

**REPUBLIC OF GUINEA**  
**Work -- Justice -- Solidarity**  
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**MINISTRY OF MINES AND GEOLOGY**  
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**AMENDED AND RESTATED PORT OPERATIONS AGREEMENT**

**BETWEEN**

**THE REPUBLIC OF GUINEA**

**AND**

**L'AGENCE NATIONALE D'AMENAGEMENT DES  
INFRASTRUCTURES MINIERES (ANAIM)**

**AND**

**GUINEA ALUMINA CORPORATION SA (GAC SA)**

**AND**

**GUINEA ALUMINA CORPORATION Ltd (GAC Ltd)**

**AND**

**LA COMPAGNIE DES BAUXITES DE GUINEE (CBG)**

**Paris, 24 June 2015**

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## AMENDED AND RESTATED PORT OPERATIONS AGREEMENT

This Amended and Restated Port Operations Agreement and its annexes (the "**Annexes to the Amended and Restated Port Operations Agreement**" as hereinafter defined), is entered into in Paris, France.

Between:

1. The **REPUBLIC OF GUINEA**, represented by his Excellency Kerfalla Yansané, State Minister of Mines and Geology (hereinafter referred to as the "**State**"),

On the first part,

2. **AGENCE NATIONALE D'AMENAGEMENT DES INFRASTRUCTURES MINIERES**, a public institution of industrial and commercial nature whose registered office is at the ENIPRA building Kaloum BP 295, in Conakry, the Republic of Guinea, represented by its Director General, Lamine Cissé, duly authorized for this purpose (hereinafter referred to as "**ANAIM**"),

On the second part,

3. **GUINEA ALUMINA CORPORATION SA**, a *société anonyme* with a board of directors registered under the laws of the Republic of Guinea, with a share capital of 50,000,000 Guinean francs, whose registered office is at Immeuble Zein, Quartier Almamya, BP:5090, Conakry, represented by its General Manager Mamady Youla, duly authorized for this purpose, acting on its behalf and on behalf of any Affiliated Company of its group which may replace it (hereinafter referred to as "**GAC SA**"),

On the third part,

4. **GUINEA ALUMINA CORPORATION LIMITED**, a private company, registered under the laws of the British Virgin Islands, which registered office is at P.O. Box 3152, Road Town, Tortola, British Virgin Islands, represented by Masoud Al Ali, duly authorised for this purpose, acting pursuant to Article 4 of the Basic Agreement (hereinafter referred to as "**GAC Ltd**"),

On the fourth part,

**GUINEA ALUMINA CORPORATION SA** and **GUINEA ALUMINA CORPORATION LTD** are hereinafter together referred to as "**GAC SA**" for the purposes of this Amended and Restated Port Operations Agreement.

5. **COMPAGNIE DES BAUXITES DE GUINEE**, a company registered under the laws of the State of Delaware, the United States of America, and registered in the Register of Economic Activities of Guinea on 23 June 1964, whose registered office is at Conakry BP 523, the Republic of Guinea, represented by its General Manager Namory Condé (hereinafter referred to as the Concessionaire" or "**CBG**" depending on the context),

On the fifth part,

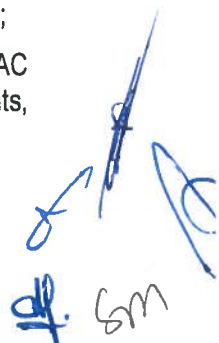
(Hereinafter referred to collectively as the "**Parties**" or individually as a "**Party**" hereto).

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## RECITALS

Whereas:

- The State has granted to GAC SA the right to develop the project which includes producing and exporting bauxite, constructing and operating an alumina plant as well as port, railway, road and other essential infrastructure for the project in the Sangarédi region and an industrial zone at Kamsar pursuant to and for the duration of the GAC Basic Agreement (as hereinafter defined) (the "**GAC Project**");
- The State, through ANAIM, has granted a concession for the operation of the Port, the railway and other infrastructure located in the Boké region pursuant to the Concession Agreement (as hereinafter defined). The State, through ANAIM, acknowledges that such infrastructure is necessary for the implementation of the GAC Project in the region of Sangarédi and an industrial zone in Kamsar, and for which, pursuant to the GAC Basic Agreement (as hereinafter defined), the State has guaranteed to GAC SA a right of access and use for the entire duration of the GAC Basic Agreement; furthermore, pursuant to the GAC Basic Agreement, the State has guaranteed to GAC SA a right of access and use of the Port (including the Channel);
- The State and Harvey Alumina Company (predecessor to Halco (Mining) Inc.) have concluded an agreement dated October 1, 1963, as amended by a supplementary agreement dated June 5, 1987, a supplementary agreement dated November 17, 1994 and the Amendment n°1 dated April 17, 2001 which form altogether the CBG's basic agreement (the "**CBG Basic Agreement**");
- GAC SA acknowledges that, at the date of this agreement, CBG is responsible for the management of the infrastructure of ANAIM under concession that shall be used in common pursuant to the Concession Agreement;
- The Parties acknowledge that the State has implemented a Development Plan (*Schéma Directeur de Développement*) for the use in common of the infrastructure located in the area of Kamsar currently conceded pursuant to the Concession Agreement (as hereinafter defined);
- The State and GAC SA confirm that the development of the GAC Project is strictly dependent upon the possibility for GAC SA throughout the duration of the GAC Project to (i) have the right to access and use such port and railway infrastructure and (ii) be provided services by the relevant Concessionaire in connection with such port and railway infrastructure;
- The Parties confirm that the implementation of the rights granted to GAC SA with respect to the railway infrastructure falling within the scope of the Concession Agreement is addressed under the Multi-User Operation Agreement dated 24 June 2015 between the relevant parties;
- The State confirms, and CBG acknowledges, that GAC SA will have access to the infrastructure pertaining to the Port (including the Channel) which are the subject of the Concession Agreement as necessary for the implementation of the GAC Project;
- In addition, GAC SA is entitled to implement, in accordance with the GAC Basic Agreement, the Amended and Restated Infrastructure Agreement and the provisions of this Amended and Restated Port Operations Agreement, the Additional Infrastructure and Installations (as hereinafter defined and which for the avoidance of doubt include the Maritime Signaling Communication, the maritime public security works and the Channel improvements) which shall take into account the technical specifications of the basic design of the Existing Infrastructure;
- The Parties have agreed that if it is necessary for the purposes of the completion of the GAC Project, to put in place any additional infrastructure, the State will grant to GAC SA, all rights,



guarantees and necessary land and will conclude any agreement necessary for this purpose, provided, however, that the rights already granted to CBG pursuant to the Concession Agreement remain maintained;

- In this respect GAC SA has commenced construction of a container terminal in the form of a New Commercial Dock (as hereinafter defined) able to handle ships and heavy large-scale equipment for the purpose of the GAC Project;
- ANAIM shall act as the Maritime and Port Authority responsible for the port of Kamsar in accordance with the Guinean code on merchant navy and the decree instating ANAIM;
- ANAIM shall act as customs agent for all goods imported to Guinea and unloaded at the port of Kamsar. To this effect, ANAIM may appoint an independent entity to act on its behalf.

Therefore, the Parties have agreed to determine the practical and logistical terms and conditions relating to the construction, access and use then granted by the State to GAC SA and the terms for the financing, the implementation and use of the completed infrastructure pertaining to the Port (including the Channel) in accordance with the terms of each Party's respective agreements with the State.

**NOW, THEREFORE,  
THE PARTIES HAVE AGREED AS FOLLOWS:**

**TITLE I  
DEFINITIONS**

For the purposes of this Amended and Restated Port Operations Agreement, capitalized terms used in this Amended and Restated Port Operations Agreement shall have the following meaning:

**"Concession Agreement"** means the concession agreement entered into between the Republic of Guinea, ANAIM and CBG on 15 January 2015 pursuant to which the State, through ANAIM, has granted to the Concessionaire the right to manage, operate and maintain the conceded Infrastructures of ANAIM including the Railway, the Port and its Channel.

**"Affiliate"** means any entity which, directly or indirectly, controls or is controlled by GAC SA, or which is under joint control, directly or indirectly, with GAC SA. For the purposes of this definition, the term **"control"** (together with the terms **"controlled by"** or **"under joint control with"**) shall mean the direct or indirect power to make or cause to make management decisions at such entity's level.

**"ANAIM"** means *Agence Nationale d'Aménagement des Infrastructures Minières de Guinée* which in the past has acted and continues to act in the name and on behalf of the State, or any other instrumentality of the State which may act on behalf and in the name of the State for the purposes of this Amended and Restated Port Operations Agreement, as is the case for ANAIM; it being specified that the State shall guarantee (*porte-fort*) the obligations undertaken by ANAIM pursuant to this Amended and Restated Port Operations Agreement.

**"Annexes to the Amended and Restated Port Operations Agreement"** means the documents which specify or add to the provisions of this Amended and Restated Port Operations Agreement to which they are attached and of which they form an integral part.

**"Anomalies"** means any defect preventing or likely to prevent normal use of the Existing Infrastructure, the Additional Infrastructure and Installations and/or making its use dangerous for property or for persons.





**"Lenders"** means the financial institutions which may finance the construction by GAC of the Additional Infrastructure and Installation.

**"Successor Beneficiary"** means any company which may become, on any basis whatsoever, in whole or in part, the successor of the Concessionaire with respect to the infrastructure referred to and the rights and obligations set forth in the Concession Agreement, the appointment of which must be transmitted to GAC SA and all other Users, being noted that GAC SA or other Users may only oppose such appointment if it is demonstrated that the successor proposed by ANAIM does not meet the technical competence or does not have the human or financial resources necessary to perform its obligations under the Concession Agreement.

**"CBG"** means *Compagnie des Bauxites de Guinée*, which carries out bauxite mining operations in Sangaredi and surrounding zones, and which is using the Existing Infrastructure.

**"Port Charges for the Improvement of the Channel"** has the meaning ascribed to this term in Article 13.

**"Port Charges"** means the sums payable by every ship entering the port of Kamsar to ANAIM through the Concessionaire for services, costs, royalties, duties and other charges relating to services provided in the port as specified hereinafter. Port Charges shall be determined based on a transparent system of cost recovery and shall be applied in a non-discriminatory basis to all ships entering the port of Kamsar. For the avoidance of doubt, the Port Charges shall be calculated only by reference to the Port in accordance with the Concession Agreement and shall in no event include recovery of costs or amortization with respect to any other infrastructure owed or used otherwise by the Concessionaire under a separate agreement such as a mineral dock.

Initial Port Charges as at the Effective Date are enumerated in Annex 3 G of this Amended and Restated Infrastructure Agreement.

**"Railway"** means the main railway line linking the Sangaredi mine to the port of Kamsar with a length of 136 km, which together with its ancillary equipment, are the subject of the Concession Agreement.

**"Channel"** means the access channel from the Atlantic Ocean to the port of Kamsar with an approximate total length of 17 km and a width of 120 meters on the Rio-Nunez.

**"Financial Closing"** means the date on which all conditions of Lenders under the relevant financing documents have been met or waived (in accordance with the terms thereof), and initial financing disbursements by GAC can take place (as certified by the Lenders agent in writing).

**"Port Technical Committee"** means the committee whose composition, mission and operation are described in Article 2.

**"New Commercial Dock Account"** has the meaning given to it in Article 7.3(a) of this Amended and Restated Port Operations Agreement.

**"Escrow Account No. 1"** means the bank account referred to in Article 7 which shall be opened by GAC SA in order to ensure the maintenance of the New Commercial Dock. The operation of this Escrow Account No.1 shall require the approval of all Parties under a procedure to be defined by the Parties under a separate agreement. ANAIM shall be co-signatory to this Escrow Account No.1.

**"Escrow Account No. 2"** means the bank account referred to in Article 13 which shall be opened by GAC SA in order to ensure the maintenance of the New Commercial Dock and the repayment of the

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Debt Service incurred by GAC SA for the purposes of the improvements referred to in Article 6.1. The operation of this Escrow Account No.2 shall require the approval of all Parties under a procedure to be defined by the Parties under a separate agreement. ANAIM shall be co-signatory to this Escrow Account No.2. Maintenance services of the Channel shall continue to be provided by the Concessionaire in accordance with the Concession Agreement.

**"Concessionaire"** means the holder of the concession granted pursuant to the Concession Agreement on the date of this Amended and Restated Infrastructure Agreement as well as any Successor Beneficiary to the Concession Agreement. The Parties acknowledge that, at the Effective Date, CBG is acting as the Concessionaire pursuant to the Concession Agreement entered into between the Republic of Guinea, ANAIM and CBG on 15 January 2015.

**"Amended and Restated Infrastructure Agreement"** means the infrastructures agreement entered into between the Parties on 14 May 2010 governing the rights granted to and obligations undertaken by the Parties in relation to the Existing and Additional Infrastructure and Installations at the port of Kamsar, as amended and restated on 24 June 2015.

**"Multi-User Operation Agreement"** means the infrastructures agreement entered into between the Parties on 24 June 2015 entered into between ANAIM, GAC SA, the Concessionaire and other users, under which the Concessionaire shall provide services (including transportation services and implementation of capacity expansion plans) to GAC SA and other users.

**"GAC Basic Agreement"** means the Basic Agreement entered into between the State and GAC SA for the purposes of the Project on 15 October 2004 as amended from time to time, including by Amendment n°1 to the Basic Agreement dated 16 May 2005 and Amendment n°2 to the Basic Agreement dated 24 November 2013 as ratified by the National Assembly of the Republic of Guinea on 24 June 2014.

**"Effective Date"** means the date of signature of this Amended and Restated Port Operations Agreement by the representatives of the Parties as stated in the heading hereof.

**"New Commercial Dock Zone"** means the zone made available to GAC SA by the State to build the New Commercial Dock as well as its possible expansions.

**"Force Majeure Event"** means any event which is beyond the control of either Party and which renders impossible the performance by that Party of its obligations or which renders it so difficult that it may be held to be impossible in such circumstances. Force Majeure Events include among others: wars, military insurrection, riots, civil unrest, earthquakes, fire, explosion, storms, flooding and other climatic upheaval, strikes, lock-outs or other actions of protest (with the exception of acts of the government or cases where such strikes, lock-outs or other actions of protest are within the control of the Party involving the occurrence of a Force Majeure Event).

For the purposes of this Amended and Restated Port Operations Agreement, the following events shall not constitute Force Majeure Events:

- (i) events resulting from negligence or a deliberate act of one of the Parties or one of its subcontractors, agents or employees;
- (ii) insufficiency of funds or default in payment.

**"Additional Infrastructure and Installations"** means the additional developments or constructions to be built as set out in Article 6.

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**"Existing Infrastructure"** means the infrastructure defined in Article 3 of this Amended and Restated Port Operations Agreement (Italian Dock, the French Dock and the Channel) which are governed by the Concession Agreement.

**"Dock Installations"** means the French Dock, the Italian Dock and the New Commercial Dock.

**"New Commercial Dock"** means the dock to be installed next to the French Dock as part of the Additional Infrastructure and Installations which coordinates are set out in Annex COC.

**"Port"** means the infrastructure and installations located at the port of Kamsar which is the subject of the Concession Agreement and which, for the avoidance of doubt, includes at the Effective Date, the Channel, the Maritime Signaling and Communication, the public security works and the Dock Installations.

**"GAC Project"** has the meaning ascribed to this term in the Recitals.

**"French Dock"** means the dock for the unloading of goods (general freight) of a length of 120 m with a tract of asphalt of about 100 m by 50 m and with a crane (Derrick) of a nominal capacity about 100 tones at 15 meters.

**"Italian Dock"** means the landing dock located near the French Dock.

**"New Commercial Dock Port Royalty"** means the side wharfage and top wharfage payable by any ships docking at the New Commercial Dock as detailed in Article 7 of this Amended and Restated Port Operations Agreement.

**"Good Practice"** means all quality, sustainability and safety norms usually accepted and applied by professionals for the construction, use, operation and/or management of infrastructure of the same type and with the same purpose as those referred to in this Amended and Restated Port Operations Agreement.

**"Debt Service"** means, the reimbursements, payments and financial amortizations to be made by GAC SA and/or the State, in relation with all sums, whether provided by their shareholders and/or Affiliates' as equity or shareholders' loans or by the Lenders as debt financing invested for the purposes of the completion of the works and infrastructure hereto, including the interests, charges, commissions in relation with these financings and the remuneration of the capital.

**"Maritime Signaling and Communication"** means the signaling and communication system (system of illuminated buoys, beacons, VHF stations/radio screen) at entry/exit and along the Channel which indicate the access to the various docks of the port of Kamsar.

**"Direct Sub-Contractor"** means any enterprise chosen by GAC SA or any of its Affiliates validly existing and which has the necessary expertise to provide the services or carry out the works necessary for the purpose of the GAC Project and having entered into a contract with GAC SA or any of its Affiliates in the context of the GAC Project. The identity and nature of such services or works need to be communicated to the State upon request, immediately upon signature of the sub-contract.

**"Users"** means any user of the Existing Infrastructure and the Additional Infrastructure and Installations which has an access right granted by ANAIM.

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**"Lay-down Zone"** means the land on which GAC SA has been granted a priority access for storage by the State and ANAIM for the purposes and for the duration of the Project which coordinates are shown in Annex COC.

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## **TITLE II GENERAL PROVISIONS**

### **ARTICLE 1 PURPOSE OF CONTRACT**

The purpose of this Amended and Restated Port Operations Agreement is to specify the terms and conditions of the design, financing, construction and operation of the expansions and improvements to the Existing Infrastructure for their common use by CBG and GAC SA, as well as those of the Additional Infrastructure and Installations which are to be used in common.

### **ARTICLE 1BIS AFFILIATES**

GAC SA shall be entitled to exercise any of its rights and perform any of its obligations under this Amended and Restated Port Operations Agreement either directly or through Affiliates. GAC SA shall submit to the Concessionaire the identity of the Affiliate and its relationship with GAC SA.

### **ARTICLE 2 PORT TECHNICAL COMMITTEE**

#### **2.1 Composition:**

The Port Technical Committee shall be composed of two (2) representatives per User, two (2) representatives of the Concessionaire and four (4) representatives of the State/ANAIM.

The Port Technical Committee shall meet at least once every six (6) months or more often, at the request of either one of the Users, the State or the Concessionaire.

The Port Technical Committee shall be chaired by one of the State/ANAIM representatives and a representative of the Concessionaire shall serve as the Secretary.

Between its meetings, the chairman shall be responsible for the coordination of all communications within the Port Technical Committee.

#### **2.2 Mission:**

##### **(a) Mission of the Port Technical Committee**

1. The mission of the Port Technical Committee is to make decisions regarding strategic questions with respect to the use, expansions and renovations of the Existing and Additional Infrastructure and Installations, including for the avoidance of doubt the decisions referred to in Articles 6.1, 11 and 12 and approval of the emergency management and response plan in accordance with Article 16.
2. The Port Technical Committee shall monitor the effective implementation of this Amended and Restated Port Operations Agreement.
3. The Port Technical Committee is responsible for examining the annual programs for ship movements prepared and submitted by the Concessionaire on the basis of the individual programs of the Users established in accordance with this Amended and Restated Port Operations Agreement in order to obtain a consensus on their application.
4. The Port Technical Committee is responsible for analysing and validating the investment proposals and the operation and maintenance budget submitted by the Concessionaire.



5. Each member of the Port Technical Committee shall provide to the Port Technical Committee all information required for the purpose of its mission.
6. The Port Technical Committee is responsible for monitoring and advising the Concessionaire on the improvement of the operation for the purpose of reducing the operating costs of the Existing and the Additional Infrastructure and Installations.
7. The Port Technical Committee is responsible for monitoring and providing advice regarding the management, use and maintenance of the Existing and Additional Infrastructure and Installations while having as objective the optimum use of such infrastructure as well as the production and profitability targets of the Users, and this while maintaining a safe and secure environment accordance with Good Practice.

**(b) Interaction with the Concessionaire**

The Concessionaire is responsible for the maintenance of the Existing Infrastructure and the Additional Infrastructure and Installations of common use (subject to Article 7.5 as regards the New Commercial Dock) and the day-to-day ship movement operations in consultation with the Users and in accordance with the provisions hereof and the Concession Agreement.

The Concessionaire shall resolve operational issues that may arise in relation with the Users' objectives in accordance with the annual programs set out according to this Amended and Restated Port Operations Agreement. GAC SA is entitled to challenge the Concessionaire's decisions by referring the matter to ANAIM. Failing to reach an agreement within five (5) days, GAC SA shall be entitled to refer the matter to the Independent Expert procedure set out in Article 21 BIS of this Amended and Restated Port Operations Agreement.

The Port Technical Committee shall not replace the Concessionaire as regards the day-to-day operation of the Existing and Additional Infrastructure and Installations mentioned herein.

**(c) Operating Rules**

The Concessionaire, through the management of the Kamsar port, being responsible for the operation of the Port, shall update the Kamsar port operating rules of 1997 and shall set out new operating rules applicable to the Kamsar port for the efficient and safe operation of the Port.

ANAIM and the Concessionaire shall procure that the operating rules referred to above reflect the operating plans and methodologies agreed upon by GAC SA and the Concessionaire, and annexed hereto (Annex COE).

Given the numerous changes to be brought to the operation of the Kamsar port, in particular due to the construction and operation of the Additional Infrastructure and Installations and the related increase in capacity and traffic, the Parties acknowledge that such indicative plans and methodologies may need to be varied or updated. In this respect, the Parties shall confer regularly within the Port Technical Committee to ensure the establishment and practical implementation of operational rules that are compliant with Good Practice and the international standards of safety and security as applied in ports of a similar size and nature. These operating rules shall also conform to the principles of equal and fair access between the users of the Kamsar port.

Once so finalized, the new operating rules applicable to the Kamsar port shall be submitted for approval to the relevant State authorities. Following such approval, the Port Technical Committee shall provide copies of such rules to all Parties. In any event, the State through ANAIM and the Concessionaire shall procure that copies of these operating rules be transmitted to each Party at the latest three (3) months

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prior to Financial Closing of the GAC Project. Each Party may submit their observations if they consider that these operating rules do not properly reflect Annex COE or the principles set forth in the paragraph above. In the absence of an agreement between the Parties, either Party may refer the observations submitted to the Port Technical Committee to the Independent Expert procedure set out in Article 21 BIS of this Amended and Restated Port Operations Agreement.

### **2.3 Operation:**

All decisions made by the Port Technical Committee in accordance with its mission referred to in Article 2.2, provided that such decisions do not constitute daily management decisions, shall be adopted by consensus. If (i) no consensus is reached within the period set out herein for a decision to be taken or (ii) no consensus is reached within thirty (30) days following the date the Port Technical Committee discussed the necessity of a decision for which no period is provided for by this Amended and Restated Port Operations Agreement, then in each of these cases, the chairman, acting on behalf of the State – the owner of the infrastructure – shall seek (i) the advice of an Independent Expert in accordance with Article 21 BIS, (ii) inform the Parties and (iii) take his decision according to the procedure set out in Article 21 BIS of this Amended and Restated Port Operations Agreement.

The application of this procedure and any decision made by the State may not limit the right of any member of the Port Technical Committee to challenge such decision and to protect its rights against any adverse consequence which could result from such decision, such challenge shall be made in accordance with the dispute resolution provisions existing under any other agreement to which the challenging Party is a party. For the avoidance of doubt and in respect of the sole Republic of Guinea and/or ANAIM, the provisions of this Article are without prejudice to GAC SA's rights under the GAC Basic Agreement and the Amended and Restated Infrastructure Agreement and CBG's rights under the Concession Agreement and CBG Basic Agreement.

### **2.4 Meetings:**

Within one (1) month following the Effective Date, the Port Technical Committee shall be convened for an initial meeting. The agenda of such meeting shall include, as a minimum, the following:

- Review of the Port Rules of 1997 and the plan and methodologies reflected in Annex COE and assessment of the required changes to be brought to adapt the Kamsar port to the upcoming increase in capacity and traffic following the construction and operation of the Additional Infrastructure and Installations;
- Review of the status of the works already conducted with respect to the New Commercial Dock and assessment of the new specifications and layout to align on the implementation plan of the New Commercial Dock submitted by GAC SA in accordance with Article 6.1; and
- Determination of the agenda and scope of the next meetings of the Port Technical Committee.

The Port Technical Committee shall establish each year a calendar of meetings for the coming year, with at least one meeting every six (6) month. Additional meetings may be called by any member of the Port Technical Committee.

## **TITLE III INFRASTRUCTURE**

### **ARTICLE 3 EXISTING INFRASTRUCTURE**

The Existing Infrastructure includes:

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- (i) The Channel;
- (ii) The French Dock;
- (iii) The Italian Dock.

The technical aspects of the Existing Infrastructure are provided in Annex COB of this Amended and Restated Port Operations Agreement.

#### **ARTICLE 4 STATE OF EXISTING INFRASTRUCTURE**

- 4.1** Within a maximum of ninety (90) days following the Effective Date of this Amended and Restated Port Operations Agreement, ANAIM shall deliver to GAC SA a complete and detailed technical report on the general condition of the operation and maintenance of the Existing Infrastructure prepared by an independent expert jointly appointed by ANAIM and the Concessionaire, the costs of which shall be borne by ANAIM.
- 4.2** If this report shows that the Existing Infrastructure has Anomalies, the State through ANAIM undertakes to have them repaired by the Concessionaire pursuant to the relevant provisions of the Concession Agreement. This report shall indicate the timetable for the repairs to be undertaken to rectify the Anomalies, if any.

These repairs shall be carried out within a reasonable timeframe, and in accordance with the timetable set out in the report. Works shall in any event commence before 30 June 2016.

When repairs have been completed as described above, ANAIM shall submit to GAC SA a new report certifying that the observed Anomalies have been rectified satisfactorily and that the Existing Infrastructure is in compliance with the provisions of the Concession Agreement and Good Practice without prejudice to GAC SA's rights under the Amended and Restated Infrastructure Agreement.

- 4.3** GAC SA may, at its own expense, have these reports examined by any expert of its choice, who – in relation with ANAIM – shall have access to the infrastructure for this purpose, if needed.
- 4.4** If, for any reason whatsoever, ANAIM or the Concessionaire is not able to undertake, or cause to be undertaken, certain repair works referred to in Article 4.2 or if the works have not commenced on 30 June 2016 or if GAC SA demonstrates to ANAIM that the Concessionaire's works are not proceeding so as to allow the implementation of the Project of GAC SA in accordance with the timetable set forth in the present Amended and Restated Operations Agreement, ANAIM shall send a formal notice to the Concessionaire urging to remedy the situation within sixty (60) days. If following such sixty (60) day period the Anomalies are not repaired or remedied, ANAIM hereby grants GAC SA the right to undertake such works in accordance with Good Practice. If GAC SA decides to undertake such works, GAC SA shall act with the full cooperation, collaboration and approval of ANAIM, the State and the Concessionaire, provided that GAC SA shall only act as an agent at ANAIM's expense and GAC SA shall not be liable in respect of either; this is without prejudice to any proceedings that ANAIM and/or the State could bring against the Concessionaire in this respect. ANAIM shall fully cooperate in the relevant construction works, in particular as regards acceptance of the works.

#### **ARTICLE 5 [NOT USED]**

#### **ARTICLE 6 ADDITIONAL INFRASTRUCTURE AND INSTALLATIONS**



**6.1** The Additional Infrastructure and Installations include:

- the Maritime Signaling And Communication,
- the maritime public security works,
- the Channel improvements,
- the New Commercial Dock.

The Parties acknowledge that the GAC Project as guaranteed by GAC Basic Agreement requires that Additional Infrastructure and Installations be completed, including necessary improvements and dredging to the Channel so to allow loading of Newcastlemax-class ships.

The Parties further acknowledge that GAC SA shall have the right to build or have built the Additional Infrastructure and Installations (except for the New Commercial Dock which is governed by Article 7) as required for the purposes of the GAC Project in the event ANAIM (directly or indirectly through the Concessionaire) has not completed the Additional Infrastructure and Installations at the latest eighteen (18) months before the date of commencement of commercial production of bauxite.

**6.2** In the event GAC SA elects to exercise its right to build or have built the Additional Infrastructure and Installations as required for the purposes of the GAC Project pursuant to Article 6.1 above, GAC SA shall submit to ANAIM and the Concessionaire the development and construction plans (including the studies conducted for the realization of such plans), as well as the estimated costs and timeframe required to construct the Additional Infrastructure and Installations. The Concessionaire shall submit for approval a technical report which includes his comments on such plans and estimates to the Port Technical Committee within two (2) months following their receipt. The Port Technical Committee shall review such technical report within one (1) month following receipt of such report. Following the approval of the technical report by the Port Technical Committee, these construction plans and estimates for the construction of the Additional Infrastructure and Installations shall constitute Annex COC which shall be an integral part of this Amended and Restated Port Operations Agreement.

**6.3** In the event GAC SA elects to exercise its right to build or have built the Additional Infrastructure and Installations as required for the purposes of the GAC Project pursuant to Article 6.1 above, GAC SA shall finance the Additional Infrastructure and Installations (including the improvements to the Maritime Signaling and Communication to the extent necessary as a result of the improvements that GAC SA has made or caused to make on the Port (including the Channel). GAC SA shall build or have built the Additional Infrastructure and Installations.

**6.4** The financing of such works shall be reimbursed via the Escrow Account N° 2 pursuant to the provisions of Article 13. The Concessionaire shall not have any responsibility in respect of the financing of and the Debt Service incurred in connection with the Additional Infrastructure and Installations.

## **ARTICLE 7 NEW COMMERCIAL DOCK**

### **7.1 Construction of the New Commercial Dock:**

- (a)** The State has granted GAC SA the right to develop (in one or more phases), design, build, finance and operate the New Commercial Dock on the port of Kamsar and to carry out its port activities on this New Commercial Dock under the terms and conditions specified in the present Amended and Restated Port Operations Agreement.





- (b) Development and construction plans as well as the related costs and schedule for the construction of the New Commercial Dock shall be transmitted by GAC SA to ANAIM within the Port Technical Committee as of the Effective Date, as available on this date.
- (c) To the extent required, the Direct Sub-Contractors shall benefit, with respect to the New Commercial Dock from the same rights as those granted to GAC SA under the GAC Basic Agreement and this Amended and Restated Port Operations Agreement.
- (d) The State is and shall remain the owner of the New Commercial Dock and the fixed equipment, subject to the rights granted to GAC SA.
- (e) The Concessionaire agrees that GAC SA is entitled to use the French Dock, provided that such use respects the rights granted to CBG under the Concession Agreement.

To this effect, GAC SA shall submit to the Concessionaire, with information to ANAIM, the programs for the ships chartered on the basis of works to be undertaken for the purposes of the GAC Project.

The ships transporting various loads belonging to GAC SA to the French Dock shall pay the Port royalty at the rate applicable to any user of the French Dock.

## 7.2 Conditions of Use:

The Parties confirm that GAC SA is granted, without restriction, a priority right to use and access the New Commercial Dock and its equipment and the Lay-down Zone for the purposes of the GAC Project.

GAC SA shall conform to the rules and procedures in force in the port of Kamsar regarding the use of the New Commercial Dock.

The Concessionaire shall take into account the ships chartered by GAC SA, its Direct Sub-Contractors and its customers, and their priority access in its operating program for the New Commercial Dock and shall ensure that the New Commercial Dock Port Royalties and Port Charges be identical to those applied to all other ships docking at the New Commercial Dock.

The Parties will define by mutual agreement the modalities of use for the New Commercial Dock, provided that (i) the priority of access and use by GAC referred to above is respected, (ii) access to the New Commercial Dock is guaranteed to small and medium enterprises operating in the Boké region, (iii) any use of the New Commercial Dock shall be first approved by GAC SA it being specified that GAC SA may only oppose to the use by a third party for technical, financial or operational reasons and (iv) when the Concessionaire is operating the New Commercial Dock in accordance with Article 7.5(b) below, any use of the New Commercial Dock shall prior be approved by the Concessionaire it being specified that the Concessionaire may only oppose to the use by a third party for technical, financial or operational reasons.

## 7.3 New Commercial Dock Port Royalty:

- (a) The New Commercial Dock Port Royalty and loading rates, if any, applicable to all users of the New Commercial Dock shall be determined by GAC SA following consultation with ANAIM and based on competitive and international standards (including by comparison with rates applicable to docks of a similar nature).
- (b) The Parties shall ensure that any New Commercial Dock Port Royalty paid by the users of the New Commercial Dock be directly paid into an account specially opened by GAC SA (the "New

**Commercial Dock Account**") until the full repayment of the Debt Service of GAC SA incurred in connection with the New Commercial Dock.

The opening and terms of operation of this New Commercial Dock Account shall be defined in a separate agreement between ANAIM and GAC SA. This New Commercial Dock Account shall be opened within six (6) months of the Effective Date and in any case three (3) months prior to the completion of the New Commercial Dock at the latest.

(c) GAC SA shall be responsible for the allocation of the New Commercial Dock Port Royalty paid to the New Commercial Dock Account for the purposes of the full repayment of the financing obtained for the construction of the New Commercial Dock as follows:

- for the first ten (10) years following July 1, 2016:
  - 90% Debt Service of GAC SA related to the New Commercial Dock;
  - 10% State, through ANAIM.
- from the eleventh (11<sup>th</sup>) year following July 1, 2016 and until full payment of the Debt Service of GAC SA:
  - 70% Debt Service of GAC SA related to the New Commercial Dock;
  - 20% State, through ANAIM;
  - 10% Escrow Account N°1.

The opening and terms of operation of the Escrow Account N°1 shall be defined in a separate agreement between ANAIM and GAC SA, provided that ANAIM shall be a cosignatory of this Escrow Account N°1.

(d) After full payment of the Debt Service of GAC SA, the New Commercial Dock Account shall be closed and New Commercial Dock Port Royalty shall be allocated as follows:

- State, through ANAIM, 70%;
- Escrow Account N° 1 30%.

GAC SA shall provide to the State, through ANAIM, proof of the investments made for the construction of the New Commercial Dock no later than thirty (30) days after the Financial Closing of the GAC Project.

(e) All percentages set out in this Article 7.3 shall, if necessary, be adjusted by mutual agreement between the State and GAC SA to take into account (i) the maintenance requirements of the New Commercial Dock and (ii) the level of the New Commercial Dock Port Royalty, provided that if the Parties decide to change the allocation of the New Commercial Dock Port Royalty, the amount allocated to the reimbursement of GAC's Debt Service shall not become lower than the amount allocated for that purpose prior to that modification.

#### **7.4 Port Charges:**

Any ship docking at the New Commercial Dock shall pay the Port Charges to the extent they are applicable to its activities in accordance with the procedures set out in this respect at the port of Kamsar.



The Concessionaire shall apply transparent and non-discriminatory Port Charges based on a system allowing the Concessionaire to recover only the costs incurred in connection with the Port (including the Channel). However, Port Charges may periodically be revised if the Parties so agree.

#### **7.5 Use and Maintenance:**

- (a) As of the Effective Date of this Amended and Restated Port Operations Agreement and for a period of fifteen (15) years starting on July 1<sup>st</sup>, 2016, GAC SA shall ensure the operation and maintenance of the New Commercial Dock and shall be authorized to use the Escrow Account N°1 for this purpose. GAC SA shall establish together with ANAIM an annual forecast budget and shall inform ANAIM of its performance on a quarterly basis.
- (b) At the expiry of a period fifteen (15) years starting on July 1<sup>st</sup>, 2016, ANAIM and the Concessionaire shall ensure the operation of the New Commercial Dock and its fixed equipment as well as its maintenance with the funds in the Escrow Account N° 1 so that the New Commercial Dock and its equipment are always in a good state of use. These provisions shall not affect the terms for the allocation of the New Commercial Dock Port Royalty as provided under Article 7.3 nor the priority of access and use granted to GAC SA under Article 7 of this Amended and Restated Port Operations Agreement.
- (c) The terms and conditions governing the use of the Escrow Account N° 1 by the Concessionaire for the maintenance of the New Commercial Dock referred to in paragraph b) above shall be determined as soon as possible by ANAIM, the State, the Concessionaire and GAC SA and in any event at the latest six (6) months prior to the expiry of a period of fifteen (15) years starting on July 1<sup>st</sup>, 2016.

The maintenance of the New Commercial Dock shall be exclusively financed using the funds available in the Escrow Account N° 1 resulting from the collection of the New Commercial Dock Port Royalties paid by the users of the New Commercial Dock.

The State shall take all necessary steps so as to ensure that sufficient funds are made available to the party responsible for such maintenance to ensure the proper performance of the maintenance. The State confirms that in the event the funds available in the Escrow Account N° 1 are insufficient for the purposes of this Article, the Concessionaire shall not carry out the maintenance by its own means.

#### **ARTICLE 8 [NOT USED]**

### **TITLE IV PROVISIONS SPECIFIC TO THE INFRASTRUCTURE**

#### **ARTICLE 9 [NOT USED]**

#### **ARTICLE 10 [NOT USED]**

#### **ARTICLE 11 CHANNEL**

##### **11.1 Improvements:**

Subject to the provisions of Article 6.1, GAC SA shall be entitled to build or have built one or more turning basin as part of the Additional Infrastructure and Installations and make the improvements and



dredging works to the Channel required for the purposes of the GAC Project guaranteed under the GAC Basic Agreement.

GAC SA shall submit to ANAIM and the Concessionaire the development and construction plans (including the studies conducted for the realization of such plans), as well as the estimated costs and timeframe required to construct these improvements.

The Concessionaire shall deliver to the Port Technical Committee a technical report within sixty days (60) days from the receipt by the Concessionaire of the draft program which includes its observations and comments on such plans.

Based on this technical report submitted by the Concessionaire, the Port Technical Committee shall adopt a program for the completion of the improvements to the Channel within forty five (45) days following presentation of such report. In this respect, ANAIM and the Concessionaire undertake not to withhold their consent to GAC SA's draft program without a legitimate reason, duly justified from a legal and/or technical point of view, nor to subject their consent to conditions which are not duly legally and/or technically justified.

These plans for the construction of Additional Infrastructure and Installations shall constitute Annex COC of this Amended and Restated Port Operations Agreement, which shall be an integral part of this Amended and Restated Port Operations Agreement.

GAC SA shall inform ANAIM before undertaking any works related to these improvements, as the case may be, before each phase of the works to be undertaken.

ANAIM shall obtain all agreements of third parties and Authorizations which may be necessary to complete these Additional Infrastructure and Installations and shall ensure that this plan is correctly applied and in compliance with the agreed schedule.

The Concessionaire shall have no responsibility as regards the financing and the Debt Service of GAC SA related to the Additional Infrastructure and Installation.

## **11.2 Joint Use of the Channel:**

GAC SA shall provide to ANAIM and the Concessionaire the annual program of ship movements three (3) months before the beginning of the following year. This program shall be detailed quarterly and monthly.

The Concessionaire shall submit a general operation annual program for the Channel to the Port Technical Committee at least one (1) month prior to the beginning of the following year. This general operation annual program shall incorporate the draft programs submitted by GAC SA and other Users (provided that such Users benefit from an access right to the Port (including the Channel) granted in accordance with the provisions of the Concession Agreement).

The Port Technical Committee shall meet and review the general operation annual program within a month following its receipt. Such general operation annual program shall be approved by consensus.

After its approval by the Port Technical Committee, such general operation annual program shall be the basis of the monthly, weekly, and daily shipping program issued by the Concessionaire, in accordance with the operating rules listed in Annex COE as adopted under the Concession Agreement and taking into account the reasonable opinions and needs of each User.

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In case of breach of this general operation annual program by the Concessionaire, ANAIM and the State undertake to enforce the relevant provisions of the Concession Agreement and take, if necessary, any available legal measures in order to ensure the proper implementation of GAC SA's annual program without delay. The provisions of this Article are without prejudice to GAC SA's rights under the GAC Basic Agreement and the Amended and Restated Infrastructure Agreement.

GAC SA shall submit, at least weekly, updated vessel nominations and anticipated vessel arrival times along with any other information which may give rise to the need for an alteration to the monthly, weekly, or daily shipping program referred to above. The Concessionaire shall, each week, based on this information and other similar information in relation to any other user's operations, and in compliance with the capacity entitlements of GAC SA as reflected in the approved general operation annual program, update and re-issue the weekly and daily shipping programs.

Any modification to the issued programs shall be made with the prior approval of the relevant user, it being specified that such approval is not required in the event of Force Majeure Events or emergency situations as set forth in the emergency management and response plan developed in accordance with Article 16. In such instance, the Concessionaire shall make its commercially reasonable efforts to inform and consult with the affected user(s). The Concessionaire shall make its commercially reasonable efforts to minimize the disruption suffered as a result of such event and restore the normal service pattern as quickly as possible.

In addition, for the purposes of daily monitoring and management, in the best interests of all parties, the Concessionaire shall:

- maintain a permanent communication between the Concessionaire's control facility and GAC SA's control facility. The means of such communication shall be agreed by the Concessionaire and GAC SA in accordance with Good Practice; and
- make commercially reasonable efforts to put into place for GAC SA a right of access the Concessionaire's control facilities at any time.

GAC SA acknowledges that the Concessionaire may agree on similar communication and/or access right with other User(s).

## **ARTICLE 12 IMPROVEMENT OF MARITIME SIGNALING**

In the event GAC SA elects to exercise its right to build or have built the Additional Infrastructure and Installations as required for the purposes of the GAC Project pursuant to Article 6.1 above, GAC SA undertakes to improve the Maritime Signaling and Communication system to the extent necessary as a result of the improvements that GAC SA has made or caused to make on the Channel under Article 11.1, in accordance with the principles set out below and the procedures set out in this respect at the port of Kamsar.

GAC SA shall submit draft plans for the completion of the improvements of the Maritime Signaling and Communication system to the Concessionaire.

The Concessionaire shall submit for approval to the Port Technical Committee within three (3) months following their receipt a technical report which includes his comments on such draft plans.

The Port Technical Committee shall review such technical report within one (1) month following its receipt. In this respect, ANAIM and the Concessionaire undertake not to withhold their consent to GAC

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SA's program without a legitimate motivation, duly justified from a legal and/or technical point of view, nor to subject their consent to conditions which are not duly legally and/or technically justified.

Following their approval, these construction plans shall constitute Annex COC of this Amended and Restated Port Operations Agreement and be an integral part of this Amended and Restated Port Operations Agreement.

The new equipment must be compatible with those of the existing system.

This improvement plan and its implementation shall be financed by the Escrow Account N° 2 as contemplated herein.

## **TITLE V OPERATION – MAINTENANCE AND RENEWAL**

### **ARTICLE 12 BIS: SHARED INFRASTRUCTURE**

The Concessionaire shall operate and maintain the Existing Infrastructure and Additional Infrastructure and Installations in accordance with (i) the Port Schedule of Specifications; (ii) Good Practice; (iii) the principles set forth in Annex COE; (iv) the operating rules referred to in Article 2.2 (c) of this Amended and Restated Port Operations Agreement; and (v) the principles set forth in any separate agreement entered into between GAC SA and the Concessionaire, if any.

GAC SA shall inform the Concessionaire and the Port Technical Committee of any Anomaly or defect, which may come to its attention so that it shall be repaired in accordance with the Concession Agreement.

The Concessionaire shall regularly transmit to the Port Technical Committee the operation and maintenance program of the Existing Infrastructure and the Additional Infrastructure and Installations such as:

- The inspection reports for the civil engineering constructions and installations.
- The statistical operation data and the periodic maintenance and inspection reports.

### **ARTICLE 13 REPAYMENT OF GAC SA'S DEBT SERVICE RELATING TO THE ADDITIONAL INFRASTRUCTURE AND INSTALLATIONS**

**13.1** If GAC SA elects to exercise its right under Article 6.1, the amounts so financed by GAC SA (including principal, interest, fees and related expenses) for the design, development, implementation and construction of the Additional Infrastructure and Installations (including as the case may be the Maritime Signaling and Communication), shall be fully reimbursed to GAC SA, paid or amortized, as the case may be, until full repayment of these amounts, as follows:

- (i) payment into the Escrow Account No. 2 of the Port Charge for the Improvement of the Channel, which is included in the Port Charges, paid by ships accessing the port of Kamsar in accordance with the provisions of Article 13.2 below;
- (ii) the State guarantees that ninety percent (90%) of this Port Charge for the Improvement of the Channel shall be allocated to the Debt Service of GAC SA and shall be paid directly to GAC SA; and

- (iii) the outstanding ten percent (10%) of this Port Charge for the Improvement of the Channel shall be allocated to additional maintenance of the Channel as required as a result of the improvements made thereof.

The opening and operating terms of the Escrow Account N°2 shall be defined in a separate agreement between ANAIM and GAC SA, it being specified that ANAIM shall be a cosignatory of this Escrow Account N°2.

**13.2** Determination of the level of the Port Charge for the Improvement of the Channel and the ships to which such charge applies

GAC SA shall provide to the State, through ANAIM, and the Concessionaire proof of the investments made and the Debt Service of GAC SA incurred in connection with the achievement and construction by GAC SA of the Additional Infrastructure and Installations (including as the case may be the Maritime Signaling and Communication) no later than thirty (30) days after the Financial Closing of the GAC Project.

The State, through ANAIM, guarantees to GAC SA that an additional port charge shall be created so that the Debt Service of GAC SA incurred in connection with the design, financing and construction of the Additional Infrastructure and Installations (including as the case may be the Maritime Signaling and Communication) shall be reimbursed within ten (10) years following the completion of the works carried out on the Channel (the "**Port Charge for the Improvement of the Channel**"). This principle is accepted by the Concessionaire.

The Parties agree that all Users of the Port of Kamsar who benefit from the construction by GAC SA of the Additional Infrastructure and Installations (including as the case may be the Maritime Signaling and Communication) shall participate in the repayment of the Debt Service incurred by GAC SA in this regard pro rata to the benefit they derive therefrom. For the avoidance of doubt, the Parties agree that the ships that were able to access the Port of Kamsar before GAC has made to the Channel the improvements referred to in Article 11.1 shall not participate in the repayment of the Debt Service incurred by GAC SA in connection with the improvements to the Maritime Signaling and Communication.

For that purpose, GAC SA shall submit to ANAIM, the Concessionaire and the Users through the Port Technical Committee, a proposed structuring of this Port Charge for the Improvement of the Channel taking into account the following:

- The Debt Service of GAC SA incurred in connection with the construction by GAC SA of the Additional Infrastructure and Installations to be reimbursed over a period of ten (10) years based on the forecasted traffic of the ships;
- An estimate of the objective benefits derived by the ships that would not have been able to access the Port of Kamsar should said improvements not have been made by GAC SA;
- An estimate of the relative level of benefits derived by all other ships entering the port of Kamsar (which excludes the benefits derived by the ships from the improvements made to the Maritime Signaling and Communication);

This proposed structuring will serve as the basis for the allocation of the amount to be repaid by each ship in relation with the Debt Service of GAC SA, it being specified that the level of this Port Charge for the Improvement of the Channel shall be revised annually on the basis of the same principles.



If (i) the members of the Port Technical Committee agree that a User or a type of ship will derive no benefit from the improvements made to the Channel or (ii) the Users are unable to agree on the portion of benefit made by each User regarding the types of ships used, the Port Charge for the Improvement of the Channel shall only be imposed on ships deriving objective benefit from these improvements, it being specified however that all other ships which do not participate in the repayment of the investment shall not benefit from any reduction (if any) of the existing Port Charges.

The Parties agree that if the calculation of this charge results in the implementation of a Port Charge for the Improvement of the Channel which is excessively high as compared to international standards applicable to ports of similar nature or which does not cover the charges for additional maintenance created as a result of the improvements made on the Channel, the Parties may jointly decide to modify the percentages for the allocation of this charge mentioned in Article 13.1 (ii) and (iii) above provided that (i) GAC SA's investment shall be reimbursed as soon as possible following the initial period of ten (10) years and/or (ii) the maintenance of the Channel shall be carried out in a sustainable manner.

**13.3** Determination of the level of the Port Charge for the Improvement of the Channel when the financing is provided by another User or the State

The Parties agree that the principles set out in this Article 13 will be reflected in the operating rules of the port of Kamsar and the State and the Concessionaire guarantee that these principles will be applied in the event another User, the Concessionaire or the State, directly or indirectly, undertake improvement works on the Channel.

**ARTICLE 14 [NOT USED]**

**ARTICLE 15 CHANNEL AND MARITIME SIGNALING AND COMMUNICATION**

The operation and maintenance of the Channel and of the Maritime Signaling and Communication shall be carried out by the Concessionaire in accordance with the Port Schedule of Specifications and Good Practice and pursuant to an operating and maintenance program approved by the Port Technical Committee.

The Parties agree that an appropriate and sufficient percentage of the Port Charge for the Improvement of the Channel shall be held in the Escrow Account N° 2 and shall be used for the additional maintenance of the Channel and of the Maritime Signaling and Communication and for periodic major works to the extent required in the event GAC SA elects to exercise its rights to build or have built the improvements on the Additional Infrastructure and Installations pursuant to Article 6.1.

**ARTICLE 16 URGENT CASES**

The Concessionaire shall develop and maintain Good Practice emergency management and response plan, which shall be reviewed and approved by the Port Technical Committee.

In case of a severe accident or occurrence of emergency operational constraints affecting the Existing Infrastructure and/or the Additional Infrastructure and Installations and which affects their continuous, regular and secure operation, the Concessionaire shall immediately inform the Port Technical Committee by means, and shall urgently undertake all necessary steps in order to restore the continuous and secure service of such installations.

**ARTICLE 16 BIS OPERATION**

The Parties further agree as follows:

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- (i) the Users shall use the Existing Infrastructure and/or the Additional Infrastructure and Installations in a commercially reasonable manner taking into account appropriate efficiencies;
- (ii) An appropriate level of designed redundancy shall be maintained with respect to the Existing Infrastructure and/or the Additional Infrastructure and Installations for the term of this Amended and Restated Port Operations Agreement. The Parties acknowledge that this redundancy is currently estimated to be approximately twenty percent (20%) of the theoretical capacity, provided however that such percentage shall be adjusted from time to time based on Good Practice.

## **TITLE VI RESPONSIBILITY**

### **ARTICLE 17 RESPONSIBILITY**

The Concessionaire shall be liable to GAC SA for losses, expenses, claims and damages as a direct result of the breach of its obligations hereunder, its negligence or willful misconduct.

GAC SA shall be liable to the Concessionaire for losses, expenses, claims and damages as a direct result of the breach of their obligations hereunder, their negligence or willful misconduct.

In no event shall the Concessionaire or GAC SA have any liability towards the each other for any special, indirect, consequential or punitive damages including, without limitation, loss of profits and/or delay in start-up.

### **ARTICLE 18 INSURANCE**

Each of the Concessionaire and GAC SA shall subscribe for and maintain insurances reasonably required to cover its liability hereunder and which are available at normal commercial terms on the market. For the avoidance of doubt, the insurance premium paid by the Concessionaire under this clause shall be included in the maintenance costs of the Existing Infrastructure and Additional Infrastructure and Installations.

## **TITLE VII TARIFF AND ROYALTIES – RIGHTS OF USE**

### **ARTICLE 19 TARIFF**

With the exception of the payment of the Port Royalty and the Port Charges, GAC SA and/or its Direct Sub-Contractors and/or its service providers and/or its customers shall not have to pay any other cost, charge, contribution, duty, expense or other charge (for access, use, maintenance or for any other cause whatsoever) concerning the access, use and services of the port Existing Infrastructure, port Additional Infrastructure and Installations (bulk material dock, Channel, port installations, including the Lay-down Zone and the New Commercial Dock).

The State has implemented an additional safety charge (ISPS) for any ship accessing or leaving the port of Kamsar, such charge shall apply to all ships and its amount shall be equivalent to the amount usually charged in ports of a similar nature.



## TITLE VIII FINAL PROVISIONS

### ARTICLE 20 GENERAL TERMS

- 20.1** ANAIM shall obtain any agreement or authorization from any third party as well as any Authorization from any administration or port authority in order to allow the implementation, within the contemplated time frame, of the provisions of this Amended and Restated Port Operations Agreement.
- 20.2** In case of expiry or early termination for whatever reasons of the Concession Agreement or non-renewal of the same, the State (i) must take all measures required to ensure the continuity of the service in conformity with Good Practice, which may include the designation of an efficient independent professional operator having all necessary technical competences to complete its assignment successfully, and (ii) guarantees that the Successor Beneficiary shall be bound by the rights granted to GAC SA under this Amended and Restated Port Operations Agreement.
- 20.3** Without prejudice to the provisions of Article 27, this Amended and Restated Port Operations Agreement does not modify or amend in any manner any other agreement to which the Parties hereto are parties. For the avoidance of doubt, the provisions of this Amended and Restated Port Operations Agreement are without prejudice to the rights of the Parties between themselves pursuant to respective agreements entered into between the Parties and the State, through ANAIM.
- 20.4** The Concessionaire shall enter into any direct agreement that may be reasonably required by the Lenders for the financing of GAC SA's obligations under the GAC Project. Such direct agreement will comply with typical terms and conditions for a direct agreement for a project of similar size and scope including the Lenders' right to transfer the rights and obligations of GAC SA and any of its Affiliates under this Amended and Restated Port Operations Agreement to a third party.

### ARTICLE 21 DURATION

This Amended and Restated Port Operations Agreement is signed for a duration starting on the Effective Date, and shall remain in force with full effect for a duration expiring on the date of expiration or termination of the Concession Agreement.

In the event of expansion, extension, renewal or signature of a new concession agreement with CBG, the duration of this Amended and Restated Port Operations Agreement shall be extended until the expiration date or termination of the expanded, extended or renewed concession agreement. In any event, GAC SA shall have the benefit of access to, and the right to use, the infrastructure that are the subject of this Amended and Restated Port Operations Agreement and shall enjoy continuity of service operations during the entire duration of the GAC Basic Agreement, in accordance with its terms.

### ARTICLE 21BIS INDEPENDENT EXPERT

The Parties shall endeavour to reach a common accord on technical and operational matters and any other matters subject to reference to the Independent Expert procedure hereunder. If the Parties do not reach an agreement relating to such matters within the period set out herein for a decision to be made or within thirty (30) days following the date on which the necessity of a decision for which no period is

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provided for by this Amended and Restated Port Operations Agreement was discussed, the Parties agree, without prejudice to the provisions of Article 2.3 that either Party may submit such matter for decision by the Independent Expert.

The Independent Expert shall act as an expert and not as arbitrator.

In order to appoint the Independent Expert, either Party may apply to the ICC International Centre which will request from each Party a list of three (3) candidates to be submitted within (1) month following application by the Party, it being specified that none of the three proposed candidates shall have any relationship with any Party or be an Affiliate of a Party. The ICC International Centre shall appoint, within fifteen (15) days following receipt of such lists, the Independent Expert among such lists of candidates or in the event the ICC International Centre concludes that none of the suggested experts has the requisite skills and expertise to certify the matters requiring certification under this Amended and Restated Port Operations Agreement and resolve matters referred for resolution, the ICC International Centre will appoint the Independent Expert from its list of experts based on the recommendations made by the Parties, it being understood the Independent Expert shall be fully independent from the Parties and may not have any relationship or affiliation with any Party, including as an employee, consultant or contractor, either directly or indirectly.

Each Party shall pay its own costs in connection with the selection procedure.

Within thirty (30) days following appointment of the Independent Expert, each Party shall provide the Independent Expert with the information in its possession regarding the disputed matter. The Independent Expert may convene one (1) or more meetings of the Parties, whether jointly or separately, in order to establish the specific points in controversy that may request necessary additional information and may request comments on any submissions by the other Party. The Independent Expert may specify the timetable for the determination of the matter and shall be requested to issue its decision within fifteen (15) days following the conclusion of the proceeding, which proceeding shall not to exceed sixty (60) days from the date of its initiation, unless otherwise agreed by the Parties in writing.

In performing its duties under this Amended and Restated Port Operations Agreement, the Independent Expert shall act honestly and fairly and within any time limits prescribed by the Amended and Restated Port Operations Agreement or, where no time is prescribed, within a reasonable time. The Parties agree that in the Independent Expert shall seek a settlement to the dispute allowing the port operations to resume as soon as possible and to continue based on Good Practices and having regards to the operating rules of the Kamsar port.

If either Party disagrees with a decision of the Independent Expert given pursuant to this Amended and Restated Port Operations Agreement, such Party may refer the matter to arbitration pursuant to Article 22 within forty five (45) Days from such decision, failing which the relevant decision of the Independent Expert shall become final and binding on the Parties. Pending the arbitration, if any, the Parties shall apply the Independent Expert determination.

If the challenged decision is upheld by the decision of the Independent Expert, all costs and expenses incurred in connection with this procedure shall be borne by the Party which has initiated the Independent Expert procedure. If the challenged decision is overturned by the decision of the Independent Expert or if the recourse to the Independent Expert resulted from an absence of decision or agreement being reached by the Parties or the Port Technical Committee on a specific matter, all costs and expenses incurred in connection with this procedure shall be borne and shared equally by the Parties.

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## ARTICLE 22 ARBITRATION AND SETTLEMENT OF DISPUTES

- 22.1** The Parties accept to consult each other amicably and objectively and make their best efforts to find a negotiated solution in the case of a dispute arising among them resulting from this Amended and Restated Port Operations Agreement. If, despite their efforts, no agreement is reached within thirty (30) days following the date of the written notification of the cause of the dispute by the claiming Party to the other Party, the dispute shall be definitively settled, at the request of any Party, in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one arbitrator or, at the request of any Party, by three (3) arbitrators, appointed in accordance with those Rules.
- 22.2** This arbitration shall be in French and in English in Paris (France) and the arbitration decision shall be definitive, the Parties to this Amended and Restated Port Operations Agreement waive in advance the legal recourses to obtain cancellation of this decision. The Parties agree to perform the arbitration decision without delay, otherwise, the implementation of the decision may be requested from a court of having jurisdiction.
- 22.3** The Parties can, without been obliged to do so, grant powers to the arbitrator to act *ex aequo and bono*. If the Parties accept to grant such power they shall confirm this in writing.
- 22.4** This Article does not limit whatsoever the right of a Party to exercise against another Party other provisions for the settlement of disputes existing under any other agreements to which they are Parties.

## ARTICLE 23 NO WAIVER

Unless expressly waived in writing, failure by either Party to exercise in whole or in part any of the rights granted to it under the Amended and Restated Port Operations Agreement shall not deemed a waiver of such rights.

## ARTICLE 24 FORCE MAJEURE EVENT

- 24.1** If as a result of Force Majeure Event, a Party is partially or completely prevented from performing its obligations hereunder, it shall inform the other Parties without delay by any means and by addressing a formal notification within five (5) days following the occurrence of the Force Majeure Event.
- 24.2** The occurrence of a Force Majeure Event shall suspend the performance by the Parties of their obligations hereunder for the period such obligations are impacted by the Force Majeure Event. Failure to perform such obligations may not be considered to be a breach to the extent that it is the result of such event. The Party failing to perform shall be exempt from the payment of penalties, damages and other contractual sanctions as a result of any such failure.
- 24.3** The occurrence of a Force Majeure Event shall have no effect on payments owed after the date of the event in question when they correspond to a service performed before the occurrence of such event.
- 24.4** Upon occurrence of a Force Majeure Event, the Parties shall take all necessary steps to limit, eliminate or mitigate all damages, losses, delays and interruptions.

## ARTICLE 25 APPLICABLE LAW

This Amended and Restated Port Operations Agreement is governed by and interpreted under Guinean law giving effect to the international practices in the field of development, operation and use of infrastructure.

## ARTICLE 26 NOTIFICATIONS

### 26.1 Form of Notification:

Any notices made in connection with this Amended and Restated Port Operations Agreement shall be made in writing and delivered to the recipient by registered letter with acknowledgment of receipt or by special courier or by certified telex which may be preceded by a fax, to the following addresses:

#### Ministry of Mines and Geology

**To the attention of:** His Excellency the Minister  
**Address:** Immeuble ANAIM – CBG, (BP 295), Conakry, Republic of Guinea  
**Telephone:** + (224) 30 45 45 26  
**Fax:** + (224) 30 41 19 13

#### ANAIM

**To the attention of:** Lamine Cissé Directeur Général  
**Address:** ENIPRA building (6<sup>th</sup> floor), Kaloum (BP 295), Conakry, Republic of Guinea  
**Telephone:** + (224) 621 21 09 76  
**Email:** lamine2cisse2002@yahoo.fr

All notices to GAC Ltd and GAC SA shall be served at the following addresses:

#### GUINEA ALUMINA CORPORATION Ltd

**To the attention of:** Chief Executive Officer  
**Address:** P.O. Box 3252, Road Town, Tortola, British Virgin Islands  
**Telephone:** +61 7 3167 5183  
**Fax:** +61 7 3167 5001

#### GUINEA ALUMINA CORPORATION SA

**To the attention of:** Mamady Youla, Directeur Général  
**Address:** Immeuble Zein, Quartier Almamy, BP:5090, Conakry, Republic of Guinea.  
**Telephone:** +224 623 23 81 00  
**Email:** mamady.youla@guineaalumina.com with a copy to: enquiries@guineaalumina.com

All notices to the Concessionaire must be made to the address below:

#### COMPAGNIE DES BAUXITES DE GUINEE:

**To the attention of:** Namory Condé Directeur Général  
**Address :** BP 100 Kamsar, BP 523, Conakry, Republic of Guinea  
**Email:** contact.cbg@cbg-guinee.com

### 26.2 Change of Address:

Any change of address shall be notified in writing as soon as possible by the concerned Party to the other Party.

## ARTICLE 27 ENTIRE AGREEMENT

This Amended and Restated Port Operations Agreement constitutes the entire agreement and understanding between the Parties in respect of its subject matter. This Amended and Restated Port Operations Agreement amends, restates and replaces in its entirety the Operations Agreement signed between the Parties on May 14, 2010.

#### **ARTICLE 28 LANGUAGE**

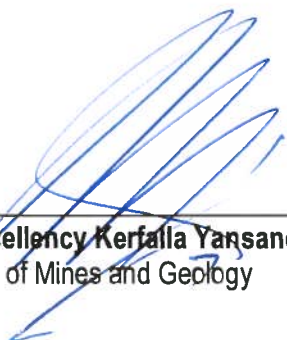
This Amended and Restated Port Operations Agreement shall be executed in French and in English. In the event of any inconsistency between the French and the English versions, the French version shall prevail.

Handwritten signatures in blue ink, including a large signature and the initials "SM".



Executed in Paris, on 24 June 2015 (in five (5) originals in English and 5 originals in French).

**FOR THE REPUBLIC OF GUINEA:**



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**His Excellency Kérékou Yansané**  
Minister of Mines and Geology

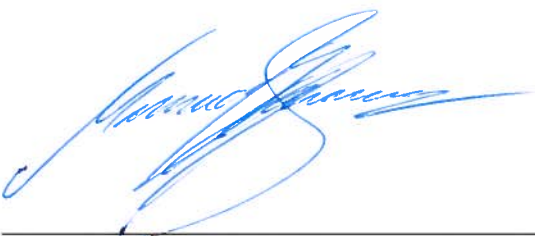
**FOR THE AGENCE NATIONALE  
D'AMENAGEMENT DES INFRASTRUCTURES  
MINIERES:**



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**Lamine Cissé**  
Directeur Général


**FOR GUINEA ALUMINA CORPORATION SA :**



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**Mamady Youala**  
Directeur Général

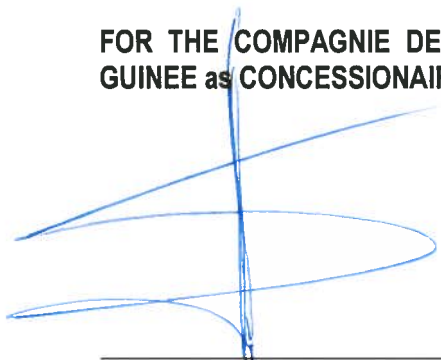
**FOR GUINEA ALUMINA CORPORATION Ltd:**



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**Masoud Al Ali**

**FOR THE COMPAGNIE DES BAUXITES DE  
GUINEE as CONCESSIONAIRE:**



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**Namory Condé**  
Directeur Général



|  |
|--|
| <b>LIST OF ANNEXES TO THE AMENDED AND RESTATED PORT OPERATIONS AGREEMENT</b> |
|--|

**COA:** Not Used

**COB:** Existing Infrastructure

**COC:** Technical specifications of the New Commercial Dock

**COD:** Current Port Charges

**COE:** Operating principles regarding the use of the Main Railway Line and the Port

**COF:** Not Used

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## **Annex COB - Existing Infrastructure**

### COB-1: The Channel

The access Channel to the Kamsar port is 120 m wide and about 17 km long. It is dredged down to – 9,0 m on average and is marked out by 19 metal buoys.

### COB-2: The Italian Dock

With a total length of a 70m and a width of 8m, the Italian Dock is used by the port services. It occasionally receives small size cargo vessels.

### COB-3: The French Dock

With a length of 120 m and a width of 50 m, the French Dock accommodates cargo vessel up to 100 m of length, featuring a 90 tones at 15m radius Derrick crane.



## Annex COC – Technical specifications of the New Commercial Dock

### *Technical specifications*

The New Commercial Dock which will be located at the port of Kamsar will be built to receive cargo liners of a capacity reaching 10,000 DWT. The New Commercial Dock will be used to discharge various materials and equipments. Once discharged, the equipments and materials will be moved to the land side of the dock, stored temporarily or dispatched to one of the construction sites, e.g. bulk material handling facility, mine or refinery.

The New Commercial Dock and its associated installations will include:

- The deepening of the existing French Dock channel to gives access to the New Commercial Dock as executed.
- A quay with steel foundation piles and a deck made of concrete having 170 m of length and 35 m of width. The quay will allow the loading and the unloading of goods between boats and the shore.
- The equipments of the quay will include: fenders, mooring bollards, navigation aids, ladders, etc.
- An approach trestle with steel piles and a concrete deck will provide the access from the New Commercial Dock. This trestle will have a length of 70 m and a width of 8 m.
- It is planned to try to utilize the existing rail system at French Dock in conjunction with CBG to move some of the construction materials to the Refinery site.
- A Lay-down Zone will be provided to the north of French Dock to marshal the trucks that will take the construction material to the construction areas.
- A temporary barge unloading facility may be installed at the north edge of the Jetty to facilitate the return of containers.
- General measures of Security, in particular guardrails and perimeter security.
- Other elements necessary to the operation of a port lay down area.

The structures will be designed in accordance with international standards for marine structures.

The materials used will be adapted to the marine environment.

The security and load factors will be based on the BS 6349 standard or international equivalent.

The design of concrete structures will be done in compliance with the BS 8500 standard or international equivalent.

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### ***New Commercial Dock working zone***

Coordinates of the New Commercial Dock working zone:

| <b>Work Point</b> | <b>Northing</b> | <b>Easting</b> |
|-------------------|-----------------|----------------|
| WP 1              | N 1 177 500     | E 541 100      |
| WP 2              | N 1 177 500     | E 541 800      |
| WP 3              | N 1 177 750     | E 541 900      |
| WP 4              | N 1 177 750     | E 542 080      |
| WP 5              | N 1 177 450     | E 542 086      |
| WP 6              | N 1 177 340     | E 542 093      |
| WP 7              | N 1 177 360     | E 542 142      |
| WP 8              | N 1 177 341     | E 542 139      |
| WP 9              | N 1 177 285     | E 542 033      |
| WP 10             | N 1 177 290     | E 541 966      |
| WP 11             | N 1 177 327     | E 541 918      |
| WP 12             | N 1 177 370     | E 541 720      |
| WP 13             | N 1 177 255     | E 541 695      |
| WP 14             | N 1 177 300     | E 541 097      |

Coordinates of the Lay-down Zone:

| <b>Work Point</b> | <b>Northing</b> | <b>Easting</b> |
|-------------------|-----------------|----------------|
| WP 2              | N 1 177 500     | E 541 800      |
| WP 3              | N 1 177 750     | E 541 900      |
| WP 4              | N 1 177 750     | E 542 080      |
| WP 5              | N 1 177 450     | E 542 086      |



## **Annex COD – Current Port Charges**

The Port Charges applicable at the Effective Date are as set out hereafter.

### **PORT CHARGES (USD)**

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# Les Charges Portuaires en application

| Charges Portuaires    | 2015                | 2014   | 2013   | 2012   | 2011   | 2010   |                       |
|-----------------------|---------------------|--------|--------|--------|--------|--------|-----------------------|
| <b>TAUX FIXES</b>     |                     |        |        |        |        |        |                       |
| Pilotage              |                     | 0,04   | 0,04   | 0,04   | 0,04   | 0,04   | TNE dans chaque sens  |
| Service de remorqueur | -Entrée du Bassin   | 400,00 | 400,00 | 400,00 | 400,00 | 400,00 | par navire            |
|                       | -Sortie du Bassin   | 400,00 | 400,00 | 400,00 | 400,00 | 400,00 | par navire            |
| Droits de Feux        |                     | 400,00 | 400,00 | 400,00 | 400,00 | 400,00 | par navire par escale |
| Droits de Port        | -Mouillage          | 0,04   | 0,04   | 0,04   | 0,04   | 0,04   | TNE pae escale        |
|                       | -Au long du Quai    | 0,07   | 0,07   | 0,07   | 0,07   | 0,07   | TNE pae escale        |
| <b>Frais d'Agence</b> |                     |        |        |        |        |        |                       |
| Petits Navires        | Moins de 5 000 TNE  | 100,00 | 100,00 | 100,00 | 100,00 | 100,00 | Par escale            |
| Bananiers             | Moins de 10 000 TNE | 100,00 | 100,00 | 100,00 | 100,00 | 100,00 | Par escale            |
| Cargos                | Moins de 10 000 TNE | 400,00 | 400,00 | 400,00 | 400,00 | 400,00 | Par escale            |
| Pétroliers            | Moins de 20 000 TNE | 500,00 | 500,00 | 500,00 | 500,00 | 500,00 | Par escale            |
| Vraquiers             | Plus de 20 000 TNE  | 600,00 | 600,00 | 600,00 | 600,00 | 600,00 | Par escale            |

TNE = Tonne Nette Enregistrée de Jauge, en se référant à la tonne forte anglaise de 20240 Livres (1 016 Kg)

|   |  |              |              |              |              |              |                               |
|---|--|--------------|--------------|--------------|--------------|--------------|-------------------------------|
| <b>TAUX VARIABLES</b>                               |  |              |              |              |              |              |                               |
| Side Wharfage                                       |  | 0,199        | 0,178        | 0,071        | 0,273        | 0,448        | Par tonne de cargaison        |
| Redevance supplémentaire pour l'entretien du Chenal |  | 0,224        | 0,221        | 0,357        | 0,073        | 0,047        | Par tonne de cargaison        |
| Top Wharfage  |  | 0,345        | 0,370        | 0,341        | 0,366        | 0,217        | Par tonne de cargaison        |
| <b>Total des charges variables:</b>                 |  | <b>0,769</b> | <b>0,769</b> | <b>0,769</b> | <b>0,712</b> | <b>0,712</b> | <b>Par tonne de cargaison</b> |

|   |  |        |        |        |        |        |                          |
|---|--|--------|--------|--------|--------|--------|--------------------------|
| <b>SERVICES AU COÛT</b>                         |  |        |        |        |        |        |                          |
| Eau   |  | 0,50   | 0,50   | 0,50   | 0,50   | 0,50   | Par mètre cube           |
| Douane  |  | 150,00 | 150,00 | 150,00 | 150,00 | 50,00  | Par jour (en semaine)    |
|   |  | 165,00 | 165,00 | 165,00 | 165,00 | 65,00  | Par jour les (week ends) |
| Santé (Quarantaine)                             |  | 20,00  | 20,00  | 20,00  | 20,00  | 20,00  | Par escale               |
| <b>ANAM (Inspection de la Marine Marchande)</b> |  |        |        |        |        |        |                          |
| Prélèvement import/export                       |  |        |        |        |        | 0,10   | Par tonne de cargaison   |
| a) Premier voyage de l'année                    |  | 500,00 | 500,00 | 500,00 | 500,00 | 500,00 | Par escale               |
| b) Chaque voyage subséquent                     |  | 120,00 | 120,00 | 120,00 | 120,00 | 120,00 | Par escale               |
| Gardiennage des Navires                         |  | 120,00 | 120,00 | 120,00 | 120,00 | 225,00 | Par 24 heures            |
| PTT (Permis pour l'utilisation du SATCOM)       |  | 59,00  | 59,00  | 59,00  | 59,00  | 59,00  | Par escale               |
| Visite d'un médecin                             |  | 25,00  | 25,00  | 25,00  | 25,00  | 25,00  | Par visite               |
| Hospitalisation-Médical                         |  | 150,00 | 150,00 | 150,00 | 150,00 | 150,00 | Par jour                 |
| <b>Chande de Personnel/Rapatriement</b>         |  |        |        |        |        |        |                          |
| a) Visa d'Immigration                           |  | 50,00  | 50,00  | 50,00  | 50,00  | 50,00  | Chaque                   |
| b) Accompagnement                               |  | 120,00 | 120,00 | 120,00 | 120,00 | 120,00 | Fixe                     |
| c) Frais de transport aérien Kamsar/Conakry     |  | 150,00 | 150,00 | 150,00 | 150,00 | 150,00 | Dans chaque sens         |
| d) Frais de transit (Hotel-Repas)               |  | 80,00  | 80,00  | 80,00  | 80,00  | 80,00  | Par jour                 |

Les billets de transport aérien international seront organisés par les propriétaires des navires avant le départ, ainsi que les billets PTA,

ANAIM and the Concessionaire will update the Port Charges from time to time.

*[Handwritten signature and initials]*

## **Annex COE – Operating principles regarding the use of the Port**

### ***Operating rules:***

- (1) The Concessionaire is to provide sufficient Channel slots over the number required by the combined operations which can be used as slots for either Users to ensure that their production levels can be met.
- (2) The Concessionaire must ensure that all Users are allowed to operate their ships in an efficient manner to meet their production rates.
- (3) The Concessionaire will provide Channel slots a day for the Users. These slots will be spaced over the day to suit the ships operation schedules of the Users.
- (4) The Concessionaire will not cancel an allocated slot once allocated, unless agreed to by the parties and the next available slot is offered in substitution provided there is no disruption to other allocated slots.
- (5) If any users' ship is late for its allotted slot the Concessionaire will ensure that the late ship can take up the next available slot provided there is no disruption to other allocated slots.
- (6) All parties shall work together to achieve the smooth and efficient operation of the supply chain being the combined port infrastructure.

### ***Shipping Protocols:***

- (1) Shipping to be scheduled so that ship arrivals and departures are aligned to ships draft, water depth and current direction.
- (2) All ship movements incoming and outgoing within the boundary of the Channel will be subject to draft, water depth and current conditions.
- (3) Laden incoming and outgoing ships can move on the same tide, draft, depth and current permitting.
- (4) Laden outgoing ships have priority over laden incoming ships due to draft, water depth and current conditions.
- (5) Laden ships have priority over empty ships on incoming and outgoing tides.
- (6) The latest time a laden outgoing ship can sail is one hour before high tide.
- (7) Ships can move through the Channel in either direction at 1 hour intervals dependent on berth availability, draft, water depth and current conditions.

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Annex COF – Not Used

 SM