

**Proposed Commitments to be made by Modern Terminals Limited and HPHT Limited to the Competition Commission pursuant to section 60 of the Competition Ordinance (Cap 619)**

- 1 MTL and HPHT agree to make the following Commitments under section 60 of the Competition Ordinance to address the Commission's competition concerns in respect of their Joint Operating Agreement. The Commitments are offered in order to bring the Commission's investigation of the Joint Operating Agreement in case EC/03AY to a close. They are conditional upon being accepted by the Commission in a Commitments Decision.
- 2 The Commitments are made by the Parties on a voluntary basis. The offering of the Commitments by the Parties does not constitute an admission by the Parties of any contravention of the Competition Ordinance or more generally of any wrongdoing.
- 3 The objectives of the Joint Operating Agreement include enhancing the efficiency and overall competitiveness of the Port of Hong Kong, increasing utilisation and improving the Parties' service offering to the benefit of their customers. The Commitments have been made to ensure that these objectives are realised in relation specifically to the provision of Gate Terminal Services by the Parties, so that the customers of Gate Terminal Services receive a fair share of the relevant benefits generated by the Alliance.
- 4 These Commitments are without prejudice to the Parties' position should the Commission or any other party commence or conduct proceedings or other legal actions against any of the Parties.

**Definitions**

- 5 For the purpose of these Commitments, the following terms shall have the following meanings:

**Affiliates** means, in respect of each of the Parties, a subsidiary controlled by the Party, a holding company controlling the Party, or a subsidiary controlled by such holding company;

**Annual Compliance Reports** means the annual written reports prepared by the Parties in English on their compliance with the Commitments within the Reporting Period, to be prepared and submitted in accordance with paragraphs 18 to 21 below;

**Appointment Proposal** has the meaning given in paragraph 23;

**ACT** means Asia Container Terminals Limited;

**CCT** means Chiwan Container Terminal Co. Limited;

**CHT** means COSCO-HIT Terminals (Hong Kong) Limited;

**Commitments** means the commitments made by the Parties hereunder pursuant to section 60 of the Competition Ordinance;

**Commission** means the Competition Commission established under the Competition Ordinance or any of its successors;

**Commitments Decision** means a formal decision by the Commission under section 60(1) of the Competition Ordinance to accept the Commitments such that section 60(4) of the Competition Ordinance applies with respect to the Commission's investigation of the Joint Operating Agreement in case EC/03AY;

**Competition Ordinance** means the Competition Ordinance (Cap 619);

**Consumer Price Index** means the Consumer Price Index 'A' published by the Census and Statistics Department of the Government of the Hong Kong Special Administrative Region;

**Container Charges for Gate Traffic** means the net value of each charge item (i.e. each contractually specified tariff charge item less any discounts available pursuant to the terms of any Relevant Discount Scheme) applied by the Parties to shipping line customers for Gate Container Handling Services provided by the Parties. For any discount under a Relevant Discount Scheme provided in lump sum form, the relevant discount will be pro-rated for each charge item based on the proportion of Relevant Container throughput compared to the shipping line customer's total throughput;

**External Truck Turnaround Time** means the time taken by an external truck to enter the gate, complete all operations required for the collection or drop-off of a container at the Parties' terminals in Kwai Tsing, and exit the gate;

**Effective Date** means the date on which the Parties receive formal notification of the Commitments Decision;

**Gate Container Handling Services** covers the following services in relation to Relevant Containers:

(i) for import containers: discharge from a vessel alongside to container yard (CY) stack, remaining there for storage (including overtime storage); transfer from CY stack to road transportation or container freight station (CFS); transfer to CY stack on return of the empty container; and

(ii) for export containers: transfer of empty container from CY stack to CFS or road transport; thence receiving laden container from CFS or road transport to CY stack, remaining there for storage (including overtime storage); loading on a vessel alongside;

**Gate Terminal Services** means Gate Container Handling Services and Gate Traffic-Related Services;

**Gate Traffic-Related Services** means services provided by the Parties or by OnePort (to the extent the Parties solely or together jointly control OnePort) to a user other than the shipping lines in relation to Relevant Containers for which there is no free alternative and of which the Parties or OnePort are, other than the Operator of Container Terminal 3, the sole suppliers in Hong Kong, including the services provided in relation to the Port Security Charge, with the exclusion of any services that the Parties or OnePort are obliged to provide by virtue of any government order or regulation;

**Governing Committees of the Alliance** means the Executive Committee, the Joint Management Committee, the Commercial Committee and the Finance Committee established under the Joint Operating Agreement;

**HIT** means Hongkong International Terminals Limited;

**HPHT** means HPHT Limited;

**Initial Baseline Report** has the meaning given in paragraph 18;

**Joint Operating Agreement** means the Hong Kong Seaport Joint Operating Alliance Agreement entered into between MTL, HIT, CHT and ACT on 8 January 2019;

**Mandate** means the Monitoring Trustee's mandate specified in paragraph 31;

**Monitoring Trustee** means an individual approved and appointed in accordance with the present Commitments (or any substitute approved and appointed thereto);

**Monitoring Trustee Reports** are the reports produced by the Monitoring Trustee under paragraph 32 in respect of Initial Baseline Reports or Annual Compliance Reports;

**Monitoring Trustee Recommendation** has the meaning given in paragraph 34(a);

**MTL** means Modern Terminals Limited;

**OnePort** means OnePort Limited;

**Operator of Container Terminal 3** means CSX World Terminals Hong Kong Ltd ("**CSX**"), the company currently operating the container terminal 3 at Kwai Tsing, or any of its successors which will operate the container terminal 3 at Kwai Tsing in place of CSX;

**Parties** means MTL and HPHT, each a "Party";

**Port Security Charge** means the charge applied to all laden import or export containers entering or leaving the Parties' terminals at the Kwai Tsing port by road transport to allow the Parties to achieve full compliance with the International Ship & Port Facility Security Code (ISPS), which was drawn up by the International Maritime Organisation (IMO) entered into force on 1 July 2004 and was adopted into Hong Kong law on 29 June 2004 in the Merchant Shipping (Security of Ships & Port Facilities) Ordinance (Cap 582). OnePort collects such charge on behalf of the Parties;

**Reciprocal Sub-contracting Arrangements** means the current and future reciprocal sub-contracting arrangements respectively entered into between each of the Parties (or their Affiliates) with the Operator of Container Terminal 3 concerning the provision of container handling and related services;

**Reference Date** means 1 April 2019;

**Relevant Containers** means all empty and laden (including reefer) containers of ISO (International System of Units) units of 20, 40 or 45 feet in length transported directly onto or from an oceangoing container vessel from or to the Kwai Tsing port by truck for import into or export out of Hong Kong;

**Relevant Discount Scheme** means a rebate, volume incentive or other discount scheme agreed between one of the Parties and their shipping line customers, the availability or applicability of which may be triggered on the basis of the handling of Relevant Containers, either by themselves or in conjunction with containers for other types of traffic or other conditions.

**Reporting Period** means the duration of the Commitments as defined in paragraph 14; and

**SCT** means Mega Shekou Container Terminals Limited.

### **Effective date of the Commitments**

6 These Commitments shall take effect from the Effective Date.

### **The Commitments**

A. *Gate Container Handling Services*

7 Charge levels: Unless otherwise requested by their shipping line customers and agreed by the Parties, the Parties shall reflect the following terms in the contractual arrangements specifically governing the provision of Gate Container Handling Services concluded with their shipping line customers:

- (a) Container Charges for Gate Traffic shall be reflected separately (on a per charge item and on a per unit basis) from other charges on the invoices addressed by the Parties to shipping line customers.
  - (b) Container Charges for Gate Traffic that apply to each shipping line customer shall not exceed (on a per charge item, per unit and, if applicable, per day basis) the charge levels applicable pursuant to the arrangements in place as at the Reference Date, provided that each shipping line customer continues to meet applicable requirements to qualify for such charge levels (e.g. qualifying conditions for the application of Relevant Discount Schemes). For the avoidance of doubt, to the extent that a shipping line customer fails to meet the applicable requirements for a particular Relevant Discount Scheme, the Container Charges for Gate Traffic that apply to that customer shall not exceed (on a per charge item, per unit, and if applicable, per day basis) the contractually specified tariff charges (i.e. the charges before any discounts available pursuant to that Relevant Discount Scheme) pursuant to the arrangements in place as at the Reference Date.
  - (c) Any contractually specified free storage period for Relevant Containers (i.e. the initial storage period provided at no additional charge as part of the Gate Container Handling Services) pursuant to the arrangements in place as at the Reference Date shall continue to remain in place.
  - (d) For the avoidance of doubt, the Parties shall be at liberty to negotiate with their shipping line customers for prices below these charge levels, for longer free storage periods, or for qualifying conditions for the application of Relevant Discount Schemes that are no less favourable than the relevant conditions applicable to each shipping line customer pursuant to the arrangements in place as at the Reference Date.
- 8 Service levels: Unless otherwise requested by their shipping line customers and agreed by the Parties, and subject to customary *force majeure* clauses (including in case of extreme weather, typhoons, strong winds, heavy rain, strike and riot), the Parties shall achieve the following:
- (a) Gate access to the terminals operated by the Parties in Kwai Tsing will be available 24 hours per day and throughout the year.
  - (b) The Parties maintain a monthly average External Truck Turnaround Time of not more than 60 minutes for the handling of Relevant Containers.
  - (c) Information about the opening times and the expected average External Truck Turnaround Time will be publicised and clearly communicated to port users within three months of the Effective Date. The Parties' actual monthly performance in respect of the average External Truck Turnaround Time will be communicated on a quarterly basis to port users (such as through the Parties' websites, the HKiPort app or similar channels).
- B. Gate Traffic-Related Services*
- 9 Regarding services that qualify as Gate Traffic-Related Services as at the Effective Date: unless otherwise requested by users and agreed by the Parties, and for as long as these services qualify as Gate Traffic-Related Services, the Parties shall reflect the following in the relevant arrangements governing the provision of these services:
- (a) Charges for these services shall be collected separately or, when collected with other charges, reflected separately from these other charges on relevant invoices; and
  - (b) The charge levels for these services shall not exceed the charge levels pursuant to the arrangements in place as at the Reference Date.
- 10 Regarding services that do not exist and/or qualify as Gate Traffic-Related Services as at the Effective Date but which qualify as such services after the Effective Date: unless otherwise

requested by users and agreed by the Parties, and for as long as these services qualify as Gate Traffic-Related Services:

- (a) Charges for these services shall be collected separately or, when collected together with other charges, reflected separately from these other charges on relevant invoices;
- (b) The total annual value of charges for services that exist but do not qualify as Gate Traffic-Related Services as at the Effective Date but which become qualified as such service after the Effective Date shall not exceed HK\$20 million in any given year;
- (c) The total annual value of charges for services that do not exist as at the Effective Date but are introduced and qualify as Gate Traffic-Related Services after the Effective Date shall not exceed HK\$30 million in any given year; and
- (d) The combined total annual value of the above charges shall not exceed HK\$45 million in any given year.

*C. Provision of container handling and related services to the Operator of Container Terminal 3*

- 11 Unless otherwise requested by the Operator of Container Terminal 3 and agreed by the Parties, the Parties shall maintain Reciprocal Sub-contracting Arrangements with the Operator of Container Terminal 3 and ensure that the terms and conditions of the Reciprocal Sub-contracting Arrangements are no less favourable to the Operator of Container Terminal 3 than those that are applicable as at the Reference Date.

*D. Governing Committees of the Alliance*

- 12 No MTL representatives appointed to serve on the Governing Committees of the Alliance shall be appointed as directors of CCT or SCT.

**Indexation**

- 13 When the upward changes in the annual Consumer Price Index in the period since the Reference Date cumulatively exceed a threshold of five and a half per cent the following shall be permitted to increase by up to the cumulation of those upward changes in the annual Consumer Price Index since the Reference Date:
- (a) the charge levels of the Container Charges for Gate Traffic at the Reference Date, as permitted under paragraph 7 above;
  - (b) the charge levels at the Reference Date for services that qualify as Gate Traffic-Related Services as at the Effective Date (for as long as these services qualify as Gate Traffic-Related Services), as permitted under paragraph 9 above;
  - (c) the permitted total values under paragraphs 10(b), 10(c) and 10(d) above for services that do not exist and/or qualify as Gate Traffic-Related Services as at the Effective Date but which qualify as such services after the Effective Date (for as long as these services qualify as Gate Traffic-Related Services); and
  - (d) the applicable rates at the Reference Date for the provision of services to the Operator of Container Terminal 3 as permitted under paragraph 11 above.

**Duration, release and variations**

- 14 The Commitments under paragraphs 7, 9, 10, 11 and 12 shall apply for:
- (a) the duration of the Joint Operating Agreement;

- (b) a period of eight consecutive years commencing on the Effective Date; or
- (c) a period of five consecutive years commencing on the Effective Date, should the Commission not within that period, upon the reasoned request of the Parties to be made within a reasonable timeframe, have completed a review of the Commitments and provided an explanation to the Parties as to whether or not it proposes to vary, substitute or release the Commitments under section 62 of the Competition Ordinance,

whichever is shorter.

- 15 The Commitments under paragraph 8 shall apply for the duration of the Joint Operating Agreement, unless otherwise agreed by the Commission.
- 16 Without prejudice to the generality of section 62 of the Competition Ordinance, the Parties may request at any time that the Commission reviews (with any such review being at the Commission's discretion) the Commitments with a view to varying, substituting or releasing the Commitments where there has been a change to the reasons or facts on which the Parties' decision to make Commitments are based or where the Commission has reasonable grounds for believing that its concerns about a possible contravention of a competition rule no longer arise.
- 17 The Parties shall make best endeavours to respond to any requests for documents and information made by the Commission in any reviews conducted pursuant to paragraph 14(c), paragraph 16 or section 62 of the Competition Ordinance.

## **Reporting, compliance and monitoring**

### *A. Compliance reporting*

- 18 For the purpose of ensuring compliance with the Commitments by the Parties, unless otherwise agreed between the Parties and the Commission:
  - (a) Each of the Parties will, for the duration of the Reporting Period and any subsequent period required in order to comply with their obligations under this paragraph 18, submit to the Commission separate and confidential Annual Compliance Reports, duly certified by an authorised officer of the Party. Each Annual Compliance Report shall be submitted within six months following the end of each Party's financial year, and shall relate to the preceding financial year (or the part of the preceding financial year that falls within the Reporting Period).
  - (b) Each of the Parties will submit to the Commission within two months following the appointment of the Monitoring Trustee separate and confidential reports, duly certified by an authorised officer of the Party ("**Initial Baseline Reports**"), showing the following information:
    - (i) the contractual arrangements relevant to Container Charges for Gate Traffic in place as at the Reference Date, for the purpose of facilitating verification of compliance with the commitments under paragraphs 7(b) and 7(c) above;
    - (ii) the services that qualify as Gate Traffic-Related Services as at the Effective Date and the charge levels for such services as at the Reference Date, for the purpose of facilitating verification of compliance with the commitments under paragraph 9(b) above;
    - (iii) the terms and conditions for the provision of services to the Operator of Container Terminal 3 as at the Reference Date, for the purpose of facilitating verification of compliance with the commitments under paragraph 11 above; and
    - (iv) the Parties' proposed methodology for assessing whether they have complied with the commitments under paragraphs 7 to 11 above.

- 19 If the Monitoring Trustee Report identifies shortcomings in the Annual Compliance Report or the Initial Baseline Report submitted by a Party (for example as regards the methodology adopted or the information and evidence provided), and if the Commission considers it appropriate, for instance as a result of these shortcomings preventing the Monitoring Trustee from properly discharging its obligations under the Mandate, the Commission may request the relevant Party to submit a revised Annual Compliance Report or a revised Initial Baseline Report addressing these shortcomings within one month of the Commission making such request.
- 20 Each Annual Compliance Report shall include the following information regarding each of the Commitments (for so long as they remain in effect), accompanied by any relevant evidence in support that is necessary for the Monitoring Trustee to discharge its obligations under the Mandate:
- (a) The Parties' confirmation that their respective Container Charges for Gate Traffic have complied with the terms and requirements under paragraph 7 of the Commitments. Relevant supporting evidence may include, by way of non-exhaustive examples: (i) copies of the Parties' relevant contracts and tariff agreements as applied to each of their relevant customers; (ii) where relevant, any pro-rata allocations of discounts under a Relevant Discount Scheme provided in lump sum form; and (iii) where relevant, calculations and/or explanations by the Parties illustrating that any changes made to relevant contracts and tariff agreements since the Reference Date are compliant with these Commitments;
  - (b) The Parties' confirmation that their service levels have complied with the terms and requirements under paragraph 8 of the Commitments. Relevant supporting evidence may include, by way of non-exhaustive examples: copies of the published records of monthly performance of average External Truck Turnaround Time and of terminal opening times;
  - (c) The Parties' confirmation that their and OnePort's respective charges in respect of Gate Traffic-Related Services have complied with the terms and requirements under paragraphs 9 and 10 of the Commitments. Relevant supporting evidence may include, by way of non-exhaustive examples: (i) relevant documentation showing, for each of these services, the breakdown, charge levels and total revenues generated by the Parties and by OnePort, extracted from their respective accounting systems, together with an auditor's letter certifying these figures (if required by the Monitoring Trustee); (ii) information about any new service introduced after the Effective Date which is provided by the Parties or by OnePort (to the extent the Parties solely or jointly control OnePort) to a user other than the shipping lines, and an explanation as to whether or not the Parties consider that service to fall within the definition of Gate Traffic-Related Services; and (iii) in respect of any existing service that does not qualify as Gate Traffic-Related Services as at the Effective Date but which qualifies as such service after the Effective Date, or any new service that qualifies as Gate Traffic-Related Services after the Effective Date, information about the charge levels for that service, who is likely to bear the cost of the charge, and the annual revenue generated (or expected to be generated) by those charges;
  - (d) The Parties' confirmation that their respective Reciprocal Sub-contracting Arrangements with the Operator of Container Terminal 3 have complied with the terms and requirements under paragraph 11 of the Commitments. Relevant supporting evidence may include, by way of non-exhaustive examples: copies of the relevant Reciprocal Sub-contracting Arrangements;
  - (e) MTL's confirmation that it has complied with the terms and requirements under paragraph 12 of the Commitments. Relevant supporting evidence may include, by way of non-exhaustive examples: copies of the relevant documentation showing the current directors of CCT and SCT, as well as MTL's current representatives on the Governing Committees of the Alliance; and
  - (f) To the extent relevant, information as to what the Parties have done in order to implement any Monitoring Trustee Recommendations issued during the preceding financial year, or, as the case may be, information as to why the Parties consider that such Monitoring Trustee Recommendations are not appropriate.

21 Each Annual Compliance Report and Initial Baseline Report shall also include any other information, including as regards the Parties' respective business and accounting practices, that is necessary for the Monitoring Trustee to discharge its obligations under the Mandate.

*B. Appointment of a monitoring trustee*

22 **Approval and appointment of Monitoring Trustee.** A Monitoring Trustee shall be approved by the Commission and appointed by the Parties on the terms and in accordance with the procedure described below. The Monitoring Trustee shall assume its specified duties and obligations in order to ensure the Parties' compliance with the Commitments. The Monitoring Trustee shall:

- (a) Perform the functions of monitoring the Parties' fulfilment of the Commitments pursuant to the terms of the Mandate;
- (b) Possess the qualifications, experience and competence necessary to carry out the Mandate;
- (c) Be appointed for the duration of the Reporting Period and any subsequent period required in order to fulfil the Mandate;
- (d) Be independent of the Parties and the companies belonging to their respective groups (being the Parties and their Affiliates). In particular, the Monitoring Trustee shall not provide services to, or become an employee of, the Parties during the period specified in sub-paragraph (c) above or for a period of one year following termination of the Monitoring Trustee's appointment if earlier. Any direct or indirect work, consulting or other relationship between the Monitoring Trustee and any of the Parties in the last three years must be disclosed in the Appointment Proposal (see paragraph 23 below);
- (e) Neither have nor become exposed to a conflict of interest and at all times act for the sole benefit of the Commission;
- (f) Have no duties of good faith, of a fiduciary nature, or otherwise, to the Parties; and
- (g) Be remunerated by the Parties in a way that does not impede the independent and effective fulfilment of the Mandate.

23 **Proposal by the Parties.** Within one month of the Effective Date, unless otherwise agreed with the Commission, the Parties shall submit to the Commission for approval a list of at least two individuals whom the Parties consider suitable candidates to fulfil the duties of the Monitoring Trustee. The proposal shall contain sufficient information for the Commission to verify whether these candidates fulfil the requirements set out in paragraph 22 and shall include the following documents in draft form:

- (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Monitoring Trustee to fulfil its Mandate under these Commitments;
- (b) the outline of a work plan which describes how the Monitoring Trustee intends to carry out the tasks assigned to it; and
- (c) the terms and conditions of appointment

(collectively the "**Appointment Proposal**").

24 **Approval or rejection by the Commission.** The Commission shall have the discretion to approve or reject the proposed Monitoring Trustee candidates and to approve the Appointment Proposal subject to any modifications it deems necessary for the Monitoring Trustee to fulfil the Mandate. For the avoidance of doubt this includes, but is not limited to, ensuring that the Monitoring Trustee acts independently, is able to be effective and does not become exposed to conflicts of interest. If only one proposed Monitoring Trustee candidate is approved, the Parties shall appoint that candidate as



Monitoring Trustee, in accordance with the Appointment Proposal approved by the Commission. If more than one proposed Monitoring Trustee candidate are approved, the Parties shall be free to choose which of the approved candidates to appoint as Monitoring Trustee.

- 25 ***New proposal by the Parties.*** If all the proposed Monitoring Trustees are rejected, the Parties shall propose at least two more individuals within one month of being informed of the rejection(s) by the Commission in accordance with the requirements and the procedure set out in paragraphs 22 to 24 above, unless otherwise agreed with the Commission.
- 26 ***Monitoring Trustee nominated by the Commission.*** If all further proposed Monitoring Trustees are rejected by the Commission, the Commission shall nominate a Monitoring Trustee, whom the Parties shall appoint in accordance with the Appointment Proposal as approved by the Commission.
- 27 ***Liability.*** The Parties hereby agree that the Monitoring Trustee (and, where appropriate, its employees or agents) shall have no liability to the Parties for any liabilities arising out of the performance of the Monitoring Trustee's duties under the Commitments, except to the extent that such liabilities result from his or her wilful default, recklessness, gross negligence or bad faith. This does not however prevent the Parties from seeking specific performance of their contractual terms with the Monitoring Trustee, including in particular in respect of confidentiality obligations.

C. *Replacement, discharge and reappointment of the Monitoring Trustee*

- 28 If the Monitoring Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Monitoring Trustee to a conflict of interest:
- (a) the Commission may, after hearing the Monitoring Trustee, require the Parties to replace the Monitoring Trustee; or
  - (b) with the prior approval of the Commission, the Parties may replace the Monitoring Trustee.
- 29 If the Monitoring Trustee is to be replaced, it may be required to continue its functions until a new Monitoring Trustee is in place to whom the Monitoring Trustee has effected a full hand-over of all relevant information. The new Monitoring Trustee shall be approved and appointed in accordance with the procedure set out in paragraphs 22 to 24 above.
- 30 Aside from being replaced in accordance with paragraph 28 above, the Monitoring Trustee shall cease to act as Monitoring Trustee only after the Commission has discharged it from its duties. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the Commitments have not been fully and properly implemented.

D. *The Monitoring Trustee's mandate*

- 31 The Monitoring Trustee's mandate shall include the obligations set out in paragraphs 32 to 34 and the additional terms described in paragraph 35 (together the "**Mandate**").
- 32 ***Verification of compliance reports.*** Unless otherwise agreed between the Parties and the Commission:
- (a) Two months following the submission of each Annual Compliance Report, including any revised Annual Compliance Report, the Monitoring Trustee shall provide to the Commission a written Monitoring Trustee Report which shall:
    - (i) confirm the accuracy of the compliance assessment and the suitability of the methodology used by the Parties where relevant;
    - (ii) identify any respects in which the Parties have failed to comply with these Commitments or the Monitoring Trustee has been unable to discharge its obligations

under the Mandate, including as a result of insufficient or inadequate information and supporting evidence being provided as part of the Annual Compliance Reports. Where the Monitoring Trustee identifies a failure to comply with these Commitments or an inability to discharge the Mandate the report shall, after carefully considering any submissions and engaging in discussions with the Parties, (x) provide details sufficient to identify the nature, date and effect (actual or anticipated) of the relevant failure and/or inability and (y) include recommendations on how to remedy the alleged failure and/or inability; and

- (iii) report generally on the progress of the discharge of the Mandate.
  - (b) Two months following the submission of the Initial Baseline Report, including any revised Initial Baseline Report, the Monitoring Trustee shall provide to the Commission a written Monitoring Trustee Report which shall:
    - (i) confirm the suitability of the methodology used by the Parties;
    - (ii) identify any respects in which the Monitoring Trustee has been unable to discharge its obligations under the Mandate, including as a result of any shortcomings with the information provided by the Parties pursuant to paragraph 18(b). Where the Monitoring Trustee identifies an inability to discharge the Mandate the report shall, after carefully considering any submissions and engaging in discussions with the Parties, (x) provide details sufficient to identify the nature, date and effect (actual or anticipated) of the relevant inability and (y) include recommendations on how to remedy the alleged inability; and
    - (iii) report generally on the progress of the discharge of the Mandate.
- 33 The Parties shall receive at the same time as the Commission does a full copy of each Monitoring Trustee Report relating to their respective Annual Compliance Reports and Initial Baseline Report.
- 34 ***Other elements of the Monitoring Trustee's mandate.*** In addition to the obligations set out above in relation to the Monitoring Trustee Reports, the Parties agree that at any time during the Reporting Period the Monitoring Trustee :
- (a) may propose to the Parties such measures as the Monitoring Trustee considers necessary to ensure the Parties' compliance with the Commitments or the fulfilment of the Mandate ("**Monitoring Trustee Recommendation**"); prior to issuing such a recommendation, the Monitoring Trustee shall carefully consider and engage in discussions with the Parties in respect of any submissions made by the Parties regarding their compliance with the Commitments, with any previously issued Monitoring Trustee Recommendations, or with any issue or concern raised by relevant parties under sub-paragraph (b);
  - (b) may receive and consider any issues or concerns regarding the Parties' compliance with the Commitments raised by customers of Gate Terminal Services or the Operator of Container Terminal 3, and shall notify the Commission and the Parties of any such issues or concerns within a reasonable timeframe;
  - (c) shall report, in writing, to the Commission in relation to the Parties' compliance with the Commitments where the Commission suspects that the Parties have failed to comply with the Commitments and has communicated this suspicion to the Monitoring Trustee requesting a written report; and
  - (d) shall comply with any instruction or order given by the Commission related to the Parties' compliance with these Commitments. Such order may be made on the Commission's own initiative or at the request of the Monitoring Trustee or the Parties.

- 35 **Amendments to the Mandate.** The Monitoring Trustee shall be restricted from undertaking any work not covered by the Mandate unless it has received written instructions from the Commission and obtained the Parties' prior approval. Where the Monitoring Trustee proposes to undertake work not covered by the Mandate, it shall discuss the work involved with the Commission and the Parties and obtain their prior approval before undertaking any work.
- 36 **Confidentiality.** The Monitoring Trustee is to be bound to respect the confidentiality of all information provided to it or obtained by it in the course of the exercise of the Mandate. This obligation shall not prevent the Monitoring Trustee from providing all such information to the Commission. This obligation remains valid after the expiry of the Mandate as long as the information remains confidential, potentially including as between the Parties, unless otherwise agreed to by the relevant Party or Parties. This obligation shall be detailed in a separate protocol binding on the Monitoring Trustee.
- E. Parties' obligations in respect of facilitating the performance of the Mandate by the Monitoring Trustee and review by the Commission*
- 37 **Provision of assistance and information.** The Parties shall provide the Monitoring Trustee with such assistance and information required by the Monitoring Trustee in carrying out the Mandate. This assistance and information shall include providing the Monitoring Trustee with a copy of the Initial Baseline Report and of the Annual Compliance Reports and access to any of the Parties' books, records and/or documents, data, technical information, management or other personnel, facilities or sites necessary to fulfil the Mandate.
- 38 **Review by the Commission.** For the purposes of verifying, determining or securing compliance with the Commitments, the Commission may request the Parties to provide documents and/or information to the Commission. The Parties shall provide the Commission with the requested documents and/or information within 14 days of the Commission's request or at a later date specified in the Commission's request.
- 39 On request by the Commission, the Parties shall supply details of compliance with the obligations referenced in paragraph 37 within 14 days of the Commission's request or at a later date specified in the Commission's request.
- 40 **Publicity.** The Parties shall inform customers of Gate Terminal Services and the Operator of Container Terminal 3 of the existence of these Commitments and of the Monitoring Trustee's contact details (such as through the Parties' websites or other similar channels).

#### **Procurement commitment**

- 41 The Parties procure that their Affiliates and OnePort, to the extent the Parties solely or together jointly control OnePort, shall comply with the Commitments (for as long as such control exists and to the extent that such Affiliates and OnePort are related to the Parties' obligations under the Commitments).

#### **General provisions**

- 42 Any notice delivered pursuant to these Commitments shall be delivered by hand, or sent by email, facsimile, registered post or pre-paid post. Any notice shall be deemed to have been received: (i) if delivered by hand, when delivered; (ii) if sent by email or facsimile, on receipt of confirmation of transmission or delivery; or (iii) if sent by pre-paid post, (in the absence of evidence of earlier receipt) three business days after posting from within Hong Kong. Any notice received on a day which is not a business day shall be deemed to be received on the next following business day.
- 43 These Commitments are governed by the laws of Hong Kong and subject to the jurisdiction of the Hong Kong courts.

For and on behalf of

Modern Terminals Limited

*[Signed]*

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Name:

Title:

Date:

For and on behalf of

HPHT Limited as co-manager of CHT and ACT

*[Signed]*

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Name:

Title:

Date: