provisions of these Standard Conditions, the User shall incorporate into the bill of lading and other transport documents evidencing contracts of carriage issued in respect of Cargo carried by the User, a clause to the effect that while acting in the course of or pursuant to these Standard Conditions, the Terminal Operator shall be entitled to the benefit of all provisions or clauses in the bill of lading or other transport document to the extent such provisions and clauses

benefit the User, but no further, and the Terminal Operator for itself and any party for whom it is responsible hereby accepts such benefit.

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10.12 The Terminal Operator authorises, empowers and directs the User to act, and the User hereby agrees to act, as the Terminal Operator's trustee and/or agent for the limited purpose only of complying with Condition 10.11.

### **11. INSURANCE**

11.1 The Terminal Operator shall comply with contracting and maintaining the insurance(s) indicated in the Concession Contract.

### **12. FORCE MAJEURE**

12.1 A Party shall not be liable for any failure of or delay in the performance of its obligations under this Agreement to the extent that such performance is prevented or delayed by Force Majeure. An event of Force Majeure means any event which could not be foreseen or which is foreseeable but inevitable, including any act of God or man such as fire, flood, typhoon, earthquake, outbreak, strike or other grave labor problem, riot, war, or a change in law, order, rule or regulation by the government.

12.2 As soon as practicable but no less than 24 hours from the occurrence of the Force Majeure, the affected Party shall notify the other Party of the occurrence through a written notice, e-mail, or, if the affected Party has limited means of communication, by any available means of sending a notice; provided, however, that the affected Party shall continue to use commercially reasonable efforts to remove or mitigate the cause and/or impact of the Force Majeure.

12.3 Payment of any invoice due and owing under this Agreement shall in no event be delayed by the affected Party.

12.4 If the Terminal Operator is prevented by Force Majeure from providing the Services, either in whole or to a substantial extent, and the period of Force Majeure exceeds two (2) months, then at any time on or after the expiration of such period, either Party may terminate this Agreement immediately upon fourteen (14) days' written notice to the other.

12.5 Notwithstanding the obligations of the affected party, if a Force Majeure event is invoked by the Terminal Operator, the Terminal Operator shall not be entitled to charge for any Services if such Services are provided by the Terminal Operator during the Force Majeure event including, but not limited to, demurrage and re-appointment fees.

12.6 During any period of Force Majeure, if the Terminal Operator incurs any additional costs in the performance of its obligations under these Standard Terms and Conditions, the User shall pay the same to the Terminal Operator.

### **13. CONFIDENTIALITY**

13.1 The parties undertake that they shall not at any time disclose to any person any Confidential Information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by Condition 13.2.

13.2 Each party may disclose the other party's Confidential Information:

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13.2.1 to its employees, officers, agents, representatives or professional advisers who need to know such information for the purposes of carrying out the party's obligations under these Standard Conditions; and

13.2.2 as may be required by law, court order or any governmental or regulatory authority.

13.3 If either party breaches this Condition 13, the other party shall have the right to immediately obtain an injunction to prevent the further disclosure of any confidential information, in addition to any other right it may have at law or otherwise.

13.4 No party shall use any other party's Confidential Information for any purpose other than to perform its obligations under these Standard Conditions.

### **14. ASSIGNMENT AND SUB-CONTRACTING**

14.1 The Terminal Operator may assign any or all of its obligations under these Standard Conditions.

14.2 The User may not assign, novate or otherwise dispose of its rights or obligations under these Standard Conditions or any part thereof without the prior written consent of the other party (such consent not to be unreasonably withheld or unduly delayed).

14.3 The Terminal Operator may sub-contract any part of its obligations under these Standard Conditions.

### **15. SAFETY OF LIFE AT SEA (SOLAS)**

15.1 The International Maritime Organization (IMO) has amended the Safety of Life at Sea (SOLAS) Convention to require that a packed Container's gross weight be verified before the Container can be loaded on board a ship. The SOLAS amendment provides that no Container without a verified gross mass (VGM) can be loaded on board a ship.

15.2 The responsibility for obtaining and documenting the verified gross weight of a packed Container (or containerized cargo) lies with the shipper. Unless otherwise directed by the relevant government authority, the shipper shall provide this information before or by the time the Container is delivered to the Terminal. The shipper shall indemnify and shall hold the Terminal Operator free and harmless from any liability, loss or damage arising from an erroneous VGM of a packed Container (or containerized cargo).

15.3 The weight of the Containers shall be verified by the Operator before being loaded on the Vessels.

15.4 In case the Terminal Operator identifies differences between the VGM provided by the user, at the time of verifying the weight of the Containers, the weight obtained by the Terminal Operator shall be used for the purposes of stowage planning.

15.5 In case of non-compliance by the user with the obligation to provide the VGM of the Containers, as established in the applicable laws, the Terminal Operator may refuse access to the Terminal. The Container Terminal will charge the respective fee for services rendered in connection with the Solas Agreement.

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15.6 A container with a gross mass in excess of its maximum allowable gross mass may not be loaded on a vessel, it shall not be the responsibility of the Terminal Operator in case the master of the vessel accepts to load the container exceeding the maximum allowable gross mass.

### COMPLIANCE CLAUSES

16.1. Parties shall at all times comply with all laws, rules, regulations, and orders of any governmental authority as well as possession of all required permits, licenses, and other authorizations for the conduct of its business.

16.2. User acknowledges access to copies of ICTSI's Code of Business Conduct ([https://cdnweb.ictsi.com/s3fs-public/inline-files/ictsi\\_-\\_code\\_of\\_business\\_conduct.pdf](https://cdnweb.ictsi.com/s3fs-public/inline-files/ictsi_-_code_of_business_conduct.pdf)) and Global Principles on Human Capital ([https://cdnweb.ictsi.com/s3fs-public/2020-11/hcb1\\_10.23\\_0.pdf](https://cdnweb.ictsi.com/s3fs-public/2020-11/hcb1_10.23_0.pdf)). The User agrees to inform each of its employees, sub-contractors (if any, as may be allowed herein), agents dealing with the Terminal Operator of these policies and undertakes that the performance of the Services shall be consistent with the same.

16.3. The User further represents and warrants that it has not, nor any of its directors, officers, employees or representatives, taken any action in furtherance of an offer, payment, promise to pay, or authorization or approval of the payment or giving of money, property, gifts or anything else of value, directly or indirectly, to any government or public official/candidate or any officer or employee of the Terminal Operator to unlawfully influence official action or secure an unlawful advantage. The User conducts its business in compliance with applicable anti-corruption laws and maintains policies and procedures designed to promote and achieve compliance with such laws and, furthermore, the antibribery obligations under ICTSI's Code of Business Conduct.

16.4. The ICTSI Group is committed to uphold the principles of sustainable development in its operations and corporate stewardship of its people, customers, corporate resources, and the environment. These thrusts are documented in ICTSI's Annual Sustainability Report available at <https://www.ictsi.com/what-we-do/sustainability>. User undertakes to observe the foregoing or analogous principles and commitment and shall cooperate with the Terminal Operator in its sustainability efforts in the Terminal and its community.

16.5. The User in all its dealings with the Terminal Operator operate safely so as to protect person and property based applicable laws as well as the Health, Safety, Security and Environment (HSE) Policies of the ICTSI Group. User shall provide the CLIENT HSE documentations that may include: a) Risk assessments;

- b) Work methodologies;
- c) Training records;
- d) Licenses and certificates; and
- e) Standard Operating Procedures.

The User shall immediately notify the Terminal Operator of any health and safety and/or environmental incident (e.g. injury, property damage, oil spill, etc.) by the quickest practicable means (e.g. by phone call). The User shall follow this notice with a formal incident report in writing within

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eight (8) hours from the occurrence.

16.6. Both Parties agree that each of their employees, directors, affiliates, subcontractors, and any other person or entity acting on their behalf (hereinafter referred to as the "Related Parties") shall comply with all applicable anti-corruption laws including but not limited to the Parties' respective codes of business conduct and anti-bribery policies, and where applicable the U.S. Foreign Corrupt Practices Act and the UK Bribery Act 2010 (hereinafter referred to as "Anti-Corruption Laws").

### **17. GENERAL PROVISIONS**

17.1 These Terms and Conditions (together with any documents expressly incorporated by the parties (if any)) comprise the entire agreement between the parties in respect of the provision of the Services and any representations or statements, whether oral or written, made elsewhere (including, without limitation, where such representations or statements have been made negligently), provided that this Condition does not exclude or limit any liability or any rights that either party may have in respect of pre-contractual representations made or given fraudulently, supersedes all previous agreements and understandings between the parties in respect of the provision of the Services. If the User's documentation contains terms or conditions in addition to or which differ from these Terms and Conditions, each additional or varying term or condition shall have no effect.

17.2 The User acknowledges that it does not enter into these Terms and Conditions in reliance on any representation, warranty or other undertaking or understanding which is not fully reflected in the written terms of these Terms and Conditions, and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

17.3 If any provision of these Terms and Conditions is held to be invalid, illegal or unenforceable for any reason by a court of competent jurisdiction, these Terms and Conditions shall be deemed modified to the extent necessary to make the unenforceable provision, and the remainder of these Terms and Conditions, valid and enforceable. If a court refuses to modify these Terms and Conditions as provided herein, the invalid, illegal or unenforceable provision shall be severed and the remaining provisions hereof shall continue in full force and effect as if these Terms and Conditions had been executed with the invalid, illegal or unenforceable provision severed.

17.4 In the event of any of the deletions described in Condition 17.3, the parties shall negotiate in good faith with a view to replacing the deleted provisions with legal and enforceable provisions having similar economic and commercial effect to the deleted provisions.

17.5 The failure of either party to enforce strict performance of any provision of these Terms and Conditions, or the failure of either party to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations set forth in these Terms and Conditions.

17.6 A waiver of any breach of these Conditions shall not constitute a waiver of any subsequent breach.

17.7 No waiver of any of the provisions of these Terms and Conditions shall be effective unless expressly stated to be a waiver and communicated to the other party in writing in accordance with Condition 17.13.

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- 17.8 Except as expressly stated in these General Conditions, no right or remedy conferred on a party by these General Conditions shall be exclusive of any other right or remedy which may arise and all such rights and remedies shall be cumulative.
- 17.9 Any modification, variation, amendment or addition to these General Conditions must be in writing and published.
- 17.10 The Terminal Operator is an independent service provider in accordance with these General Conditions. Nothing contained in these General Conditions shall be construed to constitute a partnership, association or joint venture between the parties, or make one party a representative of the other party. Neither party shall hold itself out as a representative of the other party or be a party to a joint venture vis-à-vis the other party. The User shall not have the authority to act on behalf of the Terminal Operator, nor shall the Terminal Operator in turn have the authority to act on behalf of the User, except to the extent necessary for the Terminal Operator to perform its obligations under these General Terms and Conditions.
- 16.11 Notices to be given to modify or revise the terms of these Conditions, or notices with respect to claims or legal actions having a significant impact on these General Conditions shall be in writing, in English and shall be delivered to the address of the other party personally, by registered mail or courier service with return receipt requested.
- 16.12 These General Conditions and any dispute or claims arising out of or in connection with their subject matter or their formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of Honduras.
- 16.13 The courts of Honduras shall determine whether there is any claim against the Terminal Operator arising out of the Services provided pursuant to these Terms and Conditions, to whose jurisdiction the User irrevocably submits.
- 16.14 The Terminal Operator shall be entitled to bring legal proceedings against the User in the courts of Honduras or in any other jurisdiction (including the territory(ies) in which the User has its place of business or assets) and legal proceedings brought by the Terminal Operator in one or more jurisdictions shall not preclude legal proceedings brought in any other jurisdiction, whether concurrent or not, from proceeding