

Agreement
for
International Cruise Hub Formulation
for
Naha Port
(Draft)

August 8, 2018

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Naha Port Cruise Hub Formulation Agreement

In accordance with the provisions of article 50–18, section 3 of the Port and Harbor Act and the Naha Port International Passengers Cruise Ship Hub Formulation Plan (hereinafter referred to as the “**Formulation Plan**”), and in order to promote the hosting of international passengers cruise ships, this Agreement is entered into by **Party X**: Naha Port Authority, which is the port administrator of the international passengers cruise ships hub formulation port and **Party Y**: Cruise ship liner, which is the expected terminal owner etc. (*yotei shisetsu shoyuusha tou*) set out in article 50-18, section 3 of the Port and Harbor Act of the privately-operated international cruise passengers ship acceptance promotion terminal (which is a privately-operated international cruise passengers ship acceptance promotion terminal to be developed and managed by Party Y pursuant to this Agreement; hereinafter referred to as the “**Terminal**”), in order to set out such matters that are necessary in relation to the preferential use of the Berth facilities at the international passengers cruise ships handling wharf (hereinafter referred to as the “**Berthing Facilities**”) and the making available of the Terminal to the general public and the development and management of the Terminal.

In witness thereof, the parties hereby create two original copies of this document by having their names and seals placed on, or signing, those copies.

(No further entries.)

Date: Month/Date/Year

Party X: Naha Port Authority

XXXXXX

President

Address: 2-1 Tondo-Cho, Naha, Okinawa

Date: Month/Date/Year

Party Y: Cruise Ship Liner

XXXXXX

Article 1. (Purpose and interpretation)

1. The purpose of this Agreement is to set out matters regarding the Preferential Use of the Berth Facilities and the development, maintenance and use of the Terminal contemplated by the Formulation Plan.
2. Party X and Party Y shall confirm that the purpose of the Preferential Use of the Berth Facilities at the international passengers cruise ships handling wharf, the making available of the Terminal to the general public and the development and management of the Terminal is to strengthen the international competitiveness of Japan's tourism and to increase the vitality of the local regions including to stimulate the local economy by promoting the hosting of international passengers cruise ships through a public-private partnership, and both Parties shall implement the Project on this basis.
3. Unless otherwise particularly specified in the main body of this Agreement, the terms used in this Agreement shall have the meanings ascribed to such terms in **Attachment 1**.
4. The heading of each Article in this Agreement is provided for convenient reference only and shall not have any influence on the interpretation of any Article of this Agreement.

Article 2. (Public nature and respect for the object of the Project)

1. Party Y shall duly understand the public nature of the Project and implement the Project by giving respect for the object of such public nature and taking safety of passengers into consideration.
2. Party X shall duly understand the fact that the Project will be implemented by Party Y, which is a private business, and shall respect for the object of such fact.

Article 3. (Principle of good faith)

Party X and Party Y shall cooperate with each other and respect for good faith, and shall faithfully perform this Agreement on an arms-length basis.

Article 4. (Outline of the Project)

1. The Project consists of the Preferential Use of the Berth Facilities and the Terminal Development/Management Business.
2. Party Y shall, in implementing the Project, comply with this Agreement and observe the Laws.
3. Party X and Party Y shall, unless otherwise agreed, implement the Project in accordance with the following schedule.

Scheduled completion date for the Terminal: ●●●●

Scheduled Commencement Date: ●●●●

Article 5. (Formulation Plan, etc.)

1. Party Y shall exercise its best efforts to perform the Formulation Plan.
2. Party Y shall prepare a Business Plan of it and submit the same to Party X prior to the last day of **【March】** each year.
3. Party Y shall describe in a Business Plan set out in the preceding Section any persons that are Parents (as defined in Article 13, Section 6) of Party Y, which description shall be confirmed by Party X.

Article 6. (Efforts to stimulate the local economy)

Party X and Party Y shall work together and cooperate with each other with a view to vitalising the local regions by, for example, creating premises where the products of the local regions will be sold.

Article 7. (Permits etc. and notifications etc.)

1. Party Y shall be responsible to obtain and maintain, at its own cost, all Permits necessary to implement the Project. In addition, Party Y shall be responsible to prepare and submit all notifications (*todokede*) and reports (*houkoku*) necessary for Party Y to implement the Project. However, whenever it is necessary for Party X to obtain and maintain Permits or to make notifications necessary to implement the Project, (i) Party X shall take necessary measures, (ii) Party Y shall bear the cost necessary for Party X to obtain and maintain the Permits and to give the notifications, and (iii) if Party X requests Party Y to cooperate with Party X in taking the necessary measures, Party Y shall accede to such request.
2. Upon request in writing by Party Y to Party X, Party X shall, to such extent as necessary, and to the extent not prohibited by Laws, cooperate with Party Y in its obtaining and maintaining Permits and making notifications, as contemplated by the preceding Section.
3. If Party Y prepares and submits any document in relation to Permits obtained or maintained by it or notifications made by it, it shall retain a copy of the said document and shall deliver the same to Party X on the Project Termination Date.
4. If Party Y has the original copy of a document related to Permits obtained and maintained by it or notifications made by it, it shall keep the said original copy and, if requested by Party X, Party Y shall show Party X the said original copy or submit a certified copy of the said original copy to Party X.

Article 8. (Allocation of responsibilities)

1. Party Y shall, unless otherwise stipulated in this Agreement, bear all responsibilities for the implementation of the Project.
2. Party Y shall not, unless otherwise stipulated in this Agreement, be exempted from its responsibilities under this Agreement on account of approvals given by, verifications given by or witnessing by Party X or reports, notifications or explanations given to Party X from Party Y, in connection with the implementation of the Project by Party Y, and Party X shall bear no responsibility on account of the said approvals, verifications or witnessing, or the said reports, notifications or explanations.

Article 9. (Representations and warranties by Party Y)

Party Y shall make the following representations and warranties to Party X as of the date on which this Agreement is executed.

- (1) Party Y is a legal entity which was validly and legally incorporated and is existing in accordance with its laws of incorporation.
- (2) Party Y has full power to execute and perform this Agreement and the obligations of Party Y under this Agreement are legally valid and binding obligations and are enforceable upon Party Y.
- (3) all authorizations and other procedures required by the Laws of Japan and the laws of its incorporation and the articles of associations, the board regulations and other internal rules of Party Y that are necessary for party Y to execute and perform this Agreement shall have been obtained or completed.
- (4) No litigation, claim, arbitration or investigation that could have a material adverse effect on the ability of Party Y to implement the Project or to perform its obligations under this Agreement is pending and, to the Party Y's knowledge, threatened, against Party Y.
- (5) The execution of this Agreement and the performance of its obligations thereunder by Party Y does not contravene any Laws applicable to Party Y, any contracts and other agreements to which Party Y is a party or is bound, or any judgments, decisions or orders applicable to Party Y.

Article 10. (Treatment of the Site)

Any matters necessary to deal with Terminal Site shall be determined through discussions between Party X and Party Y in accordance with the Laws, and Party X shall exercise its best effort in order to enable Party Y to acquire the right to use the Terminal Site.

Article 11. (Conditions Precedent for commencing Preferential Use)

1. The Commencement of the Preferential Use contemplated by Article 13 shall be subject to the satisfaction of the condition precedent described in each of the following Paragraphs, provided that, if a separate point of time is set for any of the conditions precedent, it is sufficient to satisfy such condition precedent no later than such point of time.
 - (1) The statement set out in each of the Paragraphs of Article 9 made with respect to Party Y is true and accurate as of the Scheduled Commencement Date (or, if the Project Commencement Date comes after the Scheduled Commencement Date, as of a new date to be designated by Party X on which the Project shall be commenced).
 - (2) Party Y has fully performed the following obligations.
 - (i) The Terminal has been completed in accordance with the Required Standards.
 - (ii) Party Y has delivered to Party X a document indicating the terminal usage charges contemplated by Article 19.
 - (iii) Neither the terminal usage charges for use of the Terminal nor the terms and conditions for use of the Terminal falls within any of the Paragraphs under Article 19, Section 4.
 - (iv) All Permits required to implement the Project as contemplated by Article 7 have been obtained.
 - (3) There has been no material breach by Party Y of its obligations under this Agreement, other than those mentioned in the preceding two Sections, which shall be performed by Party Y no later than the commencement of the use of the Berth Facilities based on the Preferential Use.
 - (4) Party X has made the Berth Facilities available for use.
 - (5) The consent of the Naha Coast Guard Office and other related parties have been obtained for Party Y's use of the Berth Facilities.
 - (6) Such other matters as agreed by Party X and Party Y.
2. Party Y must satisfy the conditions precedent set out in Paragraphs 1 to 3 and Paragraphs 5 and 6 of the preceding Section, and Party X must satisfy the conditions precedent set out in Paragraph 4 of the preceding Section, on or prior to the Scheduled Commencement Date. However, even if all those conditions precedent are not satisfied on or prior to the Scheduled Commencement Date, Party X may waive satisfaction of all or any of the conditions precedent set out in Paragraphs 1 to 3 and Paragraphs 5 and 6 of the preceding Section, and Party Y may waive satisfaction of all or any of the conditions precedent set out in Paragraph 4 of the preceding Section, in each case at its discretion. In such case, however, such waivers shall not discharge the liability of a Party for failure to perform the obligations to satisfy the relevant condition precedent.
3. If the conditions precedent set out in Section 1 (other than any condition precedent the satisfaction of which is waived pursuant to the proviso of the preceding Section) have been satisfied, the Scheduled Commencement Date shall be the Project Commencement Date (or, if the satisfaction of the conditions precedent comes after the Scheduled Commencement Date, the date on which the conditions precedent are satisfied shall be the Project Commencement Date), and Party Y shall commence the Project on such Project Commencement Date.

Article 12. (Berth Facilities and the Terminal)

1. The Berth Facilities shall be able to accommodate ships of up to 220,000 gross tonnage class .
2. The Terminal shall be ●●●.

Article 13. (Preferential Use)

1. Party Y may make priority reservations to use the Berth Facilities as set out in this Article and in accordance with this Agreement and the Laws (in this Agreement, referred to as the “**Preferential Use**”).
2. The Preferential Use by Party Y shall become effective when the conditions precedent set out in Article 11 have been satisfied.
3. If Party Y intends to conduct the Preferential Use, it must undertake the procedures set out in this Agreement.
4. The use of the Berth Facilities by Party Y is allowed to the extent allowed by the Laws.
5. If Party X considers that a Suspension Event has occurred, Party X may suspend the use of the Berth Facilities for such period and to such extent as necessary.
6. The Preferential Use is available only to Party Y as well as those persons as stipulated by the ministerial ordinance of the Ministry of Land, Infrastructure, Transport and Tourism in accordance with article 50–18, section 1 of the Port Act (in this Agreement, referred to as “**Parents**”).
7. The Preferential Use is allowed for the maximum of ●●● days per year .
8. The use of the Berth Facilities based on the Preferential Use shall be available during the period up to the Project Termination Date.
9. Reservation by Party Y to use the Berth Facilities on any date in any calendar year shall be made during the period commencing on ●●● of the second year before the year in which such date falls and ending on ●●● of the said second year.
10. Reservation by Party Y to use the Berth Facilities on any date in any calendar year shall be finalized no later than ●●● of the second year before the year in which such date falls.
11. If a situation arises that requires changes to or cancellation of the Preferential Use, Party Y shall promptly notify Party X in good faith at the time when such situation arises.
12. For the purpose of reservation to be made on or after ●●● of a calendar year to use the Berth Facilities on any date in the immediately following calendar year, Party X shall, in accordance with rules separately determined by it, treat Party Y and all other persons who want to use the Berth Facilities in an equal manner.
13. For using the Berth Facilities pursuant this Article, Party Y shall pay fees within such range of fees as determined by the municipal ordinances (*jourei*).
14. Party X shall maintain the Berth Facilities in good condition throughout the Project Period.
15. Party Y may not effect any transfer of the right of Preferential Use to third parties (except transfer of the same approved by Party X in accordance with Article 25).
16. Only the second cruise berth can be used for preferential usage by the partnership cruise ship liner.¹

Article 14. (Standards regarding the size, structure and usage of Terminal)

1. Party Y shall make the Terminal available for use by passengers, crews and others, and, for the purposes of appropriate and smooth handling of immigration, shall secure such space as necessary for CIQ services to handle an estimated number of passengers based on discussions through Party X with the relevant authorities involved in CIQ, and shall allow the said authorities to use such space.
2. The Terminal shall satisfy the standards set out in **Attachment 2** as well as the standards set out by the Laws (these standards to be hereinafter referred to as “**Required Standards**”).

Article 15. (Conditions for lease of the Terminal)

1. After completion of the Terminal and to the extent permitted by the Required Standards, Party Y shall be entitled to lease the Terminal (excluding such part as used for the CIQ Facilities) to third parties to the extent allowed by Laws. However, Party Y shall not lease such part of the Terminal as stipulated in **Attachment 3**.

*¹ Reservation for usage of Current cruise berth may be subject to restrictions.

2. If Party Y enters into a lease agreement involving the Terminal with a third party in accordance with the preceding Section, such agreement shall satisfy the following conditions. Furthermore, Party Y shall submit a copy of the said agreement to Party X immediately after the agreement is executed.
 - (1) The third party must not engage in an Adult Entertainment Business or any other business that offends public order and morals (*koujo ryouzoku*) at the place that is the subject of the lease agreement.
 - (2) The third party shall represent that its related companies or any persons whom the third party deals with are not Organised Crime Group Related Persons or any other persons Party X considers inappropriate, and shall promise that its related companies or any persons whom the third party deals with will not become Organised Crime Group Related Persons in the future.
 - (3) Under the lease agreement entered into between Party Y and the third party, (i) if the Land Lease and House Lease Act applies to the said agreement, the lease agreement must be a fixed-term building lease agreement contemplated by article 38 of the said Act or a lease agreement which has nil consideration, and (2) the last date of the contract period of the said agreement shall not be a date later than the last date of the Project Period, and if this Agreement is terminated prior to the Project Termination Date, the said agreement shall also expire at the time of such termination.
 - (4) If a breach of Paragraph (1) or Paragraph (2) occurs, Party Y shall be entitled to terminate the said agreement by giving notice without providing a prior warning (*saikoku*).
3. When Party Y leases the Terminal in accordance with Section 1, the stimulation to the local economy shall be taken into consideration.

Article 16. (Development of the Terminal)

1. Party Y shall develop the Terminal in accordance with this Agreement and the Laws.
2. Party Y shall be entitled to cause the Contractor to develop the Terminal.
3. Any faults attributed to the Contractor and third parties engaged by Party Y or the Contractor in connection with the development of the Terminal shall be deemed to be attributable to Party Y and Party Y shall be liable for such faults.
4. Party Y shall submit design specifications of the Terminal to Party X on or before a date to be agreed by Party X and Party Y and cause Party X to confirm the same.
5. Upon the completion of the Terminal, Party Y shall conduct its own completion inspection and then cause Party X to confirm the completion.

Article 17. (Management of the Terminal)

1. Party Y shall manage the Terminal in accordance with this Agreement and the Laws.
2. Unless Party Y itself manages the Terminal, Party Y shall delegate or outsource the management of the Terminal to the Maintenance Company. Party Y may however delegate to a third party other than the Maintenance Company by obtaining a prior written consent from Party X.
3. Any faults attributed to the Maintenance Company and third parties engaged by Party Y or the Maintenance Company in connection with the management of the Terminal shall be deemed to be attributable to Party Y and Party Y shall be liable for such faults.
4. Party Y shall take sufficient measures to ensure the security of the Terminal.
5. Party Y shall regularly report to Party X on matters concerning the Project throughout the Project Period, and such matters to be reported shall be determined by agreement of Party X and Party Y.

Article 18. (Bearing of costs involved in the development and management of the Terminal)

Party Y shall bear any costs to develop and manage the Terminal in accordance with this Agreement.

Article 19. (Matters regarding the use of the Terminal by Users)

1. During the period between the Project Commencement Date and the Project Termination Date, Party Y shall make the Terminal available to be used by international passengers cruise ships (including passengers and crews of such international passengers cruise ships, and hereinafter referred to as “Users”), except on such day and time when Party Y uses the Berth Facilities pursuant to the Preferential Use or the Berth Facilities cannot be used for Force Majeure.
2. During the period between the Project Commencement Date and the Project Termination Date, Party Y may collect the terminal usage charges in accordance with this Agreement, the Port Act and the related Laws.
3. If Party Y intends to collect the terminal usage charges as contemplated by the preceding Section, Party Y shall, in accordance with the Port Act, deliver to Party X a document indicating rates therefor. The same shall apply to make changes to rates that are determined during the Project Period.
4. If Party X considers that a rate applicable to a facility within the Terminal that is stipulated under the Port Act Enforcement Regulations falls within any of the following Paragraphs, Party X may, in accordance with the provisions of the Port Act, order that the rate for the said facility be changed within a period to be identified by Party X.
 - (i) If the rate treats specific Users unfairly and discriminatorily.
 - (ii) If the rate is materially inappropriate in the light of socioeconomic conditions and would potentially cause it materially difficult for Users to use the said facility.
5. If Party Y receives an order to revise as described in the preceding Section, it shall revise the rate as soon as possible and deliver to Party X a document indicating the revised rate.

Article 20. (Matters regarding the use of the Terminal by persons other than Users)

1. If any person other than Users requests that the person be entitled to use the Terminal, Party Y shall respond to such request, discuss with such person and endeavour to make the Terminal to be used by such person.
2. If Party Y makes the Terminal available for use by a third party in accordance with the preceding Section, Party Y shall notify Party X to such effect.

Article 21. (Principle of allocation of risk)

1. Party X shall not be obliged to make any payments in the implementation by Party Y of the Project, unless otherwise stipulated in this Agreement.
2. Unless otherwise stipulated in this Agreement, Party Y shall be responsible for implementing the Project, and Party Y shall take all risks associated with decrease of income, increase in costs and other damages and losses to be incurred and Party X shall not be responsible for such risks.

Article 22. (Measures for changes to the Laws)

1. If Party Y suffers increased costs and damages as a result of a change in the Laws, Party Y shall bear such increased costs and damages, unless otherwise provided by mutual agreement of Party X and Party Y.
2. If, after execution of this Agreement, it becomes difficult to conduct the implementation of the Project due to a change in the Laws, Party Y shall immediately notify Party X to such effect, by submitting a document containing detailed information thereon.
3. Upon the notice contemplated by the preceding Section is made, Party X and Party Y shall verify the information set out in the notice and, if it is determined that a change in the Laws has caused the implementation of the Project to be difficult, Party X and Party Y shall discuss how to deal with the situation.

4. If, even after taking the measures mentioned in the preceding Section, it is considered extremely difficult to continue the Project due to a change in the Laws that have occurred after the execution of this Agreement, Party X and Party Y may, after discussions, terminate this Agreement pursuant to the mutual consent.

Article 23. (Measures for Force Majeure)

1. If Party Y suffers increased costs and damages as a result of Force Majeure, Party Y shall bear such increased costs and damages, unless otherwise provided by mutual agreement of Party X and Party Y.
2. If, after execution of this Agreement, it becomes difficult to implement the Project due to Force Majeure, Party Y shall immediately notify Party X to such effect, by submitting a document containing detailed information thereon.
3. Upon the notice contemplated by the preceding Section is made, Party X and Party Y shall verify the information set out in the notice and, if it is determined that Force Majeure has caused the implementation of the Project to be difficult, Party X and Party Y shall discuss how to deal with the situation.
4. If, even after taking the measures mentioned in the preceding Section, it is considered extremely difficult to continue the Project due to Force Majeure that have occurred after the execution of this Agreement, Party X and Party Y may, after discussions, terminate this Agreement pursuant to the mutual consent.
5. If this Agreement is terminated pursuant to the preceding Section, Party Y shall, unless otherwise agreed, restore the Terminal Site to its original state and return the same to Party X.
6. Unless otherwise provided, neither Party X nor Party Y shall be entitled to request the other to compensate for damages or increased costs arising from the termination contemplated by Section 4.

Article 24. (Measures for Suspension Event)

1. If there exists a situation where an Emergency Event is considered to have occurred or if Party Y has committed a material breach of its obligations under this Agreement (which breach, together with Emergency Events, is referred to as “**Suspension Event**”), Party X or Party Y shall immediately notify the other Party of such Suspension Event. Upon receipt of such notification, Party X and Party Y shall endeavour, to the extent possible, to resolve the Suspension Event as promptly as possible.
2. For situations prescribed in the preceding Section, Party X shall, even if there is no suspension of the use of the Berth Facilities in accordance with Article 13, Section 5, be entitled to take measures it deems necessary, for a period necessary and to the extent necessary, to resolve the Suspension Event. Under the said circumstances, Party X shall be entitled to request Party Y to cooperate in the implementation of the said measures by Party X (including but not limited to temporary use by Party X of, or other cooperation related to, assets owned by Party Y), and Party Y must cooperate in such implementation.
3. Unless otherwise provided, Party Y shall not be entitled to request Party X to compensate for damages or increased costs arising from the implementation by Party X of the said measures and Party Y’s cooperating to Party X as contemplated by the preceding Section.

Article 25. (Disposition of position under this Agreement and the Terminal)

1. Party Y shall not effect transfer (including transfer in trust), creation of pledge and other security interest or any form of disposition by other means (including self-settled trusts, and hereinafter referred to in this Article as “**Disposition**”) with respect to its position under this Agreement or the rights and obligations of Party Y under this Agreement without the prior written consent of Party X, provided that such consent shall not be unreasonably withheld if a party to which such Disposition will be made is a Parent of Party Y or if Party Y is a Parent of such party to which such Disposition will be made.
2. Party Y shall not effect any Disposition with respect to the Terminal without the prior written consent of Party X, provided that such consent shall not be unreasonably withheld if a party to which such Disposition will be made is a Parent of Party Y or if Party Y is a Parent of such party to which such Disposition will be made.

Article 26. (Duration of this Agreement)

1. Unless otherwise stipulated in this Agreement or otherwise provided by mutual agreement of Party X and Party Y, this Agreement shall be effective during the period commencing on the date on which this Agreement is executed and ending on the Project Termination Date or at the point of time when this Agreement terminates or expires.
2. This Agreement shall bind a person who, after the publication of this Agreement pursuant to Article 41, Section 1, becomes the facilities owner etc. (*shisetu shoyuusha tou*) (which means facilities owner etc. (*shisetu shoyuusha tou*) defined in article 50-18, section 1 of the Port Act) and expected facilities owner etc. (*yotei shisetu syoyuusha tou*) (which means expected facilities owner etc. (*yotei shisetu syoyuusha tou*) as defined in article 50-18, section 3 of the Port Act) of the Terminal.
3. Even if the Project Commencement Date comes after the Scheduled Commencement Date, the duration of the period of the Preferential Use shall not be extended. However, if the Project Commencement Date is delayed due to a failure to satisfy the conditions precedent described in Article 11, Section 1, Paragraph 4, the duration of the period of the Preferential Use may be extended for the period of the said delay at the mutual agreement of Party X and Party Y.

Article 27. (Termination of this Agreement on account of Party Y)

1. If any of the events mentioned in the following Paragraphs occurs, Party X shall, without giving a prior warning (*saisoku*), be entitled to terminate this Agreement by giving notice to Party Y.
 - (1) If it becomes impossible to perform this Agreement due to any reasons attributable to Party Y.
 - (2) If a resolution has been passed by Party Y or a Parent thereof at a general meeting of its shareholders or at a meeting of its board of directors to make a filing for bankruptcy (*hasan*), corporate reorganization (*kaisha kousei*), civil rehabilitation (*minji saisei*), special liquidation procedures (*tokubetsu saisei*) or other similar procedures, or if a third party (including directors of Party Y) has made such filing, and the said resolution or the said filing is not cancelled or withdrawn within 30 days of the said resolution or the said filing.
 - (3) If settlement of promissory notes issued by Party Y or Parent thereof is suspended, or transactions by Party Y or a Parent thereof are suspended by densai.net Co., Ltd. or equivalent measures are taken by other electronic monetary claims recording institutions.
 - (4) If (other than due to Force Majeure) Party Y fails to satisfy the conditions precedent set out in Article 11, Section 1, Paragraphs 1 to 3 inclusive and it has become evident that the Project cannot be commenced within **【6】** months of the Scheduled Commencement Date.
 - (5) If it is considered that Party Y has abandoned the Project without justifiable reasons.
 - (6) If it is discovered that, among the officers (*yakuin*) of Party Y, there are those who are Organised Crime Group Related Persons.
 - (7) Such other termination events agreed by Party X and Party Y.
2. If any of the events mentioned in the following Paragraphs occurs, Party X may give Party Y a prior warning (*saikoku*) with such period as to be agreed by Party X and Party Y as a period that is reasonably necessary to remedy the relevant breach or event and, if such breach or event is not remedied within the said period (or, if Party X considers it necessary to extend the said period, within such extended period), Party X shall be entitled to terminate this Agreement with immediate effect by notifying Party Y in writing indicating the reasons to terminate.
 - (1) If Party Y breaches its material covenants or material representations and warranties made under this Agreement.
 - (2) If Party Y breaches or fails to perform material obligations under this Agreement.
 - (3) If Party Y breaches the Laws.
3. If a situation arises where a breach of the Required Standards causes a material impediment to the implementation of the Project including a situation where the quality standards of the Project undertaken

by Party Y do not satisfy the Required Standards continues to exist, and such situation is not rectified within one hundred and 【120】 days from the time when such breach of the Required Standards has occurred, Party X may terminate this Agreement by giving notice to Party Y, without giving a prior warning (*saikoku*).

Article 28. (Termination or expiration of this Agreement on account of Party X)

If any of the events mentioned in the following Paragraphs occurs, Party Y shall be entitled to terminate this Agreement with immediate effect by giving notice to Party Y in writing explaining the reasons to terminate.

- (1) If Party X breaches its material obligations under this Agreement and, despite having received a prior warning (*saikoku*) with a reasonable period to remedy such breach, fails to remedy such breach within the said period.
- (2) If (other than due to Force Majeure) Party X fails to satisfy the conditions precedent set out in Article 11, Section 1, Paragraph 4 and it has become evident that the Project cannot be commenced within 【6】 months after the Scheduled Commencement Date.

Article 29. (Termination by mutual agreement)

In addition to the cases stipulated in the previous two Articles, Party X and Party Y may terminate this Agreement pursuant to the mutual agreement of both parties.

Article 30. (Termination of this Agreement prior to the completion of the Terminal)

1. If this Agreement is terminated prior to the completion of the Terminal, Party Y shall, unless otherwise agreed, restore the Terminal Site to its original state and return the same to Party X. In such case, Party Y shall bear costs for the restoration.
2. In the case described in the previous Section, if, without any justifiable reasons, Party Y does not take measures to conduct the restoration within a reasonable period, Party X shall be entitled to conduct the restoration on behalf of Party Y and request Party Y to compensate for the costs incurred associated with the restoration. In such case, Party Y shall not be entitled to raise any objections to any actions by Party X.
3. Notwithstanding the provision of Section 1, if, where this Agreement is terminated prior to the completion of the Terminal, there exist some portions of the Terminal which have been completed, Party X, or a third party designated by Party X, at its own responsibility and cost, shall be entitled to inspect the completed portions of the Terminal and pay Party Y an amount corresponding to the portions that have passed the inspection (hereinafter referred to as the “**Approved Portions**”) in one lump sum or by instalments, thereby acquiring all the titles to the Approved Portions. In such case, Party X, or the third party designated by Party X, when it considers it necessary, shall be entitled to destroy the completed portions to the minimum extent possible and inspect them, after notifying Party Y of the reason thereof.

Article 31. (Handling of the Terminal)

If this Agreement is terminated after the completion of the Terminal, Party X, or a third party designated by Party X, shall be entitled to purchase the Terminal at a Market Value in accordance with the procedures to be determined pursuant to an agreement between Party X and Party Y.

Article 32. (Changes to this Agreement)

Party X and Party Y may make changes to this Agreement by an agreement in writing between both parties.

Article 33. (Liability for damages)

Unless otherwise stipulated in this Agreement, if a breach by Party X or Party Y of its obligations under this Agreement has caused damages to the other party, the other party shall be entitled to request the breaching party to compensate for the damages in accordance with the Laws.

Article 34. (Establishment of council)

1. Party X and Party Y shall have meetings of working-level officials in order to exchange information regarding the implementation of the Project and to do others. Such meetings will, in principle, be held once a month, and either party can request the other party to hold such meetings as necessary.
2. Details regarding the composition, procedures and other matters of the meetings mentioned in the previous Section shall be discussed and separately determined by Party X and Party Y.

Article 35. (Attribution of copyrights, etc.)

1. The copyright and other intellectual property rights pertaining to the information, documents, drawings and others (excluding those for which Party X has no copyrights) provided to Party Y by Party X in accordance with this Agreement shall belong to Party X.
2. Party X shall have the right and authority to use the Deliverables at its own discretion at no cost (provided that Party X shall not use the Deliverable for any purpose other than for the Project and shall not disclose the Deliverables to any third party other than a person who succeeds the implementation of the Project from Party Y), and the said right and authority to use shall remain even after the expiration of this Agreement.

Article 36. (Confidentiality)

1. Neither Party X nor Party Y shall disclose information relating to this Agreement (including classified information that is obtained through the implementation of the Project) to other parties without the prior consent of the other party.
2. Notwithstanding the previous Section, Party X and Party Y shall be entitled to disclose information related to this Agreement only in the following cases. However, if Party X gives instructions regarding the method of disclosure, the disclosure shall be made in accordance with such instructions.
 - (1) If this Agreement is made available for perusal by the general public in accordance with Article 41.
 - (2) If information is disclosed to (i) employees and others of, or attorneys-at-law, certified accountants, licensed tax accountants or other professionals of, Party X or Party Y who need to know such information, or (ii) officials of the Japanese government, or the Ultimate Parent, Subsidiaries and Affiliates of Party Y and such other companies and others that are agreed by Party X to be related companies or employees or others thereof or attorneys-at-law, certified accountants licensed tax accountants or other professionals thereof, who or which need to know such information, subject to the condition that those companies or persons are obliged to comply with the same confidentiality obligations as those applicable to Party X and Party Y.
 - (3) If information that is already known to a third party without breaching the provisions of this Article is disclosed to the said third party.
 - (4) If information that is already in the public domain is disclosed to a third party.
 - (5) If information is disclosed when the disclosure of such information is required by the Laws.
3. The provisions of the previous two Sections shall remain in effect even after the complete performance of this Agreement by Party X and Party Y or the expiration of this Agreement.

Article 37. (Taxes and other public charges)

Unless otherwise stipulated in this Agreement, all taxes (*kouso*) and public charges (*kouka*) that arise in relation to this Agreement shall be borne by Party Y.

Article 38. (Court of jurisdiction)

Naha District Court shall have the exclusive jurisdiction in the first instance over all disputes relating to this Agreement.

Article 39. (Other matters)

1. All requests (*seikyuu*), notices (*tsuuchi*), reports (*houkoku*), advise (*kankoku*), approvals (*shounin*), notifications of the expiration of contracts (*keiyaku shuuryou kokuchi*) and termination (*kaijo*) contemplated by this Agreement shall be made in writing to the other party. Party X and Party Y shall notify the other party separately regarding the address to which the said requests and others should be sent.
2. The language that is to be used between Party X and Party Y in relation to the performance of this Agreement shall be Japanese.
3. The currency that is to be used for payments contemplated by this Agreement shall be Japanese Yen.
4. The units of measurement that are to be used between Party X and Party Y in relation to the performance of this Agreement shall be in accordance with the Measurement Act (1992, Law No. 51), unless otherwise stipulated in this Agreement.
5. Whenever a period is mentioned in relation to the performance of this Agreement, it shall be interpreted in accordance with the Civil Code and the Companies Act, unless otherwise stipulated in this Agreement.
6. The dates and times stipulated in this Agreement shall be Japanese Standard Time.
7. This Agreement shall be governed by the Laws of Japan and interpreted in accordance with the same.

Article 40. (Discussion)

If it becomes necessary to determine matters that are not stipulated in this Agreement, or if questions arise regarding the interpretation of this Agreement, in each instance, these shall be determined through discussions in good faith between Party X and Party Y by having a discussion period that does not exceed 【30】 days, and no litigations shall be initiated during such discussion period.

Article 41. (Announcement of this Agreement)

1. Upon the execution of this Agreement, Party X shall publicly announce the execution in accordance with the provisions of the Port Act Enforcement Regulations, and shall make this Agreement available at its office for perusal by the public.
2. Upon the execution of this Agreement, Party X shall display a notice at a location that is easily viewed at the Terminal or the site thereof stating that this Agreement is available for perusal at its office. In such case, Party Y must provide Party X with as much assistance as possible regarding the said display.

Attachment 1. Definitions

- (1) “**Maintenance Company**” means a person who will maintain and manage the Terminal in accordance with this Agreement.
- (2) “**Terminal**” has the meaning defined in the preamble.
- (3) “**Terminal Development/Management Business**” means the development and management of the Terminal to be implemented by Party Y in accordance with this Agreement.
- (4) “**Terminal Site**” means the site stipulated in Attachment 4.
- (5) “**Ultimate Parent**” means a Parent Company (*oyagaisha*) defined in article 2, paragraph 4 of the Companies Act.
- (6) “**Parents**” has the meaning ascribed to such term in Article 13, Section 6.
- (7) “**Companies Act**” means the Companies Act (2005, Law No. 86).
- (8) “**Affiliates**” means affiliates (*kanren gaisha*) as defined in article 2, section 3, paragraph 20 of the Companies Act Enforcement Regulations.
- (9) Current cruise berth represents Tomari Terminal Berth No.8
- (10) “**Permits**” means permits (*kyoka*), licenses (*ninka*), designations (*shitei*) and other forms of administrative actions (*gyousei kouji*).
- (11) “**Emergency Event**” means (i) a situation where the safe use of the Terminal by Party Y would possibly be materially hindered, (ii) a situation where the security of Japan or the safety of the harbour is threatened, (iii) a situation where the bodies/lives of people or assets in the harbour would possibly be harmed, or (iv) an unavoidable situation because of a disaster (including a disaster occurring at a wider area) that requires rescue operations, or any other situation that is similar to any of the above.
- (12) “**Suspension Event**” has the meaning ascribed to such term in Article 24, Section 1.
- (13) “**Formulation Plan**” has the meaning defined in the preamble.
- (14) “**Berth Facilities**” has the meaning defined in the preamble.
- (15) “**Port Act**” means the Port and Harbor Act (1950, Act No. 218).
- (16) “**Port Act Enforcement Regulations**” means the Port Act Enforcement Regulations (1951, Ministerial Ordinance of the Ministry of Transport No. 98).
- (17) “**Subsidiaries**” means subsidiaries (*kogaisha*) as defined in article 2, paragraph 3 of the Companies Act.
- (18) “**CIQ Facilities**” means facilities for the purposes of customs, immigration and quarantine.
- (19) “**Market Value**” means a price of any asset to be determined using objective methodologies, such as evaluation and others by certified accountants and other professionals, at the time of transfer, etc. of such assets.
- (20) “**Project Commencement Date**” means the date on which Party Y has commenced the Project.
- (21) “**Scheduled Commencement Date**” means the “Scheduled Commencement Date” set out in Article 4, Section 3.
- (22) “**Project Period**” means the period between the Project Commencement Date and the Project Termination Date.
- (23) “**Business Plan**” means a business plan setting out an estimated number of port calls and an estimated number of passengers for the next year and such other items to be agreed by Party X and Party Y.
- (24) “**Project Termination Date**” means ●●●.
- (25) **Land Lease and House Lease Law** means the Land Lease and House Lease Law (1991, Law No. 90).

- (26) “**Deliverables**” means various plans, reports, drawings and any documents, drawings, photographs and videos and others submitted by Party Y to Party X in accordance with this Agreement or at the request of Party X.
- (27) “**Constructor**” means a person who constructs the Terminal in accordance with this Agreement.
- (28) “**Entertainment Control Act**” means the Entertainment and Amusement Trade Control Act (1948, Law No. 122).
- (29) “**Adult Entertainment Business**” means a business that falls within any of the paragraphs of article 2, section 1 and section 5 of the Entertainment Control Act.
- (30) “**Force Majeure**” means any one or more of the events set out below which has a direct and adverse impact on the performance of the obligations under this Agreement (for events where Required Standards provide for applicable standards, limited to those that exceed such standards), which cannot be attributed to the fault of Party X or Party Y, and which could not be foreseen by Party X or Party Y or, even if it could be foreseen, for which measures to prevent losses, damages or hindrance arising therefrom could not reasonably be expected.
- (i) Abnormal weather (storms, lightnings, heavy rains, strong winds, hurricanes, typhoons, cyclones, abnormal heat waves or unusual cold spells that are harsher than those which often or regularly occur in the harbour or its surrounding areas).
 - (ii) Natural disaster (flood, high tide, landslide, cave-in, earthquake, fire, tidal wave or other inevitable and unforeseeable natural disaster that cause material and inevitable damages to the harbour).
 - (iii) Civil war or hostile actions (riots, sedition, insurgency, terrorist attacks or acts of war) and the use of the harbour by the State of Japan and others in such events.
 - (iv) Epidemics (including cases where quarantine is enforced by the Laws).
- (31) “**Organised Crime Group**” has the meaning defined in article 2, paragraph 2 of the Act on Prevention of Unjust Acts by Organised Crime Group Members (1991, Law No. 77).
- (32) “**Organised Crime Group Related Person**” means a person falling in one or more of the following items:
- (i) Organised Crime Group Members Etc.
 - (a) An Organised Crime Group
 - (b) An Organised Crime Group Member (which has the meaning defined in article 2, paragraph 6 of the Act on Prevention of Unjust Acts by Organised Crime Group Members (1991, Law No. 77); hereinafter the same).
 - (c) A person that has ceased to be an Organised Crime Group Member less than 5 years ago.
 - (d) A Quasi Organised Crime Group Member (which means a person who is not an Organised Crime Group Member but who has a relationship with an Organised Crime Group and has a potential to engage in violent illegal activities and others using the power of an Organised Crime Group, or a person who cooperates for or is involved in the maintenance or operation of an Organised Crime Group by providing funds, weapons and others to an Organised Crime Group or an Organised Crime Group Member or doing others; hereinafter the same).
 - (e) An Organised Crime Group Related Company (which means a company in the operation of which an Organised Crime Group Member is effectively involved, a company managed by a Quasi Organised Crime Group Member or by a person who was an Organised Crime Group Member which actively cooperates for or is involved in the maintenance or operation of an Organised Crime Group by providing funds to an Organised Crime Group or by doing any other actions, or a company which actively uses an Organised Crime Group in the operation of its business or by doing any other actions and cooperates for the maintenance or operation of an Organised Crime Group).

- (f) Corporate racketeer, etc. (which means persons who, in seeking for improper profits, potentially conducts violent illegal activities and others targeting companies and others and who pose a threat to the safe living environment of the citizens, including corporate racketeers and extortionists).
 - (g) Rogue persons or groups proclaiming themselves to be social activists, etc. (which means persons that have the potential to engage in violent illegal activities, etc., in their demands for improper benefits by using slogans or pretending to engage in social activities or political activities, and which pose a threat to the safe living environment of the citizens).
 - (h) Organized special intellectual crime groups, etc. (which means a group or a person other than those mentioned in (a) to (g) above, which or who is the structural core part of improper activities, using its relationship with an Organised Crime Group as a threatening power, or which or who has financial connections with an Organised Crime Group).
 - (i) Other persons that are similar to those mentioned in (a) to (h).
- (ii) Other related parties
- (a) Persons whose operation is considered to be controlled by a person mentioned in (a) to (i) of paragraph (i) above (such controlling person is hereinafter referred to as a “**Organised Crime Group Member Etc.**”).
 - (b) Persons in whose operations an Organised Crime Group Member Etc. is considered to be effectively involved.
 - (c) Persons who are considered to have improperly used an Organised Crime Group Member Etc. for the purposes of extorting improper benefits for themselves, their own companies or third parties, or for the purposes of causing damage to third parties or doing others.
 - (d) Persons who are considered to provide funds or benefits to an Organised Crime Group Member Etc.
 - (e) Persons whose officers, or other persons who are substantially involved in the management of those persons, have relationship with an Organised Crime Group Member Etc. which is socially accused of.
- (33) “**Laws**” means treaties (*jouhaku*), laws (*houritsu*), cabinet ordinances (*seirei*), ministerial ordinances (*shourei*), municipal ordinances (*jourei*) and regulations (*kisoku*), together with orders (*meirei*), administrative guidance (*ghousei shidou*) and guidelines based on the same; judgment, decisions and orders by courts and arbitration awards; all stipulations (*kitei*), determination (*handan*) and measures (*sochi*) that are determined by public institutions; and all stipulations (*kitei*), determination (*handan*) and measures (*sochi*) by stock exchanges (including those of foreign countries that are similar to the above).
- (34) “**Project**” has the meaning defined in Article 4.
- (35) “**Civil Code**” means to the Civil Code (1896, Law No. 89).
- (36) “**Preferential Use**” has the meaning defined in Article 13, Section 1.
- (37) “**Required Standards**” has the meaning defined in Article 14, Section 2.
- (38) “**Users**” has the meaning defined in Article 19, Section 1.
- (39) “Terminal usage charges” means the terminal usage charges set out in Article 19, Section 2.

Attachment 2. Standards regarding size, structure and usage of the Terminal

Attachment 3. Facilities which are prohibited from being leased

Attachment 4. Terminal Site