

CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is made on the **[DAY]** day of **[MONTH] [YEAR]**

BETWEEN:

(1) JSC Poti Sea Port Corporation, a private company incorporated under the laws of Georgia with registration number 215080999 and registered office address at 52, D. Agmashenebeli str, Poti, Georgia ("PARTY A");

AND

(2) **INSERT FULL NAME PARTY B** a private company incorporated under the laws of ----- with registration number ----- and registered office address at ----- ("PARTY B");

Together the "**Parties**", individually a "**Party**".

WHEREAS:

The Parties wish to share certain Confidential Information (as defined in Clause 1.1) with each other and its Affiliates for the purposes of: Party B participation on the tender process for the Peer Review of the JSC Poti Sea Port Corporation.

NOW IT IS HEREBY AGREED as follows:

1. CONFIDENTIAL INFORMATION

1.1 For the purposes of this Agreement:

"**Affiliates**" means:

- (a) in relation to a body corporate, any subsidiary or holding company of any tier thereof and any subsidiary of any tier of any such holding company or any entity, which Controls, is Controlled by, or is under the common Control of any or all of the above entities; and
- (b) in relation to an individual, any other individual, partnership, trust, company or other entity in relation to which that individual has Control, is Controlled by, or is under the common Control of any or all of the above entities and any spouse or child of such individual;

"**Confidential Information**" means any information whether furnished before, on or after the date hereof in any form whatsoever, including but not limited to written, received through electronic transmission, on disk or CD-ROM, DVD-ROM or otherwise whether directly or indirectly, and whether expressly marked to be confidential or not

"**Controlled**" and "**Control**" means the holding of power to direct or cause the direction of management, policies and decisions of a company, corporation or other entity including, without limitation, through control by direct or indirect means of more than fifty per cent (50%) of the voting rights in such company, corporation or other entity.

2. LIMITATION OF SCOPE OF CONFIDENTIAL INFORMATION

2.1 The following shall not be regarded as Confidential Information:

- (a) information which was or becomes public knowledge or generally known in the business community at the time of disclosure through no breach of any Party's obligations hereunder;
- (b) information which was in the possession of a Party at the time of disclosure;

- (c) information which was received by a Party from a third party having no obligation of confidentiality with respect to such information.

3. **NON-DISCLOSURE OF CONFIDENTIAL INFORMATION**

3.1 For good and valuable consideration (receipt and the sufficiency of which are hereby acknowledged) each Party covenants and agrees with respect to the Confidential Information that it shall:

- (a) be considered proprietary in nature and shall be held in strict secrecy and confidence;
- (b) not be divulged or disclosed directly or indirectly to any third party without the appropriate Party's prior written consent; and
- (c) not use the Confidential Information for any purpose, other than the assessment and evaluation of the Project (the "**Purpose**").

3.2 Notwithstanding clause 3.1, a Party may disclose the Confidential Information only to such of its or its Affiliates' directors, officers, employees, agents or advisers (collectively "**Representatives**") who need to know or need to have access to the Confidential Information for the Purpose. The relevant Party shall procure that its Representatives comply with this Agreement as if they were a party to it.

3.3 If discussions in relation to the Project cease, or a Party so requests in writing at any time, the other Party shall immediately:

- (a) return all the Confidential Information received by it; or
- (b) destroy or permanently erase or procure that its Representatives destroy or permanently erase all copies of the Confidential Information, other than copies that contain insignificant extracts from, or references to, Confidential Information, copies which are such only because they refer to the Project, copies automatically backed up by computer systems and which cannot be destroyed or that contain no Confidential Information other than information disclosed under clause 4.

4. **FORCED DISCLOSURE**

4.1 Each Party may disclose Confidential Information to the minimum extent required by:

- (a) any order of any court of competent jurisdiction or any competent judicial, governmental or regulatory body; or
- (b) the rules of any listing authority or stock exchange on which the shares of any of its Affiliates are listed; or
- (c) the laws or regulations of any country with jurisdiction over the affairs of any Party or its Affiliates.

4.2 Before either Party discloses any Confidential Information under this clause, it shall (to the extent permitted by law) use its reasonable endeavours to:

- (a) inform the other Party of the full circumstances of the disclosure and the Confidential Information that will be disclosed;
- (b) consult with the other Party as to possible steps to avoid or limit disclosure and take those steps where they would not result in significant adverse consequences to the first Party;
- (c) gain assurances as to confidentiality from the body to whom the Confidential Information is to be disclosed; and
- (d) where the disclosure is by way of public announcement, agree the wording with the other Party in advance.

- 4.3 The Parties shall co-operate with each other in bringing any legal or other proceedings to challenge the validity of the requirement to disclose Confidential Information (at the cost and expense of the Party seeking to avoid disclosure).
- 4.4 If either Party is unable to inform the other Party before Confidential Information is disclosed, it shall (to the extent permitted by law) inform the other Party immediately after the disclosure of the full circumstances of the disclosure and the information that has been disclosed.
- 4.5 Party A is a subsidiary of A.P. Møller-Mærsk A/S ("**APMM**"), a company listed on the NASDAQ OMX Nordic Exchange -Copenhagen, which may be legally obliged to publish certain information relating to it that could influence the price of its shares. Party B has been made aware that APMM may be required to announce certain details of the Project which may include Confidential Information, to the NASDAQ OMX Nordic Exchange -Copenhagen and agrees to allow Party A to use the Confidential Information for this purpose provided that Party A has complied with the provisions set forth in this clause.

5. **INTELLECTUAL PROPERTY**

- 5.1 The disclosure of Confidential Information by a Party to the other Party shall not grant the receiving Party any right, title, license or interest to or in relation to it. In particular, no right, title, license or interest is granted, directly or indirectly by this Agreement relating to any invention, discovery, patent, copyright, or other industrial or intellectual property right now or in the future held, made, obtained or transferable or licensable by either Party.

6. **DISCLAIMER**

- 6.1 Neither Party nor its respective Affiliates or Representatives shall be deemed by virtue of this Agreement to have made any representations or warranties, express or implied, as to the accuracy or completeness of any of the Confidential Information.
- 6.2 The Parties acknowledges and agree that they shall not be entitled to rely on the accuracy and completeness of the Confidential Information and shall formulate their own opinion and make their own analysis based on the Confidential Information and shall not rely on the Confidential Information *per se*.

7. **PARTIES' RIGHTS AND OBLIGATIONS**

- 7.1 The Parties agree that unless and until a definitive written agreement regarding the Project has been executed, neither Party will be under any legal obligation of any kind whatsoever with respect to such Project by virtue of this Agreement except for the matters specifically agreed to herein. The Parties further acknowledge and agree that they have the right, in their discretion, to reject any and all proposals made by the other Party or any of their Representatives with regard to the Project, and to terminate discussions and negotiations between the Parties at any time without any further obligation.

8. **VARIATION AND WAIVER**

- 8.1 Any variation of this Agreement shall be in writing and signed by or on behalf of both Parties to this Agreement.
- 8.2 No failure or delay by a Party in exercising any of its rights or pursuing any remedies available to a Party shall in any way constitute a waiver nor shall any single or partial exercise preclude any further exercise of any rights or remedies under this Agreement.
- 8.3 The terms of this Agreement are in addition to any duty of confidence which the Parties may owe to each other at law.

9. **SEVERABILITY OF PROVISIONS**

If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall not affect the other part of that provision or the other provisions of this Agreement which shall remain in full force and effect.

10. **NOTICES**

10.1 All notices (which expression includes any demand, request, consent or other communication) to be given under this Agreement must be in writing in the English language for the attention of the board of directors of the relevant Party to the address, or fax number, specified in this Agreement (or such other address, fax number or person as may be notified in accordance with the provisions of this Clause); and

must be:

- (i) sent by fax; or
- (ii) delivered personally; or
- (iii) sent by an internationally recognised courier if the notice is to be served overseas.

10.2 If a Party wishes to change its address for communication, it shall give the other Party not less than seven (7) days' notice in writing of the change desired.

10.3 A notice shall be deemed to have been duly given, delivered, made or served;

- (a) in the case of fax, when the sender receives one or more transmission reports showing the whole of the notice to have been transmitted to the correct fax number; or
- (b) if delivered to an officer or other designated representative of a Party or left at the address stated in this Agreement, at the time of such delivery.

11. **TERM**

This Agreement shall end upon the entry into force of a definitive agreement documenting the Project. If the Project does not materialize, the obligations of the Parties set out in this Agreement shall remain in effect for two (2) years from the date of this Agreement (the "**Term**"), without prejudice to any right of action or remedy which shall have accrued to either Party for breach of this Agreement up to and including the expiry of the Term.

12. **INDEMNITY AND EQUITABLE REMEDIES**

12.1 The Parties agree to indemnify and hold harmless each other from and against all actions, claims, damages, losses, expenses and costs (including reasonable legal fees) which they may incur or become liable for as a result of any breach or non performance by a Party of any of its obligations under this Agreement. Notwithstanding the above, neither Party shall be liable for any consequential or indirect loss or damages, including loss of use, loss of profit, loss of anticipated profit or any similar loss or damage.

12.2 The Parties acknowledge that remedies at law may be inadequate and without prejudice to any other rights, either Party shall be entitled to seek injunctive relief or other equitable relief and for this purpose, agree that damages shall not provide an adequate remedy for such breach.

13. **GOVERNING LAW AND DISPUTE RESOLUTION**

13.1 This Agreement and any disputes or claims arising out of, or in connection with, its subject matter shall be governed by and construed in accordance with English law.

13.2 Any and all disputes arises out of or in connection with this Agreement including any question regarding its existence, validity or termination it shall be settled by arbitration in accordance with the LCIA Rules (London Court of International Arbitration) as at force in time of the submission of the claim. The language of the arbitration shall be English

13.3 The arbitration tribunal shall be composed of three (3) arbitrators. Each Party shall nominate one arbitrator in accordance with the LCIA Rules and the LCIA shall appoint the chairman of the arbitration tribunal. If either Party has not nominated an arbitrator within 30 days of

service of the request for arbitration in accordance with Article 1 of the LCIA Rules such arbitrator shall be appointed by the LCIA.

13.4 The place of arbitration shall be London, England.

THIS AGREEMENT HAS BEEN DULY EXECUTED BY THE PARTIES THE DAY AND YEAR FIRST WRITTEN ABOVE.

Signed for and on behalf of
JSC Poti Sea Port Corporation.
By its duly authorised representatives

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By:
Title:

.....

By:
Title:

Signed for and on behalf of
[INSERT FULL NAME PARTY B]
by its duly authorised representative

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By:
Title: