

**TERMS OF SERVICE**

---

**TERMS AND CONDITIONS**

**APPLICABLE FOR PROVISION OF TERMINAL SERVICES**

**AT**

**SOUTH ASIA GATEWAY TERMINALS (PVT) LTD.**

**PORT OF COLOMBO, SRI LANKA**

---

**TERMS & CONDITIONS OF TERMINAL SERVICES  
AT SOUTH ASIA GATEWAY TERMINALS, PORT OF COLOMBO, SRI LANKA**

**TABLE OF CONTENTS**

1.	INTERPRETATION .....	4
1.1	Interpretation .....	4
2.	TARIFF RATES.....	5
2.1	Payment of Tariff Rates.....	5
2.2	Tax Gross Up.....	5
3.	TERMINATION PROVISIONS .....	5
3.1	Notice to Remedy Default.....	5
3.2	Notice of Termination .....	5
3.3	Termination in Event of Insolvency .....	5
3.4	Accrued Rights and Obligations Preserved .....	6
4.	VESSELS .....	6
4.1	Definition .....	6
4.2	Customer’s Obligation In Respect of Vessel Information .....	7
5.	OBLIGATIONS OF THE OPERATOR.....	7
6.	OBLIGATIONS OF THE CUSTOMER.....	11
7.	SERVICES (loading/discharging and receipt/delivery).....	11
8.	RESTOWS.....	13
9.	SERVICES (temperature controlled and ventilated cargo and containers) .....	13
9.1	General Provision.....	13
9.2	Refrigeration of Integral Containers .....	14
9.3	Ventilated Containers (Faintainers).....	14
9.4	Operator Excused from Liability.....	14
10.	LIABILITIES .....	15
10.1	Liability - Operator .....	15
10.2	Liability – Customer.....	17
11.	FORCE MAJEURE.....	18
11.1	Relief from Liability .....	18
11.2	Mitigation.....	18
11.3	Obligations Upon Occurrence of Force Majeure.....	18
11.4	Right of Termination.....	19
11.5	Definition of Force Majeure .....	19
11.6	Force Majeure Events.....	19
12.	SECURITY AT BERTH .....	20
12.1	Damage to Vessels.....	20
12.2	Stowaways.....	20
13.	ACCESS TO BERTH.....	20
14.	PERFORMANCE CRITERIA .....	20
14.1	Vessels’ Schedule and Berth Windows.....	20
14.2	Berthing Requirements.....	21
14.3	Customer’s Responsibilities .....	21
14.4	Permissible Delays.....	21
14.5	Container Moves .....	22
14.6	Operator Indemnity .....	23
14.7	Berthing Windows and Reporting Procedures .....	23

15.	HEALTH, SAFETY AND ENVIRONMENT .....	24
16.	INSURANCE OBLIGATIONS.....	25
	16.1 Obligation of Operator.....	25
	16.2 Obligation of Customer.....	25
17.	CONFIDENTIALITY.....	25
	17.1 Duty of Confidentiality.....	25
	17.2 Exceptions.....	26
	17.3 Public Announcements.....	26
18.	DISPUTE RESOLUTION.....	26
	18.1 Reference to an Arbitrator .....	26
	18.2 Terms of Arbitration.....	26
	18.3 Identity of Arbitrator.....	27
	18.4 Status of Arbitral Decision .....	27
	18.5 Costs of Arbitration.....	27
	18.6 Arbitration Compulsory.....	27
	18.7 Non Merger.....	27
19.	NOTICES.....	27
	19.1 Form and Mode of Notice .....	27
20.	GENERAL.....	28
	20.1 Waiver and Modification.....	28
	20.2 Strict Compliance .....	28
	20.3 Legal Relationship .....	28
	20.4 Entire Terms of Services.....	28
	20.5 Sustainability .....	28

SCHEDULE 1 : SAGT – Container Terminal Tariff

**TERMS & CONDITIONS OF TERMINAL SERVICES  
AT SOUTH ASIA GATEWAY TERMINALS, PORT OF COLOMBO, SRI LANKA**

**RECITAL**

This Agreement comprises the terms & conditions governing the provision of Terminal Services by the Operator to the Customer at **SAGT, Port of Colombo**. The Customer hereby agrees that it shall be bound by the Terms and Conditions of services at SAGT, when availing terminal services. Terms & Conditions are subject to change anytime without prior notice and will be contained in the updated document. This Agreement will be superseded by the Terms & Conditions of Terminal Services Agreements, and Commercial Agreement entered between SAGT and Customer.

**NOW THIS AGREEMENT WITNESSES;**

**1. INTERPRETATION**

**1.1 Interpretation**

In this Agreement, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) words importing any gender include the other genders;
- (c) reference to any statute ordinance or other law includes all regulations and other instruments and all consolidations amendments re-enactments or replacements for the time being in force;
- (d) all headings bold typing and italics (if any) have been inserted for convenience of reference only and do not define limit or affect the meaning or interpretation of this agreement;
- (e) reference to a Recital, Schedule, Annexure or Exhibit is to a Recital, Schedule, Annexure or Exhibit of or to this agreement;
- (f) reference to a person includes a natural person, body corporate, unincorporated association, government or governmental, semi governmental or municipal entity; and
- (g) reference to a party means a party to this agreement and includes that party's successors, legal personal representatives and permitted assigns.

## **2. TARIFF RATES**

### **2.1 Payment of Tariff Rates**

In consideration of the provision of the Services by the Operator the rates payable by the customer during the term shall be payable in US Dollars, to the Operator, as per the tariff rates prescribed in Schedule One.

The Terminal Operator shall, following each port call without undue delay and no later than Three (3) business days thereafter, shall submit an Invoice covering the port call of that vessel, which shall include details and amounts charged for the services.

### **2.2 Tax Gross Up**

If any tax, levies or charges in the nature of a consumption tax, a value-added tax, a goods and services tax or similar taxes, levies or charges is or becomes law in **Sri Lanka** (or other applicable jurisdiction in which the Services are provided) during the term of this agreement and applies to or is imposed on the provision of Services under this agreement, the Customer shall, in addition to the tariff rates provided for in Clause 2.1, also account to the Operator for an amount equal to that tax, levy or charge.

## **3. TERMINATION PROVISIONS**

### **3.1 Notice to Remedy Default**

If either party (the “defaulting party”) shall fail to perform any material obligation to the reasonable satisfaction of the other, it shall be lawful for the other party (the “aggrieved party”) to give the defaulting party a notice in writing instructing the defaulting party to remedy the default or breach as the case may be within a period of thirty (30) calendar days or such further period as the parties may mutually agree.

### **3.2 Notice of Termination**

If such default or breach is not remedied within the period specified in Clause 3.1 above, the aggrieved party shall have the right to terminate by issuing the defaulting party with a written notice of termination to take effect in thirty (30) Calendar days.

### **3.3 Termination in Event of Insolvency**

Either party may terminate by written notice to the other party, however either party may terminate this agreement with such termination to have

immediate effect, if:

- (a) an order is made by a court of competent jurisdiction for the winding up of that other party or a resolution is passed by the shareholders of that other party for its winding up except for purposes of amalgamation or reconstruction in such manner that the resulting company is bound by and assumes the obligations imposed on that other party by this agreement;
- (b) that other party enters any form of external administration;
- (c) a receiver or receiver and manager is appointed to any of the assets or undertaking of that other party;
- (d) that other party makes a general assignment for the benefit of its creditors;
- (e) anything analogous to any of the above events occurs to or in respect of that other party under the law of any jurisdiction.

### **3.4 Accrued Rights and Obligations Preserved**

Termination shall be without prejudice to the accrued rights and obligations of the parties under this agreement, including, without limitation, the right of the Operator to be paid all accrued fees and charges then outstanding and the obligations of confidentiality imposed on both parties.

## **4. VESSELS**

### **4.1 Definition**

The vessels governed by the terms and conditions of services, shall be those vessels:

- (a) owned, chartered, operated or leased by the Customer and notified in writing by the Customer to the Operator, whether prior to the commencement of this agreement or from time to time during the term of this agreement;
- (b) which comply with all relevant international standards with respect to safety, stability and fitness for purpose; and
- (c) once notified to the Operator under paragraph (a), shall automatically be deemed to have been warranted by the Customer to the Operator as being safe, stable and fit for purpose.

## **4.2 Customer's Obligation In Respect of Vessel Information**

The Customer shall provide to the Operator the general arrangement plan of any Vessel and any other appropriate information as requested by the Operator at least seven (7) Calendar Days prior to the Vessel's arrival.

## **5. OBLIGATIONS OF THE OPERATOR**

The Operator shall at all times provide the Customer with:

- (a) details of the Berthing which contains specific advice on the timing for delivery of information to the Operator.
- (b) cranes, labour and handling equipment necessary for the loading and discharging operations provided for in Clause 6(d), so as to ensure that the Containers and Cargo of the Customer are handled in a safe and efficient manner;
- (c) suitable handling and storage areas based on the frequency of calls and the volumes to be handled as notified to the Operator together with a gate operation for the receipt and delivery of Containers;
- (d) proper care and control of the Customer's Containers and Cargo while under the Operator's control, including the prompt reporting of any damage to such Containers and Cargo noticed by the Operator.
- (e) vessel planning services in accordance with the Customer's instructions under the direction of the Customer's Central Stowage Planning Offices as appropriate;
- (f) bay plan and a working sequence for acceptance by the Vessel's command prior to the commencement of operations;
- (g) UN/EDIFACT standard messages including codes, data and references as per guidelines defined by the Ship Message Design Group (SMDG) in accordance with the rules of the International Transport Implementation Guideline Group (ITIGG) of the UN EDIFACT Working Group (EWG) for transport.

1. Documentation/Information flow and operational requirements for EDI
  - 1.1 General

The Customer and the Terminal Operator are committed to the maximum use of EDI to improve the efficiency of their operations with faster and more accurate information and

the removal of paper documents.

The Parties acknowledge that the use of EDI messages is to their mutual benefit.

The Parties agree that where EDIFACT messages are used, they should be constructed and transmitted in accordance with UN EDIFACT Standards and Guidelines or SMDG User manuals.

If the Customer undertakes to supply the complete data sets by EDI, the Terminal Operator will not accept to verify the data along with additional documentation received from the Customer.

## 2. Documentation and information between the Customer and the Terminal Operator

The Customer and the Operator undertakes to supply data sets to the maximum possible extent for the land and waterside operation. The standard for the information exchange of data is the paperless EDIFACT message scenario.

The Baplie file received from the Customer is the official discharge order with highest priority. The Terminal will accept additional hardcopies to a limited extent only or even for information's not covered by BAPLIE/TDR (e.g. COD-information).

2.1 In accordance with the vessel operation and no EDI, the Customer will supply the following documentation to the Terminal Operator:

- Discharge Stowage Plans
- Export Stowage Instruction (Letter Plan)
- Container Loading List (CAL)
- Dangerous Goods and Reefer List
- Out of Gauge List

2.2 In accordance with the landside operation and no continuous EDI, the Customer will supply the following documents to the Terminal Operator:

- Export Booking Information (List)
- Dangerous Goods and Reefer Order / List
- Release Order for full/Empty containers

The Terminal Operator will not accept Export Container without any information from the Customer or Customers supplies / vendors like: Vessel/voyage, Discharge port, Gross weight, Container Type, Booking No., etc.

- 2.3 In accordance with the Feeder operation and no continuous EDI, the Customer will supply the following minimum information to the Terminal Operator:

Procedure discharge main vessel:

Transshipment indicator, final discharge port.

Procedure discharge feeder vessel:

To assist Feeder Operator being able to supply information to the Terminal Operator, the Customer shall provide the following information to the Feeder Operator when making bookings:

Booking Number, Main vessel, vessel voyage, discharge port, gross weight, container type, dangerous goods, reefer and out of gauge information.

3. Documentation and Information between the Terminal Operator and the Customer

The Terminal Operator undertakes to supply complete data sets for the land- and waterside operation.

The standard for the information exchange of data is the paperless EDIFACT message scenario. Those data will apply to:

EDIFACT-COARRI (loading / discharge confirmation)  
EDIFACT-BAPLIE (information from stowage plan)  
EDIFACT-CODECO (information on gate moves)  
EDIFACT-TPFREP (Terminal Performance Report)

- 3.1 Manual documentation, like Interchange Report, copy of the master bayplan, etc. will be supplied to the Customer on request only. In the event of a failure in EDI, The Operator agrees to submit information either paper based or alternate electronic means until such fault is rectified.

- 3.2 Direct access to the Terminal Operator's e-Port web application

4. Technical agreements for EDI

- 4.1 In accordance with their stated commitment to the

maximum use of EDI, the Customer and the Terminal Operator shall work based on the manuals or documentation covering the appropriate messages (i.e. EDIFACT).

- 4.2 The communication method will be TCP/IP (FTP) and the use of e-mail.
- 4.3 The parties agree that the use of e-mail is not always secure in completeness and reliability. The exchange of messages via e-mail is restricted to loading instructions, unloading instructions, Baplies in so far, as they are transmitted as an EDIFACT Standard structured attachment form
- 4.4 An emergency procedure must be agreed between the various parties in case of non-availability of the communication system for any reason whatsoever or in case of technical problems in the chain of communication.

In the event that one of the Parties cannot send a message, it will notify the other Party as soon as possible.

If the Receiver is aware that a message has not been received, it will notify the other Party to re-send the message.

Both Parties undertake to notify the other of errors in data content or message construction as soon as possible after such error is detected.

- 4.5 Where the Standard Procedure/Methods as agreed above are used, each Party will bear their own costs and will not charge the other for EDI Services. Costs for deviations from the above defined Standard will be charged as per individual agreement.
- 4.6 Both Parties will keep original copies of all messages sent and received for a period of 5 days for use in case of queries. Neither Party will be obliged to resend a message more than 5 days after it was first sent for the respective incident.

The sender is responsible for the accuracy of EDI message (i.e. Baplie).

- 4.7 The Parties shall ensure that messages are maintained in confidence and are not disclosed or transmitted to any non-authorized persons nor used for any purpose other than those intended by the parties.

(h) notify the Customer or its duly appointed nominee of any

malfunction/failure of any refrigerated containers. Such notification must reach the Customer or its duly appointed nominee within two (2) hours of such time when the Operator detects the malfunction/failure.

## **6. OBLIGATIONS OF THE CUSTOMER**

The Customer shall at all times during the term of this agreement:

- (a) comply with the Operator's berthing plans described in Clause 14.7;
- (b) provide regular sailing schedules and notification of ETAs of Vessels in accordance with Clause 14.7;
- (c) submit to the Operator not later than twelve (12) hours before the Vessel arrives one complete set of Cargo documentation necessary for the orderly and efficient discharge/loading of that Vessel;
- (d) arrange for the delivery of Containers or Cargo to the Berth in accordance with the cut-off procedures described in Clause 7 (c) and supply information sufficient to enable the Operator to provide the Services not later than twelve (12) hours before commencement of any loading, including the validation of any Domestic Containers to be loaded;
- (e) confirm to the Operator the suitability of information referred to in Clause 5(a) within three (3) Working Days after receipt. Absence of response from the Customer will be deemed as acceptance and any dispute shall be resolved within three (3) Calendar Days;
- (f) pay excess storage charges which accrue beyond the free storage period in respect of export and transshipment Containers, as described in Schedule One (01).

## **7. SERVICES (LOADING/DISCHARGING AND RECEIVAL/DELIVERY)**

The Operator shall provide the following services:

### **(a) Receival and Delivery**

- (i) delivery of import Containers at the Terminal and all clerical work and reporting associated with such delivery;

- (ii) receipt of export Containers within the delivery period agreed between the Customer and the Operator in accordance with the cut-off procedures described below in clause 7 (c);
- (iii) transfer of transshipment containers between SAGT, the JCT and any other terminal within the Port of Colombo
- (iv) storage for export Containers operations in accordance with the provisions contained in Schedule One (01);
- (v) storage for import Containers following the completion of Vessel operations in accordance with the provisions contained in Schedule One (01);

The charges for such services will be invoiced to the Customer only if and when cargo is deemed to be abandoned and / or when the Customer specifically requests for such service.

**(b) Loading and Discharging**

- (i) movement of Containers from Vessel's cell or deck to wharf or vice versa. Lashing and unlashng of deck Containers, patent types only;
- (ii) movement of Containers from wharf to stacking area or vice versa;
- (iii) confirming Container numbers;
- (iv) reporting of Container movements out of/into the Vessel;
- (v) stowage planning based upon instructions from the Customer's Central Stowage Planning Office, including but not limited to:
  - (1) accessing the incoming electronic Bay Plan; retransmitting the completed electronic Bay Plan immediately operations are completed;
  - (2) providing the Vessel with the final Bay Plan in electronic format preferably EDI/email or by direct internet FTP, in accordance with the existing standard, not less than six (6) hours prior to scheduled departure subject always to all export Containers being received not less than twelve (12) hours prior to scheduled departure.

**(c) Cut off procedures**

- (i) The **Receival Period** for each vessel will be seven (7) days prior to the day of ETA of the vessel.

- (ii) The **“Cut Off”** for containers arriving through the gate for all vessels will be 12 hours prior to the ETA of the vessel on the berth.
- (iii) Only by agreement will arrangements be considered for receivals after the **“Cut Off”**. Arrangements must be agreed no later than 12 hours prior ETA of the vessel and must include full details of the containers being late received. The **“Cut Off” for confirmed late receivals** will be six hours prior to vessel ETB.
- (iv) Connecting vessels calling SAGT: ETD of discharging vessel should be no later than ETA of loading vessel.
- (v) Connections from SLPA, CICT (and any other Primary terminal), to the Secondary Terminal within the Port of Colombo: the ETC of the vessel from which the container is to be discharged should be no later than 24 hours before loading vessel arrives at SAGT.
- (vi) Containers received into the terminal for another vessel and outside the agreed **Receival Period** for the subject vessel cannot be automatically swapped between vessels. Such change will be subject to agreement and payment of any storage or additional movement charges as outlined in Schedule 1.
- (vii) The Operator and Customer can vary the above procedures by mutual agreement in abnormal situations.

## **8. RESTOWS**

Where the Customer requests a re-stowage, the rate described in Schedule One (01) for the re-stowage of Containers on board Vessels (whether shift on board or discharge, land and return) will be applicable.

## **9. SERVICES (TEMPERATURE CONTROLLED AND VENTILATED CARGO AND CONTAINERS)**

### **9.1 General Provision**

For Containers requiring refrigeration or forced ventilation at the Terminal the Operator agrees that it shall provide services in accordance with Clauses 9.2, 9.3 and 9.4.

## **9.2 Refrigeration of Integral Containers**

- (a) Connecting and disconnecting the power supply to containers where Customer has pre-advised the requirement.
- (b) Furnishing electrical outlets, distribution boards and the power consumed;
- (c) Monitoring the temperature settings displayed on the reefer units whilst on the terminal and on receipt or delivery;
- (d) Regular monitoring of temperatures shall be carried out at intervals not exceeding four (4) hours. Reporting of faults and machinery malfunctions (including abnormal temperature variations) to the Customer immediately on discovery.
- (e) Provide sufficient power supply to refrigerated containers.

## **9.3 Ventilated Containers (Fantainers)**

- (a) Connecting and disconnecting the power supply to containers where Customer has pre-advised the requirement.
- (b) Furnishing electrical outlets, distribution boards and the power consumed;
- (c) Checking the fan (ie exhaust) is operating correctly on receipt;
- (d) Regular monitoring of equipment whilst in the Terminal and promptly reporting any faults to the Customer.
- (e) Provide sufficient power supply to Fantainers.

## **9.4 Operator Excused from Liability**

The Operator shall not be liable in respect of:

- (a) any failure or malfunction of reefer Containers or any associated equipment unless failure or malfunction is a result of or negligence of the Operator.

## 10. LIABILITIES

### 10.1 Liability - Operator

- (a) The Operator shall indemnify and keep indemnified the Customer in respect of any loss or damage suffered or incurred by the Customer as a consequence of any negligent or willful breach of this agreement by the Operator or any act or omission of the Operator constituting negligence or willful misconduct except to the extent that such loss or damage is caused by a negligent or willful breach of this agreement or an act or omission constituting negligence or willful misconduct by the Customer.

The Operator shall not make any claim or allegation against any employee or agent of the Customer which imposes or attempts to impose upon any such person any liability whatsoever or howsoever arising; including any liability for negligence in connection with the Containers or Cargo or their carriage or handling, or actions or omissions of any visitor of the Operator.

- (b) The liability of the Operator under this clause shall, in the case of:
- (i) Damage to a Vessel;
  - (ii) In the case of physical loss or damage to a container, or a container and its ancillary equipment, the maximum liability of the operator will be the depreciated value or the reasonable cost of repairs, whichever is the less subject to limits of:
    - 20' Dry Container - USD5,000 per Container
    - 40'/45' Dry Container - USD8,500 per Container
    - 20' Insulated Container - USD16,000 per Container
    - 20' Reefer Container - USD30,000 per Container
    - 40'/45' Reefer Container - USD50,000 per Container
    - 20' Tank Container - USD40,000 per Container
  - (iii) in the case of physical loss or damage to cargo the maximum liability of the operator will be the Customer's liability to the cargo owner under its Bill of Lading or other contract of carriage to a maximum amount of:
    - in the case of containerised cargo: USD200,000 per container
  - (iv) physical loss or damage to any other equipment owned or operated by the Customer; or

- (v) any other loss or damage suffered or incurred by the Customer, will not exceed a maximum of USD20,000,000 arising out of any single incident or series of incidents arising from a common cause.
- (c) The Operator will not accept responsibility or liability for damage to ships arising from the pre-existing condition of the ship and/or the failure of the Customer to properly maintain the ship. This includes but is not limited to damage to cell guides arising from those guides being in a deteriorated or defective condition and corroded hatch coamings. In the event that the Operator's equipment is damaged as a result of an incident caused by pre-existing damage to the ship and/or failure of the Customer to properly maintain the ship, the Operator will be entitled to a full indemnity for the costs arising from the damage to its equipment.
- (d) The Operator shall be exempt from liability for damage to goods caused by or to the extent contributed to by insufficient protection or packing.
- (e) The Customer also acknowledges that data and information is sent and received by the Operator via Electronic Data Interchanges (EDI) in EDIFACT format. The Customer acknowledges that the Operator shall not be responsible for any negligent or willful errors, inaccuracies, corruption, omissions or misinformation in such data and information howsoever caused and hereby waives any rights it may have against the Operator in this regard.
- (g) Provided, however and notwithstanding anything to the contrary herein, that the Operator shall not under any circumstances be liable (including out of negligence, willful misconduct or default), whether in contract or in tort, for any indirect loss or damages, such as but not limited to loss of profits, loss of reputation, loss of alternative business opportunities suffered by the Customer.
- (h) No claim may be pursued by the Operator or the Customer (claimant for the purpose of this clause) against the other (recipient for the purpose of this clause) unless:
- i) the recipient has been advised in writing of the event or events giving rise to the claim within 45 Calendar days of their occurrence; and
  - ii) suit is brought in the proper forum and written notice thereof received by the Company within 15 calendar months of their occurrence.

The Operator reserves the right to amend any of the above clauses in the event of changes to International best practices and/or International conventions, and shall keep the Customer informed of such change prior to implementation

## **10.2 Liability – Customer**

- (a) The Customer undertakes that it will include in all its contracts of carriage for Cargo to be handled by the Operator under this agreement a provision to the effect that every sub-contractor of the Customer shall have the benefit of all provisions herein benefiting the Customer and the Operator hereby appoints the Customer as its agent for the purpose of making this stipulation only and also accepts such benefit.
- (b) The Customer shall indemnify and keep indemnified the Operator in respect of any loss or damage incurred by the Operator as a consequence of any breach of this agreement by the Customer or any act or omission of the Customer constituting negligence or willful misconduct except to the extent that such loss or damage is caused by a negligent or willful breach of this agreement or an act or omission constituting negligence or willful misconduct by the Operator.
- (c) The Customer shall not make any claim or allegation against any employee or agent of the Operator which imposes or attempts to impose upon any such person any liability whatsoever or howsoever arising including any liability for negligence in connection with the Containers or Cargo or their carriage or handling, the provision of Terminal services or actions or omissions of any visitor of the Customer.
- (d) Nothing in this agreement shall be construed as a waiver by the Customer of its right to limit its liability by establishing a limitation fund under an applicable international convention or national law governing the liability of owners and/or operators of seagoing ships.
- (e) Provided, however and notwithstanding anything to the contrary contained herein, the Customer shall not be liable under any circumstances (including negligence or willful misconduct or default), whether in contract or in tort, for any indirect loss or damage including loss of profits, loss of reputation, loss of alternative business opportunities or loss due to third party claims suffered by the Operator.
- (f) In the event the consignee abandons cargo the Customer is fully responsible for the removal of the equipment together with the cargo and the settlement of related charges as specified in the published tariff, and shall keep the Operators indemnified in respect of same.

- (g) In the case of non declaration/incorrect declaration of Dangerous cargo, The Customer will be held fully responsible for any damage that may occur during the handling/storage of the container. The Customer will be liability in this accord includes damages to,
- Operators property / equipment
  - Third party equipment
  - Injury / loss of life

## **11. FORCE MAJEURE**

### **11.1 Relief from Liability**

A party (the “Affected Party”) shall be relieved from liability for any delay in the performance or inability to perform any obligation under this agreement which is directly caused by or results from Force Majeure for so long as the Force Majeure or the inability to perform continues.

### **11.2 Mitigation**

The Affected Party shall use all reasonable efforts to mitigate and overcome the effects of the occurrence of Force Majeure in order to maintain or resume performance PROVIDED THAT no party shall be required under this provision to settle any strike or labour dispute under terms it considers to be unfavourable to it.

### **11.3 Obligations Upon Occurrence of Force Majeure**

If Force Majeure occurs, the Affected Party shall notify the other, as soon as reasonably practicable and in any event within seven (7) Business Days after the Affected Party has reasonably determined that the occurrence of the Force Majeure might affect its performance in a material way, of:

- (a) the occurrence and nature of the Force Majeure;
- (b) its expected duration (so far as can be reasonably assessed);
- (c) the obligations which cannot be fully performed as a result;
- (d) the proposed resulting mitigating action.

The Affected Party shall keep the other fully informed of developments, including performance of its mitigation steps.

#### **11.4 Right of Termination**

In the event that the Force Majeure and consequential inability to perform continues for a period of longer than six (6) months from its initial occurrence then either party may terminate this agreement by written notice to the other party at any time after the expiry of this period provided the provisions of Clause 3.4 shall apply with necessary changes.

#### **11.5 Definition of Force Majeure**

In this agreement Force Majeure means any event or circumstance or combination of events or circumstances whenever occurring which in each case:

- (a) is outside the control of the Affected Party;
- (b) could not be avoided, prevented, overcome or mitigated with reasonable foresight, prudence and diligence; and
- (c) materially prevents performance of a party's obligations under this agreement.

#### **11.6 Force Majeure Events**

Without limiting the generality of Clause 11.5 Force Majeure includes the following categories of events or circumstances having an impact on the Port of Colombo:

- (a) acts of God;
- (b) extreme weather conditions;
- (c) nuclear explosion, radioactive or chemical contamination or ionizing radiation;
- (d) meteorites;
- (e) epidemic, plague or quarantine;
- (f) blockade or closure of the Port of Colombo;
- (g) strikes or other industrial action in the port of Colombo
- (h) fire, explosion and piracy;
- (i) curfews in or restrictions on travel within **Port of Colombo**;
- (j) war (whether declared or not), invasion, embargo, revolution, military coup or armed conflict, in each case in **Sri Lanka**;
- (k) sabotage or criminal damage to the Terminal;
- (l) riot, civil commotion, insurrection or terrorism, in each case in **Sri Lanka**;
- (m) restrictions on imports imposed by the government of **Sri Lanka** or any authority, organ or instrumentality of the government of **Sri Lanka**;
- (n) confiscation, expropriation or nationalisation of Terminal assets authorised by the government of **Sri Lanka**; and

- (o) commandeering or requisition of Terminal assets authorised by the government of **Sri Lanka**.

## **12. SECURITY AT BERTH**

### **12.1 Damage to Vessels**

The Operator shall not be responsible for the security and safety of any Vessel while tied up alongside a Berth, unless any lapse in security or safety is caused by any defective equipment of the Operator or any fault or neglect on the part of the Operator, its servants, agents or sub-contractors.

### **12.2 Stowaways**

The Operator shall not be liable for any loss or damage suffered or incurred by the Customer (including, without limitation, the payment of expenses by the Customer on account of care, lodging, medical attention, security and repatriation) and arising from the presence on board Vessels of stowaways, or other unauthorised personnel, unless due to a lapse in security for which the Operator is liable under Clause 11.1.

## **13. ACCESS TO BERTH**

The Operator shall allow reasonable access to the Customer and the Customer's Visitors, upon reasonable request, to attend at any Berth for the purpose of performing and carrying out the business and agency requirements of the Customer relating to services supplied by the Operator to the Customer subject to such persons observing all safety regulations and standing instructions which may be operative at that time. The Customer shall be fully liable for the acts and omissions of the Customer's Visitors while those persons are present on the Terminal.

## **14. PERFORMANCE CRITERIA**

The performance criteria is detailed in Schedule Four and includes references under the following headings:

### **14.1 Vessels' Schedule and Berth Windows**

The Operator will provide a Berthing Window as mutually agreed with the Customer and in accordance with the Berthing Windows and Reporting Procedures contained in 14.7 below.

## **14.2 Berthing Requirements**

The Vessels will be required to berth starboard side within the agreed window in accordance with the Berthing Windows and Reporting Procedures.

If a Vessel fails to arrive within three hours of the agreed window that Vessel will be berthed at the next available window.

A Vessel shall depart at the agreed window time unless the Operator has delayed the completion of the Vessel's operations or unless mutually agreed otherwise.

## **14.3 Customer's Responsibilities**

- (a) All export containers shall be delivered in accordance with the Cut Off Procedures in Clause 7 (c) or as mutually agreed between the Customer and the Operator.
- (b) Access to holds shall comply with applicable international standards.
- (c) Lashing gear, including stacking cones and twist locks, shall conform to patent type, be in a good state of repair and be fitted in a consistent manner.

## **14.4 Permissible Delays**

The following exclusions constitute permissible delays:

- (a) delays caused by the Vessel or its equipment which prevent actual container exchange work being carried out;
- (b) delays caused by handling break bulk and over-dimensional Cargo;
- (d) force majeure as defined in Clause 11;
- (e) delays to Vessel operations as a result of port wide strikes if incurred.
- (f) delays to Vessel operations caused by late receipt of Containers if incurred;
- (g) failure of or interruption to power supply;
- (h) delays occasioned where Containers are discharged or loaded from or into non-cellular holds;

- (i) delays during pilotage and other delays before labour aboard and after labour ashore;
- (j) the delay in arrival of the Vessel for the agreed window as defined in Clause 14.1 and Schedule Four;
- (k) delays caused by insufficient, inaccessible or poorly maintained lashings and fittings, including incorrectly fitted lashings;
- (l) failure of the Customer to supply the vessel loading plan prior to the vessels arrival on the berth; (as per SAGT operations procedure)
- (m) vessel stowage arrangements where the terminal is required to load and discharge centre or outboard cells travelling over 4 or 5 high inboard container stacks on that same bay, where it demonstrably impacts on quay crane productivity
- (n) Cargo distribution per bay should be over 12% of the total number of moves:
- (o) Yard delays due to re-nominations;
- (p) Changes to the approved working plan which impacts the continuous vessel operation;
- (q) Weather conditions affecting safe operations of the vessel. IE: Heavy rain, fog, wind, vessel roll;
- (r) Delays incurred by re-handling containers due to miscellaneous reasons; IE: Leaking containers malfunctioning reefers, Customs and or other statutory requirements;

#### **14.5 Container Moves**

For the purpose of the productivity criteria a container move is defined as:

Discharge or load	1x20' or 1x40'	= 1 move
Restow same bay	1x20' or 1x40'	= 1 move
Restow via the quay	1x20' or 1x40'	= 2 moves
Over dimensional Cargo	1x20' or 1x40'	= 4 moves**
Each Hatch lid movement	1x2	= 4 container moves

Gear boxes	1x20	= 2 moves
Access restow	1x20' or 1x40'	= 2 moves

\*\*Applies only when O/H frame is used.

#### 14.6 Operator Indemnity

In the event that a Container or Cargo is incorrectly secured or lashed by the Operator, the Operator shall indemnify the Customer for all costs and expenses reasonably incurred in resecuring or relashing such Container or Cargo.

#### 14.7 Berthing Windows and Reporting Procedures

Item	Prior to Vessel ETA	Responsibility	Advice
01	7 calendar days	Line  SAGT	ETA (date and time) Discharge / Load / Restow information B/Bulk and other operational requirements  Confirm berthing window and likely ETD, based on Lines information
02	Every 24 hours after Item 1	Line  SAGT	Update on advice  Update on berthing window
03	1 calendar day	Line  SAGT	Confirm final ETA Confirm total container exchange Confirm SLPA navigation charges paid Confirm any other requirements <i>(Changes should then only be made after consultation with SAGT)</i>  Finalise operational plans

1. Items 1 and 3 of the above shall be by electronic mail. Item 2 by telephone. In item 3 the electronic mail needs to be received by the operator 24 hours before arrival.
2. The vessel is to arrive within 3 hours of the Confirmed Berthing Window (CBW) as in item 1 and 3 otherwise the vessel will berth on the next available window as determined by the operator after due consideration and consultation with the customer and other customers wishing to berth a vessel.
3. The vessel needs to depart before or within 2 hours after the CBW sailing time. If the berth is available after completion of the exchange, the vessel may remain on the berth only after due consultation has taken place between the operator and the customer.
4. Long term vessel schedules should be forwarded to the Operator on a regular basis.

## **15. HEALTH, SAFETY AND ENVIRONMENT**

Operator is required to perform all work and provide all Container Terminal Services hereunder in a manner that ensures adequate protection for:

- (a) Its employees and of its sub-contractors;
- (b) Other individuals entering the premises of the operator, such as but not limited to independent contractors;
- (c) The public;
- (d) The environment; and
- (e) The Containers, the Cargo and the Container ship

In full compliance with all applicable international, national, and local health, safety, and environmental laws, rules and regulations.

## **16. INSURANCE OBLIGATIONS**

### **16.1 Obligation of Operator**

The Operator shall, during this term:

- (a) take out and maintain with insurers of international standing all such insurances and insure against such risks and for such sums as would normally be taken out by a prudent terminal operator and in any event to a level of cover not less than the maximum limit of liability prescribed by Clause 10.1, including, without limitation, liability insurances in respect of the Operator's negligence;
- (b) provide copies of relevant policies to the Customer upon the Customer's request.

The Operator reserves the right to amend any of the above clauses in the event of changes to International best practices and/or International conventions, and shall keep the Customer informed of such changes.

### **16.2 Obligation of Customer**

The Customer shall, during the term of this agreement:

- (a) take out and maintain with insurers of international standing all such insurances and insure against such risks and for such sums as would normally be taken out by a prudent shipping operator and in any event to a level of cover not less than the maximum limit of liability prescribed by Clause 10.2, including, without limitation, P&I Club insurances;
- (b) provide copies of relevant policies to the Operator upon the Operator's request.

## **17. CONFIDENTIALITY**

### **17.1 Duty of Confidentiality**

The parties shall at all times treat as confidential and privileged information provided to one of them ("receiving party") by the other ("communicating party") which falls into one of the following categories:

- (a) information regarding any aspect of the operation of the Terminal;
- (b) information regarding any financial or operational details of the

communicating party;

- (c) any information belonging to a third party and communicated with that party's consent on terms that such information remain confidential.

The receiving party shall promptly upon termination of this agreement for any reason deliver up to the communicating party any information communicated in accordance with the above.

For the purposes of this Clause "information" means practices, techniques, processes, trade secrets and knowhow which either relate to the communicating party or have an application to the operation of the Terminal.

### **17.2 Exceptions**

The provisions of this Part 17.2 shall not apply to information which has entered the public domain otherwise than as a result of a breach of these provisions or, notwithstanding breach, is required to be disclosed by law or the rules of any stock exchange or other regulatory authority.

### **17.3 Public Announcements**

No public announcement of any kind shall be made by either party in relation to the subject matter of this agreement without the consent of the other party as to the form, content and timing of the announcement, subject to any overriding statutory or regulatory obligations of disclosure imposed by law or the rules of any stock exchange.

## **18. DISPUTE RESOLUTION**

### **18.1 Reference to an Arbitrator**

In the event of any dispute or difference arising between the parties in relation to this agreement the parties shall, in the first instance, appoint their respective designated representatives who shall represent the parties at meetings whereby the parties shall, in good faith, attempt to settle such dispute or difference.

In the event that a settlement is not achieved within thirty (30) Business Days of the commencement of the first of such meetings any party may, by written notice served upon the other, require the matter to be referred for resolution to an independent arbitrator in accordance with the following provisions.

### **18.2 Terms of Arbitration**

The arbitral hearing referred to in Clause 18.1 shall be held in Singapore,

shall be conducted in accordance with the rules and procedures promulgated by the Singapore Chamber of Maritime Arbitration and shall be conducted in the English language. The parties shall co-operate to facilitate the arbitrator delivering his decision within thirty (30) Business Days of commencement of the arbitration process.

### **18.3 Identity of Arbitrator**

The parties shall, not later than ten (10) Business Days prior to the commencement of the arbitration process, agree upon the identity of an arbitrator but, failing agreement, that person shall be designated by the President (or presiding officer) for the time being of the Singapore Chamber of Maritime Arbitration.

### **18.4 Status of Arbitral Decision**

The decision of the arbitrator, made for any purpose pursuant to this agreement, shall be final and binding upon the parties and will be carried into immediate effect by them. If the party against whom an arbitral award has been made refuses to comply with the award, the other party may approach any court of competent jurisdiction for the purpose (but only for the purpose) of enforcement of the award.

### **18.5 Costs of Arbitration**

The costs of arbitration shall be borne equally by the parties or in accordance with the directions (if any) of the arbitrator.

### **18.6 Arbitration Compulsory**

The parties agree that, in the event their respective designated representatives shall not be able to resolve matters, they shall have recourse only to arbitration as a means of dispute resolution to the

exclusion of instigating any form of legal proceedings in the local or foreign courts, except for the permitted purpose of enforcement under Clause 18.4.

### **18.7 Non Merger**

The provisions of this Clause 18 and Clause 17 shall continue to be binding on the parties notwithstanding the termination of this Agreement.

## **19. NOTICES**

### **19.1 Form and Mode of Notice**

A notice:

(a) shall be in writing; and

(a) shall be left at the address of the addressee or sent by registered post or international courier to the address of the addressee (airmail if the sender is outside the country of destination) or by facsimile transmission to the facsimile number of the addressee as follows:

(i) in the case of : **South Asia Gateway Terminals (Pvt) Ltd.**

Address: 117, Sir Chithampalam A Gardiner Mawatha,  
Colombo 2  
Sri Lanka

Facsimile No: +94 11 2457302

Attention: Chief Executive Officer

## **20. GENERAL**

### **20.1 Waiver and Modification**

No waiver of any breach of these provisions will be effective unless such waiver is in writing and signed by each party to this agreement against whom such waiver is claimed. No waiver of any breach shall be deemed to be a waiver of any other or subsequent breach. No alteration or amendment to any such obligation will be effective or enforceable unless made in writing and signed by all parties to this agreement.

### **20.2 Strict Compliance**

In the absence of express provision to the contrary, failure or omission by a party to this agreement at any time to enforce or require strict or timeous compliance with any provision of this agreement or any related document shall not impair the ability of that party to exercise the rights and remedies it otherwise has in respect of a breach of any such provision.

### **20.3 Legal Relationship**

Nothing contained in this agreement shall be construed so as to constitute any party to this agreement a partner, agent or representative of the other or others or to create any trust or partnership with any person or company or commercial entity for any purpose whatsoever.

### **20.4 Entire Terms of Services**

This terms of services will constitute the terms and conditions governing terminal services, any previous understandings on that subject matter cease to have any effect.

### **20.5 Sustainability**

The Parties shall;

- (a) observe internationally accepted treaties relating to the protection of human rights; and
- (b) observe conditions of labour not less favorable than those conditions established for the law, trade or industry; and
- (c) not use child or forced labour; and
- (d) not engage in any activity which amounts to discrimination on the basis of race, ethnicity, colour, national origin, sex, disability, veteran status, or age.
- (e) not offer, receive, agree to pay or cause the payment by another person of any money or anything of value for the purpose of influencing, improperly or unlawfully any act, decision or judgment of any person relating to the performance of the Business