

SERVICE AGREEMENT

Dated as of June 1, 1997

and

Amended and Restated as of June 1, 1998

and

Further Amended and Restated as of May 23, 2000

and

**Further Amended and Restated as of August 28, 2003
(to become effective consistent with Resolution No. 03-3 adopted by the
Board of Commissioners of Virginia Port Authority)**

and

Further Amended and Restated as of September 24, 2008

and

Further Amended and Restated as of _____, 2014

between

VIRGINIA PORT AUTHORITY

and

VIRGINIA INTERNATIONAL TERMINALS, LLC

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I. OPERATION OF PORT FACILITIES	2
<u>Section 1.1</u> <u>VIT Independent Contractor</u>	2
<u>Section 1.2</u> <u>Conditions</u>	3
ARTICLE II. TERM	4
<u>Section 2.1</u>	4
ARTICLE III. PAYMENTS TO VIRGINIA PORT AUTHORITY	4
<u>Section 3.1</u> <u>Service Charge</u>	4
<u>Section 3.2</u> <u>Funds and Accounts: Payments to VPA</u>	4
<u>Section 3.3</u> <u>Security Interest</u>	10
<u>Section 3.4</u> <u>Management of Funds</u>	10
ARTICLE IV. OPERATIONAL PROVISIONS	11
<u>Section 4.1</u> <u>No Nuisance</u>	11
<u>Section 4.2</u> <u>Compliance with Laws</u>	11
<u>Section 4.3</u> <u>Payment of Taxes</u>	11
<u>Section 4.4</u> <u>No Liens; No Indebtedness</u>	11
ARTICLE V. CHARGES AND RATES	12
ARTICLE VI. MARKETING.....	13
ARTICLE VII. MAINTENANCE, INSPECTION, IMPROVEMENTS AND DEMOLITION OF PORT FACILITIES	14
<u>Section 7.1</u> <u>Maintenance</u>	14
<u>Section 7.2</u> <u>Capital Maintenance</u>	14
<u>Section 7.3</u> <u>Consulting Engineer</u>	14
<u>Section 7.4</u> <u>Improvements to VPA Property; Equipment of VIT</u>	15
<u>Section 7.5</u> <u>VIT Authorized to Make Minor Alterations</u>	15
<u>Section 7.6</u> <u>Master Plan</u>	16
<u>Section 7.7</u> <u>Dredging</u>	16
<u>Section 7.8</u> <u>Major Equipment Purchases</u>	16
<u>Section 7.9</u> <u>Construction Management</u>	16
<u>Section 7.10</u> <u>Demolition of Port Facilities</u>	17
ARTICLE VIII. INSURANCE	17
<u>Section 8.1</u> <u>Insurance; Co-insurance; and Self-insurance</u>	17

<u>Section 8.2</u>	<u>Form; Other Requirements</u>	18
<u>Section 8.3</u>	<u>Policies to VPA</u>	18
<u>Section 8.4</u>	<u>Damage; Destruction</u>	18
<u>Section 8.5</u>	<u>VPA May Obtain Insurance not Obtained by VIT</u>	19
ARTICLE IX. ACCOUNTING, AUDITING AND BUDGETING.....		19
<u>Section 9.1</u>	<u>Accounting Systems</u>	19
<u>Section 9.2</u>	<u>Financial Statements</u>	19
<u>Section 9.3</u>	<u>Accounts and Records</u>	20
<u>Section 9.4</u>	<u>Monthly Statements</u>	20
<u>Section 9.5</u>	<u>Preparation of Annual Budget</u>	20
<u>Section 9.6</u>	<u>Annual Budget</u>	21
<u>Section 9.7</u>	<u>VIT to Comply with Budget</u>	22
<u>Section 9.8</u>	<u>Payments from Operating Account, CEMA</u>	22
<u>Section 9.9</u>	<u>Claims for Damages</u>	23
ARTICLE X. SECURITY		23
<u>Section 10.1</u>	<u>Security Rules</u>	23
<u>Section 10.2</u>	<u>VPA to Provide Security</u>	24
ARTICLE XI. UTILITIES.....		24
<u>Section 11.1</u>	<u>VIT to Contract for Utilities</u>	24
<u>Section 11.2</u>	<u>VIT to Pay for Utilities</u>	24
ARTICLE XII. MISCELLANEOUS PROVISIONS		24
<u>Section 12.1</u>	<u>Amendments</u>	24
<u>Section 12.2</u>	<u>Operating Agreement Only</u>	24
<u>Section 12.3</u>	<u>Other Definitions</u>	25
<u>Section 12.4</u>	<u>Effectiveness and Construction of Certain Amendments</u>	25

SERVICE AGREEMENT

This Service Agreement (this “Agreement”), dated as of the 1st day of June 1, 1997, and amended and restated as of June 1, 1998, and further amended and restated as of May 23, 2000, and further amended and restated as of August 28, 2003, and further amended and restated as of September 24, 2008, and further amended and restated as of _____, 2014, by and between Virginia Port Authority, a body corporate of the Commonwealth of Virginia (“VPA”) and Virginia International Terminals, LLC, a Virginia limited liability company (“VIT”).

WITNESSETH

WHEREAS, VIT was formed as a Virginia corporation on June 3, 1981, and was converted to a Virginia limited liability company effective August 17, 2013; and

WHEREAS, VPA is the sole member of VIT; and

WHEREAS, on October 17, 2006, the date on which VPA issued its \$90,000,000 Port Facilities Revenue Bonds, Series 2006, the proposed amended and restated Section 3.2 of this Agreement became effective to implement the 2003 Amendments, as that term is defined in VPA Resolution 03-3, to the Resolution, herein defined; and

WHEREAS, on account of the restructuring of the relationship between VPA and VIT, the conversion of VIT from a non-stock, nonprofit corporation to a single member limited liability company wholly owned by VPA and the implementation of the 2003 Amendments, the parties desire to amend and restate this Agreement.

NOW, THEREFORE, in consideration of the recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree to amend and restate this Agreement in its entirety as follows:

ARTICLE I.

OPERATION OF PORT FACILITIES

Section.1.1 VIT Independent Contractor.

VPA hereby engages VIT to manage, operate, and conduct the business of its Port Facilities and to perform such other functions as stated herein, in accordance with the rules, regulations and policies established by the Board of Commissioners of VPA pursuant to Chapter 10, Title 62.1 of the Code of Virginia of 1950, as amended (the “Act”), and expressly subject to the terms, conditions and restrictions contained in Resolution No. 97-5 of VPA adopted May 27, 1997, as amended and restated as of June 1, 1998, and as further amended and restated as of May 23, 2000, and as further amended and restated as of July 22, 2003 (the “Resolution”), and contained in this Agreement. It shall be the essence, spirit and philosophy of this Agreement that VIT shall operate the Port Facilities, as they are constituted from time to time and as directed by VPA now or in the future, and exist as an independent contractor for VPA, and that it shall operate NIT, NNMT, APMT and PMT (each as defined below) as public marine facilities in a manner which is competent, efficient and competitive with other marine terminal facilities and that it shall operate VIP (as defined below) in a competent and efficient manner. As of the date of this Agreement, the terminals constituting a portion of the Port Facilities and subject to this Agreement consist of:

- A. Norfolk International Terminals (“NIT”).
- B. Newport News Marine Terminals (“NNMT”).
- C. Portsmouth Marine Terminal (“PMT”).
- D. APM Terminal (“APMT”).
- E. Virginia Inland Port (“VIP”).

VPA hereby engages VIT to manage, or cause to be managed, such other Port Facilities as it shall designate, now or in the future, consisting of yards for the storage and handling of empty containers, which may be on property owned or leased by VPA, or leased by VIT, but only with VPA's prior written consent. VIT, at the written direction of VPA, shall operate such other container yards on terms and conditions stipulated by VPA, which container yards may be located outside of the Commonwealth of Virginia. VIT shall also manage, or cause to be managed, one or more chassis pools on terms and conditions stipulated by VPA.

Section 1.2 Conditions.

Performance by VIT of its services hereunder is made subject, however, to the following limitations, restrictions, reservations, easements and rights:

A. All easements for the maintenance of utility and transportation services existing at the Port Facilities at the date of commencement of this Agreement, all similar easements existing with respect to and at the time any other Port Facilities are included within the scope of this Agreement and all future easements which may be granted by VPA. VPA will consult with VIT and receive recommendations from VIT concerning future easements with respect to future Port Facilities engineering and operational implications.

B. All present and future federal, state, and municipal laws, ordinances, regulations, orders and zoning affecting the whole or any part of the Port Facilities subject to this Agreement.

C. The various restrictions, requirements, declarations, rights and covenants in Contract Nos. [MA-4667, MA-4668 and MA-8955), and addenda and amendments thereto, between the United States of America, Maritime Administration and the VPA.

D. VPA employees shall have the right of unobstructed ingress and egress. Invitees, consultants and contractors of VPA, as may require contact with VIT employees and daily business operations, shall be granted access upon reasonable notice to VIT.

E. This Agreement supplants, supersedes, and replaces in total the Operating Agreement dated March 17, 1987 among the parties and the Commonwealth of Virginia and any other agreements between VIT, and its predecessors-in-interest, and VPA.

ARTICLE II.

TERM

Section 2.1

A. This Agreement shall commence on the date of delivery of the Series 1997 Bonds and shall continue until terminated.

B. VPA shall have the right to terminate this Agreement, at its sole discretion, upon written notice to VIT.

ARTICLE III.

PAYMENTS TO VIRGINIA PORT AUTHORITY

Section 3.1 Service Charge.

Monthly, VIT shall pay VPA on or about the fifteenth day of each month, in accordance with the provisions of Section 718(b) of the Resolution, VIT's Gross Revenues for the previous month less VIT's "Service Charge" equal to the sum of the amounts described in Section 3.2 B. and C. for the previous month.

Section 3.2 Funds and Accounts: Payments to VPA.

The procedure for management of funds shall be as follows:

A. All Gross Revenues collected and received by or for VIT shall be promptly deposited with a Depository or Depositories to the credit of its income fund designated "VIT Income Fund". Notwithstanding the foregoing, VPA may receive Gross Revenues from Port Facilities not subject to this Agreement.

In accordance with the provisions of Section 718(b) and (d) of the Resolution, before making the payment required by Section 3.1, VIT first shall set aside, from the Gross Revenues, with such Depository or Depositories to the credit of an account ("VIT's Operating Account") an amount equal to the sum of (i) the Current Expenses of VIT for the prior month (both Gross Revenues and Current Expenses to be computed on a cash basis) and (ii) as a reserve for VIT's Current Expenses, an amount that when added to amounts already held in reserve shall make the balance of such reserve equal to one-twelfth (1/12th) of VIT's then budgeted Current Expenses for such Fiscal Year, less one-twelfth (1/12th) of VIT's then budgeted administrative and general expenses for such Fiscal Year (the "VIT CE Reserve Amount"); provided, however, that any deficiency in VIT's CE Reserve Amount, including any repayment of the amount of any draw(s) on an Eligible Letter of Credit (as defined below), shall be restored monthly at the rate of one-twelfth (1/12th) of the amount of such deficiency beginning in the month after the deficiency occurs; and provided further that the VPA Board of Commissioners may in its judgment based on prudent financial management extend such replenishment period at any time from 12 months to any period up to 36 months (provided that replenishment shall occur in equal monthly installments over such period). VIT shall pay monthly, from money in the VIT Operating Account, costs and expenses incurred in the operation, repair and maintenance of the Port Facilities subject to this Agreement, which shall include without limiting the generality of the foregoing, all amounts

described as Current Expenses of VIT in the Resolution. VIT may at any time and from time to time substitute for up to and including fifty percent (50%) of the CE Reserve Amount required by the terms of this Section 3.2.B. to be credited to VIT's reserve for Current Expenses a standby letter of credit issued in favor of VIT by a foreign or a domestic bank with long-term ratings from Moody's Investors Service, Inc. ("Moody's") of not less than "Aa3" and Standard & Poor's ("S&P") of not less than "AA-" (an "Eligible Letter of Credit"). In connection with such Eligible Letter of Credit, VIT may enter into a reimbursement agreement with the provider of the Eligible Letter of Credit by the terms of which VIT may be obligated to repay any draw(s) on the Eligible Letter of Credit on the same terms as it would restore a deficiency in its reserve for Current Expenses to the CE Reserve Amount and to agree and arrange with VPA for the payment of any fees or expenses associated with obtaining or maintaining the Eligible Letter of Credit and interest or expenses or other amounts due and payable by VIT under such reimbursement agreement from funds available to VPA in the Reserve Maintenance and Improvement Fund or the special account in the Revenue Fund, all as provided in the Resolution. In the event that one or both of Moody's and S&P shall withdraw or reduce below "Aa3" and "AA-", respectively, their ratings on the provider, VIT shall do one of the following: (u) replenish the reserve for Current Expenses to the amount of the CE Reserve in accordance with the requirements of the Resolution when a deficiency exists in the amount credited to such reserve, (v) replace the letter of credit then to the credit of VIT's reserve for Current Expenses with an Eligible Letter of Credit, (x) require the provider whose long-term ratings were so withdrawn or reduced to post collateral for its undertakings under the Eligible Letter of Credit in amounts and on terms that the Rating Service(s) so withdrawing or reducing such provider's long-term ratings shall affirm its (their)

maintenance of their current long-term unenhanced ratings on the Bonds, (y) require the provider whose long-term ratings were so withdrawn or reduced to obtain (Y) a facing letter of credit from a domestic or foreign bank with long-term ratings from Moody's of not less than "Aa3" and S&P of not less than "AA-" or (Z) other credit enhancement of its obligations under the Eligible Letter of Credit in amounts and on terms that the Rating Service(s) so withdrawing or reducing such provider's long-term ratings shall affirm its (their) maintenance of their current long-term ratings on the Bonds or (z) draw on the former Eligible Letter of Credit to the extent of the lesser of (A) the amount remaining to be drawn thereon and (B) the difference between the CE Reserve Amount and the balance to the credit of the reserve for Current Expenses (not taking into account the former Eligible Letter of Credit) and credit the amount so drawn to the reserve for Current Expenses. The affirmation by the Rating Service(s) that the unenhanced ratings on the Bonds will not be withdrawn or reduced in the case of (x), (y) or (Z) above shall restore the collateralized or credit enhanced letter of credit of the provider whose long-term ratings have been withdrawn or reduced below the unenhanced ratings on the Bonds to the status of an Eligible Letter of Credit.

B. In accordance with the provisions of Section 718(b) of the Resolution, after the set-aside described in Section 3.2A., VIT next shall transfer to the Trustee under the Resolution an amount equal to any remaining Gross Revenues, until VIT's Capital and Extraordinary Maintenance Account contains an amount equal to six percent (6%) of VIT's then budgeted Current Expenses for such Fiscal Year, less VIT's then budgeted administrative and general expenses for such Fiscal Year, provided that any deficiency in such Account shall be restored monthly at the rate of one-twelfth (1/12th) of the amount of such deficiency.

(1) Subject to the provisions of Section 3.3, VIT may use the moneys in such Account to make those equipment acquisitions, undertake that construction and perform those other actions that VIT has historically undertaken at the Port Facilities subject to this Agreement. Money may be disbursed by VIT as agent for VPA for paying, in connection with the Port Facilities, expenses related to the Port Facilities payable as Current Expenses, and not previously paid, the cost of unusual or extraordinary maintenance, repairs, renewals or replacements, engineering and architectural expenses incurred under the provisions of this Section, premiums on insurance carried under the provisions of the Resolution, the cost of fixtures, machinery, equipment, furniture, real property and additions to, or improvements, extensions or enlargements of the Port Facilities subject to this Agreement.

(2) Payments from such Account shall be made by requisition duly executed by the chief operating officer of VIT, or his designee, and filed with the chief financial officer of VPA, or his designee, setting forth the following:

- (a) the item number of each such payment;
- (b) the name of the person, firm or corporation to whom each such payment is due;
- (c) the respective amounts to be paid;
- (d) the purpose by general classification for which each obligation to be paid was incurred;
- (e) that obligations in the stated amounts have been incurred by VIT and are presently due and payable and that each item thereof is a proper charge against the Capital and Extraordinary Maintenance Account and has not been paid;

(f) that there has not been filed with or served upon VIT notice of any lien, right to lien or attachment upon, or claim affecting the right of any such persons, firms or corporations to receive payment of, the respective amounts stated in such requisition which has not been released or will not be released simultaneously with the payment of such obligation; and

(g) that such requisition contains no item representing payment on account of any percentage which VIT is at the date of such requisition entitled to retain, and as to obligations payable to contractors on account of construction costs or to vendors on account of land or interests in land, a certificate signed by the Engineer and attached to such requisition, certifying his approval thereof.

D. Money in the Operating Account, and the reserve therein, and the Capital and Extraordinary Maintenance Account, not immediately required by VIT, shall be invested by VIT and any interest or any earnings derived from any such investment shall be credited, and any losses shall be charged, to the appropriate Account. Investments under this paragraph shall comply with applicable provisions of State law and the Resolution (as though such investments were being made by VPA) and shall mature or shall be subject to redemption at the option of VIT at such time as the money invested will be required.

E. All monies received from VIT by VPA pursuant to Sections 3.1 and 3.2B. shall be promptly deposited to the credit of the VPA's Revenue Fund under the Resolution.

F. Funds in the Revenue Fund shall be applied immediately as received by the VPA as provided in the Resolution and in particular Section 504 thereof.

Section 3.3 Security Interest.

VIT hereby grants to the Trustee, for the benefit of the Holders of the Bonds, a security interest in the Capital and Extraordinary Maintenance Account and the cash and investments credited thereto. In the event that at the close of business of any monthly Deposit Day the balance to the credit of the Debt Service Account in the Debt Service Fund under the Resolution is less than required by the Resolution, the Trustee shall withdraw from the Capital and Extraordinary Maintenance Account and transfer to the Debt Service Account an amount equal to the deficiency therein. VIT and VPA intend and agree that this paragraph shall constitute a security agreement for the benefit of the Holders of the Bonds issued and outstanding under the Resolution and that the Trustee shall have a security interest in, and there is hereby pledged to the Trustee, the Capital and Extraordinary Maintenance Account and the cash and investments credited thereto.

Section 3.4 Management of Funds.

Subject to provisions of this Article and the Resolution, VIT shall control the handling of all money received by or for VIT in connection with the Port Facilities subject to this Agreement and shall establish an adequate system, based on standard, prudent practices of internal control, covering the receipt and expenditure of money in the purchase of equipment and the maintenance, repair, operation, and improvement of the Port Facilities subject to this Agreement.

ARTICLE IV.

OPERATION OF PORT FACILITIES

Section 4.1 No Nuisance.

VIT shall not use, or permit the use of the Port Facilities subject to this Agreement, or any part thereof, for any unlawful purposes, or permit any nuisance to exist.

Section 4.2 Compliance with Laws.

VIT shall promptly comply with all laws, ordinances, rules, regulations, policies, and requirements of all federal, state and local governments and appropriate departments, commissions, boards and officers thereof, including VPA, as they relate to its operations. However, VIT may contest by appropriate legal proceedings, with VPA approval and without cost or expense to VPA or the Commonwealth of Virginia, the validity of any law, rule, regulation or requirement affecting its operations.

Section 4.3 Payment of Taxes.

VPA shall be responsible for and pay promptly and directly, where appropriate, all taxes, license fees, service charges, and any special assessments that are lawfully incurred, levied or assessed in connection with the Port Facilities. Those payable as Current Expenses may be paid by VIT if VPA shall so direct. Those not constituting Current Expenses shall be paid by VPA from the special account in the Revenue Fund.

Section 4.4 No Liens; No Indebtedness.

VIT shall not create, or suffer to be created (with the exception of APMT), any lien or encumbrance upon the Port Facilities subject to this Agreement or any part thereof without the express prior written approval of VPA. VIT shall satisfy or cause to be discharged within sixty (60) days after the same shall accrue, all lawful claims and demands for labor, materials,

supplies or other items which, if not satisfied, might by law become a lien upon the Port Facilities subject to this Agreement or any part thereof; provided, however, that nothing in this Section shall require VIT to satisfy or discharge any such lien or claim so long as the validity thereof shall be contested in good faith by appropriate legal proceedings. VIT shall not incur any Indebtedness (as defined in the Resolution).

ARTICLE V.

CHARGES AND RATES

VPA and VIT recognize and acknowledge the statutory authority and responsibilities of VPA with respect to the establishment of rates, charges, rules, regulations, tariffs, practices and requirements, including all revisions thereof (hereinafter referred to collectively as “rates”), concerning the use of the Port Facilities subject to this Agreement and related services. VPA shall, by resolution of its Board of Commissioners setting forth appropriate guidelines and standards not inconsistent with and to the extent permissible by the Act, delegate to VIT the authority to fix, revise and enforce such rates in the manner and to the extent that VPA deems necessary or desirable, including but not limited to the authority to fix and revise rates jointly with VPA. However, any such delegation shall not compromise the responsibility and authority of VPA to determine rates necessary to carry out its functions pursuant to Article VI of this Agreement and its statutory mandates.

Such guidelines shall provide that pricing and rates will be maintained consistent with requirements to ensure competitive operation and availability of marine terminal services and in consonance with guaranteeing that the monetary conditions of the Resolution are met and the generation and protection of net income sufficient to satisfy such financial obligations of the Resolution.

VIT shall, at the direction of VPA, publish the rates.

ARTICLE VI.

MARKETING

VIT shall perform sales and marketing functions for the Port Facilities subject to this Agreement in accordance with the goals and objectives established by the VPA Board of Commissioners. VIT shall provide such regular updates to VPA and its Board of Commissioners as they may request to establish such goals and objectives, including without limitation a regular update on sales and marketing results and plans to be provided at each regular meeting of the VPA Board of Commissioners.

VPA shall be responsible for advertising, public relations, economic development, traffic analysis, and research and such other functions as VPA believes to be necessary so that it may properly discharge its statutory duties under the Act, including without limitation its duty to stimulate commerce of the Commonwealth under Section 62.1-132.3 and its duty to plan for the development of the ports of the Commonwealth under Section 62.1-132.5 thereof. VIT shall support and assist VPA in the performance of these responsibilities. VIT shall also have the responsibility for maintaining coordinated customer relations and services for customer matters concerning current business.

ARTICLE VII.

MAINTENANCE, INSPECTION, IMPROVEMENTS AND DEMOLITION OF PORT

FACILITIES

Section 7.1 Maintenance.

VIT shall at all times during the term of this Agreement, keep and maintain the Port Facilities subject to this Agreement, in at least as good condition or repair as they are at the time of the commencement date of this Agreement, ordinary wear and tear excepted.

Section 7.2 Capital Maintenance.

Division of responsibility for capital maintenance projects shall be determined by VPA and VIT staffs, but subject to approval by VPA at the time it considers the VIT budget. To the extent that VIT shall assume responsibility under this Section for projects with an estimated cost in excess of the amount estimated to be available to VIT in VIT's Capital and Extraordinary Maintenance Account as provided in Section 3.2C., the Authority will budget and make available to VIT as the agent of VPA such additional funds in VPA's Reserve Maintenance and Improvement Fund as may be required for such projects.

Section 7.3 Consulting Engineer.

VPA, biennially, shall cause a licensed professional engineer (who may be an employee of VPA but every sixth year such engineer must be independent) to make an inspection of the Port Facilities subject to this Agreement. Such engineer shall submit a written report as to the physical condition of each Port Facility's real and personal property, whether it is being properly maintained and specifying required repairs or maintenance. If any repair work or maintenance not budgeted for by VIT is required, VPA shall report the same to VIT and VIT shall, subject to the availability of funds therefor, accomplish said repair

work or maintenance within a reasonable time. In the event there is a dispute between VPA and VIT over the necessity for or extent of such repair work or maintenance, the dispute shall be resolved by the VPA Board of Commissioners, whose decision shall be final and binding.

Section 7.4 Improvements to VPA Property; Equipment of VIT.

All buildings, structures, improvements and fixtures which shall be constructed, placed or installed on the Port Facilities subject to this Agreement as a substitute for, an addition to, or in renewal or replacement of, any buildings, structures, improvements or fixtures constituting part of the Port Facilities shall become the property of VPA and part of the Port Facilities, subject to the superior rights of any ground lessor under any lease of a Port Facility, if any. Any equipment purchased by VIT or any of its affiliates required in the performance of VIT's duties under this Agreement and located at any of the Port Facilities subject to this Agreement shall at all times remain the asset of VIT or its affiliates, respectively.

Section 7.5 VIT Authorized to Make Minor Alterations.

Subject to the requirements of state law governing the construction, erection, removal, remodeling of, or addition to any building or any appurtenant structure on the property of the Commonwealth of Virginia, VIT may make such minor alterations to any of the real property now or hereafter existing on the Port Facilities subject to this Agreement and, with the prior written approval of the Executive Director of VPA, may construct or place thereon such additional improvements as VIT deems necessary or desirable for any of the purposes herein contemplated. The funding for such work is subject to the provisions of Sections 3.2C. and 7.2.

Section 7.6 Master Plan.

VPA shall prepare and update a Master Development Plan for the Port Facilities. At least every other year, VPA and VIT will review such plan and make such revisions as may be required. The review will establish budget priorities for additional facilities, construction sequences and such other improvements or modifications as may be desirable to meet the needs of the Port Facilities. VIT will make available to VPA plans and documents necessary for VPA to prepare such plan and will cooperate with VPA in providing input and technical advice.

Section 7.7 Dredging.

VPA, after consultation with VIT, shall decide which party, VPA or VIT, shall undertake maintenance dredging in order to keep the channels and slips contiguous to the berths dredged to a sufficient depth and width for the reasonable accommodation of vessels desiring to use the berths.

Section 7.8 Major Equipment Purchases.

Responsibility for major equipment purchases will be established by VPA at the time it considers the VIT budget. The funding of any such purchases to be made by VIT shall be subject to the provisions of Sections 3.2C. and 7.2.

Section 7.9 Construction Management.

VPA and VIT will perform construction management, design supervision, contract administration and periodic inspection for their respective projects. VPA and VIT will coordinate activities necessary to ensure that construction work does not interfere with cargo operations and other projects and activities at the Port Facilities subject to this Agreement.

Section 7.10 Demolition of Port Facilities.

Subject to the requirements of state law governing the construction, erection, removal remodeling of, or addition to any building or any appurtenant structure on the property of the Commonwealth of Virginia, and subject to the requirements of Section 704 of the Resolution, VIT, at its own expense and with VPA's concurrence, may demolish or remove any improvement to real property existing on the Port Facilities subject to this Agreement, provided that it shall be first determined by VPA that the demolition or removal of any such improvement shall not impair the structural soundness, efficiency or the economic value of the Port Facilities. VIT, at its own expense, shall repair all damage to the affected Port Facilities caused by any such demolition or removal. The funding of any such demolition or removal shall be in accordance with the provisions of Sections 3.2C. and 7.2.

ARTICLE VIII.

INSURANCE

Section 8.1 Insurance; Co-insurance; and Self-insurance.

VIT shall insure the Port Facilities subject to this Agreement in accordance with the requirements of Section 707 of the Resolution against such risks as are currently insured against in connection with the operation of such facilities in such amounts as may be agreed upon by VPA and VIT.

VIT shall pay timely the premiums for all applicable insurance, when and as such insurance is commercially available; provided that appropriate co-insurance clause percentage and level of deductibles may be established as the same are obtainable, considering both adequacy of coverage and premiums payable.

If VPA shall determine that adequate insurance protection in conformity with this Section shall be provided thereby, VPA may provide or cause to be provided upon a self-insurance basis to the extent permitted by the Resolution.

Section 8.2 Form; Other Requirements.

Each insurance policy required by Section 8.1 herein shall be in such form and with such provisions as specified in Section 708 of the Resolution.

Section 8.3 Policies to VPA.

Copies of all insurance policies referred to in this Article shall be sent with Declaration Page to VPA for use by VPA and its agents and representatives. VPA, in its own name, may demand, collect, sue and receipt for any insurance money which may become due and payable under any policies of insurance required hereunder if VIT shall have failed to do so within thirty (30) days after the receipt of written notice from VPA.

Section 8.4 Damage; Destruction.

If any part of the Port Facilities subject to this Agreement is destroyed or damaged by fire or other casualty, VIT shall with the approval of VPA promptly replace, repair, rebuild or restore the property damaged or destroyed to substantially its same condition, as prior to such damage or destruction, with such alterations and additions as VPA may determine will not impair the capacity or character of the affected Port Facilities for the purpose for which they are being used or intended to be used, applying so much as may be necessary of (1) the net proceeds of insurance received on account of any such damage or destruction, or (2) other available funds consistent with the provisions of Sections 3.2C. and 7.2, to payment of the cost of such replacement, repair, rebuilding or restoration. VIT, with approval of VPA, may discontinue operation of any Port Facility which cannot be so repaired.

Any balance of the net proceeds of insurance remaining after payment of the cost of such replacement, repair, rebuilding or restoration and any other proceeds described in this Section shall be applied as provided in the Resolution. The provisions of this Section are subject to the provisions of Sections 704 and 710 of the Resolution.

Section 8.5 VPA May Obtain Insurance not Obtained by VIT.

In the event VIT shall at any time fail or refuse to procure or maintain insurance coverage as herein defined, VPA shall cause insurance to be procured and maintained, and if it does so, VIT shall be obligated to reimburse VPA promptly for all amounts expended in connection therewith.

ARTICLE IX.

ACCOUNTING, AUDITING AND BUDGETING

Section 9.1 Accounting Systems.

VIT shall establish and maintain an accounting system in accordance with generally accepted accounting principles, and shall specifically include separate accounts for each of the Port Facilities subject to this Agreement.

The fiscal year of VIT shall be concurrent with the Fiscal Year of VPA.

Section 9.2 Financial Statements.

At the end of each fiscal year, VIT shall within 60 days have its financial statement audited by a certified public accountant licensed in Virginia. Within 90 days after the close of each fiscal year, the audit report shall be submitted to VPA. The report shall encompass all such matters customarily included in an annual audit report and shall specifically include a report on the internal control on which the audit was based, a statement that such report has been prepared in accordance with generally accepted auditing standards and the finding

(which may be in a separate report) of the firm conducting such audit as to whether the Gross Revenues and other moneys received by VIT during such fiscal year have been applied in accordance with this Agreement and otherwise in accordance with this Resolution.

Section 9.3 Accounts and Records.

The accounts and other records of VIT shall be open for inspection to representatives of VPA at all times during reasonable hours.

Section 9.4 Monthly Statements.

VIT shall furnish to VPA a detailed monthly financial statement(s) for each terminal constituting a part of the Port Facilities subject to this Agreement, and a consolidated statement(s) for all such terminals, which statements shall include, without limitation, the following: (i) an income statement, (ii) a balance sheet (consolidated statement only), as of the end of each month, (iii) a condensed budget comparison, (iv) the cash receipts and disbursements, (v) a listing of payments for equipment and capital projects, (vi) an accounts receivable aging schedule, and (vii) the corporate log of ships tonnage and container activity report.

Section 9.5 Preparation of Annual Budget.

At least sixty (60) days prior to the beginning of each fiscal year, VPA and VIT staff members shall meet to develop a basis for structuring the VIT Gross Revenues and expense budget and cash flow plan for the following year. They shall calculate for recommendation to the VPA Board of Commissioners the anticipated monthly transfers by VIT to VPA of VIT Net Revenues and shall review the status of budgeted equipment purchases and capital projects including those which the VPA expects to fund other than under the Resolution and this Agreement.

Section 9.6 Annual Budget.

At least thirty (30) days prior to the beginning of each fiscal year, VIT shall submit to VPA for its review and approval an annual budget for such fiscal year for each terminal constituting a part of the Port Facilities subject to this Agreement, and in consolidation, broken down by calendar months, of the Current Expenses of VIT, as defined in Section 101 of the Resolution, in the operation, repair and maintenance of the terminals during such fiscal year. The budget shall be in a form and reasonable detail generally conforming to budgets of public authorities operating facilities substantially comparable to the Port Facilities subject to this Agreement and shall include, among other costs: (i) compensation of employees and officers, stating the number of employees, (ii) fees to independent contractors and service contractors, (iii) cost of materials, supplies and equipment, (iv) insurance costs, (v) cost of maintenance dredging, (vi) expenditures for marketing and business promotion, and (vii) such other costs and expenses to be incurred as Current Expenses during such fiscal year. VIT shall also make available to VPA such other information as VPA may reasonably request in connection with the preparation of such budget. The budget submission shall also include estimated costs and priorities of operational equipment to be purchased by VIT and capital maintenance and improvement projects planned for accomplishment in the following year. The budget shall be supported by estimated financial schedules for the year, in reasonable detail, broken down by calendar months, of (i) the estimated surplus or deficit, (ii) the estimated receipts and disbursements, and (iii) estimates of expenditures for operating equipment, renovations, alterations, rebuilding, replacements, additions, improvements and extraordinary maintenance in and to the Port Facilities. VPA shall promptly review such budget and inform VIT either of its approval or its disapproval; in the event of the latter, VPA

shall submit items in question to VIT for explanation, clarification or modification. VIT and VPA agree that such budget shall be approved and adopted not later than June 1 in each fiscal year.

Section 9.7 VIT to Comply with Budget.

VIT shall comply with such budget as approved and shall not deviate therefrom, incur any additional expenses or change the manner of the operation of the Port Facilities subject to this Agreement without VPA's approval, except for an emergency or other extraordinary circumstances that make such approval impractical and except that VIT may reallocate any amount budgeted with respect to any item of Current Expense in the applicable budget estimate to another item of Current Expense budgeted therein so long as the total amount of expenditures for Current Expenses authorized by such budget shall not be exceeded. The Executive Director of VPA shall inform the VPA Board of Commissioners at least quarterly of the budget status. VPA and VIT staff members shall meet monthly to review the budget for progress against plan and determine any required changes to the budget. It is agreed that so long as any Bonds are outstanding, the VIT budget shall conform to applicable provisions of the Resolution, in particular Section 718.

Section 9.8 Payments from Operating Account, CEMA.

VIT agrees that it shall pay from money held in the Operating Account its Current Expenses, in conformity with the applicable budget, incurred in the operation, repair and maintenance of the Port Facilities subject to this Agreement. Payments for any property or improvement not within the purview of Current Expenses shall be made by VIT, only from the Capital and Extraordinary Maintenance Account in accordance with Section 3.2C. In addition, a certificate shall be signed by a duly designated officer or employee of VIT which

shall be attached to such requisition certifying that (i) obligations in the stated amounts have been incurred by VIT and are presently due and payable and that each such obligation was properly incurred as an item of justified expense and has not been paid, (ii) there has not been filed with or served upon VIT notice of any lien or attachment or a claim not then released affecting the right of such payee to receive payment of the amount stated in such requisition, and (iii) the total amount of such payments for Current Expenses will not be in excess of what is a reasonable balance therefor in the respective budget or any amendment thereof or supplement thereto.

VIT further covenants that said expenses incurred in any fiscal year will not exceed the reasonable and necessary amount thereof.

Section 9.9 Claims for Damages.

VIT shall receive and dispose of claims for damages arising in connection with the Port Facilities subject to this Agreement; provided that no claim for more than Ten Thousand Dollars (\$10,000) payable from revenues of the Port Facilities shall be paid by VIT without the prior written approval of the VPA Executive Director or his duly authorized designee. All such claims and all settlements shall be promptly reported in writing by VIT to VPA.

ARTICLE X.

SECURITY

Section 10.1 Security Rules.

VPA shall adopt all Rules and Regulations governing the security of the Port Facilities subject to this Agreement with input and advice from VIT. Rules and Regulations shall be uniform, to the extent deemed practicable by VPA.

Section 10.2 VPA to Provide Security.

VPA will provide, or cause to be provided, all security at the Port Facilities subject to this Agreement. VPA shall cooperate with VIT to meet security needs.

ARTICLE XI.

UTILITIES

Section 11.1 VIT to Contract for Utilities.

VIT will contract for utilities serving the Port Facilities subject to this Agreement unless otherwise directed by VPA.

Section 11.2 VIT to Pay for Utilities.

VIT will pay the full cost of the utility services provided under such contracts.

ARTICLE XII.

MISCELLANEOUS PROVISIONS

Section 12.1 Amendments.

This Agreement may be amended only in accordance with the provisions of Section 1104 or 1105 of the Resolution.

Section 12.2 Operating Agreement Only.

This Agreement provides solely for the operation of the Port Facilities subject to this Agreement by VIT, and conveys no interest in real or personal property to VIT. VIT may not assign any of its rights or obligations under this Agreement to others without the prior written consent of the Board of Commissioners of VPA; provided, however, that VIT may, with the prior written consent of VPA, delegate to any VIT Affiliate any of VIT's rights or obligations under this Agreement. For purposes hereof, the term "VIT Affiliate" shall mean any person or entity that directly or indirectly controls, is controlled by, or is under common control with,

VIT. In addition, VIT may, with reasonable prior notice to and consent by VPA, permit others to occupy portions of the Port Facilities subject to this Agreement by permit or license for purposes consistent with the operation thereof.

Section 12.3 Other Definitions.

All capitalized terms used in this Agreement and not defined herein shall have the meanings accorded them by the Resolution. In the event of any conflict between the provisions of this Agreement and the Resolution, the provisions of the Resolution shall control.

Section 12.4 Effectiveness and Construction of Certain Amendments.

In no event shall any amendment to this Agreement authorized by the VPA Board of Commissioners to implement amendments to the Resolution become effective prior to the time of effectiveness of such amendments to the Resolution. Such amendments to this Agreement shall be construed so as to faithfully implement such correlative Resolution amendments without diminishing or enlarging their scope.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their authorized officers and to have their respective seals impressed hereon and duly attested, all as of the date and year first above written.

VIRGINIA PORT AUTHORITY

By: _____
CEO and Executive Director

VIRGINIA INTERNATIONAL TERMINALS, LLC

By: _____
Chief Operating Officer

By: _____
Chief Sales Officer