

# CONTAINER TERMINAL AGREEMENT

THIS AGREEMENT (this "Agreement") is made as of XXXX by and between SP-SSA International Terminal (SSIT), Vietnam and hereinafter called "Contractor" and XXXX hereinafter called the "Company".

WHEREAS, the Company desires to arrange for the port and terminal services in Cai Mep Vietnam described herein;

WHEREAS, Contractor is willing to provide such port and terminal services described.

Now therefore, for the considerations contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto, hereby agree as follows:

## 1. SCOPE

- A. Contractor shall provide marine terminal facilities, container handling equipment, stevedoring and terminal services and all other related activities for the grounded container handling operation of the Company at SSIT Cai Mep Vietnam, as described in Section 4. Such services shall include normal vessel stevedoring and container yard activities associated with the handling of but not limited to I.S.O. fitted 20', 40', and 45' containers currently used in the trade.
- B. Contractor shall furnish all labor, supervision, and equipment (unless otherwise expressly noted) for the performance of such services described in this Agreement for work to be performed.
- C. Unless otherwise agreed in writing, this Agreement shall cover any container owned or leased by the Company or any container covered by Company's bill of lading handled at SSIT Vietnam, and containers so moving shall be subject to the Agreement and shall be subject to the rates under Schedule 1 of this Agreement, provided such containers are loaded on or discharged from a vessel managed and operated by the Company or a domestic barge to or from ICD's situated in the Seaports Region III (reference to the government's price framework).

## 2. TERM

- A. This Agreement shall be in full force and effect from XXXX until XXXX (date inclusive) for XXXX or equivalent service with berth window XXXX.
- B. This agreement is fixed for the first 12 months and will be automatically renewed at the end of each term for another term of one year unless either party gives the other written notice of termination at least 3 months prior to the end of the current contract.
- C. This agreement can be terminated by either party earliest from XXXX subject to 3 months prior notice.

## 3. PREFERENTIAL USE

Contractor shall use commercially reasonable efforts to grant berthing for Company's vessels as soon as practicable upon arrival at a safe berth of -16.5 m at MLLW with berth window XXXX to call at Contractor's facilities and be provided with the port and terminal

services set out in this Agreement. Company agrees that its vessels will work consecutive shifts to minimize berth occupancy time, unless otherwise agreed to by Contractor.

#### **4. STEVEDORING AND TERMINAL SERVICES**

Contractor shall perform the stevedoring and terminal services for Company at the rates specified in Schedule 1 (attached and incorporated in its entirety herein) for services rendered to Company by Contractor. The Throughput Rates contained in Schedule 1, Section I, shall include:

- A. Labor, supervision, container cranes and equipment for the loading and discharging of containers to and from vessel during day and night shifts, seven days a week year-round.
- B. Booming up / down container crane over ship's gear / house.
- C. Checking and tallying of containers, or other activities, as required by Vietnamese Customs.
- D. With respect to terminal operations, gate, labor, supervision, and equipment to receive and deliver Company's containers.
- E. Gate, labor and supervision to make proper visual inspection and record the condition of containers, and seals, and reporting promptly to Company as to any damage, discrepancy or defect.
- F. Terminal security.

#### **5. GENERAL PROVISIONS**

- A. Rates for the services outlined above include payroll taxes, insurance and other benefits required by Vietnamese labor laws.
- B. Terminal Documentation:
  - (1) Company shall provide:
    - a. Import manifest.
    - b. Inbound stowage plan.
    - c. Inbound dangerous cargo and refrigerated cargo manifest.
    - d. Pre-stow plan.
    - e. Appropriate Customs documents.
  - (2) Contractor shall provide to the Company the relevant:
    - a. Equipment Interchange Reports.
    - b. Outbound Stowage Plan.
    - c. Outbound dangerous cargo manifest prepared from information provided on Shipper's Certificate supplied by trucking company or steamship agency booking sheet and without Contractor liability for the accuracy of the source documents.
    - d. Outbound Refrigerated Cargo Manifest.
    - e. Container load list.
    - f. Injury/Incident Report.

#### **6. EXCLUSIONS:**

The following items are expressly excluded from Company's rates outlined in Schedule 1 unless otherwise agreed:

- A. Handling of any cargoes other than those specifically provided for in Schedule 1.
- B. Loading or discharging ship's stores, material, or equipment.
- C. Special rigging to handle out-of-gauge containers which cannot be handled with ISO spreaders.
- D. Special rigging to handle damaged containers (unless damage caused by Contractor) or unit lifts of machinery and/or rolling stock.
- E. Placing or removing shoring/bracing/lashing of cargo in containers.
- F. Coopering, carpentry and / or lashing of cargo containers.
- G. Pilots, tugs, bunkers, lights and buoys, dockage, line handling and anchorage fees.

## **7. RATES**

- A. Contractor warrants that it shall, except as otherwise provided herein, maintain the rates contained in Schedule 1, attached, through to **XXXX**, subject to and in compliance with the Vietnamese government's regulations.
- B. Rates for services not otherwise specified will be mutually agreed.

## **8. LIABILITIES AND RESPONSIBILITIES**

- A. Contractor shall be liable for loss of or damage to Company's vessel, its stores, apparel, equipment, and appurtenances, containers, chassis, and to all other property of any nature or description owned or leased, or otherwise used by the Company, including cargo, to the extent caused by the act, omission, negligence, willful misconduct, breach of contract or fraud of Contractor, its officers, employees, servants, contractors or agents, subject to the following:
  - (1) With regard to any claims for loss or damage to Company vessel's stores, apparel, equipment, appurtenances, containers, chassis or any other property of any nature or description owned or leased or otherwise used by Company, including cargo, Company will give Contractor written notice of such loss or damage as promptly as possible and shall if practicable to do so under the circumstances invite Contractor or Contractor's agent to any survey if conducted by Company to determine the cause, extent, and cost to replace the lost or damaged property. Contractor shall also be given the opportunity to appoint its own surveyor to attend any surveys that Company may conduct. Contractor shall accept or decline in writing responsibility for any such loss or damage within forty-five (45) days following receipt of notice and Contractor shall provide any and all reasons for declining liability.
  - (2) Save for cargo loss or damage, the parties agree that the time during which Company may assert claims for loss or damage under this section shall be twelve (12) months of the Company becoming aware of the event or occurrence giving rise to such claim. For bodily injury or death, the Company shall have six (6) months to assert a claim from the date of final judgment or award in a claim or action against the claiming party, or from the date that the claiming party has settled any such claim or action.

- B. Contractor shall fully indemnify and hold harmless Company from any and all liability for loss of, or damage to cargo and any claim of any kind or nature in connection therewith which losses or damages occur while such cargo is in the care, custody, and control of Contractor, its officers, employees, servants, contractors or agents to the extent caused by the act, omission, negligence, willful misconduct, breach of contract or fraud of Contractor, its officers, employees, servants, contractors or agents, subject to the following:
- (1) Contractor shall take all necessary action to indemnify Company in full, or notify Company if claim is disputed, within sixty (60) days of Contractor's receipt of written notice of claim from Company.
  - (2) Contractor or its agents, officers, employees, contractors or servants, or others for whom Contractor is responsible, shall not be liable for any pre-existing damage to a container or cargo if Contractor can prove that such damage occurred prior to the container or cargo being received by Contractor at SSIT.
  - (3) The parties agree that the time during which the Company may assert claims for loss of or damage to cargo and bring claims of any kind or nature in connection therewith, shall be twenty (20) months from the time that the concerned cargo was loaded onto the vessel/barge at the terminal or the time of collection of the concerned cargo from the terminal (as applicable).
  - (4) With respect to physical loss or damage to cargo, Contractor shall pay the amount that the Company has finally been adjudged to pay. Contractor shall not be responsible for slackage or shortage in cargo unless it can be affirmatively proven to be caused solely by the act, omission, fault or negligence of Contractor, its employees, servants or subcontractors.
- C. Contractor shall defend and indemnify Company from and against all claims, suits (whether groundless or not), judgments, awards, fines or citations, and expenses (including attorney's fees) for injury or death to persons to the extent caused or alleged to have been caused by the act, omissions, negligence, willful misconduct or breach of contract of Contractor its officers, employees, servants, contractors or agents.
- D. Company agrees that it will include a so called "HIMALAYA CLAUSE" in its bills of lading and sea waybills issued by Company during the effective period of this Agreement. Company's "HIMALAYA CLAUSE" will include the terms "stevedores" and "terminal operators" (or "terminal services contractor" or similar designation) as beneficiaries, to the extent of the services to be performed, of all rights, immunities and limitations of liability provision. Whenever the customary rights, immunities and/or liability limitations are waived or omitted by Company, as in the case of ad valorem, Company agrees to give Contractor written notice of any such waiver or omission and ad valorem movements prior to its arrival at the terminal.
- E. Company shall hold Contractor harmless and indemnify it against any loss, damage, cost, liability, expense, fine, penalty, or claim of any kind or nature whatsoever which may be brought against Contractor, in consequence of or with respect to (a) any discharge, emission, spillage, or leakage upon or into the seas, waters, land, or air of any pollutant whatsoever to the extent caused by any act, neglect or default of Company or as a result of any violation of laws or regulations in force at the Vietnam,

or (b) the Company's failure to properly label, placard, manifest, declare true cargo weight(s) or otherwise document any cargo, whether hazardous or otherwise regulated.

- F. Masters, crew, and agents of Company shall exercise due diligence when mooring, departing, occupying, or navigating in the vicinity of SSIT-Vietnam dock.
- G. Company agrees that it will promptly repair, at Company's own expense, any damage to SSIT's dock, equipment, and any other items to the extent caused by of any act, neglect or default of Company connected in any way whatsoever with the mooring, departure, navigation, or occupancy of its vessels at said dock, except to the extent that such damage is caused by any act, neglect or default of Contractor, its employees, servants or subcontractors. Contractor reserves the right to hire a contractor to perform any such repair or replacement and Company, provided it receives ten (10) days prior written notice of said damage or loss prior to Contractor's intended repairs, agrees to remain solely liable and to indemnify Contractor for all such costs Contractor may reasonably incur. Repairs or replacements made under this Section 8.G. shall restore SSIT's dock, equipment, and any other items to the condition of such prior to above mentioned damage.
- H. Company shall defend and indemnify the Contractor from and against all claims, suits (whether groundless or not), judgments, awards, fines or citations, and expenses (including reasonable attorney's fees) for injury or death to persons or destruction of or damage to tangible property (including damage to terminal equipment and facilities) to the extent caused or alleged to have been caused by the act, omission, negligence, willful misconduct or breach of contract of Company.
- I. Neither party shall be responsible or liable for any indirect, consequential, special or punitive damages of any type or nature whatsoever and howsoever arising, including without limitation loss of profits, income or business opportunity, or business interruption, loss of use and/or loss of ability to use undamaged component or system parts, whether resulting from negligence, breach of contract or otherwise, and regardless of whether such was foreseeable.

## **9. DISPUTE RESOLUTION:**

Company and Contractor desire to resolve any dispute which may arise in connection with the Agreement in a timely and efficient manner. The parties therefore agree that disputes arising under the provisions of the Agreement only, and no others except by subsequent written agreement between parties, shall be resolved in accordance with the following procedures:

- A. Either Contractor or Company may request the other to attend a meeting for the purpose of resolving any dispute or disagreement arising from the provisions specified in the Agreement. Said meeting shall be held either in person or by telephone within five (5) business days of receipt of written request specifying a brief description of the dispute, the monetary amount involved if known and the remedies sought. If the matter is not resolved in such meeting, or if such meeting is not held, either party may make written demand to resolve such dispute by arbitration. Within seven (7) days after service of written notice on the other party demanding arbitration, the parties in dispute shall jointly agree upon an arbitrator with qualifications identified in Section 9

B below, failing which, within five (5) business days after the end of such seven day period, any party to the dispute may request the President of the Singapore International Arbitration Centre to appoint a single arbitrator.

- B. Resolution of any claim, disputes or disagreements arising out of or connected with this Agreement, its validity or any breach hereof, which cannot be amicably settled between the parties in accordance with Section 9 A above, shall be resolved by binding arbitration in Singapore to be administered under the rules of the Singapore International Arbitration Centre in accordance with its then current rules utilizing one arbitrator familiar with ocean container shipping and terminal operations who shall have no financial or personal interest whatsoever in or with any party and shall not have acquired a detailed prior knowledge of the matter in dispute. The language of the arbitration shall be English. The decision and award of the arbitrator shall be rendered within 90 days after final submission of the parties and shall be final and binding and shall be in writing, signed and served upon the parties. All costs and expenses (including without limitation arbitrator's fees and reasonable attorney fees) of the prevailing party (or parties) shall be borne by the losing party or, in the event the prevailing party has not prevailed entirely on its claim(s), then such costs and expenses to be awarded in proportion to the award as the arbitrator, in his sole discretion, may determine. Judgment upon the award may be entered in any court in any country having jurisdiction or application may be made for the judicial acceptance of the award and an order of enforcement as the case may be. The parties agree that if it becomes necessary for any party to enforce an arbitration award by a legal action or additional arbitration or judicial methods, the defaulting party shall pay all costs and expense (including without limitation, reasonable arbitrator's fees and attorney fees) incurred by the party (or parties) seeking to enforce the award. The arbitrator may not award exemplary or punitive damages.

## **10. FORCE MAJEURE**

None of the parties hereto shall be responsible or be held liable for damage to one another for any delay in performance or for non-performance of any of its obligations under this Agreement to the extent such delay in performance or such non-performance is caused directly or indirectly by strikes or other labor issues, disturbances, riots, civil commotion, war or the consequences or war (declared or undeclared), insurrections, requisition or the threat of requisition, priorities or any other action, direction or regulation of any competent government authority or agency, Federal or Provincial, as now or hereafter may be enforced during the term of this Agreement, acts of God, perils of the seas and other waters, dangers of navigation, public enemies, storms, floods, fire, or any other matter or thing beyond the reasonable control of the respective parties, provided that prompt notice of such cause of delay in the performance or non-performance shall be given by the party invoking it who shall make every reasonable effort to restore its ability to perform hereunder. Notwithstanding the above, if non-performance continues for a period exceeding 15 days, the Contractor may terminate the Agreement immediately and/or Company may terminate the Agreement immediately. Notwithstanding any force majeure event, Contractor shall exercise due diligence to protect and safeguard equipment and property, including cargo, within its possession or custody.

## **11. INSURANCE**

- A. Contractor shall, throughout the term of this Agreement, carry and maintain insurance coverage and if required shall furnish to Company certificates of insurance evidencing such insurance coverage, as set forth below:
  - (1) Worker's Compensation Insurance for its employees, as required by applicable Vietnamese laws.
  - (2) Public Liability Insurance for bodily injury, including death, subject to a minimum of U.S. \$2,000,000 per person or each occurrence.
  - (3) Property Damage / Liability Insurance covering injury or destruction of property in the amount of U.S. \$2,000,000 each accident or occurrence.
- B. Company shall, throughout the term of this Agreement, carry and maintain insurance coverage as set forth below:
  - (1) Hull and machinery insurance on the vessels to their full value;
  - (2) Protection and indemnity insurance pursuant to a standard P&I club entry including coverage for pollution/environmental risks;
  - (3) Worker's Compensation Insurance for its employees, as required by applicable Vietnamese laws;
  - (4) Public Liability Insurance for bodily injury, including death, subject to a minimum of U.S. \$5,000,000 per person or each occurrence; and
  - (5) Property Damage / Liability Insurance covering injury or destruction of property in the amount of U.S. \$2,000,000 each accident or occurrence.
  - (6) SSIT will not assume any liability for container cargo in transit to/from SSIT while in the care of Company's subcontractors. This includes but is not limited to rail operators, feeder operators, barge companies and trucking companies. SSIT will liaise operationally with any Company appointed contractor in areas such as berth coordination, container connectivity, special cargo handling and EDI exchange whereby ensuring problem free access and usage of the terminal. This will generally be done at no extra cost to the Company unless otherwise noted in this contract.

## **12. APPLICABLE LAW**

This Agreement, and all claims, disputes or disagreements arising out of or connected with this agreement, its validity or any breach thereof, shall be governed by and interpreted in accordance with the laws of Singapore.

## **13. PAYMENT TERMS**

- A. All invoices submitted by Contractor to the Company for services rendered are due and payable within thirty (30) days from date of receipt of invoice. If payment is not received within thirty (30) days of receipt of invoice, a penalty charge of one and one-half percent (1.5%) per month or 0.05 percent per day shall be assessed on balances remaining past one month plus reasonable costs and fees of collection.
- B. Contractor will promptly notify, and in no case longer than five (5) days, Company upon completion of vessel operation the actual charges due for services performed under Schedule 1.

- C. All payments shall be made in United States Dollar (USD) to the Contractors' bank account by wire transfer as specified in the below:

Account name	SP-SSA INTERNATIONAL TERMINAL
Account number	880840060000899 (USD) – 880704060001511 (VND)
Bank name	VIETNAM INTERNATIONAL COMMERCIAL JOINT STOCK BANK – HEAD OFFICE
Bank address	111A Pasteur, Ben Nghe Ward, District 1, HCMC, Vietnam
Swift code	VNIBVNVX

#### **14. DEFAULTS AND RIGHT OF TERMINATION**

- A. Notwithstanding Clause 2 above, in the event of the failure of Company to pay for services rendered at the time and in the manner herein specified, Contractor may elect to terminate this Agreement with or without process of law, provided, however, Company shall be given thirty (30) days' notice in writing stating the nature of the default in order to permit such default to be remedied by Company within said thirty (30) day period. Such thirty (30) days period shall begin to run on the day following receipt by Company of such notice. Payment by Company to Contractor of interest on rents and/or any other charges due and owing under this Agreement shall not cure or excuse Company's default in connection with such amounts due and payable. Interest, default and all other remedies of Contractor hereunder are cumulative and not alternative.
- B. Notwithstanding Clause 2 above, in the event of a breach of any term, provision, duty or obligation of this Agreement by the Contractor (or any of Contractor's officers, employees, servants, contractors or agents) with respect to Company, Company shall give Contractor thirty (30) days' notice in writing and state the nature of the default in order to permit such default to be remedied by the Contractor within such thirty (30) day period. If all defaults contained any such notice are not cured within the said thirty (30) day period, Company may elect to terminate this Agreement by written notice to Contractor to that effect, with or without process of law and this Agreement shall thereafter terminate with respect to Company. All remedies permitted by law, equity or contract shall be available to any Company for default and such remedies are cumulative and not alternative.

#### **15. INSOLVENCY**

If Contractor shall file a petition in bankruptcy, reorganization or liquidation or if Contractor shall be adjudged bankrupt or insolvent by any court, Company may, at its sole option, terminate this Agreement by written notice to that effect.

If Company shall file a petition in bankruptcy, reorganization or liquidation or if Company shall be adjudged bankrupt or insolvent by any court, Contractor may, at its sole option, terminate this Agreement.

#### **16. NOTICES AND MISCELLANEOUS:**



- A. All notices hereunder shall be delivered by courier. Such notices shall be sent to the following respective addresses:

To Contractor: SP-SSA International Terminal (SSIT)  
Phuoc Loc Quarter, Phuoc Hoa Ward, Phu My Town,  
Ba Ria Vung Tau Province,  
Vietnam.

To Company: XXXX

or to such other respective addresses as either party hereto may hereafter from time to time designate in writing.

B. Confidentiality:

- (1) Contractor agrees not to make use of or disclose to third parties any shipping, commercial or other data concerning the cargo handled by Contractor for Company or concerning any other matter pertaining to the activities of Company without first securing the written consent of Company, except where and only to the extent that such disclosure is required by authority of law.
- (2) Company agrees not to disclose to third parties commercial information regarding the Contractor made available through this Agreement without first securing the written consent of the Contractor, except where and only to the extent that such disclosure is required by authority of law.
- (3) Other Agreements: Contractor shall not make Company a party to any agreement and signing this Agreement shall not be seen as evidence of any intent on Company's part to be made a party to any such further agreements, obligations or undertakings with respect to the use of SSIT, or terminal or stevedore services, except as provided herein.
- (4) Independent Contractor. Contractor shall perform under this agreement in the sole capacity of an independent contractor, and not as an agent, employee, partner or joint venture, of Company. Contractor's employees shall at all times act under Company's direction and control and shall not be deemed borrowed servants of Company or Company's vessel, including its owner/charterer.
- (5) Severability. If any provision of this agreement is determined to be invalid and/or contrary to law, it is agreed that such provision shall be deemed severed from this agreement as if it had never been a part hereof and the remaining provisions of this agreement shall continue in full force and effect.

WITNESS THEREOF, THE PARTIES HAVE EXECUTED THIS AGREEMENT as of the date first above written.

For XXXX	For SP-SSA International Terminal
_____ Signature	_____ Signature
Name Title	Mr. Nguyen Le Chon Tam General Director

## Schedule 1