



REQUEST FOR PROPOSALS

IN RELATION TO

**THE AWARD OF A TWENTY (20) YEAR CONCESSION, WITH AN EXTENSION OPTION, TO
DESIGN, DEVELOP, FINANCE, CONSTRUCT, OPERATE AND MAINTAIN THE COROZAL
CONTAINER TERMINAL**

ACP TENDER NO. CCO-16-003

REPUBLIC OF PANAMA, OCTOBER 7, 2016



October 7, 2016

To all Prequalified Parties:

Further to the publication on 25 November 2015 of the request for qualifications (as amended from time to time, the "RFQ") in relation to the twenty (20) year concession with an extension option to design, develop, finance, construct, operate and maintain a container terminal (the "Corozal Container Terminal") in the area of Corozal, which is located on the Pacific entrance of the Panama Canal, (the "Concession for the Corozal Container Terminal") the Autoridad del Canal de Panamá ("ACP") is pleased to present this request for proposals (as amended from time to time, the "RFP") in relation to the Concession for the Corozal Container Terminal. Prequalified Parties must send their binding offers in relation to the Concession for the Corozal Container Terminal (each, a "Binding Offer") in accordance with the terms and conditions of this RFP to the following address:

**Autoridad del Canal de Panamá
División de Administración de Proyectos de Construcción
Building 732, Ancón, Corozal Oeste
Panama, Republic of Panama**

All clarification requests in relation to this RFP must be sent, by no later than 3:00 pm (Republic of Panama local time) on the date that is fifteen (15) days prior to the deadline for the submission of Binding Offers in accordance with the terms of this RFP, to:

**Mrs. Alina de Casal,
Contract Specialist
Autoridad del Canal de Panamá
División de Administración de Proyectos de Construcción
Building 732, Ancón, Corozal Oeste
Panama, Republic of Panama
E-mail: Acasal@pancanal.com**

Any amendment to this RFP will be published at the ACP website at <http://micanaldepanama.com/servicios/bienes-y-servicios-comerciales>. It is the obligation of the Prequalified Parties to continuously review this website for any future amendments.

The ACP looks forward to receiving Binding Offers from Prequalified Parties.

Sincerely,



Jorge A. Fernández A.
Contracting Officer
Autoridad del Canal de Panamá

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GENERAL CLAUSES

1. BACKGROUND

- 1.1. Within the Panama Canal Diversification Strategy of the ACP, the Corozal Container Terminal will play an important role in providing additional port capacity on the Pacific side of Panama in order to support the transshipment needs of the larger vessels going through the new sets of Panama Canal locks.
- 1.2. The Corozal Container Terminal will be located in the last available land plot on the east bank of the Pacific entrance side of the Panama Canal and adjacent to the trans-isthmian rail track and main highway. This plot of land (the "**Concession Area**") is strategically located along one of the most important waterways of the world, which can enable more than thirteen thousand (13,000.00) transits per year. The Concession Area comprises sixty nine (69) hectares and 4,689.40 square meters of land and seven (7) hectares and 9,650 square meters of seabed, and is under the jurisdiction of the ACP. At current prices the value of the entire Concession Area is approximately one hundred thirty four thousand million US Dollars (US\$134,000,000.00). The ACP will also grant an option to expand the Concession Area to add another forty nine (49) hectares and 7,888.83 square meters of land and four (4) hectares and 3,129.00 square meters of seabed with a value of another one hundred six million US Dollars (US\$106,000.00).
- 1.3. ACP will contribute approximately seventy million US Dollars (US\$70,000,000.00) to the development of the Corozal Container Terminal by undertaking a large part of the required capital dredging along the proposed one thousand three hundred fifty (1,350.00) meter berths, as defined within the terms and conditions of the Concession Agreement. In addition, the ACP will relocate the ACP's existing operations on the Concession Area at an estimated cost of approximately fifteen million US Dollars (US\$15,000,000.00). The ACP will also provide the Environmental Impact Study for the project, which focuses on community relations and green port principles, which will become binding for the future Concessionaire.
- 1.4. Pursuant to a decision of its Board of Directors the ACP initiated the Tender Process and sought to prequalify interested parties for the award of the Concession for the Corozal Container Terminal. The Prequalification Stage, which commenced with the issuance of the RFQ, concluded on 28 April 2016 with the publication of the list of the Prequalified Parties on the ACP's website at <http://puertocorozal.micanaldepanama.com/documentos/>.
- 1.5. During the Prequalification Stage interested parties expressed their interest in participating in the Tender Process and submitted a Statement of Qualifications in accordance with the terms and conditions of the RFQ. For the avoidance of doubt, Prequalified Parties are required to meet the Requisites and all other requirements of the RFQ and this RFP throughout the Proposals Stage.
- 1.6. The Proposals Stage commenced with the issuance of this RFP and will conclude on the Award Date. In order to participate in the Proposals Stage and to access the VDR, the Prequalified Parties are required to complete, sign and deliver to the ACP (as set out in paragraph 3 of this RFP), a non-disclosure agreement (the "**NDA**") in the form set out in Schedule 4 to this RFP. This RFP sets out further details of the Proposals Stage and how the Prequalified Parties may submit a Binding Offer. This RFP also includes the terms and conditions of the Concession Agreement.

- 1.7. This RFP including its Schedules (including the Concession Agreement), the RFQ, the Statement of Qualifications provided by the Awardee, the Binding Offer provided by the Awardee, the Award and the Execution Version (but excluding for the avoidance of doubt any of the documents included in the VDR) shall constitute the "**Contract**". In the event of any conflict between the documents comprising the Contract, the following descending order of priority shall prevail:
- (a) the Concession Agreement and the Execution Version;
 - (b) the Award;
 - (c) the Binding Offer provided by the Awardee;
 - (d) this RFP including its Schedules (other than the Concession Agreement which is contained within such a Schedule);
 - (e) the Statement of Qualifications provided by the Awardee;
 - (f) the RFQ,

and each such document shall be interpreted accordingly.

2. **DEFINITIONS AND GLOSSARY**

Schedule 1 to this RFP contains a glossary and the definitions of certain terms used in this RFP, and such schedule is incorporated and made an integral part of this RFP.

3. **DUE DILIGENCE**

- 3.1 Prequalified Parties will have the opportunity to carry out due diligence in relation to the Concession Area and the Corozal Container Terminal which shall include access to a virtual data room (the "**VDR**") containing project information, and the opportunity to carry out site visits at the Concession Area ("**Site Visits**") to conduct their own investigations, in accordance with paragraph 4 of this RFP.
- 3.2 Access to the VDR is subject to compliance with, and acceptance of, the VDR rules as set out in **Error! Reference source not found.** to this RFP (the "**VDR Rules**") and, as mentioned above, receipt y the ACP of a signed NDA from the relevant Prequalified Party.
- 3.3 The ACP reserves the right to disqualify any Prequalified Party where the ACP determines that that Prequalified Party or any of its advisers has committed a breach of the VDR Rules and/or the NDA.
- 3.4 By submitting a Binding Offer a Prequalified Party unconditionally and irrevocably accepts and acknowledges that all documents, materials and information included in the VDR are for reference purposes only and the ACP makes no warranty, express or implied, as to their accuracy or completeness. The use, evaluation, interpretation, verification and/or analysis of the information contained in the VDR shall be the sole responsibility of the Prequalified Parties and the ACP will not be liable and/or subject to any claim for any loss, liability, expenses, responsibility, damages and/or any costs, incurred or suffered, which have resulted from the use, evaluation, interpretation, verification and/or analysis of the information by that Prequalified Party.

4. **SITE VISITS AND TESTS**

- 4.1 Prequalified Parties will have the opportunity, subject to the ACP's prior written consent (which will not be unreasonably withheld), to conduct at their own expense tests at the Concession Area including geotechnical site investigations, sedimentation sample tests and any other tests deemed reasonably necessary (the "Site Tests") during their Site Visits. For the avoidance of doubt the Prequalified Parties will be allowed to conduct Site Tests directly or through any contractor designated in writing to the ACP as acting on its behalf.
- 4.2 A Prequalified Party's right to conduct Site Tests is subject to such tests not interfering with the ACP operations or impacting work being done by the ACP's contractors near or on the Concession Area. Prequalified Parties shall coordinate with ACP prior to any Site Test.
- 4.3 The ACP will not be liable for any accidents occurring and/or costs incurred by any Prequalified Parties, including the designated contractors acting on their behalf during or as a result of the Site Tests. The Prequalified Parties and any designated contractors acting on their behalf shall be required to sign a waiver of liability, assumption of risk and indemnity agreement prior to participating in any Site Visit or conducting any Site Test.
- 4.4 The ACP reserves the right to request that a Prequalified Party provide the ACP with certain navigational, safety and/or environmental information, depending on the nature of the Site Test and/or the volume and type of equipment to be used.
- 4.5 No questions will be answered during the Site Visits. Prequalified Parties will be able to raise questions in accordance with paragraph 5 of this RFP. The Prequalified Parties should note that casual discussions or conversations are not allowed during the Site Visits and any comments or discussion shall be deemed to be of a non-contractual and non-binding nature.
- 4.6 Any Prequalified Parties wishing to participate in a Site Visit must notify Mrs. Alina de Casal at the email address set out in paragraph 5.1 of this RFP of their interest no later than November 1, 2016 indicating:
- (a) the name, relevant company, title and role/function of each member of the Prequalified Party's team (which may include advisers, contractors and consultants of the Prequalified Parties) who will attend the Site Visit;
 - (b) the purpose of the Site Visit; and
 - (c) their preference as to dates for the Site Visit (at least three options to be provided) between November 7, 2016 and December 31, 2016.
- 4.7 The ACP will make reasonable efforts to accommodate Prequalified Parties' requests for specific dates but reserves the right to allocate alternative slots if required. The ACP will not be able to accommodate preferences with respect to the time of the day of the Site Visits. If, for any reason, a Prequalified Party is unable to participate in a Site Visit at a date and time which has been confirmed by the ACP, the ACP will offer a Site Visit on an alternative date and time.
- 4.8 Each Prequalified Party shall bear in full its own costs and expenses arising in relation to any Site Visit and/or Site Tests. If the ACP reschedules a Site Visit and/or Site Tests for any reason, the ACP

shall not be liable for any costs and expenses incurred by a Prequalified Party as a result of such rescheduling.

5. CLARIFICATION REQUESTS

- 5.1 Prequalified Parties may submit requests for clarifications relating to this RFP including its Schedules. The deadline for clarification requests will be 3:00 p.m., Republic of Panama local time, on the date that is fifteen (15) days prior to the Binding Offers Due Date and Time. Please forward all questions or clarifications requests relating to this RFP in writing, to:

Mrs. Alina de Casal
Contract Specialist
Autoridad del Canal de Panamá
División de Administración de Proyectos de Construcción
Vicepresidencia Ejecutiva de Ingeniería y Administración de Programas
Building 732, Ancón, Corozal Oeste
Panama, Republic of Panama
Telephone: (507) 276-4930
E-mail: ACasal@pancanal.com

- 5.2 The ACP will respond to any requests for clarification within a reasonable timeframe where it considers that this would assist the Prequalified Parties in submitting a compliant Binding Offer and assist the Tender Process generally. The ACP may or may not provide responses to clarification requests received after the deadline stated in paragraph 5.1 of this RFP.
- 5.3 The requests and related responses will be published on the ACP's website at <http://micanaldepanama.com/servicios/bienes-y-servicios-comerciales> without identifying the Prequalified Party that submitted the request. No separate responses to such requests will be provided and all Prequalified Parties will be deemed to be aware of the information made available, as described above, on the ACP's website from the date on which it is published.
- 5.4 Prequalified Parties, directly or indirectly through any third parties, shall be prohibited from contacting ACP officials or advisors, or requesting or attending meetings with them, other than to the extent provided for in paragraph 4 of this RFP in relation to Site Visits, for the purpose of submitting requests for clarifications in accordance with paragraph 5.1 of this RFP, and as part of any meetings with the ACP in accordance with paragraph 6 of this RFP. All information between the ACP and the Prequalified Parties will be communicated in writing through the Contracting Officer or Mrs. Alina de Casal as set out in paragraph 5.1 of this RFP.
- ## 6. MEETINGS WITH THE ACP
- 6.1 A joint meeting with all the Prequalified Parties will be held at Building 624, West Corozal on November 22, 2016 at 9:00 a.m. (local Time) for the purpose of clarifying the content of this RFP and its Schedules.
- 6.2 Prequalified Parties will have the opportunity to request one individual meeting (each an "Individual Meeting") with designated ACP officials (and, if relevant, its consultants) for the purpose of clarifying the content of this RFP and its Schedules. The ACP will schedule the Individual Meeting at its earliest convenience upon request from a Prequalified Party and after the Joint Meeting is held.

- 6.3 Prequalified Parties shall indicate in their request for an Individual Meeting the specific subjects to be discussed in that Individual Meeting so that the ACP may organise for the relevant subject matter experts to be available to attend the Individual Meeting. Any topic discussed and information exchanged in the Individual Meeting shall be confidential, shall not be considered binding or constitute an amendment to this RFP and its Schedules and shall be for information purposes only.
- 6.4 Each Individual Meeting will be held at the offices of the ACP. Each Prequalified Party that wishes to request an Individual Meeting must notify Mrs. Alina de Casal at the email address set out in paragraph 5.1 of this RFP by no later than November 7, 2016.
- 6.5 Prequalified Parties may bring up to ten (10) representatives (including advisers) to an Individual Meeting and shall notify the ACP of the attendees (indicating their names and role/function) no later than ten (10) days before the relevant Individual Meeting.
- 6.6 The ACP reserves the right, at its sole discretion, to hold additional Individual Meetings with each of the Prequalified Parties or joint meetings with all the Prequalified Parties.
- 6.7 At any time prior to the Binding Offers Due Date and Time, the ACP may, for any reason, whether at its own initiative or in response to a clarification, individual or joint meeting held, change this RFP (including for the avoidance of doubt any of the Schedules to this RFP) by issuing amendments.
- 6.8 Any amendment thus issued shall be part of this RFP, and shall be published on the ACP's website <http://micanaldepanama.com/servicios/bienes-y-servicios-comerciales>.
- 6.9 To afford Prequalified Parties reasonable time in which to take any such amendment into account in preparing their Binding Offers, the ACP may extend the Binding Offers Due Date and Time.

7. **BINDING OFFER BID BOND**

- 7.1 Each Prequalified Party must provide, as part of its Binding Offer, a bid bond in the form set out in Schedule 3 to this RFP (the "**Bid Bond**").
- 7.2 The Bid Bonds provided by the Prequalified Parties as part of their Binding Offers will be returned to each Prequalified Party after the Execution Version has been signed as set out in paragraph 11.3(a)(ii) of this RFP and the Awardee has complied with all other requirements of paragraph 11 of this RFP.
- 7.3 The Bid Bond must, subject to paragraph 7.7 of this RFP, be issued by an Approved Bond Issuer in an amount equal to fifteen million US Dollars (US\$15,000,000.00) and must be valid until the date that is one hundred and twenty (120) days from the Binding Offer Due Date and Time (the "**Tender Validity Period**").
- 7.4 Any Binding Offer not accompanied by a Bid Bond shall be automatically rejected by the ACP and the Binding Offer which accompanies such Bid Bond will not be considered.
- 7.5 Any Bid Bond received on the Binding Offer Due Date and Time, previous to the commencement of the evaluation of proposals, which does not comply in all respects with the requirements of this RFP, shall be returned corrected no longer than three (3) days. Any Bid Bond not corrected under this paragraph shall be automatically rejected by the ACP and the Binding Offer which accompanies such Bid Bond will not be considered.

7.6 The Bid Bond provided by the Awardee may be called by the ACP if the Awardee does not comply with all the requirements of paragraph 11 of this RFP. If the Bid Bond provided by the Awardee is called by the ACP under this paragraph, the ACP shall be entitled (at its sole discretion):

- (a) to immediately withdraw the Award of the Concession for the Corozal Container Terminal for default by the Awardee and to terminate the Concession Agreement; and
- (b) to award the Concession for the Corozal Container Terminal to the next highest Total Price Proposal submitted by a Prequalified Party to the ACP as part of its Binding Offer.

7.7 In this RFP an "**Approved Bond Issuer**" is an insurance company which:

- (a) is duly established and operating in the Republic of Panama with a valid general license issued by the SSRP;
- (b) has a minimum long-term credit rating of "BBB" from S&P, "Baa2" from Moody's and/or "BBB" from Fitch (or in each case such lesser rating as the ACP may in its sole and absolute discretion accept);
- (c) is not subject to any extant debarment or sanction by the ACP or by the National Government of Panama pursuant to Applicable Laws and Regulation, not in a process of regularization, not undergoing an administrative or operational take over, and not subject to a forced liquidation ordered by the SSRP;
- (d) shall, for the purposes of this RFP, only be permitted to issue Bid Bonds up to a maximum of ten per cent (10%) of its most recent Technical Adjusted Net Worth as published by the SSRP in their quarterly report for the period during which the relevant Bid Bond is issued in accordance with this RFP (or, in the case of any such insurer that is a branch of a foreign company, up to a maximum of ten per cent (10%) of the latest audited net worth of its Parent Company (as evidenced in a manner satisfactory to the ACP)), provided that:
 - (i) in order to allow more flexibility in the issuance of Bid Bonds, up to a maximum of five (5) co-insurers per Bid Bond shall be permitted, in which case:
 - (A) each such co-insurer must meet the requirements in paragraphs (a)-(d) above, and shall have the same rights and responsibilities as each other co-insurer (other than the amount that it has agreed to be liable to pay under the relevant Bid Bond); and
 - (B) one such co-insurer shall be appointed as the leader and coordinator of the relevant Bid Bond, for its presentation as well as for its execution; and/or
 - (ii) where the amount of the relevant Bid Bond exceeds the maximum limits set out in paragraph (d) above, reinsurance coverage may be obtained with reinsurers that meet the requirements in paragraphs (a), (c) and (d) above and have an Acceptable Bond Reinsurer Rating (and for the avoidance of doubt, a reinsurer that meets such requirements and has an Acceptable Bond Reinsurer Rating shall be an Approved Bond Issuer), in which case the relevant primary (co-)insurer(s) (which for the avoidance of doubt must meet the requirements in paragraphs (a)-(d) above) retain directly, in respect of each relevant Bid Bond, a minimum exposure of fifty per cent

(50%) of the amount that is ten per cent (10%) of its/their respective most recent Adjusted Technical Net Worth as published by the SSRP in their quarterly report for the period during which the relevant Bid Bond is issued in accordance with this RFP (or, in the case of any such insurer that is a branch of a foreign company, a minimum exposure of fifty per cent (50%) of the amount that is ten per cent (10%) of the latest audited net worth of its Parent Company (as evidenced in a manner satisfactory to the ACP)), and the reinsurer shall assume the remaining exposure under the relevant Bid Bond, subject to:

- (A) a description of the reinsurance structure having been sent to the Finance and Risk Management Division of the Executive Vice Presidency for Administration and Finance of the ACP (or to the office that takes the place of this division within the ACP) no less than five (5) days prior to the date on or by which the relevant Bid Bond is to be provided under this RFP including the following information:
 - (I) the Tender Process number and title;
 - (II) the name of the (co-)insurers and reinsurers underwriting the relevant Bid Bond, the amount and percentages thereof that they will respectively underwrite, and their most recent long-term credit ratings (and names of the relevant rating agencies);
 - (III) the value withheld by the Approved Bond Issuer from the relevant Bid Bond; and
- (B) such reinsurance structure having been approved in writing by the ACP.

7.8 In the event that the ACP has accepted any Bid Bond which is underwritten in part or in whole by any insurer and/or reinsurer that ceases to be an Approved Bond Issuer (whether as a result of becoming debarred or sanctioned by the ACP, and/or, in the case of a reinsurer, as a result of it ceasing to have an Acceptable Bond Reinsurer Rating, or otherwise), the relevant Prequalified party shall be obliged to provide a replacement Bid Bond within fifteen (15) days from the date of notification from the ACP, unless the interests of the ACP are affected in which case the Contracting Officer shall determine the most suitable action to protect the best interests of the ACP.

8. SUBMISSIONS OF BINDING OFFERS

8.1 In order to submit a Binding Offer a Prequalified Party must enclose the following:

- (a) a transmittal letter in the form as set out in Schedule 2 to this RFP (the "**Binding Offer Transmittal Form**") signed by its Tender Representative(s);
- (b) a total price proposal in accordance with Schedule 6 to this RFP (the "**Total Price Proposal**");
- (c) a Bid Bond in accordance with paragraph 7 of this RFP;
- (d) a power of attorney (or equivalent instrument) issued by the Prequalified Party pursuant to a resolution of its Board of Directors (or equivalent pursuant to the relevant bylaws or other constitutional documents of the Prequalified Party) duly authorising and appointing the

person or persons named therein to sign the original and all copies of the Binding Offer Transmittal Form; and

- (e) if the Awardee has relied on its Parent Company to satisfy the Financial Requisites as stated in paragraph 9.2 of the RFQ, an original guarantee in the form set out in Part 1 of Schedule 5 to this RFP signed by such Parent Company.

8.2 A Binding Offer should be submitted by no later than 3:00 pm, Republic of Panama local time, on February 3, 2017 (the "**Binding Offers Due Date and Time**") in accordance with this paragraph 8.2:

- (a) in two (2) hard copy originals in sealed envelopes labelled "*Binding Offer for the Concession for the Corozal Container Terminal*" by hand or by courier to the Contracting Officer at:

**Autoridad del Canal de Panamá
Construction Projects Management Division
Building 732, Corozal Oeste
Panama, Republic of Panama**

All signatures in the original shall be personal and in blue ink. Plotted, printed or stamped signatures and signatures by others in lieu of the person to sign will not be acceptable;

AND

- (b) in electronic form (and in an easily accessible format), either stored in an electronic storage device (e.g. CD-ROM, DVD or USB stick) and delivered by hand or by courier, to the Contracting Officer at the address set out in paragraph 8.2(a) above. CDs and DVDs shall be submitted in their industry standard hard plastic cases. The electronic copy shall be identical in all parts and content to hard copy originals. Plastic cases shall be labelled to clearly identify the Prequalified Party and this RFP. In addition, the discs themselves shall be labelled with the same information using industry standard printed sticker labels, provided that in the case of any discrepancy between the documents submitted in electronic form and those submitted in hard copy, the hard copy version will prevail.

8.3 Regardless of the reason for delay, any Binding Offer received after the Binding Offers Due Date and Time will not be accepted and shall be returned to the relevant Prequalified Party without being unsealed.

8.4 The ACP may, at any time, require a Prequalified Party to provide it with clarifications in connection with its Binding Offer. Once a Prequalified Party has submitted a Binding Offer the ACP will not consider additional information submitted to it by the Prequalified Party which has not been requested by the ACP.

8.5 **BY PARTICIPATING IN THE TENDER PROCESS AND SUBMITTING A BINDING OFFER A PREQUALIFIED PARTY SHALL BE DEEMED TO HAVE FULLY UNDERSTOOD AND UNCONDITIONALLY ACCEPTED THE TERMS AND CONDITIONS SET OUT IN THIS RFP.**

8.6 The ACP will not accept any qualifications, conditions or reservations in relation to the terms of this RFP, be they explicit or implicit in the Binding Offer. Any qualifications, conditions or reservations

not withdrawn by the Prequalified Party when required to do so by the ACP shall constitute grounds for rejection of the Binding Offer.

- 8.7 The ACP reserves the right to disqualify any Prequalified Party where the ACP determines that that Prequalified Party or any of its advisers is in breach of any provision of this RFP.

9. AUTHENTICATION OF DOCUMENTS

In addition to any documents to which this requirement is expressly stated to apply in this RFP, the following documents provided by a Prequalified Party under Paragraph 8.1 must be authenticated.

- (a) the Binding Offer Transmittal Form; and
- (b) the documentation required in accordance with paragraphs 8.1(b), (d) and (e) of this RFP.

10. LANGUAGE AND CURRENCY OF BINDING OFFERS

- 10.1 All documents provided in relation to the Tender Process by a Prequalified Party (other than the Bid Bond which must be in Spanish) must be in English (and any such documents other than the Bid Bond not originally drafted in English, must be officially translated into English). All cost and financial references provided in any such documents must be in United States Dollars.
- 10.2 The ACP may, at its sole discretion, decide that any decision or communication it makes in relation to the Tender Process shall be in Spanish.

11. AWARD PROCESS

- 11.1 Following evaluation of the Binding Offers, the Contracting Officer, on behalf of the ACP, will issue a resolution of award of the Concession for the Corozal Container Terminal (the "**Award**") to the relevant Prequalified Party (the "**Awardee**") whose binding proposal complies with all requirements of this RFP and submits the highest Total Price Proposal. In the event that the ACP receives two or more Binding Offers whose Total Price Proposals are identical (the "**Identical Proposals**"), the Contracting Officer shall select the Awardee by a draw of lots. This process shall be conducted in the presence of each Prequalified Party that has submitted an Identical Proposal.
- 11.2 The Award will be published on the ACP's website in accordance with the ACP Acquisition Regulations (the date of such publication being the "**Award Date**").
- 11.3 Within forty (40) days of the Award Date:
- (a) the ACP shall notify the Awardee of the date (which shall be no later than forty-five (45) days of the Award Date) on which:
 - (i) the Awardee and its SPV (if any) shall, if the Awardee wishes to assign its rights and obligations under the Concession Agreement to an SPV and the Assignment Requirements have been fulfilled, be required to sign the Assignment and Acceptance Agreement, and upon which date the Awardee and its SPV shall sign the Assignment and Acceptance Agreement;
 - (ii) the Concessionaire shall be required to sign the Concession Agreement in the form of Schedule 8 to this RFP but with any blanks or text in italics and/or in square

brackets completed/deleted (such signed Concession Agreement, the "**Execution Version**"), and upon which date the Concessionaire and the ACP shall sign the Execution Version; and

- (b) the Concessionaire shall pay the Upfront Fee to the ACP in accordance with clause 3.1 of the Concession Agreement.

11.4 The ACP confirms that no stamp tax shall be due or chargeable in Panama in respect of the execution of the Execution Version or implementation of the Contract (including any assignment subject to and in accordance with clause 16.2 of the Concession Agreement/Execution Version).

11.5 For the avoidance of doubt the authorised representative of the Awardee and, if applicable, of the SPV must be present in Panama to sign the Execution Version and, if applicable the Assignment and Acceptance Agreement.

12. **ASSIGNMENT**

12.1 The Awardee shall notwithstanding clause 16.2 of the Concession Agreement have the right to assign its rights and obligations under the Concession Agreement to an SPV prior to the signing of the Execution Version in accordance with paragraph 11.3(a)(ii) of this RFP, provided that the following requirements (the "**Assignment Requirements**") are fulfilled:

- (a) the Awardee has notified the ACP within three (3) days of the Award Date that it wishes to assign its rights and obligations under the Concession Agreement to an SPV and the ACP has consented to such assignment;
- (b) such assignment is not and will not be or result in a violation of any Applicable Laws and Regulations;
- (c) the share capital of the SPV comprises only registered shares (and for the avoidance of doubt no bearer shares), and one hundred per cent (100%) of the issued and outstanding share capital of the SPV is fully subscribed and paid for by, and issued to, the Awardee;
- (d) the Awardee has delivered to the Contracting Officer, within three (3) days of the ACP's consent (if any) referred to in paragraph 12.1(a) of this RFP, the proposed text of the SPV's draft constitutional documents, which must include provisions to the following effect:
 - (i) that the shareholder of the SPV may not sell or otherwise transfer all or any part of its interest in the share capital of the SPV without ACP approval;
 - (ii) that the SPV shall be created solely and specifically for the design, development, financing, construction, operation and maintenance of the Corozal Container Terminal, including the provision of terminal related services in accordance with the terms and conditions of the Concession Agreement, and that, for avoidance of doubt, the SPV may not conduct any other business other than such design, development, financing, construction, operation and maintenance; and
 - (iii) that no provision, clause or content contained in such constitutional documents may be contrary to, or conflict with: (1) the contract entered into with the ACP for the design, development, financing, construction, operation and maintenance of a

container terminal in the area of Corozal; or (2) any ACP laws and regulations, or any rulings of the ACP, and that if there is any such conflict then such contract or such ACP laws, regulations or rulings (as the case may be) will prevail;

- (e) the Awardee has made any amendments to such constitutional documents notified to it by the ACP within three (3) days receipt of such notification, has re-submitted them to the ACP for approval and, subject to such approval, has registered the public notarial document containing the constitutional documents of the SPV in the Public Registry of the Republic of Panama within ten (10) days of any such approval; and
- (f) the Awardee has delivered a copy of the constitutional documents of the SPV duly registered at the Public Registry of the Republic of Panama to the ACP within thirty (30) days of the Award together with:
 - (i) a certified true copy of a resolution issued by the Board of Directors of the Awardee approving the assignment to the SPV;
 - (ii) a certified true copy of a resolution issued by the Board of Directors of the SPV accepting the assignment from the Awardee;
 - (iii) an original guarantee in the form set out in Part 2 of Schedule 5 to this RFP signed by the Awardee or, if the Awardee has relied on its Parent Company to satisfy the Financial Requisites as stated in paragraph 9.2 of the RFQ, an original guarantee in the form set out in Part 3 of Schedule 5 to this RFP signed by such Parent Company and the Awardee.

12.2 Upon receipt of any such guarantee as is referred to in paragraph 12.1(f)(iii) the ACP shall, if the Awardee provided a guarantee in the form set out in Part 1 of Schedule 5 with its Binding Offer in accordance with paragraph 8.1(e), return the guarantee that was provided in accordance with paragraph 8.1(e) to the Awardee.

13. **PROTESTS**

13.1 Protests against the Award may be submitted by a Prequalified Party in accordance with the ACP Acquisition Regulations.

13.2 A protest must be accompanied by the necessary documentation, which shall be reviewed according to the rules of judicial discretion.

13.3 Protests must be submitted to Mr. John D. Langman, *Gerente Ejecutivo de la División de Compras, Almacenes e Inventarios*, at the following address:

Autoridad del Canal de Panamá
División de Compras, Almacenes e Inventarios
Building 710, Balboa
Panama, Republic of Panama

13.4 Protests shall be resolved within thirty (30) days from the date on which the Gerente Ejecutivo de la *División de Compras, Almacenes e Inventarios* admits such protest.

13.5 The decision of the Gerente Ejecutivo de la *División de Compras, Almacenes e Inventarios* shall be final and exhausts the administrative procedure of the ACP.

13.6 In order to be admitted a protest against the Award must be accompanied by a monetary bond (in the form of the Bid Bond) in favour of the ACP and in an amount equal to one hundred thousand US Dollars (US\$100,000.00) to cover the ACP's costs and expenses incurred in the procedure, and which may be called by the ACP in the event that the protest is declared groundless in the resolution issued by the Gerente Ejecutivo de la *División de Compras, Almacenes e Inventarios*.

14. **LEGAL NOTICES**

14.1 All material and information in or provided pursuant to this RFP and the Tender Process (including through the VDR) generally is prepared in good faith and is provided to the best of the ACP's knowledge and belief and for the purpose of this stage of the Tender Process. However, no representation, warranty or undertaking, express or implied, is or will be made in relation to the accuracy, adequacy or completeness of any material or information in or provided pursuant to this RFP or the Tender Process generally.

14.2 No responsibility or liability is or will be accepted by the ACP, or any directors, officers, employees or advisers of the ACP in respect of any error or misstatement in or omission from of any material or information in or provided pursuant to this RFP or the Tender Process generally (including the VDR, as stated in paragraph 3.4 of this RFP).

14.3 No information contained in this RFP or in any other document provided by or on behalf of the ACP during the Tender Process generally (including the VDR) other than the Concession Agreement forms the basis for any warranty, representation or term of any contract by the ACP, with any third party.

14.4 The ACP may withdraw this RFP and/or cancel the Tender Process at any time before the Award Date.

14.5 The ACP may modify any dates set out or projected in this RFP, or issue amendments, supplements and/or modifications to this RFP.

14.6 All Binding Offers and other submissions made pursuant to the Tender Process are made at the risk of the Prequalified Parties. No Prequalified Parties shall have any right or claim for any compensation against the ACP, or any directors, officers, employees or advisers of the ACP.

14.7 Each Prequalified Party shall bear all costs associated with the preparation and submission of its Binding Offer, and participation in the Tender Process generally, and the ACP will under no circumstances be responsible or liable for any such costs.

14.8 The ACP shall not be bound by or liable for any obligations in relation to the Tender Process save as specified in the Concession Agreement by which it is bound.

15. **GOVERNING LAW**

This RFP and any non-contractual obligations arising out of or in connection with this RFP shall be governed by, and interpreted in accordance with, the Contract Governing Laws. If and to the extent that any matter relating to this RFP and/or any non-contractual obligations arising out of or in connection with this RFP is a matter that is not foreseen, or capable of being governed by, and

interpreted in accordance with, the Contract Governing Laws it shall be governed by, and interpreted in accordance with, the applicable laws of the Republic of Panama, with the exclusion of the choice of law provisions.


SCHEDULE 1
GLOSSARY AND DEFINITIONS

"Acceptable Bond Reinsurer Rating"	means, in respect of any relevant reinsurer, a minimum long-term credit rating of "a-" from AM Best, "A-" from S&P, "A3" from Moody's and/or "A-" from Fitch, provided that if such reinsurer has several long-term credit ratings the rating with the most recent date will be taken into account for these purposes.
"ACP"	has the meaning given to it in the letter from the Contracting Officer at the beginning of this RFP.
"ACP Acquisition Regulations"	has the meaning given to it in the Concession Agreement.
"Applicable Laws and Regulations"	has the meaning given to it in the Concession Agreement.
"Approved Bond Issuer"	has the meaning given to it in paragraph 7.7 of this RFP.
"Assignment and Acceptance Agreement"	means the Assignment and Acceptance Agreement in the form set out in Schedule 9 to this RFP.
"Assignment Requirements"	has the meaning given to it in paragraph 12.1 of this RFP.
"Authenticated"	has the meaning given to it in the RFQ.
"Award"	has the meaning given to it in paragraph 11.1 of this RFP.
"Award Date"	means the date that the Award is published in accordance with paragraph 11.2 of this RFP.
"Awardee"	has the meaning given to it in paragraph 11.1 of this RFP.
"Bid Bond"	has the meaning given to it in paragraph 7.1 of this RFP.
"Binding Offer"	has the meaning given to it in the letter from the Contracting Officer at the beginning of this RFP.
"Binding Offer Transmittal Form"	has the meaning given to it in paragraph 8.1(a) of this RFP.
"Binding Offers Due Date and Time"	has the meaning given to it in paragraph 8.2 of this RFP.

"Concession Agreement"	means the agreement containing the terms and conditions of the Concession for the Corozal Container Terminal set out in Schedule 8 to this RFP.
"Concession Area"	has the meaning given to it in paragraph 1.2 of this RFP.
"Concession for the Corozal Container Terminal"	has the meaning given to it in the letter from the Contracting Officer at the beginning of this RFP.
"Concessionaire"	means the Awardee or, where the Awardee has assigned its rights under the Concession Agreement to an SPV in accordance with paragraph 12, such SPV, in each case in its capacity as a party to the Concession Agreement (and the Execution Version).
"Contract"	has the meaning given to it in paragraph 1.7 of this RFP.
"Contract Governing Laws"	has the meaning given to it in the Concession Agreement.
"Contracting Officer"	has the meaning given to it in the Concession Agreement.
"Corozal Container Terminal"	has the meaning given to it in the letter from the Contracting Officer at the beginning of this RFP.
"Execution Version"	has the meaning given to it in paragraph 11.3(a)(ii) of this RFP.
"Financial Requisites"	has the meaning given to it in the RFQ.
"Governmental Entity"	has the meaning given to it in the Concession Agreement.
"Identical Proposals"	has the meaning given to it in paragraph 11.1 of this RFP.
"Individual Meeting"	has the meaning given to it in paragraph 6.2 of this RFP.
"NDA"	has the meaning given to it in paragraph 1.5 of this RFP.
"Panama Canal"	has the meaning given to it in the Concession Agreement.
"Parent Company"	has the meaning given to it in the Concession Agreement.
"Prequalification Stage"	has the meaning given to it in the RFQ.
"Prequalified Parties"	has the meaning given to it in the RFQ.

"Proposals Stage"	has the meaning given to it in the RFQ.
"Requisites"	has the meaning given to it in the RFQ.
"RFP"	has the meaning given to it in the letter from the Contracting Officer at the beginning of this RFP.
"RFQ"	has the meaning given to it in the letter from the Contracting Officer at the beginning of this RFP.
"Site Tests"	has the meaning given to it in paragraph 4 of this RFP.
"Site Visits"	has the meaning given to it in paragraph 3.1 of this RFP.
"SPV"	has the meaning given to it in the RFQ.
"SSRP"	means the Superintendence of Insurance and Reinsurance of the Republic of Panama (<i>Superintendencia de Seguros y Reaseguros de Panamá</i>).
"Statement of Qualifications"	has the meaning given to it in the RFQ.
"Technical Evaluation Board"	has the meaning given to it in the RFQ.
"Tender Process"	has the meaning given to it in the RFQ.
"Tender Representative"	has the meaning given to it in the RFQ.
"Tender Validity Period"	has the meaning given to it in paragraph 7.3 of this RFP.
"Tendering Parties"	has the meaning given to it in the RFQ.
"Total Price Proposal"	has the meaning given to it in paragraph 8.1(b) of this RFP.
"Upfront Fee"	means the Upfront Fee specified in the Awardee's Binding Offer (i.e. within its Total Price Proposal).
"VDR"	has the meaning given to it in paragraph 3.2 of this RFP.
"VDR Rules"	has the meaning given to it in paragraph 3.2 of this RFP.

SCHEDULE 2
BINDING OFFER TRANSMITTAL FORM

<p>Concession for the Corozal Container Terminal ACP TENDER NO. CCO-16-003</p>	 CANAL DE PANAMÁ																
<p>Date _____</p> <p>Mr. Jorge A. Fernández Contracting Officer Autoridad del Canal de Panamá División de Administración de Proyectos de Construcción Building 732, Ancón, Corozal Oeste Panama, Republic of Panama</p> <p>Dear Mr. Fernández:</p> <p>In this Binding Offer Transmittal Form, unless otherwise defined herein, words and expressions shall have the same meaning as are respectively assigned to them in the Request for Proposals in relation to the Concession for the Corozal Container Terminal ("RFP").</p> <p>By delivery of this Binding Offer, we _____, hereby make the attached and enclosed offer to the Autoridad del Canal de Panamá ("ACP"), and further represent and warrant that we have examined, understood and checked the documents forming the RFP including all its Schedules, all its amendments, and have ascertained that they do not contain any unfeasibility, errors, fault or other defects. We accordingly offer to design, develop, finance, construct, operate and maintain the Corozal Container Terminal and remedy any defects therein and to perform all other obligations of the Concessionaire under the Contract.</p> <p>This Binding Offer shall remain binding upon us and may be accepted by the ACP at any time before the expiration of the Tender Validity Period.</p> <p>If this Binding Offer is accepted, we will comply with all the terms of the Concession Agreement.</p> <p>Enclosed, and incorporated herein as part of this Binding Offer, are the following documents:</p> <ul style="list-style-type: none"> • Total Price Proposal, as set out in paragraph 8.1(b) (Schedule 6) of the RFP; • Bid Bond, as set out in paragraph 8.1(c) (Schedule 3) of the RFP; • Power of Attorney, as set out in paragraph 8.1(d) of the RFP; and • Guarantee (if applicable), as set out in paragraph 8.1(e) (Part 1 of Schedule 5) of the RFP. <p>We further understand that all costs and expenses incurred by us in preparing this Binding Offer and participating in the Tender Process will be borne solely by us. We agree that the ACP will not be responsible for any errors, omissions, inaccuracies or incomplete statements made in this Binding Offer. This Binding Offer shall be governed by and construed in all respects according to the Contract Governing Laws.</p>																	
<p>ACKNOWLEDGEMENT OF RECEIPT OF AMENDMENTS</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 25%;">Amendment No.</th> <th style="width: 25%;">Date</th> <th style="width: 25%;">Amendment No.</th> <th style="width: 25%;">Date</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	Amendment No.	Date	Amendment No.	Date												
Amendment No.	Date	Amendment No.	Date														
<p>Please identify here all the amendments issued by the ACP to the original RFP and your acknowledge of receipt</p>																	
<p>By signing this form, Prequalified Party's Tender Representative certifies that the information provided in this Binding Offer is true and correct.</p>																	
<p>Name of Prequalified Party's Tender Representative</p>	<p>Title of Tender Representative</p>	<p>Signature of Tender Representative</p>	<p>Date signed</p>														

**SCHEDULE 3
FORM OF BID BOND**

FIANZA DE PROPUESTA

Número de fianza:
Nombre del Proponente Precalificado (EL PROPONENTE PRECALIFICADO):
Fecha:
Cantidad Total de la Fianza: B/.15,000,000.00 (Quince millones de balboas)
Licitación No.: ACP CCO-16-003, Concesión para el diseño, construcción, operación y realización de la actividad comercial de un puerto de la Autoridad del Canal de Panamá para el trasbordo de contenedores en el área de Corozal Oeste del Canal de Panamá.

Conste por el presente documento que LA FIADORA (y COFIADORAS de darse el caso) suscrita(s) a continuación, por este medio le garantiza(n) a LA AUTORIDAD DEL CANAL DE PANAMÁ, en adelante denominada LA AUTORIDAD, el mantenimiento de la oferta hecha por EL PROPONENTE PRECALIFICADO y la obligación de este de presentar las garantías de cumplimiento exigidas por el pliego de cargos en la licitación arriba enunciada.

Por lo tanto, en el evento de la adjudicación por parte de LA AUTORIDAD del contrato de concesión resultante de la licitación precitada a EL PROPONENTE PRECALIFICADO, y que éste se negare a mantener su oferta, o incumpla su obligación de presentar las garantías de cumplimiento exigidas por el pliego de cargos LA AUTORIDAD ejecutará la presente fianza de propuesta por el monto máximo arriba establecido, sujeto a los siguientes términos y condiciones:

1. LA FIADORA y COFIADORA(S) garantiza(n) a LA AUTORIDAD: (i) el mantenimiento de la oferta hecha por EL PROPONENTE PRECALIFICADO, y (ii) la obligación de éste de presentar las fianzas de cumplimiento exigidas por el pliego de cargos. LA FIADORA y COFIADORA(S) no asume(n) la obligación de expedir las fianzas de cumplimiento correspondientes.
2. LA FIADORA y COFIADORA(S) será(n) responsable(s) ante LA AUTORIDAD por el monto asumido por cada una en este documento.

Esta fianza será válida por un término de ciento veinte (120) días contados a partir de la fecha establecida para el recibo de propuestas en la licitación correspondiente, incluyendo cualquier extensión del plazo para la presentación de propuestas, introducida a través de enmienda. Esta fianza permanecerá vigente hasta el rechazo de la propuesta hecha por EL PROPONENTE PRECALIFICADO o la devolución de la fianza de EL PROPONENTE PRECALIFICADO, lo que ocurra primero, pero en ningún caso más allá de los ciento veinte (120) días contados a partir de la fecha establecida para el recibo de propuestas en la licitación correspondiente.

3. En caso de que EL PROPONENTE PRECALIFICADO incumpliese en su obligación de mantener su oferta, o no cumpla con todos los requerimientos establecidos en el pliego de cargos como parte del proceso de adjudicación, según lo descrito en el Párrafo 11 (*Award Process*) del pliego de cargos de licitación arriba enunciada, o de presentar las fianzas de cumplimiento que fuesen exigidas por el

pliego de cargos, LA AUTORIDAD notificará por escrito dicho incumplimiento a LA FIADORA y COFIADORA(S), a fin de que ésta(s) paguen el importe de esta fianza a LA AUTORIDAD dentro de los treinta (30) días calendario siguientes a la fecha del recibo del aviso de incumplimiento.

4. Cualquier disputa o controversia proveniente de, o relacionada con esta fianza, así como la interpretación, aplicación, y ejecución de la misma, será resuelta bajo las leyes de la República de Panamá. En el evento de que LA AUTORIDAD decida iniciar una demanda arbitral, la misma deberá entablarse contra EL PROPONENTE PRECALIFICADO conjuntamente con LA FIADORA y COFIADORA(S).

En fe de lo cual, se suscribe esta Fianza en la ciudad de Panamá, en la fecha indicadas en la cabecera de este documento.

PROponente PRECALIFICADO
1. Nombre de la Compañía:
2. Firma:
3. Nombre y Título:

FIADORA
1. Nombre de la Compañía:
2. Firma autorizada:
3. Nombre:
MONTO AFIANZADO:

COFIADORA NO. 1
1. Nombre de la Compañía:
2. Firma autorizada:
3. Nombre y Título:
MONTO AFIANZADO:

COFIADORA NO. 2
1. Nombre de la Compañía:
2. Firma autorizada:
3. Nombre y Título:
MONTO AFIANZADO:

COFIADORA NO. 3
1. Nombre de la Compañía:
2. Firma autorizada:
3. Nombre y Título:
MONTO AFIANZADO:

COFIADORA NO. 4
1. Nombre de la Compañía:
2. Firma autorizada:
3. Nombre y Título:
MONTO AFIANZADO:

COFIADORA NO. 5
1. Nombre de la Compañía:
2. Firma autorizada:
3. Nombre y Título:
MONTO AFIANZADO:

SCHEDULE 4
FORM OF NON-DISCLOSURE AGREEMENT

THIS NON-DISCLOSURE AGREEMENT (the "**Agreement**") is made and entered into on _____ by and between _____ having its registered office at _____ (the "**Recipient**") and the PANAMA CANAL AUTHORITY ("**ACP**"), a Panamanian Public Law entity, created by the Title XIV of the Politic Constitution of the Republic of Panamá, having its main office at Balboa Highs, Panama City, Republic of Panama.

(The Recipient and the ACP shall collectively be referred to as the "**Parties**" and individually where the context requires as a "**Party**".)

The ACP will share project data and information included in the VDR, as referred to in the Request for Proposals No. CCO-16-003 for the Concession for the Corozal Container Terminal, to allow the Recipient to develop its binding proposal for the referenced Request for Proposal (the "**Purpose**"). Some of the information to be disclosed is considered as confidential until the award of the Concession for the Corozal Container Terminal and the Parties agree that any disclosure of Confidential Information (as defined below) shall be governed by this Agreement.

NOW THEREFORE, in consideration for the ACP agreeing to disclose Confidential Information to the Recipient, the Parties agree as follows:

1. in this Agreement, "**Confidential Information**" means all confidential or proprietary information (however recorded or preserved and including without limitation information expressly or implicitly identified as originating with or belonging to the ACP) disclosed or made available (in any form or medium including without limitation orally, in writing or by any other means), directly or indirectly, by or through the ACP to the Recipient;
2. the Recipient undertakes to the ACP as follows:
 - 2.1 the Recipient will keep the Confidential Information secret and confidential and will prevent disclosure, directly or indirectly, of all or any portion of the Confidential Information save that the Recipient may disclose the Confidential Information:
 - (a) with the ACP's prior written consent;
 - (b) to any of its officers, employees, advisers, subcontractors and contractors that need to know the relevant Confidential Information for the Purpose only provided that the Recipient procures that each such person to whom the Confidential Information is disclosed to complies with the obligations set out in this Agreement as if they were the Recipient;
 - (c) to the minimum extent required by:
 - (i) any order of any court of competent jurisdiction or any regulatory, judicial, governmental or similar body or taxation authority of competent jurisdiction;
 - (ii) the rules of any listing authority or stock exchange on which the Recipient's shares are listed; or
 - (iii) the laws or regulations of any country to which the Recipient's affairs are subject,

provided that it is agreed that the Recipient will cooperate with the ACP and provide the ACP with prompt notice of any such requirement(s) for disclosure so that the ACP may seek an appropriate protective order or waive compliance by the Recipient with the provisions of this Agreement;

- 2.2 the Recipient shall not use or exploit the Confidential Information in any way, except for or in connection with, the Purpose; and
- 2.3 if requested in writing at any time by the ACP, the Recipient shall immediately return to the ACP all documents and other records of the Confidential Information that have been supplied to or generated by the Recipient.
3. The obligations set out in clause 2 shall not apply, or shall cease to apply, to Confidential Information which the Recipient can show to the ACP's satisfaction:
 - 3.1 that it is, or becomes generally available to the public other than as a direct or indirect result of the information being disclosed by the Recipient in breach of this Agreement; or
 - 3.2 was already lawfully known to the Recipient before it was disclosed by the ACP; or
 - 3.3 has been received by the Recipient from a third party source that is not connected with the ACP and that such source was not under any obligation of confidence in respect of that information.
4. Each Party warrants that it has the full right to enter into this Agreement.
5. The Recipient acknowledges that the unauthorized disclosure of Confidential Information provided by the ACP is likely to cause damage and that, in the event of a violation of this clause the ACP shall be entitled to enforce each such obligation by temporary or permanent injunctive or mandatory relief obtained in any court of competent jurisdiction without the necessity of proving damages, posting any bond or other security, and without prejudice to any other rights and remedies which may be available at law or in equity.
6. The Recipient acknowledges that all obligations assumed under this Agreement with regard to Confidential Information shall remain in effect for as long as such information shall remain confidential or proprietary information of the ACP.
7. All notices required to be given under this Agreement shall be in writing to Mrs. Alina de Casal, Contract Specialist, Autoridad del Canal de Panamá, Building 732, Ancón, Corozal Oeste, Panama, Republic of Panama, e-mail: Acasal@pancanal.com for the ACP and _____ for the Recipient.
Notice shall be considered delivered and effective three (3) days after mailing when sent by registered or certified mail return receipt request.
8. This Agreement may not be amended, modified or waived in any manner, except in writing signed by the Parties. This Agreement embodies the entire understanding between the Parties pertaining to the subject hereof.
9. This Agreement shall be construed and the legal relationship between the Parties in connection with this Agreement shall be determined, in accordance with the laws of the Republic of Panamá. The

Parties hereby consent to the exclusive jurisdiction of the courts of the Republic of Panamá in relation to any action brought in connection with this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives who represent having the authority to bind the respective Party to this Agreement.

For PANAMA CANAL AUTHORITY (ACP)

By: _____
Name: Jorge A. Fernandez
Title: Contracting Officer

For _____

By: _____
Name:
Title:

**SCHEDULE 5
FORMS OF GUARANTEE**

PART 1 – FORM OF GUARANTEE IN CASE OF FINANCIAL REQUISITES RELIANCE

DATED

[•]

and

[•]

GUARANTEE

THIS GUARANTEE is made on [●]

BETWEEN

1. [●] a company incorporated and registered in [●] with company number [●] whose registered office is at [●] (the "**Guarantor**"); and
2. **AUTORIDAD DEL CANAL DE PANAMÁ**, an autonomous, legal entity established and organized under the terms of the National Constitution of Panama and the Organic Law (Panama Canal Authority) No. 19 of 11 June 1997 (the "ACP"), duly authorized for this act by means of Resolution of the Administrator of the Panama Canal Authority No. [●] (the "**Beneficiary**").

WHEREAS

- (A) On 26 April 2016, the Beneficiary passed Resolution No. ACP-IACL-RM16-L-CCO-16003-02 by means of which [●] (the "**Prequalified Party**") was prequalified in accordance with the Request for Qualifications relating to the concession for the Corozal Container Terminal dated 25 November 2015 (the "**RFQ**").
- (B) The Prequalified Party relied on the Guarantor for the purposes of the Financial Requisites (as defined in the RFQ) in order to become a Prequalified Party (as defined in the RFQ).
- (C) Accordingly, as required by the Request for Proposals relating to the concession for the Corozal Container Terminal dated October 7, 2016 (the "**RFP**") the Guarantor has agreed to guarantee the performance of all of the Prequalified Party's obligations under the Concession Agreement (as defined in the RFP) in the event that the Prequalified Party becomes the Awardee (as defined in the RFP), on the terms of this Guarantee.

1. **INTERPRETATION**

- 1.1 Clause headings shall not affect the interpretation of this Guarantee.
- 1.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.
- 1.3 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and vice versa.
- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.6 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time
- 1.7 A reference to writing or written includes fax and email.
- 1.8 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

- 1.9 References to clauses are to the clauses of this Guarantee.
- 1.10 A reference to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.11 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. **EFFECTIVENESS**

- 2.1 This Guarantee (other than this clause 2 and clauses 10 to 16 which are immediately effective) is conditional in all respects, and shall automatically come into effect, upon the Prequalified Party becoming the Awardee.
- 2.2 In the event that:
- (a) the Prequalified Party does not become the Awardee (whether initially or subsequently upon another Prequalified Party that was awarded the Award (as defined in the RFP) defaulting on its obligations under the RFP); or
 - (b) the Prequalified Party assigns its rights and obligations under the Concession Agreement to an SPV (as defined in the RFP), and provides a duly executed guarantee in the form set out in this clause 2 of Schedule 5 to the RFP,

this Guarantee shall become null and void.

3. **PERFORMANCE GUARANTEE AND INDEMNITY**

- 3.1 The Guarantor guarantees to the Beneficiary and its successors, transferees and assigns the due and punctual performance of all present and future obligations of the Prequalified Party under the Concession Agreement ("**Guaranteed Obligations**").
- 3.2 The Guarantor as principal obligor and as a separate and independent obligation and liability from its obligations and liabilities under clause 3.1 agrees to indemnify and keep indemnified the Beneficiary in full and on demand from and against all and any losses, costs and expenses suffered or incurred by the Beneficiary arising out of, or in connection with:
- (a) any failure of the Prequalified Party to perform or discharge the Guaranteed Obligations; or
 - (b) any of the Guaranteed Obligations being or becoming totally or partially unenforceable by reason of illegality, incapacity, lack or exceeding of powers, ineffectiveness of execution or any other matter,

but the Guarantor's liability under this indemnity shall be no greater than the Prequalified Party's liability under the Concession Agreement was (or would have been, had the relevant obligation been fully enforceable).

4. **BENEFICIARY PROTECTIONS**

- 4.1 This Guarantee is a continuing guarantee which shall remain in full force and effect until all the Guaranteed Obligations have been satisfied or performed in full, notwithstanding any intermediate satisfaction or performance of the Guaranteed Obligations by the Prequalified Party, the Guarantor or any other person.
- 4.2 The liability of the Guarantor under this Guarantee shall not be reduced, discharged or otherwise adversely affected by:
- (a) any time, waiver or consent granted to, or composition with, the Prequalified Party;
 - (b) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, the Prequalified Party or any other surety, or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
 - (c) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Prequalified Party (or any other person);
 - (d) any amendment (however fundamental including, without limitation, any amendment which has the effect of increasing the liability of the Guarantor) or replacement of the Concession Agreement or any other document or security;
 - (e) any unenforceability, illegality or invalidity of any obligation of any person under the Concession Agreement or any other document or security;
 - (f) any insolvency or similar proceedings; or
 - (g) any other act, omission, matter or thing which would not have discharged or affected the liability of the Guarantor had it been the principal obligor instead of a guarantor.
- 4.3 The Guarantor waives any right it may have to require the Beneficiary (or any trustee or agent on its behalf) to proceed against or enforce any other right or claim for payment against any person before claiming from the Guarantor under this Guarantee.
- 4.4 Until all amounts which may be or become payable under or in connection with this Guarantee have been irrevocably paid in full, and unless the Beneficiary otherwise directs in writing, the Guarantor shall not exercise any security or other rights which it may have by reason of performance by it of its obligations under this Guarantee, whether such rights arise by way of set-off, counterclaim, subrogation, indemnity or otherwise.
- 4.5 This Guarantee is in addition to and shall not affect nor be affected by or merge with any other judgment, security, right or remedy obtained or held by the Beneficiary from time to time in respect of the discharge and performance of the Guaranteed Obligations by the Prequalified Party.

5. **ADDENDUM OR VARIATION TO THE AGREEMENT**

By this Guarantee the Guarantor authorises the Prequalified Party and the Beneficiary to make any addendum or variation to the Concession Agreement, and agrees to guarantee the due and punctual

performance of the Guaranteed Obligations as so amended or varied in accordance with the terms of this Guarantee.

6. **CONDITIONAL DISCHARGE**

- 6.1 Any release, discharge or settlement between the Guarantor and the Beneficiary in relation to this Guarantee shall be conditional on no right, security, disposition or payment to the Beneficiary by the Guarantor, the Prequalified Party or any other person being avoided, set aside or ordered to be refunded pursuant to any enactment or law relating to breach of duty by any person, bankruptcy, liquidation, administration, protection from creditors generally or insolvency or for any other reason.
- 6.2 If any such right, security, disposition or payment is avoided, set aside or ordered to be refunded, the Beneficiary shall be entitled subsequently to enforce this Guarantee against the Guarantor as if such release, discharge or settlement had not occurred and any such security, disposition or payment had not been made.

7. **PAYMENTS**

- 7.1 All sums payable by the Guarantor under this Guarantee shall be paid in full to the Beneficiary in US Dollars, free and clear of any deductions or withholdings of any kind, except for those required by any law or regulation binding on the Guarantor.
- 7.2 If the Guarantor is legally obliged to make any deduction or withholding from any payment under this Deed, it shall also pay whatever additional amount is necessary to ensure that the Beneficiary receives the full amount otherwise receivable had there been no deduction or withholding obligation.
- 7.3 If the Guarantor fails to make any payment due to Beneficiary under this Guarantee by the due date for payment, then it shall pay interest on the overdue amount at the rate of five per cent (5%) per annum. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Guarantor shall pay the interest together with the overdue amount.
- 7.4 The Beneficiary shall not be entitled to recover any amount in respect of interest under both this Guarantee and any arrangements entered into between the Prequalified Party and the Beneficiary in respect of any failure by the Prequalified Party to make any payment in respect of the Guaranteed Obligations.

8. **COSTS**

- 8.1 The Guarantor shall on a full indemnity basis pay to the Beneficiary on demand the amount of all costs and expenses (including legal and out-of-pocket expenses and any value added tax on those costs and expenses) which the Beneficiary incurs in connection with:
- (a) the preservation, or exercise and enforcement, of any rights under or in connection with this Guarantee or any attempt so to do; and
 - (b) any discharge or release of this Guarantee.
- 8.2 Each party shall pay its own costs in connection with the negotiation, preparation, and execution of this Guarantee, and all documents ancillary to it.

9. **GUARANTOR REPRESENTATIONS AND WARRANTIES**

The Guarantor represents and warrants to the Beneficiary that:

- (a) it has all requisite power and authority, and has taken all necessary corporate action, to enable it to enter into and perform this Guarantee;
- (b) its obligations under this Guarantee shall, when executed, constitute legal, valid, and binding obligations enforceable in accordance with the terms of this Guarantee;
- (c) it does not require the consent, approval or authority of any other person to enter into or perform its obligations under this Guarantee;
- (d) its entry into and performance of its obligations under this Guarantee will not constitute any breach of or default under any contractual, governmental or public obligation binding on it; and
- (e) it is not engaged in any litigation or arbitration proceedings which might affect its capacity or ability to perform its obligations under this Guarantee and to the best of its knowledge no such legal or arbitration proceedings have been threatened or are pending against it.

10. **ASSIGNMENT**

The Beneficiary may assign its rights under this Guarantee.

11. **GENERAL PROVISIONS**

11.1 **Severance**

- (a) If any provision or part-provision of this Guarantee is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Guarantee.
- (b) If one party gives notice to the other of the possibility that any provision or part-provision of this Guarantee is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

11.2 **Variation**

No variation of this Guarantee shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

11.3 **Waiver**

- (a) A waiver of any right or remedy under this Guarantee or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.

- (b) A failure or delay by a party to exercise any right or remedy provided under this Guarantee or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Guarantee or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- (c) A party that waives a right or remedy provided under this Guarantee or by law in relation to one party, or takes or fails to take any action against that party, does not affect its rights in relation to any other party.

11.4 Third party rights

A person who is not a party to this Guarantee shall not have any rights under the Contracts to enforce any term of this Guarantee.

11.5 Rights and remedies

The rights and remedies provided under this Guarantee are in addition to, and not exclusive of, any rights or remedies provided by law.

11.6 Consequences of discharge

- (a) Any provision of this Guarantee that expressly or by implication is intended to continue in force on or after discharge of this Guarantee shall remain in full force and effect.
- (b) Discharge of this Guarantee shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of discharge, including the right to claim damages in respect of any breach of this Guarantee which existed at or before the date of discharge.

12. NOTICES

12.1 A notice given to a party under or in connection with this Guarantee:

- (a) shall be in writing and in English;
- (b) shall be sent to the party for the attention of the contact and at the address, fax or email address listed in clause 12.2;
- (c) shall be sent by a method listed in clause 12.4; and
- (d) is deemed received as set out in clause 12.6 if prepared and sent in accordance with this clause.

12.2 The parties' addresses and contacts are as set out in this table:

Party	Contact	Address	Fax number	Email address
[NAME OF GUARANTOR]	[NAME / POSITION OF CONTACT]	[ADDRESS]	[FAX NUMBER]	

Party	Contact	Address	Fax number	Email address
PANAMA CANAL AUTHORITY	Jorge A. Fernández, Contracting Officer	Building 732, West Corozal, Republic of Panama	[(507) 276-2615]	JFernandez@pancanal.com

12.3 A party may change its details given in the table in clause 12.2 by giving notice, the change taking effect for the party notified of the change at 9.00 am on the later of:

- (a) the date, if any, specified in the notice as the effective date for the change; or
- (b) the date five (5) days after deemed receipt of the notice.

12.4 This table sets out:

- (a) delivery methods for sending a notice to a party under this Guarantee; and
- (b) for each delivery method, the corresponding delivery date and time when delivery of the notice is deemed to have taken place provided that all other requirements in this clause have been satisfied and subject to the provisions in clause 12.5:

Delivery method	Deemed delivery date and time
Delivery by hand.	The time the notice is left at the address.
Pre-paid recorded delivery post or other delivery service providing proof of delivery.	The time recorded by the post office or other delivery service.
Fax.	The time of transmission.
Email	The time of sending.

12.5 For the purpose of clause 12.4 and calculating deemed receipt:

- (a) all references to time are to local time in the place of deemed receipt; and
- (b) if deemed receipt would occur in the place of deemed receipt on a Saturday or Sunday or a public holiday when banks are not open for business, deemed receipt is deemed to take place at 9.00 am on the day when business next starts in the place of receipt.

12.6 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

13. ENTIRE AGREEMENT

13.1 This Guarantee constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

13.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Guarantee.

14. **COUNTERPARTS**

This Guarantee may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

15. **APPLICABLE LAW**

This Guarantee and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with Panamanian Law.

16. **ARBITRATION**

Any and all disputes arising out of or in connection with this Guarantee ("**Disputes**") shall be referred to and finally resolved by arbitration in law, under the ICC Rules, which rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be three lawyers licensed in Panama. Each party shall appoint one arbitrator pursuant to the ICC Rules of Arbitration, and the third arbitrator, who shall act as President of the arbitral tribunal, shall be appointed by the International Court of Arbitration of the ICC. The seat of arbitration shall be the City of Panama, Republic of Panama and the language to be used in the arbitral proceedings shall be English. The emergency arbitrator provisions under Article 29 and Appendix V of the ICC Rules shall not apply.

In witness of which the Guarantor has executed and delivered this Guarantee, and the Beneficiary has signed this Guarantee, on the date first written above.

Signed on behalf of [NAME OF GUARANTOR], a company
incorporated in [TERRITORY], by [NAME[S] OF PERSON Authorised signatory
SIGNING], being [a] person[s] who, in accordance with the
laws of that territory, [is **OR** are] acting under the authority of
the company

.....
[Authorised signatory]¹

Signed on behalf of AUTORIDAD DEL CANAL DE
PANAMÁ, by [NAME[S] OF PERSON SIGNING] Contracting Officer

¹ Adapt as appropriate to formalities of jurisdiction of incorporation of guarantor.

PART 2 – FORM OF GUARANTEE IN CASE OF SPV ASSIGNMENT

DATED

[•]

and

[•]

GUARANTEE

THIS GUARANTEE is made on [●]

BETWEEN

1. [●] a company incorporated and registered in [●] with company number [●] whose registered office is at [●] (the "**Guarantor**"); and
2. **AUTORIDAD DEL CANAL DE PANAMÁ**, an autonomous, legal entity established and organized under the terms of the National Constitution of Panama and the Organic Law (Panama Canal Authority) No. 19 of 11 June 1997 (the "ACP"), duly authorized for this act by means of Resolution of the Board of Directors of the ACP No. [●] (the "**Beneficiary**").

WHEREAS

- (A) On [●] the concession for the Corozal Container Terminal was awarded to the Guarantor in accordance with the request for proposals relating to the concession for the Corozal Container Terminal dated October 7, 2016 (the "**RFP**").
- (B) The Guarantor wishes to assign its rights and obligations under the Concession Agreement (as defined in the RFP) to [●] (the "**SPV**"). All of the Assignment Requirements (as defined in the RFP) have been fulfilled, and the Guarantor, the SPV and the ACP have entered into an Assignment and Acceptance Agreement on or around the date of this Guarantee pursuant to which the Guarantor assigned its rights and obligations under the Concession Agreement to the SPV and the SPV accepted such assignment.
- (C) Accordingly, as required by the RFP the Guarantor has agreed to guarantee the performance by the SPV of its obligations under the Concession Agreement on the terms of this Guarantee.

1. **INTERPRETATION**

- 1.1 Clause headings shall not affect the interpretation of this Guarantee.
- 1.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.
- 1.3 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and vice versa.
- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.6 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time
- 1.7 A reference to writing or written includes fax and email.
- 1.8 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

- 1.9 References to clauses are to the clauses of this Guarantee.
- 1.10 A reference to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.11 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. **PERFORMANCE GUARANTEE AND INDEMNITY**

- 2.1 In consideration of the Beneficiary entering into the Concession Agreement, the Guarantor guarantees to the Beneficiary and its successors, transferees and assigns the due and punctual performance of all present and future obligations of the SPV under the Concession Agreement ("**Guaranteed Obligations**").
- 2.2 The Guarantor as principal obligor and as a separate and independent obligation and liability from its obligations and liabilities under clause 3.1 agrees to indemnify and keep indemnified the Beneficiary in full and on demand from and against all and any losses, costs and expenses suffered or incurred by the Beneficiary arising out of, or in connection with:
- (a) any failure of the SPV to perform or discharge the Guaranteed Obligations; or
 - (b) any of the Guaranteed Obligations being or becoming totally or partially unenforceable by reason of illegality, incapacity, lack or exceeding of powers, ineffectiveness of execution or any other matter,

but the Guarantor's liability under this indemnity shall be no greater than the SPV's liability under the Concession Agreement was (or would have been, had the relevant obligation been fully enforceable).

3. **BENEFICIARY PROTECTIONS**

- 3.1 This Guarantee is a continuing guarantee which shall remain in full force and effect until all the Guaranteed Obligations have been satisfied or performed in full, notwithstanding any intermediate satisfaction or performance of the Guaranteed Obligations by the SPV, the Guarantor or any other person.
- 3.2 The liability of the Guarantor under this Guarantee shall not be reduced, discharged or otherwise adversely affected by:
- (a) any time, waiver or consent granted to, or composition with, the SPV;
 - (b) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, the SPV or any other surety, or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
 - (c) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the SPV (or any other person);

- (d) any amendment (however fundamental including, without limitation, any amendment which has the effect of increasing the liability of the Guarantor) or replacement of the Concession Agreement or any other document or security;
- (e) any unenforceability, illegality or invalidity of any obligation of any person under the Concession Agreement or any other document or security;
- (f) any insolvency or similar proceedings; or
- (g) any other act, omission, matter or thing which would not have discharged or affected the liability of the Guarantor had it been the principal obligor instead of a guarantor.

3.3 The Guarantor waives any right it may have to require the Beneficiary (or any trustee or agent on its behalf) to proceed against or enforce any other right or claim for payment against any person before claiming from the Guarantor under this Guarantee.

3.4 Until all amounts which may be or become payable under or in connection with this Guarantee have been irrevocably paid in full, and unless the Beneficiary otherwise directs in writing, the Guarantor shall not exercise any security or other rights which it may have by reason of performance by it of its obligations under this Guarantee, whether such rights arise by way of set-off, counterclaim, subrogation, indemnity or otherwise.

3.5 This Guarantee is in addition to and shall not affect nor be affected by or merge with any other judgment, security, right or remedy obtained or held by the Beneficiary from time to time in respect of the discharge and performance of the Guaranteed Obligations by the SPV.

4. **ADDENDUM OR VARIATION TO THE AGREEMENT**

By this Guarantee the Guarantor authorises the SPV and the Beneficiary to make any addendum or variation to the Concession Agreement, and agrees to guarantee the due and punctual performance of the Guaranteed Obligations as so amended or varied in accordance with the terms of this Guarantee.

5. **CONDITIONAL DISCHARGE**

5.1 Any release, discharge or settlement between the Guarantor and the Beneficiary in relation to this Guarantee shall be conditional on no right, security, disposition or payment to the Beneficiary by the Guarantor, the SPV or any other person being avoided, set aside or ordered to be refunded pursuant to any enactment or law relating to breach of duty by any person, bankruptcy, liquidation, administration, protection from creditors generally or insolvency or for any other reason.

5.2 If any such right, security, disposition or payment is avoided, set aside or ordered to be refunded, the Beneficiary shall be entitled subsequently to enforce this Guarantee against the Guarantor as if such release, discharge or settlement had not occurred and any such security, disposition or payment had not been made.

6. **PAYMENTS**

6.1 All sums payable by the Guarantor under this Guarantee shall be paid in full to the Beneficiary in US Dollars, free and clear of any deductions or withholdings of any kind, except for those required by any law or regulation binding on the Guarantor.

- 6.2 If the Guarantor is legally obliged to make any deduction or withholding from any payment under this Deed, it shall also pay whatever additional amount is necessary to ensure that the Beneficiary receives the full amount otherwise receivable had there been no deduction or withholding obligation.
- 6.3 If the Guarantor fails to make any payment due to Beneficiary under this Guarantee by the due date for payment, then it shall pay interest on the overdue amount at the rate of five per cent (5%) per annum. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Guarantor shall pay the interest together with the overdue amount.
- 6.4 The Beneficiary shall not be entitled to recover any amount in respect of interest under both this Guarantee and any arrangements entered into between the SPV and the Beneficiary in respect of any failure by the SPV to make any payment in respect of the Guaranteed Obligations.

7. COSTS

- 7.1 The Guarantor shall on a full indemnity basis pay to the Beneficiary on demand the amount of all costs and expenses (including legal and out-of-pocket expenses and any value added tax on those costs and expenses) which the Beneficiary incurs in connection with:
- (a) the preservation, or exercise and enforcement, of any rights under or in connection with this Guarantee or any attempt so to do; and
 - (b) any discharge or release of this Guarantee.
- 7.2 Each party shall pay its own costs in connection with the negotiation, preparation, and execution of this Guarantee, and all documents ancillary to it.

8. GUARANTOR REPRESENTATIONS AND WARRANTIES

The Guarantor represents and warrants to the Beneficiary that:

- (a) it has all requisite power and authority, and has taken all necessary corporate action, to enable it to enter into and perform this Guarantee;
- (b) its obligations under this Guarantee shall, when executed, constitute legal, valid, and binding obligations enforceable in accordance with the terms of this Guarantee;
- (c) it does not require the consent, approval or authority of any other person to enter into or perform its obligations under this Guarantee;
- (d) its entry into and performance of its obligations under this Guarantee will not constitute any breach of or default under any contractual, governmental or public obligation binding on it; and
- (e) it is not engaged in any litigation or arbitration proceedings which might affect its capacity or ability to perform its obligations under this Guarantee and to the best of its knowledge no such legal or arbitration proceedings have been threatened or are pending against it.

9. **ASSIGNMENT**

The Beneficiary may assign its rights under this Guarantee.

10. **GENERAL PROVISIONS**

10.1 **Severance**

- (a) If any provision or part-provision of this Guarantee is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Guarantee.
- (b) If one party gives notice to the other of the possibility that any provision or part-provision of this Guarantee is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

10.2 **Variation**

No variation of this Guarantee shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

10.3 **Waiver**

- (a) A waiver of any right or remedy under this Guarantee or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
- (b) A failure or delay by a party to exercise any right or remedy provided under this Guarantee or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Guarantee or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- (c) A party that waives a right or remedy provided under this Guarantee or by law in relation to one party, or takes or fails to take any action against that party, does not affect its rights in relation to any other party.

10.4 **Third party rights**

A person who is not a party to this Guarantee shall not have any rights under the Contracts (to enforce any term of this Guarantee).

10.5 **Rights and remedies**

The rights and remedies provided under this Guarantee are in addition to, and not exclusive of, any rights or remedies provided by law.

10.6 Consequences of discharge

- (a) Any provision of this Guarantee that expressly or by implication is intended to continue in force on or after discharge of this Guarantee shall remain in full force and effect.
- (b) Discharge of this Guarantee shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of discharge, including the right to claim damages in respect of any breach of this Guarantee which existed at or before the date of discharge.

11. NOTICES

11.1 A notice given to a party under or in connection with this Guarantee:

- (a) shall be in writing and in English;
- (b) shall be sent to the party for the attention of the contact and at the address, fax or email address listed in clause 12.2;
- (c) shall be sent by a method listed in clause 12.4; and
- (d) is deemed received as set out in clause 12.6 if prepared and sent in accordance with this clause.

11.2 The parties' addresses and contacts are as set out in this table:

Party	Contact	Address	Fax number	Email address
[NAME OF GUARANTOR]	[NAME / POSITION OF CONTACT]	[ADDRESS]	[FAX NUMBER]	
PANAMA CANAL AUTHORITY	Jorge A. Fernández, Contracting Officer	Building 732, West Corozal, Republic of Panama	(507) 276-2615	JFernandez@pancanal.com

11.3 A party may change its details given in the table in clause 12.2 by giving notice, the change taking effect for the party notified of the change at 9.00 am on the later of:

- (a) the date, if any, specified in the notice as the effective date for the change; or
- (b) the date five (5) days after deemed receipt of the notice.

11.4 This table sets out:

- (a) delivery methods for sending a notice to a party under this Guarantee; and
- (b) for each delivery method, the corresponding delivery date and time when delivery of the notice is deemed to have taken place provided that all other requirements in this clause have been satisfied and subject to the provisions in clause 12.5:

Delivery method	Deemed delivery date and time
Delivery by hand.	The time the notice is left at the address.
Pre-paid recorded delivery post or other delivery service providing proof of delivery.	The time recorded by the post office or other delivery service.
Fax.	The time of transmission.
Email	The time of sending.

11.5 For the purpose of clause 12.4 and calculating deemed receipt:

- (a) all references to time are to local time in the place of deemed receipt; and
- (b) if deemed receipt would occur in the place of deemed receipt on a Saturday or Sunday or a public holiday when banks are not open for business, deemed receipt is deemed to take place at 9.00 am on the day when business next starts in the place of receipt.

11.6 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

12. ENTIRE AGREEMENT

12.1 This Guarantee constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

12.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Guarantee.

13. COUNTERPARTS

This Guarantee may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

14. APPLICABLE LAW

This Guarantee and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with Panamanian Law.

15. ARBITRATION

Any and all disputes arising out of or in connection with this Guarantee ("**Disputes**") shall be referred to and finally resolved by arbitration in law, under the ICC Rules, which rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be three lawyers licensed in Panama. Each Party shall appoint one arbitrator pursuant to the ICC Rules of Arbitration, and the third arbitrator, who shall act as President of the arbitral tribunal, shall be appointed by the International Court of Arbitration of the ICC. The seat of arbitration shall be the City of Panama,

Republic of Panama and the language to be used in the arbitral proceedings shall be English. The emergency arbitrator provisions under Article 29 and Appendix V of the ICC Rules shall not apply.

In witness of which the Guarantor has executed and delivered this Guarantee, and the Beneficiary has signed this Guarantee, on the date first written above.

Signed on behalf of [NAME OF GUARANTOR], a company
incorporated in [TERRITORY], by [NAME[S] OF PERSON Authorised signatory
SIGNING], being [a] person[s] who, in accordance with the
laws of that territory, [is **OR** are] acting under the authority of
the company

.....
[Authorised signatory]²

Signed on behalf of AUTORIDAD DEL CANAL DE
PANAMÁ Contracting Officer

² Adapt as appropriate to formalities of jurisdiction of incorporation of guarantor.

**PART 3 – FORM OF GUARANTEE IN CASE OF SPV ASSIGNMENT AND FINANCIAL
REQUISITES RELIANCE**

DATED

[•]

and

[•]

and

[•]

GUARANTEE

THIS GUARANTEE is made on [●]

BETWEEN

1. [●] a company incorporated and registered in [●] with company number [●] whose registered office is at [●] (the "**Awardee**");
2. [●] a company incorporated and registered in [●] with company number [●] whose registered office is at [●] (the "**Parent Company**" and together with the Awardee, the "**Guarantors**"); and
3. **AUTORIDAD DEL CANAL DE PANAMÁ**, an autonomous, legal entity established and organized under the terms of the National Constitution of Panama and the Organic Law (Panama Canal Authority) No. 19 of 11 June 1997 (the "ACP"), duly authorized for this act by means of Resolution of the Board of Directors of the ACP No. [●] (the "**Beneficiary**").

WHEREAS

- (A) On [●] the concession for the Corozal Container Terminal was awarded to the Awardee in accordance with the request for proposals relating to the concession for the Corozal Container Terminal dated October 7, 2016 (the "**RFP**").
- (B) The Awardee relied on the Parent Company for the purposes of the Financial Requisites (as defined in the RFP) in order to become a Prequalified Party (as defined in the RFP).
- (C) Accordingly, it provided a guarantee in the form set out in Part 1 of Schedule 5 to the RFP as part of its Binding Offer (as defined in the RFP). Such guarantee has become null and void in accordance with its terms, and will be returned to the Awardee in accordance with the RFP.
- (D) The Awardee wishes to assign its rights and obligations under the Concession Agreement (as defined in the RFP) to [●] (the "**SPV**"). All of the Assignment Requirements (as defined in the RFP) have been fulfilled and the Awardee, the SPV and the ACP have entered into an Assignment and Acceptance Agreement on or around the date of this Guarantee pursuant to which the Awardee assigned its rights and obligations under the Concession Agreement to the SPV and the SPV accepted such assignment.
- (E) Accordingly, as required by the RFP the Guarantors have agreed to guarantee the performance by the SPV of its obligations under the Concession Agreement on the terms of this Guarantee, which is being provided as a replacement for the guarantee referred to in Recital (C) above.

1. **INTERPRETATION**

- 1.1 Clause headings shall not affect the interpretation of this Guarantee.
- 1.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.
- 1.3 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and vice versa.

- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.6 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time
- 1.7 A reference to writing or written includes fax and email.
- 1.8 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.9 References to clauses are to the clauses of this Guarantee.
- 1.10 A reference to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.11 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. **PERFORMANCE GUARANTEE AND INDEMNITY**

- 2.1 In consideration of the Beneficiary entering into the Concession Agreement, the Guarantors jointly and severally guarantee to the Beneficiary and its successors, transferees and assigns the due and punctual performance of all present and future obligations of the SPV under the Concession Agreement ("**Guaranteed Obligations**").
- 2.2 The Guarantors as principal obligors and as a separate and independent obligation and liability from their obligations and liabilities under clause 3.1 jointly and severally agree to indemnify and keep indemnified the Beneficiary in full and on demand from and against all and any losses, costs and expenses suffered or incurred by the Beneficiary arising out of, or in connection with:
- (a) any failure of the SPV to perform or discharge the Guaranteed Obligations; or
 - (b) any of the Guaranteed Obligations being or becoming totally or partially unenforceable by reason of illegality, incapacity, lack or exceeding of powers, ineffectiveness of execution or any other matter,

but the Guarantors' liability under this indemnity shall be no greater than the SPV's liability under the Concession Agreement was (or would have been, had the relevant obligation been fully enforceable).

3. **BENEFICIARY PROTECTIONS**

- 3.1 This Guarantee is a continuing guarantee which shall remain in full force and effect until all the Guaranteed Obligations have been satisfied or performed in full, notwithstanding any intermediate satisfaction or performance of the Guaranteed Obligations by the SPV, the Guarantors or any other person.
- 3.2 The liability of the Guarantors under this Guarantee shall not be reduced, discharged or otherwise adversely affected by:

- (a) any time, waiver or consent granted to, or composition with, the SPV;
- (b) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, the SPV or any other surety, or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (c) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the SPV (or any other person);
- (d) any amendment (however fundamental including, without limitation, any amendment which has the effect of increasing the liability of the Guarantor) or replacement of the Concession Agreement or any other document or security;
- (e) any unenforceability, illegality or invalidity of any obligation of any person under the Concession Agreement or any other document or security;
- (f) any insolvency or similar proceedings; or
- (g) any other act, omission, matter or thing which would not have discharged or affected the liability of the Guarantor had it been the principal obligor instead of a guarantor.

3.3 The Guarantors waive any right they may have to require the Beneficiary (or any trustee or agent on its behalf) to proceed against or enforce any other right or claim for payment against any person before claiming from the Guarantors under this Guarantee.

3.4 Until all amounts which may be or become payable under or in connection with this Guarantee have been irrevocably paid in full, and unless the Beneficiary otherwise directs in writing, the Guarantors shall not exercise any security or other rights which they may have by reason of performance by it of its obligations under this Guarantee, whether such rights arise by way of set-off, counterclaim, subrogation, indemnity or otherwise.

3.5 This Guarantee is in addition to and shall not affect nor be affected by or merge with any other judgment, security, right or remedy obtained or held by the Beneficiary from time to time in respect of the discharge and performance of the Guaranteed Obligations by the SPV.

4. **ADDENDUM OR VARIATION TO THE AGREEMENT**

By this Guarantee the Guarantors authorise the SPV and the Beneficiary to make any addendum or variation to the Concession Agreement, and agree to guarantee the due and punctual performance of the Guaranteed Obligations as so amended or varied in accordance with the terms of this Guarantee.

5. **CONDITIONAL DISCHARGE**

5.1 Any release, discharge or settlement between the Guarantors (or either of them) and the Beneficiary in relation to this Guarantee shall be conditional on no right, security, disposition or payment to the Beneficiary by the Guarantors, the SPV or any other person being avoided, set aside or ordered to be refunded pursuant to any enactment or law relating to breach of duty by any person, bankruptcy, liquidation, administration, protection from creditors generally or insolvency or for any other reason.

5.2 If any such right, security, disposition or payment is avoided, set aside or ordered to be refunded, the Beneficiary shall be entitled subsequently to enforce this Guarantee against the Guarantors as if such release, discharge or settlement had not occurred and any such security, disposition or payment had not been made.

6. **PAYMENTS**

6.1 All sums payable by the Guarantors under this Guarantee shall be paid in full to the Beneficiary in US Dollars, free and clear of any deductions or withholdings of any kind, except for those required by any law or regulation binding on the Guarantors.

6.2 If the Guarantors (or either of them) are legally obliged to make any deduction or withholding from any payment under this Deed, they shall also pay whatever additional amount is necessary to ensure that the Beneficiary receives the full amount otherwise receivable had there been no deduction or withholding obligation.

6.3 If the Guarantors fail to make any payment due to Beneficiary under this Guarantee by the due date for payment, then they shall pay interest on the overdue amount at the rate of five per cent (5%) per annum. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Guarantors shall pay the interest together with the overdue amount.

6.4 The Beneficiary shall not be entitled to recover any amount in respect of interest under both this Guarantee and any arrangements entered into between the SPV and the Beneficiary in respect of any failure by the SPV to make any payment in respect of the Guaranteed Obligations.

7. **COSTS**

7.1 The Guarantors shall on a full indemnity basis pay to the Beneficiary on demand the amount of all costs and expenses (including legal and out-of-pocket expenses and any value added tax on those costs and expenses) which the Beneficiary incurs in connection with:

- (a) the preservation, or exercise and enforcement, of any rights under or in connection with this Guarantee or any attempt so to do; and
- (b) any discharge or release of this Guarantee.

7.2 Each party shall pay its own costs in connection with the negotiation, preparation, and execution of this Guarantee, and all documents ancillary to it.

8. **GUARANTORS REPRESENTATIONS AND WARRANTIES**

The Guarantors represent and warrant to the Beneficiary that:

- (a) each Guarantor has all requisite power and authority, and has taken all necessary corporate action, to enable it to enter into and perform this Guarantee;
- (b) the obligations of each Guarantor under this Guarantee shall, when executed, constitute legal, valid, and binding obligations enforceable in accordance with the terms of this Guarantee;

- (c) each Guarantor does not require the consent, approval or authority of any other person to enter into or perform its obligations under this Guarantee;
- (d) its entry into and performance of its obligations under this Guarantee will not constitute any breach of or default under any contractual, governmental or public obligation binding on it; and
- (e) each Guarantor is not engaged in any litigation or arbitration proceedings which might affect its capacity or ability to perform its obligations under this Guarantee and to the best of its knowledge no such legal or arbitration proceedings have been threatened or are pending against it.

9. **ASSIGNMENT**

The Beneficiary may assign its rights under this Guarantee.

10. **GENERAL PROVISIONS**

10.1 **Joint and several obligations**

All obligations and liabilities imposed on or assumed by the Guarantors under or pursuant to this Guarantee are joint and several even if not so expressed.

10.2 **Severance**

- (a) If any provision or part-provision of this Guarantee is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Guarantee.
- (b) If one party gives notice to the other of the possibility that any provision or part-provision of this Guarantee is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

10.3 **Variation**

No variation of this Guarantee shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

10.4 **Waiver**

- (a) A waiver of any right or remedy under this Guarantee or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
- (b) A failure or delay by a party to exercise any right or remedy provided under this Guarantee or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial

exercise of any right or remedy provided under this Guarantee or by law shall prevent or restrict the further exercise of that or any other right or remedy.

- (c) A party that waives a right or remedy provided under this Guarantee or by law in relation to one party, or takes or fails to take any action against that party, does not affect its rights in relation to any other party.

10.5 Third party rights

A person who is not a party to this Guarantee shall not have any rights under the Contracts to enforce any term of this Guarantee.

10.6 Rights and remedies

The rights and remedies provided under this Guarantee are in addition to, and not exclusive of, any rights or remedies provided by law.

10.7 Consequences of discharge

- (a) Any provision of this Guarantee that expressly or by implication is intended to continue in force on or after discharge of this Guarantee shall remain in full force and effect.
- (b) Discharge of this Guarantee shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of discharge, including the right to claim damages in respect of any breach of this Guarantee which existed at or before the date of discharge.

11. NOTICES

11.1 A notice given to a party under or in connection with this Guarantee:

- (a) shall be in writing and in English;
- (b) shall be sent to the party for the attention of the contact and at the address, fax or email address listed in clause 12.2;
- (c) shall be sent by a method listed in clause 12.4; and
- (d) is deemed received as set out in clause 12.6 if prepared and sent in accordance with this clause.

11.2 The parties' addresses and contacts are as set out in this table:

Party	Contact	Address	Fax number	Email address
[NAME OF AWARDEE]	[NAME / POSITION OF CONTACT]	[ADDRESS]	[FAX NUMBER]	
[NAME OF PARENT COMPANY]	[NAME / POSITION OF CONTACT]	[ADDRESS]	[FAX NUMBER]	

Party	Contact	Address	Fax number	Email address
PANAMA CANAL AUTHORITY	Jorge A. Fernández, Contracting Officer]	Building 732, West Corozal, Republic of Panama	(507) 276-2615	JFernandez@pancanal.com

11.3 A party may change its details given in the table in clause 12.2 by giving notice, the change taking effect for the party notified of the change at 9.00 am on the later of:

- (a) the date, if any, specified in the notice as the effective date for the change; or
- (b) the date five (5) days after deemed receipt of the notice.

11.4 This table sets out:

- (a) delivery methods for sending a notice to a party under this Guarantee; and
- (b) for each delivery method, the corresponding delivery date and time when delivery of the notice is deemed to have taken place provided that all other requirements in this clause have been satisfied and subject to the provisions in clause 12.5:

Delivery method	Deemed delivery date and time
Delivery by hand.	The time the notice is left at the address.
Pre-paid recorded delivery post or other delivery service providing proof of delivery.	The time recorded by the post office or other delivery service.
Fax.	The time of transmission.
Email	The time of sending.

11.5 For the purpose of clause 12.4 and calculating deemed receipt:

- (a) all references to time are to local time in the place of deemed receipt; and
- (b) if deemed receipt would occur in the place of deemed receipt on a Saturday or Sunday or a public holiday when banks are not open for business, deemed receipt is deemed to take place at 9.00 am on the day when business next starts in the place of receipt.

11.6 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

12. ENTIRE AGREEMENT

12.1 This Guarantee constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

12.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Guarantee.

13. **COUNTERPARTS**

This Guarantee may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

14. **APPLICABLE LAW**

This Guarantee and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with Panamanian Law.

15. **ARBITRATION**

Any and all disputes arising out of or in connection with this Guarantee ("**Disputes**") shall be referred to and finally resolved by arbitration in law, under the ICC Rules, which rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be three lawyers licensed in Panama. Each Party shall appoint one arbitrator pursuant to the ICC Rules of Arbitration, and the third arbitrator, who shall act as President of the arbitral tribunal, shall be appointed by the International Court of Arbitration of the ICC. The seat of arbitration shall be the City of Panama, Republic of Panama and the language to be used in the arbitral proceedings shall be English. The emergency arbitrator provisions under Article 29 and Appendix V of the ICC Rules shall not apply.

In witness of which the Guarantor has executed and delivered this Guarantee, and the Beneficiary has signed this Guarantee, on the date first written above.

Signed on behalf of [NAME OF GUARANTOR], a company
incorporated in [TERRITORY], by [NAME[S] OF PERSON Authorised signatory
SIGNING], being [a] person[s] who, in accordance with the
laws of that territory, [is **OR** are] acting under the authority of
the company

.....
[Authorised signatory]³

³ Adapt as appropriate to formalities of jurisdiction of incorporation of guarantor.

Signed on behalf of [NAME OF GUARANTOR], a company
incorporated in [TERRITORY], by [NAME[S] OF PERSON Authorised signatory
SIGNING], being [a] person[s] who, in accordance with the
laws of that territory, [is **OR** are] acting under the authority of
the company

.....
[Authorised signatory]⁴

Signed on behalf of AUTORIDAD DEL CANAL DE
PANAMÁ Contracting Officer

⁴ Adapt as appropriate to formalities of jurisdiction of incorporation of guarantor.

**SCHEDULE 6
TOTAL PRICE PROPOSAL**

1. Upfront Fee

- 1.1 Prequalified Parties are required to propose an Upfront Fee.
- 1.2 The amount of the Upfront Fee proposed by a Prequalified Party will, if that Prequalified Party becomes the Awardee, be binding on such Prequalified Party or its SPV (whichever is the Concessionaire) from the Award Date and will be included in the definition of "Upfront Fee" in the Execution Version signed by the ACP and the Concessionaire.
- 1.3 In order to determine the highest Total Price Proposal in accordance with this Schedule each Prequalified Party is required to complete Table 1 below:

Table 1

Upfront Fee	US\$ _____
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2. Pricing Assumptions

- 2.1 In addition to the Upfront Fee Prequalified Parties are also required, in accordance with paragraphs 3 to 5 below, to propose a Concession Land Area Rate, a Per Movement Fee and Guaranteed Annual Container Movements.
- 2.2 Solely for the purpose of determining the highest Total Price Proposal in accordance with this Schedule, and with no bearing on the rights and obligations of the parties under the Concession Agreement (which shall take effect as from the Award Date on the basis of the Upfront Fee, the Concession Land Area Rate, the Per Movement Fee and the Guaranteed Annual Container Movements (together, the "**Financial Components**") proposed by the Awardee), Prequalified Parties are required to assume (and the tables that need to be completed in paragraphs 3 to 6 below assume):
 - (a) that there is no extension of the Concession Term (as defined in the Concession Agreement) in accordance with clause 2.2(b) or 2.2(c) of the Concession Agreement and that the Operations Commencement Date (as defined in the Concession Agreement) is three (3) years from the Award Date, leaving seventeen (17) Operating Years to be taken into account for the purposes of the Total Price Proposal;
 - (b) that there is no Temporary Operation Period (as defined in the Concession Agreement) i.e. that no Preliminary Operations Commencement Certificate (as defined in the Concession Agreement) will be issued; and
 - (c) that the First Operating Year commences on the day following the third anniversary of the Award Date

(together the "**Pricing Assumptions**").

- 2.3 **For the avoidance of doubt the Pricing Assumptions on which a Total Price Proposal is based do not, and shall not be deemed to, amend the terms and conditions of the Concession Agreement, which shall take effect as from the Award Date on the basis of the Financial**

Components proposed by the Awardee. The Financial Components proposed by the Awardee shall be inserted in the Execution Version. Whether the Concession Term is extended, whether there is a Temporary Operation Period and when the First Operating Year will commence will in all cases depend on the exercise of the parties' rights, and the performance of the parties' obligations, under the Concession Agreement in accordance with its terms and conditions.

3. Concession Land Area Rate proposal

3.1 Prequalified Parties are required to propose a Concession Land Area Rate, which must exceed two US Dollars (US\$2.00). For the avoidance of doubt, proposals offering two US Dollars (US\$2.00) or less will not be considered. The amount of the Concession Land Area Rate proposed by a Prequalified Party will, if that Prequalified Party becomes the Awardee, be binding on such Prequalified Party or its SPV (whichever is the Concessionaire) from the Award Date and will be included in the definition of "Concession Land Area Rate" in the Execution Version signed by the ACP and the Concessionaire.

3.2 In order to determine the highest Total Price Proposal each Prequalified Party is required to complete Table 2 below on the basis of its respective Concession Land Area Rate proposal above and in accordance with paragraph 3.3 below. Solely for the purposes of the Total Price Proposal, Table 2 below:

- (a) should be based on the Pricing Assumptions;
- (b) will show the total proposed Concession Area Rent payable during the Concession Term in accordance with clause 3.1(b), and subject to clause 3.2(a), of the Concession Agreement based on such assumptions.

3.3 In order to complete Table 2 below each Prequalified Party is required to:

- (a) include:
 - (i) its proposed Concession Land Area Rate in the first row of column (C) of Table 2 below in respect of the first Operating Year in column (A) of Table 2 below; and
 - (ii) after applying an annual escalation of 3.5%, the proposed Concession Land Area Rate in each subsequent row of column (C) of Table 2 below in respect of each subsequent Operating Year in column (A) of Table 2 below; and
- (b) calculate and include in column (F) of Table 2 below the proposed Concession Area Rent in respect of each Operating Year in column (A) of Table 2 below, being the sum of:
 - (i) the product of: (1) the relevant proposed Concession Land Area Rate set out in column (C) of Table 2 below in respect of that Operating Year; (2) the figure in column (B) of Table 2 below i.e. 694,689; and (3) 12, being the number of months in each Operating Year; and
 - (ii) the product of: (1) the relevant Concession Water Area Rate set out in column (E) of Table 2 below in respect of that Operating Year; (2) the figure in column (D) of Table 2 below i.e. 79,650; and (3) 12, being the number of months in each Operating Year.

Table 2

AREA RENT PROPOSAL					
Operating Year (A)	Land area (B)	Proposed Concession Land Area Rate (C)	Water area (D)	Concession Water Area Rate (E)	Proposed Concession Area Rent (F)
1st	694,689m ²	US\$_____	79,650m ²	US\$0.50	US\$_____
2nd	694,689m ²	US\$_____	79,650m ²	US\$0.52	US\$_____
3rd	694,689m ²	US\$_____	79,650m ²	US\$0.54	US\$_____
4th	694,689m ²	US\$_____	79,650m ²	US\$0.55	US\$_____
5th	694,689m ²	US\$_____	79,650m ²	US\$0.57	US\$_____
6th	694,689m ²	US\$_____	79,650m ²	US\$0.59	US\$_____
7th	694,689m ²	US\$_____	79,650m ²	US\$0.61	US\$_____
8th	694,689m ²	US\$_____	79,650m ²	US\$0.64	US\$_____
9th	694,689m ²	US\$_____	79,650m ²	US\$0.66	US\$_____
10th	694,689m ²	US\$_____	79,650m ²	US\$0.68	US\$_____
11th	694,689m ²	US\$_____	79,650m ²	US\$0.71	US\$_____
12th	694,689m ²	US\$_____	79,650m ²	US\$0.73	US\$_____
13th	694,689m ²	US\$_____	79,650m ²	US\$0.76	US\$_____
14th	694,689m ²	US\$_____	79,650m ²	US\$0.78	US\$_____
15th	694,689m ²	US\$_____	79,650m ²	US\$0.81	US\$_____
16th	694,689m ²	US\$_____	79,650m ²	US\$0.84	US\$_____
17th	694,689m ²	US\$_____	79,650m ²	US\$0.87	US\$_____

4. **Per Movement Fee and Guaranteed Annual Container Movements proposals**

- 4.1 Prequalified Parties are required to propose a Per Movement Fee, which must be equal to or exceed twelve US Dollars (US\$12.00). For the avoidance of doubt, proposals offering a Per Movement Fee of less than twelve US Dollars (US\$12.00) will not be considered. The amount of the Per Movement Fee proposed by a Prequalified Party will, if that Prequalified Party becomes the Awardee, be binding on such Prequalified Party or its SPV (whichever is the Concessionaire) from the Award Date and will be included in the definition of "Per Movement Fee" in the Execution Version signed by the ACP and the Concessionaire. For the avoidance of doubt the "Per Movement Fee", the "Guaranteed Annual Container Movements", and the "Container Movement" is defined in the Concession Agreement.

- 4.2 Prequalified Parties are also required to propose Guaranteed Annual Container Movements in respect of each Operating Year, which must be equal or greater than the respective reserve Guaranteed Annual Container Movements set out in column (B) of Table 3 below in respect of that Operating Year in column (A) of Table 3 below. The Guaranteed Annual Container Movements proposed by a Prequalified Party will, if that Prequalified Party becomes the Awardee, be binding on such Prequalified Party or its SPV (whichever is the Concessionaire) from the Award Date and will be included in the Appendix 7 of the Execution Version signed by the ACP and the Concessionaire.
- 4.3 In order to determine the highest Total Price Proposal each Prequalified Party is required to complete Table 3 below on the basis of its respective Per Movement Fee and Guaranteed Annual Container Movements proposals mentioned above and in accordance with paragraph 4.4 below. Solely for the purposes of the Total Price Proposal, Table 3 below:
- (a) should be based on the Pricing Assumptions;
 - (b) will show the total proposed Guaranteed Annual Container Movements Fees that will apply during the Concession Term based on such assumptions.
- 4.4 In order to complete Table 3 below each Prequalified Party is required to:
- (a) include:
 - (i) its proposed Per Movement Fee in the first row of column (C) of Table 3 below in respect of the first Operating Year in column (A) of Table 3 below;
 - (ii) after applying an increase of three US Dollars (US\$3) in accordance with clause 3.3 of the Concession Agreement (which provides that the Per Movement Fee shall be increased with effect from the day after the fourth anniversary of the Award Date and with effect from each successive quinquennial period commencing thereafter until the Termination Date), the proposed Per Movement Fee in each subsequent row of column (C) of Table 3 below in respect of each subsequent Operating Year in column (A) of Table 3 below. For avoidance of doubt the Per Movement Fee shall be increased on Operating Years 2, 7, 12 and 17 as noted in column (A) of Table 3 below; and
 - (iii) its proposed Guaranteed Annual Container Movements in each row of column (C) of Table 3 below in respect of each Operating Year in column (A) of Table 3 below, provided that:
 - (A) in accordance with paragraph 4.2 above such proposed Guaranteed Annual Container Movements must exceed the respective reserve Guaranteed Annual Container Movements set out in column (B) of Table 3 below; and
 - (B) the Guaranteed Annual Container Movements for the sixth to the ninth Operating Year to be included in each of the relevant rows of column (C) of Table 3 below should be the same in respect of each of such four Operating Years;
 - (C) the Guaranteed Annual Container Movements for the tenth to the thirteenth Operating Year to be included in each of the relevant rows of column (C) of Table 3 below should be the same in respect of each of such four Operating Years;

- (D) the Guaranteed Annual Container Movements for the fourteenth to the seventeenth Operating Year to be included in each of the relevant rows of column (C) of Table 3 below should be the same in respect of each of such four Operating Years;
- (b) calculate and include in column (E) of Table 3 below the proposed Guaranteed Annual Container Movements Fees in respect of each Operating Year in column (A) of Table 3 below, which will be the product of:
- (i) the relevant proposed Guaranteed Annual Container Movements set out in column (C) of Table 3 below in respect of that Operating Year; and
 - (ii) the relevant proposed Per Movement Fee set out in column (D) of Table 3 below in respect of that Operating Year.

Table 3

GUARANTEED CONTAINER MOVEMENTS (FEES) PROPOSAL				
Operating Year (A)	Reserve Guaranteed Annual Container Movements (B)	Proposed Guaranteed Annual Container Movements (C)	Proposed Per Movement Fee (D)	Proposed Guaranteed Annual Container Movements Fees (E)
1st	70,000	_____	US\$_____	US\$_____
2nd*	140,000	_____	US\$_____	US\$_____
3rd	200,000	_____	US\$_____	US\$_____
4th	260,000	_____	US\$_____	US\$_____
5th	320,000	_____	US\$_____	US\$_____
6th	395,000	_____	US\$_____	US\$_____
7th*	395,000	_____	US\$_____	US\$_____
8th	395,000	_____	US\$_____	US\$_____
9th	395,000	_____	US\$_____	US\$_____
10th	440,000	_____	US\$_____	US\$_____
11th	440,000	_____	US\$_____	US\$_____
12th*	440,000	_____	US\$_____	US\$_____
13th	440,000	_____	US\$_____	US\$_____
14th	490,000	_____	US\$_____	US\$_____
15th	490,000	_____	US\$_____	US\$_____
16th	490,000	_____	US\$_____	US\$_____
17th*	490,000	_____	US\$_____	US\$_____

*** On the basis of the Pricing Assumptions, these are the Operating Years in which the Per Movement Fee increases.**

5. Total Price Proposal

5.1 In accordance with paragraph 11.1 of this RFP the Award will be awarded to the Prequalified Party that complies with all requirements of this RFP and submits the highest Total Price Proposal.

5.2 The Total Price Proposal shall be calculated as follows:

- (a) the amount in column (F) of Table 2 above in respect of each Operating Year in column (A) of Table 2 above will be included in column (B) of Table 4 below in respect of that Operating Year;
- (b) the amount in column (E) of Table 3 above in respect of each Operating Year in column (A) of Table 3 above will be included in column (C) of Table 4 below in respect of that Operating Year;
- (c) the sum of the amounts in columns (B) and (C) of Table 4 below in respect of each Operating Year in column (A) of Table 4 below will be included in column (D) of Table 4 below in respect of that Operating Year; and
- (d) the amount in column (D) of Table 4 below in respect of each Operating Year in column (A) of Table 4 below shall be multiplied by the discount factor (based on a discount rate of 7%) in respect of that Operating Year in column (E) of Table 4 below to produce the present value amount and which will be included in column (F) of Table 4 below in respect of that Operating Year.

5.3 A Prequalified Party's Total Price Proposal shall be the sum of the Upfront Fee set out in Table 1 above and the sum of the amounts in all of the rows of column (F) of Table 4 below.

Table 4

TOTAL PRICE PROPOSAL					
Operating Year (A)	Proposed Concession Area Rent (B)	Proposed Guaranteed Annual Container Movements Fees (C)	Total Annual Payments (D)	Discount factor (E)	Present Value (F)
1st	US\$_____	US\$_____	US\$_____	0.7629	US\$_____
2nd	US\$_____	US\$_____	US\$_____	0.7130	US\$_____
3rd	US\$_____	US\$_____	US\$_____	0.6663	US\$_____
4th	US\$_____	US\$_____	US\$_____	0.6227	US\$_____
5th	US\$_____	US\$_____	US\$_____	0.5820	US\$_____
6th	US\$_____	US\$_____	US\$_____	0.5439	US\$_____
7th	US\$_____	US\$_____	US\$_____	0.5083	US\$_____

TOTAL PRICE PROPOSAL					
Operating Year (A)	Proposed Concession Area Rent (B)	Proposed Guaranteed Annual Container Movements Fees (C)	Total Annual Payments (D)	Discount factor (E)	Present Value (F)
8th	US\$_____	US\$_____	US\$_____	0.4751	US\$_____
9th	US\$_____	US\$_____	US\$_____	0.4440	US\$_____
10th	US\$_____	US\$_____	US\$_____	0.4150	US\$_____
11th	US\$_____	US\$_____	US\$_____	0.3878	US\$_____
12th	US\$_____	US\$_____	US\$_____	0.3624	US\$_____
13th	US\$_____	US\$_____	US\$_____	0.3387	US\$_____
14th	US\$_____	US\$_____	US\$_____	0.3166	US\$_____
15th	US\$_____	US\$_____	US\$_____	0.2959	US\$_____
16th	US\$_____	US\$_____	US\$_____	0.2765	US\$_____
17th	US\$_____	US\$_____	US\$_____	0.2584	US\$_____
Total of (F)					US\$_____
Upfront Fee					US\$_____
TOTAL PRICE PROPOSAL				US\$_____	

5.4. Obvious mistakes in this Schedule 6 resulting from arithmetic errors shall be verified with the Prequalified Parties and corrected by the Contracting Officer, unless the Prequalified Parties does not accept the correction.

SCHEDULE 7
VDR RULES

1. All Prequalified Parties shall have the right to nominate up to ten (10) persons to access the VDR.
2. To access the VDR, the Prequalified Parties shall have previously submitted to the ACP their NDAs duly signed to Ms. Alina de Casal, at the address set out in paragraph 5.1 of this RFP.
3. The names and email address of each individual person nominated by the Prequalified Parties to access the VDR shall be submitted to the ACP.
4. Upon receipt of the signed NDAs and the list of the nominated persons, the ACP will notify accordingly the access to the VDR.
5. The documents included in the VDR will be available for their examination only. Such documents will have at all times restrictions on editing or changes.
6. Sharing to unauthorized persons will not be permitted.
7. Prequalified Parties shall in any cases be responsible for the consequences of not reviewing all the information contained in the VDR.

SCHEDULE 8
TERMS AND CONDITIONS OF CONCESSION AGREEMENT

SCHEDULE 9
ASSIGNMENT FORM TO AN SPV

ASSIGNMENT AND ACCEPTANCE AGREEMENT

THIS AGREEMENT (the "**Assignment and Acceptance Agreement**") is dated as of [●] and made between [INSERT NAME OF THE AWARDEE], a [GENERAL DESCRIPTION OF THE AWARDEE] (the "**Assignor**"), [INSERT NAME OF THE SPV], a corporation organized under the laws of the Republic of Panama, [INSERT GENERAL DESCRIPTION AND INCORPORATION INFORMATION OF THE SPV] of the Mercantile Section of the Public Registry Office of the Republic of Panama (the "**Assignee**") and Autoridad del Canal de Panama (the "**ACP**").

WHEREAS

- (A) On [●] (the "**Award Date**") the concession for the Corozal Container Terminal was awarded to the Assignor in accordance with the request for proposals relating to concession for the Corozal Container Terminal dated October 7, 2016 (the "**RFP**").
- (B) The Assignor wishes to the assign its rights and obligations under the Concession Agreement (as defined in the RFP) to the Assignee.
- (C) All of the Assignment Requirements (as defined in the RFP) have been fulfilled.
- (D) Accordingly, the Assignor assigns, and the Assignee accepts the assignment of, the Assignor's rights and obligations under the Concession Agreement in each case on the terms of this Assignment and Acceptance Agreement.
- (E) Under the terms of a guarantee the Assignor [and [●]]⁵ [has]/[have] agreed to guarantee the due and punctual performance of all present and future obligations of the SPV under the Concession Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements contained herein, the parties hereto agree as follows:

1. **Definitions**

All capitalized terms not otherwise defined herein shall have the respective meanings set forth in the Concession Agreement.

2. **Assignment**

The Assignor hereby irrevocably assigns, to the Assignee, and the Assignee hereby assumes from the Assignor, all of the Assignor's rights and obligations, warranties, duties, liabilities and undertakings under and pursuant to the Concession Agreement and according to the terms of the Concession Agreement, which assignment and assumption shall be effective from the Award Date.

⁵ Insert if Assignor and Parent Company have provided a guarantee in the form set out in Part 3 of Schedule 5 to the RFP; delete if the Assignor provided a guarantee in the form set out in Part 2 of Schedule 5 to the RFP.

3. **Notices under the Concession Agreement**

From and after the execution date of this Assignment and Acceptance Agreement the ACP shall provide all notices under the Concession Agreement to the Assignee at the following address:

[INSERT COMPLETE ADDRESS AND CONTACT INFORMATION]

4. **Representations and Warranties**

The Assignee, the Assignor and the Assignee hereby jointly and severally represent and warrant to the ACP as of the date hereof that:

- (a) this Assignment and Acceptance Agreement has been duly authorized by all necessary corporate or other actions of the Assignor and the Assignee, and constitutes the legal, valid and binding obligation of the Assignor and the Assignee, enforceable against each such party in accordance with its terms;
- (b) the Assignor is the sole legal and beneficial shareholder of the Assignee; and
- (c) this Assignment and Acceptance Agreement and the performance of the Concession Agreement by the Assignee does not and will not result in a violation of any applicable laws, and is without prejudice to, and does not and shall not affect the obligations of any issuer under or of, or the validity of, any insurances, bonds and/or guarantees, issued pursuant to the Contract (as defined in the RFP).

5. **Covenant of the Assignee**

From and after the date hereof, the Assignee agrees to comply and perform all of the obligations of the Assignor under the Concession Agreement in accordance with the terms thereof.

6. **Severability**

Any term or provision of this Assignment and Acceptance Agreement or the application thereof to any circumstance which is prohibited or unenforceable in any jurisdiction to any extent, shall, as to such jurisdiction, be ineffective to the extent of such illegality, invalidity, prohibition or unenforceability without invalidating or rendering unenforceable the remaining terms or provisions hereof or of this Assignment and Acceptance Agreement or the application of such term or provision to circumstances other than to those to which it is held invalid or unenforceable, and any such illegality, invalidity, prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such term or provision in any other jurisdiction. To the extent permitted by applicable law, the parties hereto waive any provision of applicable law that renders any term or provision of this Assignment and Acceptance Agreement illegal, invalid, prohibited or unenforceable in any respect.

7. **Governing Law**

This Assignment and Acceptance Agreement shall be governed by, and construed in accordance with, the laws of the Republic of Panama.

8. **Counterparts**

This Assignment and Acceptance Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Assignor, the Assignee and the ACP have caused this Assignment and Acceptance Agreement to be executed by their officers thereunto duly authorized as of the date first set forth above.

THE ASSIGNOR

By: _____
Name:
Title:

THE ASSIGNEE

By: _____
Name:
Title:

THE ACP

By: _____
Name: Jorge A. Fernández
Title: Contracting Officer