

13. General safety measures

- (1) A *tanker* within the port's limits may only open a *tank* after the *tanker* is either berthed or is at anchor for safety purposes.
- (2) During loading or ballasting of *tankers* excluding chemical parcel *tankers* operations the gases displaced must, as far as possible, be vented up the mast or wherever the extremity of the gas line is placed.
- (3) *Flammable liquids* in bulk may be handled only at the places provided for that purpose at the port and as directed by the Harbour Master.
- (4) No flammable liquid of any description and no water that is contaminated with oil or flammable liquid may be discharged, or allowed to escape, into a port.
- (5) The master of a *tanker* may not discharge clean ballast into a port before back loading without the permission of the Harbour Master.
- (6) No work of any description that might cause a fire may be performed on a *tanker* or within a *prohibited area* except with the permission of the Harbour Master.

HARBOUR MASTER'S WRITTEN INSTRUCTIONS FOR THE HANDLING OF FLAMMABLE LIQUID CONTAINERS

These written instructions are issued by the Harbour Master in terms of rule 110(1)(b) the Port Rules, which are issued in terms of section 80(2) of the National Ports Act, and section 74(3) of that Act.

1. Purpose of these instructions

The purpose of these written instructions is to ensure safety, security, efficiency, good order and the protection of the environment.

2. Application of these instructions

In addition to the Port Rules, these written instructions apply at a port to vessels conveying, shipping or discharging containers that hold or held *flammable liquids*.

3. Interpretation

(1) For the purposes of these instructions —

- (a) "***Certified chemist***" means a person who holds a B. Sc degree in chemistry or a recognised equivalent certificate, or who has successfully completed a specialised course in Chemical Tanker or Oil Tanker Safety Training Program in accordance with the South African Code of Maritime Qualifications published by *SAMSA*, and who has at least two years laboratory experience and specialised training in the testing of atmospheres in vessels;
- (b) "***Empty container***" means a container that has contained flammable liquid having a *flash point* not exceeding 61 degrees Celsius;
- (c) "***Flammable liquids***" means a liquid, or mixture of liquids, or liquids containing solids in solution or suspension (except substances otherwise classified on account of their dangerous characteristics), which give off a flammable vapour at or below 61 degrees Celsius closed-cup test (corresponding to 65.6 degrees Celsius open-cup test), normally referred to as the "flashpoint". This includes liquids offered for transport at temperatures at or above their flashpoint, and, substances transported or offered for transport at elevated temperatures in a liquid state, which give off a flammable vapour at temperatures equal to or below the maximum transport temperature;
- (d) "***Flash point***" means the lowest temperature at which the application of a flame causes the vapour above a liquid to ignite when the product is heated under prescribed conditions, in a closed container;
- (e) "***Gas free***" means that the tank, compartment or container has sufficient fresh air introduced into it in order to lower the level of any flammable, toxic or inert gas to that required for any purpose;

- (f) "**Prohibited area**" means that area on the wharf adjacent to the vessel conveying, discharging, or shipping *flammable liquids* in containers, demarcated as a *prohibited area* by means of a fence or barricade or ropes and notice boards.

4. Notices of prohibited areas

During shipping and discharging operations of containers carrying or having carried *flammable liquids*, the Harbour Master may require that the wharf area be barricaded off and one or more notice boards bearing the words "**NO SMOKING**" and "**PROHIBITED AREA**" be displayed conspicuously.

5. Loading and discharging of flammable liquid containers

- (1) Containers with *flammable liquids* and *empty containers* that had *flammable liquids* in them must be discharged directly into trucks or semi-trailers or loaded directly from trucks and semi-trailers into the vessel.
- (2) Despite sub-rule (1), if the Harbour Master is of the opinion that this is not practicable, the containers may be stacked in an open space that has been demarcated for this purpose.
- (3) A flammable gas intensity detector must be provided by the vessel and retained in the custody of a fire fighter contracted by the vessel, who must, before the handling of cargo and at half-hourly intervals during handling, conduct tests in the hold of the vessel to establish whether any dangerous concentration of gas exists.
- (4) In the event of a dangerous concentration of gas being detected —
 - (a) all operations must cease and the hold must be evacuated and ventilated; and
 - (b) normal operations may not be recommenced without the hold being certified *gas-free*.
- (5) Flammable liquid containers and *empty containers* that had flammable liquid in them may not be handled during electrical storms.
- (6) *Flammable liquids* in containers may not be discharged or shipped unless the containers are certified ISO containers.
- (7) Damaged containers may only be discharged with the approval of the Harbour Master and subject to the conditions that he or she may impose in the interests of safety, security, good order and the protection of the environment.
- (8) No quantity of *flammable liquids* in excess of 25 kilolitres may be stacked within a port except with the permission of the Harbour Master and subject to the conditions that he or she may impose in the interests of safety, security, good order and the protection of the environment.
- (9) No repair work within the hold, or on adjacent decks, or within adjacent compartments, may be carried out except with the permission of the Harbour Master and subject to the conditions that he or she may impose in the interests of safety, security, good order and the protection of the environment.

6. Stowing of flammable liquids

- (1) When *flammable liquids* in transit are stowed in a hold that is not opened or stowed on deck, precautionary measures must be taken as may be required by the Harbour Master in the interests of safety, security, good order and the protection of the environment.

- (2) If *flammable liquids* in transit are stowed in a hold which is being worked for other cargo, no person may smoke or carry out any repair work in that hold, and sufficient fire fighters, equipped with a flammable gas-intensity gas detector, must be in attendance while the hold is being worked.



TRANSNET NATIONAL PORTS AUTHORITY

SECURITY POLICY

PORTFOLIO: LEGAL, RISK & COMPLIANCE

DEPARTMENT: SECURITY

TABLE OF CONTENTS

1. Statement of Purpose	03
2. Scope	04
3. Legislative Regulatory Requirements	04
4. Policy Statement	04
5. Specific Responsibilities	13
6. Audience	15
7. Enforcement	15
8. Exceptions	16
9. Other Considerations	16
10. Communicating the Policy	16
11. Review and Update Process	17
12. Implementation	17
13. Monitoring of Compliance	17
14. Disciplinary Action	17
15. Approval	18
16 Annexure	

1. STATEMENT OF PURPOSE

- 1.1 Transnet National Port Authority (TNPA) depends on its personnel, information and other assets to deliver services that ensure the health, safety, security and economic growth and development of our country. TNPA must therefore manage these resources with due diligence and take appropriate measures to protect them.
- 1.2 Threats that can cause harm to TNPA, and some economies abroad, include acts of terror and sabotage, espionage, unauthorized access to buildings and premises, theft, armed robbery, fraud and corruption, vandalism, fire, natural disasters, technical failures and accidental damage. The threat of cyber attack and malicious activity through the internet is prevalent and can cause severe harm to electronic services and critical infrastructure. Threats to the national interests, such as transnational criminal activity, foreign intelligence activities and terrorism, continue to evolve as the result of changes in local, national and international environment.
- 1.3 The Security Policy of TNPA prescribes the application of security measures to reduce the risk of harm that can be caused to the company if the above threats should materialize. It has been designed to protect employees, preserve the confidentiality, integrity, availability and value of information and assets, and assure the continued delivery of services. Since TNPA relies extensively on information and communication technology (ICT) to provide its services, this policy emphasizes the need for acceptable use of ICT equipment as well as ICT protection measures to be complied with by employees.
- 1.4 The main objective of this Policy therefore is to support the national interest and TNPA's business objectives by protecting employees, information and other assets and assuring the continued delivery of services to South African citizens and the maritime community.
- 1.5 This Policy complements other TNPA Policies (e.g. sexual harassment, occupational health and safety, official languages, information management, asset control, real estate and financial resources).

2. SCOPE

2.1 This Policy applies to the following individuals and entities:

- All TNPA employees;
- All contractors and consultants delivering a service to TNPA, including their employees who may interact with TNPA;
- Temporary TNPA employees
- All information assets of TNPA;
- All intellectual property of TNPA;
- All fixed property that is owned or leased out by TNPA;
- All moveable property that is owned or leased out by TNPA;
- All Facilities operating at TNPA Ports including their employees;
- All private port users
- All State Agencies operating at the Ports^A
- All Port users with a temporary right of access

2.2 The Policy further covers the following seven elements of the security program of TNPA:

- Security organization
- Security administration
- Information security
- Physical security
- Personnel security
- Information and Communication Technology (ICT) security
- Business Continuity Planning (BCP)

3. LEGISLATIVE OR REGULATORY REQUIREMENTS

- 3.1 This Policy is informed by and complies with applicable national legislation, international codes, national security policies and national security standards. A list of applicable regulatory documents in this regard has been attached as Annexure A.

4. POLICY STATEMENT

4.1 General

- Employees of TNPA must be protected against identified threats according to baseline security requirements and continuous security risk management;
- Information and assets of TNPA must be protected according to baseline security requirements and continuous security risk management;
- Continued delivery of services of TNPA must be assured through baseline security requirements, including business continuity planning, and continuous security risk management.

<p>4.3.2.3.3 It shall be the responsibility of the National Intelligence Structures (e.g. NIA or SAPS) to conduct an investigation on reported security breaches and provide feedback with recommendations to TNPA;</p> <p>4.3.2.3.4 Access privileges to classified information, assets and/or to premises may be suspended by the CE of TNPA until administrative, disciplinary and/or criminal processes have been concluded, flowing from investigations into security breaches or alleged security breaches;</p> <p>4.3.2.3.5 The end result of these investigations, disciplinary action or criminal prosecutions may be taken into consideration by the CE of TNPA in determining whether to restore, or limit, the security access privileges of an individual or whether to revoke or alter the security clearance of the individual.</p>	<p>See Security Directive Security Breaches Response Process</p>
<p>4.3.3 Information Security</p>	
<p>4.3.3.1.1 Categorization of information and information classification system</p>	
<p>4.3.3.1.1 The Head of Security must ensure that a comprehensive information classification system is developed for and implemented at TNPA. All sensitive information produced or processed by TNPA must be identified, categorized and classified according to the origin of its source and contents and according to its sensitivity to loss or disclosure;</p>	
<p>4.3.3.1.2 All sensitive information must be categorized into one of the following categories:</p> <ul style="list-style-type: none"> • State Secret; • Trade Secret; and • Personal Information. 	
<p>And subsequently classified according to its level of sensitivity by using one of the recognized levels of classification:</p> <ul style="list-style-type: none"> • Confidential; • Secret; and • Top Secret 	<p>See Security Directive Information Classification</p>
<p>4.3.3.1.2 Employees of TNPA who generate sensitive information are responsible for determining information classification levels and the classification thereof, subject to management review. This responsibility includes the labeling of classified documents;</p>	
<p>4.3.3.1.3 The classification assigned to documents must be strictly adhered to and the prescribed security measures to protect such documents must be applied at all times;</p>	
<p>4.3.3.1.5 Access to classified information will be determined by the following principles:</p>	<p>See Security Directive Protection of Information</p>

<p>4.3.5.1.2 The level of security clearance given to a person will be determined by the content of or access to classified information entailed in the post already occupied or to be occupied in accordance with their respective responsibilities and accountability;</p> <p>4.3.5.1.3 A security clearance provides access to classified information subject to the need-to-know principle;</p> <p>4.3.5.1.4 A declaration of secrecy shall be signed by every individual issued with a security clearance to complement the entire security screening process. This will remain valid even after the individual has terminated his/her service with TNPA;</p> <p>4.3.5.1.5 A security clearance will be valid for a period of ten years in respect of the Confidential Level and five years for Secret and Top Secret. This does not preclude re-screening on a more frequent basis as and when need arises and/or as determined by the CE of TNPA, based on information which impact negatively on an individual's security competence;</p> <p>4.3.5.1.6 Security clearances in respect of all individuals who have terminated their services with TNPA shall be immediately withdrawn.</p>	<p>See Security Directive Security Screening</p>
<p>4.3.5.2 Polygraph Examination</p>	
<p>4.3.5.2.1 A polygraph examination shall be utilized to provide support to the security screening process. All employees subjected to a Top Secret security clearance will also be subjected to a polygraph examination. The polygraph shall only be used to determine the reliability of the information gathered during the security screening investigation and does not imply any suspicion or risk on the part of the applicant;</p> <p>4.3.5.2.2 In the event of any negative information being obtained with regard to the applicant during the security screening investigation (all levels), the applicant shall be given an opportunity to prove his/her honesty and/or innocence by making use amongst others of the polygraph examination. Refusal by the applicant to undergo the examination does not necessarily signify that a security clearance will not be granted.</p>	
<p>4.3.5.3 Transferability of Security Clearances</p>	
<p>4.3.5.3.1 A security clearance issued in respect of an official from other government institutions shall not be automatically transferable to TNPA. The responsibility for deciding whether the official should be re-screened rests with the CE of TNPA.</p>	<p>See Security Directive Security Screening</p>
<p>4.3.5.4 Security Awareness and Training</p>	
<p>4.3.5.4.1 A security training and awareness program must be developed</p>	

<p>by the Security Department and implemented to effectively ensure that all personnel and service providers of TNPA remain security conscious;</p> <p>4.3.5.4.2 All employees shall be subjected to the security awareness and training programs and must certify that the contents of the program have been understood and will be complied with. The program will not only cover training with regard to specific security responsibilities but also sensitize employees, relevant contractors and consultants about the security policy, security measures of TNPA as well as the need to protect sensitive information against disclosure, loss or destruction;</p> <p>4.3.5.4.3 Periodic security awareness presentations, briefings and workshops will be conducted and in addition to that, posters and pamphlets will be frequently distributed in order to enhance the training and awareness program. Attendance of the above programs will be compulsory for all employees who shall have been identified and notified to attend;</p> <p>4.3.5.4.4 Regular audits, surveys and walkthrough inspections shall be conducted by the Head of Security and members of the security department to monitor the effectiveness of the security training and awareness program.</p>	
<p>4.3.6 Information and Communication Technology (ICT) Security</p>	
<p>4.3.6.1 IT Security</p>	
<p>4.3.6.1.1 A secure network shall be established for TNPA in order to ensure that information systems are secured against rapidly evolving threats that have the potential to impact on their confidentiality, integrity, availability, intended use and value;</p> <p>4.3.6.1.2 To prevent the compromise of IT systems, TNPA shall implement baseline security controls and any additional control identified through the security TRA. These controls, and the security roles and responsibilities of all personnel, shall be clearly defined, documented and communicated to all employees;</p> <p>4.3.6.1.3 To ensure policy compliance, the Chief Information Officer of TNPA shall:</p> <ul style="list-style-type: none"> • Certify that all its systems are secure after procurement, accredit IT systems prior to operation and comply with minimum security standards and directives; • Conduct periodic security evaluations of systems, including assessments of configuration changes conducted on a routine basis; • Periodically request assistance, review and audits from the National Intelligence Agency (NIA) in order to get an independent assessment. 	<p>See Security Directive Security Training and Awareness</p>
<p>4.3.6.1.4 Server rooms and other related security zones where IT equipment is kept shall be secured with adequate physical security measures and strict access control shall be enforced</p>	<p>See ICT Security Policy and Security Directive ICT Security</p>

<p>and monitored;</p> <p>4.3.6.1.5 Access to the resources on the network of TNPA shall be strictly controlled to prevent unauthorized access. Access to all computing and information systems and peripherals of TNPA shall be restricted unless explicitly authorized;</p> <p>4.3.6.1.6 System hardware, operating and application software, the network and communication systems of TNPA shall be adequately configured and safeguarded against both physical attack and unauthorized network intrusion;</p> <p>4.3.6.1.7 All employees shall make use of IT systems of TNPA in an acceptable manner and for business purposes only. All employees shall comply with the IT Security Directives in this regard at all times;</p> <p>4.3.6.1.8 The selection of passwords, their use and management as a primary means to control access to systems is to strictly adhere to best practice guidelines as reflected in the IT Security Directives. In particular, passwords shall not be shared with any other person for any reason;</p> <p>4.3.6.1.9 To ensure the ongoing availability of critical services, TNPA shall develop IT continuity plans as part of its overall Business Continuity Planning (BCP) and recovery activities.</p>	<p>See BCP</p>
<p>4.3.6.2 Internet Access</p> <p>4.3.6.2.1 The Chief Information Officer (CIO) of TNPA, having the overall responsibility for setting up Internet Access for TNPA, shall ensure that the network of TNPA is safeguarded from malicious external intrusion by developing, as a minimum, a configured firewall. Human Resources management shall ensure that all personnel with Internet access (including e-mail) are aware of, and will comply with, an acceptable code of conduct in their usage of the Internet;</p> <p>4.3.6.2.2 The CIO of TNPA shall be responsible for controlling user access to the Internet, as well as ensuring that users are aware of the threats, and are trained in the safeguards, to reduce the risk of Information Security breaches and incidents;</p> <p>4.3.6.2.3 Incoming e-mails must be treated with the utmost care due to its inherent Information Security risks. The opening of e-mail with file attachments is not permitted unless such attachments have already been scanned for possible computer viruses or other malicious code;</p>	<p>See Security Directive ICT Security</p>
<p>4.3.6.3 Use of Laptop Computers</p> <p>4.3.6.3.1 Usage of laptop computers by employees of TNPA is restricted to business purposes only, and users shall be aware of, and accept the terms and conditions of use, especially the responsibility for the security of the information held on such devices;</p> <p>4.3.6.3.2 The information stored on a laptop computer of TNPA shall be suitably protected at all times, in line with the protection measures prescribed in the IT Security Directive;</p> <p>4.3.6.3.3 Employees shall also be responsible for implementing the appropriate security measures for the physical protection of</p>	<p>See Security Directive ICT Security</p>

<p>executed;</p> <p>4.3.7.3 All employees of TNPA shall be made aware and trained on the content of the BCP to ensure understanding of their own respective roles in terms thereof;</p> <p>4.3.7.4 The Business Continuity Plan shall be kept up to date and re-tested periodically by the Head of Security.</p>	<p>See BCP</p>
<p>5. SPECIFIC RESPONSIBILITIES</p> <p>5.1 Chief Executive</p> <p>5.1.1 The CE of TNPA bears the overall responsibility for implementing and enforcing the security program of TNPA. In executing this responsibility, the CE shall:</p> <ul style="list-style-type: none"> • Establish the post of the Head of Security and appoint a well trained and competent security official in the post; • Establish a Security Committee for the company and ensure the participation of all Senior Management members of all the core business functions of TNPA in the activities of the Committee; • Approve and ensure compliance with this Policy and its associated Security Plans and Directives. <p>5.2 Head of Security</p> <p>5.2.1 The delegated security responsibility lies with the Head of Security of TNPA who will be responsible for the execution of the entire security function and program within TNPA (coordination, planning, implementing, controlling,). In executing his/her responsibilities, the Head of Security shall, amongst others;</p> <ul style="list-style-type: none"> • Chair the Security Committee of TNPA; • Draft the internal Security Policy and Security Plan (containing the specific and detailed Security Directives) of TNPA in conjunction with the Security Committee; • Ensure that Port Security and Port Facility Security Plans are in place and reviewed annually?; for all regulated ports falling under the TNPA jurisdiction • Review the Security Policy and Security Plan at regular intervals; • Conduct a security TRA of TNPA with the assistance of the Security Committee; • Advise management on the security implications of management decisions; • Implement a security risk awareness program; • Conduct internal compliance audits and inspections at TNPA at regular intervals; • Conduct preliminary enquiries on security breaches within TNPA; • Establish a good working relationship with both NIA and SAPS and liaise with these institutions on a regular basis. 	

5.3 Security Committee

- 5.3.1 The Security Committee referred to in par. 5.1.1 above shall consist of senior managers of TNPA representing all main business units of TNPA.
- 5.3.2 Participation in the activities of the Security Committee by the appointed representatives of business units of TNPA shall be compulsory;
- 5.3.3 The Security Committee of TNPA shall be responsible for, amongst others, assisting the Head of Security in the execution of all security related responsibilities at TNPA, including completing tasks such as drafting/reviewing of the Security Policy and Plan; conducting of a security TRA; conducting of security audits; drafting of BCP; and assisting with security risk awareness and training.

5.4 Port Managers

- 5.4.1 All Port Managers have a delegated responsibility and commensurate authority to manage security at their respective regulated ports and must account on security matters to the Head of Security's Office;
- 5.4.2 Port Managers must ensure that appropriate measures are implemented and steps are taken immediately to rectify any non compliance issues that may come to their attention. This includes taking disciplinary action against employees if warranted.

5.5 Port Security Officer (PSO)

A Port Security Officer shall:

- 5.5.1 Manage, lead, co-ordinate, plan and organize the total TNPA security function within a specified port;
- 5.5.2 Carry out duties as specified in the Maritime Security Regulations 2004.

5.6 Port Facilities (Terminal Operators)

- 5.6.1 All Terminal Operators are required to manage their security in accordance with their approved Port Facility Security Plans.
- 5.6.2 All Terminal Operators are required to act upon the security levels as set by the Director General, National Department of Transport.
- 5.6.3 All Terminal Operators are required to comply with all applicable legislation and International Legal Instruments.

5.7 Line Management

- 5.7.1 All managers of TNPA shall ensure that their subordinates comply with this policy and the Security Directives as contained in the Security Plan of TNPA at all times;
- 5.7.2 Managers must ensure that appropriate measures are implemented and steps are taken immediately to rectify any non-compliance

issues that may come to their attention. This includes taking disciplinary action against employees if warranted.

See Disciplinary

5.8 Port Facility Security Officer (PFSO)

A Port Facility Security Officer shall:

- 5.8.1 Ensure that Port Facility Security Plans are developed in line with the respective overall Port Security Plan;
- 5.8.2 Ensure that regular reviews are held and plans updated accordingly;
- 5.8.3 Carry out functions as per the Maritime Regulations 2004; and the ISPS Code;
- 5.8.4 Report incidents as provided for in Section 62 (5) of the National Ports Authority Act (Act 12 of 2005)

5.9 Employees, Consultants, Contractors, and Other Service Providers

- 5.9.1 Every employee, consultant, contractor, various port users and other service providers of TNPA shall know what their security responsibilities are, accept it as part of their normal job function, and not only cooperate, but contribute to improving and maintaining security at TNPA at all times.

6 AUDIENCE

- 6.1 This Policy is applicable to all members of the management, employees, consultants, contractors, port facilities & various port users and any other service providers of TNPA. It is further applicable to all visitors and members of the public visiting premises of, or may officially interact with, TNPA.

7 ENFORCEMENT

- 7.1 The CE of TNPA and the appointed Head of Security are accountable for the enforcement of this Policy;
- 7.2 All employees of TNPA are required to fully comply with this Policy and its associated Security Directives and Port Facility Security Plans as contained in the Security Plan. Non-compliance with any prescripts shall be addressed in terms of the Disciplinary Code of TNPA;
- 7.3 Prescripts to ensure compliance to this Policy and the Security Directives by all consultants, contractors, or other service providers of TNPA shall be included in the contracts signed with such individuals/institutions/companies. The consequences of any transgression/deviation or non-compliance shall be clearly stipulated in said contracts and shall be strictly enforced. Such consequences may include the payment of prescribed penalties or termination of the contract, depending on the nature of any non-compliance.

<p>8 EXCEPTIONS</p> <p>8.1 Deviations from this Policy and Its associated Security Directives will only be permitted in the following circumstances:</p> <ul style="list-style-type: none"> • When security can be breached in order to save or protect the lives of people; • During unavoloided emergency circumstances e.g. natural disasters; • On written permission by the CE of TNPA (reasons for allowing non-compliance to one or more aspects of the Policy and directives shall be clearly stated in such permission; no blanket non-compliance shall be allowed under any circumstances). <p>9 OTHER CONSIDERATIONS</p> <p>9.1 The following shall be taken into consideration when implementing this Policy:</p> <p>9.1.1 Occupational Health and Safety issues within TNPA operations;</p> <p>9.1.2 Disaster management at TNPA;</p> <p>9.1.3 Disabled persons shall not be inconvenienced by physical security measures and must be catered for in such a manner that they have access without compromising security or the integrity of this Policy;</p> <p>9.1.4 Environmental issues as prescribed and regulated in relevant legislation (e.g. when implementing physical security measures that may impact on the environment).</p> <p>10 COMMUNICATING THE POLICY</p> <p>10.1 The Head of Security of TNPA shall ensure that the content of this Policy (or applicable aspects thereof) is communicated to all employees, port facilities and various port users, consultants, contractors, other service providers, clients, visitors, members of the public that may officially interact with TNPA. The Head of Security will further ensure that all security policy and directive prescriptions are enforced and complied with.</p> <p>10.2 The Head of Security must ensure that a comprehensive security risk awareness program is developed and implemented within TNPA to facilitate the above said communication. Communication of the Policy by means of this program shall be conducted as follows:</p> <ul style="list-style-type: none"> • Awareness workshops and briefings to be attended by all employees, port facilities and various port users; • Distribution of memos and circulars to all employees; • Access to the policy and applicable directives on the intranet of TNPA. <p>11 REVIEW AND UPDATE PROCESS</p> <p>11.1 The Head of Security, assisted by the Security Committee of TNPA, must ensure that this Policy and its associated Security Directives is reviewed and updated on an annual basis. Amendments shall be made to the Policy and Directives as need arises.</p>	<p>See Security Directive Security Training and Awareness</p> <p>See Security Directive Security Audits and Inspections</p>
--	---

12 IMPLEMENTATION

- 12.1 The Head of Security of TNPA must manage the implementation process of this Policy and its associated Security Directives (contained in the Security Plan) by means of an action plan (also to be included in the Security Plan of TNPA).
- 12.2 Implementation of the Policy and its associated Security Directives is the responsibility of each and every individual this Policy is applicable to (see par. 2.1 above).

13 MONITORING OF COMPLIANCE

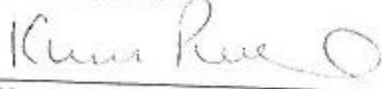
- 13.1 The Head of Security, with the assistance of the security department and Security Committee of TNPA must ensure compliance with this policy and its associated Security Directives by means of conducting internal security audits and inspections on a frequent basis.
- 13.2 The findings of the said audits and inspections shall be reported to the CE of TNPA forthwith after completion thereof.

14 DISCIPLINARY ACTION

- 14.1 Non-compliance with this Policy and its associated Security Directives shall result in disciplinary action which may include, but is not limited to:
- Re-training;
 - Verbal and written warnings;
 - Termination of contracts in the case of contractors or consultants delivering a service to TNPA;
 - Dismissal;
 - Suspension;
 - Loss of TNPA information and asset resources access privileges;
- 14.2 Any disciplinary action taken in terms of non compliance with this Policy and its associated directives will be in accordance with the Disciplinary Code of TNPA.

15. APPROVAL

APPROVED BY



Mr. K. PHIHLELA (CE TNPA)

Date: 5/11/2008

Summary of Changes:

Version	Status/Changes	Author	Year of Issue
01	Second Issue	MJ Moleya	2008/09

Distribution: To all.

ANNEXURE 'A' APPLICABLE LEGISLATION AND OTHER REGULATORY FRAMEWORK DOCUMENTS

1. Applicable Legislation

- 1.1 The Constitution Act 108 of 1996
- 1.2 The National Ports Authority Act 12 of 2005
- 1.3 Control of Access to Public Premises and Vehicles Act 53 of 1985 as amended
- 1.4 The Criminal Procedure Act 51 of 1977 as amended
- 1.5 The Protection of Information Act 84 of 1982 as amended
- 1.6 The Occupational Health and Safety Act 85 of 1993 as amended
- 1.7 The Promotion of Access to Information Act 2 of 2000
- 1.8 Firearms Control Act 60 of 2000
- 1.9 State Information Technology Act 88 of 1998
- 1.10 Private Security Industry Regulation Act 56 of 2001
- 1.11 Trespass Act 6 of 1959 as amended
- 1.12 National Archives of South Africa Act, 43 of 1996
- 1.13 Fire Brigade Services Act, 99 of 1987 as amended
- 1.14 Public Finance Management Act, 1 of 1999
- 1.15 Public Service Regulations, of 2001
- 1.16 The National Strategic Intelligence Act, 39 of 1994
- 1.17 The National Key Points Act 102 of 1980
- 1.18 The Corruption Act, 94 of 1992
- 1.19 Prevention of Organized Crime Act, 121 of 1998
- 1.20 Protected Disclosures Act, 26 of 2000
- 1.21 Telecommunications Act, 2 of 2000
- 1.22 Prevention of Interception and Monitoring Act, 70 of 2002
- 1.23 Electronic Communication Security Act, 68 of 2002
- 1.24 The National Building Regulations and Standards Act, 103 of 1956 as amended
- 1.25 The Prevention and Combating of Corrupt Activities Act 12 of 2004
- 1.26 National Environmental Management Act, 107 of 1995

2. Other Regulatory Framework Documents

- 2.1 Minimum Information Security Standards (MISS), Second Edition March 1998;
- 2.2 Minimum Physical Security Standards (MPSS)
- 2.3 International Ship and Port Facility Security Code and SOLAS Amendments 2002;
- 2.4 Merchant Shipping Act (Maritime Security Regulations) of 2004
- 2.5 Risk Management Standard GRB 1.1 Transnet Generic Security Standard;
- 2.6 White Paper on Intelligence (1995)
- 2.7 SACSA/090/1(4) Communication Security in the RSA
- 2.8 NIA Guidance Documents: ICT Policy and Standards: Part 1 & 2
- 2.9 ISO 17799
- 2.10 National Building Regulations

ANNEXURE 'B' GLOSSARY AND DEFINITIONS





- "accreditation" means the official authorization by management for the operation of an Information Technology (IT) system, and acceptance by that management of the associated residual risk. Accreditation is based on the certification process as well as other management considerations;
- "assets" means material and immaterial property of an institution. Assets include but are not limited to information in all forms and stored on any media, networks or systems, or material, real property, financial resources, employee trust, public confidence and international reputation;
- "availability" means the condition of being usable on demand to support operations, programmes and services;
- "business continuity planning" includes the development of plans, measures, procedures and arrangements to ensure minimal or no interruption of the availability of critical services and assets;
- "candidate" means an applicant, an employee, a contract employee or a person acting on behalf of a contract appointee or independent contractor;
- "certification" means the issuing of a certificate certifying that a comprehensive evaluation of the technical and non technical security features of an Information and Communication Technology system (hereinafter referred to as an ICT system) and its related safeguards has been undertaken and that it was established that its design and implementation meets a specific set of security requirements;
- "COMSEC" means the organ of state known as the Electronic Communications Security (Pty) Ltd, which was established in terms of section 2 of the Electronic Communications Security Act, 2002 (Act No. 68 of 2002) and until such time as COMSEC becomes operational, the South African Communication Security Agency will be in force;
- "critical service" means a service identified by an institution as a critical service through a Threat and Risk Assessment and the compromise of which will endanger the effective functioning of the institution;
- "document" means –
 - any note or writing, whether produced by hand or by printing, typewriting or any other similar process, in either tangible or electronic format;
 - any copy, plan, picture, sketch or photographic or other representation of any place or article;
 - any disc, tape, card, perforated roll or other device in or on which sound or any signal has been recorded for reproduction;
- "information security" includes, but is not limited to ;
 - document security;
 - physical security measures for the protection of information;
 - information and communication technology security;
 - personnel security;
 - business continuity planning;
 - contingency planning;
 - security screening;
 - technical surveillance counter-measures;
 - dealing with information security breaches;
 - security investigations; and
 - administration and organization of the security function at organs of state;
- "National Intelligence Structures" means the National Intelligence Structures as

- defined in section 1 of the National Strategic Intelligence Act, (Act 39 of 1994);
- "reliability check" means an investigation into the criminal record, credit record and past performance of an individual or private organ of state to determine his, her or its reliability;
- "risk" means the likelihood of a threat materializing by exploitation of a vulnerability;
- "screening investigator" means a staff member of a National Intelligence Structure designated by the head of the relevant National Intelligence Structure to conduct security clearance investigations;
- "security breach" means the negligent or intentional transgression of or failure to comply with security measures;
- "security clearance" means a certificate issued to a candidate after the successful completion of a security screening investigation, specifying the level of classified information to which the candidate may have access subject to the need-to-know principle;
- "site access clearance" means clearance required for access to installations critical to the national interests;
- "Technical Surveillance Countermeasures" (TSCM) means the process involved in the detection, localization, identification and neutralization of technical surveillance of an individual, an organ of state, facility, or vehicle;
- "technical/electronic surveillance" means the interception or monitoring of sensitive or proprietary information or activities (also referred to as bugging);
- "threat" means any potential event or act, deliberate or accidental, that could cause injury to persons, compromise the integrity of information or could cause the loss or damage of assets;
- "Threat and Risk Assessment" (TRA) means, within the context of security risk management, the process through which it is determined when to avoid, reduce, and accept risk, as well as how to diminish the potential impact of a threatening event;
- "vulnerability" means a deficiency related to security that could permit a threat to materialize.

ANNEXURE 'C' SUPPORTING DOCUMENTS

- Security Plan containing the following:
 - Security Component Organization Structure
 - Security Component SOP's
 - Specific Responsibilities of Key Role Players
 - Port Security Plans
 - Security Directive: Reporting of Security Breaches
 - Security Directive: Security Breaches Response Procedures
 - Security Directive: Information Security: General Responsibilities
 - Security Directive: Classification System
 - Security Directive: Security Screening
 - Security Directive: Physical Security
 - Security Directive: Access Control
 - Security Directive: ICT Security
 - Security Directive: Secure Discussions Areas
 - Security Directive: TRA

- Security Directive: Security Audits and Inspections
- ICT Security Policy
- BCP
- OHS Policy
- Disciplinary Code

Transnet National Ports Authority		 national ports authority	
Procedure for: <i>Goods vehicles</i> entering the Port of Richards Bay			
Document and Record Control			
PARA	DESCRIPTION	PAGE	
1	PURPOSE	2	
2	BACKGROUND AND SCOPE	2	
3	RESPONSIBILITIES	2	
4	DEFINITIONS AND ABBREVIATIONS	2	
5	APPLICABLE LEGISLATION AND FRAMEWORKS	6	
6	PROCEDURE	7	
7	CARTAGE ACTIVITIES	10	
8	ENVIRONMENTAL PROCEDURES	11	
9	PROHIBITED ACTIONS	12	
10	INDEMNITY	13	
 COMPILED BY Dering Joyce Port Security Officer		17/06/2015 DATE	
 RECOMMENDED BY Herbert Madonsela Acting Senior Operations Manager		17/06/2015 DATE	
 APPROVED BY Preston Khomo Port Manager, Port of Richards Bay		17/06/2015 DATE	
NEXT REVIEW		JUNE 2016	
AMENDMENT RECORD			
REV.	SECTION AFFECTED/REFERENCE	DATE	

1. Purpose

The purpose of this document is to ensure that all *Goods vehicles/Goods vehicle Drivers/Goods vehicle Owners* entering the Port of Richards Bay are well advised of the applicable Rules and Regulations upon entry and follow the procedure set out herein.

2. Background and Scope

This document applies to:

- all "*goods vehicles*",
- *goods vehicle* drivers,
- *goods vehicle* driver assistant (where applicable),
- *goods vehicle* owners which require access to the Port of Richards Bay,
- all contractors and their employees working on Transnet premises,
- all employees of Transnet whether permanent or temporary employed,

The Authority may make rules for the control and management of ports and the approaches thereto and for the maintenance of safety, security and good order in ports, in accordance with the National Ports Act 12 of 2005, Section 80 (2).

MARSEC levels must be observed and could result in access being denied depending on the MARSEC LEVEL enforce .

This document supersedes any other prior documents in relation to this matter.

3. Allocation of responsibilities

The onus is upon *goods vehicle* drivers / *goods vehicle* operators and *goods vehicle* owners, inter alia, with regards to adhering to the rules and regulations detailed within this document. The responsibility for enforcement and management of this Standard Operating Procedure ("SOP") lies with the TNPA Port Security Officer and the TNPA Operations Manager.

4. Abbreviations and Definitions

TNPA:	Transnet National Ports Authority
TSA:	Truck Staging Area
RMT:	Road Motor Transport
GCOS:	General Cargo Operating System
PPE:	Personal Protective Equipment
ISPS Code:	International Ship and Port Facilities Security Code

MSDS: Material Safety Data Sheet

- "goods vehicle " means a motor vehicle, other than a motor cycle, motor tricycle, motor car, mini-bus or bus, designed or adapted for the conveyance of goods on a public road and includes a truck-tractor, haulage tractor, adaptor dolly, converter dolly and breakdown vehicle "
- "articulated motor vehicle" means a combination of motor vehicles consisting of a truck-tractor and a semi-trailer.
- "Driver Assistant" someone who is actively involved in assisting the driver to navigate the vehicle safely or unload vehicle safely. All other passengers will not be granted access.
- "Company Premises" Includes any building, premises or property, as well as any vehicles, vessels, trains, aircraft or machines belonging to or leased by TRANSNET SOC LIMITED, trading through its operating division TRANSNET NATIONAL PORTS AUTHORITY.
- "accreditation" means the official authorization by management for the operation of an Information Technology (IT) system, and acceptance by that management of the associated residual risk. Accreditation is based on the certification process as well as other management considerations;
- "assets" means material and immaterial property of an institution. Assets include but are not limited to information in all forms and stored on any media, networks or systems, or material, real property, financial resources, employee trust, public confidence and international reputation;
- "availability" means the condition of being usable on demand to support operations, programmes and services;
- "business continuity planning" includes the development of plans, measures, procedures and arrangements to ensure minimal or no interruption of the availability of critical services and assets;
- "candidate" means an applicant, an employee, a contract employee or a person acting on behalf of a contract appointee or independent contractor;
- "certification" means the issuing of a certificate certifying that a comprehensive evaluation of the technical and non-technical security features of an Information and Communication Technology system (hereinafter referred to as an ICT system) and its related safeguards has been undertaken and that it was established that its design and implementation meets a specific set of security requirements;
- "COMSEC" means the organ of state known as the Electronic Communications Security (Pty) Ltd, which was established in terms of section 2 of the Electronic

Communications Security Act, 2002 (Act No. 68 of 2002) and until such time as COMSEC becomes operational, the South African Communication Security Agency will be in force;

- “critical service” means a service identified by an institution as a critical service through a Threat and Risk Assessment and the compromise of which will endanger the effective functioning of the institution;
- “document” means –
 - any note or writing, whether produced by hand or by printing, typewriting or any other similar process, in either tangible or electronic format;
 - any copy, plan, picture, sketch or photographic or other representation of any place or article;
 - any disc, tape, card, perforated roll or other device in or on which sound or any signal has been recorded for reproduction;
- “information security” includes, but is not limited to ;
 - document security;
 - physical security measures for the protection of information;
 - information and communication technology security;
 - personnel security;
 - business continuity planning;
 - contingency planning;
 - security screening;
 - technical surveillance counter-measures;
 - dealing with information security breaches;
 - security investigations; and
 - administration and organization of the security function at organs of state;
- “National Intelligence Structures” means the National Intelligence Structures as defined in section 1 of the National Strategic Intelligence Act, (Act 39 of 1994);
- “reliability check” means an investigation into the criminal record, credit record and past performance of an individual or private organ of state to determine his, her or its reliability;
- “risk” means the likelihood of a threat materializing by exploitation of a vulnerability;

- "screening investigator" means a staff member of a National Intelligence Structure designated by the head of the relevant National Intelligence Structure to conduct security clearance investigations;
- "security breach" means the negligent or intentional transgression of or failure to comply with security measures;
- "security clearance" means a certificate issued to a candidate after the successful completion of a security screening investigation, specifying the level of classified information to which the candidate may have access subject to the need-to-know principle;
- "site access clearance" means clearance required for access to installations critical to the national interests;
- "Technical Surveillance Countermeasures" (TSCM) means the process involved in the detection, localization, identification and neutralization of technical surveillance of an individual, an organ of state, facility, or vehicle;
- "technical/electronic surveillance" means the interception or monitoring of sensitive or proprietary information or activities (also referred to as bugging);
- "threat" means any potential event or act, deliberate or accidental, that could cause injury to persons, compromise the integrity of information or could cause the loss or damage of assets;
- "Threat and Risk Assessment" (TRA) means, within the context of security risk management, the process through which it is determined when to avoid, reduce, and accept risk, as well as how to diminish the potential impact of a threatening event;
- "vulnerability" means a deficiency related to security that could permit a threat to materialize.
- "Security level 1" means the level for which minimum appropriate protective security measures shall be maintained at all times.
- "Security level 2" means the level for which appropriate additional protective security measures shall be maintained for a period of time as a result of heightened risk of a security incident.
- "Security level 3" means the level for which further specific protective security measures shall be maintained for a limited period of time when a security incident is probable or imminent, although it may not be possible to identify the specific target.

5. APPLICABLE LEGISLATION AND OTHER REGULATORY FRAMEWORK DOCUMENTS

1. Applicable Legislation

- 1.1 The Constitution Act 108 of 1996
- 1.2 The National Ports Authority Act 12 of 2005
- 1.3 Control of Access to Public Premises and Vehicles Act 53 of 1985 as amended
- 1.4 The Criminal Procedure Act 51 of 1977 as amended
- 1.5 The Protection of Information Act 84 of 1982 as amended
- 1.6 The Occupational Health and Safety Act 85 of 1993 as amended
- 1.7 The Promotion of Access to Information Act 2 of 2000
- 1.8 Firearms Control Act 60 of 2000
- 1.9 State Information Technology Act 88 of 1998
- 1.10 Private Security Industry Regulation Act 56 of 2001
- 1.11 Trespass Act 6 of 1959 as amended
- 1.12 National Archives of South Africa Act, 43 of 1996
- 1.13 Fire Brigade Services Act, 99 of 1987 as amended
- 1.14 Public Finance Management Act, 1 of 1999
- 1.15 Public Service Regulations, of 2001
- 1.16 The National Strategic Intelligence Act, 39 of 1994
- 1.17 The National Key Points Act 102 of 1980
- 1.18 The Corruption Act, 94 of 1992
- 1.19 Prevention of Organized Crime Act, 121 of 1998
- 1.20 Protected Disclosures Act, 26 of 2000
- 1.21 Telecommunications Act, 2 of 2000
- 1.22 Prevention of Interception and Monitoring Act, 70 of 2002
- 1.23 Electronic Communication Security Act, 68 of 2002
- 1.24 The National Building Regulations and Standards Act, 103 of 1956 as amended
- 1.25 The Prevention and Combating of Corrupt Activities Act 12 of 2004
- 1.26 National Environmental Management Act, 107 of 1995

2. Other Regulatory Framework Documents

- 2.1 Minimum Information Security Standards (MISS), Second Edition March 1998;
- 2.2 Minimum Physical Security Standards (MPSS)
- 2.3 International Ship and Port Facility Security Code and SOLAS Amendments 2002;
- 2.4 Merchant Shipping Act (Maritime Security Regulations) of 2004
- 2.5 Risk Management Standard GRB 1.1 Transnet Generic Security Standard;
- 2.6 White Paper on Intelligence (1995)
- 2.7 SACSA/090/1(4) Communication Security in the RSA
- 2.8 SSA Guidance Documents: ICT Policy and Standards: Part 1 & 2
- 2.9 ISO 17799
- 2.10 National Building Regulations

6. Procedure

Procedure	Responsible Person
<p>6.1 All <i>goods vehicle</i> Owners to purchase a <i>Goods vehicle</i> Permit prior to entry:</p> <ul style="list-style-type: none"> • The following are the banking account details into which payment can be made in respect of the purchase of a <i>goods vehicle</i> permit from the Port of Richards Bay, as well as the cost of the permit can be found in the TNPA Tariff book that is available in the TNPA website. <p style="padding-left: 40px;">Standard Bank Account Name: Transnet National Ports Authority Account Number: 062525077 Branch Code: 058030 Amount: as per TNPA tariff book</p> <ul style="list-style-type: none"> • Proof of payment must be produced on collection of the <i>Goods vehicle</i> Permit • The person collecting the <i>goods vehicle</i> permits will be deemed as a representative of the Transport company and will be required to sign for the permit/s as well as the TNPA rules and regulations as further set out within this procedure. 	<p style="text-align: center;"><i>Goods vehicle</i> owner</p>

Procedure	Responsible Person
<p>6.2 A replacement permit will be issued without charge if required on the basis of the following reasons:</p> <ul style="list-style-type: none"> • Change of registration (proof of such, i.e. License certificates reflecting the old and new registration numbers, to be supplied on application of a replacement disc) • Lost discs • Stolen discs • Damaged discs <p>An affidavit from the responsible person / driver/ owner detailing the events must also accompany the reapplication process.</p> <p>The first incident for a replacement disc will be free of charge, thereafter a new disc will need to be purchased following the process as set out under item 6.1 of this document.</p>	
<p>6.3 All <i>goods vehicle</i> drivers and driver assistants (where permitted) to have valid port access permits.</p>	<p><i>Goods vehicle</i> Driver</p>
<p>6.4 MARSEC levels to be observed, and could result in access being denied depending on the MARSEC LEVEL enforce.</p>	
<p>6.5 All <i>goods vehicle</i> drivers, if not a South African citizen, to be employed in terms of the Immigration Act 13 of 2002 and to have a valid work permit/VISA.</p>	<p><i>Goods vehicle</i> owner</p>
<p>6.6 The <i>goods vehicle</i> driver as well as the driver assistant (where permitted) to be in possession of a valid driver's license/Professional Drivers Permit (PrDP) category G (Goods) and D (Dangerous Goods) to operate such a vehicle.</p>	<p><i>Goods vehicle</i> Driver / <i>Goods vehicle</i> owner</p>
<p>6.7 All goods vehicles to be in a roadworthy condition, free of all defects.</p>	<p><i>Goods vehicle</i> driver / <i>Goods vehicle</i> owner</p>
<p>6.8 All <i>goods vehicle</i> drivers are to comply with all Security, Safety and Environmental requirements in all applicable legislation.</p>	<p><i>Goods vehicle</i> driver</p>
<p>6.9 All <i>goods vehicle</i> drivers / owners are to arrive on the port premises in a sober state as mandatory breathalyzing will be conducted upon entry and egress of the port</p>	<p><i>Goods vehicle</i> driver/ <i>Goods</i></p>

Procedure	Responsible Person
premises (ZERO tolerance to alcohol)	<i>vehicle</i> owner
6.10 All <i>goods vehicle</i> drivers to comply with signage throughout the port premises.	<i>Goods vehicle</i> driver
<p>6.11 All <i>goods vehicles</i> to report to the truck staging area upon access and egress. Furthermore, the <i>goods vehicle</i> driver must ensure and/or comply to the following when reporting to the truck staging area:</p> <ul style="list-style-type: none"> • Driver to have the necessary ID and vehicle permits before entry • Alcohol Testing and cab search to be conducted at the TNPA entrance • <i>Goods vehicle</i> to have no leaks and must be properly tarped. • <i>Goods vehicle</i> to be roadworthy • Ensure all equipment, revolving lights and reverse sirens are working • Random Cargo/seal checks to be conducted on RMT's at TNPA entrance. Any deviations to be elevated to the Security Supervisor and such to be remedied with the Customer/Agent before entering the TSA • Verification of delivery note to GCOS system 	<i>Goods vehicle</i> driver
6.12 All <i>goods vehicle</i> drivers are to ensure that the <i>goods vehicles</i> are weighed at the weigh in areas (truck staging and terminals) where available.	<i>Goods vehicle</i> driver
6.13 All <i>goods vehicle</i> drivers are to ensure that they have all relevant and valid licenses and permits to operate in terms of the National Ports Act 12 of 2005 (Port Rules)	<i>Goods vehicle</i> driver
6.14 All <i>goods vehicle</i> drivers and owners involved in damages to Transnet property must immediately report such damage to TNPA Control Room (035 905 4626). Furthermore, the <i>goods vehicle</i> drivers / owners will be and remain liable for all costs resulting from such damage.	<i>Goods vehicle</i> driver/ <i>Goods vehicle</i> owners
6.15 <i>Goods vehicle</i> drivers / owners will be held liable for any costs pertaining to spillages in terms of clean-up costs relating to ground contamination etc.	<i>Goods vehicle</i> driver/ <i>Goods vehicle</i> owners
6.16 All <i>goods vehicle</i> drivers/owners must ensure every <i>goods vehicle</i> driver entering the port/ port facilities/ terminals must have full Personal Protective Equipment applicable to the areas to be entered, including, but not limited to;	<i>Goods vehicle</i> driver/ <i>Goods vehicle</i> owners

Procedure	Responsible Person
<ul style="list-style-type: none"> • Hardhats, • reflective jackets, • safety boots, 	
<p>6.17 All <i>goods vehicles</i> over 3T are to have the following fitted:</p> <ul style="list-style-type: none"> • Strobe lights • Audible reverse hooters • Safety / breakdown equipment eg. Triangle • All applicable reflective strips to be visible on the <i>goods vehicle</i> • All <i>goods vehicles</i> to drive with the lights on when entering the port 	<i>Goods vehicle</i> owner
<p>6.18 Any vehicle maintenance & repairs are not allowed within the Port premises. All <i>goods vehicles</i> to be towed to the applicable service provider premises for repairs. No mechanic will be allowed into the TSA to repair trucks. All trucks must be repaired / serviced off site. If a breakdown has occurred, a tow truck must be arranged and the truck removed to an appropriate facility for repairs.</p>	<i>Goods vehicle</i> owner
<p>6.19 All <i>goods vehicle</i> drivers/owners are hereby informed that the port roads are policed by security as well as municipal traffic Officials. Sanctions and monetary traffic fines are issued for traffic violations.</p>	<i>Goods vehicle</i> driver/ <i>Goods vehicle</i> owner

7. Cartage Activities

Procedure	Responsible Person
<p>7.1 <i>Goods vehicle</i> drivers within the port may not transport any container / cargo unless the container / cargo is properly secured, with the necessary locks designed to transport containers / cargo by land.</p>	<i>Goods vehicle</i> driver
<p>7.2 The discharging gate on the box/bin of a <i>goods vehicle</i> shall have an adequate seal to prevent spillage of any material/cargo during transit.</p>	<i>Goods vehicle</i> driver

Procedure	Responsible Person
7.3 The amount of material/cargo shall not be such that it allows for any spillage from the top level of the box/bin. The level should at least 100mm lower than the upper edges of the loading box/bin.	<i>Goods vehicle driver</i>
7.4 The material/cargo loaded into the loading box/bin shall be covered properly and secured before leaving the loading area. Covers shall be secured at both ends and both sides of the loading box/bin in such a manner that no material/cargo will spill from the box/bin during transportation.	<i>Goods vehicle driver</i>
7.5 No load shall be greater than the rated weight capacity of the <i>goods vehicle</i> as specified by the manufacturer and must not exceed the limits imposed by South African legislation.	<i>Goods vehicle driver</i>

8. Environmental Procedures

PROCEDURE	RESPONSE PERSONS
8.1 All goods vehicles entering the Port of Richards Bay must be fitted with a fully equipped spill kit.	Goods vehicle owner.
8.2 The goods vehicle must always have on board an MSDS for the material being conveyed and the fuel.	Goods vehicle owner.
8.3 The goods vehicle driver must be suitably trained on how to use the spill kit and must have emergency contact details for a response company to assist should large spillages occur.	Goods vehicle owner.
8.4 The goods vehicle driver must undertake the clean-up of the minor and manageable spillages as soon as possible to avoid environmental impact and traffic disruption.	Goods vehicle driver.
8.5 TNPA Emergency services will attend to all spillages incidents in the Port and will take over the incident management should the goods vehicle driver be unable to adequately attend to the incident.	TNPA Emergency Services.
8.6 The goods vehicle owner will be responsible for payments to be made to Emergency services for the	Goods vehicle owner.

incident response.	
8.7 In case of large spillages, the goods vehicle driver must alert the goods vehicle's response company to assist with effective clean-up of the spilled material.	Goods vehicle owner.
8.8 Any costs that may be incurred or surface as a result of claims from the environmental incidents will be borne by the goods vehicle owner.	Goods vehicle owner.
8.9 Goods vehicle owner must ensure that environmental incidents are reported to Department of Environmental Affairs as per NEMA Section 30. Should the goods vehicle owner neglect this responsibility, TNPA Environment will report the incident and goods vehicle owner will need to undertake all measures required to attend to the incident to closure.	Goods vehicle owner.
8.10 Goods vehicle driver must ensure that waste generated in goods vehicle is disposed accordingly in suitable waste receptacle. If no receptacle can be accessed, the goods vehicle driver must dispose the waste in his next stop. Littering in the Port is strictly prohibited. Actions will be taken against anyone observed polluting.	Goods vehicle driver.

9. Prohibited Actions

Procedure	Responsible Person
9.1 No overnight stays within the port premises	<i>Goods vehicle driver / driver assistant / passenger</i>
9.2 No cooking of food, washing of clothes or bathing permitted within the port premises. Drivers are to use only designated ablution facilities	<i>Goods vehicle driver / driver assistant / passenger</i>
9.3 No firearms permitted within the port premises	<i>Goods vehicle driver / driver assistant / passenger</i>
9.4 No unauthorized passengers permitted to enter the port	<i>Goods vehicle driver / driver assistant / passenger</i>
9.5 No minors permitted within the operational areas	<i>Goods vehicle driver / driver assistant / passenger</i>
9.6 No swapping of harbour carrier permits	<i>Goods vehicle driver / driver assistant / passenger</i>

9.7 No Stopping in unauthorized areas	<i>Goods vehicle driver / driver assistant / passenger</i>
9.8 No double parking within the port premises	<i>Goods vehicle driver / driver assistant / passenger</i>
9.9 No loitering permitted	<i>Goods vehicle driver / driver assistant / passenger</i>
9.10 No alcohol or drugs are permitted within the port premises	<i>Goods vehicle driver / driver assistant / passenger</i>
9.11 No overtaking on any of the port roads	<i>Goods vehicle driver / driver assistant / passenger</i>
9.12 No washing of cargo bins anywhere within the port premises	<i>Goods vehicle driver / driver assistant / passenger</i>
9.13 Do not leave the <i>goods vehicle</i> unattended at any time	<i>Goods vehicle driver / driver assistant / passenger</i>
9.14 No Payment of unauthorized persons to untarp cargo bins	<i>Goods vehicle driver / driver assistant / passenger</i>
9.15 No photography or videography equipment allowed within the port premises unless duly authorized by the Port Security Officer	<i>Goods vehicle driver / driver assistant / passenger</i>
9.16 No duplication/tampering of vehicle or personal access permits is allowed	<i>Goods vehicle driver / driver assistant / passenger</i>
9.17 No open flames / fires are permitted within the port premises	<i>Goods vehicle driver / driver assistant / passenger</i>

Indemnity

In consideration of Transnet Ltd (Registration Number 90/00900/06),

on behalf of the said Company indemnify the Transnet against all claims and actions and hold it harmless against all losses sustained by it by reason of :

- 1) any damage or loss to movable or immovable property (including consequential damages directly flowing from physical damage to such property) owned by the Transnet, the said Company or any third party; and/or**
- 2) the death of or injury to any person; and/or**
- 3) any legal costs or expenses reasonably incurred in connection with claims or actions arising out of any of the foregoing,**

whenever the damage, loss, death or injury contemplated in 1, 2 and 3 above is/are due to or arises out of the Activity, provided that the said Company shall not be liable under this indemnity for any such damage, loss, death or injury which is attributable to the willful misconduct of any servant or employee of the Transnet acting within the course and scope of his/her employment with the Transnet.



Government Gazette

REPUBLIC OF SOUTH AFRICA

Vol. 440 Cape Town 21 February 2002 No. 23150

THE PRESIDENCY

No. 217 21 February 2002

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 48 of 2001: Gas Act, 2001



AIDS HELPLINE: 0800-123-22 Prevention is the cure

(English text signed by the President.)
(Assented to 12 February 2002.)

ACT

To promote the orderly development of the piped gas industry; to establish a national regulatory framework; to establish a National Gas Regulator as the custodian and enforcer of the national regulatory framework; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

CONTENTS

Sections

CHAPTER I	5
DEFINITIONS AND OBJECTS	
1. Definitions	
2. Objects of Act	
CHAPTER II	
NATIONAL GAS REGULATOR	
3. Establishment of Gas Regulator	
4. Functions of Gas Regulator	
5. Constitution of Gas Regulator	
6. Disqualifications and requirements regarding appointment to Gas Regulator	
7. Vacation of office and termination of appointment	15
8. Meetings of Gas Regulator	
9. Duties of members of Gas Regulator	
10. Decisions of Gas Regulator	
11. Personnel of Gas Regulator	
12. Funds of Gas Regulator	20
13. Accounting by Gas Regulator	
14. Reporting by Gas Regulator	
CHAPTER III	
GAS LICENCES AND REGISTRATION	
15. Activities requiring licence	25
16. Application for licence	
17. Advertising of application for licence	
18. Particular information to be supplied by applicant	
19. Finalisation of application	
20. Disposal of gas assets controlled by State	30
21. Conditions of licence	

- 22. Non-discrimination
- 23. Term of licence
- 24. Amendment of licence
- 25. Revocation of licence on application
- 26. Contravention of licence 5
- 27. Revocation of licence by court
- 28. Registration with Gas Regulator

CHAPTER IV

GENERAL PROVISIONS

- 29. Entry, inspection and gathering of information by Gas Regulator 10
- 30. Voluntary resolution of disputes by Gas Regulator
- 31. Investigations by Gas Regulator
- 32. Expropriation of land by Gas Regulator
- 33. Rights of licensee in respect of premises or land belonging to others
- 34. Regulations and rules 15
- 35. Transitional provisions
- 36. Mozambique Gas Pipeline Agreement
- 37. Short title

SCHEDULE 1

EXEMPTION FROM OBLIGATION TO APPLY FOR AND HOLD A LICENCE 20

CHAPTER I

DEFINITIONS AND OBJECTS

Definitions

1. In this Act, unless the context indicates otherwise—
 - “**chief executive officer**” means the person appointed in terms of section 11(1); 25
 - “**customer**” means a person purchasing gas, or purchasing transmission, storage or distribution or liquefaction or re-gasification services;
 - “**Department**” means the Department of Minerals and Energy;
 - “**distribution**” means the distribution of bulk gas supplies and the transportation thereof by pipelines with a general operating pressure of more than 2 bar gauge and less than 15 bar gauge or by pipelines with such other operating pressure as the Gas Operator may permit according to criteria prescribed by regulation to points of ultimate consumption or to reticulation systems, or to both points of ultimate consumption and reticulation systems, and any other activity incidental thereto, and “distribute” and “distributing” have corresponding meanings; 30
 - “**distribution company**” means any person distributing gas; 35
 - “**eligible customer**” means a customer who in the prescribed manner may buy gas directly from suppliers without the intervention of a distribution company;
 - “**gas**” means all hydrocarbon gases transported by pipeline, including natural gas, artificial gas, hydrogen rich gas, methane rich gas, synthetic gas, coal bed methane gas, liquefied natural gas, compressed natural gas, re-gasified liquefied natural gas, liquefied petroleum gas or any combination thereof; 40
 - “**Gas Regulator**” means the National Gas Regulator established by section 3;
 - “**licensee**” means any person holding a licence granted by the Gas Regulator in terms of this Act; 45
 - “**liquefaction**” means converting natural gas from a gaseous state to a liquid state;
 - “**mine**” means “mine” as defined in the Minerals Act, 1991 (Act No. 31 of 1991);
 - “**Minister**” means the Minister of Minerals and Energy;

“person” includes any organ of state as defined in section 239 of the Constitution;
“prescribed” means prescribed by regulation or by rules;
“price” means the charge for gas to a distributor, reticulator or final customer;
“production” means the recovery, processing, treating and gathering of gas from
wells in the earth up to the boundary of the mine, or the manufacture of synthetic 5
or artificial gas, or the manufacturing of any gases in the refining process up to the
boundary of the factory, and any other activity incidental thereto, and “produce”
and “producing” have corresponding meanings;
“re-gasification” means converting liquefied natural gas to a gaseous state at a
re-gasification plant; 10
“regulation” means a regulation made under section 34(1);
“reticulation” means the division of bulk gas supplies and the transportation of
bulk gas by pipelines with a general operating pressure of no more than 2 bar gauge
to points of ultimate consumption, and any other activity incidental thereto, and
“reticulate” and “reticulating” have corresponding meanings; 15
“rule” means by a rule made under section 34(3);
“service” means any service relating to the transmission, distribution, storage,
trading, liquefaction or re-gasification of gas;
“specification” means the chemical and physical composition, calorific values and
Wobbe Index of the gas that conforms to recognised international standards and the 20
pressure of the gas at point of entry to shared systems;
“storage” means the holding of gas as a service and any other activity incidental
thereto, but excludes storage of gas in pipelines which are used primarily for the
transmission and distribution of gas;
“storage company” means any person storing gas; 25
“tariff” means the charge for gas services to any customer;
“this Act” includes the regulations;
“trading” means the purchase and sale of gas as a commodity by any person and
any services associated therewith, excluding the construction and operation of
transmission, storage and distribution systems, and “trading services” has a 30
corresponding meaning;
“transmission” means the bulk transportation of gas by pipeline supplied between
a source of supply and a distributor, reticulator, storage company or eligible
customer, or any other activity incidental thereto, and “transmit” and “transmit-
ting” have corresponding meanings; 35
“transmission company” means any person transmitting gas;
“uncommitted capacity” means such capacity determined by the Gas Regulator
in a liquefaction, re-gasification, transmission, storage or distribution facility as is
not required to meet contractual obligations.

Objects of Act 40

2. The objects of this Act are to—
- (a) promote the efficient, effective, sustainable and orderly development and
operation of gas transmission, storage, distribution, liquefaction and re-
gasification facilities and the provision of efficient, effective and sustainable
gas transmission, storage, distribution, liquefaction, re-gasification and 45
trading services;
 - (b) facilitate investment in the gas industry;

- (c) ensure the safe, efficient, economic and environmentally responsible transmission, distribution, storage, liquefaction and re-gasification of gas;
- (d) promote companies in the gas industry that are owned or controlled by historically disadvantaged South Africans by means of licence conditions so as to enable them to become competitive; 5
- (e) ensure that gas transmission, storage, distribution, trading, liquefaction and re-gasification services are provided on an equitable basis and that the interests and needs of all parties concerned are taken into consideration;
- (f) promote skills among employees in the gas industry;
- (g) promote employment equity in the gas industry; 10
- (h) promote the development of competitive markets for gas and gas services;
- (i) facilitate gas trade between the Republic and other countries; and
- (j) promote access to gas in an affordable and safe manner.

CHAPTER II

NATIONAL GAS REGULATOR 15

Establishment of Gas Regulator

3. The National Gas Regulator is hereby established as a juristic person.

Functions of Gas Regulator

4. The Gas Regulator must, as appropriate, in accordance with this Act—
- (a) issue licences for— 20
 - (i) construction of gas transmission, storage, distribution, liquefaction and re-gasification facilities;
 - (ii) conversion of infrastructure into transmission, storage, distribution, liquefaction and re-gasification facilities;
 - (iii) operation of gas transmission, storage, distribution, liquefaction and re-gasification facilities; and 25
 - (iv) trading in gas;
 - (b) gather information relating to the production, transmission, storage, distribution, trading, liquefaction and re-gasification of gas;
 - (c) issue notices in terms of section 26(1) and, if necessary, take remedial action 30 in terms of section 26(2);
 - (d) undertake investigations and inquiries into the activities of licensees;
 - (e) consult with government departments and other bodies and institutions regarding any matter contemplated in this Act;
 - (f) consult with government departments and gas regulatory authorities of other 35 countries to promote and facilitate the construction, development and functioning of gas transmission, storage, distribution, liquefaction and re-gasification facilities and services;
 - (g) regulate prices in terms of section 21(1)(p) in the prescribed manner;
 - (h) monitor and approve, and if necessary regulate, transmission and storage 40 tariffs and take appropriate action when necessary to ensure that they are applied in a non-discriminatory manner as contemplated in section 22;
 - (i) expropriate land or any right in, over or in respect of such land as is necessary for the performance of a licensee's functions;
 - (j) promote competition in the gas industry; 45
 - (k) promote the optimal use of available gas resources;
 - (l) take decisions that are not at variance with published Government policy;
 - (m) publish from time to time a list of other legislation applicable to the gas industry;

- (n) perform any activity incidental to the performance of its functions;
- (o) make rules in accordance with section 34(3); and
- (p) exercise any power or perform any duty conferred or imposed on it under any law.

Constitution of Gas Regulator

5

5. (1) The Gas Regulator consists of five part-time members appointed by the Minister.

(2) The Minister must designate one of the members appointed under subsection (1) as chairperson of the Gas Regulator.

(3) If the chairperson is for any reason unable to perform his or her duties, the other members must choose another person from among themselves to act as chairperson until the chairperson can resume his or her duties or another chairperson is appointed by the Minister.

(4) (a) A member of the Gas Regulator holds office for a period of four years.

(b) The Minister may reappoint a member.

15

(c) If a member of the Gas Regulator ceases to hold office, the Minister may appoint another person in his or her place for the remainder of the term of office of that member.

(5) Members of the Gas Regulator must be paid for their services such remuneration and allowances as the Gas Regulator may determine with the approval of the Minister and the concurrence of the Minister of Finance.

20

Disqualifications and requirements regarding appointment to Gas Regulator

6. (1) No person may be appointed or remain as a member of the Gas Regulator if that person—

(a) is not a South African citizen resident in the Republic of South Africa;

(b) is an unrehabilitated insolvent;

25

(c) has been convicted of an offence involving dishonesty; or

(d) is in the employ of, or affiliated to, an organ of state in any sphere of government, or has any conflict of interest in this regard.

(2) The Minister must appoint, as members of the Gas Regulator, persons who—

(a) have adequate legal, technical, business, economic or other experience relevant to the transmission, storage or distribution of gas or trading in gas;

30

(b) are collectively representative of South African society as a whole;

(c) are committed and available to fulfill their role as members of the Gas Regulator; and

(d) demonstrate impartiality and objectivity,

35

in such a manner that a fair balance between continuity and capacity building is achieved.

(3) Before appointing members to the Gas Regulator, the Minister must by notice in the *Gazette* call for nominations from members of the public.

(4) All members must—

40

(a) upon appointment disclose if he or she is in the employ of or acts as a consultant to, or has any relationship with any person, firm, association or company engaged in the exploration for gas, or the production, transmission, storage, distribution, liquefaction or re-gasification of gas or trading in gas, or has any pecuniary interest in any such firm, association or company;

45

(b) upon appointment disclose if his or her spouse, life partner, child, business partner or associate or employer is in the employ of or acts as a consultant to, or has any relationship with any person, firm, association or company engaged in the exploration for gas or the production, transmission, storage, distribu-

tion, liquefaction and re-gasification of gas or trading in gas, or has any pecuniary interest in any such firm, association or company; and

(c) notify the Minister and the Gas Regulator when those interests change.

(5) A member must not at any time be present during the discussion of, or the making of a decision on, or take part in, any matter before the Gas Regulator in which that member or his or her spouse, life partner, child, business partner or associate or employer, other than the State, has a direct or indirect interest. 5

(6) If a member acquires or contemplates acquiring an interest contemplated in subsection (4)(a), such member must immediately in writing declare that fact to the Minister and the Gas Regulator. 10

Vacation of office and termination of appointment

7. (1) A member of the Gas Regulator must vacate his or her office if that member—

- (a) becomes of unsound mind;
- (b) has been absent from more than two consecutive meetings without leave of the chairperson for each absence; 15
- (c) resigns by written notification to the Minister;
- (d) materially breaches any duty imposed on him or her in terms of this Act; or
- (e) becomes disqualified from being a member on any of the grounds referred to in section 6(1).

(2) The Minister may terminate the appointment of a member of the Gas Regulator if such member behaves in a manner contrary to the provisions of section 9. 20

Meetings of Gas Regulator

8. (1) (a) The Gas Regulator must meet at such times and places as may be determined by the chairperson.

(b) The chairperson must call such meetings of the Gas Regulator as are necessary for the proper performance of its functions. 25

(2) The chairperson shall, upon a written request of the chief executive officer or two other members, convene a special meeting to be held within two weeks after the date of receipt of such request.

(3) Unless other procedures are prescribed, the chairperson of any meeting of the Gas Regulator must determine the procedures to be followed at such meeting. 30

(4) The quorum for any meeting of the Gas Regulator is a majority of its members.

(5) (a) The decision of the majority of the members present at a meeting constitutes a decision of the Gas Regulator.

(b) In the event of an equality of votes on any matter the person presiding at the meeting has a casting vote in addition to his or her deliberative vote. 35

(6) No decision taken by the Gas Regulator is invalid merely because of a vacancy on the Gas Regulator or because any person not entitled to sit as a member sat as such member at the time when the decision was taken if the rest of the members present at the meeting and entitled to sit as members at the meeting constituted a quorum and the decision was taken by a majority of those members present and entitled to vote. 40

(7) The Chief Executive Officer or, if unavailable, an employee of the Gas Regulator designated by the Chief Executive Officer, must attend all meetings of the Gas Regulator and has the right to speak, but not vote, at such meetings.

(8) (a) Any meeting of the Gas Regulator is open to the public unless confidential, proprietary or commercially sensitive information is tabled for discussion, in which case an affected person must convince the Gas Regulator as to why such information should not be disclosed to the public. 45

(b) If the Gas Regulator takes a decision in any other manner than at a formal meeting, such decision comes into effect immediately but must be reduced to writing, signed by a majority of the members and submitted for noting at the first formal meeting of the Gas Regulator following the decision. 50

(c) The Gas Regulator must cause a record of all of its proceedings to be kept.

Duties of members of Gas Regulator

9. Members of the Gas Regulator may exercise all their powers under this Act and must—

- (a) perform all their duties in terms of this Act; 5
- (b) act in a justifiable and transparent manner whenever the exercise of their discretion is required;
- (c) at all times act in the interest of the Gas Regulator and not in their own or sectoral interests;
- (d) act independently of any undue influence or instruction; 10
- (e) recuse themselves from and refrain from voting on or discussing any matter pending before the Gas Regulator in which they have a direct or indirect interest; and
- (f) act in a manner that is required and expected from the holder of a public office.

Decisions of Gas Regulator 15

10. (1) Any decision of the Gas Regulator must be—

- (a) consistent with the Constitution and this Act;
- (b) in the public interest;
- (c) within the powers of the Gas Regulator, as set out in this Act;
- (d) taken within a procedurally fair process in which all affected persons have the opportunity to submit their views and present relevant facts and evidence at their own expense to the Gas Regulator; 20
- (e) based on facts and evidence that must be summarised and recorded with the decision;
- (f) in writing; and 25
- (g) explained clearly as to its factual and legal bases and the reasons therefor.

(2) Any decision of the Gas Regulator and the reasons therefor must be available to the public.

(3) Any person adversely affected by a decision of the Gas Regulator may bring such decisions under review by the High Court. 30

Personnel of Gas Regulator

11. (1) The Gas Regulator must appoint a chief executive officer for the Gas Regulator.

(2) Subject to the directions of the Gas Regulator, the chief executive officer is responsible for— 35

- (a) the day-to-day management of the affairs of the Gas Regulator; and
- (b) administrative control over the employees appointed under subsection (3).

(3) The chief executive officer may appoint employees, or contract with any person, to assist the Gas Regulator in the performance of its functions.

(4) The chief executive officer and other members of the personnel of the Gas Regulator must be paid such remuneration, allowances, subsidies and other benefits as the Gas Regulator, with the approval of the Minister and the Minister of Finance, may determine. 40

(5) Notwithstanding subsections (1) and (3), the Minister may determine that the Gas Regulator appoint or make use of persons employed or contracted by another licensing or regulatory authority falling under the Minister's jurisdiction. 45

(6) Section 9 applies to any member of the personnel of the Gas Regulator, with the changes required by the context.

Funds of Gas Regulator

12. The funds of the Gas Regulator consist of— 50

- (a) appropriations from the National Revenue Fund;
- (b) levies imposed by or under separate legislation; and

- (c) charges for dispute resolution and other services rendered.

Accounting by Gas Regulator

13. (1) The Gas Regulator must perform its functions in accordance with the Public Finance Management Act, 1999 (Act No. 1 of 1999).
 (2) The Gas Regulator must open one or more accounts in its name with one or more recognised financial institutions and deposit therein all money received from the sources contemplated in section 12. 5
 (3) The financial records of the Gas Regulator must be audited by the Auditor-General.
 (4) The financial year of the Gas Regulator starts on 1 April of one year and ends on 31 March of the following year. 10

Reporting by Gas Regulator

14. The annual report for public entities required in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999), must be accompanied by information on the following matters: 15
- (a) Licences granted, amended or withdrawn;
 - (b) regulations made and directives issued;
 - (c) the envisaged strategies of the Gas Regulator;
 - (d) the existing position and envisaged commercial developments with respect to the transmission, storage, distribution, liquefaction and re-gasification of gas and the gas trade; 20
 - (e) the position regarding health and safety in the industry; and
 - (f) such other matters as the Gas Regulator may deem necessary.

CHAPTER III

GAS LICENCES AND REGISTRATION 25

Activities requiring licence

15. (1) No person may without a licence issued by the Gas Regulator—
- (a) construct gas transmission, storage, distribution, liquefaction and re-gasification facilities or convert infrastructure into such facilities;
 - (b) operate gas transmission, storage, distribution, liquefaction or re-gasification facilities; or 30
 - (c) trade in gas.
- (2) Notwithstanding subsection (1), a person engaged in an activity referred to in Schedule 1 is not required to apply for or to hold a licence to engage in such activity, but a person engaged in an activity referred to in items 1 and 2 of that Schedule must register the operation as contemplated in section 28. 35
- (3) The Gas Regulator may—
- (a) determine whether any person is engaged in any of the activities requiring a licence as contemplated subsection (1);
 - (b) direct any person engaged in any of the activities requiring a licence in terms of subsection (1) who is not in possession of the necessary licence to cease such activity. 40
- (4) (a) Nothing in this Act precludes any person from discussing the contemplated construction of, or conversion of infrastructure into, gas facilities, the operation thereof or the envisaged trading in gas with the Gas Regulator prior to filing a licence application. 45
- (b) The Gas Regulator must, subject to section 29(4), furnish a person contemplated in paragraph (a) with such information as may facilitate the filing of an application.

Application for licence

16. (1) Any person who has to apply for a licence in terms of section 15 must do so in the prescribed form and in accordance with the prescribed procedure.

(2) Any application contemplated in subsection (1) must include—

- (a) the name, company number (if any) and principal place of business of the applicant; 5
- (b) particulars of the owners or shareholder of the applicant if the applicant is not a natural person;
- (c) documents demonstrating the administrative, financial and technical abilities of the applicant; 10
- (d) a description of the proposed facility to be constructed or operated, or the proposed trading to be conducted, including maps and diagrams where appropriate;
- (e) a general description of the type of customers to be served and the tariff or gas price policies to be applied; 15
- (f) the plans and ability of the applicant to comply with all applicable labour, health, safety and environmental legislation;
- (g) a detailed specification of the gas that will be traded under the licence; and
- (h) such other particulars as may be prescribed.

(3) The applicant may request confidential treatment of commercially sensitive information contained in an application and, subject to concurrence by the Gas Regulator, such information may be withheld from publicly available copies of the application. 20

Advertising of application for licence

17. (1) When application is made for a licence as contemplated in section 16, the person concerned must publish a notice of the application in at least two newspapers circulating in the area of the proposed activity in any two official languages, one of which must be English. 25

(2) The advertisement must state—

- (a) the name of the applicant; 30
- (b) the object of the application;
- (c) the place where the application will be available for inspection by any member of the public;
- (d) the period within which any objections to the issue of the licence may be lodged with the Gas Regulator; 35
- (e) the address of the Gas Regulator where any objections may be lodged; and
- (f) that objections must be substantiated by way of an affidavit or solemn declaration.

(3) The advertisement contemplated in subsection (1) must be published for such period or in such number of issues of a newspaper as may be prescribed. 40

Particular information to be supplied by applicant

18. Before considering an application for a licence in terms of this Act, the Gas Regulator—

- (a) if it is of the view that the proposed construction of gas facilities or the proposed provision of gas services should be altered to provide access to third parties, must inform the applicant of that view and request the applicant to supply reasons as to why the application should not be considered subject to the imposition of such condition; 45
- (b) may direct the applicant to alter the plans for the proposed construction of gas facilities or the proposed provision of gas services in order to comply with applicable health, safety or environmental legislation; 50
- (c) must furnish the applicant with all substantiated objections contemplated in section 17(2)(f) in order to allow the applicant to respond thereto;
- (d) may request such additional information as may be necessary to consider the application properly; and 55

- (e) must publish the criteria contemplated in section 19(2), if applicable, and allow the applicant an opportunity to amend its application.

Finalisation of application

19. (1) The Gas Regulator must decide on an application in the prescribed manner within 60 days— 5
- (a) after the expiration of the period contemplated in section 17(2)(d), if no objections have been received; or
 - (b) after receiving the response of the applicant to objections as contemplated in section 18(c).
- (2) The Minister may direct that when the Gas Regulator decides upon a licence application to establish a specified gas transmission pipeline, gas storage facility, liquefaction or re-gasification facility or to convert infrastructure into such facilities, or to operate such facilities, the Gas Regulator shall satisfy itself that such application meets, inter alia, criteria specified by the Minister, which criteria must be based upon and must reflect— 10 15
- (a) the national interest;
 - (b) the promotion of regional growth; or
 - (c) any other social objective.
- (3) The Gas Regulator must provide the applicant with a copy of its decision as well as a list of the factors on which the decision was based. 20
- (4) The Gas Regulator must issue separate licences for— 25
- (a) the construction of gas transmission, storage, distribution, liquefaction and re-gasification facilities or the conversion of infrastructure into such facilities;
 - (b) the operation of gas transmission, storage or distribution facilities; and
 - (c) trading in gas.

Disposal of gas assets controlled by State

20. Whenever any state-controlled entity that acquired a licence pursuant to the provisions of section 19(2) sells any of its shares or any of its assets or part thereof, covered by such a licence, to any privately controlled entity, it shall do so by means of an open and transparent bidding procedure. 30

Conditions of licence

21. (1) The Gas Regulator may impose licence conditions within the following framework of requirements and limitations:
- (a) A licensee must carry out the construction, operation or trading activities for which the licence is granted; 35
 - (b) licensees must provide information to the Gas Regulator of the commercial arrangements regarding the participation of historically disadvantaged South Africans in the licensees' activities as prescribed by regulation and other relevant legislation;
 - (c) the gas transmission, storage, distribution, trading, liquefaction and re-gasification activities of vertically integrated companies must be managed separately with separate accounts and data and with no cross-subsidisation; 40
 - (d) third parties must in the prescribed manner have access on commercially reasonable terms to uncommitted capacity in transmission pipelines;
 - (e) interested parties must be allowed to negotiate changes with transmission companies in the routing, size and capacity of proposed pipelines; 45
 - (f) interested parties must be allowed to negotiate with transmission companies for increases in compression of existing transmission pipelines and all pipeline customers must benefit equitably from reduced costs resulting from the increased volume; 50

- (g) transmission companies are not obliged to incur any additional expenditure to provide the changes referred to in paragraphs (e) and (f), and the total cost for the pipeline must be shared equitably between the transmission company and the parties requesting the change;
- (h) licensees must allow interconnections with the facilities of suppliers of gas, transmitters, storage companies, distributors, reticulators and eligible customers, as long as the interconnection is technically feasible and the person requesting the interconnection bears the increased costs occasioned thereby, which must be taken into account when setting their tariffs; 5
- (i) third parties must in the prescribed manner have access on commercially reasonable terms to uncommitted capacity in storage facilities; 10
- (j) interested parties may negotiate with storage companies for changes in the capacity of storage facilities;
- (k) storage companies are not obliged to incur any additional expenditure to provide the changes contemplated in paragraph (j) and the total cost for the storage facility must be shared equitably between the storage company and the party requesting the change; 15
- (l) apart from direct sales via physical by-passes to eligible customers who may alternatively have access to the distribution network at the distributor's discretion, a distributor will be granted an exclusive geographic area, but only for a particular range of specifications of gas determined by the Gas Regulator; 20
- (m) a distributor will be granted the construction, operation and trading licences for its exclusive geographic area. The construction and operation licences will be exclusive for the period of validity of such licences, and the trading licence will be exclusive for a period determined by the Gas Regulator; 25
- (n) an exclusive geographic area must be based on the distributor's ability to supply present and future potential consumers at competitive prices and conditions;
- (o) gas must be supplied by a licensed distributor within its exclusive geographic area to any person on request, if such service is economically viable; 30
- (p) maximum prices for distributors, reticulators and all classes of consumers must be approved by the Gas Regulator where there is inadequate competition as contemplated in Chapters 2 and 3 of the Competition Act, 1998 (Act No. 89 of 1998); 35
- (q) an advisory service with regard to the safe and efficient use, handling and storage of gas must be provided to customers other than eligible customers, by the trading licensee;
- (r) licensees must maintain their facilities in a fully operative condition;
- (s) all customers in a licensed distribution area, except eligible customers and reticulators, must purchase their gas from the distribution company licensed for that area; 40
- (t) the time period within which gas facilities will become operational must be fixed; and
- (u) licensees must provide information necessary for the Gas Regulator to perform its functions. 45
- (2) (a) Any person aggrieved by a condition imposed by the Gas Regulator in terms of subsection (1) may in the prescribed manner apply to the Gas Regulator to have the condition reviewed.
- (b) If the aggrieved person is not the licensee the Gas Regulator must inform the licensee regarding the application for review. 50
- (c) Whenever there is an application for review in terms of paragraph (a) the Gas Regulator must conduct an investigation and may for that purpose summon witnesses to appear before it.

Non-discrimination

55

22. (1) Licensees may not discriminate between customers or classes of customers regarding access, tariffs, prices, conditions or service except for objectively justifiable and identifiable differences regarding such matters as quantity, transmission distance, length of contract, load profile, interruptible supply or other distinguishing feature approved by the Gas Regulator. 60

(2) The prohibition of discrimination referred to in subsection (1) applies to actions by licensees in favour of their related undertakings in particular.

Term of licence

- 23.** (1) Any licence issued in terms of this Act is valid for a period of 25 years or such longer period as the Gas Regulator may determine. 5
- (2) A licensee may apply to have his or her licence renewed.
- (3) An application for renewal must be granted, but the Gas Regulator may set new or different licence conditions.
- (4) A licensee may not assign its licence to another party.

Amendment of licence 10

- 24.** (1) The Gas Regulator may vary, suspend or remove any of the licence conditions, or may include additional conditions—
- (a) on application by the licensee;
- (b) with the permission of the licensee;
- (c) upon non-compliance by a licensee with a licence condition; 15
- (d) if it is necessary for the purposes of this Act; or
- (e) on application by any affected party.
- (2) The procedure to be followed in varying, suspending, removing or adding any licence conditions is as prescribed.

Revocation of licence on application 20

- 25.** (1) The Gas Regulator may revoke a licence on the application of a licensee if—
- (a) the licensed facility or activity is no longer required;
- (b) the licensed facility or activity is not economically justifiable; or
- (c) another person is willing and able to assume the rights and obligations of the licensee concerned in accordance with the requirements and objectives of this Act, and a new licence is issued to such person. 25
- (2) Licensees must give the Gas Regulator at least 12 months notice in writing of their intention to cease their activities.
- (3) The form and procedure to be followed in revoking a licence under subsection (1) is as prescribed. 30

Contravention of licence

- 26.** (1) If a licensee contravenes or fails to comply with a condition of a licence or any provision of this Act, the Gas Regulator may serve a notice on such licensee in which the licensee is directed to comply with the condition or the provision of the Act within a reasonable period specified in the notice. 35
- (2) If a licensee fails to comply with a notice contemplated in subsection (1) the Gas Regulator may sit as a tribunal and, with due regard to section 10, decide on the matter and may impose a penalty of a fine not exceeding R2 000 000,00 per day for each day on which the contravention or failure to comply continues.
- (3) The Gas Regulator must consider the severity of non-compliance in deciding the amount of any penalty. 40
- (4) Any person adversely affected by a decision of the tribunal contemplated in subsection (2) may bring such decision under appeal to the High Court.
- (5) The Minister may by notice in the *Gazette* amend the amount referred to in subsection (2) in order to counter the effect of inflation. 45

Revocation of licence by court

- 27.** (1) The Gas Regulator may by way of application on notice of motion apply to the High Court for an order suspending or revoking a licence if there exists any ground justifying such suspension or revocation, such as failure of the licensee to carry out the construction, operation or trading activities for which the licence was granted. 50

(2) The court before which an application is made under subsection (1) may grant or refuse the application and may make such order as to costs and maintaining the services of the licensee as it may deem fit.

Registration with Gas Regulator

- 28.** (1) An owner of an operation involving any of the following activities must register the operation with the Gas Regulator: 5
- (a) The production or importation of gas; or
 - (b) an activity referred to in items 1 and 2 of Schedule 1.
- (2) The owner contemplated in subsection (1) must provide the Gas Regulator with such information concerning the activities of the operation as may be prescribed. 10
- (3) Any application for registration in terms of subsection (1) must be submitted in the prescribed form.

CHAPTER IV

GENERAL PROVISIONS

Entry, inspection and gathering of information by Gas Regulator 15

- 29.** (1) For the purposes of this Act, any person authorised thereto in writing by the Gas Regulator may—
- (a) at all reasonable times enter any property on which a licensed activity is taking place and inspect any facility, equipment, machinery, book, account or other document found thereat; and 20
 - (b) require any person to furnish the Gas Regulator with such information as may be necessary for the proper application of this Act.
- (2) The Gas Regulator may require that the accuracy of any information furnished in terms of subsection (1) be verified on oath or by way of a solemn declaration.
- (3) A person authorised by the Gas Regulator as contemplated in subsection (1) must show the authorisation to any person requesting it. 25
- (4) No information obtained by the Gas Regulator in terms of this Act which is of a non-generic, confidential, personal, commercially sensitive or of a proprietary nature may be made public or otherwise disclosed to any person without the permission of the person to whom that information relates, except in terms of an order of the High Court. 30

Voluntary resolution of disputes by Gas Regulator

- 30.** (1) (a) The Gas Regulator may, with the approval of the parties to a dispute, act as mediator or arbitrator in any matter concerning the trading of gas or the rendering of services.
- (b) When acting as arbitrator, the Gas Regulator must issue a decision on the matter. 35
- (2) (a) The Gas Regulator may, on request of the parties involved, appoint a person, suitable to the Gas Regulator and such parties, to act as mediator or arbitrator on behalf of the Gas Regulator in any matter contemplated in subsection (1).
- (b) Any decision of an arbitrator so appointed must be regarded as being the decision of the Gas Regulator. 40
- (3) Any decision taken by the Gas Regulator acting as arbitrator or by an arbitrator contemplated in subsection (2) is binding on the parties to the dispute.

Investigations by Gas Regulator

- 31.** (1) The Gas Regulator must conduct investigations into complaints by—
- (a) customers relating to the supply of gas; 45

- (b) customers relating to unreasonable or excessive prices or tariffs imposed by a licensee; and
 - (c) any customer concerning unreasonable differences regarding the supply of gas or gas services by licensees.
- (2) Notwithstanding subsection (1), the Gas Regulator may not conduct investigations into disputes concerning breach of contract between a licensee and an eligible customer. 5
- (3) A complaint contemplated in subsection (1) must be submitted within the prescribed period and in the prescribed manner and be accompanied by—
- (a) supporting information; and 10
 - (b) a description of efforts made to resolve the dispute before resorting to the Gas Regulator.

Expropriation of land by Gas Regulator

32. (1) In pursuit of the objects of this Act, the Gas Regulator may expropriate land, or any right in, over or in respect of land on behalf of a licensee for gas transmission, storage, distribution, liquefaction or re-gasification facilities in accordance with section 25 of the Constitution. 15
- (2) The procedure to be followed in giving effect to subsection (1) must be prescribed.
- (3) The Gas Regulator may exercise the powers contemplated in subsection (1) only if it is satisfied that— 20
- (a) a licensee is unable to acquire land or a right in, over or in respect of such land by agreement with the owner; and
 - (b) the land or any right in, over or in respect of such land is reasonably required by a licensee for gas transmission, storage, distribution, liquefaction or re-gasification facilities which will enhance the Republic's gas infrastructure. 25

Rights of licensee in respect of premises or land belonging to others

33. (1) (a) Subject to subsections (2) and (3), a licensee may lay and construct pipes for the distribution of gas under or over any such street, and may from time to time repair, alter or remove any pipes so laid or constructed within its licenced area of supply.
- (b) The licensee is responsible for any restoration necessary as a result of the acts referred to in paragraph (a). 30
- (2) Before exercising a power contemplated in subsection (1)(a), a licensee must consult and coordinate with the authority in whose area of jurisdiction the street in question is situated, except in cases of emergency.
- (3) A licensee must exercise a power contemplated in subsection (1)(a)— 35
- (a) in accordance with a route and in terms of specifications approved by the authority concerned; and
 - (b) except in cases of emergency, under the supervision of the authority concerned.
- (4) Any pipe, meter, fitting, work or apparatus belonging to a licensee and lawfully placed or installed above or under any land or upon any premises not in the licensee's possession remain the property of and may be removed by such licensee. 40
- (5) Subject to subsection (6) any person authorised thereto in writing by a licensee may at all reasonable times enter any premises to which gas is or has been supplied—
- (a) in order to inspect, repair, replace or alter any pipe, meter, fitting, work and apparatus belonging to such licensee; 45
 - (b) the purpose of ascertaining the quantity of gas consumed; or
 - (c) where a gas supply is no longer required, for the purpose of removing any pipe, meter, fitting, work and apparatus belonging to such licensee.
- (6) Any person entering a premises under subsection (5) must— 50
- (a) except in cases of emergency, make arrangements with the occupant or owner of the premises before entering such premises;
 - (b) adhere to all reasonable security measures of the occupant or owner of the premises; and

- (c) exhibit his or her authorisation at the request of such occupant or owner.

Regulations and rules

34. (1) The Minister may, by notice in the *Gazette*, make regulations regarding—
- (a) ensuring fair administrative action by the Gas Regulator;
 - (b) criteria for distribution; 5
 - (c) the qualifying thresholds and other requirements that must be met by a person in order to qualify as an eligible customer and the conditions under which such eligible customer may purchase gas from a supplier or trader;
 - (d) the rehabilitation of land used in connection with the transmission, storage, distribution, liquefaction or re-gasification of gas or the trading therein, the provision of security for rehabilitation purposes and the composition and amount of such security; 10
 - (e) the determination of gas specifications;
 - (f) the procedure to be followed and fees to be paid in mediation and arbitration proceedings; 15
 - (g) the procedure to be followed at, and the time within which, expropriation proceedings must be conducted;
 - (h) the rendering of information to the Gas Regulator;
 - (i) price regulation procedures and principles;
 - (j) mechanisms to promote historically disadvantaged South Africans; and 20
 - (k) any other matter that may or has to be prescribed, or determined or provided for by regulations in terms of this Act.
- (2) Before promulgating regulations contemplated in subsection (1), the Minister must—
- (a) consult with the Gas Regulator; 25
 - (b) invite public comments on such regulations; and
 - (c) duly consider the comments.
- (3) The Gas Regulator may make rules regarding—
- (a) the procedures to be followed at meetings of the Gas Regulator;
 - (b) the keeping of records by the Gas Regulator; 30
 - (c) the form and manner, and contents of licence applications;
 - (d) the publishing of licence applications and the contents thereof;
 - (e) the form and manner in which objections to licence applications must be lodged and the furnishing thereof to the applicant for his or her response thereto; 35
 - (f) the procedure to be followed in considering licence applications;
 - (g) the publishing of information relating to uncommitted capacity by the holders of transmission or storage licences and the publishing of prices for gas supplied to customers other than eligible customers by the holders of distribution licences; 40
 - (h) the procedure to be followed in the variation, suspension or removal or the revocation of licence conditions;
 - (i) the form in which registration must be lodged;
 - (j) the procedures to be followed in investigations, including the summoning of witnesses and the payment of witness fees; 45
 - (k) the inspection of and enquiry into the construction and operation of any gas facility or any trading in gas; and
 - (l) consultation with interested and affected parties.

Transitional provisions

35. (1) Any person owning or operating gas facilities or trading in gas prior to the commencement of this Act must, within six months after the commencement, submit to the Gas Regulator an application for a licence in terms of this Act. 50
- (2) (a) The Gas Regulator must grant a licence contemplated in subsection (1), unless

it finds that the applicant is unable or unwilling to own or operate gas facilities or to trade in gas in a manner consistent with the objectives and provisions of this Act.

(b) Any licence issued in terms of paragraph (a) must for all purposes be regarded as a licence issued in terms of section 19.

Mozambique Gas Pipeline Agreement

5

36. (1) In this section, "the agreement" means the Mozambique Gas Pipeline Agreement, as it existed immediately before the date of commencement of this Act, entered into between the Minister, the Minister of Trade and Industry and Sasol Limited concerning the introduction of natural gas by pipeline from the Republic of Mozambique into the Republic.

10

(2) Despite anything to the contrary in this Act, the agreement binds the Gas Regulator until 10 years after natural gas is first received from Mozambique.

(3) From the date of the conclusion of the agreement, the terms of the agreement relating to the following matters constitute conditions of a licence issued in terms of section 19:

15

(a) Exclusive rights and periods granted in respect of transmission and distribution of gas;

(b) third party access to the transmission pipeline from Mozambique and to certain of Sasol's pipelines;

(c) prices charged by Sasol for gas;

20

(d) Sasol's obligation to supply customers, distributors and reticulators with gas; and

(e) administration of the agreement.

(4) The Gas Regulator must formally issue licences to the entities contemplated in the agreement and may impose such conditions in respect of each licence in terms of this Act as are not contrary to the agreement.

25

Short title

37. This Act is called the Gas Act, 2001, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

SCHEDULE 1**EXEMPTION FROM OBLIGATION TO APPLY FOR AND HOLD A LICENCE****(Section 15(2))**

1. Any person engaged in the transmission of gas for that person's exclusive use.
2. Small biogas projects in rural communities not connected to the national gas pipeline grid.
3. Gas reticulation and any trading activity incidental thereto.
4. Liquefied petroleum gas supplied from a bulk storage tank or cylinder, piped at less than 2 bar gauge and crossing no more than four erf lines between separate property boundaries.

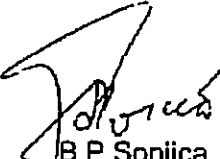
**DEPARTMENT OF MINERALS AND ENERGY
DEPARTEMENT VAN MINERALE EN ENERGIE**

No. R. 321

20 April 2007

GAS ACT, 2001**PIPED GAS REGULATIONS**

I, Buyelwa Patience Sonjica, Minister of Minerals and Energy hereby, under section 34(1), read with sections 1, 4(g), 21(1)(b), (d), (i), (h), (2)(a), 28(2), 32(2) and 34(2) of the Gas Act, 2001 (Act No. 48 of 2001) make the regulations in the Schedule.



B P Sonjica
Minister of Minerals and Energy

SCHEDULE**ARRANGEMENT OF REGULATIONS**

1. Definitions
2. Criteria for distribution
3. Eligible customers
4. Price regulation principles and procedures
5. Information regarding historically disadvantaged South Africans
6. Third party access to transmission pipelines
7. Third party access to storage facilities
8. Review of licence conditions
9. Registration information
10. Expropriations procedures
11. Rehabilitation of land
12. Fair administrative action
13. Determination of gas specifications
14. Mediation
15. Arbitration
16. Costs of mediation and arbitration
17. Rendering of information

Definitions

1. In these Regulations any word or expression to which a meaning has been assigned in the Act shall have the meaning so assigned and unless the context indicates otherwise –

"administrative action" means administrative action as defined in the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000);

"backhauling" means the delivery of gas in a direction opposite to the aggregate physical flow of gas in the pipeline, typically delivery is upstream from the point of receipt;

"consumer" means a person who uses gas except for those who purchase gas from a reticulator;

"Gas Regulator" means the National Energy Regulator established by section 3 of the National Energy Regulator Act;

"linepacking" means increasing the quantities of gas in the pipeline for purpose of storage or as a buffer for continuous supply by increasing the pressure;

"liquefaction plant" means a plant for liquefaction activities and includes any equipment incidental thereto;

"National Energy Regulator Act" means the National Energy Regulator Act, 2004 (Act No. 40 of 2004);

"Promotion of Access to Information Act" means the Promotion of Access to Information Act, 2000 (Act No.3 of 2000);

"re-gasification plant" means a plant for re-gasification activities and includes any equipment incidental thereto;

"related undertakings" means any undertaking in which a licensee owns a controlling shareholding, interest or similar right in subsidiaries, parent companies or joint-venture partnerships;

"subsidiary" means a subsidiary as contemplated in the Companies Act, 1973 (Act No. 61 of 1973);

"the Act" means the Gas Act, 2001 (Act No. 48 of 2001);

"the agreement" means the agreement defined in section 36 (1) of the Act.

Criteria for distribution

2. (1) The Gas Regulator must take the following criteria into account when determining the operating pressures that define the boundary between transmission and distribution pipelines:

- (a) More than five customer off-takes per kilometre may be considered as distribution; and
- (b) more than five branch pipelines per kilometre may be considered as distribution.

(2) Notwithstanding subregulation (1), branch pipelines connected to a transmission pipeline whose sole purpose is to serve eligible customers must be classified as transmission pipelines.

Eligible customers

3. (1) A customer who meets the qualifying threshold or requirements set out in subregulation (2) or (3) may qualify as an eligible customer.

(2) The qualifying thresholds for a customer who is located within a licensed distribution area are as follows:

- (a) For the first 5 years after the first delivery of gas sold and delivered on a commercial scale and on a continuous basis to the distribution licensee: 400 000 Giga Joules per annum;
- (b) for the next 5 years: 100 000 Giga Joules per annum; and
- (c) thereafter: 40 000 Giga Joules per annum.

(3) Customers who were receiving gas under a valid contract of supply in an area prior to-

- (a) the issue of a distribution license issued by the Gas Regulator; or
- (b) the issue of a reticulation permit or equivalent permit by the local authority,

may be eligible customers for as long as that contract remains valid.

(4) A vertically integrated gas company active in transmission and distribution may only supply from its transmission to an eligible customer in other distribution areas licensed to another entity if a third party would have mandatory access to the transmission pipeline for quantities of gas equivalent to the threshold of that eligible customer.

Price regulation principles and procedures

4. (1) While the agreement is in force, pricing matters that are not specifically provided for in the agreement are governed in accordance with this regulation.

(2) Gas traders whose maximum gas prices are calculated by Market Value Pricing in terms of the agreement must inform their customers of the elements used to calculate their maximum gas price and of-

- (a) the alternative fuel available;
- (b) the operating costs for the alternative fuel and for gas; and

- (c) the Net Present Value for operating cost of the alternative fuel and the operating cost of gas.
- (3) The Gas Regulator must, when approving the maximum prices in accordance with section 21(1)(p) of the Act-
- (a) be objective i.e. based on a systematic methodology applicable on a consistent and comparable basis;
 - (b) be fair;
 - (c) be non-discriminatory;
 - (d) be transparent;
 - (e) be predictable; and
 - (f) include efficiency incentives.
- (4) Maximum prices referred to in subregulation (3) must enable the licensee to -
- (a) recover all efficient and prudently incurred investment and operational costs; and
 - (b) make a profit commensurate with its risk.
- (5) The Gas Regulator must approve maximum prices for gas for each distribution area or group of distribution areas as indicated in Annexure A for the following classes of customers:
- (a) Residential; and
 - (b) commercial and industrial.
- (6) When gas is sold, the accompanying sales invoice must itemise the constituent elements of the total price reflected on the invoice, including at least the cost of gas, any transport tariffs and any other charges.
- (7) Licensees must provide the Gas Regulator with sufficient information as required by the Gas Regulator for it to determine maximum prices.
- (8) Licensees may be required to file contracts signed with customers with the Gas Regulator.

- (9) The Gas Regulator may not make public the contents of contracts referred to in subregulation (8) if such information is protected in terms of the Promotion of Access to Information Act.
- (10) The Gas Regulator must, as far as possible, promote fair pricing through price transparency rather than direct intervention in order to enable consumers to make informed market decisions.
- (11) In order to promote price transparency and the prevention of discrimination-
- (a) trading licensees must provide the Gas Regulator within three months of the end of each calendar year, the annual volume and average price for that year for each of its customers consuming less than 10 million gigaJoules per annum;
 - (b) the Gas Regulator must publish aggregated results for categories of customers defined in subregulation (5) on a provincial basis;
 - (c) the Gas Regulator may not release information pertaining to individual customers if such information is protected in terms of the Promotion of Access to Information Act; and
 - (d) there must be at least three customers in a given category for a price to be published.
- (12) The invoices issued by licensees to customers and consumers must indicate-
- (a) the acquisition or production cost of the gas; and
 - (b) details of all tariff charges applied, including metering and other charges.
- (13) When the ownership of gas changes, the price of gas in the new owner's hands refers to the price of gas from the seller plus any tariffs charged by that seller.

Information regarding historically disadvantaged South Africans

5. (1) Information regarding historically disadvantaged South Africans provided by a licensee must include-

- (a) the number of shareholders from historically disadvantaged background and their respective shareholding in the licensee;
- (b) the number and positions of historically disadvantaged South Africans who are members of the Board of Directors of the licensee;
- (c) the number of historically disadvantaged South Africans who hold senior management positions in the licensee;
- (d) the quantity and percentage of subcontracted work to companies with more than 50% ownership by historically disadvantaged South Africans;
- (e) proof of compliance with the Employment Equity Act, 1998 (Act No. 55 of 1998); and
- (f) plans for and actions taken to develop historical disadvantaged South Africans in the gas sector through training, procurement and enterprise development.

(2) The Gas Regulator must utilise the information acquired in terms of subregulation (1) in such a manner so as to facilitate the addressing of historical inequalities and to broaden the country's economic base and accelerate growth, job creation and poverty alleviation.

(3) The information acquired may be used to create a scoring schedule mechanism to promote historically disadvantaged South Africans.

(4) The scoring mechanism contemplated in subregulation (3) must include-

- (a) the core activities of the piped gas industry;
- (b) historically disadvantaged South Africans such as shareholders, directors, management and subcontractors;
- (c) target indicators;
- (d) weighting factors;
- (e) achievements; and
- (f) bonus provision for exceeding targets.

Third party access to transmission pipelines

6. (1) Third party access to transmission lines that are not specifically provided for in the agreement are governed by this regulation.
- (2) The allocation mechanism to be used in order to ensure third party access to uncommitted capacity in transmission pipelines must comply with the following principles:
- (a) Use-it-or-lose-it taking into account diurnal and seasonal load profiles;
 - (b) non-discrimination;
 - (c) defined time periods; and
 - (d) technical feasibility.
- (3) Where two or more applications for access to uncommitted capacity of transmission pipelines are received by the transmission pipeline licensee on the same date, priority must be allocated according to the most attractive application to the transmission pipeline licensee, taking into account such identifiable elements such as the proposed volumes, revenue generated and length of contract.
- (4) The Gas Regulator may upon receipt of a complaint, from a third party regarding a refusal for third party access to a transmission line, determine uncommitted capacity in the transmission pipeline and determine an allocation mechanism that is consistent with subregulation (2).
- (5) A transmission licensee must not discriminate between customers or classes of customers, particularly with regard to the granting of more favourable conditions to its related undertakings than to other customers or classes of customers.
- (6) A transmission licensee may not discriminate in respect of-
- (a) the manner, content and timing of the provision of any information that pertains to third party access to customers or prospective customers;
 - (b) the manner and timing of processing of applications and granting of capacity;
 - (c) the terms and conditions of any grant of capacity and any other service to be provided to any customer or prospective customer;

- (d) tariff methods and prices, including but not limited to the offering and granting of any discount and the imposing of any surcharge;
- (e) nominations and balancing of gas entering and exiting the system; and
- (f) scheduling of maintenance activities.

(7) A transmission licensee interconnected to other systems must provide sufficient information to any other transmission licensee, storage licensee, distribution licensee or reticulator to ensure that the transport of gas may take place in a manner compatible with the secure and efficient operation of the interconnected system.

(8) All parties in third party access negotiations and transactions must avoid any abuse of a dominant position and negotiations for access to the system must be in good faith.

(9) A transmission licensee must preserve the confidentiality of commercially sensitive information obtained in the course of carrying out its business and may not provide commercially sensitive information to a related undertaking.

(10) The Gas Regulator may, at the request of one or more parties negotiate for third party access to gas transmission pipelines and after consultation with the parties concerned, fix a term within which the negotiations must be completed.

(11) A transmission licensee must lodge with the Gas Regulator its guidelines for the use of the transmission system within the first year following implementation of these regulations.

(12) The information contained in the guidelines referred to in subregulation (11) must be publicly available and be sufficient to enable potential customers to understand the procedure for obtaining access to a transmission pipeline, as well as to enter and conclude negotiations with the transmission licensee.

(13) The guidelines contemplated in subregulation (11) must include-

- (a) a detailed description of the gas transmission system indicating all inlet and outlet points;
- (b) all ownership boundaries;

- (c) method by which the tariffs are calculated;
 - (d) method by which a customer may request a tariff;
 - (e) contractual terms and conditions regarding use and payment;
 - (f) technical requirements for access to the network; and
 - (g) the process to request access.
- (14) The Gas Regulator must, when determining the uncommitted capacity for transmission pipelines, consider the following elements:
- (a) contractual commitments of the transmission licensee;
 - (b) variations in pipeline capacity from one segment to another;
 - (c) potential to increase pipeline capacity by additional compression, linepacking, backhauling, parallel lines, peak storage facilities;
 - (d) temperature and pressure differences;
 - (e) load profile and swing requirements;
 - (f) gas specifications; and
 - (g) whether or not capacity allocations are being used to limit access to the transmission facilities.

Third party access to storage facilities

7. (1) The allocation mechanism to ensure third party access to uncommitted capacity in storage facilities must comply with the following principles:

- (a) Use-it-or-lose-it taking into account diurnal and seasonal load profiles;
- (b) non-discrimination;
- (c) defined time periods; and
- (d) technical feasibility.

(2) Where two or more applications for mandatory third party access are received by a storage licensee on the same date, the storage licensee must select the most attractive application, taking into account objective elements such as the proposed volumes, revenue generated and length of contract.

- (3) The Gas Regulator may upon receipt of a complaint, from a third party regarding a refusal for third party access to a storage facility, determine uncommitted capacity in the transmission pipeline and determine an allocation mechanism that is consistent with subregulation (1).
- (4) A storage facility licensee interconnected to other systems must provide sufficient information to any other transmission licensee, storage licensee, distribution licensee or reticulator to ensure that the storage of gas may take place in a manner compatible with the secure and efficient operation of the interconnected system.
- (5) A storage facility licensee must preserve the confidentiality of commercially sensitive information obtained in the course of carrying out its business and may not provide commercially sensitive information to a related undertaking.
- (6) A storage facility licensee may not discriminate between customers or classes of customers, particularly with regard to the granting of more favourable conditions to its related undertakings than to other customers or classes of customers.
- (7) A storage facility licensee may not discriminate in respect of -
- (a) the manner, content and timing of the provision of any information to customers or prospective customers as required by the Act;
 - (b) the manner and timing of processing of applications and granting of capacity;
 - (c) the terms and conditions of any grant of capacity and any other service to be provided to any customer or prospective customer;
 - (d) tariff methods and prices, including but not limited to the offering and granting of any discount and the imposing of any surcharge;
 - (e) nominations and balancing of gas entering and exiting the storage facility; and
 - (f) scheduling of maintenance activities.
- (8) All parties in third party access negotiations and transactions must avoid any abuse of a dominant position and negotiations for access to the system must be in good faith.

- (9) The Gas Regulator may, at the request of one or more parties to negotiations for third party access to storage facilities and after consultation with the parties concerned, fix a term within which the negotiations must be completed.
- (10) A storage facility licensee must lodge with the Gas Regulator its guidelines for the use of the system within the first year following implementation of these regulations.
- (11) The information contained in the guidelines referred to in subregulation (10) must be publicly available and must be sufficient to enable potential customers to understand the procedure for obtaining access and to enter and conclude negotiations.
- (12) The guidelines contemplated in subregulation (10) must include -
- (a) a detailed description of the gas storage system indicating all inlet points and outlet points.
 - (b) method by which the tariffs are calculated;
 - (c) method by which a customer may request a tariff;
 - (d) contractual terms and conditions regarding use and payment;
 - (e) technical requirements for access to the storage facility and network; and
 - (f) the process to request access.
- (13) The Energy Regulator must, when determining the uncommitted capacity for storage facilities, consider the following elements:
- (a) Contractual commitments;
 - (b) type of storage facility;
 - (c) cushion gas requirements;
 - (d) load profile and swing requirements;
 - (e) particular range of specifications of gas; and
 - (f) whether or not capacity allocations are not being used to limit access to the storage facilities.
- (14) Storage owned and operated by a reticulator solely for reticulation purposes is exempted from these mandatory third party access regulations.

(15) Storage that forms part of the process of and is within the premises of a liquefaction or regasification plant is exempted from these mandatory third party access regulations.

Review of license conditions

8. (1) Any person aggrieved by a condition imposed by the Gas Regulator in terms of section 21(1) of the Act may apply to the Gas Regulator in writing to have the condition reviewed.

(2) The application referred to in subregulation (1) must contain the following information:

- (a) The name of the licensee to which this objection is applicable;
- (b) the licence number to which objection is being made;
- (c) the name and surname of the person, company or organisation that is objecting to the licence condition;
- (d) the name and surname of the objector or the objector's contact person
- (e) the telephone and fax numbers of the objector or the objector's contact person;
- (f) the postal address of the objector or the objector's contact person;
- (g) the licence condition to which objection is being made;
- (h) the details of the objection;
- (i) the reasons for the objection and provide the necessary supporting documentation; and
- (j) an indication of whether or not the objector requests an opportunity to orally present the objection to the Gas Regulator.

Registration information

9. (1) A person contemplated in section 28 (1) of the Act must provide the following information to the Gas Regulator:

- (a) The actual and planned production quantities and specification details of gas including gas intended for own use;
 - (b) the sources, specifications and quantity of imported gas; and
 - (c) the gas reserves data measured in trillions of cubic feet.
- (2) The information referred to in subregulation (1) must be supplied within three months of the end of each calendar year.
- (3) Notwithstanding subsection (2), if during a calendar year there is any substantial change to the information provided under subregulation (1), the person concerned must notify the Gas Regulator in writing thereof.

Expropriation procedures

10. (1) A licensee contemplated in section 32 (1) of the Act may request the Gas Regulator, in writing, to expropriate land, or any right in, over or in respect of land on his or her behalf.
- (2) A request contemplated in subregulation (1) must contain the following information:
- (a) The nature of the request;
 - (b) the reason for the request;
 - (c) evidence of attempts to acquire the land or right in, over or in respect of such land by agreement with the owner;
 - (d) reasons why those attempts to reach agreement with the owner did not succeed;
 - (e) reasons why such land is reasonably required by the licensee;
 - (f) reasons why the acquisition of the land is in the public interest and will enhance the Republic's gas infrastructure;
 - (g) a plan of the project contemplated; and
 - (h) specification of the proposed land required.

- (3) The Gas Regulator must, before considering an expropriation, satisfy itself that a voluntary agreement cannot be reached between the applicant and the owner of the land or right in question.
- (4) The Gas Regulator must, in the absence of a voluntary agreement-
- (a) hold a hearing to which are invited:
 - (i) the applicant;
 - (ii) the owner and, if the land is leased, the leasee of the land; and
 - (iii) other affected persons whom must be invited by means of a notice contemplated in paragraph (b);
 - (b) publish a notice setting out the date, time and venue of the hearing at least two weeks in advance in a newspaper circulated in the area in which the expropriation is sought inviting affected persons; and
 - (c) be satisfied that the land or right is reasonably required by the licensee.
- (5) The Gas Regulator must, in making a determination for the purpose of subregulation (4)(c), consider-
- (a) whether the planned facilities will enhance the Republic's gas infrastructure;
 - (b) the nature of the proposed servitude or amendment to a servitude, including the nature and function of the gas infrastructure relating to the proposed servitude or amendment to a servitude;
 - (c) whether or not any existing gas infrastructure can be used to give effect to the proposed servitude;
 - (d) the probable duration of the proposed servitude;
 - (e) the extent of the deprivation of use of the land likely to be suffered as a result of the proposed servitude or amendment to a servitude;
 - (f) the nature and extent of the actual inconvenience or loss likely to be suffered as a result of the exercise of the rights under the proposed servitude or amendment to a servitude;
 - (g) the extent to which the land can reasonably be rehabilitated on termination of the proposed servitude;
 - (h) any advantage that the landowner or other person with a compensational interest in the land subject to the servitude is likely to derive as a result of the proposed servitude or amendment to a servitude; and

- (i) the public interest served by the gas infrastructure relating to the proposed servitude or amendment to a servitude.
- (6) An expropriation award made by the Gas Regulator must be accompanied by a recommendation as to compensation.
- (7) The Gas Regulator must, in making a recommendation on compensation, consider-
- (a) the nature of the proposed servitude or amendment, including the nature and function of the gas infrastructure relating to the proposed servitude or amendment;
 - (b) whether any existing gas infrastructure will be used to give effect to the proposed servitude;
 - (c) the probable duration of the proposed servitude;
 - (d) the extent of the deprivation of use of the land likely to be suffered as a result of the proposed servitude or amendment;
 - (e) the rental value of the land affected by the proposed servitude or amendment;
 - (f) the nature and extent of the actual inconvenience or loss likely to be suffered as a result of the exercise of the rights under the proposed servitude or amendment;
 - (g) the extent to which the land can reasonably be rehabilitated on termination of the proposed servitude;
 - (h) any advantage that the landowner or other person with a compensational interest in the land subject to the servitude is likely to derive as a result of the proposed servitude or amendment; and
 - (i) the public interest served by the gas infrastructure relating to the proposed servitude or amendment.
- (8) The Gas Regulator must make a decision on an expropriation application and the conditions thereof within 30 days of the completion of the hearing contemplated in subregulation 4(a).
- (9) If a party concerned does not accept the Gas Regulator's recommendation regarding compensation, that party may approach a court to determine the amount and the time and manner of payment of compensation.

- (10) The acquisition, amendment or cancellation of a servitude by virtue of an order of the Gas Regulator takes effect when the order is noted in terms of the legislation applicable to the registration of title deeds.
- (11) An owner of land or any right in, over or in respect of land subject to a servitude granted by the Gas Regulator may apply to the Gas Regulator for the cancellation of that servitude-
- (a) if the relevant licence associated with the servitude is terminated;
 - (b) if the rights and obligations in respect of the servitude have not been exercised on the land subject to the servitude for a continuous period of three years; or
 - (c) for any other lawful reason.
- (12) The Gas Regulator may recover all or part of the costs that it incurs in holding a hearing contemplated in subregulation 4(a) from the applicant.

Rehabilitation of land

- 11.(1) A licensee must, not later than six months prior to termination, relinquishment or abandonment of licensed activity, submit to the Gas Regulator a plan for approval for the closure, removal and disposal, as the case may be, of all installations relating to the licensed activity.
- (2) The plan contemplated in subregulation (1) must include information regarding-
- (a) alternatives investigated for further use and alternative disposal of the installations;
 - (b) decommissioning activities;
 - (c) site clean up, removal and disposal of dangerous material and chemicals; and
 - (d) an environmental impact assessment of the termination and abandonment of the activity concerned.

(3) The Gas Regulator may approve the plan contemplated in subregulation (1) subject to any condition or amendment determined by the Gas Regulator.

(4) From time to time, licence conditions may incorporate, by referral any current legislation on the rehabilitation of land used in connection with the transmission, storage, distribution, liquefaction or re-gasification of gas or the trading therein, and may include the provision of environmental performance bonds for rehabilitation purposes and the composition and amount of such guarantees.

(5) The financial provision contemplated in subregulation (4) may include-

- (a) an insurance policy;
- (b) a bank guarantee;
- (c) a trust fund; or
- (d) other financial arrangement acceptable to the Gas Regulator.

(6) The Gas Regulator may require confirmation in writing from a licensee that it is in compliance with the requirements of the National Environmental Management Act, 1998 (Act No 107 of 1998).

(7) The Gas Regulator may not consent to the termination of the financial security arrangement contemplated in subregulations (4) and (5) before it is in receipt of a certificate from an independent consultant competent to conduct environmental impact assessments in accordance with the provisions of the National Environmental Management Act, 1998 (Act No. 107 of 1998), stating that the site has been rehabilitated.

Fair administrative action

12.(1) The Gas Regulator must, in the case where its administrative action may materially and adversely affect the rights or legitimate expectations of any person, call for written representations to adduce the relevant facts.

(2) The Gas Regulator must, for purpose of subregulation (1), give-

- (a) at least two week's notice of the deadline for written representations;
 - (b) a clear statement of the intended administrative action; and
 - (c) a reasonable opportunity for persons who may be affected by the proposed administrative action to make representations.
- (3) The call for written representations must be given on the Gas Regulator's web site and on a public notice board at the Gas Regulator's offices.
- (4) When considered appropriate by the Gas Regulator, notices of the call for written representations may be communicated by the Gas Regulator directly to the persons concerned.
- (5) Licencees must provide the Gas Regulator with a list of all their potential customers or customers and persons likely to be materially and adversely affected together with their addresses and contact details within a time specified by the Gas Regulator if directed to do so in writing by the Gas Regulator.
- (6) The Promotion of Administrative Justice Act shall be applicable to all administration action undertaken by the Gas Regulator.

Determination of gas specifications

13.(1) The Gas Regulator may set a range of gas specifications, including maximum concentrations of gases that may be harmful, for each licensed activity where gas is comingled or is planned to be comingled from two or more separately owned sources.

- (2) The determination of gas specifications must be governed by-
- (a) the chemical composition of the gas involved;
 - (b) the calorific values;
 - (c) the combustion properties including the wobbe index;
 - (d) the pressure and temperature of the gas at point of entry to shared systems; and
 - (e) the relevant additional components that may be determined by the Gas Regulator.

(3) The Gas Regulator may determine the technical and commercial feasibility of the miscibility of gases and the maximum quantities from individual sources to promote the interconnection and interoperability of systems.

(4) Where it is not technically feasible or economically viable to make gases from different systems compatible, those gases must be conveyed in separate pipeline systems and stored in separate storage facilities.

Mediation

14.(1) A request to the Gas Regulator to act as mediator must be made in writing and must set out the nature of the dispute between the parties.

(2) A person appointed in terms of section 30(2)(a) of the Act must-

(a) be a person suitable person with no conflict of interest in the matter; and

(b) be so appointed within ten working days of receipt of the application for mediation.

(3) At the commencement of mediation, the appointed mediator must -

(a) inform the parties that he or she does not have any conflict of interest;

(b) inform the parties about the procedure and manner in which the mediation will be conducted;

(c) inform the parties how the fees contemplated in regulation 16 must be paid and to whom payments should be made; and

(d) secure agreement from the parties to the dispute with regard to paragraphs (a) to (c) before proceeding with the mediation.

Arbitration

- 15.(1) A request to the Gas Regulator to act as arbitrator must be made in writing and must set out the nature of the dispute between the parties.
- (2) A person appointed in terms of section 30(2)(a) of the Act must-
- (a) be a suitable person with no conflict of interest in the matter; and
 - (b) be so appointed within ten working days of receipt of the application for arbitration.
- (3) At the commencement of arbitration, the appointed arbitrator must-
- (a) inform the parties that he or she does not have any conflict of interest;
 - (b) inform the parties about the procedure and manner in which the arbitration will be conducted;
 - (c) inform the parties how the fees contemplated in regulation 16 must be paid and to whom payments should be made;
 - (d) inform the parties that any award made will be final and binding; and
 - (e) secure agreement from the parties to the dispute with regard to paragraphs (a) to (d) before proceeding with the arbitration.
- (4) The claimant party initiating a dispute must submit to the arbitrator and to the respondent party against whom the claim is being made a written statement containing the following information:
- (a) the name and address of the person who will represent the claimant at the proceedings;
 - (b) a detailed description of the dispute; and
 - (c) the relief or remedy sought and the amount claimed, if applicable.
- (5) The respondent shall, after receipt of the statement referred to in subregulation (4), submit a written statement of defence to the arbitrator and the claimant by a date determined by the arbitrator.
- (6) During arbitration proceedings, any party may amend or supplement its claim, counterclaim or defence, unless the arbitrator considers it inappropriate to allow such

amendment or supplement, because of the party's delay in making it, if it would be prejudicial to the other parties, or because of any other circumstances.

(7) A party may not amend or supplement a claim or counterclaim if the amendment or supplement would fall outside the scope of the agreement to arbitrate.

(8) Any party to an arbitration may be represented in an arbitration.

(9) The names, addresses and telephone numbers of representatives shall be communicated in writing to the other parties and to the arbitrator.

(10) The parties or their representatives may communicate in writing directly with the arbitrator: Provided that copies of such documents are provided to all the other parties to the dispute.

(11) The arbitrator must conduct the arbitration in a manner ensuring that the parties are treated with equality and that each party has the right to be heard and is given a fair opportunity to present its case.

(12) Documents or information supplied to the arbitrator by one party shall at the same time be supplied by that party to the other party or parties.

(13) Each party shall have the burden of proving the facts relied on to support its claim or defence.

(14) At any time during the proceedings, the arbitrator may order parties to produce documents, exhibits or other evidence that it deems necessary or appropriate.

(15) The arbitrator may appoint one or more independent experts to report to it, in writing, on specific issues designated by the arbitrator and communicated to the parties.

(16) The parties shall provide an expert with any relevant information or produce for inspection any relevant documents or goods that such expert may require.

- (17) Any dispute between a party and the expert as to the relevance of the requested information or goods shall be referred to the arbitrator for decision.
- (18) Upon receipt of an expert's report, the arbitrator shall send a copy of the report to all parties to the dispute and shall give the parties to the dispute an opportunity to express, in writing, their opinion on the report.
- (19) A party may examine any document on which the expert has relied in such a report.
- (20) At the request of a party, the arbitrator shall give the parties an opportunity to question the expert at a hearing and to present expert witnesses to testify on the points at issue during arbitration proceedings.
- (21) Awards by an arbitrator shall be made in writing and shall be final and binding on the parties and the parties must carry out any such award without delay.
- (22) The arbitrator must state the reasons for the award.
- (23) An award may be made public only with the consent of the parties to the dispute or as required by law.
- (24) In addition to making a final award, the arbitrator may make interim, interlocutory, or partial orders and awards.
- (25) The arbitrator must, upon request of the parties, terminate the arbitration if the parties settle the dispute before an award is made.
- (26) If in the opinion of the arbitrator, the continuation of the proceedings becomes unnecessary or impossible for any reason, the arbitrator must inform the parties of its intention to terminate the proceedings and must thereafter issue an order terminating the arbitration.
- (27) Confidential information disclosed during the proceedings by the parties or by witnesses shall not be divulged by the arbitrator.

(28) The arbitrator shall keep confidential all matters relating to the arbitration or the award, unless otherwise agreed by the parties or required by applicable law.

(29) The arbitrator shall not be liable for any act or omission in connection with any arbitration conducted under these regulations, except for the consequences of conscious and deliberate wrongdoing.

Costs of mediation and arbitration

16.(1) The Gas Regulator may charge fees for mediation and arbitration services.

- (2) The fees referred to in subregulation (1) must be-
- (a) sufficient to recover all or part of the costs incurred by the Gas Regulator including, if applicable, the costs of a person referred to in section 30(2)(a) of the Act; and
 - (b) paid by one or more of the parties to the dispute as is determined by the mediator or arbitrator concerned taking into account the circumstances of the dispute.
- (3) The fees contemplated in this regulation must be paid within thirty calendar days of receipt of an invoice unless the Gas Regulator determines otherwise.

Rendering of information

17. (1) A licensee must submit to the Gas Regulator the following information, in addition to any other information required:

- (a) Detailed audited annual accounts consisting of a balance sheet, income statement and cash flow statement for each licensed gas facility and activity;

- (b) an updated plan of the distribution network and details of availability for public inspection; and
 - (c) the annual volume, average charges and name and address for each of its customers consuming less than 10 million gigaJoules per annum for the applicable financial year of the licensee.
- (2) The charge data supplied by a trading licensee must-
- (a) be limited to piped gas;
 - (b) reflect actual prices and tariffs and any other charges paid by the end-consumer excluding taxes;
 - (c) include meter rental, standing charge and the initial installation charge to the customer, where applicable;
 - (d) be on a calendar monthly basis; and
 - (e) be reported in Rands per gigaJoule.
- (3) Information provided in terms of this regulation must be submitted annually to the Gas Regulator within three months of the licensee's financial year end, except in the case of information provided in terms of subregulation (1)(a) that must be submitted annually within six months of the licensee's financial year end.

ANNEXURE A

Definition of the classes of customers as classified by their annual gas consumption in GigaJoules.

CLASS	ANNUAL GAS CONSUMPTION		
Class 1	Less than 400 GJ pa		
Class 2	401 GJ pa	to	4000 GJ pa
Class 3	4001 GJ pa	to	40 000 GJ pa
Class 4	40 001 GJ pa	to	400 000 GJ pa
Class 5	400 001 GJ pa	to	4 000 000 GJ pa
Class 6	> 4 000 000 GJ pa		

Annex U Declaration of Interest

1. General

- 1.1. This Declaration of Interest Form is to be duly completed and signed by each Bidder which is a Project Company, each Shareholder thereof, and where the Bidder is a consortium, by each Member of the Bidder (for purposes of this Declaration, the “Member”).
- 1.2. Failure to complete this form may lead to disqualification.
- 1.3. ‘Related’ in this form means a relationship formed on the basis of any one or more of (i) family (including spouses and in-laws), (ii) friendship, (iii) business acquaintance, (iv) professional engagement, or (v) employment).

2. Disclosure of Interest

- 2.1. Please state if the Bidder or any Member or any individual who is a director, officer, employee or shareholder of any Member is Related, in any manner, to any employee of TNPA or Transnet and or to any other Government official or person directly involved in the Procurement Programme in respect of the Multipurpose Terminal, who may be involved with the evaluation of Bid Responses.

Yes / No [The Member is required to circle the applicable response]

If so, state particulars:

.....

.....

.....

.....

.....

.....

2.2. Please state if the Bidder or any Member or any individual who is a director, officer, employee or shareholder of any Member is Related, in any manner, to any employee of TNPA or Transnet and or any other Government official or person with the ability to influence the decision of TNPA with respect to the appointment of the Preferred Bidder and or the Reserve Bidder.

Yes / No [The Member is required to circle the applicable response]

If so, state particulars:

.....

.....

.....

.....

2.3. Is any national public entity, or provincial public entity (both as defined in the Public Finance Management Act No. 1 of 1999), or a person employed by a national public entity or a provincial public entity, a Contractor of or participating as a Member, or a shareholder (direct or indirect) of any Member, of the Bidder?

Yes / No [The Member is required to circle the applicable response]

If so, state particulars:

.....

.....

.....

.....

3. Declaration in respect of Litigation

3.1. Please describe the extent of any material pending or threatened litigation or legal proceedings (civil or criminal, and including any investigations or complaint proceedings conducted against the Member in terms of the Competition Act, 89 of 1998 or in terms of any other legislation providing for investigations or complaint proceedings) in which the Member is

involved as at the Bid Submission Date, or has been involved during the last 5 (five) years, instituted by any South African organ of state against the Member. If the Bidder or Member has something to declare, please provide all details in the space provided below. If the Bidder or Member has nothing to declare, please insert “nothing to declare” in the space provided below. [Add extra pages to be appended to this Declaration if necessary.]

.....

.....

.....

.....

3.2. Please describe in detail:

- 3.2.1. all occurrences of a failure by the Member to timeously complete any contracts (a) with any South African organ of state; or (b) relating to any Government project or procurement programme;
- 3.2.2. any incidences of damages deducted or recovered within the last 5 (five) years by any South African organ of state in relation to a contract with the Member, or by any person in relation to any Government project or procurement programme; and
- 3.2.3. any contract between the Member and any South African organ of state which was terminated during the past 5 (five) years on account of failure by the Member to perform on or to comply with the contract. If the Bidder or Member has something to declare, please provide all details in the space provided below. If the Bidder or Member has nothing to declare, please insert “nothing to declare” in the space provided below. [Add extra pages to be appended to this Declaration if necessary.]

.....

.....

.....

4. Declaration of Past Supply Chain Practices

4.1. Is the Member or any of its directors listed on the National Treasury database as companies or persons prohibited from doing business with the State / public sector?

Yes / No [The Member is required to circle the applicable response]

If yes, state particulars:

.....
.....
.....

4.2. Is the Member or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act No. 12 of 2004?

4.3. Yes / No [The Member is required to circle the applicable response]

If yes, state particulars:

.....
.....

4.4. Was the Member or any of its directors convicted by a court of law (including a court outside of the Republic of South Africa) for fraud or corruption during the past five years?

Yes / No [The Member is required to circle the applicable response]

If yes, state particulars:

.....
.....

DECLARATION

I, the undersigned (Name of authorised individual representing the Member)

CERTIFY THAT THE INFORMATION FURNISHED IN THIS DECLARATION IS COMPLETE, TRUE AND CORRECT. I ACCEPT THAT TNPA MAY DISQUALIFY MY BID RESPONSE IN THE EVENT THAT THE INFORMATION FURNISHED ABOVE IS IN ANY RESPECT UNTRUE, INCORRECT OR INCOMPLETE.

Signature _____

Date _____

Position _____

Name of Member _____

Name of Bidder _____

Who warrants his / her authority hereto

Annex W – Form of Preferred Bidder Guarantee

[To be submitted on the letterhead of the issuing institution]

By: [insert name of issuer of the Preferred Bidder Guarantee]

In favour of: Transnet National Ports Authority.

Terms with initial capital letters, unless otherwise defined herein, have the meanings given to them in the RFP.

WHEREAS Transnet National Ports Authority (“TNPA”), a division of Transnet SOC Limited has issued a Request for Proposals (“RFP”) in respect of the design, financing, Construction, Operation, and Maintenance of the Multipurpose Terminal for the purpose of entering into, inter alia, the Terminal Operator Agreement with TNPA;

AND WHEREAS pursuant to the RFP, TNPA has selected [insert the names of each Member of the Preferred Bidder consortium, or the name of the Preferred Bidder] (“Preferred Bidder”) as a Preferred Bidder in the Procurement Programme for which it submitted a Bid Response;

AND WHEREAS TNPA requires the Bidder to provide an on demand guarantee in favour of TNPA in the amount of [] Rand (R[]) (“Guarantee Amount”) to secure certain undertakings or obligations of the Bidder as the Preferred Bidder under the RFP;

AND WHEREAS we, [insert name of guarantor institution] (“Bank / [Insurer (substitute throughout if applicable)]”) have agreed to issue this guarantee to secure such undertakings and obligations of the Preferred Bidder (“Preferred Bidder Guarantee”).

NOW THEREFORE

1. The Bank, duly represented by _____ being duly authorised to sign this Preferred Bidder Guarantee, hereby irrevocably and unconditionally guarantees and as a primary obligation undertakes to pay TNPA without objection or argument amounts not exceeding in aggregate the Guarantee Amount, such payment(s) to be made by the Bank upon first written demand by TNPA being received at the Bank’s counter, situated at [●], attention [●], declaring that the Preferred Bidder has:
 - 1.1. breached any law relating to the Procurement Programme or is disqualified from the Procurement Programme as a result of its actions or omissions;

- 1.2. failed to extend the term of guarantee after agreeing to TNPA's request to extend the expiry date of the Preferred Bidder Guarantee: and or
- 1.3. failed to sign the Terminal Operator Agreement within the time period specified in clause 8 (Timetable of the Procurement Programme) of Part I (General Requirements, Rules and Provisions);
- 1.4. revoked, repudiated or withdrawn its Bid Response.

2. More than one demand may be made under this Preferred Bidder Guarantee, provided that the aggregate amount payable shall not exceed the Guarantee Amount.
3. Payment of the amounts so demanded will be made without set-off or deduction to the following account, or such other account as TNPA may notify the Bank in writing:

Bank: Standard Bank of SA
Account Name: TNPA Head Office
Account: 401 947 092
Branch: Parktown Branch
Branch Code: 000355

4. This Preferred Bidder Guarantee shall be valid and effective from the date of its issue until the earlier of (a) the expiry of the Bid Validity Period (as it may be extended in terms of the RFP); and (b) the date on which the Preferred Bidder complies with the requirements of any protocol issued by TNPA.
5. The Preferred Bidder Guarantee shall remain valid during the period described above notwithstanding the Bidder's insolvency, winding-up, liquidation, business rescue, dissolution or deregistration, whether provisionally or finally.
6. Notwithstanding the above provisions, this Preferred Bidder Guarantee shall terminate and be returned to the Bank within fifteen (15) Business Days of payment of an amount or amounts which, in aggregate, equal the Guarantee Amount, or of expiry of Preferred Bidder Guarantee as set out above.
7. This Preferred Bidder Guarantee shall be governed by the laws of the Republic of South Africa, and the parties hereto consent and submit for the benefit of TNPA to the non-exclusive jurisdiction of the High Court of South Africa, Gauteng Division, Pretoria.

Signature of Representative

Signature of Representative

Date: _____

Date: _____

TRANSNET



delivering freight reliably



Port Operations Performance Standards **Terminal Operator Performance Standards (TOPS)**





- What is TOPS
- Key Principle of TOPS
- Aims of TOPS
- TOPS Development Process
- TOPS Consultation
- Methodology
- Scope of Measures for TOPS
- Systematic STAT
- Port Capacity
- Benefits to Stakeholders

- The TNPA issued Terminal Operator Licenses (TOL's) in July 2012. Clause 14 of the TOL provides for Terminal Operator Performance Standards (TOPS)
- TOPS are a set of key performance measures applicable to the performance of the Terminal / Terminal Operator as well as the applicable norms / standards for such measures
- TOPS are issued in writing by the TNPA to the Terminal Operator will be determined for a set performance measures as applicable to the operation
- The TNPA's oversight in ensuring that TOPS are met:
 - The Terminal performance against TOPS is assessed quarterly by TNPA
 - The Terminal Operator to effect remedial action to ensure that TOPS is met
- TOPS will be reviewed and / or revised annually in line with the anniversary date of the TOL (01 July 2014)

Informed and expected levels of performance for specific Terminal operations/processes.

- TOPS PERFORMANCE CRITERIA
- Volume throughput
- Volume of cargo per ship working hour
- Turnaround times (cargo, ship, road and rail)

Key Principles Adopted In TOPS

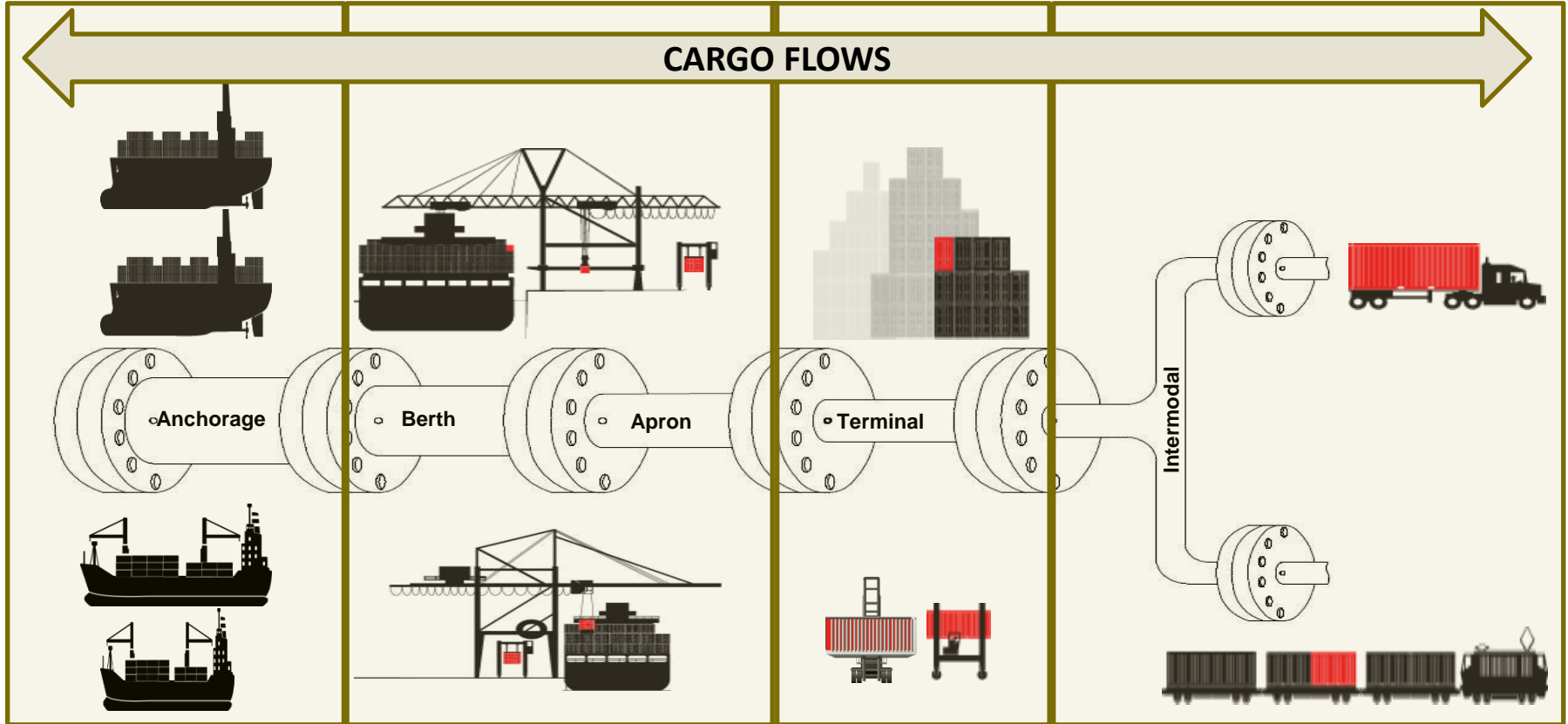


- Constructive engagement between the TNPA and Terminal Operators to improve port performance
- A consultative approach to inform the determination of TOPS
- Standardized and consistent methodology as per TNPA TOPS Toolkit across all Terminal Operators
- Emphasis on cargo flows, productivity, efficiency and competitiveness of South African Ports
- TOPS focus on, inter alia on port / terminal capacity informed by demand, current operational realities, performance expectations, applicable internal and international benchmarks and good order
- Emphasis on performance and remedial action. Where large performance gaps exist against the desired standard, interim targets may be set to remedy the situation over time whilst being mindful of the standard
- Repeated non achievement of targets will be approached in terms of Clause 14.9 and Clause 20 (breach and remedial action) of the TOL. The mechanisms for Clause 14.9 will be developed in consultation with port users in the 2014/15 year.
- Develop and grow a data driven and validation based and auditable approach to TOPS





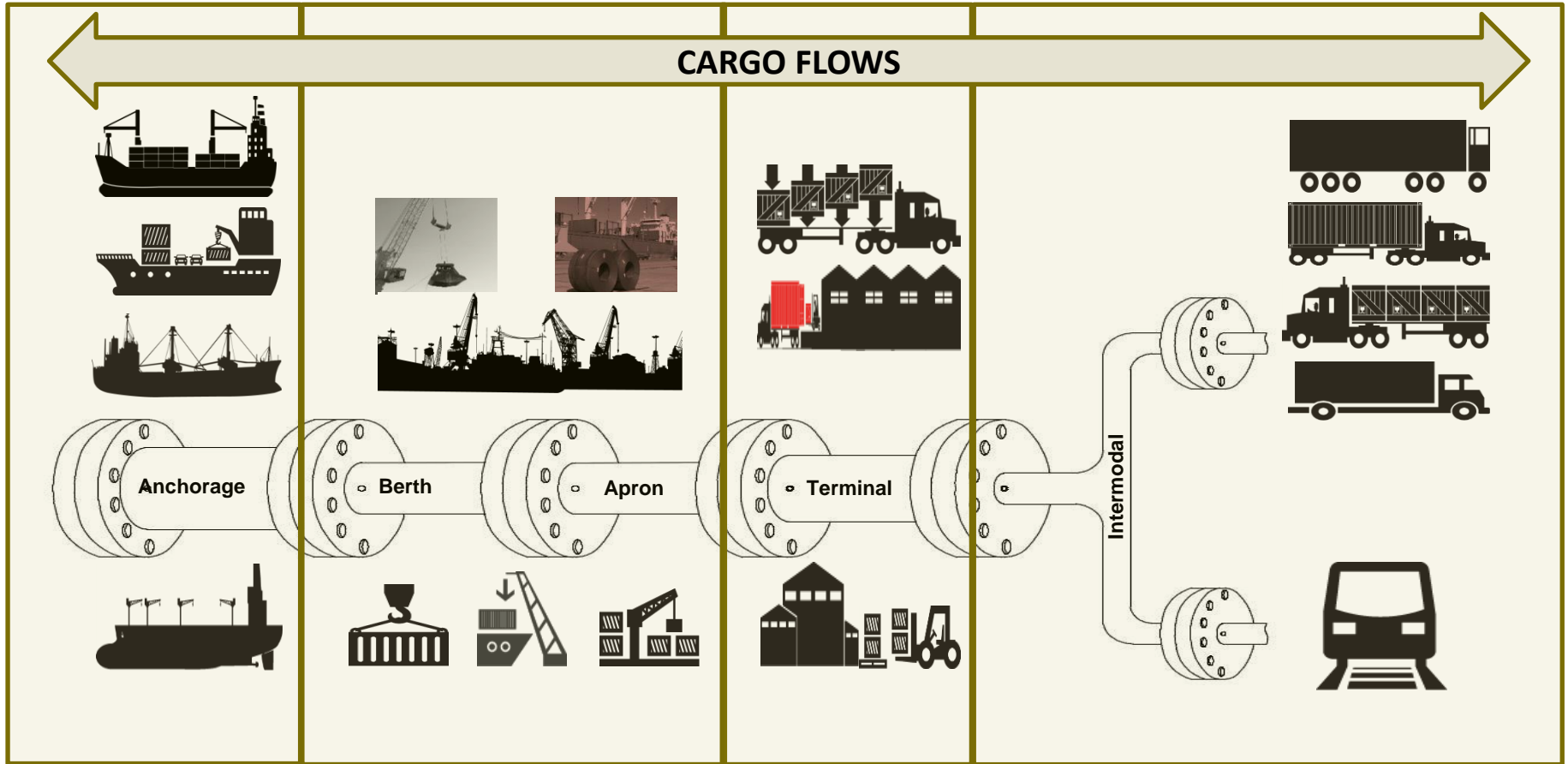
TOPS Aims To Facilitate The Smooth Flow Of Cargo (Containers)



- | | | | |
|---|---|--|---|
| <ul style="list-style-type: none"> • Berthing delays | <ul style="list-style-type: none"> • Berth productivity • Ship Working Hour / ATS | <ul style="list-style-type: none"> • Throughput • Container dwell time | <ul style="list-style-type: none"> • Truck turnaround time • Truck waiting time • Rail turnaround time |
|---|---|--|---|



TOPS Aims To Facilitate The Smooth Flow Of Cargo (Break Bulk / MPT)



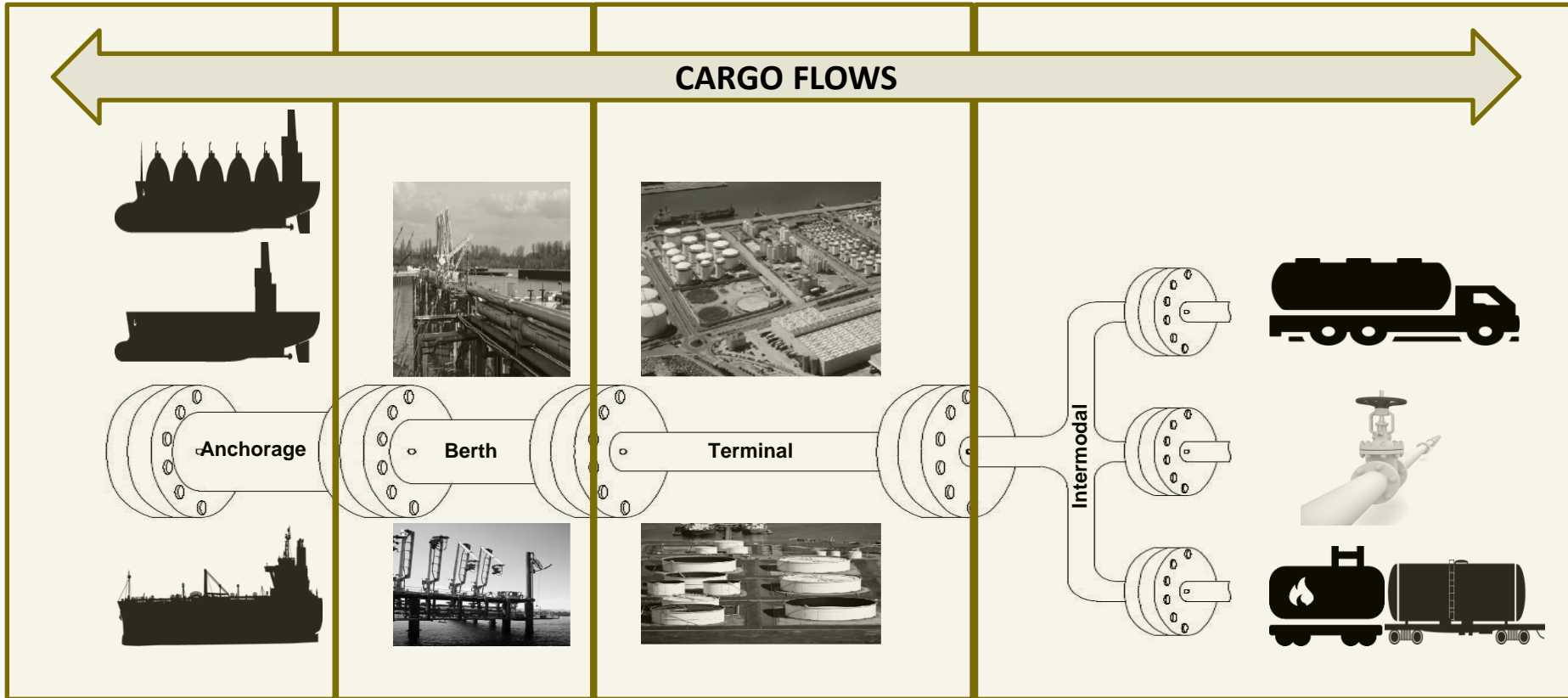
- Berthing delays

- Berth productivity
- Ship Working Hour / ATS

- Throughput
- Cargo dwell time

- Truck turnaround time
- Truck waiting time
- Rail turnaround time

TOPS Aims To Facilitate The Smooth Flow Of Cargo (Liquid Bulk)



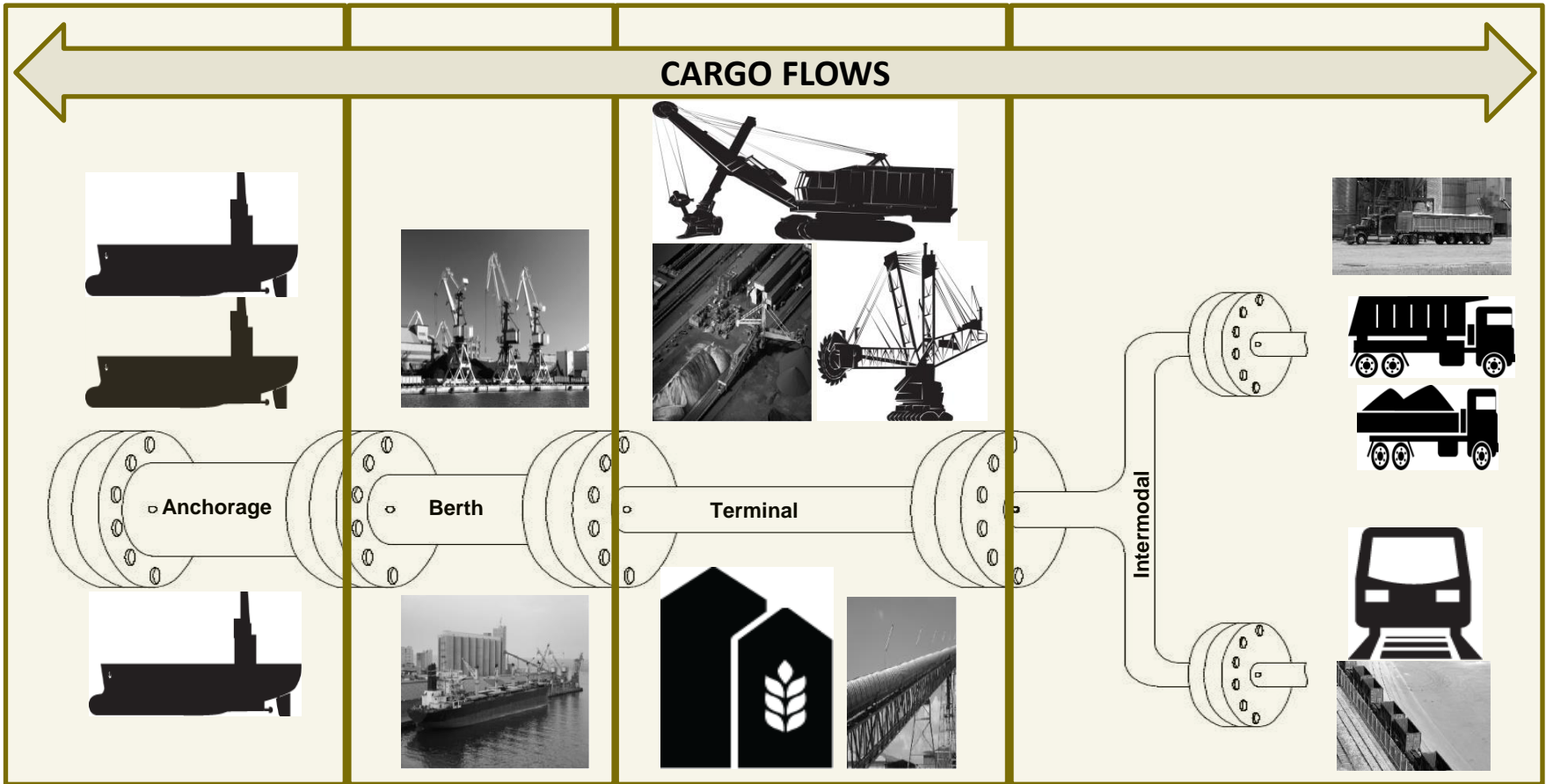
- Berthing delays

- Berth productivity
- Ship Working Hour / ATS

- Throughput
- Cargo dwell time

- Truck turnaround time
- Truck waiting time
- Rail turnaround time

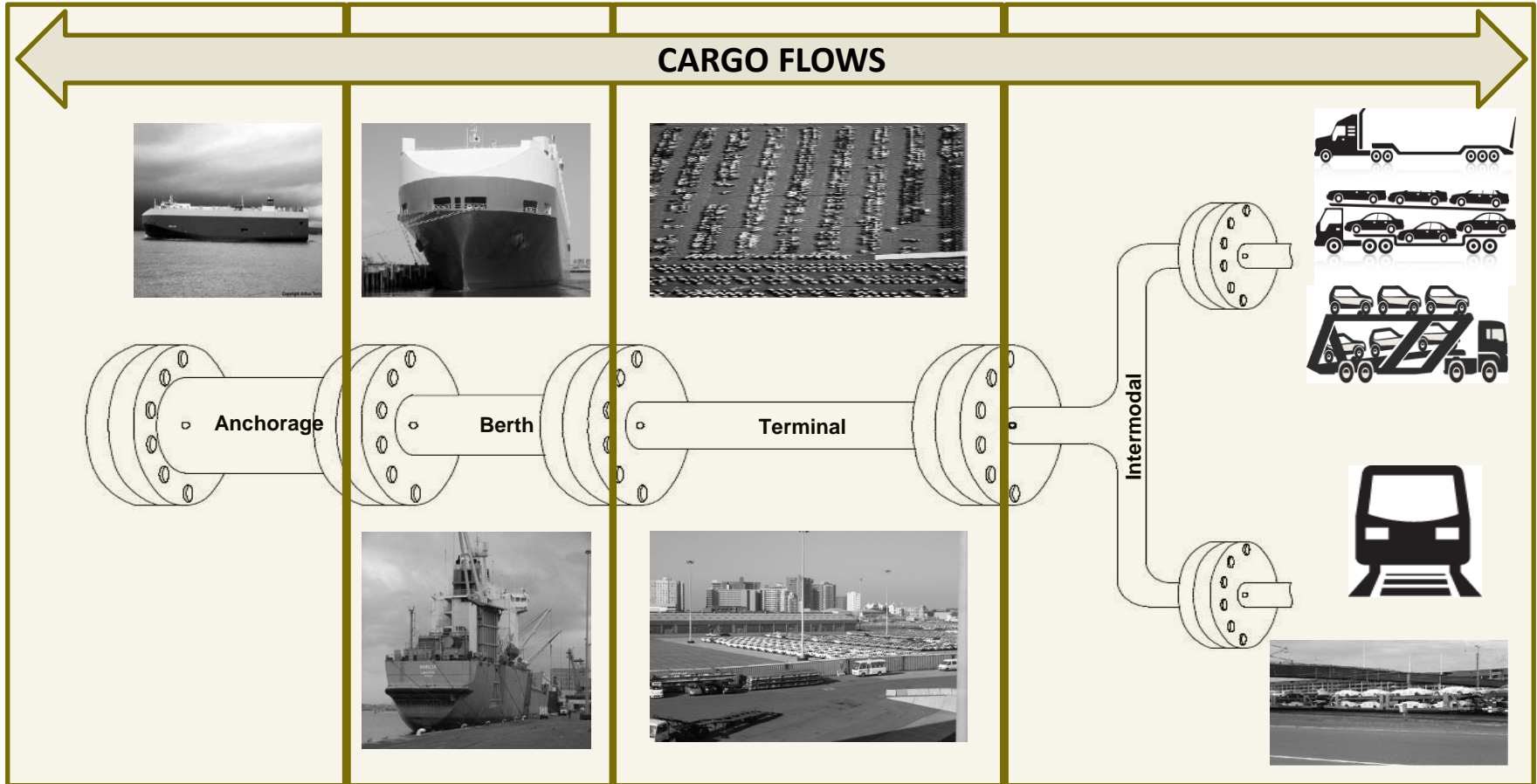
TOPS Aims To Facilitate The Smooth Flow Of Cargo (Dry Bulk)



- | | | | |
|---|---|--|---|
| <ul style="list-style-type: none"> • Berthing delays | <ul style="list-style-type: none"> • Berth productivity • Ship Working Hour / ATS | <ul style="list-style-type: none"> • Throughput • Cargo dwell time | <ul style="list-style-type: none"> • Truck turnaround time • Truck waiting time • Rail turnaround time |
|---|---|--|---|



TOPS Aims To Facilitate The Smooth Flow Of Cargo (Ro Ro)



- Berthing delays

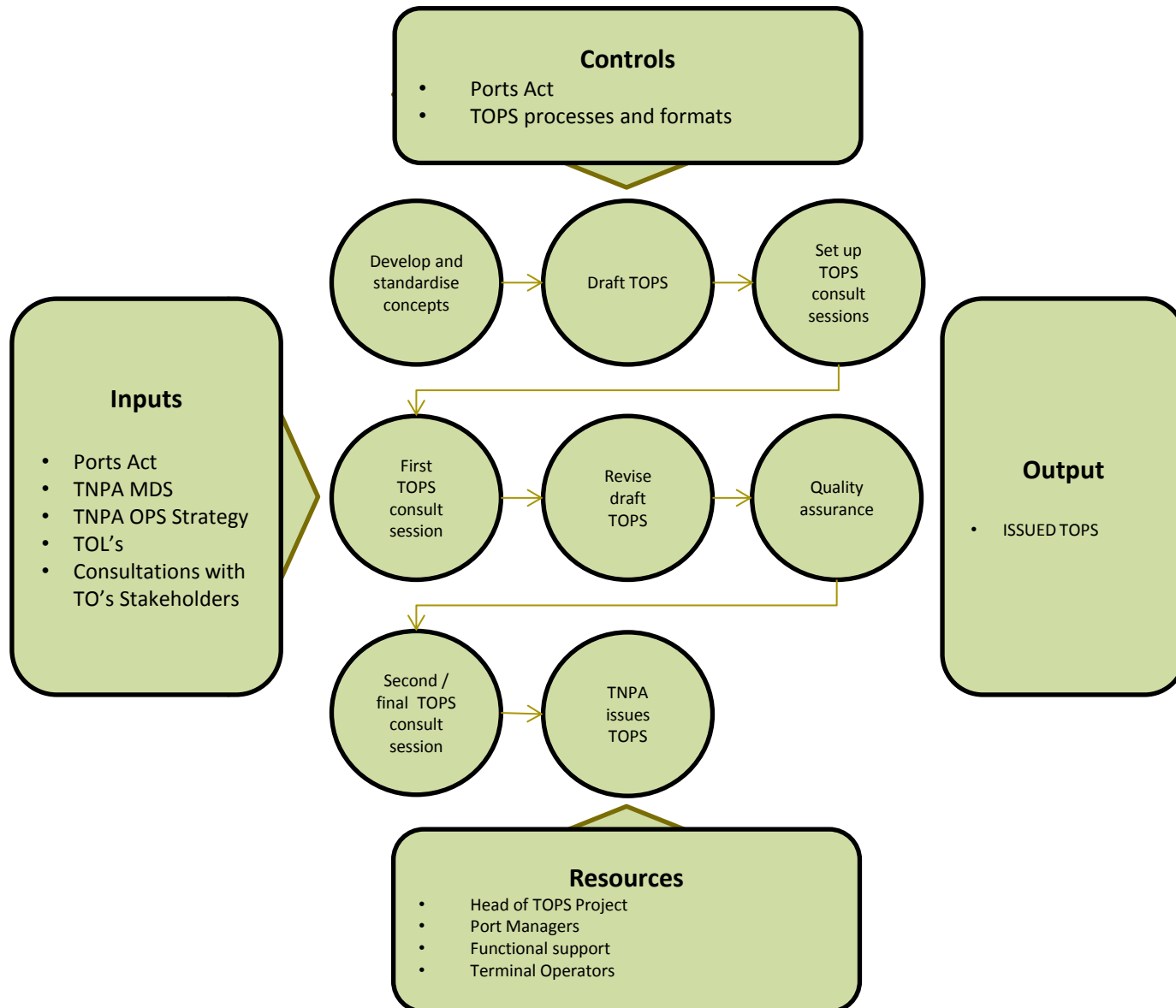
- Berth productivity
- Ship Working Hour / ATS

- Throughput
- Unit dwell time

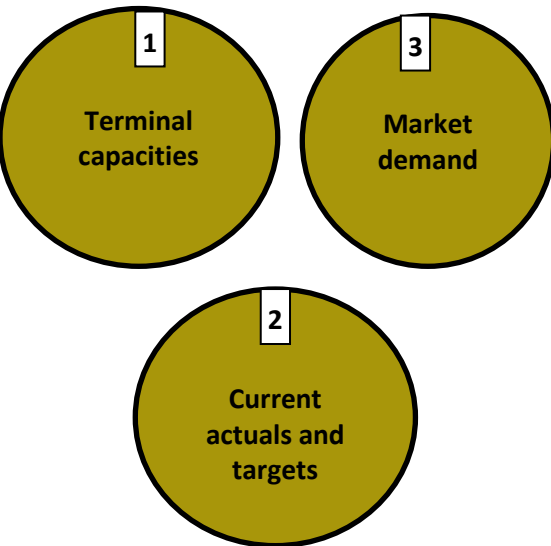
- Truck turnaround time
- Truck waiting time
- Rail turnaround time



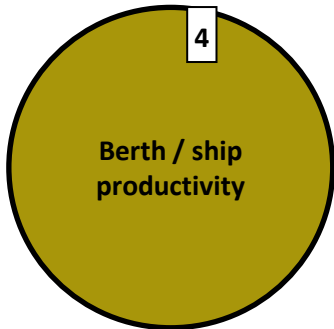
Standard TOPS Development Process



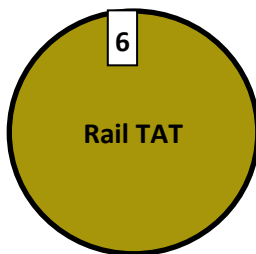
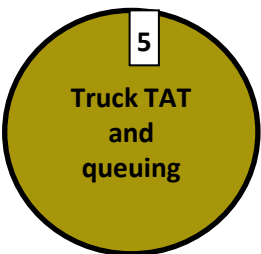
Who	Purpose
Terminal Operators	Determine TOPS through a consultative development process and to embed TOPS within the operational and oversight relationship between TNPA and the Terminal Operator
Transnet	Alignment with Transnet of corporate targets (MDS) to ensure integration with CAPEX and operational performance / delivery
Department of Public Enterprises	Alignment with Shareholder expectations regarding the performance of the South African Ports system and strategic investment decisions
Ports Regulator	Integration of the port efficiency component with other aspects of the port tariff model
PCC's	Consult as per PCC mandate to inform and where necessary validate TOPS
Port Users and Cargo Owners	Inform and where necessary validate TOPS



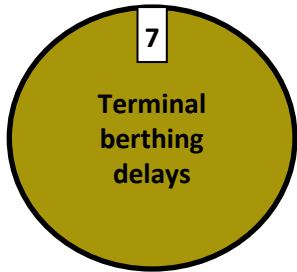
Question	Source of info / Action
<ul style="list-style-type: none"> What is the current terminal capacity? 	<ul style="list-style-type: none"> TNPA or terminal simulations, desktop calculations
<ul style="list-style-type: none"> What is the level of market demand to be serviced and what portion will this terminal serve? 	<ul style="list-style-type: none"> Terminal and TNPA Commercial departments, Customers
<ul style="list-style-type: none"> What are the gaps between 1,2, and 3? 	<ul style="list-style-type: none"> Comparison, discuss and set standards / targets for throughput Vessel reports Out turn reports



Question	Source of info / Action
<ul style="list-style-type: none"> What is the current GCH or Tons / hour productivity of cranes, ship loaders, conveyer systems, pumps etc? 	<ul style="list-style-type: none"> Terminal Operator, Customers
<ul style="list-style-type: none"> What is the rated performance of the equipment and why is the rated performance not met? Uncontrollable exclusions must be noted in the measures 	<ul style="list-style-type: none"> Terminals, Equipment suppliers
<ul style="list-style-type: none"> Understand reasons for gaps. These may be supply chain or bottleneck related! Equipment may need to be upgraded or replaced 	<ul style="list-style-type: none"> Comparison, discuss and set standards / targets for equipment productivity



Question	Source of info / Action
<ul style="list-style-type: none"> What is the current Truck TAT or prevailing truck congestion outside terminals? What is the Rail TAT and the % trains departed on time 	<ul style="list-style-type: none"> Trend analysis from terminals and customers, trucking associations
<ul style="list-style-type: none"> Does the terminal operator manage truck arrival patterns? Is there a booking system? 	<ul style="list-style-type: none"> Comparison, discuss and set standards / targets



Question	Source of info / Action
<ul style="list-style-type: none">• What is the current vessel berthing delays attributed to the terminal?	<ul style="list-style-type: none">• Marine Services, Terminal Operator, Customers
<ul style="list-style-type: none">• Uncontrollable exclusions must be noted in the measures	<ul style="list-style-type: none">• Terminals, Equipment suppliers
<ul style="list-style-type: none">• Understand reasons for gaps. These may be supply chain or bottleneck related! Equipment may need to be upgraded or replaced	<ul style="list-style-type: none">• Comparison, discuss and set standards / targets for equipment productivity

Inputs

- Ports Act, Commercial Ports policy
- Terminal Operator Licence
- Installed, utilised and spare capacity of terminal
- Market demand for the commodity/ies or sector
- Capability of current equipment and resources against performance expectations and internationally accepted thresholds and ranges (benchmarks)
- Commercial arrangements with customers

**Draft TOPS /
Revised TOPS /
Issued TOPS**

Scope Of Measures For TOPS

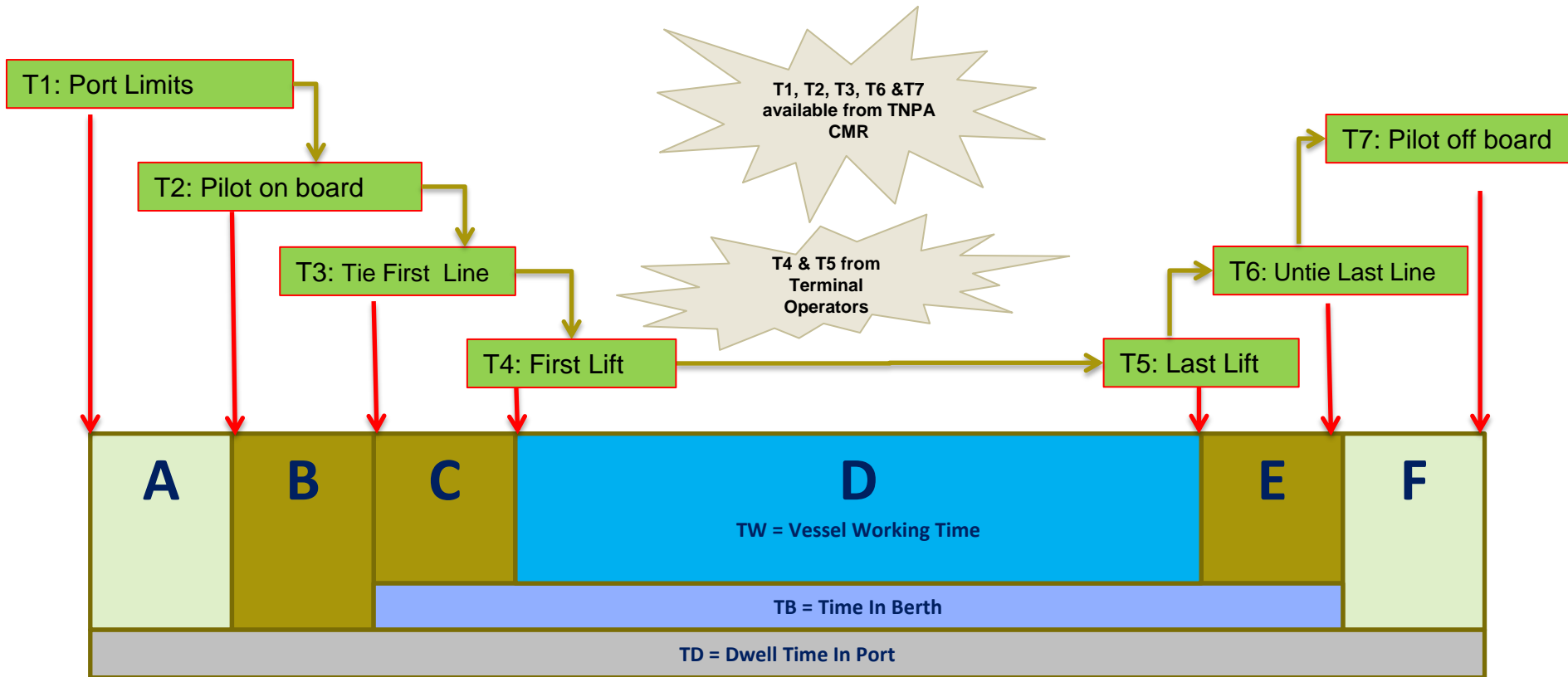
Measure	Stated in	Applicable to	Managed by
Terminal Berthing Delays	Average hours per vessel	Terminals using dedicated berths	Operational relationship, quarterly assessments, Clause 14.9 and Clause 20 of TOL
Berth Productivity	TEU's per berth hour	Terminals using dedicated berths	
Ship Working Hour	Containers per ship hour Tons per ship hour Kl per ship hour Units per ship hour	All terminals	
Truck Turnaround Time	Average minutes	Terminals with road haulage	
Truck Queuing Time (outside terminals)	Average number of vehicles		
Rail Turnaround Time	Average Hours	Terminals with rail haulage	
Cargo Dwell Time	Average days	All terminals	
Terminal throughput	TEU's, Tons, Kl, Units	All terminals	

The above measures are supported by standard definitions and calculation methods

Systemic View Of Ship Turnaround



delivering freight reliably



A = WAITING FOR BERTH (T2- T1)
 C = WAITING FOR GANGS (T4- T3)

B = SAILING IN (T3 - T2)
 D = WORKING (T5- T4)

E = PREPARING TO SAIL (T6- T5)
 TB = TOTAL TIME ON BERTH (T6 - T3)

F = SAILING OUT (T7- T6)
 TD = PORT DWELL TIME (T7 - T1)





delivering freight reliably

TOPS Benefits to All Port Players

Shipping Lines



Expect:

- Cargo volumes
- Compliance with schedules
- High productivity levels
- Flexibility
- Reduced operating costs
- Market growth

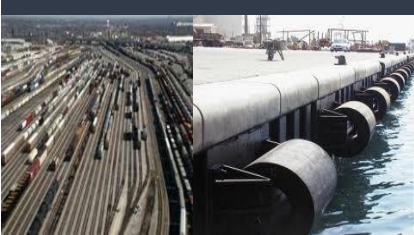
Expect:

- Economic growth
- Job creation
- Access to the port industry
- People development
- Minimised externalities
- Sustainability

Stakeholders, Service Providers and Suppliers

TOPS = improved port performance, increased volumes / revenues with decreased costs

Port Authority



Expect:

- Cargo and vessel volumes
- Targeted levels of capacity utilisation
- High productivity levels
- Quick turnaround of vessels
- Smooth logistics flows
- Market growth

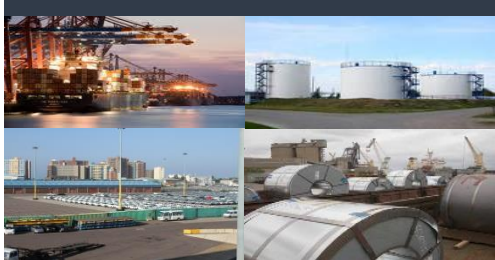
Expect:

- Targeted volumes
- Asset utilisation
- Vessel handling productivity levels
- Demand coverage
- Competency
- Safety
- Sustainability

Marine Services



Terminals



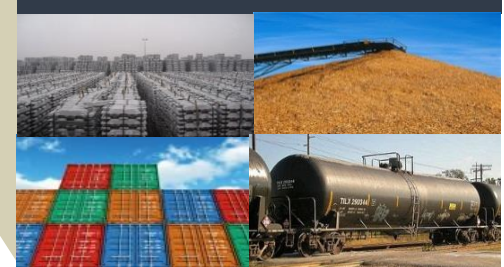
Expect:

- Cargo volumes
- Terminal productivity
- Performance of service providers
- Reduced operating cost
- Market growth

Expect:

- Compliance with dwell times and lead times
- Storage
- Cargo handling productivity
- No cargo degradation or damage
- Reduced costs

Cargo Owners



TRANSNET



delivering freight reliably



Thank you



BID RESPONSE FORM

We _____

[name of entity, company, consortium, close corporation or partnership]

Of *[full address]*

carrying on business trading/operating as

represented by

in my capacity as

being duly authorised thereto by a Resolution of the Board of Directors or Members or Certificate of Partners, as per Annex L (*Resolution of Board of Directors*) of this RFP (a certified copy of which is Annexed hereto) hereby offer to undertake the Project at the prices determined in terms of Part III (*Evaluation Criteria*) of this RFP).

1. We agree to be bound by those conditions in TNPA's:
 - 1.1. terms of this RFP; and
 - 1.2. any other standard or special conditions mentioned and or embodied in this RFP or Terminal Operator Agreement.
2. We accept that unless TNPA should otherwise decide and so inform us in the letter of appointment, our Bid Response (and, if any, its covering letter and any subsequent exchange of

correspondence), together with TNPA's acceptance thereof shall constitute a binding contract between TNPA and us.

3. Should TNPA decide that the Terminal Operator Agreement should be negotiated and entered into with us, this Bid Response (and, if any, its covering letter and any subsequent exchange of correspondence) together with TNPA's letter of appointment, shall constitute a binding contract between TNPA and us until the formal contract is signed.
4. We further agree that if, after we have been notified of the acceptance of Bid Response, we fail to enter into the Terminal Operator Agreement, or fail to commence the provision of services within 24 (twenty-four) months thereafter, TNPA may, without prejudice to any other legal remedy which it may have, recover from us any expense to which it may have incurred in calling for Bid Responses afresh and/or having to accept any less favourable Bid Response.
5. We accept that the Terminal Operator Agreement resulting from this offer will be for a period of 25 (twenty-five) years only. Furthermore, we agree to the penalty Clauses to be negotiated with TNPA, which will allow TNPA to invoke a penalty against us for non-compliance with material terms of this RFP including the delayed delivery of the services due to non-performance by ourselves, failure to meet Economic Development and/or Black Ownership Improvement Plan commitments. In addition, we agree that non-compliance with any of the material terms of the RFP, including those mentioned above, will constitute a material breach of the Terminal Operator Agreement and provide TNPA with cause for cancellation.

6. **ADDRESS FOR NOTICES**

6.1. The law of the Republic of South Africa shall govern any contract created by the acceptance of this RFP. The *domicilium citandi et executandi* shall be a place in the Republic of South Africa to be specified by the Bidder hereunder, at which all legal documents and notices may be served on the Bidder, who shall agree to submit to the jurisdiction of the courts of the Republic of South Africa. Foreign Bidders shall, therefore, state hereunder the name of their authorised representative in the Republic of South Africa who has the power of attorney to sign the Terminal Operator Agreement, which may have to be entered into in the event of their Bid Response being accepted and to act on their behalf in all matters relating to such Terminal Operator Agreement.

6.2. Bidder to indicate the details of its *domicilium citandi et executandi* hereunder:

Name of Entity: _____

Facsimile: _____

Address: _____

7. NOTIFICATION OF AWARD OF RFP

As soon as possible after approval to award the appointment of the Preferred Bidder, the Preferred Bidder will be informed of the acceptance of its Bid Response in writing. Unsuccessful Bidders will be advised in writing of the name of the Preferred Bidder and the reason as to why their Bid Responses was unsuccessful, for example, in the category of administrative responsiveness, technical criteria, B-BBEE status or for any other reason.

8. VALIDITY PERIOD

TNPA requires a validity period of 365 (three hundred and sixty five) calendar days from the Bid Submission Date against this RFP.

9. NAME(S) AND ADDRESS / ADDRESSES OF DIRECTOR(S) OR MEMBER(S)

9.1. The Bidder must disclose hereunder the full name(s) and address(s) of the director(s) or members of the consortium, company or close corporation on whose behalf the RFP is submitted.

9.2. Registration number of company or close corporation

9.3. Registered name of company, close corporation or consortium

9.4. Full name(s) of director or member(s) Number(s)	Address/Addresses	ID
---	-------------------	----

10. **CONFIDENTIALITY**

All information related to this RFP is to be treated with strict confidence. In this regard Bidders are required to complete and return a signed copy of Annex Q (*Certificate of Acquaintance with RFP Documents*) with Annex N (*Non-Disclosure Agreement*) Annexed to this RFP. All information related to the Terminal Operator Agreement, both during and after completion thereof, will be treated with strict confidence. Should the need however arise to divulge any information gleaned from provision of the services, which is either directly or indirectly related to TNPA's business, written approval to divulge such information must be obtained from TNPA.

11. **DISCLOSURE OF THE CONCESSION TENDERED**

Bidders must indicate below whether TNPA may disclose their tendered concession and conditions to other Bidders:

YES		NO	
------------	--	-----------	--

12. **RETURNABLE DOCUMENTS**

12.1. All sections must be signed, stamped and dated by the Bidder. Bid Returnable Documents means all the documents, sections and Annexes, as listed in the tables below. There are three types of returnable documents as indicated below and Bidders are urged to ensure that these documents are returned with their Bid responses based on the consequences of non-submission as indicated below:

12.1.1 **Mandatory Returnable Documents**

Failure to provide all mandatory Returnable Documents at the closing date and time of this tender will result in a Bidder's disqualification. Bidders are therefore urged to ensure that all these documents are returned with their Bid Responses.

Please confirm submission of the mandatory Returnable Documents detailed below by so indicating 'Yes' or 'No' in the table below:

MANDATORY RETURNABLE DOCUMENTS	RFP REFERENCE	SUBMITTED [Yes or No]
A valid B-BBEE verification certificate which is not older than 12 (twelve) months and which is issued by a SANAS certified agency, or a valid affidavit or sworn affidavit (in the case of a Qualifying Small Enterprise or		

MANDATORY RETURNABLE DOCUMENTS	RFP REFERENCE	SUBMITTED [Yes or No]
Exempt Micro Enterprise),confirming that the Bidder has at least a Level 4 (four) Contributor Status Level;		
A mark-up version of the Terminal Operator Agreement;		
A Concession Fee offer;		
A Business Case;		
A Cargo Ownership Interest Declaration		

12.1.2 Essential Returnable Documents (Used for Scoring Purposes)

12.1.1. Bidders are further required to submit these Essential Returnable Documents with their Bid Responses as detailed in the table below.

Failure to provide all Essential Returnable Documents used for the purpose of scoring a bid, by the closing date and time of this bid will not result in a Bidder's automatic disqualification. However, Bidders will receive an automatic score of zero for the applicable qualification or evaluation criterion Bidders are therefore urged to ensure that all these documents are returned with their Bid Responses.

12.1.2. Please confirm submission of these Essential Returnable Documents by so indicating 'Yes' or 'No' in the table below.

12.1.3. Full responses and documentation in respect of each qualification criterion in Part II of the RFP, including the following:

ESSENTIAL RETURNABLE DOCUMENTS & SCHEDULES (USED FOR SCORING PURPOSES)	RFP REFERENCE	SUBMITTED [Yes or No]
1. OBJECTIVE CRITERIA: Stage 2:		
1.1 Previous experience and track record	Clause 70.1.	
1.2 SHE and Risk Requirements	Clause 70.2.	
1.3 Financial Capability	Clause 70.3	

ESSENTIAL RETURNABLE DOCUMENTS & SCHEDULES (USED FOR SCORING PURPOSES)	RFP REFERENCE	SUBMITTED [Yes or No]
1.3.1 Profitability EBITDA	Clause 70.3.2	
1.3.2 Financial Ratios	Clause 70.3.3	
1.3.3 Proposed Funding Model	Clause 70.3.3.3	
1.3.4 Past Experience in Raising Capital	Clause 70.4.2	
1.4 Business Case:	Clause 70.5.	
1.4.1 Market Analysis	Clause 70.5.2.1	
1.4.2 Financial Management Plan	Clause 70.5.2.2	
1.4.2.1 Operational Costs (25 Year Projection)	Clause 70.5.2.2.1	
1.4.2.2 Operational Revenue (25 Year Projection)	Clause 70.5.2.2.2	
1.4.2.3 Key Financial Indicators (25 Year Projection)	Clause 70.5.2.2.3	
1.4.2.4 Capital Expenditure	Clause 70.5.2.2.4	
1.4.2.5 Financial Model Assumptions	Clause 70.5.2.2.5	
1.4.3 Operational Model	Clause 70.5.2.3	
1.4.4 Project Schedule	Clause 70.5.2.4	
1.4.5 Concept Design	Clause 70.5.2.5	

12.1.3 Essential Returnable Documents (Not For Scoring Purposes)

12.1.3.1 Over and above the requirements of clauses 12.1.1 and 12.1.2 above, Bidders are further required to submit these Essential Returnable Documents (not used for scoring purposes) with their Bid Responses as detailed in the table below.

Failure to provide Essential Returnable Documents (not for scoring purposes) will result in TNPA affording Bidders a further opportunity to submit by a set deadline.

Should a Bidder thereafter fail to submit the requested documents, this may result in a Bidder's disqualification. Bidders are therefore urged to ensure that all these documents are returned with their Bid Responses.

ESSENTIAL RETURNABLE DOCUMENTS & SCHEDULES <u>(NOT USED FOR SCORING PURPOSES)</u>	RFP REFERENCE
Any documents deemed necessary by the TNPA in order to conduct the information verification/due diligence as indicated in this clause	Clause 60

13 Annexures

13.1 The Bidder is to ensure that the following documents are completed (where necessary) and attached to this Form.

ANNEXURES	RFP REFERENCE	SUBMITTED [Yes or No]
Annex A – BID NOTICE	N/A	PROVIDED BY TNPA
Annex B – GATELY PRESCINCT LAYOUT	N/A	PROVIDED BY TNPA
Annex B1 – TERMINAL 1 LAYOUT	N/A	PROVIDED BY TNPA
Annex B2 – TERMINAL 2 LAYOUT	N/A	PROVIDED BY TNPA
Annex B3 – TERMINAL 3 LAYOUT	N/A	PROVIDED BY TNPA
Annex B4 – TERMINAL 4 LAYOUT	N/A	PROVIDED BY TNPA
Annex C1 – TERMINAL INFRASTRUCTURE CONDITION ASSESSMENT	N/A	PROVIDED BY TNPA
Annex C2 – ENVIRONMENTAL CONTAMINATION SITE ASSESSMENT	N/A	PROVIDED BY TNPA

Annex D – TNPA SAFETY, HEALTH, ENVIRONMENT AND QUALITY POLICY	N/A	PROVIDED BY TNPA
Annex D1 – TNPA MANDATORY REQUIREMENTS FOR LIQUID BULK FACILITIES	N/A	PROVIDED BY TNPA
Annex E – PORT OF EAST LONDON BERTHING POLICY	N/A	PROVIDED BY TNPA
Annex F – TRANSNET NATIONAL PORTS AUTHORITY SECURITY POLICY	N/A	PROVIDED BY TNPA
Annex G – PETROLEUM PIPELINES ACT, 60 OF 2003	N/A	PROVIDED BY TNPA
Annex H – ALLOCATION MECHANISM GUIDELINES FOR THIRD PARTY ACCESS TO PETROLEUM STORAGE FACILITIES	N/A	PROVIDED BY TNPA
Annex I – NERSA TARIFF METHODOLOGY	N/A	PROVIDED BY TNPA
Annex J – FORM OF PREFERRED BIDDER GUARANTEE	N/A	
Annex K – GUIDELINES FOR TERMINAL OPERATOR PERFORMANCE STANDARDS	N/A	PROVIDED BY TNPA
Annex L – BID RESPONSE FORM	N/A	
Annex M – TNPA DECLARATION OF BIDDER	N/A	
Annex N – NON DISCLOSURE AGREEMENT	N/A	
Annex O – RESOLUTION OF BOARD OF DIRECTORS	N/A	
Annex P – RESOLUTION OF EACH MEMBER	N/A	
Annex Q – CERTIFICATE OF ACQUAINTANCE WITH RFP DOCUMENTS	N/A	
Annex R – DECLARATION OF INTEREST	N/A	
Annex S – TAX CLEARANCE REQUIREMENTS	N/A	
Annex T – CERTIFICATE OF ACQUAINTANCE WITH THE REQUIREMENTS OF THE RFP	N/A	

Annex U – CERTIFICATE OF ACQUAINTANCE WITH CONDITIONS OF THE TERMINAL OPERATOR AGREEMENT	N/A	
Annex V – BREACH OF LAW FORM	N/A	
Annex W – RFP CLARIFICATION REQUEST FORM	N/A	
Annex X – CERTIFICATE OF ATTENDANCE OF RFP BRIEFING	N/A	
Annex Y – SUPPLIER INTEGRITY PACT	N/A	
Annex Z – STANDARD RFP RESPONSE FORM: INFORMATION ABOUT BIDDER	N/A	
Annex AA – LENDERS SUPPORT LETTER	N/A	
Annex BB – FINANCIAL SUPPORT LETTER	N/A	
Annex CC – B-BBEE VERIFICATION CERTIFICATE	N/A	
Annex DD – BUSINESS CASE GUIDELINES	N/A	PROVIDED BY TNPA
Annex EE – CONFIRMATION OF CONCESSION FEE OFFER	N/A	
Annex FF – ECONOMIC DEVELOPMENT GUIDELINES	N/A	
Annex GG – DEVELOPMENT PHASE VALUE SUMMARY	N/A	PROVIDED BY TNPA
Annex HH – OPPORATIONAL PHASE VALUE SAMMARY	N/A	
Annex II – ECONOMIC DEVELOPMENT PLAN	N/A	
Annex JJ – DRAFT TERMINAL OPERATOR AGREEMENT	N/A	
Annex KK –DECLARATION OF PURE TERMINAL OPERATIONS	N/A	

14. **CONTINUED VALIDITY OF RETURNABLE DOCUMENTS.** The Preferred Bidder will be required to ensure the validity of all returnable documents, including but not limited to its Tax Clearance Certificate and valid B-BBEE verification certificate, for the duration of any contract emanating from this RFP. Should the Preferred Bidder be awarded the Terminal Operator Agreement and fail to present TNPA with such renewals as and when they become due, TNPA shall be entitled, in addition to any other rights and remedies that it may have in terms of the Terminal Operator Agreement, to terminate such Terminal Operator Agreement forthwith without any liability and without prejudice to any claims which TNPA may have for damages against the Bidder.

15. By signing these RFP documents, the Bidder is deemed to acknowledge that it has made itself thoroughly familiar with all the conditions governing this RFP, including those contained in any printed or electronic form stated to form part hereof, and TNPA will recognise no claim for relief based on an allegation that the Bidder overlooked any such condition or failed properly to take it into account any information for the purpose of calculating tendered concession or otherwise.

SIGNED at _____ on this _____ day of _____ 20____

SIGNATURE OF WITNESSES

ADDRESS OF WITNESSES

1 _____

Name _____

2 _____

Name _____

SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE:

NAME: _____


DESIGNATION: _____

“HOW TO” GUIDE FOR BIDDERS

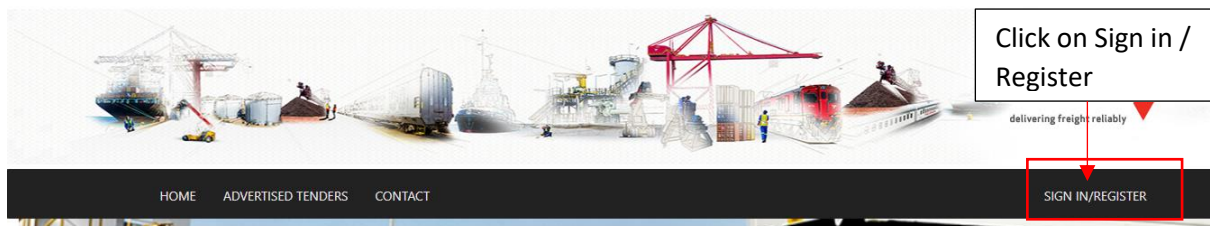
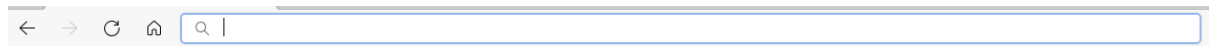
REGISTER ON ETENDER PORTAL

ACCESS TENDERS


NB: Do not wait for the last minute to register or to bid for a tender. Ensure you complete your process at least 1 day (24hours) before the closing date

Go to Google Chrome 

In the address bar type: <https://transnetetenders.azurewebsites.net>



https://transnetetender.b2clogin.com/transnetetender.onmicrosoft.com/b2c_1_signupsignin/oauth2/v2.0/authorize?client



Sign in with your email address


[Forgot your password?](#)

[Don't have an account? → Sign up now](#)

If not already registered, click on Sign up now.

Ensure that the email you use to sign in is the same as the email that you received from the tender invite on the email, otherwise you will not see the tender

< Cancel



Email Address

Send verification code

New Password

Confirm New Password

Given Name

Organization Name

Surname

Central Supplier Database Number

Company Registration Number

Country/Region

Country/Region

Secondary Email Address

State/Province

Street Address

Postal Code


Display Name

Create

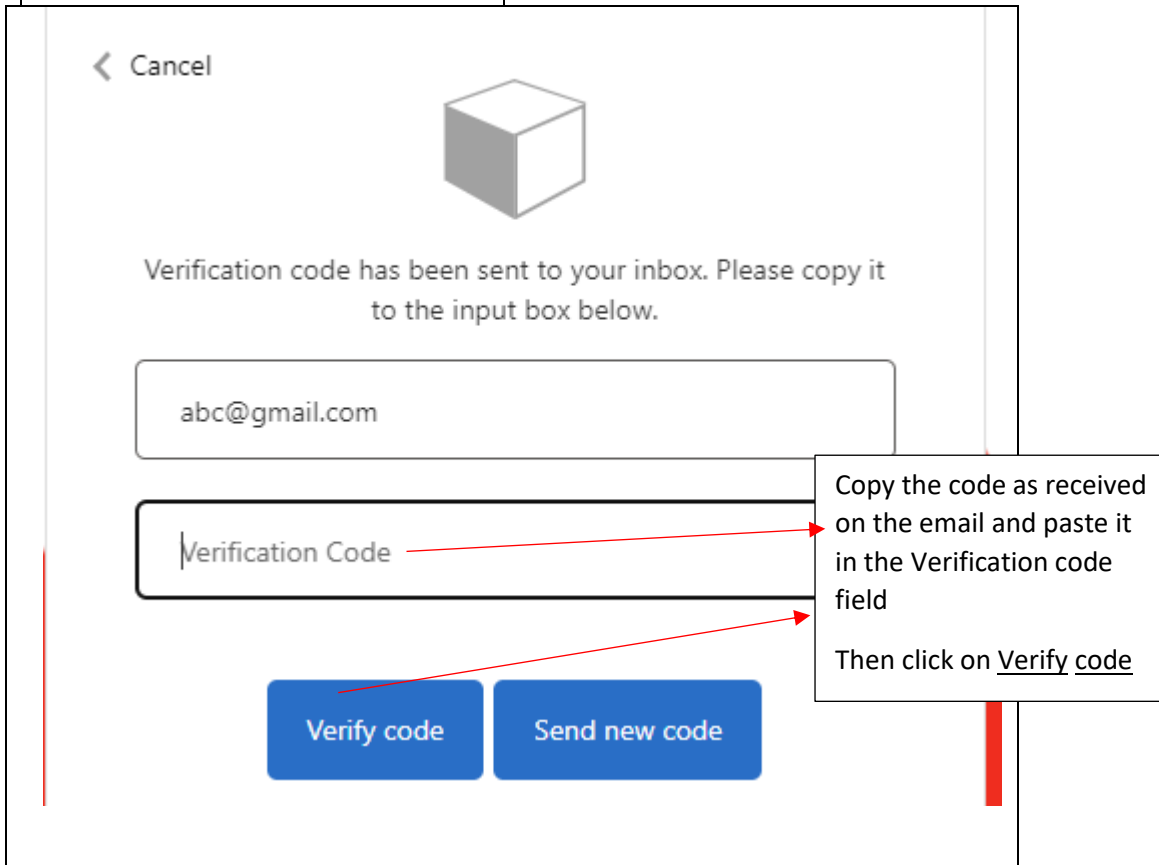
Complete all fields, before selecting “Send verification code” and confirm that all information is correct.

VERY IMPORTANT: Each field needs to be completed and not to be left blank

If you do not have a central Supplier Database number, enter the same company registration number in that field.



After completing all fields, select "Send verification code". The code will be sent to your email.



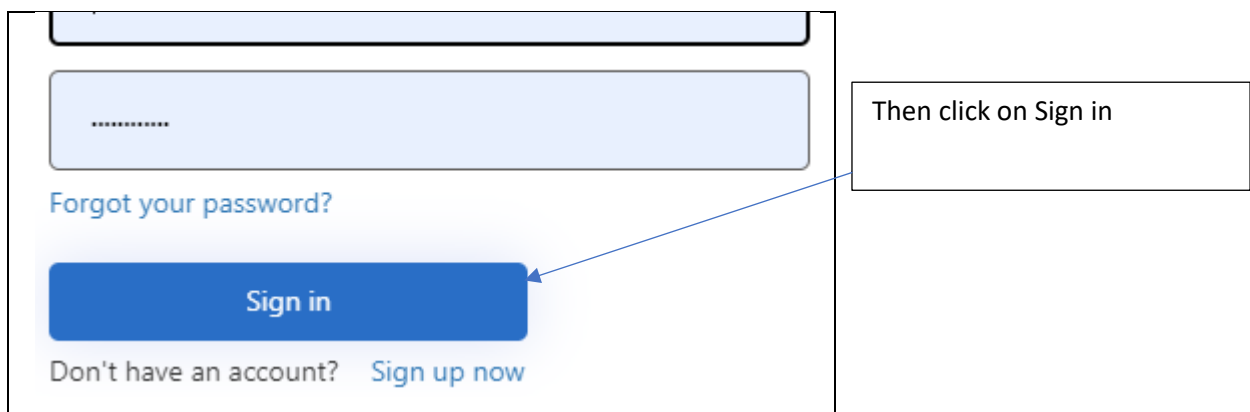
Verification code has been sent to your inbox. Please copy it to the input box below.

abc@gmail.com

Verification Code

Verify code Send new code

Copy the code as received on the email and paste it in the Verification code field
Then click on Verify code



.....

Forgot your password?

Sign in

Don't have an account? Sign up now

Then click on Sign in

Once registered and signed in, the home screen will have "WELCOME (Registered user)"

TRANSNET



DO NOT use secondary email address, YOU THE SAME EMAIL ADDRESS WHICH YOU RECEIVE INVITES FOR BIDDING

HOME ADVERTISED TENDERS MY SUBMITTED INTENTS MY BID DOCUMENT SUBMISSIONS CONTACT WELCOME TESTING SIGN OUT

To become a Transnet supplier, please respond to the tender requirements as stipulated. Ensure that all information is completed before submission with the requested documentation. Transnet will assess whether your business complies with certain preset standards which are required in order to supply certain items or services.

HOME ADVERTISED TENDERS MY SUBMITTED INTENTS MY BID DOCUMENT SUBMISSIONS CONTACT WELCOME TESTING SIGN OUT

ADVERTISED TENDERS

Open Tenders Other Tenders

Show entries Search:

Reference Number	Tender Name	Description	Briefing Session	Closing Date	Tender Status
------------------	-------------	-------------	------------------	--------------	---------------

To view / search for tenders, click on ADVERTISED TENDERS

Tender Invitation For Tender Ref # TE/2022/04/0697/RFQ - Message (HTML)

File Message Help Tell me what you want to do

Delete Archive Reply Reply All Forward Share to Teams ATM signed To Manager Team Email Move Tags Editing Read Aloud Translate Zoom Send to OneNote Viva Insights

Tender Invitation For Tender Ref # TE/2022/04/0697/RFQ

SRV-TCC-Etender
To noreply@transnet.net

This message was sent with Low importance.

Dear Suppliers,
You have been invited to bid and respond to the following tender:

Name Of Tender : TE22-SRX-1FG-02068
Description : STOP; TOP BUNK, OD 19.5 X HT 6.5 MM
Tender Number : TE/2022/04/0697/RFQ

Access to this tender will be granted by using this email when you sign up/sign in. To access the tender information, please click on the link below.

Kind Regards,
Transnet eTenders

When a bidder receives an email to quote, the bidder needs to register with the email address of the recipient that received the email. If already registered, sign in.

NOTE: The details on this email is intended for guidance only and not to be used on the live system

HOME ADVERTISED TENDERS MY SUBMITTED INTENTS MY BID DOCUMENT SUBMISSIONS CONTACT WELCOME TESTING SIGN OUT

ADVERTISED TENDERS

Open Tenders Other Tenders

Show entries Search:

Reference Number	Tender Name	Description	Briefing Session	Closing Date	Tender Status	
TCC/2021/11/0031/RFQ	For the supply and installation of an air compressor	For the supply and installation of an air compressor for indoor shooting range that operates the laser system and supply air to air guns utilised during training and conduct maintenance on air supply system and hoses.		12/10/2021 12:00:00 PM	Closed	View Details
TFR/2021/12/0014/RFQ	ELECTRICAL MATERIAL (CABLES)	SUPPLY AND DELIVERY OF ELECTRICAL MATERIAL (CABLES) FOR A ONCE OFF PERIOD		12/13/2021 4:00:00 PM	Closed	View Details
TFR/2021/12/0017/RFQ	CRAC_JHB_36509.	FOR THE SUPPLY AND DELIVERY OF HIGH BACK CHAIRS FOR CTC OFFICES IN CENTRAL, EASTERN AND WESTERN REGIONS, FOR A ONCE OFF PERIOD.		12/14/2021 10:00:00 AM	Closed	View Details
TFR/2021/12/0015/RFQ	CRAC-JHB-36313	FOR THE SUPPLY AND DELIVERY OF VARIOUS CLAMPS, TERMINAL LUGS, DROPPER CLIPS AND		1/13/2022 12:00:00	Closed	View Details

When signed in, select "ADVERTISED TENDERS".

To manually search and change the view from Closed to Open, click twice on arrow next to "Tender Status". The arrow pointing down will change to blue and open tenders will be displayed.

HOME ADVERTISED TENDERS MY SUBMITTED INTENTS MY BID DOCUMENT SUBMISSIONS CONTACT WELCOME TESTING SIGN OUT

ADVERTISED TENDERS

Open Tenders Other Tenders

Show entries Search:

Reference Number	Tender Name	Description	Briefing Session	Closing Date	Tender Status	
TE/2022/04/0450/RFQ	VALVE:L-1 LOAD DET,WAGONS AIRBRAKE	VALVE:L-1 LOAD DET,WAGONS AIRBRAKE-062101802 VALVE; TYPE: L-1 LOAD DETECTOR, MEDIA FOR WHICH DESIGNED: WAGONS AIRBRAKE, CONNECTION TYPE: FLANGE, SPECIAL FEATURES: BLUE, WITHOUT PIPE BRACKET; SIMILAR ITEM: 062004338		4/8/2022 10:00:00 AM	Open	View Details
TE/2022/04/0494/RFQ	GEAR OIL	OIL GEAR TYPE SYNTHETIC BRAND NAME MOBILGEAR SHC SERIES GRADE SCH 6800 VISCOSITY RATING 220 TO 320 FLASH POINT 234 DEG C COLOR ORANGE CONTAINER TYPE SACHET 250 G CONTAINER CAPACITY 14 KG FOR USE ON: 39-200 GM, 15E AND 19E LOCOMOTIVES		4/8/2022 10:00:00 AM	Open	View Details
TE/2022/04/0495/RFQ	SUPPLY OF CORROSION (NALCOOL) - APPROVED	ITEM NUMBER - 077807563 INHIBITOR, CORROSION; TYPE: COOL-C18, COLOR: RED,		4/8/2022 10:00:00	Open	View Details

HOME ADVERTISED TENDERS MY SUBMITTED INTENTS MY BID DOCUMENT SUBMISSIONS CONTACT WELCOME TESTING SIGN OUT

ADVERTISED TENDERS

Open Tenders Other Tenders

Show entries Search:

Reference Number	Tender Name	Description	Briefing Session	Closing Date	Tender Status	
TE/2022/04/0697/RFQ	TE22-SRX-1FG-02068	STOP; TOP BUNK, OD 19.5 X HT 6.5 MM		4/13/2022 10:00:00 AM	Open	View Details

To search for a specific tender, the tender number, tender name or description can be used for searching.

ADVERTISED TENDERS

Open Tenders Other Tenders

Show entries Search:

Reference Number	Tender Name	Description	Briefing Session	Closing Date	Tender Status	
TE/2022/04/0697/RFQ	TE22-SRX-1FG-02068	STOP; TOP BUNK, OD 19.5 X HT 6.5 MM		4/13/2022 10:00:00	Open	View Details

When the tender has been identified, click on "View Details"

When the "View Details" has been selected, the following screen will be displayed where the attachments can be viewed or downloaded.

The screenshot shows the 'TENDER DETAILS' page. The left sidebar contains a 'Tender Details' tab. The main content area is divided into two columns. The left column lists tender information: Tender Reference Number (TE/2022/04/0697/RFQ), Name Of Tender (TE22-SRX-1FG-02068), Description (STOP; TOP BUNK, OD 19.5 X HT 6.5 MM), Tender Type (RFQ), Contact Person (Charl du Preez Transnet Engineering SLR), Contact Person Email Address (Charl.duPreez@transnet.net), Date Published (4/7/2022 3:51:47 PM), Closing Date (4/13/2022 10:00:00 AM), Briefing Date And Time, Briefing Details, and Location Of Service (Coaches, Salt River). The right column shows 'Briefing Session' with a 'Closing Date' of 4/13/2022 10:00:00 AM, a list of 'Attachments' (2.14 Standard Terms and Conditions of Contract, 2.18 Supplier Integrity Pact_April 2020_v1.pdf, 2.19 Non Disclosure Agreement_April 2020_v1.pdf, 2.9 Request for Quotations TE22-SRX-1FG-02068), and a 'Log An Intent To Bid' toggle switch which is currently turned off.

If interested to bid, on the same page there's an option to select: **Log an Intent to Bid**. Once selected, an option will appear to "**Submit Intent**" or "**Cancel**". Click on **Submit Intent**

This screenshot shows the same 'TENDER DETAILS' page as above, but with the 'Log An Intent To Bid' toggle switch turned on. Below the toggle switch, two buttons are visible: a blue 'Submit Intent' button and a red 'Cancel' button. Red arrows from the text box point to the toggle switch and the 'Submit Intent' button.

Tender Details

Tender Reference Number

Name Of Tender

Description

Tender Type RFQ

Contact Person Charl du Preez Transnet Engineering
SLR

Contact Person Email Address Charl.duPreez@transnet.net

Date Published 4/7/2022 3:51:47 PM

Closing Date 4/13/2022 10:00:00 AM

Briefing Date And Time

Briefing Details

Location Of Service

Name Of Institution

Tender Category

Tender Status

Intent to Bid

Your request to log an intent to bid has been successfully submitted.

[Close](#)

Briefing Session

Closing Date 4/13/2022 10:00:00 AM

Attachments

- 2.14 Standard Terms and Conditions of Contract for
- 2.18 Supplier Integrity Pact_April 2020_v1.pdf
- 2.19 Non Disclosure Agreement_April 2020_v1.pdf
- 2.9 Request for Quotations TE22-SRX-1FG-02068.pdf

Log An Intent To Bid

[Submit Intent](#) [Cancel](#)

When the "Submit Intent" is selected, a message will appear to indicate that the request was successfully submitted. Click on close and wait for the next screen.

delivering freight reliably

HOME
ADVERTISED TENDERS
MY SUBMITTED INTENTS
MY BID DOCUMENT SUBMISSIONS
CONTACT
WELCOME TESTING
SIGN OUT

MY SUBMISSION INTENTS

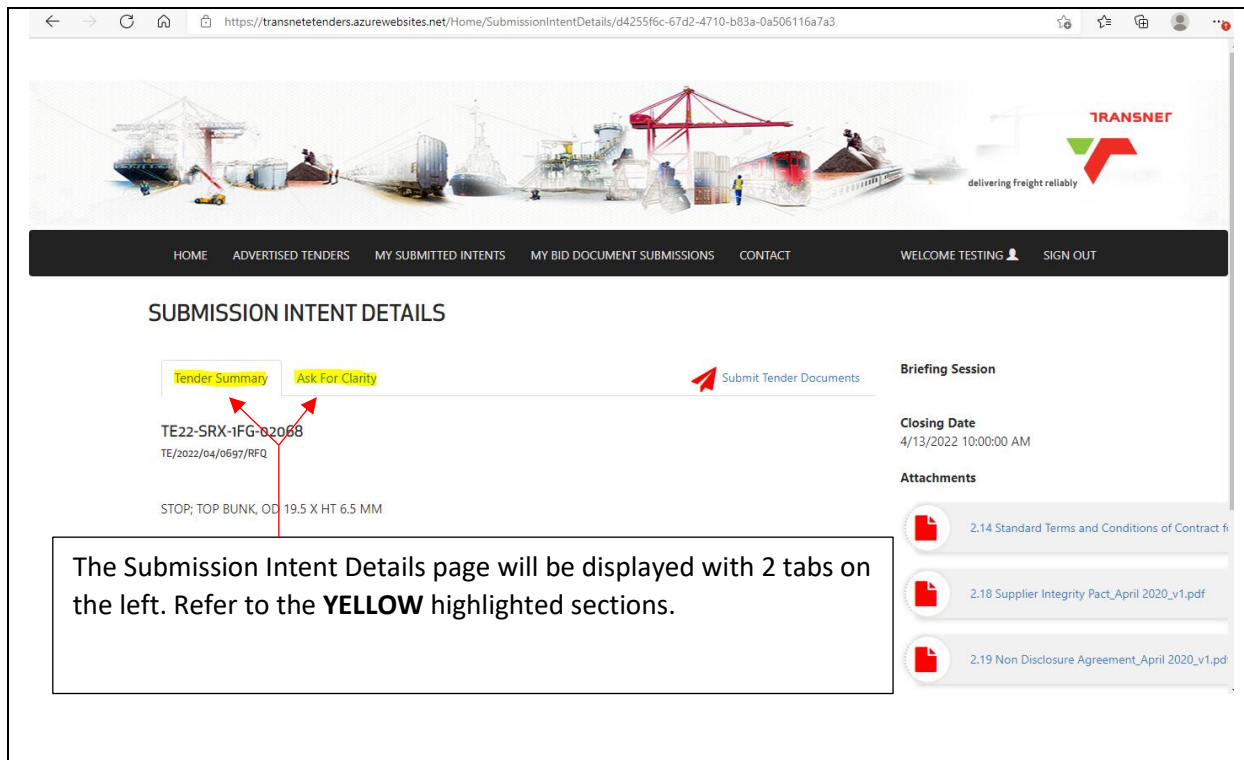
Show entries

Tender Reference Number	Name	Description Of Tender	Briefing Session Date	Closing Date	View Details
TE/2022/04/0697/RFQ	TE22-SRX-1FG-02068	STOP; TOP BUNK, OD 19.5 X HT 6.5 MM		4/13/2022 10:00:00 AM	View Details

Showing 1 to 1 of 1 entries

Previous 1 Next

The screen should be updated and load the "MY SUBMITTED INTENTS". To proceed to capturing your bid documents, click on "View Details"



https://transnettenders.azurewebsites.net/Home/SubmissionIntentDetails/d4255f6c-67d2-4710-b83a-0a506116a7a3

HOME ADVERTISED TENDERS MY SUBMITTED INTENTS MY BID DOCUMENT SUBMISSIONS CONTACT WELCOME TESTING SIGN OUT

SUBMISSION INTENT DETAILS

Tender Summary Ask For Clarity Submit Tender Documents

TE22-SRX-1FG-02068
TE/2022/04/0697/RFQ

STOP, TOP BUNK, OD 19.5 X HT 6.5 MM

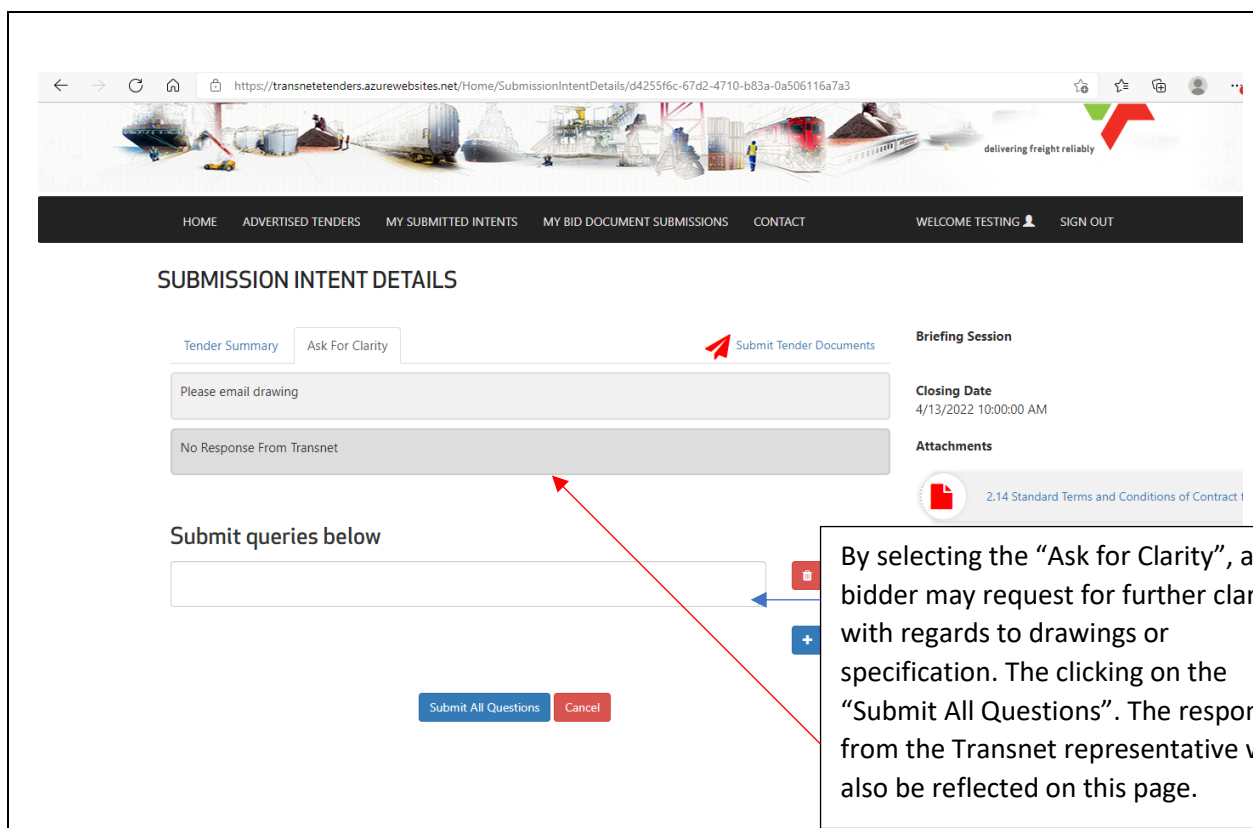
Briefing Session

Closing Date
4/13/2022 10:00:00 AM

Attachments

- 2.14 Standard Terms and Conditions of Contract f
- 2.18 Supplier Integrity Pact_April 2020_v1.pdf
- 2.19 Non Disclosure Agreement_April 2020_v1.pdf

The Submission Intent Details page will be displayed with 2 tabs on the left. Refer to the **YELLOW** highlighted sections.



https://transnettenders.azurewebsites.net/Home/SubmissionIntentDetails/d4255f6c-67d2-4710-b83a-0a506116a7a3

HOME ADVERTISED TENDERS MY SUBMITTED INTENTS MY BID DOCUMENT SUBMISSIONS CONTACT WELCOME TESTING SIGN OUT

SUBMISSION INTENT DETAILS

Tender Summary Ask For Clarity Submit Tender Documents

Please email drawing

No Response From Transnet

Briefing Session

Closing Date
4/13/2022 10:00:00 AM

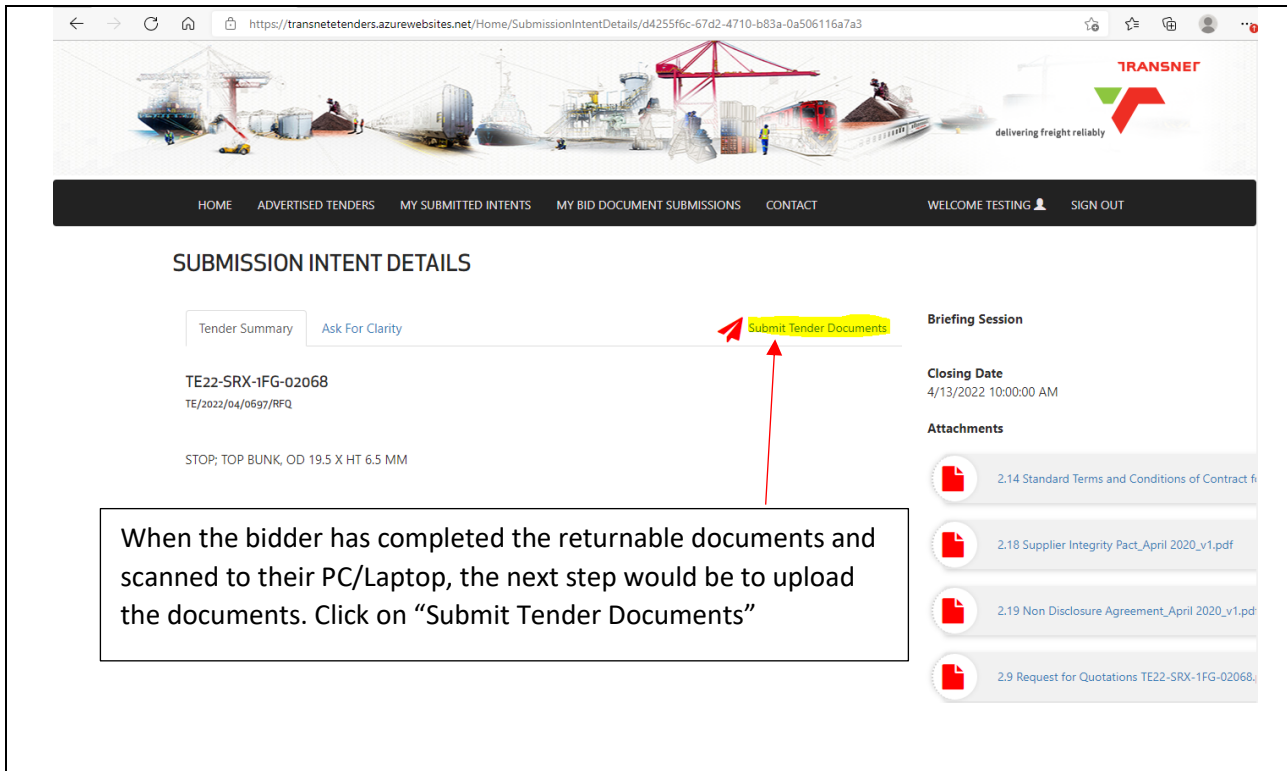
Attachments

- 2.14 Standard Terms and Conditions of Contract 1

Submit queries below

Submit All Questions Cancel

By selecting the "Ask for Clarity", a bidder may request for further clarity with regards to drawings or specification. The clicking on the "Submit All Questions". The response from the Transnet representative will also be reflected on this page.



https://transnettenders.azurewebsites.net/Home/SubmissionIntentDetails/d4255f6c-67d2-4710-b83a-0a506116a7a3

HOME ADVERTISED TENDERS MY SUBMITTED INTENTS MY BID DOCUMENT SUBMISSIONS CONTACT WELCOME TESTING SIGN OUT

SUBMISSION INTENT DETAILS

Tender Summary Ask For Clarity **Submit Tender Documents**

TE22-SRX-1FG-02068
TE/2022/04/0697/RFQ

STOP; TOP BUNK, OD 19.5 X HT 6.5 MM

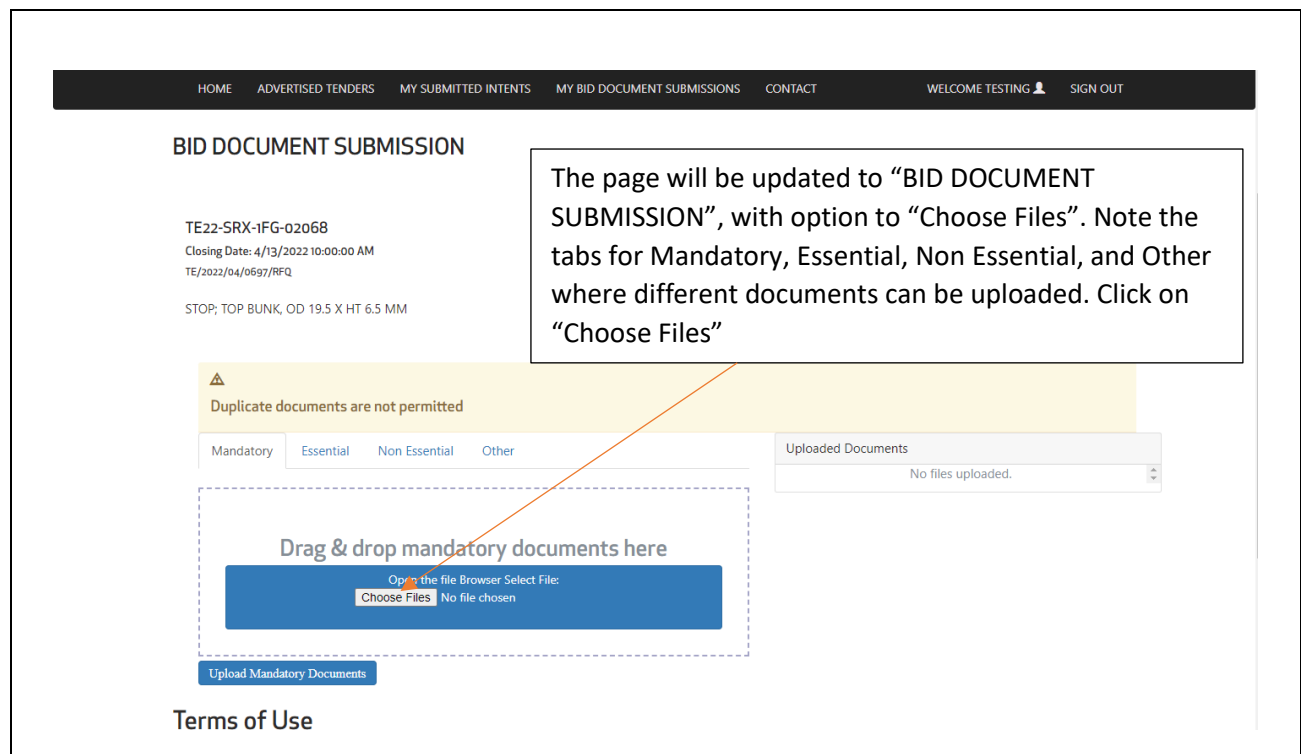
Briefing Session

Closing Date
4/13/2022 10:00:00 AM

Attachments

- 2.14 Standard Terms and Conditions of Contract f
- 2.18 Supplier Integrity Pact_April 2020_v1.pdf
- 2.19 Non Disclosure Agreement_April 2020_v1.pdf
- 2.9 Request for Quotations TE22-SRX-1FG-02068.

When the bidder has completed the returnable documents and scanned to their PC/Laptop, the next step would be to upload the documents. Click on "Submit Tender Documents"



HOME ADVERTISED TENDERS MY SUBMITTED INTENTS MY BID DOCUMENT SUBMISSIONS CONTACT WELCOME TESTING SIGN OUT

BID DOCUMENT SUBMISSION

TE22-SRX-1FG-02068
Closing Date: 4/13/2022 10:00:00 AM
TE/2022/04/0697/RFQ

STOP; TOP BUNK, OD 19.5 X HT 6.5 MM

Choose Files

Uploaded Documents
No files uploaded.

Drag & drop mandatory documents here

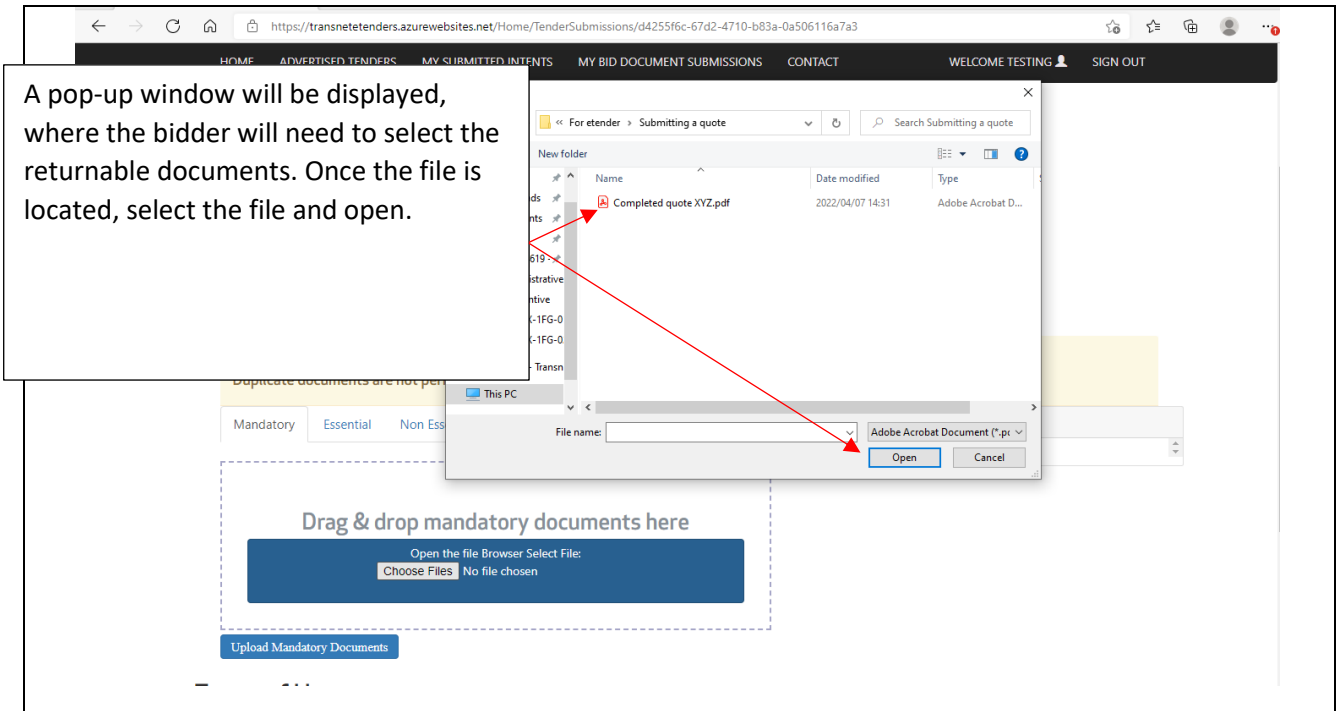
Open the file Browser Select File:
Choose Files No file chosen

Upload Mandatory Documents

Terms of Use

The page will be updated to "BID DOCUMENT SUBMISSION", with option to "Choose Files". Note the tabs for Mandatory, Essential, Non Essential, and Other where different documents can be uploaded. Click on "Choose Files"

A pop-up window will be displayed, where the bidder will need to select the returnable documents. Once the file is located, select the file and open.



BID DOCUMENT SUBMISSION

TE22-SRX-1FG-02068
 Closing Date: 4/13/2022 10:00:00 AM
 TE/2022/04/0697/RFQ
 STOP; TOP BUNK, OD 19.5 X HT 6.5 MM

Duplicate documents are not permitted

Mandatory Essential Non Essential Other

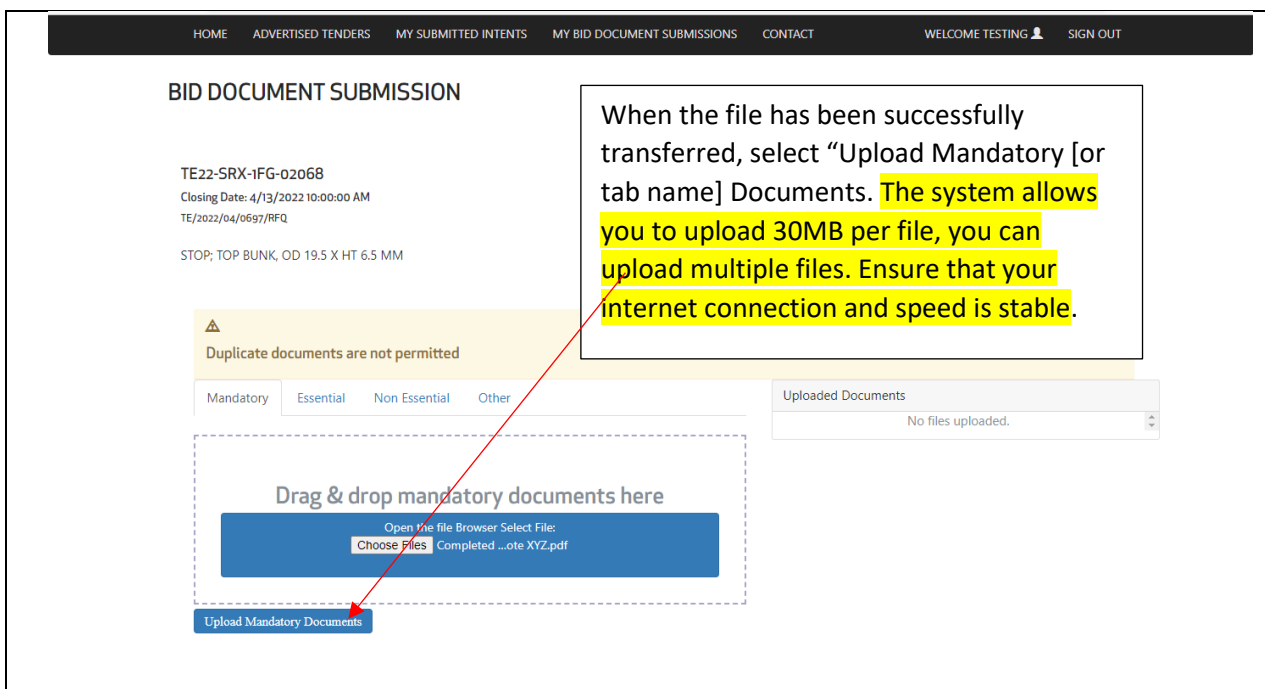
Drag & drop mandatory documents here

Open the file Browser Select File:
 Choose Files Completed ...ote XYZ.pdf

Upload Mandatory Documents

Uploaded Documents
 No files uploaded.

When the file has been successfully transferred, select "Upload Mandatory [or tab name] Documents. The system allows you to upload 30MB per file, you can upload multiple files. Ensure that your internet connection and speed is stable.



The "Uploaded Documents" section will be updated to confirm that the document was uploaded, then click on "Submit Bid"

TE/2022/04/0697/RFQ
STOP; TOP BUNK, OD 19.5 X HT 6.5 MM

⚠ Duplicate documents are not permitted

Mandatory Essential Non Essential Other

Drag & drop mandatory documents here

Open the file Browser Select File:
Choose Files No file chosen

Upload Mandatory Documents

Terms of Use

Information provided by the bidder through this portal constitute a binding bid submission/response and a commitment to deliver Transnet requirements. Kindly note that the system automatically ranks the outcome of the evaluation of price and BBBEE scoring based on the information provided. Pricing and BBBEE information provided is the responsibility of the bidder to ensure correctness and Transnet will only consider your latest submission made before the closing date.


← Back

Uploaded Documents

Completed quote XYZ.pdf - Document Type: Mandatory Documents

Delete

→ Submit Bid



TRANSNET
delivering freight reliably

HOME ADVERTISED TENDERS MY SUBMITTED INTENTS MY BID DOCUMENT SUBMISSIONS CONTACT WELCOME TESTING SIGN OUT

MY BID DOCUMENT SUBMISSIONS

Show 10 entries Search:

Tender Reference Number	Name	Date Submitted	Company Name	View Details
TE/2022/04/0697/RFQ	TE22-SRX-1FG-02068	4/8/2022 8:59:06 AM	Transnet Engineering	View Details

Showing 1 to 1 of 1 entries

Previous 1 Next

The screen will progress to "MY BID DOCUMENT SUBMISSION", where the "View Details" can be selected to confirm that all required information is submitted correctly.

NON-DISCLOSURE AGREEMENT

BETWEEN

(Reg)

AND

TRANSNET SOC Ltd,

acting through its operating division

TRANSNET NATIONAL PORTS AUTHORITY

(Reg 1990/000900/30)

This agreement entered into between

_____ located at and

Transnet SOC Ltd, acting through its operating division, Transnet National Ports Authority (“TNPA”),

(hereinafter referred to respectively as 'a Party' or 'the Parties'),

concerns the safeguarding of proprietary and company confidential information to be provided by each Party to the other in connection with discussions regarding

WITNESSED THAT: It is agreed between the Parties as follows:

1. For purposes of this Agreement, company confidential and/or proprietary information, hereinafter called "Proprietary Information", shall be construed to mean any information disclosed by a Party to the other Party, including without limitation all computer software, which is identified as such by an appropriate stamp or legend or any other notice in writing or when disclosed orally, has been identified as proprietary at the time of disclosure and has been promptly (30 (thirty) days at the latest) confirmed and designated in writing as Proprietary Information of the disclosing party, hereinafter called the 'Disclosing Party', in either hard copy or electronic media and which each Party considers to be material to its business operations, including, without limitation, wage and salary information, technical information, commercial information, financial information and personnel records.
2. The receiving party, hereinafter called the 'Receiving Party' of any Proprietary Information covenants that, for a period of 7 (seven) years from the effective date of this Agreement, the Proprietary Information received from the Disclosing Party:
3. shall not be used, duplicated, in whole or in part for any purpose other than the purpose here above stated, without the prior written consent of the Disclosing Party,
4. shall be protect and keep in confidence said Proprietary Information by using the same degree of care and safeguard as it uses to protect its own Proprietary Information of like importance,
5. shall only be disclosed to persons within the Receiving Party's organisation who have a need to know and solely for the purpose mentioned in the preamble.
6. Nothing contained in the Agreement shall be construed as granting or conferring, expressly or impliedly, any rights in or title to the Proprietary Information disclosed hereunder. It is agreed that no license under any patents of either Party is granted by this Agreement or by any disclosure or use of such Proprietary Information which:
7. was at the time of receipt otherwise known to the Receiving Party;
8. has been published or is otherwise within the public knowledge or is generally known to the public at the time of its disclosure to the Receiving Party;

9. subsequently is developed independently in good faith by employees of the Receiving Party who did not have access to the Proprietary Information;
10. becomes legally known or available to the Receiving Party from a source other than the Disclosing Party and without breach of the Agreement by the recipient;
11. becomes part of the public domain without breach of the Agreement by the recipient; and
12. is so disclosed or used with the written approval of the Disclosing Party.
13. Unless extended in writing by mutual agreement and unless earlier terminated as hereafter, this Agreement shall terminate upon the expiration of 7 (seven) years from its effective date. This Agreement including all rights and obligations of the Parties hereto, except the obligations specified in paragraph 2 hereof, may be terminated earlier by either Party by operation of law or without demand at any time on 30 (thirty) days written notice. The end of termination of the Agreement shall not relieve either Party from complying with the obligations of paragraph 2 with respect to the use and protection of the Proprietary Information received prior to the date of termination or the end of this Agreement. Such obligations shall continue for the period applicable as set forth in said paragraph.
14. Each Party shall bear its own costs incurred under or in connection with the Agreement. Nothing in the Agreement shall be construed as an obligation by either Party to enter into a contract, subcontract or any other business relationship with the other Party or to disclose any Proprietary Information to the other Party.
15. It is understood that this Agreement constitutes a Non-Disclosure Agreement only. Nothing in this Agreement shall grant either Party the right to make any commitments of any kind for, or on behalf of, the other Party without the prior written consent of the other Party.
16. This Agreement and the rights and obligations hereunder may not be transferred or assigned by a Party without the proper written approval of the other Party hereto.
17. This Agreement shall be governed by and interpreted in accordance with the laws of the Republic of South Africa
18. Any dispute arising from or in connection with this Agreement, which cannot be settled amicably by the Parties, shall be finally resolved in accordance with the Arbitration Foundation of Southern Africa ("AFSA") by an arbitrator or arbitrators appointed by AFSA. The arbitration will be held in Sandton, Johannesburg, in accordance with the formalities of AFSA rules and procedure settled by the arbitrator and may be held in an informal and summary manner on the basis that it will not be necessary to observe or carry out the usual formalities or procedures, pleadings or the strict rules of evidence.

19. Any Proprietary Information (and copies thereof) disclosed by a Party to the other Party shall remain the property of the Disclosing Party and shall be returned by the Receiving Party immediately upon request.
20. Any Proprietary Information disclosed by the Parties under this Agreement, shall be identified by the Disclosing Party as Proprietary Information at the time of disclosure and the disclosure, protection, use and handling of such information shall be in accordance with the security procedures prescribed by the South African government.
21. In the event of one Party visiting any of the facilities of the other Party, the visiting party undertakes that any further Proprietary Information relating to the Party being visited which may come to the visiting Party's knowledge as a result of any such visit, including without limitation, any information relating to plant and equipment which may be seen at such facilities, the methods of operation thereof and the various applications thereof shall be kept strictly confidential and be subject to the same protection as is provided for in clause 2 above.
22. The execution, existence and performance of the Agreement shall be kept confidential by the Parties and shall not be disclosed by a Party without the prior consent of the other Party.
23. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes and cancels all prior representations, negotiations, commitments, undertakings, communications whether oral or written, acceptances, understanding and agreements between the Parties with respect to or in connection with any of the matters or things to which such Agreement applies or refers.
24. The Parties hereby represent that the disclosure of Proprietary Information by and between themselves is not contrary to the laws and regulations of the Republic of South Africa.
25. With respect to any exchange of Proprietary Information which may occur as a result of the Agreement, it is expressly understood and agreed that the below listed employees shall on behalf of the respective Parties be the exclusive individuals authorized to receive and/or transmit Proprietary Information under the Agreement:
 - 25.1. TNPA :
 - 25.2. Bidder :
26. As regards the parties identified in Paragraphs above, each Party shall have the right and power to re-designate such persons within their organisation as are authorized to receive/transmit Proprietary Information, which are made by a Party, shall be affected by rendering written notice of such change to the other Party.
27. The Parties agree that this Agreement shall be drafted in the English language.

IN WITNESS WHEREOF, the Parties hereto have to set their hands as of the date first above written.

TNPA

Date:

Place:

Witness 1: (Name, Address, Signature, Date).....

.....

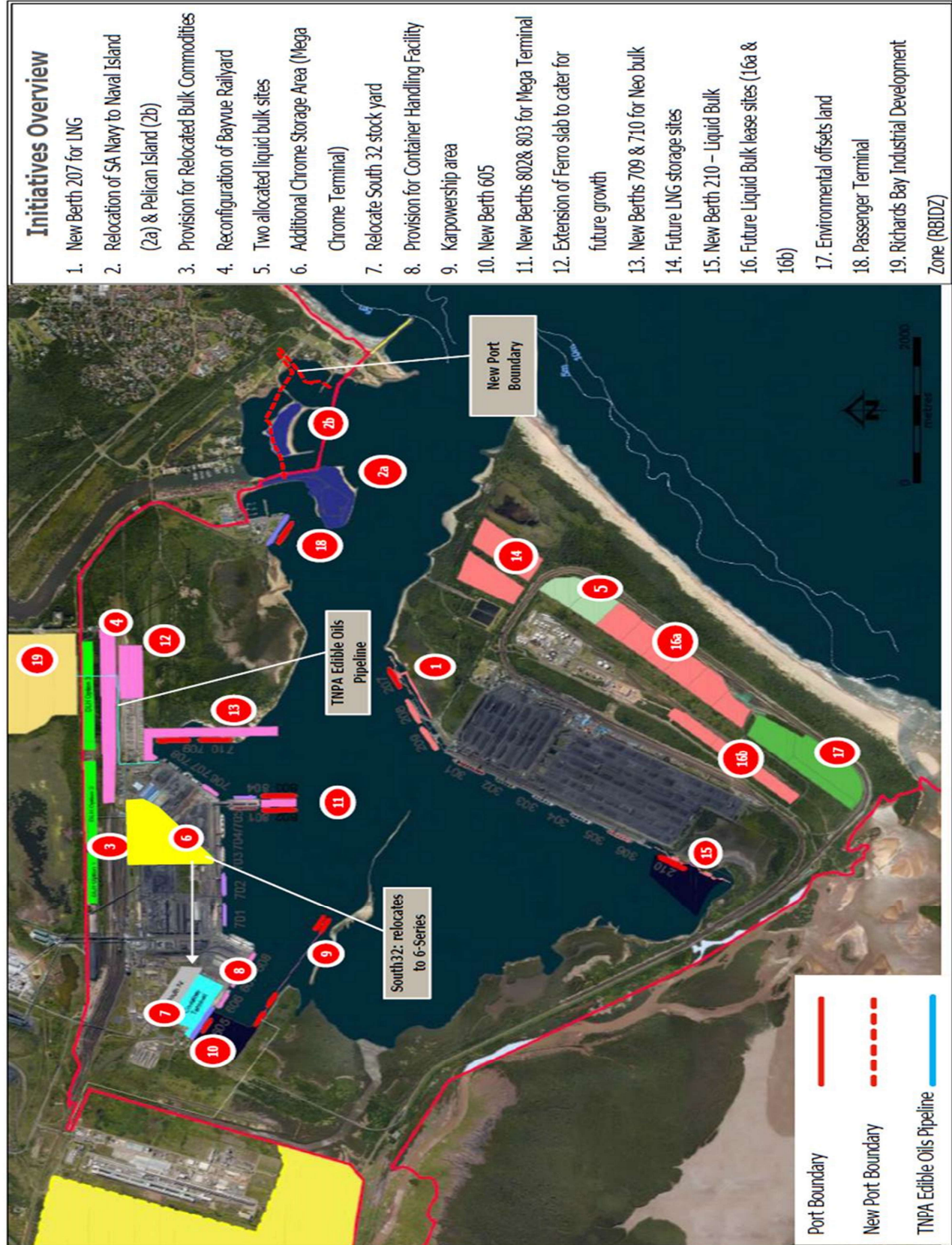
.....

Witness 2: (Name, Address, Signature, Date)

.....

.....

ANNEX BB PORT OF RICHARDS BAY – MASTER PLAN



Annex CC - Standard RFP Response Form: Bidder Information

1. INSTRUCTIONS FOR COMPLETION OF THE RESPONSE FORM

1.1. STRUCTURE OF THE QUESTIONNAIRE

1.1.1. The responses to the information requests set out in the RFP must be submitted as requested and provided for in the response forms contained in this Annex CC (*Standard RFP Response Form: Information about the Bidder*) of the RFP.

1.1.2. The questionnaire has been structured in sections so that the capability and suitability of the Bidder and its Members can be tested in each of the following areas to encompass general capability or suitability and technical ability. These headings largely mirror the evaluation criteria contained in the RFP and are inserted as headings for the Bidders' reference throughout the response forms in this Annex CC (*Standard RFP Response Form: Information about the Bidder*) of the RFP to broadly indicate which responses will be evaluated under each evaluation item:

1.1.2.1. Information about the Bidder (Bidder's Details);

1.1.2.2. Member Information;

1.1.2.3. Government Contracts; and

1.1.2.4. Legal Proceedings.

2. NOTES FOR COMPLETION

2.1. Please note that each section may relate to one or more entities and care should be taken to ensure that each Member provides a completed response for the general sections and those which relate to their speciality or experience. Certain sections of the response form may have to be duplicated and completed in respect of the Bidder and each Member.

2.2. Please answer using the electronic forms, in the manner and space provided for in the response forms in this Annex CC (*Standard RFP Response Form: Information about the Bidder*) of the RFP, Bidders are required to answer the

questions posed in the following sections as fully as possible. Extra pages may be appended to the response form if necessary.

- 2.3. Bidders should note that the provision of false or misrepresenting information may result in an entity's exclusion from the Procurement Programme.
- 2.4. To the extent that some of the information sought and responded to by each Bidder and its Members constitute its or their views and opinions on certain issues, TNPA is under no obligation to accommodate any such views and or opinions at any later stage of the procurement process, but reserves the right to hold the Bidder (and relevant Member) thereto.

3. INFORMATION ABOUT THE BIDDER

3.1. Please state (in the format provided):

- 3.1.1. the name of the Bidder, indicating whether or not it is incorporated, and the date of its legal formation. If a Bidder is a Company, the Bidder must submit the Constitutional Documents of the Company. If the Bidder is a joint venture or consortium, the Bidder must submit a signed joint venture or consortium agreement between the Members clearly stating the percentage split of the joint venture or consortium and the associated responsibilities of each Member. If such a joint venture or consortium agreement is unavailable, the Members must submit confirmation in writing of their intention to enter into a joint venture or consortium agreement should they be appointed as Preferred Bidder by TNPA through this Procurement Programme. This written confirmation must clearly indicate the percentage split of the business and the responsibilities of each Member;

BIDDER INFORMATION	
Name of Bidder	
Legal status: (e.g. Limited Liability Company or Joint Venture or Consortium)	

Date of legal formation of Bidder	
HEAD OFFICE	
Physical address:	
Postal address:	
E-mail address:	
Telephone number:	
Telefax number:	

3.1.2. name and contact details of the contact person for the Bidder for purposes of this RFP. If the Bidder is an unincorporated joint venture or consortium, this will be the lead member of the Bidder who is responsible for the submission of a RFP Bid Response. The contact details are to include the physical address, postal address, e-mail address, telephone and telefax numbers of that person;

3.1.3. Bidders are required to annex certified copies of all relevant its Constitutional Documents including a certified copy of the joint venture and or consortium agreement and mark same Annex CC1.

CONTACT PERSON / LEAD MEMBER FOR THE BIDDER	
Name:	
Physical address:	
Postal address:	
E-mail address:	

Telephone numbers:	
Telefax number:	

3.1.4. The names of all those persons that will be Lenders, Legal Advisors, Financial Advisors and technical consultants in respect of the Bid Response and the Project and their respective roles and responsibilities:

NAMES OF ADVISOR	NATURE OF ADVISORY SERVICE	ROLES AND RESPONSIBILITIES

3.1.5. the Bidder's Legal and Financial Advisors must provide a written declaration of interest where they disclose any potential or existing conflicts of interest due to any affiliation or relation with TNPA, Transnet or any other Government official or person with the ability to influence the decision of TNPA and or other Bidders. Relationship will include a relationship formed on the basis of any one or more of (i) family (including spouses and in-laws),

3.2.1.4. the person dealing with this RFP and the Bid Response on each Member's behalf, and their contact details.

[The tables in this section must be duplicated and completed for each Member of the Bidder.]

MEMBERS INFORMATION	
Name of Member:	
Legal status: (e.g. Limited Liability Company, Trust, or Joint Venture or Consortium or other)	
Registration No.:	
Date and country of registration:	
Registered address of the Member:	
Website address, if any:	
HEAD OFFICE	
Physical address:	
Postal address:	
E-mail address:	
Telephone numbers:	

Telefax number:	
CONTRACT PERSON INFORMATION	
Name:	
E-mail address:	
Mobile number:	
Telephone number:	
Telefax number:	

3.2.2. Please state (in the format provided) the following key personnel information in relation to the aforementioned entities:

3.2.2.1. the full names and addresses of (i) each director or equivalent of each Member; and

No.	NAME OF DIRECTOR OR EQUIVALENT	ADDRESS

3.2.3. Brief description of each Member's primary business and main products or services, previous experience and track record comprising of no more than 4 (four) pages:

3.2.4. Brief history of each Member, comprising of no more than 4 (four) pages, including detail of any parent or associated companies and any changes in ownership of the Member, over the last 5 (five) years:

3.2.5. Brief description, comprising of no more than 4 (four) pages, of the Member's main customers and suppliers and highlighting any associations with or sales to any entities within the Government sector:

3.3. Please attach the following information in respect of each Member to this Schedule:

- 3.3.1. certified copies of all Constitutional Documents, including all documents that evidence changes thereto, such as change of name certificates;
 - 3.3.2. certified copies of documents that evidence the Member's directorship; and
 - 3.3.3. particulars of share capital showing classes of shares and amounts of authorised and issued share capital, including relevant copies of share registers and or share option details.
- 3.4. Please provide (in the format provided) the following information in relation to either the Bidder or the Member with the appropriate experience:
- 3.4.1. a brief description of the leadership and project management capabilities of the Bidder or the Member in operation and maintenance or similar projects, including the outcomes of those projects and the time periods from development to financial close of those projects;

- 3.4.2. a detailed description of how the Member or Bidder will approach the leadership, control and co-ordination of the Bidder during the bid preparation phase, negotiations phase and the Operation and Maintenance phase of the Project should the Bidder be appointed as Preferred Bidder and then awarded the Terminal Operator Agreement to implement the Project, as the case may be;

3.4.3. a detailed description of how the Member or Bidder will deliver and or co-ordinate an experienced project management, Operation and Maintenance management, legal and finance team capable of delivering the Project on a fully integrated basis.

4. Government Contracts

4.1. Please state (in the format provided) the following information in relation to each Member forming part of the Bidder:

4.1.1. Details of any contracts awarded to the Member by the Government in the last 3 (three) years:

4.1.2. Brief details of any contracts awarded to the Member by other governments during the last 3 (three) years, highlighting any Multipurpose Terminal and or port related Construction,

operation and maintenance of the Multipurpose Terminal projects:

4.1.3. Details of the bidding processes of any similar projects from which any of the Members withdrew, indicating the reasons for withdrawal and whether any claim and or legal proceedings was made against the Member by the relevant government in relation to the bid process:

4.1.4. Details of any current Multi-Purpose Terminal concession projects for which any of the Members are bidding and their status (for example: preferred bidder, short-listed) in respect of such projects:

4.2. Legal Proceedings [Each of these sections must be duplicated and completed for the Bidder and each Member.]

Please provide (in the format provided) the following information in respect of the Bidder and each of the Members:

4.2.1. whether any order of a court for that Bidder's and or its Member's winding up has been granted. If so, please advise whether such order has been for the purposes of *bona fide* reconstruction or amalgamation or not;

4.2.2. whether the Bidder and or its Members has ever been or is currently subject to, liquidation, business rescue or insolvency proceedings or equivalent proceedings in a foreign jurisdiction, and if so, please provide details thereof, including the current status and the outcome of such proceedings;

4.2.3. whether the Bidder and or its Members, or any director thereof is currently being prosecuted for or has been convicted of a criminal

offence, including fraud and corruption, related to the conduct of its business or profession in South Africa and worldwide and if so, details thereof as well as the outcome or current status thereof;

4.2.4. whether the Bidder and or its Member is currently or has been engaged in any disputes in respect of the provision of services with any supplier and or client within the last 3 (three) years to the value above R5 million and if so, please furnish details of the nature of such dispute as well as the current status or outcome thereof;

4.2.5. whether the Bidder and or its Member has suffered a deduction for liquidated or ascertained damages in respect of any government contract within the last 3 (three) years and if so, please furnish details of the reasons for such deductions; and

4.2.6. whether the Bidder and or its Member has had any government contract cancelled or not renewed, for failure to perform in accordance with the terms thereof.

Certificate of Acquaintance with the requirements of RFP Documents

NAME OF ENTITY:

1. We

_____do

hereby certify that we acquainted ourselves with all the documentation comprising this RFP and all conditions contained therein, as laid down by TNPA for the carrying out of the Project for which we submitted our Bid Response.

2. We furthermore agree that TNPA shall recognise no claim from us for relief based on an allegation that we overlooked any RFP or contract condition or failed to take it into account for the purpose of calculating our offered Concession Fee or otherwise.

3. We accept that an obligation rests on us to clarify any uncertainties regarding this bid which we may have, before submitting the Bid Response. We agree that we will have no claim based on an allegation that any aspect of this RFP was unclear but in respect of which we failed to obtain clarity.

4. We understand that the accompanying Bid Response will be disqualified if this Certificate is found not to be true and complete in every respect.

5. For the purposes of this Certificate and the accompanying Bid Response, we understand that the word "competitor" shall include any individual or organisation, other than the Bidder, whether or not affiliated with the Bidder, who:

5.1. has been requested to submit a Bid Response in respect of the RFP;

5.2. could potentially submit a Bid Response in response to RFP, based on their qualifications, abilities or experience; and

5.3. provides the same services as the Bidder and/or is in the same line of business as the Bidder.

6. The Bidder has arrived at the accompanying Bid Response independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium will not be construed as collusive bidding.

7. In particular, without limiting the generality of paragraph 5 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:

- 7.1. prices;
 - 7.2. geographical area where Services will be rendered (market allocation);
 - 7.3. methods, factors or formulas used to calculate rental;
 - 7.4. the intention or decision to submit or not to submit, a Bid Response;
 - 7.5. the submission of a Bid Response which does not meet the specifications and conditions of the RFP; or
 - 7.6. bidding with the intention not being awarded Preferred Bidder status.
8. conditions or delivery particulars of the services to which this RFP relates.
9. The terms of the accompanying Bid Response have not been, and will not be, disclosed by the Bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.
10. We are aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, Bid Responses that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No. 89 of 1998 and or may be reported to the National Prosecuting Authority (“**NPA**”) for criminal investigation and/or may be restricted from conducting business with the public sector for a period not exceeding 10 (ten) years in terms of the Prevention and Combating of Corrupt Activities Act No. 12 of 2004 or any other applicable legislation.

SIGNED at _____ on this ____ day of _____ 20__.

SIGNATURE OF BIDDER

SIGNATURE OF WITNESS



Government Gazette

REPUBLIC OF SOUTH AFRICA

Vol. 482 Cape Town 4 August 2005 **No. 27863**

THE PRESIDENCY

No. 792

4 August 2005

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 12 of 2005: National Ports Act, 2005



AIDS HELPLINE: 0800-123-22 Prevention is the cure

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President.)
[Assented to 31 July 2005.]

ACT

To provide for the establishment of the National Ports Authority and the Ports Regulator; to provide for the administration of certain ports by the National Ports Authority; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

CONTENTS

CHAPTER 1

DEFINITIONS AND OBJECTS OF ACT 5

1. Definitions
2. Objects of Act

CHAPTER 2

ESTABLISHMENT AND INCORPORATION OF AUTHORITY

3. Process before establishment of Authority 10
4. Conversion of Authority
5. Authority's memorandum **and** articles of association
6. Non-application of provision of Companies Act
7. Certain provisions of Companies Act may be declared inapplicable to Authority 15
8. Authority's financial year
9. Judicial management and liquidation

CHAPTER 3

PORTS UNDER JURISDICTION OF AUTHORITY AND FUNCTIONS OF AUTHORITY 20

10. Ports under jurisdiction of Authority
11. Functions of Authority
12. Aims of Authority
13. Co-operative governance

CHAPTER 4**BOARD, STAFF AND ASSETS OF AUTHORITY**

14.	Composition of Board	
15.	Nomination and appointment of members of Board	
16.	Functions of Board	5
17.	Persons disqualified from membership of Board	
18.	Terms of office of members of Board	
19.	Disclosure of interest by members of Board	
20.	Meetings of Board	
21.	Delegation and assignment of functions by Board	10
22.	Appointment of chief executive officer	
23.	Functions of chief executive officer	
24.	Vacating of and removal from office of chief executive officer	
25.	Acting chief executive officer	
26.	Appointment and transfer of staff of Authority	15
27.	Transfer of ports, land and other rights and obligations	
28.	State guarantees	

CHAPTER 5**PORTS REGULATOR**

29.	Establishment of Regulator	20
30.	Functions of Regulator	
31.	Nomination and appointment of members of Regulator	
32.	Disclosure of interests and certain prohibitions	
33.	Vacation of office of members of Regulator	
34.	Appointment of Regulator's chief executive officer	25
35.	Vacating of and removal from office of Regulator's chief executive officer	
36.	Regulator's acting chief executive officer	
37.	Secretariat of Regulator	
38.	Services of non-employees	
39.	Meetings of Regulator	30
40.	Minutes of meetings	
41.	Decisions of Regulator	
42.	Funding of Regulator	
43.	Accounting and accountability	
44.	Annual report	35
45.	Delegation of powers	
46.	Appeals	
47.	Complaint against Authority	
48.	Investigation of complaint	
49.	Hearings before Regulator	40
50.	Right to participate in hearing	
51.	Taking of evidence at hearing	
52.	Rules of procedure	
53.	Interim relief	
54.	Orders of Regulator	45
55.	Winding up and dissolution of Regulator	

CHAPTER 6**PROVISION OF PORT SERVICES AND PORT FACILITIES AND USE OF LAND**

56.	Agreements in port operations and services	
57.	Licence regarding port services and facilities	5
58.	Conditions of licence	
59.	Restrictions on transfer of licence	
60.	Suspension or cancellation of licence	
61.	Directives affecting licensed operators and other persons	
62.	Duties of licensed operators	10
63.	Routine inspections	
64.	Special powers in emergency	
65.	Operations existing on commencement of Act	
66.	Off-shore cargo-handling facilities	
67.	Restructuring and reform of ports	15

CHAPTER 7**DEVELOPMENT, ENVIRONMENT AND CLOSURE OF PORTS**

68.	Planning, construction, development and maintenance of ports	
69.	Protection of environment	
70.	Closure of port	20

CHAPTER 8**COMMERCIAL ASPECTS**

71.	Commercial functions of Authority	
72.	Authority's tariff book	
73.	Fees payable to Authority	25

CHAPTER 9**SAFETY ASPECTS**

74.	Safety of navigation and shipping in ports	
75.	Pilotage	
76.	Liability of pilot	30
77.	Certification and licensing of pilot	
78.	Lighthouses and other navigational aids	

CHAPTER 10**MINISTERIAL DIRECTIONS AND PORT REGULATIONS**

79.	Ministerial direction	35
80.	Port regulations	

CHAPTER 11**GENERAL**

81.	Port Consultative Committee	
82.	National Port Consultative Committee	40
83.	Port access	
84.	Co-operation with authorities	
85.	Liability of Authority	
86.	Confidential information	

- 87. Offences
- 88. Amendment of law
- 89. Repeal of law, and saving
- 90. Short title and commencement

CHAPTER 1

5

DEFINITIONS AND OBJECTS OF ACT

Definitions

1. (1) In this Act, unless the context indicates otherwise—
- “agreement” includes any form of concession or partnership;
 - “Authority” means, subject to section 3, National Ports Authority Limited, 10 contemplated in section 4;
 - “Board” means the board of directors of the Authority contemplated in Chapter 4;
 - “Companies Act” means the Companies Act, 1973 (Act No. 61 of 1973);
 - “concession” means a concession agreement entered into in terms of section 56;
 - “family member” means a parent, child or spouse of a person, and includes a 15 partner living with that person as if they were married to each other;
 - “Harbour Master” means an employee of the Authority contemplated in section 74(3);
 - “incorporation date” means the date on which the Authority is incorporated as a 20 company in terms of section 4;
 - “Legal Succession Act” means the Legal Succession to the South African Transport Services Act, 1989 (Act No. 9 of 1989);
 - “licence” means a licence to provide a port service or operate a port facility, issued in terms of section 57 or deemed to be held in terms of section 65 and “licensed” 25 must be interpreted accordingly;
 - “licensed operator” means a person licensed, or deemed to be licensed, to provide a port service or operate a port facility;
 - “Minister” means the Minister of Transport or a duly appointed representative;
 - “National Ports Authority (Pty) Ltd” means the Transnet subsidiary company 30 contemplated in section 3(2);
 - “National Ports Authority of South Africa” means the business unit or division of Transnet which immediately prior to the commencement of the Act constituted and was known as the “National Ports Authority of South Africa”;
 - “National Port Consultative Committee” means a committee set up in terms of 35 section 82;
 - “navigational aids” means lighthouses, radio navigational aids, buoys, beacons and any other device or system used to assist the safe and efficient navigation of vessels;
 - “off-shore cargo handling facility” means an off-shore facility within or beyond 40 the port limits used for the transfer of cargo from a vessel to the land and vice versa;
 - “partnership” includes a public-private partnership and a public-public partnership;
 - “PFMA” means the Public Finance Management Act, 1999 (Act No. 1 of 1999);
 - “pilot” means a person licensed in terms of section 77 to provide pilotage services;
 - “port” means any of the ports of Richards Bay, Durban, East London, Nqura, Port 45 Elizabeth, Mossel Bay, Cape Town, Saldanha Bay, Port Nolloth or a port which has been determined as such in terms of section 10(2);

“Port Consultative Committee” means a committee appointed in terms of section **81**;

“port infrastructure” means the basic structure of a port, including breakwaters, seawalls, channels, basins, quay walls, jetties, roads, railways and infrastructure used for the provision of water, lights, power, sewerage and similar services; 5

“port repair facilities” means dry docks, vessel repair facilities within a port and any other facilities which are designated as such by the Authority by publication in the *Gazette*;

“port services” means stevedoring, cargo handling, terminal operations, storage of cargo within a port, tug services, floating crane services, berthing services, fire fighting, security, radio and radar services, waste disposal, vessel repairs and any other services provided within a port which are designated as such by the Authority by notice in the *Gazette*; 10

“port terminal” means terminal infrastructure, cargo-handling equipment, sheds and other land-based structures used for the loading, storage, transshipment and discharging of cargo or the embarkation and disembarkation of passengers; 15

“prescribe” means prescribe by regulation;

“regulation” means any regulations promulgated under this Act;

“Regulator” means the Ports Regulator established by section **29**;

“Shareholding Minister” means the Minister of Public Enterprises or a duly appointed representative; 20

“South African Maritime Safety Authority” means the authority established by section 2 of the South African Maritime Safety Authority Act, **1998** (Act No. **5** of **1998**);

“terminal infrastructure” means terminal buildings, workshops, substations, surfacing, rail sidings and terminal operations and infrastructure for the provision of water, lights, power, sewerage and similar services within terminal boundaries; 25

“terminal operations” means services provided at a port terminal, consisting of handling cargo, storing cargo, transshipment of cargo and delivering cargo to vessels and services related thereto; 30

“this Act” includes the regulations made by the Minister, the rules made by the Authority, and the directives made by the Regulator;

“Transnet” means Transnet Limited, the company contemplated in section **2** of the Legal Succession Act;

“vessel” means any water navigable craft or structure and includes a seaplane and a non-displacement craft. 35

(2) Nothing contained in this Act must be construed as conferring on the Authority any right of ownership in, or authorising the Authority to provide, services or facilities which are provided in terms of the Telecommunications Act, **1996** (Act No. **103** of **1996**).

Objects of Act 40

2. The objects of this Act are to—

- (a) promote the development of an effective and productive South African ports industry that is capable of contributing to the economic growth and development of our country;
- (b) establish appropriate institutional arrangements to support the governance of ports; 45
- (c) promote and improve efficiency and performance in the management and operation of ports;

- (d) enhance transparency in the management of ports;
- (e) strengthen the State's capacity to—
 - (i) separate operations from the landlord function within ports;
 - (ii) encourage employee participation, in order to motivate management and workers; 5
 - (iii) facilitate the development of technology, information systems and managerial expertise through private sector involvement and participation; and
- (f) promote the development of an integrated regional production and distribution system in support of government's policies. 10

CHAPTER 2

ESTABLISHMENT AND INCORPORATION OF AUTHORITY

Process before establishment of Authority

- 3.** (1) (a) From the date this Act comes into effect until the date determined by the Shareholding Minister in terms of section 27(1), the National Ports Authority of South Africa— 15
- (i) is for all purposes deemed to be the Authority; and
 - (ii) must perform the functions of the Authority as if it were the Authority.
- (b) For the purposes of paragraph (a) any reference in this Act to the Authority, the Board of the Authority and any functionary of the Authority must be construed as a reference to National Ports Authority of South Africa and the divisional board and any functionary thereof, respectively, unless it is clearly inappropriate. 20
- (c) Any appointment to the divisional board or of any functionary of National Ports Authority of South Africa made after the commencement of this Act, must be made in terms of this Act. 25
- (2) As soon as this Act takes effect the Shareholding Minister must ensure that the necessary steps are taken for the incorporation of the National Ports Authority of South Africa as a company contemplated in subsection (3).
- (3)** The Registrar of Companies must—
- (a) register the memorandum and articles of association and incorporate National Ports Authority of South Africa under the name "National Ports Authority (Pty) Ltd" with Transnet as the sole member and shareholder; 30
 - (b) issue to that entity the necessary documents to enable it to conduct business as a corporate entity.
- (4)** (a) On the date determined by the Shareholding Minister in terms of section 27(1), all assets, liabilities, rights and obligations of Transnet in respect of National Ports Authority of South Africa vest in National Ports Authority (Pty) Ltd. 35
- (b) From the date contemplated in paragraph (a) until the date on which the Authority becomes the successor to National Ports Authority (Pty) Ltd as contemplated in section 4, National Ports Authority (Pty) Ltd— 40
- (i) is for all purposes deemed to be the Authority; and
 - (ii) must perform the functions of the Authority as if it were the Authority.
- (c) For the purposes of paragraph (b) any reference in this Act to the Authority, the Board of the Authority and any functionary of the Authority must be construed as a reference to National Ports Authority of South Africa (Pty) Ltd and the board and any functionary of that company, respectively, unless it is clearly inappropriate. 45

(d) Any appointment to the board or of any functionary of National Ports Authority (Pty) Ltd must be made in terms of this Act.

Conversion of Authority

4. (1) Notwithstanding sections 32, 66, 190 and 344(d) of the Companies Act, on a date after the incorporation of National Ports Authority (Pty) Ltd, and with the concurrence of the Minister, the Shareholding Minister may take the necessary steps to convert the company into a public company, styled "National Ports Authority Limited", vested with the authority to own, manage, control and administer ports within the Republic. 5

(2) Where National Ports Authority (Pty) Ltd is converted as contemplated in subsection (1), the State's rights as a shareholder of the Authority are to be exercised by the Shareholding Minister and, where required by this Act, with the concurrence of the Minister. 10

Authority's memorandum and articles of association

5. (1) The memorandum and articles of association of the Authority must be drawn up in such a manner that the contents thereof are consistent with this Act. 15

(2) In the event of any conflict between a provision of the memorandum or articles of association on the one hand, and a provision of this Act on the other hand—

(a) the provision of this Act prevails; and

(b) the provision of the memorandum or articles of association only has legal effect if this Act is amended so as to remove the conflict. 20

Non-application of provision of Companies Act

6. A provision of the Companies Act does not apply to the Authority if—

(a) any special or contrary arrangement is provided for in this Act; or

(b) the Minister of Trade and Industry has issued a declaration under section 7. 25

Certain provisions of Companies Act may be declared inapplicable to Authority

7. (1)(a) The Shareholding Minister may request the Minister of Trade and Industry to declare any provision of the Companies Act to be inapplicable to the Authority.

(b) The request must be fully motivated by the Authority.

(2)(a) The Registrar of Companies must publish particulars about the request and the motivation contemplated in subsection (1), by notice in the *Gazette*. 30

(b) In such notice, the Registrar must invite interested persons to submit representations to a person named in the notice within the period stipulated in that notice.

(3)(a) After having considered the representations contemplated in subsection (2), if any, the Minister of Trade and Industry may, by notice in the *Gazette*, declare the whole or any part of the provision concerned to be inapplicable to the Authority with effect from the date stipulated in that notice. 35

(b) The Minister of Trade and Industry may only issue the declaration if satisfied on reasonable grounds that the inapplicability of that provision to the Authority — 40

(i) will contribute to the Authority's efficiency;

(ii) will not reduce or limit the Authority's accountability as a public institution or reduce the transparency of its functioning and operations; and

- (iii) will not be prejudicial to the rights, interests or claims of the Authority's creditors or employees or to the rights or interests of any other person.

Authority's financial year

8. The Authority's financial year runs from 1 April in any year to 31 March in the following year, both days included. 5

Judicial management and liquidation

9. Despite any other law, the Authority may not be placed under judicial management or liquidation, except if authorised by an Act of Parliament enacted specifically for that purpose.

CHAPTER 3 10

PORTS UNDER JURISDICTION OF AUTHORITY AND FUNCTIONS OF AUTHORITY

Ports under jurisdiction of Authority

10. (1) All ports fall under the jurisdiction of the Authority.

(2) The Minister may by notice in the *Gazette* determine ports in addition to the ports contemplated in subsection (1) which fall under the jurisdiction of the Authority. 15

(3) The Minister may, after consultation with the Authority, review, vary or extend the boundaries of ports and must consult with the municipality concerned if such review, variation or extension affects the municipal boundaries.

(4) When exercising the powers referred to in subsections (2) and (3), the Minister must— 20

- (a) follow an open and transparent process, which must include a viability study and a strategic environmental impact assessment; and
- (b) obtain Cabinet approval.

Functions of Authority 25

11. (1) The main function of the Authority is to own, manage, control and administer ports to ensure their efficient and economic functioning, and in doing so the Authority must—

- (a) plan, provide, maintain and improve port infrastructure;
- (b) prepare and periodically update a port development framework plan for each port, which must reflect the Authority's policy for port development and land use within such port; 30
- (c) control land use within ports, and has the power to lease land under such conditions as the Authority may determine;
- (d) provide or arrange for road and rail access within ports; 35
- (e) arrange for services such as water, light, power and sewerage and telecommunications within ports;
- (f) maintain the sustainability of the ports and their surroundings;
- (g) regulate and control— 40
 - (i) navigation within port limits and the approaches to ports;

- (ii) the entry of vessels into ports, and their stay, movements or operations in and departures from ports;
 - (iii) the loading, unloading and storage of cargo and the embarkation and disembarkation of passengers;
 - (iv) the development of ports; 5
 - (v) off-shore cargo-handling facilities, including navigation in the vicinity of such facilities;
 - (vi) pollution and the protection of the environment within the port limits;
 - (vii) the enhancement of safety and security within the port limits;
 - (h) ensure that adequate, affordable and efficient port services and facilities are provided; 10
 - (i) exercise licensing and controlling functions in respect of port services and port facilities;
 - (j) ensure that any person who is required to render any port services and port facilities is able to provide those services and facilities efficiently; 15
 - (k) promote efficiency, reliability and economy on the part of the licensed operators in accordance with recognised international standards and public demand;
 - (l) promote the achievement of equality by measures designed to advance persons or categories of persons historically disadvantaged by unfair discrimination in the operation of facilities in the ports environment; 20
 - (m) prescribe the limits within which and the levels to which dredging may be carried out in the ports and the approaches thereto;
 - (n) provide or arrange for tugs, pilot boats and other facilities and services for the navigation and berthing of vessels in the ports; 25
 - (o) provide, control and maintain vessel traffic services;
 - (p) promote the use, improvement and development of ports;
 - (q) advise on all matters relating to the port sector, port services and port facilities:
 - (r) promote greater representivity, in particular to increase the participation in terminal port operations of historically disadvantaged persons; 30
 - (s) exercise the licensing of the erection and operation of off-shore cargo-handling facilities and services relating thereto;
 - (t) discharge or facilitate the discharge of international obligations relevant to ports; 35
 - (u) facilitate the performance of any function of any organ of state in a port;
 - (v) promote research and development in the spheres of port services and facilities.
- (2) The Authority may—
- (a) undertake any other activities within a port that encourage and facilitate the development of trade and commerce for the economic benefit and interest of the national economy; 40
 - (b) collaborate with educational institutions for the promotion of technical education regarding port services and facilities;
 - (c) provide any service, including a port service or the operation of a port facility, which is required for the safe, efficient and orderly operation or management of a port; 45
 - (d) **perform** such other functions as may be necessary in order to achieve the objects of this Act;
 - (e) encourage and facilitate private and public sector investments and participation in the provision of port services and facilities; 50
 - (f) enter into agreements in terms of this Act.

(3) The Authority may enter into any agreement with any other statutory body or organ of state in order to co-ordinate and harmonise the performance of functions similar or related to those of the Authority.

(4) The Authority as an operator of last resort must do everything reasonably necessary for the effective and economic management, planning, control and operation of ports. 5

(5) The Authority must—

(a) annually report to the Minister, and for that purpose section 44 applies with the necessary changes; and

(b) submit a copy of that report to the Shareholding Minister. 10

Aims of Authority

12. The Authority must, in all its activities, aim to—

(a) conduct business in a manner designed to achieve the objects of this Act and which does not jeopardise the national interest; 15

(b) remain financially autonomous;

(c) enable the port users to access the port system in the most efficient way possible;

(d) satisfy all reasonable demands for port services and facilities;

(e) co-ordinate the general activities of the ports;

(f) ensure that orderly, efficient and reliable port services, including safe and secure cargo-storage and cargo-handling facilities, are provided to port users; 20

(g) promote the development and expansion of port services and facilities elsewhere in the world in collaboration with other countries and international organisations in a manner consistent with the objectives of this Act;

(h) promote and undertake the necessary measures to enhance safety and security of life and property in ports; 25

(i) integrate biophysical, social and economic issues in all forms of decision-making with regard to port development and operations.

Co-operative governance

13. (1) To give effect to the principles of co-operative governance and inter-governmental relations contemplated in Chapter 3 of the Constitution, all organs of state as defined in section 239 thereof must co-operate with one another in order to— 30

(a) ensure the effective management of all ports;

(b) ensure the effective oversight of ports; and

(c) co-ordinate the performance and minimise the duplication of functions. 35

(2) The Authority must conclude a memorandum of understanding with the relevant organs of state to give effect to the co-operation contemplated in subsection (1).

(3) The Minister must, by notice in the *Gazette*, publish any co-operative memorandum of understanding concluded in terms of subsection (2).

CHAPTER 4 40

BOARD, STAFF AND ASSETS OF AUTHORITY

Composition of Board

14. (1) Subject to subsection (7), the Board consists of a minimum of seven and a maximum of 13 members, appointed by the Shareholding Minister after consultation with the Minister. 45

(2) The members of the Board must have special knowledge or experience that would be of value to the Authority in the performance of its functions, in such fields as—

- (a) management of ports;
 - (b) international trade;
 - (c) corporate management;
 - (d) maritime transport;
 - (e) commerce, finance and legal and economic matters; 5
 - (f) transport and logistics, ships agency, clearing and forwarding.
- (3) The Shareholding Minister must appoint one member of the Board as the chairperson.
- (4) The Board must elect a deputy chairperson from among its members.
- (5) Members of the Board may not represent particular interests of a certain group, but must promote the harmonious development and improvement of the ports to the benefit of all users and the economy. 10
- (6) In selecting persons for appointment to the Board, cognisance must be taken to the objects of this Act and the functions of the Authority.
- (7) The board of National Ports Authority (Pty) Ltd, as it existed immediately prior to the date on which the Authority becomes the successor to National Ports Authority (Pty) Ltd, constitutes the first Board of the Authority and must be deemed to have been appointed in terms of this Act. 15

Nomination and appointment of members of Board

15. (1) (a) The Shareholding Minister must call for nominations through the national media. 20
- (b) Subject to sections 14 and 17, the Shareholding Minister must appoint a member of the Board from among the persons nominated.
- (2) (a) Whenever a position on the Board becomes vacant, the Shareholding Minister may appoint any person to serve for the unexpired period of the term of office of the previous member irrespective of when the vacancy occurs. 25
- (b) The person contemplated in paragraph (a) must preferably have special knowledge and experience, contemplated in section 14(2).

Functions of Board

16. (1) The Board represents the Authority and all actions performed by the Board in terms of this Act and within its authority are deemed to be actions of the Authority. 30
- (2) The Board—
- (a) approves the strategic and business plans of the Authority, including budgets, pricing mechanisms policy and financing arrangements;
 - (b) institutes the necessary control measures to ensure that the Authority is managed and operated in accordance with sound business principles; 35
 - (c) approves port reform measures, including concession agreements contemplated in section 56;
 - (d) ensures that small and medium-sized enterprises owned by historically disadvantaged groups have an equitable opportunity to participate in the operations of facilities in the ports environment; 40
 - (e) appoints and enters into a performance contract with the chief executive officer of the Authority;
 - (f) sets criteria and policy for the effective execution of the Authority's regulatory and control functions; 45
 - (g) evaluates the overall policy for the development, improvement and extension of ports;
 - (h) approves the sale, acquisition and long-term lease of property in ports;
 - (i) approves the long-term lease of land;
 - (j) maintains sound relations with the State and other industry stakeholders; 50
 - (k) approves contracts for major works and purchases subject to section 54 of the PFMA;

- (l) approves the appointment of senior executive employees of the Authority; and
 (m) gives effect to the Government's national commercial ports policy.

(3) Nothing in subsection (1) precludes the Board from performing any function reasonably necessary for the effective and economic management, planning, operation and control of ports and which is not in conflict with this Act. 5

(4) Under no circumstances should land within ports owned by the Authority be sold.

Persons disqualified from membership of Board

17. A person may not be appointed or remain a member of the Board if such a person—

- (a) is not a citizen of South Africa; 10
 (b) is an unrehabilitated insolvent;
 (c) has been declared by a court to be mentally ill;
 (d) has been convicted of an offence, whether in the Republic or elsewhere, committed after the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), took effect, and sentenced to imprisonment without the option of a fine; 15
 (e) has been convicted—
 (i) whether in the Republic or elsewhere, of theft, fraud, forgery, perjury or any other offence involving dishonesty; or
 (ii) has been convicted of an offence under this Act; 20
 (f) has any financial interest in the business of any port;
 (g) is otherwise disqualified from serving as director in terms of the Companies Act.

Terms of office of members of Board

18. (1) The chairperson and the other members of the Board hold office for a period determined by the Shareholding Minister, but not exceeding three years. 25

(2) (a) The chairperson may be reappointed for further periods not exceeding three years each.

(b) The other members of the Board may be reappointed to ensure continuity, but may not serve for more than six consecutive years. 30

(3) The Shareholding Minister must remove a member of the Board from office—

- (a) for failing to perform his or her functions diligently;
 (b) for failing to comply with section 19(1), (2) or (3);
 (c) for being absent without good reason from three consecutive meetings of the Board without the permission of the chairperson; or 35
 (d) for misconduct.

(4) A member of the Board may resign by giving one month's written notice to the Shareholding Minister.

(5) A member of the Board is appointed on such terms and conditions and is entitled to such remuneration as the Shareholding Minister may, with the concurrence of the Minister of Finance, stipulate in that member's letter of appointment. 40

(6) The Shareholding Minister may extend the terms of office of members of the Board upon the expiry of their terms of office for such period as may be necessary, not exceeding three months, to finalise the appointment of a new board.

Disclosure of interest by members of Board 45

19. (1) A member of the Board must, upon appointment, submit to the Shareholding Minister and the Board a written statement in which it is declared whether or not that member has any direct or indirect financial interest which could reasonably be expected to compromise the Board in the performance of its functions.

(2) A member of the Board may not be present at, or take part in, the discussion of or the taking of a decision on any matter before the Board in which that member or his or her family member, business partner or associate has a direct or indirect financial interest. 50

(3) If any member of the Board acquires an interest that could reasonably be expected to be an interest contemplated in this section, he ~~or~~ she must immediately in writing declare that fact to the Shareholding Minister and the Board.

(4) If an organisation or enterprise in which a member of the Board has an interest contemplated in section (2) is requested to offer its services to the Authority, the organisation or enterprise must immediately, in writing, declare the member's interest to the Shareholding Minister and the Board. 5

Meetings of Board

20. (1) (a) The first meeting of the Board must be held at a time and place determined by the Shareholding Minister and thereafter Board meetings must be held at such times and places as the Board may determine. 10

(b) The Board must meet at least once every three months.

(2) The chairperson—

(a) may convene a special meeting of the Board; and

(b) must convene a special meeting of the Board within 14 days of the receipt of a written request to convene such a meeting signed by not less than one quarter of the members of the Board. 15

(3) Whenever the chairperson is not available, the deputy chairperson exercises the powers of the chairperson, subject to such directions as the chairperson may give.

(4) A quorum for any meeting of the Board is a majority of all members of the Board. 20

(5) All decisions of the majority of the members of the Board present at a meeting are binding on the Board and the Authority.

(6) In the case of an equality of votes at any meeting of the Board, the chairperson has a casting vote in addition to a deliberative vote.

Delegation and assignment of functions by Board

25

21. (1) The Board may, by a resolution passed by 75 per cent of its members—

(a) delegate any of its powers and assign any of its duties conferred or imposed by ~~or~~ under this Act and the memorandum and articles of association of the Authority, to any member of the Board, the chief executive officer or any employee of the Authority; and 30

(b) amend or revoke such delegation or assignment.

(2) Notwithstanding a delegation or assignment under subsection (1), the Board is not divested of any power or duty so delegated or assigned.

(3) (a) Any delegation or assignment contemplated in subsection (1)—

(i) may be made subject to such conditions as the Board may determine; 35

(ii) may include the power to subdelegate or reassign subject to the conditions contemplated in subparagraph (i);

(iii) must be communicated to the delegatee or assignee in writing.

(b) The written communication contemplated in paragraph (a)(iii) must contain full particulars of the matters being delegated or assigned and of the conditions subject to which the power may be exercised or the duty must be performed. 40

Appointment of chief executive officer

22. (1) The Board must, with the approval of the Shareholding Minister, appoint a chief executive officer within three months of the incorporation date, or such longer period as the Shareholding Minister may determine. 45

(2) The Board must invite applications for the post of chief executive officer by publishing an advertisement in the media.

(3) A person appointed as chief executive officer must—

(a) have qualifications or experience relevant to the functions of the Authority;

(b) have extensive knowledge of port affairs; and 50

(c) not be disqualified as contemplated in section 17(a) to (f).

(4) The appointment of the chief executive officer is subject to the conclusion of a performance contract with the Authority.

(5) A chief executive officer—

- (a) is appointed for the period specified in his or her letter of appointment; and 5
(b) may be reappointed.

(6) The person who fulfils the function of the chief executive officer of National Ports Authority (Pty) Ltd immediately prior to the incorporation date serves as the chief executive officer until the Board appoints a chief executive officer in terms of this section. 10

Functions of chief executive officer

23. (1) The chief executive officer is responsible for—

- (a) the execution of the policy and directives of the Board;
(b) the implementation of the Authority's functions;
(c) the organisation, control and management of the day-to-day business of the Authority; and 15
(d) ensuring that the Authority achieves its goals.

(2) The chief executive officer may in writing delegate any of his or her powers or assign any of his or her duties to a senior employee of the Authority, but must advise the Board from time to time of any such delegation or assignment. 20

Vacating of and removal from office of chief executive officer

24. (1) The Board must, subject to applicable labour legislation, remove the chief executive officer from office—

- (a) for misconduct;
(b) for failing to perform the duties connected with that office diligently; 25
(c) if the chief executive officer becomes subject to any disqualification contemplated in section 17(a) to (f).

(2) (a) The chief executive officer may resign on two months' written notice to the Board.

(b) If the Board is not sitting at the time of such resignation, the notice may be handed to the chairperson of the Board and must be regarded as having been received by the Board on the date on which it is handed to the chairperson. 30

Acting chief executive officer

25. (1) The Board may in writing appoint any senior employee of the Authority to act as chief executive officer when the holder of that office— 35

- (a) is temporarily unable to perform the duties connected with that office; or
(b) has vacated or been removed from that office and a new chief executive officer has not yet been appointed.

(2) The chief executive officer may in writing appoint any senior employee of the Authority to act as chief executive officer for any period that the chief executive officer is absent from the Republic. 40

(3) An acting chief executive officer may exercise all the powers and must perform all the duties of the chief executive officer.

Appointment and transfer of staff of Authority

26. (1) The chief executive officer may appoint such persons as he or she deems fit for the proper discharge of the functions of the Authority. 45

(2) All persons who immediately prior to the date on which National Ports Authority (Pty) Ltd is incorporated, were in the employ of National Ports Authority of South Africa are deemed to have been transferred to the service of National Ports Authority (Pty) Ltd

on that date without any interruption in their service, on terms and benefits no less favourable than those enjoyed by them immediately prior to their transfer.

(3) All persons who immediately prior to the date determined in terms of section 27(1) were in the employ of National Ports Authority (Pty) Ltd are deemed to have been transferred to the service of the Authority on that date without any interruption in their service, on terms and benefits no less favourable than those enjoyed by them immediately prior to their transfer. 5

(4) For the purpose of the application of the Income Tax Act, 1962 (Act No. 58 of 1962), to the transfer of employees contemplated in subsections (2) and (3), it is deemed that the Authority, National Ports Authority (Pty) Ltd and National Ports Authority of South Africa are the same employer. 10

Transfer of ports, land and other rights and obligations

27. (1) (a) On a date after the commencement of this Act, determined by the Shareholding Minister by notice in the *Gazette*, National Ports Authority (Pty) Ltd becomes the successor to National Ports Authority of South Africa. 15

(b) The date contemplated in paragraph (a) must be determined after consultation with the Minister and with the concurrence of the Minister of Finance.

(2) On the date determined in terms of subsection (1), Transnet must transfer to National Ports Authority (Pty) Ltd the business of the National Ports Authority of South Africa and— 20

(a) all land and immovable property relating to the business of National Ports Authority of South Africa and owned by Transnet will vest in the National Ports Authority (Pty) Ltd; and

(b) all movable property and all liabilities, rights and obligations of Transnet relating to the National Ports Authority of South Africa as determined by the Shareholding Minister will vest in National Ports Authority (Pty) Ltd. 25

(3) Upon the vesting contemplated in subsection (2), the Board of National Ports Authority (Pty) Ltd must inform the National Treasury in the manner contemplated in section 54(2) of the PFMA.

(4) On the date contemplated in subsection (1) and arising out of the vesting in terms of subsection (2), and without derogating from the generality of that subsection, National Ports Authority (Pty) Ltd— 30

(a) becomes the owner of all land and immovable property situated within ports;

(b) becomes the owner of all lighthouses and other navigational aids;

(c) is substituted as the litigating party for Transnet in all pending litigation relating to the business of the National Ports Authority, including arbitration and mediation, as if it had been the litigant from the beginning; and 35

(d) is substituted as the contracting party for Transnet in all contracts relating to the business of the National Ports Authority as if the Authority had been the contracting party from the beginning. 40

(5) Subsections (2) and (4) are not to be interpreted as conferring on National Ports Authority (Pty) Ltd a right of ownership in—

(a) movable or immovable property which, before the date determined in terms of subsection (1), was vested in a person other than Transnet Limited or any of its Divisions; 45

(b) telecommunication facilities or petroleum pipelines of Transnet Limited or any of its Divisions.

(6) Despite section 5 of the State Land Disposal Act, 1961 (Act No. 48 of 1961), and the provisions of the Deeds Registries Act, 1937 (Act No. 47 of 1937), a registrar of deeds referred to in section 102 of the latter Act must, on submission of a certificate by the Shareholding Minister that land has vested under this section, make such entries and endorsements free of charge as the registrar considers necessary in any appropriate register in order to register the transfer of such land in the name of the Authority. 5

(7) A registrar of deeds must, on submission of a certificate by the Shareholding Minister that a servitude, other real right or lease has vested under this section, make such entries and endorsements as the registrar considers necessary in or on any appropriate register in order to register such vesting in the name of the Authority. 10

(8) (a) Despite any provision in any other law to the contrary, and with the concurrence of the Minister of Finance, Transnet, National Ports Authority (Pty) Ltd and the Authority are exempt from—

- (i) any tax, value-added tax, capital gains tax, stamp duties, transfer duties or registration fees payable in terms of any law in relation to the transfer of assets or rights; 15
- (ii) any fee or charge required in terms of the Companies Act; and
- (iii) any fee or charge required in terms of the Deeds Registries Act, 1937 (Act No. 47 of 1937).

(b) The exemption referred to in paragraph (a) applies to the processes contemplated in sections 3, 4 and 27. 20

State guarantees

28. Subject to section 66 of the PFMA, the Authority may borrow money or issue a guarantee, indemnity or security, or enter into any other transaction contemplated in that section. 25

CHAPTER 5

PORTS REGULATOR

Establishment of Regulator

29. There is hereby established an independent ports regulatory body, vested with legal personality, to be known as the Ports Regulator. 30

Functions of Regulator

30. (1) The main functions of the Regulator are to—

- (a) exercise economic regulation of the ports system in line with government's strategic objectives;
- (b) promote equity of access to ports and to facilities and services provided in ports; 35
- (c) monitor the activities of the Authority to ensure that it performs its functions in accordance with this Act.

(2) The Regulator must—

- (a) hear appeals and complaints contemplated in sections 46 and 47, respectively, and investigate complaints contemplated in section 48; 40
- (b) negotiate and conclude an agreement with the Competition Commission established by section 19 of the Competition Act, 1998 (Act No. 89 of 1998), to co-ordinate and harmonise the exercise of jurisdiction over competition matters, and to ensure consistent application of the principles of this Act; 45
- (c) advise and receive advice from any other regulatory authority;
- (d) consider proposed tariffs of the Authority, contemplated in section 72, in the prescribed manner;

- (e) promote regulated competition;
 - (f) regulate the provision of adequate, affordable and efficient port services and facilities.
- (3) The Regulator may, with the concurrence of the Minister, and by notice in the *Gazette*, issue directives not in conflict with this Act for matters relating to the proper performance of the functions of the Regulator, including — 5
- (a) forms to be used when complaints or appeals are submitted to the Regulator;
 - (b) time periods within which complaints or appeals must be submitted;
 - (c) information to be supplied when a complaint or appeal is submitted;
 - (d) filing fees for the lodging of complaints or appeals with the Regulator; 10
 - (e) access by the Regulator to confidential information of the Authority;
 - (f) manner and form of participation in proceedings of the Regulator;
 - (g) procedures regarding the running of the business of the Regulator;
 - (h) the filing of prices charged by the provider of any port service other than the Authority. 15
- (4) The Regulator may enter into an agreement with any other statutory body in order to co-ordinate and harmonise the performance of functions similar or related to those of the Regulator.
- (5) Whenever necessary or required by the Minister, the Regulator must report to the Minister on any matter relating to the application or purposes of this Act. 20
- (6) The Regulator must, as soon as practicable after 31 March of each year but not later than 30 June of each year, submit to the Minister a report giving particulars regarding the activities of the Regulator during the year which ended on the first-mentioned date.
- (7) The Minister must table in Parliament any report— 25
- (a) contemplated in subsection (5), if such report deals with a substantial matter relating to the application or purposes of this Act; and
 - (b) contemplated in subsection (6).
- (8) Any report referred to in subsection (7) must be tabled— 30
- (a) within 10 business days after receiving the report from the Regulator; or
 - (b) if Parliament is not then sitting, within 10 business days after the commencement of the next session.

Nomination and appointment of members of Regulator

- 31.** (1) (a) The Regulator consists of a chairperson and a minimum of six and a maximum of 12 other members appointed by the Minister for a period of up to five years at a time. 35
- (b) The members of the Regulator may be re-appointed.
- (2) The Minister must call for nominations of members to the Regulator in the national media and appoint the members from the persons so nominated.
- (3) Notwithstanding subsection (2), the Minister may appoint persons other than those nominated. 40
- (4) The members of the Regulator must, when viewed collectively, comprise sufficient persons with suitable qualifications or experience in economics, the law, commerce, ports, the shipping industry and public affairs.
- (5) Each member of the Regulator must— 45
- (a) be a citizen of the Republic, who is ordinarily resident therein;
 - (b) be committed to the purposes and principles enunciated in this Act; and
 - (c) be available to fulfil his or her role as a member.
- (6) A person may not be a member of the Regulator if that person— 50
- (a) is an unrehabilitated insolvent;
 - (b) is subject to an order of a competent court holding that person to be mentally unfit or disordered;
 - (c) has been convicted of an offence committed after the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), took effect, and sentenced to imprisonment without the option of a fine; 55

- (d) has been convicted, whether in the Republic or elsewhere, of theft, fraud, forgery, perjury or any other offence involving dishonesty;
- (e) has been convicted of an offence under this Act; or
- (f) has any financial interest in the business of any port.

(7) A member of the Regulator who is not an officer in the public service must be paid such allowance for his or her services as the Minister with the concurrence of the Minister of Finance may determine. 5

(8) The Minister may extend the terms of office of members of the Regulator upon the expiry of their terms of office for such period as may be necessary, not exceeding three months, to finalise the appointment of a new board. 10

Disclosure of interests and certain prohibitions

32. (1) A member of the Regulator must, upon appointment, submit to the Minister a written statement in which it is declared whether or not that member has any direct or indirect interest which could compromise the Regulator in the performance of its duties. 15

(2) A member of the Regulator may not—

- (a) engage in any activity that may undermine the integrity of the Regulator;
- (b) participate in any investigation, hearing or decision of the Regulator concerning a matter in respect of which that person or a family member or a business partner or associate of that member has a direct financial interest or any other personal interest; or 20
- (c) make private use of, or profit from, any confidential information obtained as a result of performing official functions within the Regulator.

Vacation of office of members of Regulator

33. (1) The Minister must remove a member of the Regulator from office—

- (a) for being absent without good reason from three consecutive meetings of the Regulator without the permission of the chairperson; 25
- (b) for failing to perform his or her functions diligently;
- (c) for ceasing or failing to comply with any requirement referred to in sections 31(5) or 32(1) or (2); or
- (d) for misconduct. 30

(2) A member of the Regulator may resign by giving one month's written notice to the Minister.

(3) If a member of the Regulator for any reason ceases to hold office, the Minister may appoint another person in his or her stead for the remainder of the term of office of the member. 35

Appointment of Regulator's chief executive officer

34. (1) (a) The Minister must, after advertising in the media and after consultation with the Regulator, appoint a person as chief executive officer of the Regulator.

(b) Sections 31(5) and (6) and 32(1) and (2) apply to the chief executive officer with the changes required by the context. 40

(2) Subject to the directions of the Regulator, the chief executive officer is responsible for—

- (a) the management of the day-to-day affairs of the Regulator;
- (b) the administrative control over the resources of the Regulator and members of staff appointed in terms of section 37. 45

(3) The chief executive officer is ex officio a member of the Regulator.

Vacating of and removal from office of Regulator's chief executive officer

35. (1) The Regulator must, after consultation with the Minister, remove the chief executive officer from office —

- (a) for misconduct;
- (b) for failing to perform the duties connected with that office diligently; **5**
- (c) if the chief executive officer ceases or fails to comply with any requirement referred to in section 31(5) or 32(1) or (2).

(2) (a) The chief executive officer may resign on two months' written notice to the Regulator.

(b) If the Regulator is not sitting at the time of such resignation, the notice may be handed to the chairperson of the Regulator and must be regarded as having been received by the Regulator on the date on which it is handed to the chairperson. **10**

Regulator's acting chief executive officer

36. (1) The Minister may in writing appoint any senior employee of the Regulator to act as chief executive officer when the holder of that office — **15**

- (a) is temporarily unable to perform the duties connected with that office for any reason whatsoever; or
- (b) has vacated or been removed from that office and a new chief executive officer has not yet been appointed.

(2) An acting chief executive officer may exercise all the powers and must perform all the duties of the chief executive officer. **20**

Secretariat of Regulator

37. (1) The chief executive officer must —

- (a) on such conditions as the Regulator, with the approval of the Minister, may determine, appoint such employees as may be required to perform the work connected with the functions of the Regulator; and **25**
- (b) pay its employees such remuneration, allowances, subsidies and other benefits as the Regulator may determine in accordance with a remuneration structure approved by the Minister with the concurrence of the Minister of Finance.

(2) A member of the secretariat of the Regulator may not — **30**

- (a) engage in any activity that may undermine the integrity of the Regulator or the Authority;
- (b) participate in any investigation, hearing or decision of the Regulator or of the Authority concerning a matter in respect of which that person or a family member of that member has a direct financial interest or any other personal interest; **35**
- (c) make private use of, or profit from, any confidential information obtained as a result of performing official functions within the Regulator.

Services of non-employees

38. (1) The Regulator may, with the approval of the Minister, in the performance of its functions in terms of this Act, for specific projects — **40**

- (a) enter into contracts for the services of persons having technical or specialised knowledge of any matter relating to the work of the Regulator; and
- (b) determine the remuneration, including reimbursement for traveling, subsistence and other expenses of such persons. **45**

(2) Section 37(2) applies to a person appointed under subsection (1) with the changes required by the context.

Meetings of Regulator

39. (1) The Regulator must meet as often as may be required for the proper performance of its functions. **50**

(2) The Minister must designate a member of the Regulator as the chairperson.

(3) In the absence of the chairperson from a meeting of the Regulator, the members present at that meeting must elect one of their number to preside at that meeting.

(4) The chairperson must, upon a written request of at least two members, convene a special meeting to be held as soon as possible but not later than one week after the date of receipt of such request. 5

(5) The quorum for any meeting of the Regulator is a simple majority of its members.

(6) The chairperson must determine the procedure to be followed at meetings.

(7) The meetings of the Regulator are open to the public.

Minutes of meetings 10

40. (1) The Regulator must cause minutes of its meetings to be kept and copies of the minutes to be circulated to its members and the Minister.

(2) The minutes, when signed by the chairperson, are in the absence of proof of any error—

(a) regarded as a true and correct record of the proceedings; 15

(b) evidence of those proceedings before a court of law, any tribunal or a commission of inquiry.

Decisions of Regulator

41. (1) Any decision of the Regulator must—

(a) be taken within a procedurally fair process in which the affected persons have the opportunity to submit their views; 20

(b) be in writing;

(c) include reasons for the decision.

(2) The decision of the majority of members present at a meeting constitutes a decision of the Regulator. 25

(3) In the event of an equality of votes on any matter, the chairperson has a casting vote in addition to his or her deliberative vote.

(4) Any person directly affected by a decision of the Regulator must be furnished with a copy of the decision and the reasons therefor.

Funding of Regulator 30

42. (1) The funds of the Regulator consist of—

(a) money appropriated by Parliament;

(b) interest on investments;

(c) fees charged for the filing of complaints or appeals with the Regulator.

(2) The Regulator must utilise its funds to defray expenses in connection with the performance of its functions in terms of this Act. 35

Accounting and accountability

43. (1) The Regulator must exercise its fiscal, accounting and reporting duties in accordance with the provisions of the PFMA.

(2) The Regulator's chief executive officer is the accounting officer of the Regulator and must— 40

(a) open an account in the name of the Regulator with a financial institution and deposit therein all moneys received in terms of section 42(1);

(b) cause proper records to be kept of all financial transactions, assets and liabilities of the Regulator; 45

(c) as soon as possible after the end of each financial year, cause to be prepared a statement of the income and expenditure of the Regulator for that financial year and a balance sheet of its assets and liabilities as at the end of that financial year.

(3) The records, statement and balance sheet referred to in subsection (2) must be audited by the Auditor-General.

(4) The financial year of the Regulator ends on 31 March in each year.

(5) The Regulator must in each financial year, at a time determined by the Minister, submit a statement of its estimated income and expenditure for the following financial year to the Minister for his or her approval, granted with the concurrence of the Minister of Finance. 5

Annual report

44. The annual report contemplated in section 30(6) must include—
- (a) an audited balance sheet and statement of income and expenditure; 10
 - (b) a report on the audit contemplated in section 43(3);
 - (c) an account of the execution of the business plan of the Regulator;
 - (d) the business plan and statement of the Regulator's estimated income and expenditure for the following financial year;
 - (e) the envisaged strategies of the Regulator; 15
 - (f) such matters as the Regulator may wish to report on;
 - (g) such other information as the Minister may require.

Delegation of powers

45. (1) The Regulator may by resolution and with the approval of the Minister delegate in writing any power vested in it by this Act to the chief executive officer or any member of the Regulator. 20

(2) A delegation under subsection (1) does not prevent the Regulator from exercising the power itself.

(3) The Regulator may by resolution, and the Minister may by written notice to the Regulator, at any time amend or cancel a delegation made under subsection (1). 25

Appeals

46. (1) Any port user or licensed operator whose rights are adversely affected by a decision of the Authority may appeal against that decision to the Regulator in the manner directed under section 30(3).

- (2) After considering the appeal the Regulator must— 30
- (a) confirm, set aside or vary the decision; or
 - (b) substitute the decision of the Authority for its own.

Complaint against Authority

47. (1) Any complaint against the Authority must be lodged with the Regulator in the manner directed under section 30(3). 35

(2) A complaint against the Authority may be based on any ground provided for by the Regulator by direction under section 30(3) or on the ground that—

- (a) access to ports and port facilities are not provided in a non-discriminatory, fair and transparent manner;
- (b) small and medium-sized enterprises owned by historically disadvantaged groups do not have an equitable opportunity to participate in the operation of facilities in the ports environment; 40
- (c) Transnet is treated more favourably and that it derives an unfair advantage over other transport companies. 45

Investigation of complaint

48. (1) The Regulator may investigate any complaint against the Authority and must conclude the investigation as speedily as possible.

(2) A complaint against the Authority must be conducted in the manner directed under section 30(3).

Hearings before Regulator

49. (1) The Regulator may conduct a hearing into any matter referred to it, but must conduct a hearing in respect of a matter referred to it in terms of section 46. 5

(2) Hearings before the Regulator must be conducted in the manner directed under section 30(3).

Right to participate in hearing

50. The following persons may participate in a hearing in person or through a representative and may put questions to witnesses and inspect any book, document or item presented at the hearing: 10

- (a) Any person appointed by the Regulator;
- (b) the complainant;
- (c) the Authority;
- (d) any other person who has a material interest in the hearing, unless the presiding member of the Regulator rules that another participant adequately represents that interest. 15

Taking of evidence at hearing

51. (1) The Regulator may, by direction under section 30(3), determine the rules of procedure for the taking of evidence before the Regulator. 20

(2) A person questioned by the Regulator must answer each question truthfully and to the best of that person's knowledge, but a person is not obliged to answer any question if the answer is self-incriminating.

(3) No self-incriminating answer given or statement made during the course of a hearing of the Regulator is admissible as evidence in criminal proceedings against the person concerned, except in criminal proceedings in which that person is tried for an offence relating to— 25

- (a) the administering or taking of an oath or the administering or making of an affirmation;
- (b) the giving of false evidence; 30
- (c) the making of a false statement; or
- (d) a failure to answer lawful questions fully or satisfactorily.

Rules of procedure

52. Subject to such rules of procedure as the Regulator may make, the member of the Regulator presiding at a hearing may determine any matter of procedure for that hearing, with due regard to the circumstances of the case. 35

Interim relief

53. The Regulator may, if so requested by a person who lodged a complaint with the Regulator, make such interim order as it may deem necessary in the circumstances.

Orders of Regulator 40

54. (1) In addition to its other powers in terms of this Act, the Regulator may—

- (a) make an appropriate order in relation to any complaint, including—
 - (i) interdicting any conduct or action;
 - (ii) declaring the whole or any part of an agreement to be void;
- (b) condone any breach of its rules and procedures on good cause shown. 45

(2) (a) The Regulator may at any time adjourn a hearing for a reasonable period of time, if there is need to do so.

(b) If the Regulator adjourns a hearing in terms of paragraph (a) it may, on application, make such interim order as it deems fit.

Winding up and dissolution of Regulator

55. (1) The Minister may by notice in the *Gazette* determine the date on which the Regulator will cease to operate.

(2) Upon the winding-up of the Regulator's activities, the Minister must—

- (a) subject to applicable labour laws, determine the future of the Regulator's employees; and **5**
- (b) with the concurrence of the Minister of Finance, determine how the Regulator's assets and liabilities must be dealt with.

CHAPTER 6**PROVISION OF PORT SERVICES AND PORT FACILITIES AND USE OF LAND **10******Agreements in port operations and services**

56. (1) The Authority may enter into an agreement with any person in terms of which that person, for the period and in accordance with the terms and conditions of the agreement, is authorised to— **15**

- (a) design, construct, rehabilitate, develop, finance, maintain or operate a port terminal or port facility, or provide services relating thereto;
- (b) provide any other service within a port designated by the Authority for this purpose;
- (c) perform any function necessary or ancillary to the matters referred to in paragraphs (a) and (b); or **20**
- (d) perform any combination of the functions referred to in paragraphs (a), (b) and (c).

(2) An agreement concluded in terms of this section must provide for the Authority to monitor and annually review performance with regard to the operation of the terminal or facility and the provision of the relevant services in terms of a performance standard specified in the agreement. **25**

(3) The services authorised under the agreement contemplated in subsection (1) may include stevedoring on board a vessel.

(4) Notwithstanding any other provision of this Act, the Authority may enter into agreements in terms of which it contracts out any service which the Authority is required to provide in terms of this Act. **30**

(5) An agreement contemplated in subsection (1) or (4) may only be entered into by the Authority in accordance with a procedure that is fair, equitable, transparent, competitive and cost-effective. **35**

Licence regarding port services and facilities

57. (1) Unless an agreement contemplated in section 56 has been concluded, no person other than the Authority may provide a port service or operate a port facility otherwise than in terms of a licence issued under this section.

(2) Any person may, subject to the provisions of this Act, apply to the Authority for a licence. **40**

(3) Any application for a licence must be lodged in the prescribed manner and in accordance with an invitation issued by the Authority by notice in the *Gazette*.

(4) The Authority must, in an invitation contemplated in subsection (3), specify— **45**

- (a) the kind of service in respect of which applications are invited; **45**
- (b) the form in which applications must be submitted, including any fee payable upon submission of an application; **45**
- (c) the manner in which it is contemplated that the service must be provided;
- (d) the place where and times when any application form or relevant document may be obtained from the Authority; and **50**
- (e) the period within which such applications must be lodged.

(5) The Authority may require an applicant for a licence, at the applicant's expense, to furnish the Authority, within the period specified by it, with such further information as may be necessary in order to consider the application.

(6) Within six weeks after receiving an application in accordance with subsection (2), the Authority must— 5

(a) issue a licence subject to specified terms and conditions; or

(b) refuse to issue a licence and give written reasons for such refusal.

(7) (a) The Authority may exempt a person from having to obtain a licence in terms of this Act if—

(i) an agreement contemplated in section 11(3) has been concluded; and 10

(ii) the Authority is satisfied that the activities of the person concerned are, for purposes of this Act, sufficiently regulated by the other statutory body or organ of state contemplated in that section.

(b) An exemption contemplated in paragraph (a) may be made subject to such conditions, authorised by this Act, as the Authority may deem fit. 15

Conditions of licence

58. (1) A licence issued under section 57 must set out—

(a) the duration of the licence;

(b) the types of services or facilities to be provided by the licensed operator;

(c) the annual licence fee payable by the licensed operator; 20

(d) the duties and obligations of the licensed operator in respect of the services or facilities provided by it; and

(e) such other terms and conditions as may be necessary.

(2) The terms and conditions of a licence may—

(a) control and restrict, directly or indirectly, the creation, holding or disposal of shares in the licensed operator or its shareholders or interests in the undertaking of the licensed operator; 25

(b) restrict the carrying on by the licensed operator of any trade or business which is not related to the activity authorised in the licence;

(c) provide for the modification of the licence; 30

(d) provide for the determination of performance standards; and

(e) provide for the control and, if necessary, the reasonable fixing of prices to be charged by a licensed operator.

Restriction on transfer of licence

59. (1) A licence may not be transferred to any third party without the prior written consent of the Authority. 35

(2) Any transfer of a licence in contravention of subsection (1) is of no force or effect.

Suspension or cancellation of licence

60. (1) Subject to this section, the Authority may cancel or for a reasonable period suspend a licence, if— 40

(a) the licensed operator contravenes or breaches any condition of its licence, any provision of this Act or the regulations, or any directive issued by the Authority in terms of this Act;

(b) the licensed operator is sequestered, liquidated or placed under judicial management; 45

(c) the licensed operator has made any assignment to, or composition with, its creditors; or

(d) the safety of vessels and persons within ports or the national security of the Republic so requires.

(2) The Authority may direct a licensed operator to take specified measures to remedy any contravention or breach contemplated in subsection (1) (a). 50

- (3) Prior to acting under subsection (1) or (2), the Authority must give written notice to the licensed operator—
- (a) indicating the intention to cancel or suspend the licence or the intention to issue a direction;
 - (b) setting out the reasons why it is considering cancelling or suspending the licence or issuing the direction; and 5
 - (c) affording the licensed operator a reasonable opportunity to make representations as to why the licence should not be cancelled or suspended or the direction should not be issued.
- (4) Where a licence is cancelled or suspended under subsection (1), the Authority may, if it considers that such cancellation or suspension would materially affect the movement of cargo or passengers in a port— 10
- (a) provide the port service or operate the port facility;
 - (b) engage any employee of the licensed operator, or any third party, to carry out functions as directed by the Authority; and 15
 - (c) recover any expenses from the licensed operator concerned.

Directives affecting licensed operators and other persons

61. (1) The Authority may give directives with respect to standards of performance and procedures to be observed by licensed operators—
- (a) to ensure the reliability of the supply of port services and facilities; or 20
 - (b) in the interest of public safety or the environment.
- (2) Before issuing a directive under subsection (1), the Authority must give written notice to the affected licensed operator—
- (a) indicating the intention to issue the directive;
 - (b) setting out the reasons why it is considering issuing the directive; and 25
 - (c) affording the operator a reasonable opportunity to make representations as to why the directive should not be issued.

Duties of licensed operators

62. (1) A licensed operator must—
- (a) provide the port services and operate the port facilities specified in its licence; 30
 - (b) comply with this Act and any other law;
 - (c) meet the performance standards specified in its licence; and
 - (d) provide reliable, efficient and economical port services and facilities to port users in accordance with the conditions of the licence granted to it.
- (2) Every licensed operator must— 35
- (a) within three months after the end of each financial year, submit to the Authority a report of its licensed operations during that financial year, including—
 - (i) the quality and level of its service in the financial year under review; 40
 - (ii) its compliance with the terms and conditions of its licence, this Act and the regulations;
 - (iii) steps taken to eliminate anti-competitive and discriminatory practices;
 - (iv) its audited annual financial statements; 45
 - (v) the quality and level of performance with regard to such environmental criteria and social responsibility requirements as may be set by the Authority or required by other national legislation; and
- (b) from time to time, and where applicable, submit to the Authority— 50
 - (i) such statistical information relating to its licensed operations as may reasonably be required by the Authority;

- (ii) its cargo forecast over the period and in the form determined by the Authority; and
- (iii) future development plans relating to any service or facility which it is obliged to provide under the conditions of its licence.

(3) The Authority may require a licensed operator, at the operator's cost, to submit such additional information as may be necessary to explain or amplify any report or information submitted by the licensed operator in terms of subsection (2). 5

(4) Any information required by the Authority in terms of subsection (3) must be lodged by the licensed operator within the period and in the manner determined by the Authority. 10

(5) A licensed operator must, within 24 hours of its occurrence or discovery, inform the Authority of—

- (a) any change in the control of the licensed operator;
- (b) any industrial dispute between the licensed operator and its employees;
- (c) any industrial accident or disaster involving any employee or agent of the licensed operator; 15
- (d) any occurrence of fire within its premises within the port;
- (e) any theft or pilferage within its premises or any theft or pilferage involving any cargo in its possession or control;
- (f) any proceedings or claim instituted or made against the licensed operator which could materially affect its ability to perform any obligation or to comply with any term or condition of its licence; and 20
- (g) any spillage or pollution that may have an impact on the environment.

Routine inspections

63. (1) In order to determine whether licence conditions are being complied with, any person duly authorised by the Authority in writing may, during office hours, enter any premises occupied by a licensed operator to inspect any activity, process, building or facility therein. 25

(2) A person contemplated in subsection (1) may, when conducting an inspection, require the licensed operator to produce any book, record, statement or other document relating to matters dealt with in this Act for inspection, or for the purpose of obtaining copies thereof or extracts therefrom. 30

Special powers in emergency

64. (1) The Shareholding Minister may, with the concurrence of the Minister, on the occurrence of any event which gives rise to an emergency which creates a real and imminent threat to the national interest of the Republic or public safety, authorise the Authority, for as long as such threat exists, to— 35

- (a) suspend the licence of a licensed operator, take temporary possession (either itself or through an authorised agent) of any port facility or undertaking relating to a port service of such licensed operator and operate it in such a manner as it deems fit; or 40
- (b) withdraw either partially or totally the use of any port service or facility from any person or class of persons or from the public in general.

(2) Where the Authority takes possession of any port facility or undertaking under subsection (1) (a), adequate compensation must be paid, in the amount agreed between the Authority and the affected licensed operator, and failing agreement, in the amount determined by the Shareholding Minister, whose decision is binding upon the parties. 45

Operations existing on commencement of Act

65. (1) Any person who provided a port service or operated a port facility immediately prior to the date on which this Chapter came into force, is deemed to hold a licence for the provision of such port service or the operation of such port facility, but such person must apply for a licence in terms of section 57 within six months of the date determined by the Shareholding Minister by notice in the *Gazette*. 50

(2) A person contemplated in subsection (1) is deemed to hold a licence until the Authority has decided on its licence application.

(3) A person contemplated in subsection (1) must be issued a licence in terms of section 57 to provide the port service or operate the port facility contemplated in that subsection, if the Authority is reasonably satisfied that such person is capable of complying with the terms and conditions of the licence. 5

(4) (a) Subsection (1) does not apply to a person who, immediately before the date on which this Chapter came into effect, provided a stevedoring service.

(b) Any permission or authorisation to provide a stevedoring service granted before this Chapter came into effect lapses at the end of the period for which the permission or authorisation was granted. 10

(5) Transnet is, in respect of port services or port facilities provided or operated by the South African Port Operations Division of Transnet or Spoornet, a division of Transnet, immediately prior to the commencement of this Chapter deemed to be the holder of a licence to provide port services or to operate port facilities, but must apply for such licence within six months of the date determined by the Shareholding Minister by notice in the *Gazette*. 15

(6) The deeming contemplated in subsection (5) remains valid until the Authority has decided on the licence application or until such time as a third party is authorised to provide such services or operate such facilities in terms of an agreement or licence concluded or issued under this Chapter. 20

(7) Any licence issued to Transnet pursuant to an application contemplated in subsection (6) is subject to the condition that such licence will terminate in the event that a third party is authorised to provide the relevant services or operate the relevant facilities in terms of an agreement or licence concluded or issued under this Chapter. 25

Off-shore cargo-handling facilities

66. (1) No person may erect or operate an off-shore cargo-handling facility otherwise than in terms of a licence issued by the Authority under this section.

(2)(a) Any lease agreement covering off-shore cargo handling facilities in the Republic which existed on the date of commencement of this section is deemed to be a licence issued in terms of this Act for the duration of such lease agreement. 30

(b) Any such agreement remains valid for the duration of the term thereof.

(3) Sections 56 to 65 apply with the changes required by the context to the erection or operation of an off-shore cargo-handling facility.

Restructuring and reform of ports

35

67. (1) If, in any area within a port—

(a) it is necessary to change the use to which immovable property may be put in order to improve the safety, security, efficiency and effectiveness of the operations of the port, the Authority may in writing addressed to the lessee and every lawful occupier of such property, direct that the use be altered to a new use; 40

(b) the terms of a long-term lease which existed immediately before this section took effect are substantially prejudicial to the operation of a port, including terms providing for unreasonable low rentals or containing no restrictions on sub-letting or no provision confining the use of the property to a use relating to the relevant port, the Authority may in writing addressed to the lessee direct that the applicable terms be renegotiated in order to remove the prejudice; or 45

- (c) persons from historically disadvantaged groups are excluded from taking part in the economic activities of the port in terms of long-term leases which existed immediately before this section took effect, the Authority may in writing addressed to the lessee direct that any such lease be renegotiated in order to ensure equitable access to the economic activities in the area in question. 5
- (2) (a) A directive issued under subsection (1) (a) may stipulate that any lease that is inconsistent with the new use shall be invalid from a date stipulated in the notice.
- (b) Before issuing a directive under subsection (1) (a), the Authority must in writing give the lessee and every lawful occupier of the property concerned— 10
- (i) reasonable notice of the proposed change in use;
 - (ii) full reasons for the proposed change in use; and
 - (iii) a reasonable opportunity to make representations on the proposed change in use.
- (3) (a) In the event of a directive being issued under subsection (1) (b) or (c), the Authority and the lessee must endeavour to negotiate the terms of a new lease in relation to the immovable property. 15
- (b) If the Authority and the lessee are unable to reach an agreement as to the new terms of the lease in question, the Authority may, by written notice addressed to the lessee, declare the relevant lease to be invalid as from a date specified in the notice. 20
- (4) If the application of this section results in an expropriation of property, section 25 of the Constitution applies.

CHAPTER 7

DEVELOPMENT, ENVIRONMENT AND CLOSURE OF PORTS

Planning, construction, development and maintenance of ports 25

68. (1) The Authority must—
- (a) facilitate the building and exploitation of the infrastructure of ports;
 - (b) regulate and control development within ports, in accordance with approved port development framework plans; and
 - (c) ensure that the infrastructure of ports is managed and maintained in a manner which ensures efficient, safe and orderly port operations. 30
- (2) The Authority may enter into agreements for the planning, construction, development and maintenance of port infrastructure.

Protection of environment

69. (1) The Authority must in the performance of its functions ensure that a fair and reasonable balance is achieved between the protection of the environment and the establishment, development and maintenance of ports. 35
- (2) (a) The Authority must ensure that sustainable and transparent port planning processes are undertaken when formulating any port development framework.
- (b) When undertaking any port planning process, the Authority must ensure that stakeholders are consulted and that all relevant biophysical and economic aspects are taken into account. 40

Closure of port

70. (1) Subject to subsection (2), the Authority may only close a port which is non-viable and after Cabinet has issued a written directive authorising the closure of such port. 45
- (2) The Cabinet directive contemplated in subsection (1) may only be issued following Cabinet's consideration of a report compiled by a committee appointed by the Minister to conduct an inquiry into the impact of the contemplated port closure.

(3) The Cabinet may, based on the findings of the enquiry contemplated in subsection (2), direct the Authority—

- (a) to refrain from closing the port;
- (b) to delay the closure of the port for a specific period; or
- (c) to amend its proposed course of action in a specified manner.

5

CHAPTER 8

COMMERCIAL ASPECTS

Commercial functions of Authority

71. Notwithstanding any provisions of this Act, from the date that the Authority becomes the successor to the National Ports Authority (Pty) Ltd as contemplated in section 4(1), the funds and assets of the Authority may only be used for the performance of the Authority's functions and activities relating thereto, including the maintenance of port infrastructure and the management and development of ports. 10

Authority's tariff book

72. (1) (a) The Authority must, with the approval of the Ports Regulator, determine tariffs for services and facilities offered by the Authority and annually publish a tariff book containing those tariffs. 15

(b) The Authority may, with the approval of the Ports Regulator, amend the tariff book whenever it is necessary to do so.

(2) The Authority must, prior to any substantial alteration of a tariff, consult with the National Port Consultative Committee. 20

(3) Subject to section 9 of the Competition Act, 1998 (Act No. 89 of 1998), the tariffs contemplated in subsection (1) may vary between ports.

(4) Notwithstanding the provisions of this section, the Authority may enter into an agreement with a licensed operator or a party to an agreement or a port user for the variation of any tariff contemplated in subsection (1). 25

Fees payable to Authority

73. (1) The Authority may charge fees, in accordance with a tariff determined in terms of section 72, for—

(a) the provision of port and other services, including— 30

(i) vessel traffic service charges;

(ii) pilotage dues for the provision of pilotage;

(iii) light dues for the provision of navigational aids along the coast of the Republic and within ports;

(iv) towage dues for the provision of tug services; 35

(v) berthing charges for the use of berthing facilities and services; and

(vi) port and ship security;

(b) the provision and maintenance of port infrastructure, port terminals and port facilities, including—

(i) land rentals; 40

(ii) port dues for the provision and maintenance of entrance channels, breakwaters, basins, navigational aids and maintenance dredging inside port limits;

(iii) cargo dues for the provision and maintenance of port infrastructure; and 45

(iv) berth dues for vessels occupying quays or repair quays while not engaging in the loading or unloading of cargo;

(c) granting concessions and licences; and

(d) any other services provided by the Authority in the performance of its functions. 50

(2) The Authority may also, in relation to off-shore cargo-handling facilities, charge fees as contemplated in subsection (1).

(3) The Authority may on good cause shown, remit or waive the whole or any part of any fee payable to the Authority.

(4) The Authority may require any person to furnish such security as it deems fit for the payment of any fee payable to the Authority. 5

(5) The fees contemplated in subsection (1) (a) and (b) become due to the Authority and payable without demand when the services have been rendered and facilities have been provided,

(6) If any request for the rendering of services or the provision of facilities is withdrawn or cancelled, without prior notice of withdrawal or cancellation having been given timeously to the Authority, the fees contemplated in subsection (1) (a) and (b) remain due and payable as if the services or facilities had been rendered or provided. 10

(7) The fees and charges levied by National Ports Authority of South Africa immediately before the commencement of this section continue to be valid as if determined by the Authority under this section until rescinded, varied or withdrawn by the Authority in terms of this Act. 15

CHAPTER 9

SAFETY ASPECTS

Safety of navigation and shipping in ports 20

74. (1) Subject to the provisions of this Act, the Authority must, for the purpose of ensuring safety of navigation and shipping in ports—

- (a) control marine and other traffic in each port;
- (b) control the entry, stay, movement and operations of vessels in ports, and the departures of vessels from ports; 25
- (c) regulate the loading, unloading and storage of cargo and the embarkation and disembarkation of passengers in ports;
- (d) provide or procure pilotage services, license pilots and regulate the safe provision of pilotage services by licensed pilots;
- (e) provide or procure tug services, license tug service providers and regulate the safe provision of tug services by licensed tug service providers; 30
- (f) provide, operate and maintain adequate and efficient lighthouses and other navigational aids within the port limits and at such other places as the Authority may determine;
- (g) undertake dredging and maintain channels at the depths published by the Authority; and 35
- (h) remove or cause to be removed any obstruction or object from the waters of the ports that may pose a danger to shipping or navigation.

(2) The Authority may—

- (a) order that a vessel which has been arrested or attached by order of court or another relevant authority be moved to another place within the port and, if necessary, move such vessel to that place; 40
- (b) search for, raise, remove or destroy any sunken, stranded or abandoned vessel or wreck within the port limits, and recover the costs incurred in connection with such searching, raising, removal or destruction from the owner of the vessel or any other person who had the beneficial use of the vessel at the time it sank, became stranded or was abandoned; 45

- (c) search for and remove any wreck or obstruction which may endanger the safety of any vessel entering or leaving the port, and recover the costs *of* such search and removal from the owner of the wreck or obstruction, or from any person responsible for the presence of such wreck or obstruction;
- (d) give notice to the owner or other person legally responsible for the upkeep of any vessel within port limits, calling upon such owner or person to remove or otherwise dispose of such vessel, or part thereof, which is not seaworthy, or is likely to become an obstruction, wreck or derelict or a threat to the environment or public safety, and recover from that owner or person all costs incurred for the removal or disposal should the owner or person fail to comply with such notice within the time specified therein; and
- (e) after written demand for any costs contemplated in this subsection, and on non-payment thereof, institute an admiralty action in terms *of* section 3 of the Admiralty Jurisdiction Regulation Act, 1983 (Act No. 105 of 1983), to recover the costs.
- (3) (a) The Harbour Master is, in respect *of* the port for which he or she is appointed, the final authority in respect of all matters relating to pilotage, navigation, navigational aids, dredging and all other matters relating to the movement of vessels within port limits.
- (b) For purposes of paragraph (a), the Harbour Master may give such written or verbal instructions as may reasonably be necessary for—
- (i) promoting or securing conditions conducive to the ease, convenience or safety of navigation in the port;
 - (ii) regulating the movement or mooring and unmooring *of* a vessel in the port;
 - (iii) controlling the manner in which cargo, fuel, water or ship's stores are taken on, discharged or handled;
 - (iv) regulating the removal or disposal of any residues and mixtures containing oil or noxious liquid substances, sewage and garbage from vessels in a port and requiring any such matter to be deposited in reception facilities in the port;
 - (v) the detention of a vessel reasonably suspected of causing oil pollution and ensuring that the total cost *of* the pollution clean-up operation is recovered, or acceptable guarantees are provided, prior to the vessel being given permission to leave the port;
 - (vi) carrying into effect the provisions of this Act.
- (4) The Harbour Master must take such steps as may reasonably be necessary to bring an instruction issued under subsection (3) to the notice of any person likely to be affected by it.

Pilotage

75. (1) Subject to subsection (2), a pilot must navigate every vessel entering, leaving or moving in a port.
- (2) Pilotage is not compulsory in respect of any vessel or class of vessels that have been exempted from pilotage by the Authority in writing.
- (3) The pilot's function is to navigate a vessel in the port, to direct its movements and to determine and control the movements *of* the tugs assisting the vessel under pilotage.
- (4) The pilot must determine the number of tugs required for pilotage with the concurrence of the master of the vessel.

(5) In the event of a disagreement between the pilot and the master of the vessel regarding the number of tugs to be used as contemplated in subsection(4), the Harbour Master takes the final decision.

(6) The master of the vessel must at all times remain in command of the vessel and neither the master nor any person under the master's command may, while the vessel is under pilotage, in any way interfere with the navigation or movement of the vessel or prevent the pilot from carrying out his or her duties, except in an emergency, where the master may intervene to preserve the safety of the vessel, cargo or crew and take whatever action he or she considers reasonably necessary to avert the danger. 5

(7) Where the master of the vessel intervenes as contemplated in subsection(6), he or she must immediately inform the pilot of the vessel and, after having restored the situation, must permit the pilot to proceed with the execution of his or her duties. 10

(8) The master of the vessel must ensure that the officers and crew are at their posts, that a proper lookout is kept and that the pilot is given all assistance necessary in the execution of his or her duties. 15

Liability of pilot

76. (1) Neither the Authority nor the pilot is liable for loss or damage caused by anything done or omitted by the pilot in good faith whilst performing his or her functions in terms of this Act.

(2) Notwithstanding any other provision of this Act, the pilot is deemed to be the servant of the owner or master of the vessel under pilotage and such owner or master is liable for the acts or omissions of the pilot. 20

Certification and licensing of pilot

77. (1) No person may perform the functions of a pilot in a port without having been duly certificated by the South African Maritime Safety Authority and licensed by the Authority to do so. 25

(2) The Minister may prescribe requirements for the licensing of pilots.

(3) The South African Maritime Safety Authority may recommend to the Minister the minimum qualifications required for any person to be licensed as a pilot, including the content and nature of examinations, if any, to be undertaken. 30

(4) The South African Maritime Safety Authority must consult with the Authority regarding the content of the minimum qualifications referred to in subsection(2), before any recommendation is made.

Lighthouses and other navigational aids

78. (1) The Authority must operate and maintain lighthouses and other navigational aids under its control in terms of standards determined by the South African Maritime Safety Authority in order to assist the navigation of vessels within port limits and along the coast of the Republic. 35

(2) The Authority may not cease operating any lighthouse or navigational aid under its control, irrespective of whether such lighthouse or aid is replaced by a new lighthouse or aid on the same or adjacent location, or reduce the service provided by any lighthouse or aid in any manner, without the consent of the South African Maritime Safety Authority and having consulted the Port Consultative Committee of the port closest to the lighthouse or aid. 40

(3) Subject to subsection(2), the Authority may erect new lighthouses or install other navigational aids on locations and in the manner which the Authority may think fit, or improve or extend the service provided by existing lighthouses and other navigational aids. 45

(4) The Port Consultative Committee of the port closest to a lighthouse or navigational aid may make recommendations to the Authority with regard to the improvement or extension of the service provided by such lighthouse or aid.

(5) The Authority may remove any light or device which may confuse a vessel if the owner of the property on which the light or device is used or the person having charge of such light or device fails to extinguish or effectively screen the light or remove the device within seven days of notice to do so having been served on him or her, and may recover the expenses for the removal from that owner or person. 5

CHAPTER 10

MINISTERIAL DIRECTIONS AND PORT REGULATIONS 10

Ministerial direction

79. (1) The Minister may, in writing, direct the Authority to perform a specified act within the Authority's power or not to perform a specified act, if such direction is necessary—

- (a) to safeguard the national security of the Republic; 15
- (b) to promote the national, strategic or economic interests of the Republic; or
- (c) to discharge an international obligation of the Republic.

(2) The Minister must consult with the Authority and the Shareholding Minister prior to giving a direction under subsection (1).

(3) The Authority must take all necessary steps to give effect to a direction issued under subsection (1). 20

(4) (a) The Minister may, out of monies appropriated by Parliament for that purpose, compensate the Authority for any loss suffered by the Authority as a result of the obligation to perform or not perform an act contemplated in subsection (1).

(b) In addition, should the performance of such an act not be in the commercial interests of the Authority, the financing of such activity is the responsibility of the State. 25

Port regulations

80. (1) The Minister may, by notice in the *Gazette*, make regulations in respect of—

- (a) a framework for the economic participation and empowerment of historically disadvantaged groups in port operations; 30
- (b) fitness standards for the safe use of the infrastructure and equipment in the provision of any port facility or port service;
- (c) rules of procedure for Port Consultative Committees;
- (d) port limits;
- (e) transitional matters in order to ensure a smooth transition from National Ports Authority of South Africa to National Ports Authority (Pty) Ltd, and from that company to the Authority; 35
- (f) a framework for economic participation in port operations and services by public entities, private entities and public-private partnerships;
- (g) any other matter which it is necessary or expedient to prescribe for the proper implementation or administration of this Act. 40

(2) The Authority may, with the approval of the Minister, by notice in the *Gazette*, make rules for the control and management of ports and the approaches thereto and for the maintenance of safety, security and good order in ports, in particular regarding—

- (a) the manner in which control of a port must be exercised and the grounds on which access to a port may be refused;
- (b) orderly vessel traffic, including the prevention and removal of any obstruction or impediment to navigation within the port limits;
- (c) the use of navigational aids, lights and signals to be used in ports and steps to be taken to avoid collision by vessels navigating in the ports; 5
- (d) the supervision, regulation and control of all activities conducted in or on the waters of the ports;
- (e) the licensing of activities carried out in the ports and at off-shore cargo-handling facilities; 10
- (f) the declaration and definition of wharves on which cargo will be landed and from which cargo will be shipped in vessels;
- (g) the protection of the environment within ports, the cleaning of land and waters of the ports and the prevention of oil, filth, rubbish or any other matter from being thrown into the sea, including the discharge of ballast water; 15
- (h) the maintenance by the Authority of security within ports;
- (i) places of refuge for vessels;
- (j) the information which has to be supplied by the masters, owners, agents and other persons in respect of vessels arriving and departing and the time and manner in which this information is to be supplied; 20
- (k) the information which has to be supplied by the masters, owners, agents and other persons in respect of cargo loaded or discharged in the ports, and the time and manner in which such information is to be supplied;
- (l) the prohibition of embarkation and disembarkation of persons at places other than those determined by the Authority for this purpose; 25
- (m) the prohibition of the loading, handling or discharging of dangerous cargoes at wharves where such loading, handling or discharging appears especially dangerous to the public;
- (n) the limits within which, and the levels to which, dredging may be carried out in ports and approaches thereto; 30
- (o) the information which has to be furnished to the Authority by port users in relation to their activities within ports;
- (p) the establishment, construction, maintenance and operation of off-shore cargo handling facilities;
- (q) road and rail traffic within ports subject to the Railway Safety Regulator Act, 2002 (Act No. 16 of 2002); 35
- (r) any other matter for which it is necessary or expedient to make rules so that the Authority is able to perform its functions effectively and efficiently.
- (3) The Authority may prescribe rules in respect of each port, setting out the hours of the port's operation and the relationship between concessionaires or contractors contemplated in section 56, on the one hand, and licensees on the other. 40
- (4) The regulations and rules contemplated in this section may create offences and the Minister may stipulate a penalty of a fine or of imprisonment for a period not exceeding six months or both a fine and such imprisonment.

CHAPTER 11

45

GENERAL

Port Consultative Committee

81. (1) The Minister must appoint a Port Consultative Committee for each port, consisting of the Harbour Master of the relevant port and—

- (a) two persons representing the Authority; 50
- (b) three persons representing the local port users;

- (c) two persons representing the local and provincial governments, respectively, of the area in which the port is situated;
 - (d) two persons representing organised labour;
 - (e) one person representing the South African Maritime Safety Authority.
- (2) The function of the Port Consultative Committee is, with regard to any matter concerning a port— 5
- (a) to provide a forum for the exchange of views between the Authority and other interested parties; and
 - (b) to advise the Minister.
- (3) The Authority must consult the Port Consultative Committee regarding— 10
- (a) any major scheme relating to the expansion or development of a particular port;
 - (b) any other matter on which the Minister or the Shareholding Minister may require the Authority to consult the Committee.

National Port Consultative Committee 15

- 82.** (1) The Minister must appoint a National Port Consultative Committee consisting of at least—
- (a) one representative from each Port Consultative Committee;
 - (b) four representatives of national government departments;
 - (c) a representative of the National Port Users Forum; 20
 - (d) a representative of organised labour; and
 - (e) a representative of the Authority.
- (2) The functions of the National Consultative Committee are—
- (a) to advise the Minister on national commercial ports policy matters;
 - (b) to advise the Minister on measures that need to be taken to improve the regulatory framework governing management and operations of ports; 25
 - (c) to consider any proposed substantial alteration to the Authority's tariffs; and
 - (d) to consider any other matter that the Minister or the Shareholding Minister may require the Committee to consider.
- (3) The Minister must appoint an official of the Department of Transport as chairperson of the National Port Consultative Committee. 30

Port access

83. Subject to this Act, a port must be freely accessible to any person who conducts lawful business in it.

Co-operation with authorities 35

84. The Authority must co-operate with immigration, customs, law enforcement and any other authority required to perform any function within a port, and must afford such authority every facility reasonably necessary, subject to such compensation as may be agreed between the Authority and the other authority or, failing an agreement, such compensation as the Minister may determine. 40

Liability of Authority

85. Neither the Authority nor an employee or a representative of the Authority is liable for loss or damage caused by anything done or omitted by the Authority, the employee or the representative in good faith whilst performing any function in terms of this Act.

Confidential information

86. (1) No person may disclose any confidential information concerning the affairs of the Authority or any other person obtained—

- (a) in carrying out any function in terms of this Act; or
- (b) as a result of initiating a complaint or participating in any proceedings in terms of this Act. 5

(2) Subsection (1) does not apply to information disclosed for the purposes of—

- (a) the proper administration or enforcement of this Act; or
- (b) the administration of justice.

Offences

10

87. (1) A person is guilty of an offence if he or she—

- (a) wilfully or negligently endangers the safety of navigation, persons or property in a port;
- (b) having been directed or summonsed under section 51 to appear before the Regulator, without sufficient cause— 15
 - (i) refuses so to appear;
 - (ii) refuses to be sworn in or to make an affirmation after being directed to do so;
 - (iii) refuses to answer, or fails to answer to the best of his or her knowledge, any question put; or 20
 - (iv) refuses to comply with a requirement to produce a book, document or item specified in the directive summons;
- (c) without lawful authority, interferes with a pilot while a vessel is under pilotage;
- (d) contravenes section 59(1), 66(1) or 86(1); 25
- (e) hinders or obstructs a person acting under section 48 or 63(1);
- (f) fails to comply with a requirement contemplated in section 63(2); or
- (g) fails to comply with an instruction of the Harbour Master given under section 74(3).

(2) Any person convicted of an offence in terms of subsection (1) is liable on conviction to a fine or to imprisonment for a period not exceeding five years, or both. 30

Amendment of law

88. (1) Section 1 of the Institution of Legal Proceedings against certain Organs of State Act, 2002 (Act No. 40 of 2002), is hereby amended by the deletion in subsection (1) of the word “and” at the end of paragraph (e) of the definition of “organ of state” and by the substitution for paragraph (f) of that definition, of the following paragraphs: 35

“(f) National Ports Authority Limited, contemplated in section 4 of the National Ports Act, 2005, and any entity deemed to be the National Ports Authority in terms of section 3 of that Act;

(g) any person for whose debt an organ of state contemplated in paragraphs (a) to [(e)](f) is liable;” 40

Repeal of law, and saving

89. (1) The Legal Succession Act is hereby repealed in so far as it relates to any provision for the management and operation of the ports referred to in this Act.

(2) (a) Despite subsection (1), the port regulations made under section 21 of the Legal Succession Act and which were in force immediately prior to the commencement of this Act remain in force in so far as they are not inconsistent with this Act, until amended or repealed under this Act. 45

(b) Any reference in such regulations to “harbour” must be interpreted to mean “port”. 50

Short title and commencement

90. This Act is called the National Ports Act, 2005, and comes into effect on a date determined by the President by proclamation in the *Gazette*.

Annex FF Tax Clearance Requirements

Tax Clearance Requirements

1. It is a condition of bidding in response to this RFP that:
 - 1.1. the taxes of a Bidder and its Members must be in order, or that satisfactory arrangements have been made with the South African Revenue Services (“**SARS**”) or other local revenue authority for the relevant Bidder to meet its tax obligations;
 - 1.2. the form “Application for Tax Clearance Certificate TCC 001”, available on the official SARS website or at any SARS office, must be completed in all respects and submitted to SARS where the Bidder is registered for tax purposes. SARS will then furnish the Bidder with a Tax Clearance Certificate that will be valid for a period of six (6) months from the date of issue.
2. Each Bidder and its Members established or incorporated in South Africa more than 365 days prior to the Bid Submission Date must submit an original and valid Tax Clearance Certificate with the Bidder’s Bid Response.
3. Each Bidder and its Members established or incorporated in South Africa within the last 365 (three hundred and sixty five) days of the Bid Submission Date must submit proof that an application for a Tax Clearance Certificate has been submitted and received by SARS, with the Bidder’s Bid Response.
4. A Bidder and its Members which are not established or incorporated in South Africa must produce a tax clearance certificate or equivalent certificate translated into English, if applicable, from the local revenue authority where they are established or incorporated to demonstrate that they are in good standing with that authority.



**Guidelines for Monitoring and Approving
Piped-Gas Transmission and Storage Tariffs
in South Africa**

Final

March 2017

These Tariff Guidelines replace the 2009 version

CONTENTS

GLOSSARY	III
ABBREVIATIONS	III
1 INTRODUCTION	4
2 THE POLICY AND LEGISLATIVE FRAMEWORK	5
2.1 INTRODUCTION	5
2.2 OBJECTIVES FOR TARIFF REGULATION.....	5
2.3 LEGISLATIVE FRAMEWORK AND REQUIREMENTS OF THE ENERGY REGULATOR	6
2.3.1 <i>The National Energy Regulator Act, 2004</i>	6
2.3.2 <i>Gas Act, 2001</i>	7
2.4 THE ROLE OF THE ENERGY REGULATOR IN PIPED-GAS TARIFFS	8
2.5 THE LEGAL STATUS OF THE GUIDELINES.....	8
3 TARIFF APPLICATION	10
3.1 INTRODUCTION	10
3.2 TARIFF METHODOLOGY APPROACHES	11
3.2.1 <i>Rate of return regulation</i>	11
3.2.2 <i>Incentive regulation</i>	13
3.2.3 <i>Profit sharing and sliding scales</i>	14
3.2.4 <i>Hybrids of the abovementioned approaches</i>	15
3.2.5 <i>Discounted Cash-Flow</i>	15
3.3 GENERAL APPLICATION	15
4 COMPONENTS OF ALLOWABLE REVENUE (AR)	17
4.1 INTRODUCTION	17
4.2 THE EFFICIENT LEVEL OF OPERATING AND MAINTENANCE COSTS (EXPENSES)	18
4.2.1 <i>Data for monitoring Expenses</i>	18
4.2.2 <i>An approach to determining efficient operating and maintenance costs</i>	19
4.2.3 <i>Considerations in efficient O&M expenses</i>	20
4.3 DETERMINING TAX (T).....	21
4.4 CALCULATING RETURNS – THE REGULATORY ASSET BASE (RAB).....	23
4.4.1 <i>Prudency Assessment</i>	23
4.4.2 <i>Determining the value of the Regulatory Asset Base (RAB)</i>	24
4.4.3 <i>Value of Property, Plant, Vehicles and Equipment (V) using TOC</i>	25
4.4.4 <i>Depreciation (d) and amortisation</i>	35
4.4.5 <i>Net Working Capital (w)</i>	35
4.4.6 <i>Weighted Average Cost of Capital (WACC)</i>	36
4.4.7 <i>Financial Indicators</i>	44
4.4.8 <i>Correction Factor or Clawback/Giveback</i>	44
4.4.9 <i>Cost of Service for initial P_0/R_0</i>	47
4.4.10 <i>The determination of tariffs for liquefied natural gas terminals and related facilities</i>	47
4.4.11 <i>The determination of tariffs for distribution</i>	48

4.4.12	The determination of tariffs for Compressed Natural Gas	49
5	ASSESSMENT OF TARIFFS.....	51
5.1	INTRODUCTION	51
5.2	APPROACH OF TESTING TARIFF PROPOSALS	51
5.3	REGULATORY FINANCIAL REPORTING AND DATA REQUIREMENTS FOR REGULATION	52
5.4	INDEXATION OF THE TARIFFS	53
6	COMMON APPROACHES TO TARIFF STRUCTURING	54
6.1	INTRODUCTION	54
6.2	GEOGRAPHIC DIMENSION OF TARIFF STRUCTURE.....	54
6.2.1	<i>Full-distance pricing</i>	54
6.2.2	<i>Entry/exit pricing</i>	54
6.2.3	<i>Postal pricing</i>	55
6.3	APPROACH TO CALCULATING THE LEVEL OF COST BASED TARIFFS	55
6.3.1	<i>Average accounting cost (or Fully Distributed Cost)</i>	55

Glossary

Clawback Factor to correct for differences between actual values and assumptions used in the calculation of the tariff

Giveback Factor to correct for differences between actual values and assumptions used in the calculation of the tariff (a negative clawback)

Abbreviations

CAPM Capital Asset Pricing Model

CPI Consumer Price Index

AR Allowable Revenue

DSCR Debt Service Cover Ratio

EBIT Earnings Before Interest and Tax

FERC Federal Energy Regulatory Commission

IRR Internal Rate of Return

MRP Market Risk Premium

O&M Operating and Maintenance

Opex Operational expenditure

PPI Producer Price Index

RAB Regulatory Asset Base

SRAB Starting Regulatory Asset Base

TOC Trended Original Cost

WACC Weighted Average Cost of Capital

1 Introduction

The National Energy Regulator (NERSA) derives its mandate regarding piped-gas tariffs and maximum prices from the Gas Act, 2001 (Act No. 48 of 2001) ('the Gas Act'). According to the Gas Act, the Energy Regulator is required to 'monitor and approve, and if necessary regulate' transmission and storage tariffs for piped-gas and 'take appropriate action when necessary to ensure that tariffs are applied in a non-discriminatory manner'. In line with these requirements, NERSA has developed guidelines for monitoring and approving piped-gas transmission and storage tariffs.

In 2009, NERSA developed these Guidelines for Monitoring and Approving Transmission and Storage Tariffs in South Africa ('the Guidelines'). NERSA has updated these guidelines in order to reflect developments in the industry since 2009, as well as possible future developments, as well as to clarify issues that have arisen and gaps that have been identified through the implementation and practical application of the guidelines, and align the guidelines to published government policy and legislation.

2 The Policy and Legislative Framework

2.1 Introduction

After an overview of the general objectives for the economic regulation of gas tariffs, this section provides a review of the legal aspects of gas sector regulation, including:

- the mandate of the Energy Regulator with regard to the regulation of the gas industry;
- the role of the Energy Regulator in monitoring, approving and regulating gas transmission and storage tariffs;
- the obligations of participants in the piped-gas sector.

These aspects are key to defining the scope and nature of the gas transmission and storage tariff guidelines developed by NERSA.

2.2 Objectives for tariff regulation

The following objectives generally apply to the monitoring and approving of tariffs for the transmission and storage of piped-gas:

- *Cost reflectiveness.* The tariffs for services provided by a transmission or storage facility should reflect the direct and assignable costs associated with providing those services to a particular customer. To be fully cost reflective, fixed capacity related costs should be recovered via a capacity charge and volume related costs should be recovered by a demand charge. It is an established economic principle that cost-reflective tariffs provide appropriate incentives in a network industry.
- *Economically appropriate pricing signals.* It is important that the tariffs provide users and potential users of gas transmission or storage services with the correct economic signals regarding the economic cost of the service.
- *Incentives for efficient operation of a system.* The tariffs should reflect the costs required by an efficient operator to run the system.
- *Allow for full cost recovery and ensure a reasonable return.* The selected methodology should enable the transmission and storage companies to

recover the costs of delivering those services,¹ plus a reasonable return to ensure the long-term provision of transmission and storage services.

- *Non-discrimination.* The tariff structure should not discriminate between customers, unless such discrimination is based on the objectively justifiable and identifiable differences as set out in section 22 of the Gas Act.
- *Transparency.* Transparency is required to ensure a balance between buyer and seller power in the market and to facilitate regulation. If tariffs are not transparent, it is difficult for pipeline or storage users to respond to incentives or disincentives contained in these tariffs or for competition between facilities to occur.
- *Predictability.* In addition to transparency, consumers will value the ability to forecast their gas transportation and storage costs and to be able to make informed business decisions.
- *Practicality.* In addition to the above, the selected method must be suitable for efficient implementation and administration.
- *Public interest and social objectives.* Consistent with Government policy, tariffs may be designed to take account of social objectives. For instance, certain surcharges or cross-subsidies may be introduced with the aim of funding the provision of affordable services to low income sectors of the population.

2.3 Legislative framework and requirements of the Energy Regulator

2.3.1 The National Energy Regulator Act, 2004

The Energy Regulator is mandated in terms of the National Energy Regulator Act, 2004 (Act No. 40 of 2004) ('the NERSA Act') to regulate the electricity, piped-gas and petroleum pipeline industries in terms of the Electricity Regulation Act, 2006 (Act No. 4 of 2006); the Gas Act, 2001; and the Petroleum Pipelines Act, 2003 (Act No. 60 of 2003).

¹ Typically, regulators allow recovery of efficiently incurred costs rather than the actual costs incurred by the company as part of incentive regulation.

The Energy Regulator embarked on an extensive consultation process regarding its proposed guidelines for monitoring and approving tariffs for gas transmission and storage tariffs, in compliance with the requirements of the NERSA Act.

2.3.2 Gas Act, 2001

The Gas Act aims to *inter alia* promote the orderly development of the piped-gas industry and to establish a national regulatory framework with the National Gas Regulator (now NERSA) as the custodian and enforcer of this national regulatory framework.

The Gas Act further contains a list of objectives for the development of the piped-gas industry in South Africa, ranging from investment and competitive markets to skills and employment equity promotion. Notably the Gas Act aims to promote ‘the efficient, effective, sustainable and orderly development and operation of gas transmission, storage, distribution, liquefaction and re-gasification facilities’ and ‘the provision of efficient, effective and sustainable gas transmission, storage, liquefaction, re-gasification and trading services’.

The functions of the Energy Regulator are *inter alia* to:

- issue licences for construction, conversion and operation of gas facilities and trading in gas;
- undertake investigations and inquiries into the activities of licensees; and
- regulate prices in terms of section 21(1)(p) in the prescribed manner.

Furthermore, the Energy Regulator has a duty as laid out in section 4(h) of the Gas Act to ‘monitor and approve, and if necessary regulate, transmission and storage tariffs and take appropriate actions when necessary to ensure that they are applied in a non-discriminatory manner as contemplated in section 22.’

The above objectives and the functions of the Energy Regulator were taken into consideration in the development of these guidelines.

2.4 The role of the Energy Regulator in piped-gas tariffs

In terms of section 2 of the Gas Act, the Energy Regulator is required to 'promote the efficient, effective, sustainable and orderly development and operation of gas transmission, storage, distribution' and related activities in South Africa.

In order to enable the Energy Regulator to achieve the objectives of the Gas Act as listed in section 2 of the Act, the Energy Regulator is, *inter alia*, required to issue licences for the construction, conversion and operating of gas transmission, storage, and distribution facilities and for trading of gas. In addition, the Energy Regulator is required to ensure compliance with licence conditions and is also given the authority to undertake investigations and enquiries into the activities of licensees.

Section 4(h) of the Gas Act further provides that the Energy Regulator must 'monitor and approve and, if necessary, regulate' transmission and storage tariffs. This is operationalised as follows:

- the monitoring process requires the Energy Regulator to ensure that the tariff is being applied and adhered to;
- in giving effect to its duties to monitor and approve the tariff, the Energy Regulator may direct enquiries to the licensees to establish that the tariff is appropriate before approval;
- the Energy Regulator is required to determine, at regular intervals, whether the tariff requires any adjustment; and
- the Energy Regulator is required to regulate the tariffs, if necessary, to ensure that NERSA is fulfilling its regulatory duties, *inter alia* by ensuring tariffs are cost reflective and applied in a non-discriminatory manner.

2.5 The legal status of the Guidelines

These Guidelines have been developed pursuant to the provisions of section 4(n) of the Gas Act in an effort to simplify and systematize the processes associated with the performance of the express statutory function and duty of NERSA, which is laid down in section 4(h), and thereby promote the achievement of reasonable and consistent decision-making as well as provide a measure of useful predictability and certainty for piped-gas tariff regulation.

For this reason, which makes these Guidelines compatible with the enabling legislation, they are considered lawful and legally binding as per what was noted in *Mazibuko NO v Sisulu and Others 2013 (6) SA 249 (CC)* in *paragraph 70* on what constitutes a legal and valid instrument.

NERSA will use these Guidelines in evaluating every relevant tariff application it receives; and it will be competent to decide on such application using these Guidelines, provided it is independently satisfied that they are well suited to the tariff application concerned; and it will only depart from them, to the extent necessary, if it finds something exceptional in the tariff application that cannot be adequately dealt with in terms of the guidance already contained in these Guidelines.²

² This is in line with the well-established principles of South African Law that discourages the rigid and inflexible application of the guidelines - see. *MEC for Agriculture, Conservation, Environment & Land Affairs v Sasol Oil (Pty) Ltd 2005 (6) SA 483 (SCA)*; *Kemp and Others v Van Wyk and Others [2005] ZASCA 77*; *National Lotteries Board v SA Education and Environment Project 2012 (4) SA 504 (SCA)*; and *Arun Property Development (Pty) Ltd v City of Cape Town [2014] ZACC 37*

3 Tariff Application

3.1 Introduction

As indicated above, NERSA has a duty as laid out in section 4(h) of the Gas Act to ‘monitor and approve and, if necessary, regulate’ transmission and storage tariffs. In practice, this is interpreted as follows:

In monitoring and approving:

- NERSA will not set tariffs, but will review tariffs prepared by licensees or applicants for transmission and storage facilities;
- NERSA can request licensees or applicants to amend the levels of tariffs or the tariff structure or both; and
- NERSA can approve or decide not to approve a tariff.

In regulating:

- NERSA will regulate the tariffs, if necessary, to ensure that NERSA is fulfilling its regulatory duties, *inter alia* by ensuring that tariffs are cost reflective and applied in a non-discriminatory manner.
- In this regard, ‘regulate’ is not limited to only ‘approving’ but it also extends to ‘controlling or governing’, ‘determining’ or ‘setting.’³
- However, the ‘setting’ part will become an obligation for NERSA when it is faced with the application of a recalcitrant licensee who is unwilling or unable to reconfigure its application in order to enable NERSA to approve its tariff upon reconsideration of the application.

The tariff application process is envisaged as follows:

- All licensees (or applicants, as appropriate) will be required to submit an application for tariff approval (a ‘tariff application’) to NERSA for the respective gas transmission and storage facilities concerned.
- For monitoring purposes, this application must be provided on an annual basis, although applicants are allowed to apply for approval of tariffs for a period of several years.

The Energy Regulator will request licensees to submit a tariff application based on their respective preferred methodology that may be chosen from the approved list of tariff methodologies. In addition, NERSA will specify and

³ See *Rex v Beerman and Another 1947 (2) SA 1029 (C) at 1030; De Beers Industrial Diamond Division (Pty) Ltd v Ishizuka 1980 (2) SA 191 (T) at 196D-F; and Phillipson-Stow and Others v Inland Revenue Commissioner [1960] 3 ALL ER 814 (HL)* on the wider meaning of the word ‘regulate’.

publish the preferred sources of information that must be used for tariff calculation input variables. The Energy Regulator will review each tariff application using the same methodology chosen and used by the tariff applicant and any other appropriate information or method for assessing the reasonableness of each application. This means that an applicant may use any of the provided methodologies, and that in the testing of the reasonableness of the application, the Energy Regulator may use the same methodology as well as other approaches. Alternative tariff methodologies or variations on the methods listed in the menu may be used by the applicant, provided that such method is proven, tested and verifiable.

Applicants must provide information regarding the parameters chosen and assumptions made in the tariff calculation, as well as the detailed calculations, for ease of assessment by the Energy Regulator before approval.

It should be noted that this method of ‘monitoring and approving and if necessary regulating’ provides ample room for project finance approaches to tariff determinations, as the main criterion for comparison and assessment is the resultant tariff outcome, not the method used in arriving at such a tariff. Moreover, a discounted cash flow approach is included as an approved methodology in the menu of tariff methodology options.

3.2 Tariff methodology approaches

Licensees or applicants for transmission and storage tariffs will be able to choose the type of tariff methodology they wish to adopt. Below is a list of methodologies that the transmission and storage applicants or licensees can use to submit tariff applications.

3.2.1 *Rate of return regulation*

Rate of return regulation adjusts overall tariff levels according to the company’s efficient level of accounting costs and cost of capital. Rate of return regulation is based on the calculation of the revenue the company will be allowed to earn to cover its efficient operational expenses and to provide a return on its efficient level of investment in capital assets. This can be done for a single year or for a number of years (typically 3 to 5 years where a licensee opts for a multi-year application) or, in the case of new infrastructure, a longer term tariff

formula, logically constrained by the useful economic life of the facility and the licence period (e.g. for 20 to 25 years).

The components of the allowable revenue formula under the rate of return methodology are as follows:

$$\mathbf{AR = (RAB \times WACC) + E + T + D \pm C}$$

Where

AR = Allowable Revenue

RAB = Regulatory Asset Base inflation indexed original cost net of cumulative depreciation and cumulative amortization write-up for the period up to the commencement of the tariff period under review

WACC = Effective Weighted Average Cost of Capital (in real terms)

E = Efficient operating and maintenance Expenses

T = Tax expense

D = Depreciation for the tariff period under review, including Amortisation of the inflation write-up

C = 'Clawback/giveback' factor to correct for differences between actual variable values and the assumptions thereof used in the tariff calculation. This factor is typically applied with a 1 year lag in order for the licensee to submit the audited actual values for assumed values.

The allowable revenue calculated above should be divided by the gas volume projections to determine the tariff for the period. Licensees will need to motivate any gas volume projections lower than the latest actual volumes pertaining to a full year. In the absence of reasonable motivation, the Energy Regulator will accept the latest actual volumes as the minimum volumes or projection for the tariff.

It should be noted that all the components of allowable revenue are discussed in a generic manner in Section 4 of this document to allow licensees to use any of the elements in the methodology of their choice as they deem appropriate. Table 1 on page 17 provides an overview of how these components may be adopted for the various methodologies in the list.

3.2.2 Incentive regulation

Price Caps

An alternative approach for regulation is incentive-based regulation. Incentive-based regulation is aimed at providing incentives for efficiency increases and often involves setting of prices or revenues for a number of years (typically 3 to 5 years) into the future and including in those prices an 'efficiency factor' (a projected decrease in prices or revenues to incentivise the licensee to reduce costs).

Price Cap regulation is usually associated with CPI-X regulatory regimes, where CPI is an appropriate inflation index and where the X factor is an efficiency target.

The components of the price cap formula are as follows:

$$P_1 = P_0 * (1 + (I - X)) + K +/- Z$$

Where:

P₁ = new price

P₀ = current price (and the initial price is set using cost of service approach)

I = a measure of inflation or consumer price index

X = productivity/efficiency adjustment

K = correction factor to adjust for variations between estimated and actual values of variables such as the demand forecast

Z = an exogenous factor considered outside of the licensee's control.

Revenue Caps

An alternative version of incentive regulation is to apply a **revenue cap**, which is designed to provide a certain amount of revenue for the licensee. This is achieved by estimating the allowed revenue required by the regulated business (using the allowed revenue formula). The revenue cap differs from the price cap inasmuch as it provides the

licensee with protection against variations in demand that apply in the price cap. The licensee is generally allowed to earn its allowed revenue regardless of the level of demand.

The components of the revenue cap formula are as follows:

$$R_1 = R_0 * (1 + (I-X)) + K +/- Z$$

Where:

R₁ = Revenue Year 1

R₀= Revenue Year 0 (initial revenue is set using cost for of service approach)

I = is a measure of inflation

X= is a productivity/efficiency adjustment

K= correction factor to adjust for variations between estimated and actual values of variables such as the demand forecast

Z= an exogenous factor considered outside of the licensee's control

3.2.3 Profit sharing and sliding scales

Under profit sharing approaches, the licensee is allowed an appropriate level of profitability (based on the cost of capital approach described in Section 4.7 of this document). Any excess profits or losses relative to the allowed Weighted Average Cost of Capital (WACC) are then shared in pre-determined proportions between customers and the licensees.

The formula for a profit-sharing performance-based methodology will contain the following components:

- a starting point allowable revenue or tariff (established using the rate of return method);
- a performance-based revenue formula to establish allowable revenues in subsequent years that are indexed to some measure of inflation and productivity/efficiency (similar to revenue cap above);
- a mechanism by which allowable revenues or tariffs are adjusted to account for changes in the cost of capital, usually called a 'cost of capital trigger' mechanism;
- some type of revenue or earnings sharing component, whereby

customers and the licensee share the excess of actual revenues over allowable revenues; and

- 'Z-factors' and similar exclusions to account for highly unusual events and costs that are not within the control of the licensee.

3.2.4 *Hybrids of the abovementioned approaches*

Under a hybrid scheme, the regulator combines a price cap or rate of return mechanism with a revenue sharing or other mechanism that uses realised earnings to determine prices. The most common type of hybrid price cap is one where the regulator approves a price cap formula and an explicit earnings-sharing requirement through which any additional earnings are divided between the licensee and customers using a pre-determined formula.

3.2.5 *Discounted Cash-Flow*

The discounted cash-flow approach to tariff calculation is based on the use of project finance-based financial modelling to determine the appropriate tariffs for transmission and storage facilities. Allowable revenue for transmission or storage facilities is calculated based on projected expenditure, capital investment and discount rates using the allowed revenue formula. These allowable revenues are then used in a financial model of the transmission or storage facility's cash flows to assess whether the business is financially sustainable.

This assessment is based on a range of financial performance indicators, for instance whether the transportation or storage business is able to meet a target hurdle rate, i.e. a target range of Internal Rate of Return (IRR), or some target Interest Cover Ratio or Debt Service Cover Ratio (DSCR) in order to attract investment.

3.3 General application

The methodologies outlined briefly above would also require a reward or penalty system as an incentive to maintain or improve licensee service, safety, and customer satisfaction performance compared to established benchmarks.

Licensees or applicants may apply for a tariff for more than one year, logically constrained by the useful economic life of the pipeline or storage facility, depending on the specific circumstances. The period of application notwithstanding, such long-term tariffs will remain subject to monitoring and the other requirements of the Gas Act.

In addition, so-called ‘Z-factors’ are often included to account for highly unusual or exogenous events and costs that are not within the control of the licensee and hence are inappropriate for performance-based regulation.

Lastly, any tariff methodology will be subject to monitoring and evaluation by the Energy Regulator.

4 Components of Allowable Revenue (AR)

4.1 Introduction

Each of the regulatory methodologies considered in Section 3 require the calculation of an allowable revenue for each year under consideration. In this section, the calculation of some of the elements of the allowable revenue, as summarised in the following table, will be discussed.

Table 1: Tariff methodology elements

Methodology/ Component of Allowable Revenue	Rate of Return Regulation	Incentive Regulation	Profit sharing/ Sliding scale	Hybrid	Discounted Cash flows
Efficient O&M expense (Bottom-up)	✓	✓	✓	✓	✓
Flow through tax¹	✓	✓	✓	✓	✓
Straight-line depreciation	✓	✓	✓	✓	✓
TOC for RAB Valuation²	✓	✓	✓	✓	✓
CAPM & Real cost of equity	✓	✓	✓	✓	✓
Real cost of debt³	✓	✓	✓	✓	✓
Real WACC³	✓	✓	✓	✓	✓
Inflation CPI/PPI	✓	✓	✓	✓	✓
Financial Indicators e.g. hurdle rate, DSCR, Interest Cover					✓
Correction Factor	✓ = C	✓ = K	✓ = cost of capital trigger	✓ = pre- determined formula	✓ = financial indicators trigger
Cost of Service for initial P_0/R_0		✓			
Allowable Revenue	✓ = AR	✓ = $P_1 * \text{Volume} = R_1$	✓	✓	✓

Note 1: See section 4.3 for exceptions to use Normalized tax approach; Note 2: See section 4.4 for exceptions regarding 100% TOC versus trending of equity financed portion of asset; and Note 3 see section 4.4 for exceptions regarding applying real Ke on equity funded portion of assets versus use of real WACC on 100% on full asset base.

In order to ensure a systematic approach to tariff approval, the Energy Regulator will use Rate of Return elements in addition to the applicant's chosen methodology to assess the reasonableness of each application. For instance, the standard (i.e. textbook) DCF method does not cater for a clawback calculation or an allowance for funds used during construction. Hence, while an application can be made using the standard DCF for tariffs, NERSA will use elements of Rate of Return regulation to perform reasonableness tests in order to monitor and approve the tariffs.

4.2 The efficient level of operating and maintenance costs (Opex)

4.2.1 Data for monitoring Expenses

The Operating and Maintenance (O&M) cost efficiency analysis will be based on:

- NERSA receiving operating cost projections from the regulated transmission or storage licensee;
- NERSA forming a view as to the efficient level of maintenance and operational expenditure; and
- the revised operating and maintenance costs based on NERSA's view being included in the Allowable Revenue calculation.

Operating and Maintenance cost data for tariff determinations should be provided in a form consistent with that laid out in the Regulatory Reporting Manuals prescribed by NERSA⁴ to facilitate comparisons between actuals and projections over the tariff period. The provided costs should be such that there is a clear separation of storage from transmission activities and between individual pipelines as prescribed. In addition, the following should be noted:

- Allowable expenses relate to all expenses that are incurred in relation to the regulated services. These costs include normal operating expenditure, maintenance (excluding refurbishment costs that must be capitalised), manpower or labour costs, and overheads, as stipulated in the Regulatory Reporting Manuals.
- Operating expenses referred to as 'other costs' must be unbundled.

⁴ NERSA [2008]: Regulatory Reporting Manual Volume 3: Piped-Gas (effective 01 September 2008).

- Litigation costs incurred in the production of income in accordance with South African Revenue Services rules are allowed. The costs of litigation arising from the transgression of laws by the licensee are not allowed.
- Research and development expenses are permitted, subject to adequate justification.
- The following are examples of expenses that may be considered by NERSA as unjustified expenses. NERSA will scrutinise these expenses on a case-by-case basis and consider whether these costs benefit tariff paying customers. The list of expenses is not exhaustive, but are indicative of costs that may not be allowed into the allowable revenue calculation.
 - advertising and sponsorship services; golf day and fair expenses;
 - value adjustment, exceeding the amount of 1% of total operating revenue of the operator;
 - occasional awards;
 - annual awards to the members of the Management Board;
 - costs of life insurance premiums, in the total amount;
 - entertainment expenses;
 - internal representation and publicity expenses;
 - gifts (donations);
 - fines, penalties, compensation for damages and expenses arising from the contract, in the total amount;
 - expenditures such as write-offs of tangible and intangible assets if the subject assets are replaced by new assets entered into the regulated assets; and
 - BEE and other CSR costs.
- The provision for land rehabilitation or decommissioning costs must be applied for and collected separately. These funds must be kept in accordance with section 34(1)(d) of the Gas Act and regulations 11(4) and 11(5), which require licensees to provide for security in respect of rehabilitation obligations.

4.2.2 An approach to determining efficient operating and maintenance costs

To effectively monitor pipeline tariffs on a pipeline-by-pipeline basis or for individual storage facilities, at any point during the lifetime of the facility, NERSA may undertake an assessment of the efficient level of operating and maintenance expenditure by licensees.

The Energy Regulator may use the ‘bottom up’ approach to assess the efficient level of O&M expenses in transmission and storage activities.

The bottom up assessment is typically based on the regulator appointing a suitably qualified expert to review the data provided by the licensee and to conduct interviews with the licensee to identify opportunities for cost reduction.

A top down benchmarking approach to efficiency assessments may also be used to complement the bottom up assessment.

4.2.3 Considerations in efficient O&M expenses

A number of other factors will be considered by NERSA in assessing the O&M expenses incurred by licensees. These include the following:

- Expenses must be prudently and efficiently incurred. In assessing whether the expense was prudently and efficiently incurred, NERSA will consider the following factors:
 - determination if the expenses were arm’s length bargaining;
 - expenses must be legitimate for providing regulated services;
 - the costs should be incurred through efficient company processes;
 - expenses should represent the normal operations of the licensee and may be adjusted for pending increases or decreases; and
 - expenses that will not be allowed by other commissions or authorities.
- NERSA may undertake prudence checks on the efficiency of the expenses, including using the previous year’s actual values as a benchmark. NERSA may also use another internationally acceptable standard to test the reasonableness of the escalation indices to be applied in the following tariff application or period.
- In incentive regulation, such as CPI-X regulation, the X factor is referred to as the efficiency factor. This efficiency factor is likely to be different from a simple target set for O&M expenses reduction for a number of reasons, including that the X factor represents the change in tariff therefore taking into account total efficiency (e.g. capital efficiency as well as O&M expense efficiency); and often the X factor is calculated to smooth the tariff over a number of years,

which does not specifically reflect operating cost efficiency in any particular year.

4.3 Determining TAX (T)

Tax refers to a licensee's estimated tax payable to the tax authority with respect to taxable allowable revenue from the regulated activity for the tariff period under review.

NERSA allows the licensee a choice between the flow-through and normalised tax approaches. However, once a licensee has chosen an approach, it is not permitted to change. However, the flow-through tax approach is the Energy Regulator's preferred tax methodology.

The flow-through (of taxes payable) approach is an approach whereby only current income taxes payable are factored into the allowable revenue and recovered in the tariff during the period under review. In this flow-through of taxes payable method, it is not necessary to provide for future income taxes (deferred taxes), since there is a reasonable expectation that future taxes payable will be included in future costs of service and provided for in allowable revenues at that time.⁵ Thus, in applying the flow-through of taxes payable approach, income taxes payable are estimated for the tariff period under review based on taxable income as opposed to accounting income.

To derive the taxable income (as opposed to accounting income), the licensee is obligated to maximise all eligible deductions for income tax. Differences between the estimated flow-through tax at time of the tariff application and actual flow-through taxes paid will be adjusted through the appropriate +/- correction factor contained in the tariff methodology chosen by the licensee. The formula that will be used to assess the flow through tax is as follows:

$$\text{Tax} = \{(NRBTA)/(1-t)*t\}$$

Where

$$\begin{aligned} \text{NRBTA} &= \text{Net Revenue Before Tax Allowance} \\ &= \{(RAB*WACC) + E + D(\text{historic} + \text{write up}) +/-C\} - \{E + D(\text{historic}) + Kd (\text{nominal})\} \end{aligned}$$

⁵ The taxes payable method of accounting for income taxes is used for tariff setting purposes for Canadian natural gas transmission operations.

T = Prevailing Corporate Tax Rate

Although the flow-through tax methodology is preferred, the Energy Regulator may, upon request, allow a licensee to use the normalised⁶ tax approach under one of the following conditions:

- Where a licensee has been using the normalised tax approach in the past and has obtained approval from the Energy Regulator to continue using this approach. In this case, the deferred taxes are deducted from the Regulatory Asset Base (RAB) because the licensee would have collected the funds necessary to meet its deferred tax liability obligations in its tariff in advance. In addition, the licensee must maintain adequate records for the assets creating the deferred tax liability and the tariff application must include a schedule disclosing the year-on-year deferred tax liability and expected year-on-year reversal of the deferred tax liability until the time that such a deferred tax liability ‘zeros out’.
- Any other licensee wishing to use the normalised tax approach must motivate to the Energy Regulator before using the normalised approach and provide sufficient undertakings that detailed records must be kept as indicated, as well as proof that sufficient funds will be set aside to be available in the later years to pay the taxes when the deferred taxes start reversing.

With regard to the flow-through tax approach, its main advantage is the avoidance of the over-recovery of corporate tax payments by the regulated entity. The extent of the over-recovery can be significant, particularly for major assets that have economic lives extending many decades.

It must be emphasised that the flow-through approach does not take away the tax benefits from an accelerated wear and tear allowance envisaged by the tax authorities. The difference is in the timing. When a company accelerates the depreciation of asset in accordance with tax laws, more depreciation is recorded in the first few years of the asset’s life, and less in the later years of the asset’s life, relative to regulatory depreciation.

⁶ The normalized tax approach is a method in which a licensee collects more revenue from tariff payers to cover its tax obligation early in the life of a depreciable asset than the licensee is obliged to pay in taxes in the early tariff period(s). This arises from the fact that the licensee would ordinarily use a straight-line depreciation method to determine depreciation expenses charged against operating income for tariff making purposes while in contrast, *accelerated* depreciation deductions are permitted by the tax authority for determining corporate income taxes. Deferred taxes for this asset are built up in a deferred tax account, and then drawn down to zero over the asset’s life as lower tax charges during the asset’s early years are followed by higher taxes during its later years. The fundamental aspect of ‘normalization’ accounting is that the deferred tax account must ‘zero out’.

Cumulative tax and regulatory depreciation are generally equal over the course of an asset's life.⁷

The main disadvantage of the flow-through approach is the potential complexity arising from calculating the accelerated depreciation allowances for each of the regulated entity's assets. This calculation, to some extent, would also be required under the notional tax approach for the calculation of the deferred tax assets and liabilities, which are added to/deducted from the RAB. However, deferred tax assets and liabilities are reported separately in statutory accounts, making it possible to obtain these values without detailed calculations.

The advantage/disadvantage of the normalised tax approach is the inverse of the advantage/disadvantage of the flow-through approach described above, i.e. it is simple to administer, but allows for the over-recovery of the taxation allowance in the early years of an asset's life. In addition, given that the tax allowance is calculated with reference to straight line depreciation, the normalised approach allows for a more smoothed tariff profile compared to the flow-through approach.

4.4 Calculating returns – the Regulatory Asset Base (RAB)

The key principle for setting a regulatory asset base value is to ensure that the investment in assets receives an appropriate level of reward to recoup the investment and earn a return commensurate with risk. At the same time, this requires the WACC to be set at an appropriate level for an adequate 'return on capital'. In addition, setting the asset value correctly for the calculation of depreciation is fundamental to ensuring that an appropriate level of funds is available for a 'return of capital' towards the eventual replacement of those assets.

4.4.1 Prudency Assessment

NERSA will perform prudency tests on the investment to be included in the RAB for the tariff determination. Prudency means that the investment is reasonable based on cost-minimisation to avoid

⁷ Edison Electric institute, 2013, 'Comprehensive Tax Reform Priorities: Maintain Normalization Rules', available: <http://www.eei.org/issuesandpolicy/finance/Documents/Maintain%20Normalization%20Rules.pdf>.

unnecessary over investment. When determining prudence, the following assessment will be undertaken:

- The investment is prudent if it was prudent at the time the decision was made. Meaning that this requires accurately assessing what information management had available and used to make its decision.
- The investment is prudent if management acted to minimise cost by fully considering the changing conditions that would affect the investment. This requires assessing what management should have known and should have considered in making this decision.
- Aligned to prudence is the used and useful concepts. Used and useful means that the plant is actually being used to provide a service and that it is contributing to the provision of the service.

4.4.2 Determining the value of the Regulatory Asset Base (RAB)

The value of the regulatory asset base is the inflation-adjusted historical cost or trended original cost (TOC) of plant, property and equipment less the accumulated depreciation at the commencement of the period under consideration plus the net working capital. The following formula may be used to determine the value of the regulatory asset base:

$$\text{RAB} = \text{V} + \text{AFUDC} - \text{d} + \text{w}$$

Where

V = Value of used and usable regulated property, plant, vehicles and equipment at commissioning date, indexed by TOC plus the Allowance for Funds Used During Construction (AFUDC).

AFUDC= Allowance for Funds Used During Construction. This refers to the recovery of costs incurred by a licensee during construction of a licensed facility. It includes the net cost for the period of the construction of the borrowed funds and a reasonable rate of return on funds such as equity, when so used. The amount should not exceed, without the prior approval of the Energy Regulator, allowances computed in accordance with the formula prescribed below

d = accumulated depreciation at the commencement of the tariff period under review

w = net working capital

The trending can be done for the entire asset base if the so-called 'patient equity capital' approach is used. However, if there are assets that are funded by debt, then the licensee can opt to only trend the equity financed proportion of the asset base.

4.4.3 Value of Property, Plant, Vehicles and Equipment (V) using TOC

The value of used and usable property, plant, vehicles and equipment comprises only non-current assets used in the regulated activity.

The RAB must be adjusted for capital additions upon commissioning of the assets concerned. This is the approach used by regulators when capital additions occur infrequently. Should additions occur frequently and in small increments, the RAB on which return for any given year is calculated can be calculated by averaging opening and closing balances: $[(RAB_{t-1} + RAB_t)/2]$.

Inflation adjustments must be based on appropriate inflation indices as approved by the Energy Regulator. The same inflation index CPI used in trending will be applied in adjusting the nominal return on equity/nominal WACC to real rate of return on equity/real WACC and vice versa.

The full asset base will be trended for inflation if the 'patient capital' approach is used. If however the debt is treated as a pass-through, then only the equity-financed portion of the assets is trended, as explained below. Of these two approaches, the 'patient capital' approach is preferred to avoid asset abandonment.

Non-current assets must be calculated for each asset category and added to arrive at the value for V using the TOC valuation method as follows:

- The Starting Regulatory Asset Base (SRAB) will be determined using depreciated original cost. Where original cost does not exist, then the SRAB should be determined as prescribed in the Regulatory Reporting Manuals.
- The SRAB for existing assets determined as explained above becomes the proxy for original cost to be trended for the future.

- In the so-called 'patient capital' approach, the equity investor takes the risk by getting less of its return upfront, but more return later (e.g. from year 8 as per the attached example 1).

In the patient capital approach:

- The equity holder is entitled to full trending of the asset base for both the debt and the equity-financed asset portion.
- The real WACC that combines both debt and equity as per the capital structure financing the asset will be applied to the Trended RAB.
- The real WACC times the total regulatory asset base yields the yearly allowed total return on assets in Rands.
- The inflation factor multiplied by the total regulatory asset base yields the regulatory asset base write-up for inflation (adjustment) to be added to the RAB balance carried forward to the next tariff period.

In the cost of debt pass-through approach, the equity holder has not taken as much risk since the full debt costs are a pass through. Hypothetical debt costs will not be considered in this approach as this would not enable a like for like comparison with the Regulatory Financial Reports. Hence if a licensee opts to use the debt pass through approach, it must use its actual debt profile in the calculations.

Under this approach, the following applies:

- It is required to trend the equity portion only in order to ensure that the equity holder will not benefit from an inflation adjustment or inflation 'write-up' of the rate base with respect to assets financed by debt.
- The equity holder will only be compensated for the inflation to the extent that assets are financed by equity. The real cost of equity (not WACC) will be applied to the trended equity-financed portion of RAB.
- The real rate of return on equity (not WACC) times the equity share of the regulatory asset base yields the yearly allowed return in Rands.
- The inflation factor multiplied by the equity share of the regulatory asset yields the regulatory asset base adjustment (write-up) added to the RAB balance carried forward to the next tariff period.

- In determining the proportion of equity-funded assets to be trended, the capital structure should be representative of the regulated business' risk, and therefore the actual capital structure must be used.
- However, the Energy Regulator may use an 'optimal' or 'deemed' capital structure in order to provide incentives for efficient financing.
- Where debt cost is a pass through, both the interest as well as the difference between depreciation of debt-financed asset and the actual debt principal are allowable as a pass-through in the tariff through a calculation to achieve the desired debt service cover ratio (DSCR).
- The write-up or adjustment is, similar to depreciation, written off or amortised over the useful life of the asset. Prior periods' write-ups will be excluded from the tariff calculation because a nominal rate of return, which included inflation, has already been earned by the licensee.

The Energy Regulator intends to implement this approach based on depreciated original cost or, in the absence of original cost, as prescribed in the Regulatory Reporting Manuals. The annual change in the asset value with this approach is equal to the value of net (expected) new investment during the year.

4.4.4 General provisions

The provisions below provide guidance regarding the treatment of assets in the tariff methodology:

- plant, property and equipment under construction are excluded from the Regulatory Asset Base;
- non-current assets must be used and usable, of a long-term economic lifespan and in a condition that makes it possible to be used in the short term;
- capital expenditure is admitted to the Regulatory Asset Base when the asset concerned becomes used and usable, i.e. is 'commissioned';
- other costs of an extraordinary nature, for example major storm damage repairs not covered by insurance, may be included in the Regulatory Asset Base if the licensee decides to capitalise these costs;

- funds deposited by customers with the licensee are excluded from the Regulatory Asset Base;
 - contributions received in lieu of connection charges representing non-refundable funds contributed by customers are excluded from the Regulatory Asset Base;
 - where a normalized tax approach is applied, the deferred tax collected from tariff payable earlier than the licensee currently must pay in taxes is deducted from the Regulatory Asset Base;
 - leasehold improvement constitutes an investment in a right-to-use property and is admitted to the Regulatory Asset Base;
 - non-current assets expected to become used and usable during the forthcoming tariff period (i.e. one year) are admitted to the Regulatory Asset Base in proportion to the share of the forthcoming tariff period during which they will be used and usable, however if a difference occurs between the expected share of the asset and the actual share of the asset that has become used and usable during the year under review, then a clawback or giveback is made in the year following the submission of the audited financial and regulatory accounts; and
 - plant equipment (spares) held for emergency stores for security of supply (if not already included in working capital) are allowed for inclusion in the Regulatory Asset Base and depreciated at a rate specific to its respective asset class.
- This approach also provides for the classification of the assets used in the Compressed Natural Gas industry, as well as guidance on treatment of Liquefied Natural Gas and distribution assets in the allowable revenue.
 -

4.4.5 Regulatory assets/liabilities

Regulatory assets/liabilities result from a tariff approval decision in a particular period that results in an allowable revenue that differs from the amount that would have been allowable if the full allowable revenue was earned in that same period. See excerpt from the Regulatory Reporting Manuals below:

145 Regulatory Assets

This account shall include the amounts of regulatory-created assets, not included in other accounts, resulting from the ratemaking actions of the Energy Regulator.

The amounts recorded in this account are to be established by those charges which would have been included in net income, determinations in the current period under the general accounting norms are being deferred and to be included in a different period(s) for the purposes of developing rates that the Licensee is authorized to change for its regulated services. The amounts recorded in this account are generally to be changed, concurrently with the recovery of the amounts in rates, to the same account that would have been charged if included in income when incurred.

Regulatory Assets are 'deferred' allowable revenue or income. Hence the licensees should provide the Energy Regulator with a calculation of the allowable revenue according to the chosen methodology (using the estimated volume projection for instance) for the relevant tariff periods, so as to determine the regulatory asset to be raised in the accounts, that will be included in future tariff periods (i.e. over the entire multi-year tariff period). The Energy Regulator may request licensees to defer a portion of their allowable revenue (for instance, this may be deferred investment costs or deferred operational costs) to later years in both multi-year and one-year tariff applications as well, because the licensee will still need to ramp up the volume.

As illustrated by the example shown in Table 2 below, the licensee is entitled to allowable revenue over the lifetime of the asset of a certain value in real terms. If, during the ramp-up of the facility, the actual volumes are lower than average for the lifetime of the asset, the Energy Regulator may request the licensee to defer some of this allowable revenue to a later year in the multi-year tariff period (indexed with inflation) so as to smooth the tariffs and to arrive at a stable real tariff path. This deferred income must be recovered during the multi-year tariff period that the licensee has applied for or in successive tariff applications in the case of a one-year application that is not yet fully ramped up, but the licensee expects to reach full capacity within a foreseeable period in the future.

Table 2: Example

	Year 1	Year 2	Total
Allowable revenue (Rands)	50	50	100
Volume (GJ)	25	75	100
Tariff according to methodology (Rands/GJ)	2.00	0.67	
Adjusted allowable revenue (Rands)	25	75	100
Adjusted tariff (Rands/GJ)	1.00	1.00	

In Table 2 above, the total allowable revenue is R100 over 2 years. The total project volume is 100 GJ, so that in constant terms, R100 must be recovered over 100 GJ, which yields an average tariff of R1. By charging R1 per GJ in year 1, a total of R25 revenue is earned, while a total of R75 is earned in year 2. Half of the allowable revenue is recorded as a regulatory asset in year 1, and a liability of the same amount is raised in year 2. Please note that in the example real values are used for clarity purposes, thereby removing the inflation write-up that would be applied to the year 2 regulatory assets that is part of the adjusted allowable revenue.

A licensee can calculate the levelised cost of the infrastructure and calculate stable tariffs in real terms over a longer time frame. Actual tariffs will be inflated when being implemented.

4.4.6 The treatment of cross-border assets

A cross-border asset is an infrastructure project with activities spanning two or more countries, one of which is the Republic of South Africa, or a domestic infrastructure project that has significant cross-border impact.

The costs of cross-border assets can equitably be allocated on the basis of the 'Beneficiaries Pay' principle. The beneficiary pays principle entails that each country is allocated the share of the costs based on capacity reservation on the asset. This applies to greenfield projects as well capacity additions.

Licensees will be required to provide an assessment of the benefits of the project, and the allocation of costs to the different beneficiaries based on the assessment. In particular, the following is relevant:

- The benefits of the project should be clearly laid out, which may include capacity enhancement, congestion reduction or other benefits. Where possible, these benefits should be quantified, for example, the project will increase the capacity of the transmission pipeline by 1 million GJ per annum.
- The beneficiaries of the project should be clearly identified indicating the benefits and how much of the benefits will accrue to each beneficiary. For example, the beneficiaries of the project are Company X supplying customers in Country X and Company Y supplying customers in Country Y. 50% of the increased capacity has been reserved by Company X and therefore 50% of the capacity has been allocated to Company X.
- The costs of the project should be clearly laid out, including capital expenditure, operational and maintenance expenditure over the technical lifecycle of the project and decommissioning and waste management costs.
- Where significant benefits of the project cannot be quantified but should impact on the cost allocation, NERSA will assess whether the cost allocation is fair and comports to the principle of the beneficiary pays.
- Based on the assessment of the benefits and beneficiaries of the project, the costs should be allocated accordingly.

Documentary evidence detailing the analysis undertaken by the licensee should be provided to support this assessment.

NERSA will treat cross-border asset cost allocation by taking into account the following criteria:

- The investment cost must be prudently and efficiently incurred.
- The cost of the cross-border asset that will be allowed to be included in the RAB of the licensee will be reflective of the capacity reserved for the domestic market. This will ensure that one country does not subsidise the capacity reserved for another country and also ensures fair allocation of cost. For instance the cost of cross-border transmission pipelines with off-takes in both countries involved, would be split according to the capacity reserved for or utilised by each country's off-take. The estimate of the relative use

of the pipeline by both countries must be indicated in the tariff application and may be subject to a clawback/giveback provision in a case of substantial deviation between the estimated and actual usage split. Similarly, in the case of capacity additions to existing cross-border infrastructure, the cost for the additional capacity would be split according to the capacity reserved for or utilised by each country's off-take.

- It is acknowledged that country risk premia differ between countries and this is particularly important for cross-border assets. As many infrastructure assets are in fact interdependent and indivisible in nature, country risk premia applied to the cost of capital will be that of the highest risk-premium country. This will ensure that the allowable revenue component is adjusted to reflect the country risk that the project as a whole is exposed to.
- The decommissioning costs for the asset that is located outside the border of South Africa will be split according to the capacity reserved or utilised between the two countries. This approach is aligned to the treatment of capital costs (RAB) that which gave rise to the need for decommissioning cost. Capital costs including decommissioning costs will be split between countries in proportion to capacity reservation.
- The tax treatment of the cross-border assets will be aligned with the RRM principles and tax laws, including tax treaties. According to SARS, resident companies are taxed on world-wide income and non-residents are taxed on income sourced from South Africa. For cross-border assets that are owned by a South African registered company, the entire tax relating to the asset will be included in the allowable revenue at the South African tax rate. For a non-resident company, only the part of the cross-border asset that caters for capacity that is earmarked for the South African market will be included in the allowable revenue at the South African tax rate and the foreign share will be included at the relevant foreign tax rate. The split of the tax dues will be according to the cost allocation principles applied for.
- Unutilised capacity costs will be allocated pro rata, in accordance with the cross-border cost allocation mechanism outlined above.
- NERSA may conduct a review of the reserved capacity assumptions periodically so that should the capacity reservation profiles change, the costs can be re-allocated.

The underlying principle in terms of cross border assets is to ensure that asset costs are shared fairly between countries in line with benefits accrued and risks faced by the countries involved.

4.4.7 Allowance for funds used during construction

The Regulatory Reporting Manuals provide guidance on the Allowance for Funds Used During Construction (AFUDC).⁸ NERSA's proposed approach as outlined below is consistent with this guidance.

The AFUDC refers to the recovery of costs incurred by a licensee during construction of a licensed facility. It includes the net cost for the period of the construction of the borrowed funds and a reasonable rate of return on funds such as equity, when so used. The amount should not exceed, without the prior approval of the Energy Regulator, allowances computed in accordance with the formula prescribed below.

The costs should have been incurred on a continuous, planned and progressive basis. The Energy Regulator suggests that the licensee inform the Regulator of potential costs prior to the tariff application. Preferably, the applicant should state the costs when the application for a construction licence is submitted.

The formula and elements for the computation of the allowance for funds used during construction shall be the approved weighted average cost of capital multiplied by the sum of the following:

- average balance in construction work in progress (CWIP);
- plus average capital inventory balance;
- less construction accounts payable; and
- less asset retirement costs (if included in the CWIP).

The weighted average cost of capital rate shall be determined in the manner indicated and approved by NERSA for the applicable year. The resulting amount should be added to the allowable revenue. The AFUDC may, if so directed by the Energy Regulator, be prorated over the appropriate depreciable plant accounts.⁹

⁸ NERSA. 2008. Regulatory Reporting Manual Volume 3: Piped Gas, pg. 15-16

⁹ NERSA. 2008. Regulatory Reporting Manual Volume 3: Piped Gas, pg. 19

The formula for the AFUDC is calculated as follows:

$$\text{AFUDC} = \text{WACC} \times [\text{Average CWIP} + \text{Average capital inventory balance} - \text{Construction accounts payable} - \text{Asset retirement costs}]$$

Where:

WACC = Weighted Average Cost of Capital

Average CWIP = $\{(\text{Opening CWIP balance} + \text{Closing CWIP balance})/2\}$

Average capital inventory balance = $\{(\text{Opening balance} + \text{Closing balance})/2\}$

As the definition of the RAB includes the AFUDC value, it should not be multiplied by the WACC in isolation, but the amount over which the allowance may be earned must be added to the RAB, after which the WACC * RAB value is calculated over the entire value of the RAB including the amount for the AFUDC.

The Energy Regulator will consider the following rules in deciding whether to allow the AFUDC to be included as part of the allowable revenue:

- For AFUDC to be allowed, the licensee should demonstrate to the Energy Regulator's satisfaction that the capital expenditure on the project has been incurred and that the activities required for construction completion of the assets are in progress.
- The activities allowed under AFUDC exclude a return on funds used during the preliminary survey and investigation activities required to prepare the construction project for its intended use, unless they are capitalised in accordance with acceptable accounting principles.
- Capital expenditures must have been incurred prudently.
- The company must also retain the records supporting the commencement of AFUDC accruals.
- Piped-gas companies must show that the 'activities', that are necessary to get the construction project ready for its intended use are in progress.
- No AFUDC should be accrued during periods of interrupted construction unless the company can justify the interruption as being reasonable under the circumstances. Capitalisation of AFUDC stops when the facilities have been tested and are placed

in, or are ready for, service. This would include those portions of construction projects completed and put into service although the project may not be fully completed.

- When only part of the plant or project is placed in operation or is completed and ready for service, but the construction work as a whole is incomplete, that part of the cost of the property placed in operation or ready for service, shall be treated as a gas plant in service and AFUDC as a charge to construction should cease. AFUDC on the part of the cost of the plant that is incomplete may be continued as a charge to construction until such time as it is placed in operation or is ready for service.
- No AFUDC will be included for projects where a 100% contribution has been received up front on a direct assigned project. For those projects where contributions are received up front and no AFUDC is calculated, the contribution would be included in the rate base in the same period as the asset.
- The AFUDC accruals will be subject to scrutiny through audit as well as during the tariff application. Once the project is completed and commissioned, the AFUDC accruals have to cease.

4.5 Depreciation (d) and amortisation

Accumulated depreciation is the cumulative depreciation against plant property, vehicles and equipment in service. It is calculated on a straight line basis over the economic life of the asset. Depreciation can be calculated on the historical (original) cost of the asset. The inflation write-up from the trending of the asset value is treated in a similar manner to the depreciation of the historical cost and amortised over the remaining economic useful life of the asset.

4.6 Net Working Capital (w)

Net working capital refers to various regulatory asset base funding requirements other than utility plant in service. These funding requirements include inventories, prepayments, cash working capital and other non-plant operating requirements. Working capital funded by investors may be included in the regulatory asset base.

The following formula may be used to determine net working capital:

Net working capital = inventory + receivables + operating cash – trade payables

The calculation method for inventory should be consistent with that included in the Regulatory Reporting Manuals.

Operating cash refers to the amount of investor-supplied funds needed to finance operations. This is finance to bridge the gap between the time expenditures are made to provide service and the time collections are received for that service. It is the cash supplied by investors to finance operating costs during the time lag before revenues are collected. Measurement of the required operating cash must be based on the licensee's standard practice subject to a maximum 45 days' operating expenses, excluding depreciation. To claim a provision for operating cash for more than 45 days, the licensee must submit a lead-lag study demonstrating the difference between receivables and payables.

Receivables refer to current assets for which the amount to be received is usually known and is to be included in the net working capital calculation, based on an amount for between 30 and 45 days.

Trade payables refer to current liabilities for which the amount to be settled is usually known and is to be included in the net working capital calculation to a maximum of 45 days.

The Energy Regulator will expect licensees to observe optimal working capital management practices such as timely collections and minimizing uncollectible (bad debts) and abnormal inventory losses/unaccounted for gas in accordance with international standards.

4.7 Weighted Average Cost of Capital (WACC)

The weighted average cost of capital is the average of the cost of equity and debt, weighted by the proportions of equity and debt that an efficiently financed company can be expected to use to fund its activities. Hence, to determine the WACC, it is necessary to determine the cost of debt and equity and the proportions of debt and equity that would be employed in an efficiently financed company.

As providers of equity and debt are interested in the post-tax returns available to them, when determining the allowed revenues and tariffs, NERSA must allow not only for the post-tax WACC return, but must also allow for corporate taxation

that will be incurred by the regulated company. Since the tax treatment of debt (deductible as a cost) is different from the tax treatment of equity (not deductible as a cost), the allowed revenues to fund taxation will be a function of the proportions of debt and equity that would be employed by an efficiently financed business.

Pipeline and storage companies will be expected to submit their WACC expectations based on evidence regarding the cost of debt and the cost of equity. Internationally recognised approaches to the calculation of cost of debt and the return on equity should be used. For example, the Capital Asset Pricing Model (CAPM) can be used for the cost of equity.

Besides CAPM, a licensee is allowed to opt for the use of any other internationally accepted methodology to estimate the cost of equity, provided that such methodology must be supported by expert testimony from credible financial sources. Quotations or estimates from different lenders could provide further justification.

The following formula is used to determine the WACC using CAPM:

$$\text{Post-tax WACC} = \left[\left(\frac{E}{Dt + E} \right) * Ke + SSP \right] + \left[\left(\frac{Dt}{Dt + E} \right) * Kd \right]$$

Where:

E = Equity

Dt = Debt

Ke = the Cost of Equity in terms of the Capital Asset Pricing Model (CAPM)

SSP = Small stock premium is calculated based on the approach outlined below

Kd = is the post-tax rate of return on Debt capital

CAPM is the preferred approach as it is the most common methodology in the determination of cost of capital.

However, if CAPM is considered to be inappropriate, applicants have the option to submit an application based on any other internationally recognised and used cost of capital approaches. Companies are expected to provide a rationale for the approach used, and this will be assessed by NERSA on a case-by-case basis.

When tariffs are considered by NERSA, the tariff level will be set to ensure that appropriate levels of financial indicators will be met, based on prevailing financial market conditions and best practice.

If the CAPM is adopted for the calculation of WACC, one of the key components that will need to be estimated is Beta, which will be discussed below.

As much regulatory certainty can be provided by narrowing down the range of acceptable input variables, NERSA will publish preferred sources of information for the key input variables discussed in the remainder of this section. These sources of data will be subject to stakeholder comment and will be determined and revised by the Energy Regulator from time to time.

Cost of equity

The cost of equity is the rate of return available on alternative equity investments of comparable risk. In the WACC formula, it is calculated as:

$$K_e = r(f) + \beta(e) * MRP$$

Where

r(f) = The risk-free rate

It represents the return an investor can achieve on the least risky asset in the market, i.e. government bonds. In particular, the spot prices of South African government bonds with a maturity of at least 10 years should be used for the expected risk free return when estimating the cost of equity.

$\beta(e)$ = The equity beta

This measures the covariance between the return on the firm's equity and the returns from the stock market as a whole. Beta is an important parameter calculated by the regulator, and more details on its calculation are provided below.

MRP = The market risk premium

This represents the additional expected return investors require to invest funds into equities rather than risk-free instruments. It should be calculated using the arithmetic

mean of the returns on the Johannesburg Stock Exchange All Share Index for a period of 30 years.

The NERSA-preferred sources of information for input variables, to be determined from time to time, will provide clarity on the appropriate sources to be used for $r(f)$, $\beta(e)$ and MRP.

Beta

Beta (β) is the systematic risk parameter for regulated entities providing transmission and storage. The methodology to be used to determine the beta is set out below:

For licensees that are not publicly listed and where there are insufficient publicly listed competitors, the equity beta must be determined by proxy. International pipeline companies can be used as a proxy for gas transmission and storage licensees. Licensees supplying compressed natural gas can use international compressed natural gas companies as well as those supplying compressed natural gas for use in vehicles as proxies. The companies used as proxies by licensees should be listed on stock exchanges. A total of six international companies should be used to determine the equity beta. The companies included as proxies need to be approved by NERSA. Licensees can calculate the beta based on the weekly previous two years data. The beta will be applied for the duration of the tariff period.

To make adjustments for differences in gearing between the proxy and the licensee, the process involves 'unlevering' and 'relevering' as follows:

- obtaining the equity beta for the proxy company;
- unlevering the beta of the proxy company by the gearing level of the proxy company (this unlevered beta is known as the 'asset beta');
- calculating the weighted average of the asset betas for the chosen proxy companies; and
- relevering the average asset beta by the (optimal) gearing expected of an efficiently financed licensee to fund its licensed activities.

The following steps and formulae must be used:

Step 1 – Calculate asset beta (or unlevered beta) for proxy firm

The following formula must be used to determine the asset beta:

$$\beta_{a1} = \frac{\beta_1}{1 + [1 - Tr] * \left[\frac{D}{E} \right]}$$

Where:

β_{a1} = asset beta for proxy company 1

β_1 = beta of proxy company 1

Tr = tax rate of relevant country

D = debt

E = equity

Repeat step 1 for each of the six chosen proxy companies.

Step 2 – Calculate weighted average asset beta of proxy companies

Weight each of the six proxy firm asset betas by their proportion of the total debt plus equity of the six proxy firms and sum the six results using the following formula:

$$\beta_{aE} = \sum_{n=1}^6 \left[\left(\frac{(D + E)_n}{\sum_{n=1}^6 (D + E)_n} \right) * (\beta_a)_n \right]$$

Where:

β_{aE} = weighted average asset beta of the regulated entity

$(D + E)_n$ = sum of the debt and equity for a specific proxy company

$(\beta_a)_n$ = asset beta of the corresponding specific proxy company

$\sum_{n=1}^6 (D + E)_n$ = sum of debt and equity for all proxy companies

Step 3 – Calculation of beta (β) for licensee

The following formula must be used to determine the beta for the licensee:

$$\beta_L = [WA \beta][1 + (1-t)(D/E)]$$

Where:

B_L = beta for the licensee

WA β = the weighted average β of the proxy firms asset betas from Step 2. The Energy Regulator may adjust this factor to take account of a difference in country risk ratings between the host country of the proxy firms and South Africa.

t = tax rate of the licensee

Dt = the debt of the licensee subject to a minimum gearing level of 30%

Eq = the equity of the licensee

Cost of debt

The actual cost of debt (interest charges) incurred by the licensee must be used for K_d and for the calculation of the WACC (both real or nominal as appropriate), subject to the Energy Regulator finding it reasonable through the application of reasonableness tests.

The cost of debt is calculated as:

$$\underline{K_d = K_{d_{pre-tax}} * (1 - t)}$$

Where:

K_d = is the post-tax rate of return on debt capital

K_{d_{pre-tax}} = is the pre-tax rate of return on debt capital

t = is the corporate tax rate

Where actual interest rates are not known (for example where the interest rate fluctuates), the lender's estimate of interest rates for the forthcoming tariff period must be used.¹⁰ At the end of the tariff period, the actual interest rates achieved must be compared with the estimated interest rates used in the tariff application and any adjustment necessary must be made in the Allowable Revenue in the subsequent year of the tariff period (i.e. the clawback/giveback adjustment to be calculated using the audited financials and regulatory reports).

Where the licensee has business activities that are not regulated by the Energy Regulator and the licensee raises corporate debt, the actual cost of debt

¹⁰ Tariff applicants must provide the estimates made by their lenders in writing.

charged to the regulated activities must fairly reflect the risks of those regulated activities as prescribed in the RRM and approved by the Energy Regulator in the Cost Allocation Manual.

The cost of debt is based on the pre-tax rate of return on debt capital. Pre-tax cost of debt is rated before deducting the South African corporate tax.

Gearing

When calculating the cost of capital, regulators make assumptions on the gearing level of the regulated companies. Typically, an assumption is made based on an 'optimal' level of gearing that an efficient company would be expected or deemed to have, rather than on the actual level of gearing of the licensee.

The Energy Regulator will use actual gearing ratios as submitted by the applicant, subject to motivation of its reasonableness. Infrastructure finance experience suggests however that at least 30% debt is a reasonable minimum gearing. NERSA will continue using the 30% minimum gearing requirement to ensure optimal gearing levels of regulated entities.

Premia included in the WACC formula

A number of different premia could be included in the WACC formula to adjust the return to account for additional risks over and above that already factored into the Beta and MRP. The Energy Regulator will only consider allowing premia to be included in the WACC if the costs associated with the additional risk are not catered for elsewhere in the Allowable Revenue formula. The following principles will be applied by NERSA in determining whether to allow a premium to be added to the WACC:

- A small stock premium is an adjustment to the CAPM to account for the other risks associated with small companies that the model does not address. Some of the risks that have been cited in the literature include the often-concentrated ownership of small companies, which may imply that investors are not well-diversified; asymmetries of information between small companies and potential investors results in these companies being more difficult to value and hence may be perceived as riskier; small companies may not have access to significant resources to endure external economic shocks and shares issued by small companies tend to be more illiquid than shares issued by large companies (due to higher

transaction costs). Generally, regulators that have awarded a premium have done so due to the relative illiquidity of capital in small companies compared to large ones. As these measures are largely subjective, NERSA's approach for awarding a small stock premium will be based on the size of the licensee as explained below:

- This premium is allowed for all companies that fall into the size bands for which small stock premiums are allowed by practitioners as noted in the latest available PwC Valuation Methodology Survey.¹¹ The size of the company should be based on the total value of the assets for the regulated activity of the licensee (covering all countries in which the regulated entity has assets relating to the regulated activity). For trading companies the Energy Regulator may consider the level of turnover as a benchmark for size. The awarded premium should be the average used by practitioners surveyed in the PwC survey for the particular company size band applicable to a particular licensee. The small stock premium should be added to the cost of equity component of the post-tax WACC calculated based on the approach outlined above.
- A liquidity or marketability adjustment is generally applied to an equity valuation in which a firm's value is discounted to reflect a risk associated with illiquidity of the firm's assets. The Energy Regulator will not permit a liquidity premium to be added to the cost of equity portion of the WACC for any licensee whether a small stock premium is applicable or not. Given the relationship between a liquidity risk premium and the small stock premium, awarding both a small stock premium and liquidity premium would result in double counting in correcting for illiquidity.

Adjusting the WACC for assets located in another country

Where a portion of the Regulatory Asset Base is located in another country and where that country has a country risk rating that is different from South Africa's country risk rating, then the WACC may be adjusted to take into account the difference between these two countries' risk ratings if the costs associated with that risk are not catered for elsewhere in the Allowable Revenue formula. The adjusted WACC will apply to that portion of the Regulatory Asset exposed to that risk. The WACC may be adjusted by adding the Country Risk Premia to the Cost of Equity to account for this additional risk.

¹¹ As at the date of publication of this document, the latest available survey is for 2016/2017.

4.8 Financial Indicators

Financial indicators used in a tariff methodology may include *inter alia* the interest cover ratio and the internal rate of return (discount/hurdle rate).

Interest cover ratio

The interest cover ratio is estimated by dividing the earnings before interest and taxes by the interest expense. i.e.

$$\text{Interest Cover Ratio} = \text{EBIT/Interest Expense}$$

EBIT stands for Earnings Before Interest and Tax and the Interest Expense is the total cost of borrowing in a given tariff period as determined by applying the annual percentage rate on the qualifying debt.

Internal rate of return

Internal rate of return (IRR) is a rate of return (discount rate) on an investment (project) that will give a net present value of zero. The IRR for a project will be selected at a value that meets a set target cost of capital (known as the hurdle rate). The hurdle rate is therefore an investor's set minimum acceptable required rate of return for making an investment.

4.9 Correction Factor or Clawback/Giveback

Under incentive regulation, the following applies:

- **K=** correction factor. This is a factor to adjust for variations between estimated and actual values of variables, such as the demand forecast.

Under Hybrid regulation the following applies:

- Pre-determined **earnings-sharing formula**. The licensee can propose an appropriate earnings-sharing formula to the Energy Regulator. For example, using a rate of return formula with an explicit earnings sharing requirement via which any additional earnings are divided between the licensee and customers.

Under Profit sharing/Sliding Scale the following applies:

- **Cost of capital trigger mechanism.** This is a mechanism by which allowable revenues or tariffs are adjusted to account for changes in the cost of capital. There will be some type of revenue or earnings sharing component, whereby customers and the licensee share the excess of actual revenues over allowable revenues.

Under Discounted Cash Flow the following applies:

- **Financial indicators triggers.** This involves a mechanism by which allowable revenues or tariffs are adjusted to account for the variance from a target range of the hurdle rate or specific financial indicator.

Clawback/Giveback principles

The main purpose of applying a clawback/giveback adjustment is to ensure that the licensees do not gain or lose out from differences emanating from the forecasts and assumptions used at the time of submitting the tariff application and the actual values achieved as contained in and proven by the audited financial statements and regulatory reports. When an over-recovery has occurred due to estimation errors, a commensurate downward adjustment will be made to the allowable revenue of the first tariff period following the submission of audited financial statements (a 'clawback/giveback'); when an under-recovery has occurred, a commensurate upward adjustment will be made to the first year's allowable revenue subsequent to the submission of audited financials.

Any differences between the reason for decision (RfD) values and actual values must be recorded in the regulatory deferral accounts as provided for in the Regulatory Reporting Manual.

Only the audited financial statements and regulatory reports shall be used to determine clawback or giveback calculations.

The following principles will be applied by NERSA in determining the clawback/giveback required. These principles are applicable to all methodologies, where appropriate:

- For all tariff applications, whether for single- or multi-year tariffs, the over/under recovery shall be given/clawed back in the financial year directly following the submission of the audited financial reports (in

practical terms, this is a one-year lag, as the clawback/giveback from year 1 will be applied to the allowable revenues of year 3).

- In order to compensate for the time value of money, the clawback/giveback will be corrected for inflation. In practical terms, the under- or over-recovery from year 1 will be adjusted for the estimated CPI of year 2, and added to the allowable revenue of year 3. For example, if the under-recovery is 100 in year 1, and inflation is determined to be 5% in year 2, the allowable revenue of year 3 will be increased by 105. Note that this will be applied in the same fashion for over-recoveries. In order to encourage accurate estimates, the inflation adjustment is calculated over one tariff period only, and not further inflated for inflation that occurs in year 3.
- The clawback/giveback will be implemented in full in the subsequent year of the tariff period, unless extraordinary circumstances, such as an exogenous economic shock or force majeure events occur, in which case the Energy Regulator may decide to spread the tariff adjustment over several years.
- Non-submission of the audited financial reports within six months of the finalisation thereof will result in a forfeit of an upwards tariff adjustment, where warranted.
- For multi-year tariff applications, the actual data will replace the assumed variables.
- Should the Energy Regulator apply a multi-year clawback/giveback spread, this will be corrected for inflation. The text above applies *mutatis mutandis* for multi-year clawbacks/givebacks.
- A clawback/giveback will only be permitted on the following assumptions:
 - Volumes: Variances between the forecast and actual sales volumes shall be assessed and analysed to determine the cause of the variance. The Energy Regulator will use the audited regulatory financial reports as the source for the actual volumes.
 - Regulated Asset Base: The Energy Regulator will use the audited financial statements and regulatory financial reports to assess the capital expenditure variances. The Energy Regulator will further assess whether the capital expenditure was prudently incurred.
 - Operating & Maintenance Expenses: Any differences in the operating and maintenance expenses emanating between the assumptions used at the time of submitting the tariff application and the actual values contained in the audited financial statements and regulatory reports will be included as part of the clawback/giveback. Only efficient and prudently incurred costs will be included in the

clawback/giveback. The Energy Regulator will be guided in its assessment of whether costs were prudently incurred by the principles outlined in the section of these guidelines relating to operating and maintenance expenses.¹²

- Return on Capital: The return on capital is made up of a return on debt and a return on equity. The latter is based on the WACC and CAPM. The Energy Regulator will permit a clawback/giveback based on the difference in the cost of debt, which will be based on the values contained in the audited financial statements and regulatory reports. A clawback/giveback on the return on equity will not be permitted as the return on equity is based on historical values, not predicted values.
- Calculation errors: The Energy Regulator will not permit a clawback/giveback on calculation errors regarding the cost of equity made by the licensee in its tariff application.
- The actual adjustment (whether clawback or giveback) will be determined by the Energy Regulator, taking the net result of all relevant variable adjustments into account.
- In order to provide regulatory certainty and predictability, NERSA will apply a rules-based system, utilising its discretion where appropriate and based on reasons, facts and evidence, to determine each case on its merits.

4.10 Cost of Service for initial P₀/R₀

The components of Cost of Service for the initial price and revenue (P₀/R₀) are the same as those listed under the rate of return methodology as defined in Section 3.2 above.

4.11 The determination of tariffs for liquefied natural gas terminals and related facilities

Currently, NERSA's mandate does not extend to the 'monitoring and approval' of regasification tariffs. In order to provide certainty and predictability to potential investors in Liquefied Natural Gas (LNG) terminals and related facilities and support the South African Government's proposed Gas-to-Power programme, NERSA provides the following guidance on the methodology for a licensee to determine reasonable and equitable tariffs for LNG terminals and related facilities. Applicants for the construction or operation of regasification facilities

¹² In determining whether the expense was prudently incurred, the Energy Regulator will be guided by the definition and principles discussed in the section on operating and maintenance costs.

will be expected to provide their financial model in the context of the requirements to demonstrate the viability of the proposed facility, which should contain the projected regasification tariffs.

NERSA's approach will be guided by the following principles:

- licensees should be able to recover all efficient and prudently incurred investment and operational costs, and make a profit commensurate with risk; and
- tariffs for services should be cost reflective and non-discriminatory, except for objectively justifiable and identifiable differences.

Licensees can use any of the five approved tariff methodology approaches outlined in the guidelines to calculate the tariffs for the LNG terminals and related facilities. The guidance regarding the calculation of the components of allowable revenue can also be used by licensees to determine tariffs for LNG facilities and services. The formula to be used for calculating the allowable revenue for the LNG activities is:

$$AR = (RAB \times WACC) + E + T + D \pm C$$

The elements will have the same definitions as defined above.

4.12 The determination of tariffs for distribution

Currently, NERSA's mandate does not extend to the 'monitoring and approval' of distribution tariffs. In order to provide certainty and predictability to the gas industry and in anticipation of amendment to be made to the Gas Act when providing the necessary mandate, NERSA provides the following guidance on the methodology to determine tariffs for distribution.

NERSA's approach will be guided by the following principles:

- licensees should be able to recover all efficient and prudently incurred investment and operational costs, and make a profit commensurate with risk; and
- tariffs for services should be cost reflective and non-discriminatory, except for objectively justifiable and identifiable differences.

Licensees can use any of the five approved tariff methodology approaches outlined in the guidelines to calculate the tariffs for the distribution. The guidance regarding the calculation of the components of allowable revenue can

also be used by licensees to determine distribution tariffs. The formula to be used for calculating the allowable revenue for distribution is:

$$AR = (RAB \times WACC) + E + T + D \pm C$$

The elements will have the same definitions as defined above.

4.13 The determination of tariffs for Compressed Natural Gas

Currently, NERSA regulates the storage and transportation of Compressed Natural Gas as 'mobile' storage. The Gas Act clearly states that Compressed Natural Gas falls under the definition of 'gas' and, as long as the process involves a gas pipeline in the value chain, it is considered 'piped-gas' and therefore its tariffs and maximum prices are regulated by NERSA. It is noted that Compressed Natural Gas that originates from a landfill or other facility that does not involve a pipeline is currently not considered piped-gas.

For compressed natural gas facilities licensed as mobile storage, NERSA's approach to the assessment of tariffs will be guided by the following principles:

- licensees should be able to recover all efficient and prudently incurred investment and operational costs, and make a profit commensurate with risk; and
- tariffs and trading margins for services should be cost reflective and non-discriminatory except for objectively justifiable and identifiable differences.

Licensees can use any of the five approved tariff methodology approaches outlined in the guidelines to calculate the tariffs for Compressed Natural Gas facilities. The guidance regarding the calculation of the components of allowable revenue can also be used by licensees to determine tariffs for compressed natural gas facilities and services. Alternatively, the assets and costs of the Compressed Natural Gas facilities can be included in the trading margin as assets and operational costs, this approach will be allowed on application and on a case by case basis.

The formula to be used for calculating the allowable revenue for the activities is:

$$AR = (RAB \times WACC) + E + T + D \pm C$$

The elements will have the same definitions as defined above.

5 Assessment of Tariffs

5.1 Introduction

In this section, the process that will be followed by NERSA to monitor and approve proposed tariffs is described.

5.2 Approach of testing tariff proposals

NERSA may choose to use any reasonable comparator to the tariff applied for by the applicant. In principle, the methodology used by the licensee will be used to ensure a comparison of like with like and to achieve consistent and objective decision-making. In addition, NERSA may use additional information; alternative methodologies; or rely on expert views.

Further, the Energy Regulator intends to specify the preferred sources of information that may be used for tariff calculation input variables. The published sources of information will include the following:

- Historical equity/stock returns for determining Market Risk Premium;
- Historical RSA government bonds returns;
- Risk-free rate (R_f) expectations;
- Tax rate;
- Beta benchmarks of proxy companies including adjustments thereof;
- Historical Consumer Price Index and Producer Price Index data; and
- Consumer Price Index and Producer Price Index expectations.

The intended publishing of sources of data is aimed at addressing the need for clearly defined input factors and stakeholders' requests that each input element be reviewed and approved on a regular basis.

In addition, an applicant retains the option to use data from a source different from the list of preferred sources for input variables, in other words, the preferred sources are not an exclusive and exhaustive list. However, before using such data, it must be approved by the Energy Regulator after the due process is followed.

Moreover, an applicant or licensee may submit an application for an amendment of these guidelines should a strong preference for an alternative methodology occur. In the event of such application, the Energy Regulator will consider the request to include an additional methodology after the due process is followed.

The above implies that the Energy Regulator will request licensees to submit tariff applications based on their preferred methodologies using the Energy Regulator's published preferred sources of information. The Energy Regulator will perform the comparison test on each tariff application and may request a licensee to provide evidence of the calculation of specific elements in the tariff application.

Any deviation from the tariff calculated by the Energy Regulator will be dealt with on a case-by-case basis. The Energy Regulator is not able to set a 'maximum deviation allowed' as requested by stakeholders as this would constitute prejudging of individual cases and would encourage speculative applications.

The following objectives will be followed in testing tariff proposals:

- promote the efficient, effective, sustainable and orderly development and operation of gas transmission and storage facilities;
- promote the provision of efficient, effective and sustainable transmission and storage services;
- facilitate investment in gas transmission and storage;
- ensure the safe, efficient, economic and environmentally responsible transmission and storage of gas;
- ensure that gas transmission and storage services are provided on an equitable basis and that the interests and needs of all parties concerned are taken into consideration;
- promote the development of competitive markets for gas and gas services;
- facilitate gas trade between the Republic and other countries; and
- promote access to gas in an affordable and safe manner.

In practice, this requires a delicate balance to be struck between facilitating investment and the requirement that 'the interests and needs of all parties concerned are taken into consideration'. The desired outcome should be one that results in tariffs that are sufficiently high to promote access to gas in an affordable manner as well as to promote investment while not preventing the development of gas markets.

5.3 Regulatory financial reporting and data requirements for regulation

To effectively monitor and approve tariffs on individual pipelines and storage activities or facilities will require licensees to develop financial and operating data for both the business plan (prospective) and regulatory returns

(retrospective submissions) for each gas transmission and storage facility. This approach is described as accounting separation for regulatory reporting purposes and will be a key requirement for implementing a monitoring methodology for gas transmission and storage.

For this purpose, NERSA has developed the Regulatory Reporting Manuals. The Manuals prescribe the format in which financial data, facilitated by a cost allocation manual, must be submitted to the Energy Regulator. Key aspects of appropriate accounting separations are:

- that only the costs related to the specific activity are attributed to that activity; and
- that vertically integrated businesses must be managed separately with separate accounts and data, with no cross-subsidisation between activities/facilities.

The regulatory reporting data and projections are required by NERSA for tariff monitoring purposes regardless of which tariff methodology or which tariff structure is adopted by licensees.

5.4 Indexation of the tariffs

Tariffs must be adjusted or indexed on an annual basis only, unless there are compelling circumstances that must be approved by the Energy Regulator.

6 Common Approaches to Tariff Structuring

6.1 Introduction

This section of the tariff methodology is not intended to be prescriptive, but aims to provide an overview of typical approaches to tariff structuring. Licensees are able to choose the tariff structure most appropriate to their particular circumstances, within the confines of the tariff principles outlined in section 2.

Below are the common approaches to tariff structuring. In particular, these concentrate on the geographic dimension of the tariff structure, namely:

- full-distance pricing;
- entry/exit pricing; and
- postal pricing.

6.2 Geographic dimension of tariff structure

6.2.1 *Full-distance pricing*

Full-distance-related pricing is the calculation of tariffs (for both capacity and volume) for individual pairs of entry and off-take points. The tariffs will reflect the distance between the off-take point and the point where gas was delivered into the pipeline system (the entry point). It will be necessary to calculate a tariff for each entry and off-take point, based on the distance between the off-take point and each entry point.

Where the configuration of the pipeline system is complex (i.e. there are many interconnections) and there is a large number of off-take points, full distance pricing may be complicated to develop and impracticable to administer and maintain.

6.2.2 *Entry/exit pricing*

Entry/exit pricing is a simplified approximation of full-distance pricing. Off-take points are grouped according to their location – the Exit Zone. Tariffs (both capacity and volume) are set for each Exit Zone. The tariff for the off-take point is then determined according to the Exit Zone in which it is located.

In addition, tariffs will be set for the transmission of gas from the point at which it is delivered into the system – the Entry Point – to the Exit Point. The Entry Point may be an import terminal, processing or storage facility or regasification plant.

The high-pressure system may be divided into regions, with staging posts along its length. The customer will be charged the tariff applicable for each leg of the pipeline system through which gas is transported. A variant of this tariff structure is the use of a nodal system, where congestion at certain points in the system can be priced accordingly.

6.2.3 *Postal pricing*

Postal pricing is a system in which each off-take point in a particular region is charged a flat rate, irrespective of its capacity, the distance gas is transported or any other characteristics, similar to a postage stamp system.

Postal pricing has the advantage of simplicity, although it may be less suitable for a regulated environment, as it does not fully reflect costs associated with gas transportation over specific distances.

6.3 Approach to calculating the level of cost based tariffs

Gas pipelines can, within certain geographical limits, be considered as natural monopolies. In the absence of competition, the objective of regulation is to ensure that tariffs will be closely related to the costs of providing gas storage or transmission services. The first step, therefore, in approving tariffs, is to define the costs that are to be recovered through tariffs.

The approach preferred by the Energy Regulator for calculating the level of cost-based tariffs is the average accounting cost (also known as fully allocated cost) approach. The fully allocated cost approach is prescribed in the Regulatory Reporting Manuals.

6.3.1 *Average accounting cost (or Fully Distributed Cost)*

Definition

The average accounting cost (AAC) method is based on the allocation of total costs of operating the system to different storage or transmission services and then expressing these as an average unit cost. This approach is also known as 'fully distributed cost'.

For each service, the allocated costs may be further segregated according to the cost drivers. The cost drivers will include fixed and distance-related elements:

- distance (or geographic zone);
- seasonality;
- load factor (i.e. the ratio of average daily demand to peak day demand); and
- volume.

Average tariffs may then be calculated for each service and cost segment.

Issues for developing AAC tariffs

The development of tariffs on this basis requires a detailed understanding of the costs associated with each service.

Unbundling of accounting information is required to support this approach. The number of services identified depends on the degree of unbundling that is adopted.

It is generally accepted that the higher the number of services to which costs are allocated (and hence the higher the degree of unbundling) the more correct the economic signals given by the tariffs.

Section 21(1)(c) of the Gas Act provides that the gas transmission, storage, distribution, trading, liquefaction and re-gasification, activities of vertically integrated companies must be managed separately with separate accounts and data and with no cross-subsidisation. Hence



NATIONAL ENERGY REGULATOR OF SOUTH AFRICA

In the matter regarding

The Methodology to Approve Maximum Prices of Piped-Gas in South Africa

THE DECISION

On 15 April 2020, the National Energy Regulator of South Africa approved:

1. the Methodology to Approve Maximum Prices of Piped-Gas in South Africa; and
2. the Reasons for Decision on the Methodology to Approve Maximum Prices of Piped-Gas in South Africa.

Contents

1.	Applicable law	3
2.	Background	3
a.	Determination of inadequate competition in the relevant piped-gas markets	4
b.	The Piped-Gas Regulations, April 2007 (GG No 29792 of 20 April 2007)	6
c.	Determining the trading cost	7
3.	Reasons for the review and legal mandate	8
a.	The role of NERSA in approving maximum prices.....	9
4.	Determination of the maximum price	17
a.	Determining the weights in the formula.....	17
b.	Price adjustment.....	18
5.	Decision-making process	19
a.	Pass-through (cost build-up) approach	19
b.	A competitive benchmark	28
6.	Selection of the hubs	35
7.	Process of identifying economic surplus in the piped-gas market	38
a.	Marginal/actual costs of the gas molecule	38
b.	LNG as the upper bound of the piped gas market	41
8.	Determining the piped-gas trading costs	50
9.	Data sources	51
10.	New entrants and third-party traders	52
A.	Pass through of costs	55
11.	Conclusion	56

REASONS FOR DECISION

1. APPLICABLE LAW

The National Energy Regulator of South Africa (NERSA) derives its mandate to regulate maximum prices and tariffs of piped-gas from the National Energy Regulator Act, 2004 (Act No. 40 of 2004) ('the National Energy Regulator Act'), read with the Gas Act, 2001 (Act No. 48 of 2001) ('the Gas Act').

2. BACKGROUND

2.1 In terms of section 4(g) of the Gas Act, the Energy Regulator must, as appropriate, in accordance with this Act regulate prices in terms of section 21(1)(p) in the prescribed manner.

2.2 Section 21(1) (p) of the Gas Act prescribes that the Energy Regulator may impose licence conditions within the following framework of requirements and limitations: 'maximum prices for distributors, reticulators and all classes of consumers must be approved by the Gas Regulator where there is inadequate competition as contemplated in chapters 2 and 3 of the Competition Act, 1998 (Act No. 89 of 1998)'.

2.3 The essence of section 4(g), therefore, is that when the licensee holds a licence that contains a condition in terms of section 21(1)(p), then such licensee's maximum prices must be approved by the Energy Regulator in the prescribed manner where there is inadequate competition.

2.4 In line with the legislative requirements, NERSA developed a methodology for approving/regulating maximum prices for gas in the piped-gas industry in October 2011. This is the Reasons for Decision for reviewing the methodology.

2.5 Regulating maximum prices and using this methodology is contingent on NERSA determining that 'there is inadequate competition as contemplated in chapters 2 and 3 of the Competition Act, 1998 (Act No. 89 of 1998)'.

2.6 The determination of inadequate competition was approved by the Energy Regulator on 27 March 2019 (The 2019 determination of inadequacy of competition) and is available on the NERSA website at www.nersa.org.za.

a. Market Analysis – Determination of Inadequate Competition in the Relevant Piped-Gas Markets

2.7 NERSA conducted an assessment to establish the adequacy of competition in the relevant piped-gas markets before embarking on the current process to review the Maximum Pricing Methodology for Piped-Gas.

2.8 The assessment reached the following conclusions regarding the definition of the relevant markets in the South African piped-gas industry:

2.8.1 Piped-gas was defined to be in a separate relevant product market to other energy sources such as coal, diesel, electricity, heavy fuel oil and liquefied petroleum gas.

2.8.2 Separate markets were defined for the transmission, distribution and the trading of the gas molecule.

2.8.3 The market for trading of piped-gas was further delineated into a national market for the trading of piped-gas to traders¹ and a market for the trading of piped-gas to end-user customers².

2.8.4 The further delineation of the market for trading of piped-gas to end-user customers was also considered. Although the markets for trading to industrial and vehicular customers were analysed, separate markets for these two types of customers were not definitively defined.³

¹ The scope of the geographic market for the trading of piped-gas to traders were found to be national.

² A national market for the trading of piped-gas to industrial customers or separate markets for the trading of piped-gas to industrial customers in the Gauteng/Mpumalanga/Free State region and the KwaZulu-Natal region could be defined.

³ A market for the trading of piped-gas to vehicular customers in the Greater Tshwane, Johannesburg and Benoni areas was assessed, however, the scope of the market was left open.

- 2.9 The outcome of the assessment was that the South African piped-gas industry continues to be dominated by Sasol Gas, which has a vertically integrated monopoly or near monopoly position throughout the gas supply chain. In this regard, it was found that Sasol Gas still maintains a monopoly position in respect of gas infrastructure through its ownership and operation of gas transmission and distribution pipelines in South Africa. In addition, it was found that Sasol Gas was the only upstream supplier of gas to third-party traders.
- 2.10 The assessment further revealed that the only level of the gas supply chain where Sasol Gas does not hold a monopoly position is at the trading level, where Sasol Gas and six other third-party traders are active.⁴ However, even with this number of traders active in the market, Sasol Gas has still maintained an irrefutably dominant position at the trading level of the gas supply chain.
- 2.11 Sasol Gas' persistent and irrefutable dominance at the trading level of the gas supply chain, and the slow pace at which third-party traders have been able to grow their share of sales to end-user customers, point towards the existence of barriers that hinder the meaningful expansion of the operations of third-party traders. The assessment revealed that the most significant factor that hampers growth and competition in the gas industry is the lack of availability of new gas supplies, and the infrastructure required to enable such supplies (e.g. infrastructure required to import Liquefied Natural Gas [LNG]). This may be exacerbated by other factors, such as issues of access to infrastructure to transport new gas supplies to traders and end-user customers.
- 2.12 In addition, customer countervailing power in the gas industry also remains limited, most obviously due to the lack of viable alternative sources of gas for customers to switch to, or threaten to switch to.
- 2.13 Therefore, and on the basis of the above considerations, the outcome of NERSA's assessment was that competition in the gas industry remains

⁴ These include: SLG/SL-CNG, VGN/NGV, NOVO, Egoli/Reatile Gas, Tetra4 and Evraz.

inadequate. On 27 March 2019, the Energy Regulator subsequently made a determination that there is inadequate competition in the relevant gas markets. The Energy Regulator's reasons for decision document is available on the NERSA website at www.nersa.org.za.

2.14 This meant that in terms of section 4(g) and section 21(1)(p) of the Gas Act, NERSA has a mandate to approve maximum prices for piped-gas. The purpose of such maximum prices would be to mitigate for the lack of sufficient competition within the relevant piped-gas markets by setting maximum prices that would serve to emulate prices that would persist in competitive markets.

b. The Piped-Gas Regulations, April 2007 (GG No. 29792 of 20 April 2007)

2.15 The maximum price determination principles outlined in this methodology, are further informed by the Price Regulation and Procedures Principles prescribed in the Piped-Gas Regulations, promulgated in terms of the Gas Act, 2001 (Act No. 48 of 2001), Gazette No. 29792, 20 April 2007, ('the Regulations'). The following are pertinent to this methodology:

- Sub-regulation 4(3) prescribes that the Energy Regulator must, when approving the maximum price in accordance with section 21(1)(p) of the Act:
 - a) be objective, i.e. based on a systematic methodology applicable on a consistent and comparable basis;
 - b) be fair;
 - c) be non-discriminatory;
 - d) be transparent;
 - e) be predictable; and
 - f) include efficiency incentives.
- Sub-regulation 4(4) prescribes that the maximum prices referred to in sub-regulation 4(3) must enable the licensee to:
 - a) recover all efficient and prudently incurred investment and operation costs; and

- b) make a profit commensurate with risk.
- Sub-regulation 4(6) requires that when gas is sold, the accompanying invoice must itemise the constituent elements of the total price reflected on the invoice, including at least the cost of gas, and transport tariffs and any other charges.
- Sub-regulation 4(7) states that licensees must provide the Gas Regulator with sufficient information, as required by the Gas Regulator for it to determine maximum prices.
- Sub-regulation 4(13), provides that when ownership of gas changes, the price of gas in the new owner's hands refers to the price of gas from the seller plus any tariffs charged by that seller.

2.16 These legislative aspects, as prescribed by the Gas Act and the Regulations, are key to defining the scope and nature of the maximum pricing methodology of piped-gas developed by NERSA.

c. Determining the Trading Cost

2.17 The maximum price contemplated in the abovementioned Gas Act provisions comprises of both the gas price and the trading cost so as to avoid leaving traders with only an approved –

2.17.1 underlying gas price without a trading cost since this would have the undesired effect of expecting such licensees to either trade without recovering trading costs or of encouraging their non-compliance by trading without a trading cost portion approved by NERSA through a transparent process; or

2.17.2 trading cost without a valid underlying price for their gas molecule as this would mean they have no gas price to add that trading cost onto.

2.18 The Maximum Pricing Methodology requires a trader to provide its costs to the Energy Regulator. When it is applying for a maximum price, the trader is expected to provide its acquisition cost of gas and to separately show the costs incurred to trade the gas molecule. The format is shown below.

Costs of the gas molecule

Component	R/GJ
Cost of gas molecule	xx
Trading cost per gigajoule	xx
Total costs of the trader	xx

2.19 The trading cost per gigajoule is essentially the calculation of costs of providing a trading service. The determination of such trading costs is referenced to the Tariff Guidelines. Determining the trading part separately from the molecule cost would enable this service cost that is similar to transportation or storage to be determined using the same approach. This will ensure that there is consistency in the decisions taken by the Energy Regulator.

2.20 The determination of an appropriate margin that will be added to these costs is discussed in this document.

3. REASONS FOR THE REVIEW AND LEGAL MANDATE

3.1 The current Maximum Prices Methodology that was approved in October 2011 contains a clause that provides for its review after five years of implementation. However, the special dispensation given to Sasol Gas that allowed customers to be charged according to the Market Value Pricing (MVP) principles only came to an end in March 2014. As such, the Methodology only became applicable to Sasol Gas effective from March 2014. Five years lapsed in 2019, hence NERSA commenced the process of reviewing the methodology.

3.2 During the five years to March 2019 when the methodology was being implemented, NERSA received various comments and feedback from stakeholders, particularly on the option that uses a basket of prices of

certain energy indicators (basket of alternatives). Such feedback included the criticism of using electricity prices in the price formula while such prices are not competitive. It was further emphasised that the drivers of prices of alternative energy sources is not the same driver for the price of natural gas, and when compared with other markets, may lead to natural gas pricing that is not in sync with the global market, among several other issues that were raised.

3.3 Another consideration was that gas users formed a group, called the Industrial Gas Users Association of South Africa (IGUA SA), and took NERSA to court over its decision to approve the Sasol Gas' maximum prices using the basket of alternatives approach. The matter was ultimately decided at the Constitutional Court and the NERSA decision of 2013 to approve Sasol Gas maximum prices was deemed to be irrational, primarily on the basis that NERSA did not take into account Sasol's marginal costs. The Constitutional Court decision provided additional insights that ought to be considered when approving maximum prices.

3.4 Thus, NERSA conducted a desktop research to identify the various ways of pricing natural gas that are being used around the world. NERSA also conducted an assessment of the adequacy of competition in the market.

3.5 Subsequently, NERSA developed and published a consultation document on the review of the Maximum Price Methodology in November 2019. Stakeholders were engaged through workshops and media invitations to comment on the proposals contained in the consultation document.

3.6 The role and mandate of NERSA in approving maximum prices was one of the topical issues on which stakeholders commented.

a. The Role of NERSA in Approving Maximum Prices

3.7 In regulating maximum gas prices:

- NERSA will review maximum prices prepared by licensees or applicants;
- NERSA may request licensees or applicants to amend maximum prices;

- NERSA may approve or decide not to approve maximum prices; and
- NERSA may eventually determine a maximum price for an applicant that is not able/unwilling to alter its maximum price application.

3.8 The process of a maximum price application is envisaged to be as follows:

3.8.1 Applicants must submit their applications for a maximum price based on a systematic methodology approved by the Energy Regulator.

3.8.2 To ensure consistency of applications and predictability of analysis of the applications, NERSA will specify the following:

- a) Preferred sources of information that must be used for the price as input variables for price calculations
- b) Criteria for price adjustment factors
- c) Methodology to determine the trading cost.

3.8.3 Applicants must submit an application for maximum piped-gas price approval (a price application) to NERSA.

3.8.4 Applicants must provide information regarding the assumptions made in the price calculation, as well as the detailed calculation of the maximum price(s) applied for.

3.8.5 The application must:

- be provided on an annual basis, although applicants are allowed to apply for approval of price for a longer (i.e. multi-year) or shorter (e.g. quarterly) period; and
- indicate the frequency of price adjustment to be approved by the Energy Regulator.

3.9 In the event of an applicant that is unwilling or unable to reconfigure its application to enable NERSA to approve the application, NERSA may proceed to set or determine the maximum price that it considers appropriate for such a licensee.

- 3.10 NERSA will periodically conduct reviews of approved prices to assess the impact of the prices on the piped-gas industry, and ensure compliance with the requirements of the Act and the Regulations.

Stakeholder comments on the role of NERSA in approving prices

- 3.11 Stakeholders, particularly NERSA licensees, submitted that the regulator must regulate prices in terms of section 21(1)(p) of the Gas Act that states that maximum prices must be approved by the regulator where there is inadequate competition. The term 'regulate' in section 4(g) is qualified by section 21(1) (p) of the Gas Act. According to some stakeholders, NERSA does not have powers to set maximum prices and any attempt to do so would be ultra vires.
- 3.12 On the other hand, IGUA SA indicated that NERSA is expected to determine a price that allows Sasol Gas to make a fair and reasonable return as long as there is compliance with the requirements of section 4(g), read with section 21(1)(p), of the Gas Act and the relevant regulations. The users referred to regulation 4(3) and 4(4) and argued that the maximum price must have two components, namely production costs and a reasonable return, which is added based on the risk of the trader.
- 3.13 The users emphasised that the statutory provisions must be followed when NERSA discharges its duties. The following are the steps that NERSA is expected to follow:
- a. Firstly identify the various markets.
 - b. Establish whether there is inadequate competition in each of the identified markets.
 - c. A separate parallel process of determining a maximum price must then occur for each of the identified markets.
- 3.14 The users emphasised that each separate market identified requires an entirely distinct process of maximum price determination.

NERSA assessment on its role in approving maximum prices

- 3.15 NERSA understands that section 4(g) of the Gas Act empowers it to 'regulate prices in terms of section 21(1)(p) in the prescribed manner'. In turn, section 21(1)(p), read with most parts of regulation 4 of the Piped Gas Regulations, references the gas price regulation powers bestowed upon NERSA by section 4(g) to the maximum price approval mechanism.⁵
- 3.16 NERSA acknowledges that both section 21(1)(p) and most parts of regulation 4 seem to raise rather than answer the question of whether 'approval' of maximum prices includes 'setting/determining' maximum prices.
- 3.17 Despite this acknowledgment, NERSA understands the significance of the qualification 'regulate prices in terms of section 21(1)(p)' to be no more than an emphasis that NERSA is not enjoined to fix the actual charge for the gas molecule. Instead, NERSA only has power to rule on permissible maximum levels beyond which licensees may not impose actual prices on their customers; and this regulatory power is only triggered when there is inadequate competition in the market so as to mimic the competition that would otherwise have been. On this ground, therefore, NERSA does not agree that the expression 'in terms of section 21(1)(p)' in section 4(g) was intended to limit the wide meaning of the word 'regulate' in that section.
- 3.18 In support of the above view, NERSA relies on the aid of well-established rules of legal interpretation as derived from some most renowned judicial approaches to the interpretation of legal documents, including statutory interpretation.⁶ This recourse to legal interpretation rules leads NERSA to two fundamental considerations, which suggest that NERSA's power to 'regulate' prices of gas is not necessarily limited to the power to approve,

⁵ Regulation 4(7) of the Piped Gas Regulations refers to the determination of maximum prices, based on information that NERSA would have still required and obtained from licensees.

⁶ See *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA), paragraphs 18-26; *Kubyana v Standard Bank of South Africa Limited* 2014 (3) SA 56 (CC), paragraph 78; *Thomas v Minister of Defence and Military Veterans* 2015 (1) SA 253 (SCA), paragraph 8; and *Commissioner for South African Revenue Services v Bosch and Another* 2015 (2) SA 174, paragraph 9.

but it also includes the power to set maximum prices. The first of these two fundamental considerations pertains listening closely to the controlling statutory objectives listed in section 2 of the Gas Act, and the second fundamental consideration is the ordinary meaning of the word 'regulate'.

3.19 Insofar as the first fundamental consideration goes –

3.19.1 NERSA takes the view that section 2 of the Gas Act makes this law a remedial legislation, which was designed to, *inter alia* –

- a. promote the provision of efficient, effective and sustainable gas trading services as set out in section 2(a); and
- b. ensure that gas trading services are provided on an equitable basis and that the interests and needs of all parties concerned are taken into account as set out in section 2(e).

3.19.2 That said, NERSA is cognisant of the emphasis made by the Constitutional Court, in the case of *Sishen Iron Ore*,⁷ on the important role played by the statutory objects of remedial legislations on the interpretation of such legislations.

3.19.3 It is therefore partly on the basis of the above-mentioned remedial legislation approach of interpretation that NERSA remains persuaded that the price regulation power conferred to it by section 4(g) of the Gas Act does extend to the setting of maximum prices, should the circumstances so dictate, if it is to ever find itself in a position to meaningfully promote the objects of the Gas Act listed in

⁷ *Minister of Mineral Resources and Others v Sishen Iron Ore Co (Pty) Limited and Another* 2014 (2) SA 603 (CC). At paragraphs 42 and 43, the Constitutional Court held the following –

"Section 2 of the MPRDA lists nine objects...A few observations arise from the reading of s2. The first is that the transformation of the mining and petroleum industries could not be achieved without abolishing private ownership of mineral rights and vesting the resources in the nation as a whole, and giving the state a free hand in allocating rights to exploit those resources. If this were not done, any attempt to transform the industry would have failed. By placing the mineral wealth of the country in the hands of the state, parliament acted in accordance with an internationally accepted practice."

See also paragraphs 83 to 89.

section 2(a) and (e). In this regard, NERSA cannot fathom how it could ever be able to attain the above-mentioned statutory objects of the Gas Act unless it is able to set the maximum prices of gas where necessary.

3.19.4 It is also the considered view of NERSA that its approach on the wide meaning of the word 'regulate' in section 4(g) would help avoid undesirable situations whereby the piped-gas industry is left operating without a regulated price and the gas consumers are solely left at the mercy of licensees, after NERSA has decided not to approve their maximum price applications, as these would result in a regulatory uncertainty which could not have been intended by the lawmakers.

3.19.5 Accordingly, NERSA takes the view that restricting the price regulation powers conferred to it to a reactive type of regulation instead of proactive regulation absurdly emphasises the word 'approve' in section 21(1)(p) above the generality of the power to 'regulate' in section 4(g).

3.20 Insofar as the second fundamental consideration goes –

3.20.1 NERSA is aware that the word 'regulate' has received attention of different courts,⁸ albeit in the context of other legislative provisions than the Gas Act, where these courts have all arrived at similar conclusions that 'regulate' means determining; taking control; governing; subjecting to guidance/restrictions; or adjusting something according to some standard/purpose.

⁸ In *Rex v Beerman and Another* 1947 (2) SA 1029 (C), paragraph 1030, the Court held that the ordinary meaning of the word "regulate" is "to control or govern". In *De Beers Industrial Diamond Division (Pty) Limited v Ishizuka* 1980 (2) SA 191 (T), paragraph 196D-F, the Court held that "to regulate" means to "control, govern, or direct by rule or Regulations; to subject to guidance or restrictions; to adapt to circumstances or surroundings. To bring or reduce (a person or body of persons) to order. To correct by control. To adjust, in respect of time, quantity, etc., with reference to some standard or purpose ...". In *Philipson-Stow and Others v Inland Revenue Commissioner* [1960] 3 ALL ER 814 (HL), the House of Lords held that the verb "regulating" includes "determining".

3.20.2 It is therefore also on this basis that NERSA is persuaded that the phrase 'regulate prices' in section 4(g) of the Gas Act carries a far wider and broader meaning than the word 'approve' used in section 21(1)(p) and most parts of regulation 4; and that, in its ordinary meaning, it includes setting or determining prices.

3.21 As to whether the wider meaning of the word 'regulate' must be restricted by the narrower meaning of the word 'approved/approving/approve', NERSA concludes that there are no compelling textual or contextual considerations in either section 4(g) alone or the entire Gas Act, which commend such restriction. This conclusion has been arrived at by having regard to the following considerations –

3.21.1 Section 4(g) of the Gas Act, which is the enabling provision for gas price regulation purposes in South Africa, uses the word of wide import (i.e. regulate); while section 21(1)(p), which flows from section 4(g), uses the word of a narrow meaning (i.e. approve).

3.21.2 If the word of a narrow meaning is strictly what was intended by the lawmakers, NERSA believes that there would have been textually no need for the Gas Act to use the word 'regulate' in section 4(g). Instead, it would have been sufficient for section 4(g) to simply provide that the power of NERSA is to approve maximum prices of piped-gas.

3.21.3 Therefore, any interpretation of section 4(g), which equates the meaning of the word 'regulate' to that of the word 'approve' in section 21(1)(p), renders the use of the word 'regulate' in section 4(g) nugatory. And this contradicts one of the fundamental rules of statutory construction that discourage a light presumption of surplusage (i.e. excessive or meaningless use of words) in statutory provisions.

3.21.4 Restricting the meaning of 'regulate' to 'approve only' would potentially yield an undesirable consequence of regulatory uncertainty, in the event that NERSA does not approve a maximum price application and a licensee is unwilling or unable to amend its application in line with the directions of NERSA.

3.22 In view of all the above clarifications, NERSA is satisfied that the process it envisages to follow in executing its price regulation mandate, as outlined in paragraphs 3.7 to 3.9 above, falls precisely within the scope of section 4(g), read with section 21(1)(p) of the Gas Act and regulation 4 of the Piped Gas Regulations.

3.23 The adoption by NERSA of a stance that it will not set maximum prices for cooperative licensees, but will do so only for those that are unwilling or unable to reconfigure their original maximum price applications in order to enable NERSA to grant approvals when it considers them for the second time, should be assurance enough that it does not mean to execute its maximum price regulation mandate in an arbitrary manner.

Steps followed by NERSA in discharging its maximum price regulation mandate

3.24 According to the Determination of Inadequate Competition in the Piped-Gas Industry made by NERSA on 27 March 2019, the finding was that no adequate competition exists yet in all relevant markets found within the piped-gas industry.

3.25 As a result, NERSA considers that it would be premature at this point to engage in a lengthy discussion about whether there should be a separate parallel process of determining a maximum price for each identified market in response to comments received from some gas users.

4. DETERMINATION OF THE MAXIMUM PRICE

The Maximum Price Formula

- 4.1 The maximum price of piped-gas proposed by an applicant or licensee shall be reviewed for purposes of approval by the Energy Regulator based on the following formula:

$$\text{Max Price} = 0.4 (\text{HH}) + 0.5 (\text{TTF}) + 0.1 (\text{NBP})$$

where:

Maximum Price of Gas = Maximum price for gas energy (ZAR/GJ)

Henry Hub (HH) = Twelve months simple average of the Henry Hub monthly prices with a 40% weight in the energy basket

Transfer Title Facility (TTF) = Twelve months simple average of the TTF monthly prices with a 50% weight in the energy basket

National Balancing Point (NBP) = Twelve months simple average of the NBP monthly prices with a 10% weight in the energy basket.

- 4.2 The maximum price of gas energy does not include distribution tariffs, transmission tariffs, storage tariffs and levies. Once the maximum price of gas is arrived at, all other charges (tariffs and levies) mentioned above shall be included to arrive at the 'total gas charges' to be invoiced by a licensee.

Determining the Weights in the Formula

- 4.3 The weights used in the maximum price formula will be taken from the maturity and liquidity of the hub concerned. The evaluation of the maturity of hubs is based on the following five key elements, which will assist in judging whether the criteria of depth, liquidity and transparency of hubs are

being met and to what degree.⁹ The five key elements are: market participants, traded products, traded volumes, tradability index and churn rates. The churn rate is regarded as the most important measure of a gas hub's commercial success. The churn rate is calculated as the ratio between the volume of all trades, in all time frames, executed in a given market and its total demand. Churn rates are regarded as an appropriate measure of a hub's real liquidity and maturity. As a result, churn rates are used in most commodity and financial markets.

4.4 In this regard, the Energy Regulator took guidance from the churn rates of each of the aforementioned gas hubs in determining its weight allocation for the identified competitive gas hubs. Below is how the churn rates are used to establish the weights used in the methodology.

Table 1: Weight allocation for Dutch's TTF, US' Henry Hub and Britain's NBP, 2018

HUB	Churn rate	Share / Weight
TTF	70,9	50%
HH	53,9	40%
NBP	16,9	10%
Total	141,7	100,00%*

*the percentage weight is to the nearest 10.

Source: NERSA's own compilation, 2020

Price Adjustment

4.5 The maximum price in the formula in section 6.12 above will be adjusted as detailed below.

4.6 The maximum gas prices will be reviewed over a period of 12 months, using the preceding 12 months average prices of the Henry Hub, the TTF and NBP prices as shown in the formula. Should licensees choose a different review period based on their commercial agreements, they would

⁹ See, <https://www.oxfordenergy.org/wpcms/wp-content/uploads/2019/07/European-traded-gas-hubs-a-decade-of-change-Insight-55.pdf>, accessed 5 March 2020

request the Energy Regulator to approve such a different period. However, in all instances, the preceding 12 months' average price of the Henry Hub, TTF and NBP will be used.

- 4.7 The implication of this approach is that it will minimise the volatility that may result from the use of a shorter period.
- 4.8 The approach adopted by NERSA is in line with the comments received from stakeholders as they have stated that the use of international hubs would lead to high volatility in the maximum price.
- 4.9 NERSA also retained the use of the pass through of costs as a second option in the Methodology. This option is discussed further in section 10 below.

5. DECISION-MAKING PROCESS

- 5.1 In its consultation document, NERSA published three options for stakeholder comments. The options being a pass-through (cost build-up) approach, an amended pass-through approach and the use of a competitive benchmark. Stakeholders provided their comments on these approaches as discussed below.

a. Option 1 – Pass-Through (Cost Build-Up) Approach

Stakeholder comments

- 5.2 The gas users provided extensive comments highlighting why this approach ought to be the only approach that is adopted by NERSA. Firstly, it was indicated that the inadequate competition study identified relevant markets in which Sasol Gas is the only supplier. It was added that the only new entrants that could be relevant are those that supply gas on substantially comparable terms to those Sasol Gas enjoys. It was claimed that Sasol Gas has been pricing gas at excessive levels, yet no new entry has been observed for more than a decade. It was indicated that setting a price to encourage entry into the market would therefore be irrational.

- 5.3 The gas users indicated that the objectives of the Gas Act include notions of efficiency, economic and equitability. Section 2(j) of the Gas Act provides that it is an object of the act to promote access to gas in an affordable manner.
- 5.4 The gas users argue that the objects of the Gas Act are advanced by ensuring that Sasol Gas monopoly pricing is constrained to the level required by regulation 4(4). It is argued that the wording of regulation 4(4) envisages that NERSA will mimic a competitive market by allowing Sasol Gas to be remunerated for its outlay and to the extent of a reasonable or fair return, one commensurate with its risk.
- 5.5 It was further indicated that the Constitutional Court found that the pass-through approach is consistent with what regulation 4(4) requires. A price that over-recovers on the marginal costs of producing the gas molecule, its fixed costs of producing the molecule and a reasonable return would not be justified. The reasonable return in this instance was deemed to be one that is calculated using the weighted cost of capital (WACC). The gas users also provided extensive calculations to link the average production costs of the gas molecule to the price at which Sasol Gas purchases the molecule. The users demonstrated, using their assumptions, that the upstream Sasol Gas supplier already makes a reasonable return with the price it transfers the gas molecule to Sasol Gas and that there is no need for Sasol Gas to earn any additional surplus.
- 5.6 During the public hearing, IGUA SA provided additional comments where it reiterated that Sasol Gas should only be allowed to generate sufficient revenue to recover its fixed, variable and capital costs and to earn a return commensurate with risk. Among the additional submissions are that the following:
- 5.6.1 A cost-plus approach to regulating the maximum price for piped-gas does not imperil the incentive of higher-cost providers to enter the market. An artificially high price, set well above the relevant costs of Sasol Gas, would baselessly allow Sasol Gas to

continue reaping excessive profits – to the detriment of gas users, end consumers and, ultimately, the economy as a whole. Contrary to the claims of Sasol Gas, such an approach would be detrimental to the development of the gas industry as a whole.

5.6.2 It is not true that there is no international support for a cost-plus approach to natural gas pricing (in fact, the pass-through approach was suggested as an option by NERSA). For instance, IGUA SA understands that small-scale LNG import applications are currently approached on the cost-plus basis. For all the reasons set out above and in the written submission, IGUA SA is of the view that the pass-through approach is eminently reasonable.

5.6.3 The cost-plus approach plainly meets the regulatory requirements of transparency, predictability, and objectivity. Moreover, if applied appropriately, a cost-plus approach to price regulation can preserve efficiency incentives. For instance, if a regulatory lag is put in place and price-setting episodes are spread out over time, the monopolist will benefit from any profits generated by the lowering of costs, thus creating an incentive for the monopolist to operate efficiently and to keep costs down.

5.6.4 A price set in line with the relevant variable, fixed and capital costs of Sasol Gas, including a reasonable return on investment commensurate with risk, is more likely to mimic a competitive outcome. The pass-through option is firmly grounded in an assessment of the costs that the monopolist actually incurred in the production of the gas molecule.

5.7 One trader also supports that Sasol Gas' maximum price should be determined using a pass-through approach but its own maximum price should be determined using the prices of other energy indicators (basket of alternatives) because only the decision on Sasol Gas' maximum price was found to be irrational by the Constitutional Court.

- 5.8 Another trader prefers that the maximum price be linked to a competing fuel such as LPG or to tweak the current methodology that calculates the maximum price based on a basket of prices of certain energy indicators.
- 5.9 Extensive comments were also received from other traders that did not support the pass-through approach. It was acknowledged that cost build-up approaches are suited in regulating tariffs for infrastructure that can accommodate multiple users such as pipelines, storage facilities and regasification units. Infrastructure is fixed and tariffs sprout from a return on and off capital and the recovery of costs. It was highlighted that capital is known while cost and volume are estimated for a forward-looking period and claw/give-back calculations are then done to ensure that an appropriate return is achieved.
- 5.9.1 It was indicated that in a commodity world, LNG for instance, the uncertainty and volatility are far greater and cost can only be determined on a cargo-by-cargo basis. It was reported that there is limited conceptual and international support for the regulation of gas molecules based on cost. It is stated that linking price to cost removes important price signals to both customers and potential suppliers that are needed for the ongoing development of the sector.
- 5.9.2 It was also highlighted that a number of legal and regulatory issues arise, which render the proposed cost-based approach inconsistent with NERSA's legislative framework, as well as principles determined in the Constitutional Court ruling. For instance, a pass-through approach, as proposed, will have the effect of setting an actual price and therefore goes beyond NERSA's mandate.
- 5.9.3 It is also reported that a cost-based approach will not result in an equitable sharing of the surplus between consumer and producer, as indicated by the Constitutional Court judgement, but rather transfers the entire surplus to the gas consumers.

- 5.9.4 It was also indicated that a pass-through approach does not incentivise efficiency on the part of the licensee as any cost incurred will be passed through. Hence the licensee will not be concerned about efficiency.
- 5.9.5 It was also indicated that a cost-based approach risks severe negative consequences, such as stifling growth, for South Africa.
- 5.9.6 Sasol Gas commented indicating that a cost-based approach will create disincentives for it to continue supplying gas to third parties at the current basis. Sasol Gas indicated that it would re-examine the amounts of gas sold to external customers versus what it uses for internal operations. Sasol Gas stated that it has various internal uses for the gas, which would yield higher returns than a regulated price set using its acquisition cost of gas.
- 5.9.7 It was further stated that many countries have moved away or avoided cost regulation of gas molecules. The US, India and China have previously regulated gas on the basis of cost but have since abandoned such regulations with the aim of adopting a price regulation that better facilitates the industry development.
- 5.9.8 Another argument was on the fact that regulation 4(4) allows licensees to *inter alia* make a profit commensurate with risk. It was indicated that NERSA's proposed pass-through approach is deficient in that it makes provision for cost of purchasing the gas molecule and cost of trading the gas molecule and treats the trading cost as a margin on the molecule when it is in fact a tariff charge. It was stated that NERSA fails to include a critical component of the pass-through approach, that is a margin on the molecule that would constitute the profit referred to in regulation 4(4).

5.10 The stakeholders were all opposed to an amended pass-through approach. The issues raised include the criticism on the measure of

marginal cost as proposed by NERSA, and the subjective sharing of economic surplus as alluded to in the consultation document. It was added that the LNG price that is expected to proxy customers' willingness to pay must reflect the full cost that consumers would pay if they were to purchase LNG.

NERSA assessment of the pass-through of costs

- 5.11 NERSA is required to determine maximum prices that are fair such that, in the absence of competition in the South African piped-gas markets, they mimic competitive gas prices. In accordance with the guidance provided by the Constitutional Court in its ruling in the GUG case¹⁰, such maximum prices should comply with section 2(e) of the Gas Act that provides that NERSA should ensure that gas transmission, storage, distribution, trading, liquefaction and regasification services are provided on an equitable basis and that interests and needs of all parties concerned are taken into consideration. The Constitutional Court also held that the maximum prices set by NERSA should serve to allocate the economic surplus in the relevant piped-gas markets between producers/suppliers and customers in a fair manner.
- 5.12 NERSA thus assessed whether this pass-through approach is aligned to the other objects and provisions of the Gas Act, as well as the Piped-Gas Regulations. NERSA in this assessment is mindful of its mandate, which is to approve a maximum price of gas and not set an actual price of gas.
- 5.13 As stated by some stakeholders, the pass-through approach achieves requirements alluded to in the Piped-Gas Regulations as it will ensure that maximum prices enable the licensee to recover all efficient and prudently incurred investment costs and make a profit commensurate with risk. A noted criticism from the stakeholders is that the current methodology does not provide a margin on the molecule but rather only provides a margin on trading costs. NERSA would need to ensure that it provides for a margin

¹⁰ National Energy Regulator of South Africa and Another v PG Group (Pty) Limited and Others 2019 ZACC 28.

on the molecule should it consider adopting the pass-through approach as its preferred methodology.

5.14 The pass-through approach will also meet the objective of the Gas Act (section 2[jj]) of promoting access to gas in a safe and affordable manner.

5.15 Economic literature and case law on the assessment of excessive prices provide some insights on how to determine the economic value of a product, and whether a price is fair and competitive. In the seminal *United Brands* case¹¹, a cumulative test with two legs was proposed to assess the relation between price and economic value and to establish unfair pricing. According to this two-pronged test:

- i. an assessment should be made as to 'whether the difference between the costs actually incurred and the price actually charged is excessive'; and
- ii. if the answer is yes, an assessment should be made as to 'whether a price has been imposed which is either unfair in itself or when compared to competing products'.¹²

5.16 The court also clarified that other methods could be used to establish unfair pricing.¹³ In the *Gazprom* case, the EC stated that the first limb of the above *United Brands* test can be interpreted as a screening exercise to assess whether the price charged is suspiciously high.¹⁴

5.17 The second limb of the test is to confirm whether the suspiciously high price in the first part of the test reflects the economic value of the product and in order to establish whether the price is fair or unfair. The Court then proposed two alternative options to establish whether the price is fair: either by carrying out a comparison with a competitive price benchmark

¹¹ Case C-27/76 *United Brands Company v Commission*

¹² Case C-27/76 *United Brands Company v Commission*, paragraph 252.

¹³ Case C-27/76 *United Brands Company v Commission*, cited above, paragraph 253. See also CASE AT.39816 – *Upstream gas supplies in Central and Easter Europe*, paragraph 65.

¹⁴ CASE AT.39816 – *Upstream gas supplies in Central and Easter Europe*, paragraph 65

(which can be seen as a proxy of the economic value of the product), or if no appropriate price benchmark exists, by directly estimating the economic value of the product (unfair in itself).¹⁵

5.18 Essentially, therefore, the latter approach (i.e. assessing whether the price is unfair in itself) requires an assessment as to whether the profit margin established during the first limb of the United Brands test is unfair, without the use of a competitive price benchmark. This approach has been criticised on account of difficulties in defining an appropriate profit margin that would be regarded as fair.¹⁶

5.19 For example, Evans and Padilla (2005) observe the following in this regard: *Measurement issues are the least of the concerns with using profit benchmarks, though. Accounting procedures do not provide for capitalization of R&D and advertising, do not address inflation, and do not properly adjust rates of return for risk. Thus accounting profits do not reflect economic profits except under the most unrealistic assumptions. The relationship between accounting and economic rates of return hinges on the time shape of net revenues, something that varies across industries, across firms within an industry, and even across time for a given firm.*¹⁷

5.20 Moreover, the courts have also not established the level of profit margins that can be regarded as unfair, other than to note that they would only regard these as unfair when they are substantially higher than the defined economic value of the product.¹⁸

¹⁵ Case C-27/76 *United Brands Company v Commission*, cited above, paragraph 253. See also CASE AT.39816 – Upstream gas supplies in Central and Easter Europe, paragraph 65, and Damien Geradin, *The Necessary Limits to the Control of “Excessive” Prices by Competition Authorities - A View from Europe*, SSRN Scholarly Paper (Rochester, NY, 2007), page 6

¹⁶ Damien Geradin, *The Necessary Limits to the Control of “Excessive” Prices by Competition Authorities - A View from Europe*, SSRN Scholarly Paper (Rochester, NY, 2007), pages 9 and 10, Omar Vasquez Duque, “Excessive Pricing: A view from Chile”, University of Oxford Centre for Competition Law and Policy, Working Paper CCLP(L) 41, 2015, pages 10 and 14, David S. Evans and A. Jorge Padilla, “Excessive Prices: Using Economics to Define Administrable Legal Rules,” *Jnl of Competition Law & Economics* 1, no. 1 (2005), page 5.

¹⁷ David S. Evans and A. Jorge Padilla, “Excessive Prices: Using Economics to Define Administrable Legal Rules,” *Jnl of Competition Law & Economics* 1, no. 1 (2005), page 5.

¹⁸ In *Polymers* (Case No: 131/CAC/Jun14, Sasol Chemical Industries Limited / Competition Commission) the court stated that a price which is significantly less than 20% of the figure employed to determine economic value falls short of justifying judicial interference in this complex area. On the other hand, E. Pijnhacker Hordijk, “Excessive Pricing under EC Competition Law ; An Update in the Light of ‘Dutch Developments’”,

- 5.21 As such, NERSA notes that the economic theory and case law on excessive pricing do not provide sufficient guidance on the percentage profit to be added to the molecule in order to meet the test as to whether a profit margin is fair or reasonable. Neither does it provide sufficient guidance on how to establish profit margins that would mimic competitive conditions nor does it provide sufficient guidance on how to determine a margin that would allocate the economic surplus between producers/suppliers and consumers of gas in a fair manner, without the use of a competitive benchmark. Such an attempt would be subjective and fraught with difficulties.
- 5.22 NERSA also considered the level of opposition and the reasons thereof levelled by the gas traders against the pass-through approach. Hence approving the pass-through approach as it is will be ignoring the concerns raised by these stakeholders. On the other hand, NERSA also ought to consider the level of detail and comments provided by gas consumers advocating for the pass-through approach in its current form. Therefore, NERSA was mindful of the concerns raised by both opposing arguments.
- 5.23 It is on a balance of scale that NERSA proposes that a competitive price benchmark be used to set maximum prices. The formula for the competitive benchmark will be discussed in the next section. However, NERSA will not mechanically input details into this formula but will take guidance from a paragraph in the Constitutional Court decision that states that:

The Maximum Pricing Methodology is not law, but rather a guideline made in accordance with the empowering legislation. NERSA has discretion not to rigidly apply the methodology if its application would lead to irrational or otherwise unlawful results. In Britten, Innes CJ noted that although policies and general principles are sometimes inevitable, a decision-maker must

pages 474 and 475, notes that the EC's administrative practice shows that only margins in the range of 100% or more have given rise to interventions on account of excessive pricing.

*remain alive to the existence of circumstances in a case that would justify departure from the policy or precedent.*¹⁹

5.24 Hence, the methodology will require a licensed trader to provide enough detail on its cost information when it applies for a maximum price. This information would be used as a guide or floor and will be compared to the price calculated by the benchmark. In other words, such a competitive benchmark will be a transparent mechanism for establishing a reasonable profit margin for the gas trader.

5.25 Moreover, the methodology will retain the pass-through approach as an option albeit not in its current form. The pass-through approach is discussed further under the section on how new entrants will price their gas imports.

b. Option 2 – A Competitive Benchmark

5.26 NERSA consulted stakeholders on the use of a competitive benchmark in the approval of a maximum price of piped-gas. Consultations were held on the following formula:

Maximum Price =	[Price_{Henry Hub} X Weight_{Henry hub}]+ [Price_{Europe} X Weight_{Europe}]
------------------------	---

5.27 The US and European gas prices are used in a formula to calculate the maximum price of gas price for South Africa. The formula above shows that the gas price for the corresponding market was weighed using the volumes traded that market. For instance, the henry hub benchmark price was weighed with the volumes traded in the USA.

5.28 Stakeholders provided comments on the proposal to adopt this approach as the maximum price.

¹⁹ National Energy Regulator of South Africa and Another v PG Group (Pty) Limited and Others 2019 ZACC 28 - paragraph 33

- 5.29 The users of gas indicated that the use of competitive prices is a broadly similar aggregation of comparative prices that the Constitutional Court found to be at odds with the object of the Gas Act and the Piped Gas Regulations and, therefore, irrational and unreasonable. It was indicated that it would be important for the new methodology to properly account for each of Sasol Gas' operations, specifically its marginal costs of producing the molecule, the fixed costs of producing the gas molecule and a reasonable return on capital. A detailed analysis and discussion on costs was provided, which NERSA assessed and noted.
- 5.30 A notable conclusion to such a discussion was that Sasol Gas' upstream operations already make a sufficient return when it sells the molecule to its downstream affiliate such that the proposal to use a competitive benchmark would result in excessive prices. It was added that it would be wholly unjustified as a matter of both law and economics, and would hurt gas customers and end-users.
- 5.31 It was highlighted that while the option produces prices that are below the current maximum price level, it still falls short of how NERSA is required to regulate the piped-gas maximum prices, as it would allow Sasol Gas to charge above a point that allows Sasol Gas to recover its cost and make a reasonable return.
- 5.32 During the public hearing, IGUA SA further criticised the proposed benchmark by stating that international benchmarks might provide some information about gas prices in other parts of the world, consistency with international benchmarks is by no means a requirement of the Gas Act or of the Regulations. It is also not found in the Constitutional Court's judgement on NERSA's decision.
- 5.33 It was argued that a price based on international benchmarks does not replicate or mimic a competitive outcome. As explained in IGUA SA's written submission, in a perfectly competitive environment, firms have incentives to price all the way down to their marginal costs. However, in the long run, firms will also be required to cover their fixed operating and capital

costs. Many firms will also have to pay a return to their investors, in exchange for any initial capital outlays. As such, a price set in line with the relevant variable, fixed and capital costs of Sasol Gas, including a reasonable return on investment commensurate with risk, is more likely to mimic a competitive outcome.

5.34 IGUA SA concluded its submission stating that the international benchmarking approach is inconsistent with the Gas Act and the NERSA decision. IGUA SA also submitted that it would appear that this approach has been devised to generate a price that allows Sasol Gas to continue reaping excessive monopoly profits, to the detriment of gas users and end consumers – and of South Africa as a whole.

5.35 On the other hand, gas suppliers indicated that the methodology should be adequate in pricing current supplies of natural gas, as well as provide incentives to enable future supplies or entrants into the market. It was indicated that NERSA's proposed approach of using competitive benchmark prices would be inadequate for future sources of gas supply, such as LNG imports. This is because US and European hub prices reflect competition between available sources of supply at a wholesale level. Therefore, these prices are below a price level that could accommodate LNG imports. A measure suggested was the JKM price plus an additional premium to account for shipping to South Africa, long-term contracting, terminal and regasification costs, as well as any additional pipeline charges from the terminal to the existing network.

5.36 A price that is linked to the oil price was also suggested, typically representing 9% to 14% of crude oil.

5.37 The traders also commented on the suitability of the proposed competitive benchmark on the current gas supply. Sasol Gas indicated that it supports the use of international hub prices as a basis for approving maximum prices in South Africa. However, it expressed its reservations on the choice of international benchmarks that NERSA is proposing.

- 5.38 Sasol Gas further indicated that if the correct international benchmarks are used, the index is capable of delivering regulated prices, which reflect prices obtained in other markets where strong rivalry exists between suppliers. It is stated that this would be consistent with NERSA's objective of setting a price that mimics a competitive outcome and also provides an objective mechanism of dividing the surplus between customers and suppliers.
- 5.39 It was added that the international hub prices would provide a pricing methodology that is transparent, predictable, non-discriminatory and objective. It would also create strong efficiency incentives for the licensee because setting maximum prices with this methodology would reward the licensee for reductions in cost. It encourages the licensee to reduce costs and enhance efficiency as opposed to cost-based methods as a licensee can pass its higher costs through and is not rewarded for any efficiency gains.
- 5.40 It was also reported that the method has strong international backing as is the case in India and Italy.
- 5.41 The drawbacks of international hub prices have also been highlighted as the following:
- i. International prices can be highly volatile; such volatility may require NERSA to impose a collar on the prices determined by the index hub to ensure that sales do not occur below cost.
 - ii. The international hub prices do not incentivise new entry as their prices will be lower than the cost of supply of a new supplier of gas, such as an LNG supplier.

NERSA assessment on a competitive benchmark

- 5.42 NERSA assessed the stakeholder comments commencing with the criticism of adopting international hub prices approach. The first criticism is that this approach is similar to the basket of prices of certain energy

indicators and is therefore irrational and unlawful. NERSA notes that the criticism that was levelled against the basket of prices of certain energy indicators was the failure to consider Sasol's costs when it approved the Sasol Gas maximum price. Hence, the Constitutional Court did not throw out the methodology but provided guidance on the aspect that was deemed irrational.

5.43 Furthermore, the proposed methodology will require a licensed trader to provide enough detail on its cost information when it applies for a maximum price. This information would be used as a guide or floor and will be compared to the price calculated by the benchmark. In other words, such a competitive benchmark will be a transparent mechanism for establishing a reasonable profit margin for the gas trader.

5.44 Another criticism that is highlighted throughout by the IGUA SA is that international benchmarking falls short of how NERSA is required to regulate the piped-gas maximum prices as it would allow Sasol Gas to charge above a point that allows Sasol Gas to recover its cost and make a reasonable return. IGUA SA further submits that a reasonable return ought to be calculated as a weighted average cost of capital and provided on the capital outlay in an allowable revenue type of calculation. As noted earlier, economic theory and case law on excessive pricing does not provide sufficient guidance on the percentage profit to be added to the commodity price, such as natural gas, in order to meet the test as to whether a profit margin is fair or reasonable.

5.44.1 It is difficult to define and establish what would be an appropriate profit margin that would be regarded as fair.

5.44.2 For instance, should failed exploration costs be recovered in the successful venture? Should new prospecting and exploration costs be included in the costs? Hence, researchers noted that *accounting procedures do not provide for capitalisation of Research and Development and advertising, do not address inflation, and do not properly adjust rates of return for risk. Thus,*

accounting profits do not reflect economic profits except under the most unrealistic assumptions. The relationship between accounting and economic rates of return hinges on the time shape of net revenues, something that varies across industries, across firms within an industry, and even across time for a given firm.

5.44.3 Moreover, NERSA's mandate is to determine a maximum price that mimics the outcome from a competitive market. NERSA is not mandated to set an actual price of gas. Therefore, NERSA was inclined to adopt the competitive international hubs as a benchmark to use to establish a maximum price.

5.45 NERSA noted that the use of competitive benchmarks to regulate the prices of commodities has strong international support. For example:

- a. India uses an index made up of international prices to set prices for domestic gas. Wholesale gas prices in India are regulated using an index of four international price series – the UK's NBP; the US's Henry Hub; Canada's Alberta Energy Company (AECO) hub; and Russian piped-gas prices as published by the Federal Tariff Service.²⁰
- b. Italy links the regulation of its last resort tariff to the Dutch TTF hub. The only category of customers in the European Union that are still eligible to receive regulated tariffs are those that receive the so called last resort tariff (LRT).²¹ In Italy, the LRT is set with reference to the highly liquid TTF hub in the Netherlands.²²
- c. NERSA's review of gas pricing practices internationally has revealed that regulators are increasingly moving away from a cost-based

²⁰ Petroleum Planning & Analysis Cell (2019), 'Guidelines for marketing and pricing freedom,' Available online: <https://www.ppac.gov.in/>

²¹ The LRT tariff generally only applies to a small portion of customers deemed to be most vulnerable.

²² Although Italy has its own gas trading hub, the Italian regulator did not consider it to have adequate liquidity to serve as a good benchmark for prices.

approach in regulating gas prices (for example China²³), in favour of the use of competitive benchmarks.²⁴

- d. Moreover, competition authorities have, in numerous instances, used competitive price benchmarks to establish whether the prices of products sold by firms with market power are excessive. For example, the EC, in its 2018 investigation of various alleged anticompetitive practices by Russian gas supplier, Gazprom, in respect of its gas supplies to Central and Eastern European countries, Bulgaria, Estonia, Latvia, Lithuania and Poland, used *inter alia* competitive Western European price benchmarks to establish that Gazprom had charged excessive gas prices to these countries.²⁵ Furthermore, to remedy Gazprom's conduct, the European Commission had agreed that amendments be made in Gazprom's supply contracts with these five countries to include price revision clauses of well-defined, competitive and publicly available benchmarks such as prices at competitive gas hubs in Western Europe, even though the countries in question relied primarily on Gazprom for their gas supplies, and did not at the time have access to the gas sold at these gas hubs.²⁶

5.46 IGUA SA argued that a price based on international benchmarks does not replicate or mimic a competitive outcome. NERSA, as indicated through research on excessive pricing cases, found that benchmark pricing, such as international gas hub prices that reflect the actual prices paid in gas markets where the market price has been formed through a competitive process involving multiple suppliers and buyers, is an acceptable approach. In fact, the use of such benchmarks would be consistent with NERSA's objective to regulate maximum prices so that they mimic a more competitive outcome and provide an objective means to divide surplus value between suppliers and customers.

²³ IGU Wholesale Gas Price Survey 2019, p13

²⁴ Regulated gas prices account for 30% of international consumption. Only 10% of gas pricing is reported to be regulated at cost.

²⁵ CASE AT.39816 – Upstream gas supplies in Central and Easter Europe

²⁶ See the European Commission's decision of 24.5.2018 relating to a proceeding under Article 102 of the Treaty on the Functioning of the European Union (TFEU) and Article 54 of the EEA Agreement. Case AT.39816 – Upstream Gas Supplies in Central and Eastern Europe. Available at https://ec.europa.eu/competition/antitrust/cases/dec_docs/39816/39816_10148_3.pdf

6. SELECTION OF THE HUBS

- 6.1 Stakeholders also provided their views on which international hub prices should form the pricing benchmark. It was stated that the pricing benchmarks must be based on international gas hubs that are highly liquid with multiple sources of competing supply. This would ensure that the benchmark reflects prices borne out of strong rivalry between competing suppliers. Four main international hubs were provided being (i) the UK's NBP; (ii) the Netherlands TTF; (iii) the US Henry Hub and (iv) the Japan Korean Marker (JKM), for gas deliveries in Asia Pacific.
- 6.2 It was stated that the source of supply and associated market dynamics must be reasonably similar to the South African context. It was indicated that the international benchmark should be based on supply sources that broadly reflect the type of gas available in South Africa. South Africa is largely supplied by conventional natural gas from Mozambique. For that reason, it was highlighted that three European hubs, the TTF and NBP and the JKM, which are supplied with conventional gas should be used, and it was suggested that the three should be used in a formula as the new maximum price of South Africa.
- 6.3 The stakeholder also stated that for transparency, the hub prices should all have equal weighting in the formula as the gas sold in the relevant markets is not easily obtainable.
- 6.4 The prices calculated from this proposed hub were used in a calculation that was shown. It was stated that this benchmark is only appropriate for current supplies, and it was suggested that NERSA allow a licensee to motivate and justify an alternative hub index should they believe such a price benchmark to be more appropriate.

NERSA assessment

- 6.5 NERSA assessed the stakeholder comments. Firstly, an assessment based on the suggestion that the South African maximum price should be

based on hubs other than those proposed in the consultation and should be constructed based on the TTF, NBP and JKM, was conducted. NERSA assessed whether the suggested hubs meet the liquidity criteria required for them to be regarded as benchmark hubs. A benchmark hub or a price marker hub is one that offers prices for other hubs, and must have good liquidity from spot trading to several years forward and must be fully transparent, open, and accessible to a wide range of participants or traders.²⁷

6.6 Liquid gas hubs are said to foster gas on gas competition, thus resulting in a market where gas prices are determined by the interplay of supply and demand²⁸. A frequently used indicator of liquidity is the churn rate (i.e. the number of times gas generated in a market is subsequently traded). The churn rate is also calculated as the ratio between the volume of all trades in all time frames executed in a given market and its total demand. In particular, inter-dealer (ID) liquidity can be expressed as the ratio between ID traded volumes and total demand. The churn rate is then used to denote the liquidity of a hub. A churn rate:

- 6.6.1 below 10 = illiquid (light blue);
- 6.6.2 10 < 15 = mature (orange);
- 6.6.3 15 < 50 = liquid (light green);
- 6.6.4 >50 = very liquid (dark green).²⁹

6.7 Table 2 below shows the extent to which hubs located within the main global regions (North America, Europe and Asia) are liquid.

²⁷ See, Heather, P. (2015). The evolution of traded gas hubs in Europe. *Oxford Institute for Energy Studies, OIES Paper, 104*.

²⁸ See, Hulshof, D., van der Maat, J. P., & Mulder, M. (2016). Market fundamentals, competition and natural-gas prices. *Energy policy, 94*, 480-491.

²⁹ See, http://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Publication/ACER_Market_Monitoring_Report_2015.pdf

Table 2: Global benchmark churn rates for 2018

Country	Hub	Churn rate
Netherlands	TTF	70.9
United States	Henry Hub	53.9
Britain	NBP	16.9
FR-DE-AT-CZ-Benelux	TTF	16.7
UK-IE	NBP	15.9
Austria	VTP	6.9
Germany	NCG+GPL	3.3
Belgium	ZEE+ZTP	3.1

Source: *The Oxford Institute of Energy Studies, 2019*³⁰

6.8 Table 2 above shows that North America's Henry Hub, the Netherlands TTF and the UK NBP are the liquid hubs as reflected in the churn rates of above 15. The NBP is the benchmark for the UK and the Republic of Ireland. Asia does not have a gas trading hub as such but the Platts JKM is being used for the pricing of some LNG contracts in the region. Even though the trading volumes have grown exponentially, the Asian JKM is still in its infancy, when set against the very large physical underlying volumes in China, Japan, Korea and Taiwan. For instance, the JKM's churn rate in 2018 was only 0.2, thus, indicating that it is classified as illiquid.

6.9 The Henry Hub, TTF and NBP are successful, mature, benchmark hubs, that can be used for benchmark purposes. These hubs are very competitive and exhibit strong rivalry between suppliers, hence NERSA considered them.

6.10 A proposal that each trader may choose a benchmark or international hub price that suits them would not be consistent with the Piped-Gas Regulations that require that a methodology should be objective, i.e. based on a systematic methodology applicable on a consistent and comparable basis. A methodology also has to be predictable and transparent.

³⁰ See, <https://www.oxfordenergy.org/wpcms/wp-content/uploads/2019/07/European-traded-gas-hubs-a-decade-of-change-Insight-55.pdf>, accessed 5 March 2020

Conclusion

6.11 In conclusion, NERSA chose to use the Henry Hub, the Dutch TTF and the UK NBP for the maximum pricing formula as they are very liquid and will ensure that the maximum price mimics a competitive market. The Dutch's TTF, Britain's NBP and United States' (US) Henry Hub (HH) are currently the main gas trading hubs that are classified as liquid in the world. As such, gas prices in these trading hubs are largely determined by the interplay between supply and demand (gas-on-gas competition). In this regard, the Dutch TTF, Britain's NBP and US' HH are the suitable benchmark hubs against which a gas price that seeks to mimic competition can be linked.

7. PROCESS OF IDENTIFYING ECONOMIC SURPLUS IN THE PIPED-GAS MARKET

a. Marginal/Actual Costs of the Gas Molecule

7.1 NERSA stated in the consultation document that it interprets Sasol Gas' marginal costs as the actual costs of procured gas from the upstream suppliers. This is the pass-through actual cost of gas plus trading cost of Sasol Gas. The marginal cost of Sasol Gas would be the provable Sasol Gas purchase cost price of gas and not theoretic upstream costs.

7.2 Another interpretation would entail Sasol Gas establishing the cost of its next available molecule. This would be a projection or an estimate. However, this cost would be an imaginary cost and may fall into the same category that was criticised by the Constitutional Court judgement. NERSA indicated that it will request that Sasol Gas should provide its provable actual costs of gas.

Stakeholder comments on which costs to use

7.3 Sasol Gas stated that its acquisition cost of gas from its unincorporated Mozambican joint venture is an inappropriate basis for establishing its costs. According to Sasol, the price from this upstream joint venture reflects an agreement that was struck between vertically related entities at the time

the overall gas project was undertaken and is intrinsically linked to the risks and investments undertaken by Sasol Gas along the whole value chain. This includes developing a market in South Africa into which gas could be placed, as well as investments in the upstream production and processing at Pande and Temane. Sasol Gas further argues that the price reflected in the gas supply agreement with its upstream joint venture is born out of a particular and unique context of stranded gas resource that was determined at a time when a very specific political risk associated with the development of natural gas as a whole, existed.

- 7.4 Sasol Gas stated that the upstream price is even lower than other measures of the value of gas. For example, in the calendar year 2019, [REDACTED] Sasol Gas further stated that this price is below other measures of value that emerge from several of Sasol's uses of gas in its production and related processes. Sasol Gas argues that attempting to regulate prices at this acquisition cost of gas would be inappropriate and would distort the true value of the gas molecule.
- 7.5 Sasol Gas concludes by indicating that its acquisition cost of gas is not an appropriate measure for economic cost and, therefore, cannot be used in the determination of a floor price for the maximum price.
- 7.6 On the other hand, the gas users contend that NERSA should consider whether the upstream production costs are linked to the price at which Sasol Gas buys the gas molecule. IGUA SA provided details on how to estimate Sasol Gas' actual upstream production costs. The gas users provided production costs of Sasol Gas from various sources such as the Wood Mackenzie report titled 'Pande, Temane and Inhassaro fields', dated January 2019; the operating costs reported in the CMH annual financial statements for the FY2016 to FY 2019 financial years, as well as average production costs reported in Sasol's Form 20-Fs.
- 7.7 NERSA notes the extensive details provided by IGUA SA in showing the connection between Sasol's production cost and its transfer cost. NERSA

particularly notes the illustrations and assumptions, as well as sentiments from the users that this price is higher than the production cost and adequately compensates for the capital costs and the upstream risk taken.

NERSA assessment of the stakeholder comments on costs

- 7.8 NERSA assesses the comments from stakeholders and considered their views on which costs to include. NERSA's assessment relied on the current legislative framework and first identified the licensee, and ultimately the costs involved in the trading of gas.
- 7.9 The Constitutional Court decided that the irrationality of the NERSA decision on the Sasol Gas' maximum price was the failure to consider Sasol's marginal costs. Hence the need to identify the costs to which reference was made.
- 7.10 In this instance, the licensee of NERSA is Sasol Gas and not Sasol Petroleum Temane or another upstream producer. Hence NERSA has confined its enquiry in establishing the costs incurred by Sasol Gas to acquire the molecule and deliver it to a customer. NERSA could not rely on upstream marginal costs as these include exploration costs for new gas resources. The stakeholders' assumption that the transfer price between the upstream player and Sasol Gas already reflects a profit margin is not premised on marginal costs but rather uses historical average costs. Sasol Gas, in its comments, indicated that its upstream marginal costs would indeed include all its upstream exploration activities. Therefore, NERSA is reluctant to include upstream marginal costs or interrogate such a link as these include exploration costs, as stated by Sasol Gas. It was stated that the price paid by Sasol Gas to the upstream player is a reflection of a price that was negotiated in an environment that had a perceived high level of political risk.
- 7.11 Therefore, NERSA is not relying on the marginal costs of an upstream player as it will not be in a position to interrogate the composition of such

costs given that its regulatory mandate does not include upstream activities.

- 7.12 Sasol Gas added that NERSA should not use its acquisition cost of gas as the price may not reflect the true cost of the gas molecule. Furthermore, it is highlighted that such a price is influenced by peculiar historical circumstances and it was structured in the current way to compensate for the investment risk in an environment that was perceived to be risky. NERSA acknowledges these sentiments. However, the Constitutional Court decision found NERSA to be irrational for not considering Sasol's marginal costs. It would perpetuate this irrationality if NERSA were to use costs other than Sasol Gas' costs.

Conclusion on the costs of the gas molecule

- 7.13 In response to the stakeholder comments, NERSA will seek the actual costs of acquisition of the gas molecule and of trading the molecule from the licensee. These costs of the gas molecule and costs to trade the molecule will be the floor of the maximum price.

b. LNG as the Upper Bound of the Piped-Gas Market

- 7.14 In the consultation document, NERSA stated that the piped-gas industry is supply constrained. In the 2019 adequacy of competition determination, the lack of adequate sources of gas was identified as one of the key barriers to competition in the relevant piped-gas markets. The current gas supply to the market is finite and will last until 2029. Hence, NERSA is cognisant of the fact that new sources of gas ought to be found to ensure continuity of gas supply when the current reserves in Pande and Temane become depleted.
- 7.15 NERSA also established that some gas users that consume an estimated 70% of the piped-gas volumes supplied by Sasol Gas to its external

customers³¹ would not switch to an alternative energy source once current piped-gas supplies become depleted, but would instead prefer to continue using natural gas. Thus, NERSA is considering LNG and the estimated costs of a new LNG supplier into the market to represent the marginal costs of the marginal supplier. This new LNG supplier would represent the upper bounds in the determination of an appropriate method to use to establish the maximum price for approval.

Stakeholder comments on the use of LNG as an upper bound

7.16 Various stakeholders provided their views on this issue. Some gas users clearly stated that LNG is not the upper bound of the current piped-gas market. It was stated that the importation of LNG should not be taken into account when considering the maximum price of piped-gas, on account of the fact that the importation of LNG does not form part of the South African piped-gas market.

7.17 It was argued that a product has to form part of the relevant South African piped-gas market in order for it to be regarded as an appropriate benchmark for maximum gas prices. Reliance was placed on the following extracts by competition economist Willem H. Boshoff:

A defence of market definition as a preliminary screen is helpful, but focuses attention away from the significant other benefit of a market definition exercise, namely that it identifies and ranks competitors of the firm under investigation. Competitor identification and ranking is very important, for the extent of substitution lies at the heart of what competition policy considers facilitating conditions for the exercise of market power. By treating market definition as a remnant of an old approach to antitrust, we forego a large chunk of information directly relevant to the effects-based approach. An effects-based approach requires the analyst to link supposedly anti-competitive behaviour with market effect and substitution patterns are crucial for this: anti-

³¹ External customers refer to Sasol Gas' piped-gas customers that do not form part of the Sasol Group

*competitive behaviour requires the use of market power, which only exists in the absence of meaningful competitors. The market definition exercise therefore helps us to assess the feasibility and possible effect of anti-competitive strategies – the heart of an antitrust inquiry.*³²

And

*We argue that market definition is an essential first step in a competition investigation, not only for the purposes of calculating market shares, but more importantly because it involves an analysis of substitutability. Substitution patterns are central in evaluating the competitive effects of a merger or of a particular business practice.*³³

- 7.18 It was argued that it would be irrational, in regulating the prices of piped-gas, to consider entrants in other markets, even adjacent markets or even to consider increases in the regulated price in order to encourage entry or facilitate investment in other markets.
- 7.19 IGUA SA indicated that the LNG price that is determined by NERSA is too high, and provided an alternative LNG price that was calculated in a Western Cape Integrated Liquefied Gas Importation and Gas to Power Feasibility Study Report. According to the study report, the appropriate cost of LNG would be US\$7.17/GJ (about R99.5/GJ).
- 7.20 A trader also commented that LNG will not be available in the near future and that the current basket of fuels should be used as the upper bound in the determination of an appropriate maximum price. LPG was suggested as another alternative to LNG.
- 7.21 Other traders simply agreed that the next gas molecule will be supplied as LNG. It was indicated that there is substantial excess LNG export capacity in the world, which could enable credible buyers to buy the commodity. It was added that Floating Regasification and Storage Unit (FSRU)

³² Paragraph 3.4 (2) of the IGUA SA submission

³³ Paragraph 3.4 (3) of the IGUA SA submission

technology is developing at a rapid pace such that purchasing or leasing of such is now commonplace.

- 7.22 Transnet is currently considering plans for an LNG import terminal using an FSRU. It was also reported that the Total Group (in collaboration with Gigajoule and Matola Gas Company) is involved in a project for the importation of LNG through the Matola harbour. This involves investment in an FSRU and connection to the South African market. It was indicated that this project could come online as early as 2022, supplying significant volumes of natural gas to the South African market.
- 7.23 It was further submitted that the Integrated Resource Plan (IRP) of October 2019 envisages an expanded role for gas in the generation of electricity going forward and the same IRP acknowledges that in the short term the natural gas will have to be imported. Gas will be part of the energy mix and the country will generate 1 000 MW from gas in 2023 and 2 000 MW in 2027³⁴ although with a low load factor. The country will convert open-cycle gas plants that currently use diesel to run on gas. The IRP 2019 acknowledges that gas for power projects will likely have to be imported.
- 7.24 Another trader stated that its own investigations confirm that additional and new sources of gas will have to be imported and any local developments will only materialise in the long term.

NERSA assessment on LNG as upper bound and the use of competitive benchmarks

- 7.25 NERSA found that the supply of piped-gas in South Africa is constrained and that the relevant gas markets are immature. At the same time NERSA is cognisant that it has to set a maximum price that reflects the economic value of piped-gas, and that mimics the outcome of a competitive market. As a first step in this process, NERSA has estimated the economic surplus that is prevailing in the market, with the view to allocate the surplus

³⁴ Integrated Resource Plan 2019 – pg. 42 (Table 5)

between producers and consumers of piped-gas in a fair manner. Such economic surplus will be the difference between the consumers' willingness to pay and the producers' costs of supply. This is the context of establishing the costs of the marginal supplier into the market.

7.26 NERSA agrees that LNG imports are currently not part of the current piped-gas markets in South Africa, on account of various factors, including the following:

- (i) Some actual prices charged by Sasol Gas are significantly lower than the estimated costs of LNG imports, such that gas customers would not switch from their current gas source to LNG in response to a small but significant and non-transitory increase in price (SSNIP) of 5% to 10%.
- (ii) LNG is not currently available to South African customers, on account that the relevant infrastructure to supply same to customers is not yet in place. As such, even if the prices of current piped-gas and LNG imports were similar, customers would currently not be able to switch to or substitute their current piped-gas supplies with LNG. However, indications are that there are numerous plans underway to erect the infrastructure to supply bulk LNG imports to customers, and NERSA has already received a licence application for the import and supply of small-scale LNG to South African customers. As such, although it may not be available immediately, indications are that LNG is likely to be the next source of gas for South African customers that will serve to supplement existing supplies, and eventually replace such supplies once they are depleted.

7.27 It is NERSA's view that a product does not have to form part of the relevant South African piped-gas markets in order for it to be regarded as an appropriate benchmark for maximum gas prices, unless the rival-firm-as-

a-benchmarking method³⁵, which is but one of a number of recognised competitive price benchmarking methods, is used to set maximum prices for piped-gas.

- 7.28 A key criticism to the use of a rival firm's price as a benchmarking method in excessive pricing cases is that the presence of competitors might suggest that the market is subject to competitive constraints, which is considered an important requirement for intervention in excessive pricing cases.³⁶ This is even more so in the case of NERSA's task of setting maximum prices to mitigate for the lack of competition in the relevant piped-gas markets, where NERSA only has a mandate to set such prices when there is inadequate competition in the relevant piped-gas markets.
- 7.29 In the current instance, therefore, the rival-firm price benchmarking method is not suggested as an appropriate measure to set maximum prices or profits for piped-gas in South Africa, as there are no equally efficient competitors to Sasol Gas in the relevant piped-gas markets to benchmark against. If there were competitors, then this would suggest that the relevant piped-gas market is subject to sufficient competitive constraints. However, as set out in the 2019 adequacy of competition determination, there are no competitors.
- 7.30 Rather, NERSA will look to other recognised price benchmarking methods to guide it in determining an appropriate maximum price for piped-gas in South Africa. The other recognised benchmarks that have been suggested in the economic literature, and used by the courts in excessive pricing cases to determine the economic value of a product include (i) comparisons of prices charged by the same firm across customers or geographical markets (also known as discrimination benchmarks); (ii) price

³⁵ This benchmarking method entails setting the price of the relevant product to be regulated with reference to the prices of competing products. In excessive pricing cases, the benchmarking method entails a comparison of the prices charged by the dominant firm with those charged by its competitors. The cases of *General Motors (Case 26/75 General Motors Continental v Commission* [1975] ECR 1367) and *United Brands (United Brands v. Commission* [1978] ECR 207) are leading examples where this method was put into place.

³⁶ See Geradin, *The Necessary Limits to the Control of "Excessive" Prices by Competition Authorities - A View from Europe*, 13.

comparisons by the same firm over time; (iii) cost-plus reasonable profit margin benchmarks; and (iv) competitive market price comparisons.³⁷

7.31 In this regard, the discrimination benchmark cannot practically be used by NERSA to set maximum prices of gas, as none of the relevant markets in which the irrefutably dominant supplier of gas is active are regarded as competitive. As such, there is no relevant price discrimination benchmark that can be used to guide NERSA in setting maximum piped-gas prices in South Africa.

7.32 The historical price benchmark can also not practically be used by NERSA to set maximum prices of gas. This is because NERSA is currently reviewing the maximum price methodology for a number of reasons, including, inter alia, criticism regarding the inclusion of electricity prices in the price formula, while such prices are not competitive. The other criticism is that the driver of the prices of alternative energy sources in the current methodology is not the same market as that of natural gas. Thus, setting maximum prices on the basis of the historical maximum prices would not serve the purpose of reviewing the current maximum price methodology.³⁸

7.33 In addition, the cost-plus reasonable profit approach is a useful first step in calculating the economic surplus, and in determining what the profit margin of a relevant supplier is as a screening exercise in excessive pricing cases. However, the economic literature recognises that this method is fraught with difficulties in determining a profit margin that is fair – i.e. that would mimic profit margins that would be prevalent under competitive conditions

³⁷ See O'Donoghue and Padilla, *The Law and Economics of Article 102 TFEU*, 748; Miguel de la Mano, Renato Nazzini, and Hans Zenger, "Article 102," 519–22; Damien Geradin, Anne Layne-Farrar, and Nicolas Petit, *EU Competition Law and Economics* (Oxford, U.K: Oxford University Press, 2012), 276–80; Massimo Motta and Alexandre de Stree, "Excessive Pricing and Price Squeeze under EU Law," in *European Competition Law Annual 2003: What is an Abuse of a Dominant Position*, ed. Claus-Dieter Ehlermann and Isabela Atanasiu (Oxford; Portland, Ore.: Hart Publishing, 2006), 93–104; Roberts, "Assessing Excessive Pricing", Omar Vasquez Duque, "Excessive Pricing: A view from Chile", University of Oxford Centre for Competition Law and Policy, Working Paper CCLP(L) 41, 2015

³⁸ It is nevertheless useful to note that all the options for setting maximum prices set out in the consultation document will lead to maximum prices that are significantly lower than those set under the basket of alternatives approach.

– and that would allocate the economic surplus between producers/suppliers and consumers of gas in a fair manner.³⁹

7.34 Therefore, and in line with the practice internationally in countries such as China, it is prudent for NERSA to consider using competitive benchmarks internationally⁴⁰ to guide it in setting maximum prices or profit margins that would be considered to be fair, and allocate the economic surplus between producers/suppliers and consumers of gas in a fair manner. This would entail the identification of appropriate benchmark price(s) or profit margins that would reflect price levels or profit margins obtained in other geographical markets where strong rivalry exists between suppliers.

7.35 The competitive market price benchmarking approach has recently been used in the European Commission’s (EC) 2018 investigation that sought to assess whether Gazprom had charged excessive prices for the supply of gas to five central and eastern European countries, namely Bulgaria, Estonia, Latvia, Lithuania and Poland (the Gazprom case).⁴¹ In this case, the EC first used the price/cost test as a screening step to establish that Gazprom’s prices net of export duties in the five countries exceeded its costs by a large margin (an average of 170%). Thereafter, EC used the geographic price benchmark approach to determine whether these prices were unfair.

7.36 Specifically, the EC compared Gazprom’s long-term contract prices in the five CEE countries with Western European hubs such as the Dutch TTF hub and German NCG hub ‘front month’ forward prices. The EC found that Gazprom’s long-term contract prices in all five CEE countries had significantly and persistently exceeded both hub prices by between 22%

³⁹ Damien Geradin, *The Necessary Limits to the Control of “Excessive” Prices by Competition Authorities - A View from Europe*, SSRN Scholarly Paper (Rochester, NY, 2007), pages 9 and 10, Omar Vasquez Duque, “Excessive Pricing: A view from Chile”, University of Oxford Centre for Competition Law and Policy, Working Paper CCLP(L) 41, 2015, pages 10 and 14, David S. Evans and A. Jorge Padilla, “Excessive Prices: Using Economics to Define Administrable Legal Rules,” *Jnl of Competition Law & Economics* 1, no. 1 (2005), page 5.

⁴⁰ In excessive pricing cases such as the United Brands case, this method is used by comparing the prices of the dominant firm with those of other firms that operate in different geographic markets where those markets are characterized by effective competition in the long run.

⁴¹ CASE AT.39816 – Upstream gas supplies in Central and Easter Europe

and 40% over the period 2009 – 2014. The EC considered these differences to be indicative of unfair prices.⁴²

7.37 After the EC's intervention, prices for the supply of gas to these countries were effectively reduced to prices prevailing in 'competitive Continental Western European gas markets', with an explicit reference to 'liquid gas hubs in continental Europe'.⁴³ The EC further noted that this remedy would ensure that gas prices in the five CEE countries are closely linked to prices that are formed in parts of the EU where other sources of gas are available and prices are competitive.⁴⁴⁴⁵

7.38 In the consultation document, it was proposed that LNG prices be used to determine the willingness of customers to pay by determining where the next source of gas would come from to supplement existing gas supplies, and to eventually replace them when the current source of gas becomes depleted, rather than to substitute for current gas supplies in South Africa. Most stakeholders were in agreement that the next source of gas would come from LNG.

7.39 Moreover, and by way of clarification it should be noted that the gas prices discovered at competitive hubs, such as the Dutch TTF and US HH as stated in the consultation document are not LNG prices. Rather, these are prices for natural gas that can be purchased on the spot market, and these prices are discovered through competitive forces of supply and demand. LNG, as with piped-gas, merely refers to the method/form in which natural gas is transported to customers. The prices discovered through competitive

⁴² CASE AT.39816 – Upstream gas supplies in Central and Easter Europe, paragraph 73

⁴³ CASE AT.39816 – Upstream gas supplies in Central and Easter Europe, paragraphs 152-157

⁴⁴ https://ec.europa.eu/commission/presscorner/detail/en/MEMO_17_546

⁴⁵ It is noteworthy that, over the relevant period during which Gazprom's anticompetitive conduct investigated by the EU in this matter persisted (2004 – 2014) the market structures of the gas markets in the five CEE countries exhibited similarities to the South African piped-gas markets. In particular, in spite of being part of the EU, the five CEE countries were largely isolated from gas supplies in the rest of the EU due to the unavailability of gas infrastructure and a lack of interconnection agreements with neighbouring countries, particularly prior to the opening of a liquefied gas terminal in Lithuania at the end of 2014.

forces of supply and demand at the Dutch TTF and US HH are prices of natural gas molecules, which can be delivered either in gaseous form through pipelines, shipped in liquid form (LNG), or transported in compressed form (CNG).

7.40 NERSA notes the comments by stakeholders indicating that indeed LNG would be the next source of gas. However, the dispute is whether the LNG would be the upper bound of the piped-gas market, thus reflecting customers' willingness to pay. The above paragraphs adequately address this aspect and show that the marginal supplier of piped-gas would be an LNG importer. NERSA acknowledges comments from stakeholders that recent the Government Policy, in the form of the October 2019 IRP includes gas to power electricity generation and allocates 1 000 MW for this purpose by 2023.

7.41 In conclusion, NERSA will use LNG as the upper bounds in the determination of an appropriate method to calculate a maximum price for approval for applicants. NERSA will use the JKM marker to establish this LNG price. The maximum price that NERSA will establish will have to lie somewhere between the costs of the gas supplier and this upper bound of the market.

8. DETERMINING THE PIPED-GAS TRADING COSTS

8.1 To approve the trading costs component, NERSA will reference the Tariff Guidelines as the elements that ought to be included. The trading costs are similar to those used in determining tariffs.

8.2 An opportunity cost (%) will also be calculated in nominal terms. A nominal Weighted Average Cost of Capital (WACC) of the trader will be used in calculating the opportunity cost of the trading activity. The WACC will be applied to the sum of Trading RAB of that trader plus Working Capital.

8.3 The nominal WACC will be calculated as prescribed in the Appendix to the methodology.

8.4 The formula for the trading cost will be as follows:

$$\text{Allowable Revenue} = (\text{Trading Assets} + \text{Working Capital}) * \text{WACC} + \text{OPEX} + \text{TAX} + \underline{\text{C}}$$

8.5 To be billed to customers as a trading cost per Giga Joule as follows:

$$\text{Trading Costs in ZAR Gigajoule} = \text{Allowable Revenue}/\text{VOLUME.}$$

8.6 The formula shows that trading assets and a working capital will receive a nominal WACC. To eliminate the problem whereby the gas molecule may be rewarded twice, i.e. in order to eliminate double counting, the cost of sales figure will be excluded from calculating trading costs as the profit for that limb of the gas price is estimated using a competitive benchmark that is shown in earlier paragraphs.

8.7 Stakeholders commented that they would prefer that this leg of the maximum price be determined separately from the molecule. NERSA will, however, not approve trading costs separately as these are one part of the maximum price.

9. DATA SOURCES

9.1 In order to provide certainty and predictability, the following data source will be used for the various elements in the formula for the determination of maximum price of piped-gas energy.

Table 3: Sources of Data

Variable element	Source of data
a) Prices of Henry Hub, TTF and Japan Gas Prices	World Bank Commodity Prices Publication 'Pink Data' sheet
b) NBP	Bloomberg
c) JKM	Platts, Australian Competition and Consumer Commission
d) Inputs for Weighted Average Cost of Capital (WACC) for Trading cost	Approved data sources for Tariff Guidelines published on NERSA website
e) Financial information to determine piped-gas trading service margin	As prescribed by the Regulatory Reporting Manuals vol. 3

Variable element	Source of data
f) Exchange rates	South African Reserve Bank - Historical exchange rates (monthly mean) South African Revenue Service (SARS)

10. NEW ENTRANTS AND THIRD-PARTY TRADERS

10.1 Third-party traders (referring to those that purchase gas from other traders in the market) provided comments to the proposal in the consultation document where it is stated that the pricing of traders that purchase gas from other traders will take into account regulation 4(13) of the Piped Gas Regulations. This regulation states that when ownership of gas changes, the price of gas in the new owner's hands refers to the price of gas from the seller plus any pass-through costs already levied.

10.2 This means that traders will only add their trading cost to the total charges levied by Sasol Gas. The calculated trading cost will also account for their producer surplus. The proposal to calculate the surplus was the difference between the third-party traders' purchase price and the upper bounds of the gas market (LNG price) will be shared between these traders and their customers. That is a trader's profit will be increased by 50% of the difference between its costs and the upper bounds of the gas market. The trader will also calculate its trading costs and add these to its molecule price.

Stakeholder comments

10.3 Third-party traders provided extensive comments on the proposal contained. Firstly, it was highlighted that Sasol Gas is the dominant integrated firm and there are no alternative suppliers to Sasol Gas. Traders are limited in their ability to compete against Sasol Gas. They are effectively captive customers as they cannot legitimately threaten Sasol Gas with switching to an alternative supplier as there are no alternatives.

- 10.4 The traders stated that the Constitutional Court judgement was against a specific applicant being Sasol Gas and that the methodology was not set aside. It was indicated that the principles set out in the judgement apply to Sasol Gas and any other licensee that occupies the same position as Sasol Gas. A section in the Constitutional Court judgment states that the existing basket of alternatives approach, albeit 'somewhat arbitrary', *may be rationally related to a potential competitive price in the piped-gas market.*
- 10.5 It was stated that it is not the Methodology that was criticised by the court but its application to Sasol Gas by NERSA.
- 10.6 It was highlighted that the proposal, as articulated in the consultation document, is unlawful as it does not promote competition.
- 10.7 It was stated that the proposal in the consultation document to allocate 50% of the economic surplus to traders, will have the result of customers receiving more than a fair share of the surplus. The context provided is that only a miniscule of the volumes can be sold at the maximum price. Criticism was also levelled at the theoretic determination of the economic surplus.
- 10.8 Comments were also received that the proposed methodologies do not address the Sasol Gas monopoly in the separate market of trading to other traders. It was reported that traders buy gas on the same basis as large end-user customers (with the exception of a limited discount by way of a trading cost). It was reported that there is insufficient margin from the gas supplier and the trader to make trading to large customers worthwhile.
- 10.9 The proposal was deemed not clear as to how actual LNG imports and notional LNG pricing will be used to determine maximum prices. It was reported that the proposed regulatory approach for third-party traders will only be efficient for an interim period until LNG actually flows into the piped-gas network.
- 10.10 A detailed analysis on the preferred approach for the cost of the marginal supplier into the South African market, was also provided. It was indicated that if LNG is to be adopted, then it has to include all the various costing

scenarios, including shipping costs and regasification costs for each of the South African ports.

- 10.11 It was further highlighted that traders are thus not in favour of the methodology suggested, as the determination of the surplus would be subjective.
- 10.12 It was highlighted that the adjustment of Sasol's actual price is aligned with the adjustment of the maximum price, traders will need to revise their maximum price escalation to account for revisions that Sasol Gas may make to its actual price mechanism. It was suggested that NERSA ought to change the maximum price determination for traders and base it on the import parity LNG price.
- 10.13 It was mentioned that the proposals ultimately benefit smaller customers. The impact on traders will be a reduced ability to provide differentiated pricing to customers, which will impinge on the development of new markets. It was further stated that smaller customers are supplied at a greater credit risk to traders and impose a higher cost of service per GJ than larger customers, justifying higher pricing than that charged to larger customers.

NERSA assessment

- 10.14 NERSA assessed the comments from third-party traders. NERSA agrees that traders do not have an alternative supplier of natural gas. NERSA also agrees that the methodology was not set aside, but NERSA's decision on the Sasol Gas maximum price was set aside. However, the current methodology that was approved in October 2011 contains a clause that provides for the review of the methodology after five years of implementation. This period has lapsed, hence NERSA is reviewing its methodology.
- 10.15 NERSA noted the concern that the calculation of a 50% surplus would be subjective and has adopted the recommendation of the traders to use an international benchmark as well. Traders will still be required to submit their

costs of gas as per regulation 4(13) of the Piped Gas Regulations. However, NERSA decided to place a second option into the methodology to address these issues and it is the pass through of costs.

A. PASS THROUGH OF COSTS

10.16 The pass through of costs will be used by third-party traders and by importers of LNG.

10.17 The pricing of traders that purchase gas from other traders will take into account regulation 4(13) of the Piped-Gas Regulations. This regulation states that when ownership of gas changes, the price of gas in the new owner's hands refers to the price of gas from the seller plus any pass-through costs already levied.

10.18 Therefore, traders will only add a reasonable profit plus their trading costs to the total charges levied by their supplier. The main issue to be established is what such a reasonable profit ought to be. As such, NERSA is also proposing the use of a benchmark, being the Japan Korea Marker (JKM) Platts price. This price becomes the maximum price of third-party traders that purchase gas from the importers of gas in the current period. The use of such a landed JKM price would be a reasonable way of estimating a reasonable profit for such third-party traders.

10.19 NERSA proposes that a shipping cost be added to this JKM price for the gas molecule to arrive at a landed price. Other charges, such as regasification tariffs, will be added separately to the price of the gas molecule. Thus a benchmark will be used in conjunction with the cost-plus approach to establish appropriate profit margins when determining the maximum gas prices of third-party traders.

10.20 The importer of LNG would also use the JKM price as its maximum price and add its actual shipping and transportation costs, as well as eventually add all the other pass-through tariffs. The maximum price becomes the JKM. In addition, the importer of gas and third-party traders will add their trading costs that are calculated as shown in this methodology.

11. CONCLUSION

- 11.1 On 15 April 2020, the Energy Regulator approved the Methodology to Approve Maximum Prices of Piped-Gas in South Africa.
- 11.2 The Methodology to Approve Maximum Prices in South Africa is appropriate and complies with legislative and regulatory requirements.

Annex HH - Certificate of Acquaintance with conditions of contract with TNPA

NAME OF ENTITY: _____

We

do hereby certify that we are aware that any Bid Response submitted which is suspicious will be reported to the Competition Commission for investigation by the Commission and the possible imposition of administrative penalties in terms of section 59 of the Competition Act and may be reported to the National Prosecuting Authority for a criminal investigation and/or be restricted from conducting business with the public sector in terms of the Prevention of Combating of Corrupt Activities Act No. 12 of 2004.

SIGNED at _____ on this _____ day of _____ 20____

SIGNATURE OF WITNESS

SIGNATURE OF BIDDER



PORT OF RICHARDS BAY BERTHING GUIDELINES

Effective Date:	01 November 2017
Originating Department:	Harbour Master
Master File Reference:	HM/RCBBG/21/11/2017
Approved :	 _____
Harbour Master	<u>21/11/2017</u> Date
Approved :	 _____
Port Manager	<u>21/11/2017</u> Date

TABLE OF CONTENT

No.	SECTIONS	Page No.
1	OBJECTIVES	3
2	DEFINITIONS	3
3	PROCESS FLOW ON IPMS	5
4	ISPS CLEARANCE	5
5	INTERNATIONAL MARITIME DANGEROUS GOODS (IMDG)	5
6	RESOURCE ALLOCATION & ORDER OF WORKING	6
7	ORDER OF PRIORITY BY BERTHS	8
8	VACATING OF BERTH	9
9	WEATHER OPERATIONAL LIMITS	10
10	PORT AND BERTH DRAFT LIMITATIONS	10
11	DAYLIGHT MOVEMENTS ONLY	12
12	TIDAL VESSELS	12
13	FACTORS TO INCLUDE IN THE PASSAGE PLANNING OF TIDAL VESSELS, INCLUDE BUT NOT LIMITED TO:	12
14	MOORINGS	12
15	PILOTS BOARDING ARRANGEMENTS	13
16	ASSOCIATED COSTS FOR VACATING BERTH	13
17	DISPUTE RESOLUTION	14
18	AVAILABLE RESOURCES	14
19	PRECINCTS	14

1. OBJECTIVES

- 1.1 The objective of these guidelines is to ensure safe, efficient and orderly berthing of vessels such that the waiting time of vessels for a berth is minimized whilst optimizing the use of Port Infrastructure and improving vessel loading and unloading productivity.
- 1.2 To ensure that all port stakeholders have a common understanding of the operations in the port. **Where reference is made to the National Ports Act 12, 2005, the Port Rules issued under Section 80(2) and Harbour Master Written Instruction Compliance to these sections are mandatory.**
- 1.3 Ensure safety, the interests of security, good order, protection of the environment and the effective and efficient working of the port as per the Port Rules.
- 1.4 To provide the Port of Richards Bay with berthing guidelines for each port.

2. DEFINITIONS

Act – Ports Act no.12 of 2005

Arrival – For port purposes & key performance measurement - time a vessel crosses the port limits or VTS limits

Berth – any area in the port where a vessel can safely dock

TNPA Berth Planner – An employee of TNPA responsible for safe planning of vessels at designated berths

Departure – time when a vessel crosses the breakwater leaving the port

Terminal Operator – a Licensed Terminal Operator Handling within the port

Terminal Berth Planner – An employee of a Terminal Operator responsible for proper planning or allocation of berths at a designated terminal

Port Manager – TNPA employee responsible for the overall management of the port

PSO – Port Security Officer

Harbour Master – TNPA employee employed as the Harbour Master and mandated by the Ports Act of 2005 to ensure safety of navigation in the interest of safety, security, good order, protection of the environment, effective and efficient working of the port.

Senior Operations Manager – A senior TNPA employee responsible for operations in a port

ISPS – International Ship and Port Security

IPMS - Integrated Port Management System

Mooring – method of securing a vessel to a berth – limiting movement

Shifting – when a vessel moves for more than 20m alongside the quay or from berth to another berth/inner anchorage within the breakwaters

Warping – when a vessel moves a maximum of 20m along the quay

Wind Bound – when the wind conditions are not conducive to either docking or sailing a vessel

Weather Bound – when the weather conditions are not conducive for vessel movements.

UKC – Under Keel Clearance

Liner vessels – Vessels with regular calls at almost regular times

Red Liners – vessel which require special permission and or times for entry due to size or type of cargo

SAMSA – South African Maritime Safety Authority

Key Commodities – Cargo that contributes significantly to the ports revenue

Resource allocation – deployment of Pilots, Tugs and Berthing Staff

Precinct – a collective of terminals

Terminal Operator – licence terminal operator as per section 56 and 57 of the National Ports Act.

Terminal Manager – Any person appointed by a licensed Terminal Operator as a Terminal Manager or in their absence, any person duly appointed to act in that capacity

Tidal Vessel – Vessels with a greater draft than the promulgated draft for the Port which requires additional water which can be obtained at high tides on approval by the office of the Harbour Master

Vessel Agency – It is a licensed port operator appointed by the vessel owner

Vessel Agent – A person appointed by a licensed & registered Agency to represent the vessel

Vessel Movement Interruption – A suspension of vessel movement as a results of adverse weather conditions or marine related delays for a specified period

Port Closure – A total closure of the entire port operation for a specified period.

3. PROCESS FLOWS ON IPMS

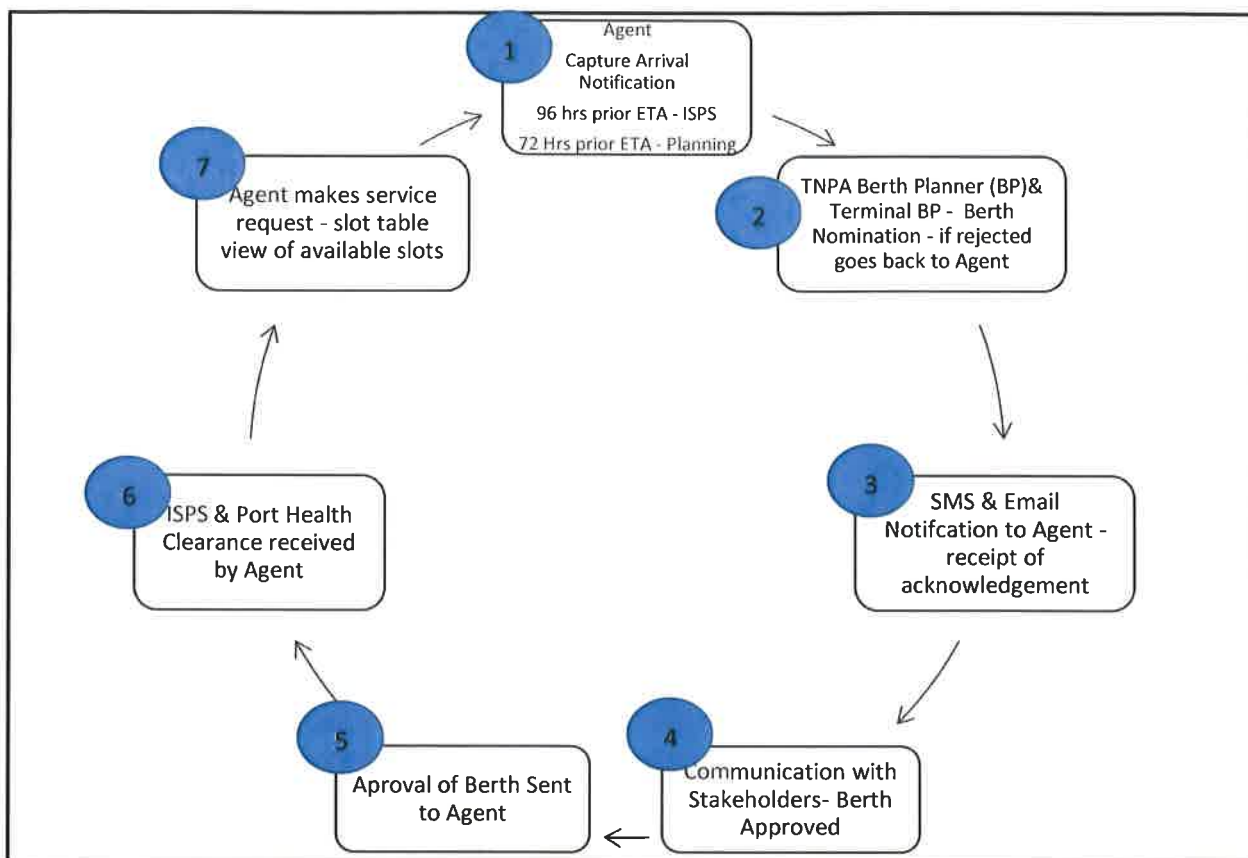


Fig 1: TNPA IPMS Process Flow

Note: Terminal notifications as required by the relevant terminal will also need to be complied with in terms of terminal procedures or systems.

4. ISPS CLEARANCE

All security regulated vessels must be ISPS cleared as per Maritime Security Regulations of 2004 prior to making a request for marine services on IPMS. The Security Office (PSO) will also be required to clear coastal vessels to ensure that no vessels enter that the port without ISPS clearance. This serves as a check for coastal vessels, where they cannot escape clearance due to omission by first port of call.

Off Port Limits Vessels - All vessels arriving off port limits for any services or interaction with any crafts will require ISPS clearance.

5. INTERNATIONAL MARITIME DANGEROUS GOODS (IMDG)

All shippers, vessel agents and terminal operators must ensure compliance with the IMDG code, the South African Maritime Dangerous Goods Standards, Handling and Transport of Dangerous Cargoes - Procedures Manual.

Special attention shall be paid to the importing and exporting of Class 1 Explosives, which poses a significant risk to the port and port users. Class 1 Explosives will only be handled in designated areas of the port and under strict conditions as specified by the SAPS Explosives inspector, SAMSA and the Harbour Master of the Port.

Class 7 refers to radioactive substances and also requires approval from the National Nuclear Regulator and will require special conditions for its handling.

All persons handling dangerous goods or involved in the administration, planning or movement of dangerous goods must be appropriately trained as specified in the SAMSA Marine Notice no 28 of 2009 or any updated notices & amendments thereto.

All IMDG declaration must be made 72 hours prior to vessel arrival for Harbour Masters' approval.

6. RESOURCE ALLOCATION & ORDER OF WORKING

TNPA implemented Marine Operator Performance Standards (MOPS) in an effort to improve performance within the Marine Services Operations environment. In conjunction with Stakeholders the following measures were agreed to be MOPS key performance indicators. Slot utilization, slot efficiency, adherence to requested time (in relation Marine Services, Terminal Operator, Shipping Lines and Weather delays).

- 6.1 In line with Marine Operator Performance Standards (MOPS), which aims to offer an equitable, efficient, reliable and predictable Marine Services to all Shipping Lines, the port declared number of available Slots per day. These slots are based on available resources and port configuration.

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Time	06h00	07h30	09h00	10h30	12h00	13h30	15h00	16h30	18h00	19h30	21h00	22h30	00h00	01h30	03h00	04h30
Slot	07h30	09h00	10h30	12h00	13h30	15h00	16h30	18h00	19h30	21h00	22h30	00h00	01h30	03h00	04h30	06h00

Fig 2: Port of Richards Bay – 1 Vessel move per 1.5 hours

- 6.2 As a general principle, all vessels will be serviced based on bookings made on Integrated Port Management System (IPMS) slot booking system and subject to the provisions of this policy, in compliance with the Ports Act and Port Rules.
- 6.3 A vessel, shall forfeit its booked slot, if it has not complied with all the normal and ordinary requirements for its berthing as prescribed by the Port Rules and the standard operating procedures of the Terminal Operator.
- 6.4 Under normal circumstances, first vessel to book a slot on IPMS will be served first. In the interest of safety, security, good order, protection of the environment and orderly working of the port, the Harbour Master will decide on how resources will be allocated taking into consideration the following:

- 6.4.1 Vessels with emergencies
- 6.4.2 Shipping back log recovery
- 6.4.3 Tidal vessels
- 6.4.4 Liner type vessels – time sensitive
- 6.4.5 Key commodities that contribute to the revenue of the port
- 6.4.6 Cargo sensitive vessels – e.g. passengers
- 6.4.7 Weather conditions

6.5 Harbour Masters also reserves the right to prioritize the vessels according to key commodities provided there are no competition issues. The order of priority will be as follows;

- 6.5.1 Passengers
- 6.5.2 Foreign Navy
- 6.5.3 Jobs of Special Nature (including Tug and Tow)
- 6.5.4 Bulk Carriers - Coal
- 6.5.5 Tankers – Chemical, products, Gas carriers
- 6.5.6 Draft Restricted Vessels
- 6.5.7 General Cargo vessels
- 6.5.8 Other – non cargo working vessels

6.6 The following key commodities have been identified in the port:

- 6.6.1 Coal – Port of Richards Bay
- 6.6.2 Liquid Bulk

6.7 The movement must only be booked at the start of a slot. The IPMS will only provide agent with selected start times of slot as per port designated slot table. This is to ensure that there is order in managing vessel movements throughout the day and to also avoid inconsistent service bookings.

6.8 Thirty Minutes will be allowed for Marine Services resources to be at the vessel and for the vessel to be ready. All Marine delay calculation will only commence after thirty minutes from the requested time. The TNPA Tariff book is to be consulted for additional charges and application thereof

6.9 The Vessel Traffic Controller (VTC) / Senior Vessel Traffic Controller (SVTC) will be able to drag a vessel back if a move can be accommodated and there is spare time and this will not impact negatively or cause misalignment for future slots.

Start and end of cargo times as well as cargo volumes will be required at the completion of every vessel to complete vessel visit on IPMS

7. ORDER OF PRIORITY BY BERTHS

Berths operated by Licensed Terminal Operators will have rights to prioritize cargo working vessel calls to these berths. Any substitution must be approved by the TNPA Berth Planner or Deputy Harbour Master. Cargo working vessels will take priority over other vessels – e.g. lay bye, bunkers, repairs, etc.

In the interest of safety, security, good order, protection of the environment and orderly working of the port, the Harbour Master may berth another vessel at the berth allocated to a Licensed Terminal Operator in consultation with the terminal operator. Conditions of lease agreements and terminal license must be consulted to ensure that the terminal operator's rights are maintained.

7.1 Vessels will be berthed in order of their seniority subject to;

7.1.1 The vessel being ready to commence cargo handling operations.

7.1.2 Sufficient cargo and / or cargo storage space being available to permit efficient cargo handling operations. For general cargo exports 80 % of the cargo must be on the ground and the remainder of the cargo must be enroute and such that the productivity of the berth is not affected. In the case of direct shipment, 100% of the cargo shall be in the port.

7.1.3 For vessels discharging and loading cargo, the 80 % rule for cargo availability will only be applied once the discharge operation has been completed. If 80 % of the export cargo is not available the vessel will be required to vacate the berth.

7.1.4 Should berth 804 be vacant a General Cargo vessel can choose to use the berth if a woodchip vessel is not expected within the next 12 hours.

7.1.5 Berth 609 to be used as an opportunity berth for phosphoric acid vessels.

7.1.6 Passenger vessels have preferential use of the following berths;

- Vessel draught of 7,5m and -190m LOA - Repair Quay
- For all vessels greater than the above - Berths 606, 607 & 708

7.1.7 The provisions of the Terminal Operator Guidelines are to be applied as per designated berths.

7.1.8 Vessels discharging bunkers to the Richards Bay Bunker Terminal and loading / discharging liquid chemicals to / from the leased sites in South Dunes will have preferential use of berth 209/208.

8. VACATING OF BERTH

- 8.1 Should a vessel be required to vacate a berth due to poor cargo performance and non-productiveness, the costs associated therewith shall be for the vessel's account, this will exclude situations arising from inclement weather.
- 8.2 In the case of inclement weather, the terminal requesting the vessel to vacate the berth for productivity reasons, shall bear the costs of the move.
- 8.3 Should a vessel waiting to berth, request a vessel to move off the berth and the request is accepted by both the Terminal Manager and all the senior vessels concerned, the cost of the moves on and off the berth will be to the account of the requesting vessel.
- 8.4 Should a vessel be required to vacate a berth due to a reason other than its own requirement, it will be berthed at the first opportunity after the reason for having to vacate the berth has fallen away.
- 8.5 Should a woodchip vessel require berth 804, vessels other than woodchip vessels will be required to vacate the said berth under the following conditions;
 - 8.5.1 At least 2 hours prior to the arrival of woodchip vessel at the anchorage,
 - 8.5.2 Within 12 hours of notification for such usage in the case of a woodchip vessel already in port,
 - 8.5.3 The cost of vacating the berth will be for the occupying vessel's account.
- 8.6 Should a phosphoric acid vessel occupy berth 609, it shall be required to vacate the berth at own cost, within 15 hours of arrival of the South 32 vessel.
- 8.7 Should a phosphoric acid vessel require berth 608, a definite 72 hour notice of arrival shall be given to the Berth Planner and the MPT Central Planning Office.
- 8.8 Should a general cargo vessel occupy berth 608 and a phosphoric acid vessel arrives, the General Cargo vessel will upon request, move to the next available MPT berth. In such an event the cost of the move will be borne by the phosphoric acid vessel. Such costs to be limited to TNPA's marine services charges only. Should no such berth become available, the General Cargo vessel may complete loading at berth 608 before the phosphoric acid vessel is berthed.
- 8.9 Should a vessel take up berth 608 within the 72 hours' notice of arrival of the phosphoric acid vessel, such vessel will be required to vacate the berth 15 hours after the arrival time of the phosphoric acid vessel. The cost of vacating the berth will be to the account of the occupying vessel.

9. WEATHER OPERATIONAL LIMITS

	Port Area	Maximum Limits
Wind Speed	Port Entrance	Approx. 35KTS
Swell Height	Port Entrance	Approx. 3.5M
Visibility	Outside Breakwater	Approx. 1 mile

Safe weather operating parameters for vessel types are approximate guidelines due to the variables in the maritime environment and subjected to the prevailing weather conditions and pilot's discretion.

10. PORT AND BERTH DRAFT LIMITATIONS

The list of all the berth depths and the maximum permissible draft of the berths – channels and basins are only good for the time at which the soundings were taken. The Harbour Master's office must be contacted for verification of berth depths & maximum permissible drafts.

BERTH	TYPE	LENGTH	DEPTH	DRAFT (MAX)	COPE LEVEL	LOA	DISP-T
Die Duine							
208	Chemical/Bunkers	300,0m	-16,0m	14,0m	+4,8m	225	90000t
209	Chemical/Bunkers	300,0m	-14,0m	12,5m	+4,8m	225	67000t
301	Coal/Bunkers	350,0m	-19,0m	17,5m	+5,2M	300	195000t
302	Coal/Bunkers	350,0m	-19,0m	17,5m	+5,2M	300	195000t
303	Coal	350,0m	-19,0m	17,5m	+5,2M	300	195000t
304	Coal	350,0m	-19,0m	17,5m	+5,2M	300	195000t
305	Coal	184,0m	-19,0m	17,5m	+5,2M	300	195000t
306	Coal	280,0m	-19,0m	17,5m	+5,2M		195000t
uMhlatuzi							
606	General	220,0m	-14,5m	13,5m	+5,2m	200	65000t
607	General	220,0m	-14,5m	13,5m	+5,2m	200	65000t
608	General	204,0m	-14,5m	13,5m	+5,2m	190	65000t
609	Bulk	300,0m	-14,5m	14,0m	+5,2m	230	65000t
Bayview							
701	Bulk	240,0m	-14,5m	14,0m	+5,2m	200	65000t
702	Bulk	300,0m	-19,0m	17,5m	+5,2m	270	150000t
703	Bulk	240,0m	-19,0m	17,5m	+5,2m	200	150000t
704	Bulk	220,0m	-19,0m	17,5m	+5,2m	200	150000t
705	Bulk / General	200,0m	-19,0m	17,5m	+5,2m	180	65000t
706	General	200,0m	-14,5m	13,5m	+5,2m	180	65000t
707	General	200,0m	-14,5m	13,5m	+5,2m	190	65000t
708	General	200,0m	-14,5m	13,5m	+5,2m	180	65000t
801	Bulk / General	260,0m	-19,0m	17,5m	+5,2m	230	85000t
804	Bulk / General	260,0m	-19,0m	17,5m	+5,2m	230	85000t
Small Craft Harbour							
Repair Berth		300,0m	-8,0m	7,5m	+4,3m	180	65000t
Dredger Berth		150,0m	-6,7m	N/A	+4,3m		
Tug Berth		180,0m	-6,7m	N/A	+4,3m		
Pilot Boat Berth		165,0m	-3,7m	n/A	+3,4m		
Harbour Craft Berth		150,0m	-3,7m	N/A	+3,4m		
Launch Jetty		170,0m	-3,7m	N/A	+3,0m		
Note: Datums CD = MSL- 1.205m : MSL = CD + 1,205mF							
<p align="center">General notices & regulations: Vessels must arrive with the following minimum draughts, with the propeller submerged for safe navigation:</p> <p>Vessels with LOA up to 250m: Forward - 2% of LOA; Aft - 3% of LOA Vessels with LOA over 250m: Forward - 2,5% of LOA; Aft - 3,5% of LOA</p> <p>Maximum Permissible draft in channel 17.5m Maximum width restriction of 50m for vessels loading Coal</p> <p>Tidal vessels are approved up to 18m draft for Coal vessel subjected to the available window as indicated by the DMAX</p>							

Berth	Min. Distance between vessels	Remarks
Tankers, High risk & end of quay	30m	PIANC recommends 0.15 x LOA
General cargo Vessels	20m	PIANC recommends 0.1 x LOA
Coal Vessels (Cape Size)	40m	PIANC recommends 0.1 x LOA

11. DAYLIGHT ONLY MOVEMENTS

- 11.1 Vessels exceeding a particular length or breadth as per limitations.
- 11.2 Fishing vessels presenting language and or forward visibility problems
- 11.3 Double banking/de-coupling
- 11.4 No-main-engine movements
- 11.5 Towing immobilized vessels entering the port
- 11.6 Buoy Mooring- docking/undocking – as per port requirements
- 11.7 Dry dock movement in & out, Floating dock & synchro-lift movements
- 11.8 Any vessel over 370m and beam greater than 50m
- 11.9 Vessel of Special Nature

12. TIDAL VESSELS

There is increasing commercial pressure on the port to accommodate bigger and deeper ships. Obviously the operating limits for the port gives the limit of these vessels at chart datum and an allowance given for tide. Vessels wishing to berth shift or sail at a draft above the maximum permissible draft of the berth are allowed to do so only under the following conditions:

- 12.1 Vessel movement to be carried out at rising tide.
- 12.2 The vessel owner or designated representative to sign a letter of indemnity.
- 12.3 Submission of a tidal calculation to the Harbour Master's office for approval.
- 12.4 The under keel clearance at all states of tide must be not less than the Ports prescribed UKC.

13. SOME FACTORS TO BE INCLUDE IN THE PASSAGE PLANNING OF TIDAL VESSELS ARE LISTED BELOW (THIS LIST IS NOT EXHAUSTIVE):

- 13.1 Type of vessel / maneuvering characteristics
- 13.2 Size of vessel
- 13.3 Wind conditions
- 13.4 Current at the bar
- 13.5 Visibility
- 13.6 Speed
- 13.7 Squat
- 13.8 Increased draft due to list/rolling/heave
- 13.9 Type of bottom – sand, clay, mud or rock
- 13.10 Available tug assistance and bollard pull

14. MOORINGS

Mooring requirements will depend on the type of vessel, LOA, breadth, freeboard prevailing weather conditions, berth, bollard configuration - distance between bollards, bollard SWL.

The minimum mooring lines to secure a vessel under 200m, is 3 headlines, 2 spring lines forward, 3 stern lines and 2 spring lines aft. Alternatively 4 headlines, 2 breast lines, 2 springs, 4 stern lines, 2 breast lines and 2 springs for bigger vessels.

Additional mooring lines will be required to secure a vessel under special conditions i.e. surge, high swells, strong winds, etc. This is Subject to Master requirements and storm surge lines may be used only if safe to do so.

Special mooring arrangements need to be made with the Harbour Master of the port for unconventional vessels. A mooring plan needs to be submitted to the Harbour Master for approval. Ports will indicate minimum mooring requirements – especially for high risk berths and request for mooring plan for approval by Harbour Master for high risk vessels – prone to wind or swell, surge conditions and also passing vessel traffic.

It is the master’s responsibility to ensure that his vessel is secured & safe for cargo operations and the mooring lines are tendered to during loading and discharge operations.

The recommended Maximum speed in harbour to prevent breaking of vessel’s mooring lines is 6 Knots.

15. PILOTS BOARDING ARRANGEMENTS

All Pilots boarding arrangements must comply with IMO and local port legislations taking into account marine notices issued by SAMSA. Pilot ladder to be 2m above water, with two good manropes, for Marine Pilot boarding by a pilot boat. Pilot Boarding position for incoming vessels is 4NM South East of the South Breakwater. For a Marine Pilot boarding by a Helicopter, the Master of the vessel must make sure the deck is clear for obstructions.

Port Control may advise the vessel for a different pilot boarding position – this may vary due to vessel type or size, weather conditions and preferably distance from Breakwater subjected to the Marine Pilot discretion.

Limitation	Pilot Boat	Helicopter
Wind Speed	Approx. 35knots	Approx. 35 knots
Swell Height	Approx. +/-4m	Approx. +/-6m

**These limitations guidelines are subjected to prevailing weather conditions and Pilots discretion*

16. ASSOCIATED COSTS FOR VACATING BERTH

Should a vessel make use of a berth to which another vessel has preference, such vessel shall vacate that berth, as required, at its own cost.

Should a non-working or unproductive vessel be required to vacate a berth due to circumstances beyond the control of TNPA, the costs associated therewith will be for the vessel’s account.

Any surcharge applicable to the movement of such a vessel will be for the account of terminal or vessel requesting that service.

If the Harbour Master, for safety reasons, deems a shift to be necessary, the cost thereof will be for that vessel's account - this is subject to consultation with the relevant parties.

17. DISPUTE RESOLUTION

Should a dispute arise in the order of the berthing of a vessel, the involved parties will submit their reasons, in writing to the Harbour Master. The Harbour Master will give his/her decision, in writing, based on these written reasons together with any information gathered during any consultation that he/she may deem necessary, as soon as practicable.

18. AVAILABLE RESOURCES

Port	Tugs	Work Boats	Pilot Boats	Launches	Helicopter
Richards Bay	5	1	1	0	1

**The tugs in the port bollard pull range from 40 – 70 tons bollard*

19. PRECINCTS

PRECINCT	BERTH	COMMODITIES
RICHARDS BAY	301-306	COAL
	606-608	MPT-BREAK BULK
	706-708	MPT-BREAK BULK
	609, 701-705	DBT- DRY BULK
	801,804	DBT- DRY BULK
	208-208	LIQUID BULK
	REPAIR QUAY	PASSENGER & REPAIRS AND LAY-BAY
	TUG JETTY (Small Craft)	TNPA CRAFT (TUGS)
	YACHTS JETTY (Small Craft)	FOREIGN AND LOCAL YACHTS
	606,607	Used as an alternate for passenger vessels with draft over 7.5m and LOA greater than 190m

Tariff Book

April 2022 to March 2023

TRANSNET



TRANSNET NATIONAL PORTS AUTHORITY

PORT TARIFFS

Twenty First Edition

1 April 2022

Issued by:

Transnet National Ports Authority
Finance / Economic Regulation
Neptune Road, Coega Industrial Development Zone, Gqeberha

ISBN 978-0-620-56322-2

**The tariff book is available on the
Internet Website Address:**
www.transnetnationalportsauthority.net

DISCLAIMER

Transnet National Ports Authority can not assure that the Tariff Book is free of errors and will therefore not be liable for any loss or damages arising from such errors.



Picture: Port of Ngqura

CONTENTS

DEFINITIONS

SECTION 1

1. LIGHT DUES 9
2. SOUTH AFRICAN MARITIME SAFETY AUTHORITY (SAMSA) LEVY 10

SECTION 2

VESSEL TRAFFIC SERVICES (VTS)

1. VTS charges 11

SECTION 3

MARINE SERVICES

1. General terms and conditions 12
2. Marine Services Incentive 12
3. Pilotage services 13
4. Survey/Examination of small vessels and life saving appliances 14
5. Pilotage exemption certificate 14
6. Tugs/Vessel assistance and/or attendance 15
7. Miscellaneous tug/vessel services 16
8. Berthing services 18
9. Running of vessel lines 19
10. Hire of marine equipment/marine services 20

5-8 SECTION 4

PORT FEES ON VESSELS, MISCELLANEOUS FEES AND SERVICES

1. Port fees on vessels 21
 - 1.1 Port dues 21
 - 1.2 Berth dues 22
2. Port dues for small vessels, hulks and pleasure vessels 24
3. Miscellaneous services 26
 - 3.1 Fire and emergency services 26
 - 3.2 Fire protection 27
 - 3.3 Fire awareness training 28
 - 3.4 Fire equipment maintenance 29
 - 3.5 Fire equipment hire 30
4. Security services 30
5. Fresh water 30
6. Electricity 30
7. Removal of refuse 30
8. Combating of Oil Pollution 30
9. Passenger baggage: All ports 31
10. Passengers' levy: All ports 31
11. Administrative fees 31

SECTION 5

PORT SERVICE LICENCE, PORT RULE LICENCE, PORT RULE REGISTRATION AND PORT RULE PERMIT FEES

1. Fees payable for Port Service licences to be issued by the Authority in terms of section 57 of the National Ports Act, No. 12 of 2005 32
2. Fees payable for licences, registrations and permits to be issued by the Authority in terms of Port Rules made by the Authority in terms of section 80(2) of the National Ports Act, No. 12 of 2005 32

SECTION 6

DRYDOCKS, FLOATING DOCKS, SYNCROLIFTS AND SLIPWAYS

1. General terms and conditions 33
2. Booking fees 33
3. Penalties 34
4. Preparation 34
5. Docking and undocking of vessels 35
6. Drydock, floating dock and syncrolift dues 36
7. Slipway 39
8. Wharf cranes 40
9. Miscellaneous 40

SECTION 7

CARGO DUES ON IMPORTS, EXPORTS, TRANSHIPMENTS AND COASTWISE

1. Breakbulk 42
2. Dry Bulk 43
3. Liquid Bulk 44
4. Containers 45
5. Coastwise cargo 45
6. Exemptions 46
7. Transhipped cargo 47
8. Late order and related fees 48
9. Cargo conveyed by vessel permitted to service vessels within and outside the port 48

SECTION 8

BUSINESS PROCESSES AND DOCUMENTATION

1. Cargo Dues Order 49
 - 1.1 Types of documentation 50
 - 1.2 Timing of documentation 51
2. Responsible party 52
3. Late order fees 52
4. Amending orders 53
5. Terminal Outturn report 53
6.
 - 6.1 Port Revenue Offices 54
 - 6.2 Order-to-cash 54
 - 6.3 Import & Export Cargo Dues Order 54

LIST OF TRANSNET NATIONAL PORTS AUTHORITY FEES AT THE SOUTH AFRICAN PORTS OF TRANSNET SOC (Ltd)

Definitions

“**Act**” means the National Ports Act No. 12 of 2005.

“**Agent**” refers to all representatives having commercial dealings with a vessel or its cargo, unless the context indicates that it refers to a particular kind of agent, and includes a vessel’s agent and a cargo agent.

“**Authority**” means Transnet National Ports Authority, a division of Transnet.

“**Cargo**” means any cargo, goods, wares, merchandise, and articles of every kind whatsoever, including animals, birds, fish, plants and containers, carried, or intended to be carried, over the port infrastructure by sea.

Claims for adjustment or refund of port fees

All claims related to fees raised by the Authority in terms of the Authority’s Tariff Book will, for prescription purposes, be dealt with strictly in terms of the Prescription Act, Act 68 of 1969

“**Coaster**” refers to vessels carrying cargo exclusively between SA ports, on a regular schedule. To qualify as a bonafide coaster, an application must be lodged and approved by the Authority.

“**Coastwise cargo**” means cargo moving by sea between SA ports.

“**Container operator**” means any person providing international transportation of containerised goods, and approved by the Commissioner for the South African Revenue Service under section 96A of the Customs and Excise Act 91 of 1964, as amended, for operating containers in the Republic.

“**Entering port**” means a vessel entering the port’s limits.

“**passenger vessel**” means a vessel that carries more than 12 passengers.

“**pleasure vessel**” means a vessel, however propelled, that is used, or intended to be used, solely for sports and recreation and that does not carry more than 12 passengers.

“**fees**” means all fees, charges and dues contemplated in Section 73 of the Act. (The fees in the Tariff Book are for the basic services only and other fees may be levied in the event of a departure from or addition to basic services.) Fees will be raised at the time the service is performed excluding, where tariffs are adjusted annually where the actual time of vessel arrival will be used for cargo dues purposes.

“**fishing vessel**” means a vessel that is used for the purpose of catching fish or other living resources of the sea for financial gain or reward.

“**Harbour Master**” means the employee of the Authority appointed for each port as contemplated in section 74(3) of the Act.

“**length**” refers to the length overall (LOA) and means —

- i) in the case of a registered vessel, the length shown in the certificate of registry; and
- ii) in the case of a vessel licensed in terms of section 68 of the Merchant Shipping Act, 1951 (Act No. 57 of 1951), the length shown in the licence.

“**master**” means any person, other than a pilot, having charge or command of a vessel or pleasure vessel.

“**ISO container**” means a freight container with the specifications prescribed by the International Organization for Standardisation.

“**owner**” means any person to whom a vessel or pleasure vessel or a share in a vessel or pleasure vessel belongs or any other organisation or person, such as the manager or charterer, who has assumed the responsibility for the operation of the vessel or pleasure vessel from the owner of the vessel or pleasure vessel.

“**passenger**” means any person carried in a vessel, except:

- i) a person employed or engaged in any capacity on board a vessel on the business of the vessel;
- ii) a person on board the vessel either in pursuance of the obligation laid upon the master to carry shipwrecked, distressed or other persons or by reason of any circumstance that neither the master nor the owner nor the charterer (if any) could have prevented; and
- iii) a child under one year of age.

“**area of jurisdiction**” means the area within which Transnet has jurisdiction at the respective ports as appearing in the Port Regulations.

“**Port Regulations**” means the Regulations that the Minister of Transport promulgated in the Government Gazette, 23 November 2007.

“Port Rules” are the rules that the Authority may, with the approval of the Minister of Transport, adopt in terms of Section 80(2) of the Act.

“Republic” means the Republic of South Africa.

“Revenue Office” means the Authority’s Revenue Office.

“SAMSA” means the South African Maritime Safety Authority, established as a juristic person by virtue of section 2(1) of the South African Maritime Safety Authority Act No. 5 of 1998.

“shift” means the movement of a vessel from one place in the port to another, and **“shifting”** bears a corresponding meaning.

“small vessel” means a commercial small vessel that:

- i) is registered in the Republic;
- ii) lies in, is used in or operates from a port; and
- iii) includes a tug, fishing vessel, launch, barge, lighter, rowing boat, ski boat, sailing boat, yacht or similar vessel, or a hulk of any of the vessels enumerated, but excludes a pleasure vessel.

“tanker” means a vessel designed to carry liquid cargo in bulk, including a combination carrier being used for this purpose.

“Tariff Book” means the Tariff Book contemplated in section 72 of the Act.

“Transshipment” means an act of off-loading cargo from one ship (generally at the hub port) and loading it onto another ship to be further carried to the final port of discharge outside SA ports.

“Transnet” means Transnet SOC(Ltd) registration No. 1990/00900/30.

“Unit of tonnage” means

1 metric ton (1 000 kg), subject to a minimum of 1 ton, except for the following:

- A vehicle is a purposely built mobile machine on wheels/tracks that is capable of being steered/driven/towed (Including wagons, bicycles, motor vehicles, motorcycles, cars, trucks, buses, railed vehicles, locomotives, tamping machines), Watercraft (ships, boats), Aircraft (helicopters and spacecraft).
- Bulk liquids = 1 kilolitre
- The metric tonnage for tariffing purposes of cargo dues shall include all packaging i.e. mass of cargo, cases, pallets, bags etc.

“vessel” means any water-navigable vessel or structure and includes a passenger vessel, ship, seaplane, small vessel and a non-displacement vessel, but excludes a pleasure vessel, to which Part B of Chapter 2 applies.

“vessel agent” means the agent or owner of the vessel.

“vessel in need of assistance” means a vessel in a situation, apart from one requiring rescue of persons on board, that could give rise to the loss of the vessel or an environmental or navigational hazard.

“vessel’s tonnage” (excluding Section 6) means the tonnage for port tariff purposes is the gross tonnage of a vessel as per the tonnage certificate issued in terms of the Tonnage Convention 1969. (NOT converted to cubic metres.)

Where the vessel's tonnage is not available, the highest tonnage reflected in Lloyds Register of Shipping, is acceptable.

“VTS” means the vessel traffic service of a port administered by the Authority in respect of a VTS zone.

Importer/Exporter – the responsible party at the time of ship to shore / shore to ship transfer of cargo.

- Importer = the buyer or nominated representative
- Exporter = the seller or nominated representative

SECTION 1

1. LIGHT DUES ON VESSELS

Light dues in accordance with the vessels tonnage definition as follows:

The tonnage of a vessel for port tariff purposes is the gross tonnage of a vessel as per the tonnage certificate issued in terms of the Tonnage Convention 1969. (NOT converted to cubic metres).

Where the vessel's tonnage certificate is not available, the highest tonnage reflected in Lloyds Register of Shipping, is acceptable.

The sea within a distance of twelve (12) nautical miles from the baselines shall be the territorial waters of the Republic. When vessels go beyond twelve (12) nautical miles it would be deemed as being outside the ports territorial waters.

LIGHT DUES

Payable by:

Self-propelled vessels, vessels licensed by the Department of Environmental Affairs and Tourism, at their registered port:

Per metre or part thereof of the length overall per financial year or part thereof.....22.03

All other vessels

Light dues raised at the first South African port of call and remains valid until the vessel departs from the last South African port of call, subject to the following conditions:

1. Vessel does not proceed beyond the borders of the South African coastline as defined.
2. Time spent in South African waters does not exceed 60 days.
 - After 60 days the vessel will be deemed coastal for Light Dues purposes only and will be liable for Light Dues raised on a per calendar month basis.
 - It would still be the vessel's prerogative to request for coastal status within the 60 day window.
3. Vessels remaining within a specific port for extended periods will only be charged once and would not be affected by the length of stay:

Per 100 tons or part thereof.....104.69

Light dues in respect of coasters are payable in terms of a special agreement.

Coaster Light Dues will be raised on a monthly basis to vessels granted "Bonafide Coasters" status. In the event where bonafide coasters enter a South African port following a visit or call from a foreign port, full Light Dues is payable at the first South African port of call.

Exemptions

A reduction of 100% would be allowed in the following instances:

- SAPS and SANDF vessels;
- SAMSA vessels;
- SA Medical & Research vessels;
- Non-selfpropelled small and pleasure vessels not used for gain;
- Vessels that remain at the anchorage outside the port except in the following instances:
 - When moored at a single buoy mooring or any similar facility.

2. SOUTH AFRICAN MARITIME SAFETY AUTHORITY (SAMSA) LEVY

SAMSA levies as prescribed in the SAMSA Levy Determination Regulations in force are payable by the vessel's owner, charterer, operator or agent.

Exemptions

- Foreign naval / war vessels.

SECTION 2

VESSEL TRAFFIC SERVICES (VTS)

1. VESSEL TRAFFIC SERVICES CHARGE ON VESSELS

Vessel Traffic Service (VTS) charges have been introduced in the interest of safe navigation, pollution and conservancy of the ports based on the gross tonnage of a vessel.

The tonnage of a vessel for port tariff purposes is the gross tonnage of a vessel as per the tonnage certificate issued in terms of the Tonnage Convention 1969. (NOT converted to cubic metres.)

Where the vessel's tonnage certificate is not available, the highest tonnage reflected in Lloyds Register of Shipping, is acceptable.

1.1 VTS CHARGES

Payable by:

- Vessels calling all Ports under the control of the Authority, and vessels performing port related services within port limits, as follows:

Payable per GT per port call at all ports excluding Durban and Saldanha Bay.....0.48

Payable per GT per port call at the ports of Durban and Saldanha Bay.....0.58

Minimum fee.....210.59

Exemptions

- Vessels belonging to the South African Police Services (SAPS) and the South African National Defence Force (SANDF);
- Vessels belonging to SAMSA;
- SA Medical & Research vessels;
- Vessels returning from anchorage at the order of the Harbour Master;
- Vessels resorting under Section 4, (small vessels and pleasure vessels).

SECTION 3

MARINE SERVICES

1. GENERAL TERMS AND CONDITIONS

“Ordinary Working Hours”

Port of Mossel Bay

Mondays to Fridays, other than public holidays: 06:00 to 18:00.

Surcharges may apply at the Port of Mossel Bay for marine services provided outside ordinary working hours.

Port of East London

Mondays to Fridays, other than public holidays: 06:00 to 22:00.

Saturdays, other than public holidays: 06:00 to 12:00.

Surcharges may apply at the Port of East London for marine services provided outside ordinary working hours.

Ports of Richards Bay, Durban, Ngqura, Port Elizabeth, Cape Town and Saldanha

00:01 to 24:00 (24 hours service)

Marine Operations available on special request on public holidays i.e. Workers Day, Christmas, New Year's Day, etc.

“Special Services”

Fees are not raised for services performed for the convenience of the port.

Fees for the use of appliances/equipment and for services not provided for herein are quoted on application.

“Tonnage of Vessels for Port Tariff Purposes”

- The gross tonnage of a vessel as per the tonnage certificate issued in terms of the Tonnage Convention 1969. (NOT converted to cubic metres):

Where the vessel's tonnage certificate is not available, the highest tonnage as reflected in Lloyds Register of Shipping is accepted.

2. MARINE SERVICES INCENTIVE

The following incentive applies to the service charges of pilotage, craft assistance and berthing ser-

Vessel/Cargo Type	Threshold No. of Vessel Calls	Discount Applicable	Maximum No. of Vessel Calls for Discount
CONTAINER	500	1% (or proportionate) for every 50 calls above Threshold	1500
AUTO CARRIERS	100	1% (or proportionate) for every 10 calls above Threshold	300
BREAK BULK	100	1% (or proportionate) for every 10 calls above Threshold	300
DRY BULK	100	1% (or proportionate) for every 10 calls above Threshold	300
LIQUID BULK	100	1% (or proportionate) for every 10 calls above Threshold	300

These incentives apply per shipping line on a national basis (all port calls) to cargo working vessels only.

3. PILOTAGE SERVICES

All the Ports of Richards Bay, Durban, East London, Ngqura, Port Elizabeth, Mossel Bay, Cape Town and Saldanha pilotage is compulsory, the service being performed by the Authority (Marine Services).

Tonnage of a vessel for Pilotage services purposes:

Ports	Richards Bay	Durban	Port Elizabeth / Ngqura	Cape Town	Saldanha	Other
Per Service (normal entering or leaving the port)	27 683.74	16 639.15	8 020.66	5 671.14	8 649.76	5 854.49
Basic Fee						
Per 100 tons or part thereof	9.78	8.70	12.81	9.12	12.21	9.38

Pilotage dues for services other than normal entering or leaving the port such as towage, standing by, etc. are available on application.

Any movement of vessels without the consent of the Authority will be subject to full pilotage charges as if the service was performed.

A surcharge of 50% is payable at all ports in the following instances:

- If the pilotage service terminates or commences outside ordinary working hours;
- If the vessel is not ready to be moved 30 minutes after the notified time or 30 minutes after the pilot has boarded, whichever is the later;
- If the request for a pilotage service is cancelled at any time within 30 minutes prior to the notified time and the pilot has not boarded.

A surcharge of 50% is only applicable at the Port of Durban in the following instance:

- If the request for a pilotage service is cancelled at any time within 60 minutes prior to the notified time and the pilot has not boarded.

At the Port of Saldanha:

PLO duties for pilots on board tanker vessels during stay charge per hour.....792.41

Exemptions

- Vessels belonging to the SAPS and SANDF except if pilotage services are performed on request.

4. SURVEY/EXAMINATION OF SMALL VESSELS AND LIFE SAVING APPLIANCES

Fees for surveying/examination of small vessels, Per service.....1 261.49
 Fees for surveying/examination of life saving appliances, Per service.....550.50

5. PILOTAGE EXEMPTION CERTIFICATE

Vessels up to and including 30 metres in length overall

Per metre or part thereof.....124.08

Minimum.....1 240.87

Vessels over 30 metres up to 50 metres in length overall.....3 723.17
 plus
 per metre or part thereof over 30 metres.....186.19

Vessels over 50 metres up to 70 metres in length overall.....7 446.31
 plus
 per metre or part thereof over 50 metres.....248.24

Vessels belonging to the SAPS and SANDF are exempted.

Pilotage exemption certificates are valid per financial year.

Pilotage exemptions and ferryman or coxswain licences may be endorsed to cover all vessels belonging to the same company, provided all vessels are licenced and fall within the category covered by the licence. If a licence is extended to incorporate a larger vessel, the applicable fees must be adjusted accordingly.

Note: A pilotage exemption endorsement cannot be applied to vessels that do not have an exemption license.

6. TUGS/VESSEL ASSISTANCE AND/OR ATTENDANCE

The table hereunder shows the craft assistance allocation for the varied vessel size ranges.

VESSEL TONNAGE	MAXIMUM NUMBER OF CRAFT
Up to 2 000	0.50
2 000—10 000	1
10 001—50 000	2
50 001—100 000	3
100 000 plus	4

0.50 Represents workboat

The undermentioned fees are payable for tugs/vessels assisting and/or attending vessels, within the confines of the port and are as follows:

- The craft type and number thereof to be allocated for a service will be decided by the port.
- Per service based on vessel's tonnage:

	Richards Bay	Durban	East London	Port Elizabeth / Ngqura	Mossel Bay	Cape Town	Saldanha
Up to 2 000	6 260.64	7 278.50	5 027.13	6 444.22	5 648.02	4 838.75	8 081.83
2 001 to 10 000	11 642.62	11 296.86	7 289.35	9 986.43	7 289.35	7 062.62	13 751.15
Plus Per 100 tons or part thereof above 2 000	246.18	240.52	179.70	212.39	155.02	174.03	292.78
10 000 to 50 000	35 766.46	34 420.41	24 998.07	28 843.93	23 075.14	24 805.77	42 304.43
Plus Per 100 tons or part thereof above 10 000	90.38	75.96	59.62	65.36	53.84	57.69	92.30
50 001 to 100 000	71 532.92	65 379.56	49 996.13	57 687.86	n/a	48 265.50	80 762.99
Plus Per 100 tons or part thereof above 50 000	26.93	28.83	23.07	19.23	n/a	42.31	25.01
Above 100 000	92 992.81	83 647.39	n/a	73 806.52	n/a	71 148.36	99 992.27
Plus Per 100 tons or part thereof above 100 000	19.23	21.15	n/a	19.23	n/a	34.61	42.31

Incremental charge "Plus" is per additional 100 ton/part thereof

- A surcharge of 25% is payable for a service either commencing or terminating outside ordinary working hours on weekdays and Saturdays or on Sundays and public holidays;
- A surcharge of 50% is payable per tug when an additional tug/vessel is provided on the request of the master of the vessel or if deemed necessary in the interest of safety by the Harbour Master; (in addition to the maximum allocation as per craft allocation table)
- A surcharge of 50% is payable where a vessel without it's own power is serviced. Should an additional tug/vessel be provided on the request of the master to service such a vessel, a 100% surcharge is payable; (in addition to the maximum allocation as per craft allocation table)
- Should the request for a tug/vessel to remain/come on duty outside ordinary working hours be cancelled at any time after standby has commenced, the fees as if the service had been performed, are payable, i.e. normal fees enhanced by 25%.
- Should a vessel arrive or depart 30 minutes or more after the notified time the fee per tug per half hour or part thereof is (all ports excluding the Port of Saldanha).....7 198.70
- Port of Saldanha.....9 077.72

7. MISCELLANEOUS TUG/VESSEL SERVICES

Tanker fire watch, fire fighting and standby services

For remaining/coming on duty outside ordinary working hours for purposes of tanker fire watch and/or fire fighting during or outside ordinary working hours for any other standby services, such as bad weather, for long uninterrupted periods:

When foam is used to combat a fire and/or oil spills all costs incurred will be recovered from the vessel.

Fees available on application.

All ports excluding the port of Saldanha

First 12 hours, per tug per hour or part thereof14 394.52

Maximum.....115 156.26

Following 12 hours up to 24 hours per tug per hour or part thereof.....9 599.15

Maximum for 24 hours.....201 582.97

Thereafter, per tug per hour or part thereof.....7 198.70

At the Port of Saldanha

First 12 hours, per tug per hour or part thereof	18 155.40
Maximum.....	145 251.85
Following 12 hours up to 24 hours per hour or part thereof.....	12 104.58
Maximum for 24 hours.....	254 218.38
Thereafter, per tug per hour or part thereof.....	9 077.72

Mobilisation and demobilisation charge for floating cranes

Minimum fee per service at the Port of Durban.....	39 677.77
--	-----------

The mobilisation and demobilisation of the floating crane constitutes one service. The fee is applicable to each vessel serviced.

Floating cranes

For handling loads, per hour or part thereof:

At the Port of Durban.....	17 004.77
----------------------------	-----------

The hire period will be subject to a minimum of 2 hours calculated from the time the crane is placed in position to undertake the service, until it is released. The fee is applicable to each vessel serviced.

Other vessel services:

Fees for Large Tug per hour or part thereof.

All Ports, except the Port of Ngqura, Port Elizabeth and Saldanha.....	14 391.68
Port of Ngqura/Port Elizabeth.....	19 716.59
At the Port of Saldanha for services of a special nature.....	18 152.59

Fees for Small Tug/ Workboat per hour or part thereof

All Ports, except the Port of East London, Ngqura and Port Elizabeth.....	5 325.22
Port of East London.....	8 808.47
Port of Ngqura/Port Elizabeth.....	7 295.55

Fees for launch per hour or part thereof

All Ports, Large Launch.....	2 119.93
All Ports, Small Launch.....	1 483.93
Port of Ngqura/Port Elizabeth, Large Launch.....	2 904.26
Port of Ngqura/Port Elizabeth, Small Launch.....	2 032.99

Tugs/vessels involved in salvage: Special conditions apply when services rendered constitute salvage. The Authority reserves the right to claim reward for salvage if the service rendered to a vessel in distress constitutes salvage.

8. BERTHING SERVICES

The following fees are payable per service, including conveyance of staff, for vessels entering or leaving a port, shifting berth (including warping along the line of a wharf and shifting to or from a drydock or slipway) undergoing engine trials, remooring and crewing, berthing gang standing by or detained at a vessel's request for similar purposes, with or without tug/vessel assisting or in attendance (unmooring and mooring of a vessel when shifting berth or warping alongside the berth.) Berthing services provided when a vessel shifts berth alongside the berth and will be charged on a per service basis and berthing and unberthing will be charged as two separate services.

	Richards Bay	Port Elizabeth / Ngqura	Cape Town	Saldanha	Other Ports
Basic fee	2 839.77	3 432.36	2 729.29	3 582.32	2 505.37
Plus					
Per 100 tons or part thereof	12.04	16.74	13.34	15.18	12.23

A surcharge of 50% will be payable in the following instances:

- If the service either terminates or commences outside ordinary working hours;
- Should the request for the berthing staff to remain/come on duty outside ordinary working hours be cancelled at any time after standby has commenced;
- If the vessel arrives or departs 30 minutes or more after the notified time.

For berthing staff in attendance during or outside ordinary working hours on board tanker vessels, discharging crude and petroleum products (including LPG vessels) at the Port of Mossel Bay and Port of Saldanha Bay, per hour or part thereof.....1 133.65

9. RUNNING OF VESSEL LINES

Running of vessels' lines is where a launch/mooring boat is used to run the vessels' lines (steel wire lines/mooring ropes) from the ship to the bollard. Running of the vessels' lines or standing by to run lines for vessels entering, leaving or shifting; per service during or outside ordinary working hours:

	Port Elizabeth / Ngqura	Cape Town	Saldanha	Other Ports
Per service	2 026.83	2 119.92	1 864.86	1 479.45
If the service terminates or commences outside ordinary working hours, minimum	4 053.62	2 958.83	3 729.72	2 958.83

If the vessel arrives or departs 30 minutes or more after the notified time, the following charges apply per hour or part thereof, calculated from the notified time until service is completed:

	Port Elizabeth / Ngqura	Cape Town	Saldanha	Other Ports
Per service	2 026.83	2 119.92	1 864.86	1 479.45
If the service terminates or commences outside ordinary	4 053.62	4 239.85	3 729.72	2 958.83

If the request for a tug/vessel to remain on duty outside ordinary working hours is cancelled at any time after standby has commenced, the following fee per hour or part thereof, will be maintained for the actual period that the tug/vessel remained on duty, subject to a minimum of 2 hours.....1 479.45

At the Port of Saldanha when remooring without tug/pilots occurs the following fee per service is applicable4 237.57

10. HIRE OF MARINE EQUIPMENT/MARINE SERVICES

Each per day of 24 hours or part thereof, if available

Passenger gangways.....286.22
 Mooring ropes at the Port of Saldanha.....1 351.84

Each per hour or part thereof, if available

Punt hire per hour.....130.79

Forklifts at the Port of Mossel Bay per hour

3 ton Forklift.....477.84
 4 ton Forklift.....532.25

Electric Power: Fees quoted on application

Compressed Air: Fees quoted on application

Any other equipment: Fees quoted on application.

Divers Services (where available): Fees quoted on application

Any other equipment: Fees quoted on application.

Note: Any rope, mooring spring or strap damaged or destroyed by chafing or cutting shall be paid for by the owner of the vessel responsible. All other equipment damaged through other than by normal wear and tear may be repaired/replaced at the hirer's expense. Fees quoted on application.

SECTION 4

PORT FEES ON VESSELS, MISCELLANEOUS FEES AND SERVICES

1. PORT FEES ON VESSELS

The tonnage of vessels for port tariff purposes is the gross tonnage of a vessel as per the tonnage certificate issued in terms of the Tonnage Convention 1969. (NOT converted to cubic metres)

Where the vessel's tonnage certificate is not available the highest tonnage as reflected in Lloyds Register of Shipping is accepted.

1.1 PORT DUES

Payable by:

- Vessels entering the port from the time of passing the entrance inwards until the time of passing the entrance outwards;
- Vessels taking in bunkers at the designated anchorage;
- Vessels at offshore moorings or similar facilities, as follows:

Basic fee per 100 tons or part thereof.....	172.33
plus	
per 100 tons or part thereof per 24 hour period, a part of a 24 hour	
period being applied pro rata.....	51.67

Small vessels and pleasure vessels resorting under Section 4 when visiting a port other than at their registered port will be subject to a minimum fee421.14

A reduction of 35% will be allowed in the following instances:

- Vessels not engaged in cargo working for the first 30 days only;
- Bona fide coasters;
- Passenger vessels;
- Small vessels resorting under Section 4, Clause 2 when visiting a port other than their registered port.

Vessels in port for longer than 30 days not engaged in cargo working or undergoing repairs will be liable for a 20% surcharge on the incremental fee of port dues.

A reduction of 60% will be allowed to vessels calling for the sole purpose of taking on bunkers and/or stores and /or water or a combination of all three, provided the vessel's entire stay does not exceed 48 hours. This reduction will not be enjoyed in addition to the 35% reduction granted for vessels not engaged in cargo working for the first 30 days only, bona fide coasters, passenger vessels and small vessels resorting under Section 4, Clause 2.

A reduction of 10% will be allowed to certified double hulled liquid bulk tankers, liquid bulk tankers equipped with segregated ballast tanks and liquid bulk tankers in possession of a "Green Award." The reduction is applied for any one certification or a combination thereof with a maximum of 10%. Proof of aforementioned needs to be submitted to the Authority prior to Vessel sailing.

A vessel remaining in port for less than 12 hours will be allowed a reduction of 15% in addition to other reductions that may be enjoyed.

Exemptions

- Vessels belonging to the SA Police Services (SAPS) and the SA National Defence Force (SANDF);
- Vessels belonging to SAMSA.
- SA Medical & Research vessels;
- The time a vessel occupied a drydock, floating dock, syncrolift or slipway;
- Vessels resorting under Section 4, Clause 2 but only at their registered port;
- Fishing vessels licensed by the Department of Environmental Affairs and Tourism, but only within the fishing port declared under the Sea Fisheries Act, 1973 (Act 58 of 1973) at Saldanha.
- Vessels calling for the second time, returning from anchorage at the order of the port.

In the event of a coastal vessel entering from a foreign port full port dues would be payable at the first South African port of call.

1.2 BERTH DUES

Payable by any vessel occupying a repair quay or any other berth and not handling cargo, in addition to port dues, for each 24 hour period or part thereof as follows:

Per 100 tons or part thereof

Up to 17 700 tons.....	45.21
The following 17 600 tons (up to 35 300 tons.).....	29.91
The following 17 700 tons (up to 53 000 tons.).....	15.04

Over 53 000 tons: No additional fee.

A vessel paying the fees for the use of a drydock, floating dock, syncrolift or slipway can lie alongside a quay for repairs without paying berth dues for the same number of days as it did inside the drydock, floating dock, or on the syncrolift or slipway.

Vessels calling for the sole purpose of landing/shipping/transshipping cargo are allowed a free period of six cargo working hours before cargo working commences and six cargo working hours after cessation of cargo working per call, at berths other than container handling berths in respect of which the free period is two cargo working hours.

Berth dues are calculated by obtaining the following source documents from the Terminal Operators:

- Bulk and break bulk vessels: the source document is the Crane allocation sheet from the planning department at MPT/ TPT
- Container vessels: the source is the Terminal Performance Report from the MIS department at TPT
- Other vessels: the source is the Statement of Facts from the vessels agents.

Berth dues are calculated by deducting the number of hours worked as per the source document from the period the vessel is in port, taking into account the free periods before and after cargo working hours.

Exemptions

- SAPS and SANDF vessels;
- Vessels lying alongside a berth for the sole purpose of taking in vessel's stores and/or coal and liquid fuel for own consumption are exempted for only 48 hours whereafter the fees specified are payable;
- Vessels resorting under Section 4, Clause 2 but only at their registered port;
- Vessels calling for the sole purpose of landing survivors;
- Vessels calling for the sole purpose of obtaining medical assistance;
- SA Medical & Research vessels;
- Passenger vessels on normal business;
- Vessels being fumigated prior to taking in cargo.

Berth dues payable by vessels shipping ore at the ore loading jetty at the Port of Saldanha

Any vessel shipping ore which, after berthing alongside the ore loading jetty and, through no fault of the port, is unable to commence loading within two hours, or which is unable to continue loading for a period exceeding two hours per occurrence, or which occupies the berth after completion of loading and/or a draught survey for a period exceeding two hours, will be subject to berth dues per hour or part thereof based on the vessel's summer dead-mass tonnage (metric tons) and calculated separately for the time exceeding each period of two hours.....1.03

Statement of Facts for each voyage must be submitted to the Authority within 24 hours after vessel departs.

Fee for non submission of Statement of facts.....1 811.07

2. PORT DUES FOR SMALL VESSELS, HULKS AND PLEASURE VESSELS

Small vessels, hulks and pleasure vessels will be allowed access to the port at the discretion of the port.

Small vessels

Per financial year or part thereof, per metre of length overall, or part thereof:

Non-mechanically propelled boats.....42.02

Selfpropelled boats.....70.11

Fishing vessels (however propelled) operating from the fishing harbour at the Port of Saldanha.....123.09

Fishing vessels (however propelled), with non-steel constructed hulls

- For the first 10 metres.....169.33
- Thereafter.....338.61

Fishing vessels (however propelled), with steel constructed hulls

- For the first 10 metres.....341.84
- Thereafter.....683.60

Hulks

Hulks: per metre, per day calculated on the length.....8.21

An application to the Authority must be lodged prior to the event after which written approval will be granted if favourably considered.

If broken up at a commercial wharf import cargo dues is also payable in addition to the hulk fee.

Pleasure vessels

Each per financial year or part thereof:

Rowing boats.....100.09

Other vessels of up to and including 6 metres in length overall.....200.18

Other vessels of over 6 metres in length overall.....400.33

Visiting Vessels (not engaged in trade) Foreign/Local yachts (port dues)

Visiting vessels that are not engaged in trade and do not moor at a commercial berth are allowed a free stay of 30 days in port.

Fees per metre or part thereof of length overall, per day or part thereof.

The following rates must be applied after the 30 day free period.

For the next 90 days, per metre or part thereof of length overall per day.....2.52

The following 90 days, per metre or part thereof of length overall, per day.....4.98

Thereafter, for the remaining period up to 12 months, per metre or part thereof of length overall, per day.....9.96

If visiting yachts and other visiting pleasure vessels remaining in port for a period in excess of 12 months, per metre or part thereof of length overall, per day.....29.91

3. MISCELLANEOUS SERVICES

Fees applicable at ports where these services or equipment are available.

“A” Whether the fire has been extinguished or not on the arrival of the Fire and Emergency Services on the scene.

“B” Whether the “Hazmat” incident has been resolved or not on the arrival of the Fire and Emergency Services on the scene.

“C” Whether the rescue and/or salvage operation has been completed or not on the arrival of the Fire and Emergency Services.

Refer to A, B and C for the following emergency or incidents below

Fees:

3.1 FIRE AND EMERGENCY SERVICES

3.1.1 Fire tender turn-out fee — Heavy duty (7 000 kg).....3 364.02

3.1.2 Fire tender turn-out fee — Light duty.....2 382.19

3.1.3 Hazmat (Chemical) vehicle turn-out — Heavy duty (7 000 kg).....3 364.02

3.1.4 Hazmat (Chemical) vehicle turn-out — Light duty.....2 382.19

3.1.5 Use of the fire tender, equipment and crew.
The fee is per half hour or part thereof.....1 681.98

(Crew=1 x fire officer, 4 x fire fighters for any incident mentioned under numbers A,B,C).
The fee is per half hour or part thereof

3.1.6 Use of Hazmat vehicle, equipment and crew.....1 681.98

3.1.7 Additional fire fighting staff fee per half hour or part thereof —each additional member of the fire service assisting in any incident mentioned under A, B and C.....281.65

3.1.8 Fire fighter on standby duty at the incident including equipment —per half hour or part thereof.....281.65

3.1.9 Use of a portable fire pump, chemical transfer pump, generator, “veld fire” pump, bobcat including the fire fighter to operate the pump per half hour or part thereof...447.48

3.1.10 Use of additional breathing apparatus. Per set — this is in addition to the breathing apparatus sets carried on the fire tender or hazmat vehicle.....421.14

3.1.11 Use of additional chemical protection suits. Per suit — this is in addition to the chemical suit carried on the hazmat vehicle1 681.98

3.1.12 Use of fire extinguishers foam per litre.....84.27

3.1.13 Use of fire extinguishers. This is in addition to those carried on the fire tender or hazmat vehicle

The fees below include the cost of material, labour and supervision involved in the re-charging of the equipment.

A: 9 Lt water fire extinguisher.....139.54

B: 9 Lt foam fire extinguisher.....168.43

C: 9 kg Dry powder fire extinguisher.....210.59

D: 5-7 kg Carbon Dioxide fire extinguisher.....336.92

3.1.14 Emergency support vehicle — R/km.....7.88

3.1.15 Tanker Fire Watch at the Port of Saldanha

12-36 Hours Tanker Fire Watch - Tug.....7 665.74

(Maximum fee).....343 978.63

12-48 Hours Tanker Fire Watch - Tug.....6 082.62

(Maximum fee).....415 134.49

3.2 FIRE PROTECTION

3.2.1 Vessel fire protection duties — fire fighter per hour.....313.22

3.2.1.1 At the port of Durban — fire fighter (including security) per hour.....531.54

3.2.2 Cargo fire protection duties — fire fighter per hour.....313.22

3.2.2.1 At the port of Durban — fire fighter (including security) per hour.....531.54

3.2.3 “Hotwork” fire safety inspection service.....336.92

3.3 FIRE AWARENESS TRAINING (MEALS EXCLUDED)

3.3.1 Fire induction course per person per day (1 day).....1 050.26

3.3.2 Hazmat awareness course per person (2 days).....2 103.14

3.3.3 Fire marshal course per person (1 day).....1 050.26

3.3.4 Fire team course per person (2 days).....2 103.14

3.3.5 Fire co-ordination course per person (3 days).....3 153.42

3.3.6 On site evacuation drills / simulations and feedback.....5 606.65

3.3.7 Hazmat training for drivers (2 days).....2 103.14

3.3.8 Fire risk assessment per day.....2 803.33

3.4 FIRE EQUIPMENT MAINTENANCE

3.4.1 Labour cost per hour.....	307.97
3.4.2 Service of CO2 fire extinguisher.....	155.30
3.4.3 Pressure test and recharge of CO2 fire extinguisher.....	336.92
3.4.4 Recharge of CO2 fire extinguisher.....	336.92
3.4.5 Service of 9 kg powder fire extinguisher.....	155.30
3.4.6 Pressure test and recharge of 9 kg powder fire extinguisher.....	363.28
3.4.7 Recharge of 9 kg powder fire extinguisher.....	336.92
3.4.8 Service of 9 Lt water fire extinguisher	155.30
3.4.9 Pressure test and recharge of 9 Lt water fire extinguisher.....	181.61
3.4.10 Recharge of 9 Lt water fire extinguisher.....	155.30
3.4.11 Service of 9 Lt foam fire extinguisher.....	155.30
3.4.12 Pressure test and recharge of 9 Lt foam fire extinguisher.....	197.39
3.4.13 Recharge of 9 Lt foam fire extinguisher.....	168.43
3.4.14 Service fire hose reel.....	97.39
3.4.15 Service and pressure test hose.....	155.30
3.4.16 Service mobile foam fire unit (>9 Lts capacity).....	155.30
3.4.17 Pressure test and recharge mobile foam fire unit.....	784.42
3.4.18 Recharge mobile foam fire unit (>9 Lts capacity).....	589.62
3.4.19 Service mobile powder fire unit.....	155.30
3.4.20 Pressure test and recharge mobile powder fire unit (>9 kg capacity).....	784.42
3.4.21 Recharge mobile powder fire unit (>9 kg capacity).....	589.62

3.5 FIRE EQUIPMENT HIRE

3.5.1 Training Facilities Hire per day (excluding fire equipment).....	4 906.50
3.5.2 Fire pump hire (per half hour).....	447.50
3.5.3 Ejector pump hire (per half hour).....	168.43
3.5.4 Fire hose hire (per half hour).....	42.12
3.5.5 Branch pipe and nozzle hire (per 8 hr day).....	42.12
3.5.6 Fire extinguisher hire (per 8 hr day).....	139.54
3.5.7 Fire tender and driver — social functions (per hour).....	3 364.02

4. SECURITY SERVICES

4.1 Crew Transportation

Port of Durban:

Vehicle provided by the Authority's security to crew members for vessels at Island View berths 1-8 to transport crew members from vessel to Check Point

Crew Transportation per day.....	1 065.94
----------------------------------	----------

4.2 Fees for other security services are available on application.

5. FRESH WATER

Fees for the supply of fresh water are available on application.

6. ELECTRICITY

Fees for electricity are available on application.

7. REMOVAL OF REFUSE

Fees for the removal of refuse from the port are compulsory (where applicable) and available on application.

8. COMBATING OF OIL POLLUTION

The following fees must be raised for the combating of oil pollution in the port area.

- Utilization of oil boom per hour or part thereof.....921.09
- Oil spill emulsifier will be charged per litre on applicationOn application
- Fees for any tugs used in the combating operation will be raised separately.

9. PASSENGER BAGGAGE: ALL PORTS

Where the Authority is involved in the handling of passenger's baggage, other than manifested baggage, the following fees shall be collected from owners/agents of passenger-carrying vessels for all passengers on embarkation or on disembarkation.

Per passenger.....80.64

10. PASSENGERS' LEVY: ALL PORTS

The levy charge will be in addition to the abovementioned baggage charge for all passengers on embarkation or on disembarkation.

Embarkation per passenger.....85.01

Disembarkation per passenger.....85.01

Visiting passenger in transit per call.....85.01

The passenger levy is raised at all ports where passengers embark, disembark or visit the ports. The levy is raised on a per call basis.

11. ADMINISTRATIVE FEES

11.1 Amending Fees

Amending fees will be applicable for all changes to marine order post invoicing which arise from customer initiated requests

Amending Fee per request.....410.75

11.2 Split Account Fees

PRIOR to vessel sailing per party.....421.14

AFTER vessel sailing will result in the split account fee being levied twice per party.

Credit & Re-debit of marine invoice as per client's request after vessel sailing will result in a fee being levied twice.

SECTION 5

PORT SERVICE LICENCE, PORT RULE LICENCE, PORT RULE REGISTRATION AND PORT RULE PERMIT FEES

1. FEES PAYABLE FOR PORT SERVICE LICENCE TO BE ISSUED BY THE AUTHORITY IN TERMS OF SECTION 57 OF THE NATIONAL PORTS ACT, No. 12 of 2005

Licence fees are payable in equal installments, on an annual basis, over the period of the licence.

Fee for duration of licence per port

Floating crane services licence fee.....21 923.00

Stevedore services licence fee.....21 923.00

Waste disposal services licence fee.....21 923.00

2. FEES PAYABLE FOR LICENCES, REGISTRATION AND PERMITS TO BE ISSUED BY THE AUTHORITY IN TERMS OF PORT RULES MADE BY THE AUTHORITY IN TERMS OF SECTION 80(2) OF THE NATIONAL PORTS ACT, No. 12 of 2005:

2.1 Port Rule Licences (Fee for duration of licence) per port

Bunkering licence fee.....21 923.00

Diving licence fee.....21 923.00

Fire protection and fire equipment installation and maintenance licence fee.....21 923.00

Pest control licence fee.....21 923.00

Pollution control licence fee.....21 923.00

2.2 Port Rule Registration (Fee for duration of registration) per port

Vessel agent registration fee.....721.16

2.3 Port Rule access permit for persons and vehicles

Persons ad hoc access permit fee.....free

Persons longer-term access permit fee.....free

Motor vehicle access permit fee per financial year.....338.86

2.4 Port Rule permits for small vessels and pleasure vessels

Small vessel permit fee.....free

Pleasure vessel permit fee.....free

2.5 Replacement of permits

Permit replacement fee.....406.64

SECTION 6

DRYDOCKS, FLOATING DOCKS, SYNCROLIFTS AND SLIPWAYS

1. GENERAL TERMS AND CONDITIONS

“Ordinary working hours”

Ports of Cape Town and East London

According to the custom of the facility.

Port of Durban

07h00 - 17h00 Weekdays

“Week-ends and Public Holidays”

Special permission must be obtained for work to be undertaken on Saturdays, Sundays and public holidays. Special arrangements must also be made for the provision of salt water, compressed air, cranes etc. outside normal working hours.

“Tonnage of vessels for tariff purposes”

The gross tonnage of a vessel in cubic metres (conversion factor 2,83) of a vessel as per the tonnage certificate issued in terms of the Tonnage Convention 1969,

Plus

The tonnage is mass, of all cargo on board.

Where the vessel’s tonnage certificate is not available the highest tonnage as reflected in Lloyds Register of Shipping converted (x2,83) to cubic metres is accepted.

2. BOOKING FEES

2.1 Bookings at the Ports of Cape Town and East London

The following deposits are required for the use of a drydock, floating dock or syncrolift when a firm booking has been made:

Drydock.....	56 222.56
Syncrolift.....	14 055.64

2.2 Bookings at the Port of Durban

The following deposits are required for the use of a drydock or floating dock when a firm booking has been made:

Drydock.....	56 222.56
Floating Dock.....	56 222.56

2.3 Bookings for Slipways at the port of Mossel Bay and Port Elizabeth

The following deposits are required for the use of slipway when a firm booking has been made:

Slipways.....	1 686.68
---------------	----------

3. PENALTIES

- Should the booking not be taken up or cancelled within 60 consecutive days prior to the booked date, the deposit will be forfeited. If the booking is cancelled greater than 60 days, a full refund will be given
- Vessels that exceed their allocated scheduled booking dates for the dry-dock, floating dock and syncrolift occupancy period will incur a 40% penalty on dry-dock, floating dock and syncrolift dues for each subsequent 12-hour period of the vessel’s overstay on the ship repair facility.

4. PREPARATION

4.1 Preparation at the Ports of Cape Town and East London

Note: Should the booking of a drydock be cancelled after the preparatory work has begun, preparation fees are payable.

Tons shall mean gross tonnage in cubic metres

Vessels up to 1 000 tons.....	2 158.96
Vessels from 1 001 up to 10 000 tons.....	4 317.91
Vessels from 10 001 up to 20 000 tons.....	8 635.78
Vessels from 20 001 up to 50 000 tons.....	12 953.72
Vessels above 50 000 tons.....	17 271.56

4.2 Preparation at the Port of Durban

The following fees for the preparation of a drydock and floating dock per vessel, are payable:

Drydock.....	17 282.81
Floating Dock.....	16 965.17

5. DOCKING AND UNDOCKING OF VESSELS

5.1 Docking and undocking of vessels at the Ports of Cape Town and East London

The following fees are payable, per service, for the docking and undocking of vessels (the docking and undocking are regarded as separate services):

Drydock.....	13 083.00
Syncrolift.....	5 771.23

In the event of a request for services outside ordinary working hours being cancelled after the staff have been brought on duty, fees are payable as if the service was rendered.

5.2 Docking and undocking of vessels at the Port of Durban

The following fees are payable, per service, for the docking and undocking of vessels (the docking and undocking are regarded as separate services):

Drydock.....	13 083.00
Floating Dock.....	12 838.40

In the event of a request for services outside ordinary working hours being cancelled after the staff have been brought on duty, fees are payable as if the service was rendered.

6. DRYDOCK, FLOATING DOCK AND SYNCROLIFT DUES

All charges under clause 6 below are subject to the overstay penalties as specified in Clause 3 on page 34.

6.1 Drydock: Ports of Cape Town and East London

The following fees which include cranes and salt water during ordinary working hours are payable for the use of a repair facility:

Tons shall mean gross tonnage in cubic metres.

Drydock	First period of 24 hours or part thereof	Each subsequent 12 hour period or part thereof
Vessels up to 3 000 tons Plus per ton	8 585.20 2.52	4 292.57 0.84
3 001 to 6 000 tons Plus per ton	11 300.73 2.88	5 650.38 0.94
6 001 up to 10 000 tons Plus per ton	19 846.56 3.53	9 923.28 1.39
10 001 tons to 30 000 tons Plus per ton	20 779.85 3.53	10 389.93 1.39
30 001 to 60 000 tons Plus per ton	43 308.22 3.53	21 654.14 1.20
60 001 to 80 000 Plus per ton	51 494.21 3.53	25 747.12 0.94

Above 80 000 tons, fees are available on application.

6.2 Drydock: Port of Durban

The following fees which include crange and salt water during ordinary working hours are payable for the use of a repair facility:

Tons shall mean gross tonnage in cubic metres.

Drydock	First period of 24 hours or part thereof	Each subsequent 12 hour period or part thereof
0 to 30 000 tons Plus per ton	20 796.71 3.53	10 398.34 1.37
30 001 to 60 000 tons Plus per ton	43 308.22 3.53	21 654.14 1.20
60 001 up to 80 000 tons Plus per ton	51 494.21 3.53	25 747.12 0.93

Above 80 000 tons, fees are available on application.

6.3 Floating Dock: Port of Durban

The following fees which include crange, salt water, equipment, keel etc. during ordinary working hours are payable for the use of a repair facility:

Tons shall mean gross tonnage in cubic metres.

Floating Dock	First period of 24 hours or part thereof	Each subsequent 12 hour period or part thereof
0 up to 10 500 tons Plus per ton	20 408.81 3.50	10 204.40 1.39

6.4 Syncrolift at the Port of Cape Town

Syncrolift	First 24 hour period or part thereof:	Each subsequent 12 hour period or part thereof
Vessels up to 2000 tons Plus per ton	1 602.33 3.53	801.19 1.46
Vessel above 2000 tons Plus per ton	2 108.35 3.53	1 054.16 1.46

6.5 Minimum fees

	First 24 hour period or part thereof:	Each subsequent 12 hour period or part thereof
Sturrock and Prince Edward drydocks	48 570.64	20 389.12
Princess Elizabeth and Robinson drydocks	18 634.97	8 329.37
Floating docks	20 408.81	10 204.40
Syncrolift	6 625.83	2 206.74

Note:

Shifting of docking blocks are obtainable on application.

The damage occurred by bar/box keel vessels at any vessel repair facility will be recovered as per damage incurred and at the Authority's discretion.

Special conditions may be applied to Medical, Research vessels or where four and more vessels of a company are drydocked at any of the Authority's drydocks (excluding syncrolift, floating docks and slipways) during a 12 month period.

Details are available on application.

7. SLIPWAY

Slipway preparation costs

Note: Should the booking of a slipway be cancelled after the preparatory work has begun, the above mentioned fees are payable:

Vessels up to 1 000 tons.....2 156.13

Docking and Undocking of vessels at a slipway

The following fee is payable, per service for the docking and undocking of vessels (the docking and undocking) are regarded as separate services)

Slipway.....1 130.09

Docking and Undocking of vessels at a slipway	First 24 hour period or part thereof:	Each subsequent 12 hour period or part thereof
Vessels up to 2 000 tons Plus per ton	1 602.33 3.53	801.19 1.46
Vessels above 2 000 tons Plus per ton	2 108.35 3.53	878.49 1.46
Minimum fees	4 329.12	1 588.29

8. WHARF CRANES

8.1 Wharf cranes at the Ports of Cape Town and East London

Outside ordinary working hours only:

One crane will be provided per vessel if required, inclusive of the dues.

Irrespective of the crane lifting capacity, per hour.....1 265.00

8.2 Wharf cranes at the Port of Durban

Outside ordinary working hours only.....1 265.00

One crane will be provided per vessel if required, inclusive in the dues.

Additional cranes, irrespective of the crane lifting capacity, will be charged as follows:

Per hour.....1 265.00

9. MISCELLANEOUS

Fresh water

Fees for the supply of water when available on application.

Electricity

Fees for the supply of electricity are available on application.

Compressed air

Fees for the supply of compressed air are available on application.

SECTION 7

CARGO DUES ON IMPORTS, EXPORTS, TRANSHIPMENTS AND COASTWISE

Cargo dues on all commodities, articles, things or containers (full or empty) is levied at all ports. Cargo dues are charged to recover the cargo contribution towards port infrastructure.

UNIT OF TONNAGE

1 metric ton (1 000 kg), subject to a minimum of 1 ton, except for the following:

A vehicle is a purposely built mobile machine on wheels/tracks that is capable of being steered/driven/towed (Including wagons, bicycles, motor vehicles, motorcycles, cars, trucks, buses, railed vehicles, locomotives, tamping machines), Watercraft (ships, boats), Aircraft (helicopters and spacecraft)

Bulk liquids: 1 kilolitre

The metric tonnage for tariffing purposes of cargo dues shall include all packaging i.e. mass of cages, cases, pallets, bags, etc.

- Cargo dues on all commodities, articles, things or containers (full or empty) is levied at all ports.
- The tonnage must be substantiated by presentation of a bill of lading, manifest, packing declaration or supplier's invoices, as the case may be.
- In instances where the tonnage for cargo dues purposes has been incorrectly declared, whether wilful or not, a late order fee will be charged.
- The minimum fee for cargo dues on breakbulk cargo will be based on 1 ton.
- The minimum fee for cargo dues on containers will be based on 1 TEU.
- A new category 'other' has been implemented for all bulk commodities at the base rate. The following fees will apply per ton with the exception of those listed thereafter:

	Imports	Exports
Breakbulk	31.50	31.50
Liquid bulk	23.54	23.54
Dry bulk	6.66	6.66
Breakbulk empty returns	4.69	4.69
Motor vehicles on own wheels per metre	168.94	66.65

1. BREAKBULK

Commodity	Imports	Exports
1. Alumina	31.50	28.18
2. Articles of cement / sand / stone	28.18	28.18
3. Bait	31.50	28.18
4. Bricks	31.50	28.18
5. Cement & clinker	28.18	5.63
6. Chrome ore	19.43	15.95
7. Citrus fruit	25.91	25.91
8. Clay	28.18	28.18
9. Coal	10.88	4.67
10. Fertilizers	27.59	19.73
11. Fish meal & products thereof	31.50	31.50
12. Fluorspar	28.18	28.18
13. Glass & glassware	31.50	17.70
14. Granite & products thereof	31.50	10.89
15. Gypsum & products thereof	28.18	28.18
16. Iron ore	28.18	28.18
17. Lead & products thereof	28.18	22.52
18. Lime & products thereof	28.18	28.18
19. Logs	31.50	7.53
20. Maize & products thereof	31.01	31.01
21. Manganese ore	19.73	19.73
22. Ores & minerals: Olivine	28.18	31.50
23. Ores & minerals: Other	28.18	28.18
24. Pig iron	28.18	15.00
25. Pitch pencil	28.18	26.32
26. Potash & products thereof	27.59	19.73
27. Salt	28.18	28.18
28. Scrap steel	9.36	9.36
29. Stainless steel (excluding pipes & tubes)	31.50	28.68
30. Steel pellets	10.33	10.33
31. Steel rebars / sheets / plates / angles	28.68	28.68
32. Steel: Cold rolled coils, galvanised, aluzinc coils	28.68	28.68
33. Steel: Hot rolled coils, slabs, billets	28.68	28.68
34. Timber & products thereof (excluding furniture)	31.50	20.63
35. Zinc & products thereof	28.18	28.18
36. Zircon	31.50	28.18

2. DRY BULK

Commodity	Imports	Exports
1. Agricultural products / seaweed	18.00	18.00
2. Alumina	18.00	18.00
3. Andalusite	18.00	13.15
4. Barley & products thereof	18.00	18.00
5. Cement & clinker	18.00	5.63
6. Chrome ore	18.00	6.76
7. Coal	11.39	5.46
8. Copper concentrates	18.00	18.00
9. Cotton seed & products thereof	18.00	18.00
10. Ferro alloys	18.00	18.00
11. Fertilizer & products thereof	18.00	18.00
12. Fluorspar & products thereof	18.00	18.00
13. Grain & products thereof	18.00	18.00
14. Gypsum & products thereof	18.00	18.00
15. Iron Ore	18.00	9.78
16. Iron Oxide (Hematite)	18.00	9.57
17. Lead & products thereof	18.00	18.00
18. Maize & products thereof	18.00	15.00
19. Malt & products thereof	18.00	18.00
20. Manganese ore	18.00	9.78
21. Ores & minerals: Magnetite	18.00	4.78
22. Ores & minerals: Silico Manganese	18.00	18.00
23. Petroleum Coke	18.00	18.00
24. Pig iron	18.00	15.00
25. Potash & products thereof	18.00	18.00
26. Rice & products thereof	18.00	18.00
27. Rockphosphate	10.71	10.71
28. Rutile	18.00	18.00
29. Salt	6.59	18.00
30. Soda ash	18.00	18.00
31. Steel: Steel pellets	10.33	7.53
32. Sugar	18.00	18.00
33. Sulphur	7.15	7.15
34. Timber products: Wood shavings, sawdust	18.00	7.88
35. Titanium slag	18.00	18.00
36. Vermiculite	18.00	18.00
37. Wheat & products thereof	18.00	18.00
38. Woodchips	18.00	7.88
39. Zinc & products thereof	18.00	18.00
40. Zircon	18.00	18.00

3. LIQUID BULK

Commodity	Imports	Exports
1. Ammonium & products thereof	28.85	28.85
2. Anhydrous ammonia	28.85	28.85
3. Animal / vegetable oils / fats & products thereof	37.00	37.00
4. Caustic soda	37.00	37.00
5. Crude & petroleum products	32.44	18.03
6. Molasses & products thereof	7.06	3.60
7. Phosphoric acid	37.00	37.00
8. Pitch pencil	15.14	37.00
9. Sunflower seed oil	37.00	37.00

4. CONTAINERS

The following fees will apply per container as specified:

	Imports	Exports
6m / 20' containers	1 874.14	412.15
12m / 40' , 13,7m/45' containers	3 748.24	824.30
Empty containers, all sizes	75.43	75.43

- ISO containers filled with MT returns of whatever nature being returned for filling, provided a certificate is given to the effect that they are being returned to the original sender for refilling as well as new MT ISO containers will be regarded as an empty container. Transhipments are excluded from this ruling.
- All containers up to the size of a 6m / 20' container will be charged at 6m / 20' container rate.

5. COASTWISE CARGO

Breakbulk/Bulk

All cargo per leg inwards or outwards , per ton.....	17.31
Breakbulk empty returns, per ton.....	4.69

Containerised

All cargo per leg inwards or outwards irrespective of contents, per container:	
6m / 20' containers.....	76.95
12m / 40' , 13,7m / 45' containers.....	153.88
Empty containers, all sizes.....	76.95

6. EXEMPTIONS

- Bunkers and/or water for the vessel's own consumption at a commercial berth, jetty or mooring;
- Cargo landed in error and reshipped onto the same vessel;
- Fish landed for local consumption at a leased berth from locally registered fishing vessels licensed by the Department of Environmental Affairs & Tourism;
- Clip-on units for ISO reefer containers and the cribs in which they are conveyed when returned to the original port of shipment;
- Cargo restowed by utilizing the wharf.

Vessel's spares / stores for own consumption

- Vessel's stores including bait and packaging materials, vessel's spares all for the vessel's own consumption at any commercial berth, jetty or mooring;
- Bona fide transhipments will qualify for the above exemption only if the import and export documents have been suitably endorsed.

Notes:

i. Vessel's spares/stores imported and moved to a bonded warehouse pending placing on board another vessel are liable for cargo dues on the incoming leg. After placing on board as vessel for own use, import cargo dues will be refunded whilst the outgoing transaction is exonerated from payment of cargo dues provided that both transactions are done within 30 day period. Failing which normal import / export cargo dues will be maintained. (Both import and export cargo dues documentation) must be suitably endorsed, certified and cross-referenced)

ii. Vessel's spares/stores transhipped from one vessel to another are exempted from cargo dues. Documents must be certified to the effect that the cargo is vessel spares/stores for the receiving vessel's own use and consumption

iii. Vessel's spares/stores emanating from local suppliers or being airfreighted are exempted from cargo dues. In these instances, documents must also be certified

iv. Vessel's spares/stores or duty free vessel's stores/spares imported and moved to a private warehouse (not bonded) as a normal import transaction will attract normal import cargo dues and if placed on board a vessel at a later stage as vessel's spare/stores for own use, the outgoing transaction is exonerated from payment of cargo dues

v. Notes (i) and (iv) only apply where vessel's spares/stores transaction take place at a commercial berth, jetty or mooring of Transnet

7. TRANSHIPPED CARGO

The fees for:

- Cargo/Empty containers manifested to the port of discharge for transshipment to another port; or
- Cargo/Empty containers for which transshipping orders have been accepted prior to, or within 3 days of the discharging vessel having commenced discharge; or
- Cargo/Empty containers transhipped from one vessel to another without touching a wharf or jetty; or
- Cargo/Empty containers landed in error or over carried and reshipped onto a different vessel; or
- Bunker fuel oil supplied to vessels direct from tankers (excluding bunkers barges);
- Cargo loaded at a South African port and then discharged from the same vessel due to container malfunction/damage/unpack/repack;
- Cargo not manifested.
- Cargo not manifested for SA that is discharged due to damage/malfunction and then shipped/ airfreighted to the country of final destination within 90 days of cargo being discharged. Unpack and repack must be done at a Customs bonded warehouse/ Custom’s supervision. Documentary proof must be available to the Authority.

Are as follows:

Containerised cargo, **per container per leg inwards or outwards**;

6m / 20’ containers.....	76.95
12m / 40’ , 13,7m / 45’ containers.....	153.88
Empty containers, all sizes.....	75.42
Other cargo, per ton per leg inwards or outwards	4.44

Fees payable on bulk liquids transhipped direct from one vessel to another or on bulk liquids pumped into private storage installations awaiting the on carrying vessel are, per ton (kilolitre)

First 100 000 tons (kilolitres), per ton (kilolitre), per consignment, **per leg inwards or outwards**.....4.44

Thereafter, per ton (kilolitre), per consignment, per leg inwards or outwards.....2.22

Perishable cargo and in bond cargo not transhipped within 30 days after the date that the discharging vessel commenced cargo working, shall for cargo dues purposes be regarded as cargo imported and exported.

8. LATE ORDER AND RELATED FEES

Late order fee is applicable for cancellations and late submission of cargo documentation are as follows:

Cargo dues order amendment fee per order.....	346.94
Late, incomplete and non-submission of manifests and outturn reports per manifest/ outturn report.	
per manifest and outturn report.....	1 734.76
Cargo dues order framing fee per order.....	346.94

All amended orders to be accompanied by the original order (upon request from the Authority).

9. CARGO CONVEYED BY VESSEL PERMITTED TO SERVICE VESSELS WITHIN AND OUTSIDE THE PORT

Per trip.....	411.30
---------------	--------

Administrative fees

for photocopies per page.....	10.87
-------------------------------	-------

SECTION 8

BUSINESS PROCESSES AND DOCUMENTATION

1. CARGO DUES ORDER

Cargo Dues Orders must be presented at the port where the consignment will be landed/shipped/transhipped.

Cargo dues is payable by the importer/exporter of cargo who may appoint a clearing and forwarding agent to undertake transactions on their behalf. The account number appearing on the cargo dues order will be debited accordingly.

In instances where cargo dues orders have not been received, such charges will be billed to the container operator for container traffic and the vessel agent for bulk and breakbulk traffic.

ISO containers filled with MT returns of whatever nature being returned for filling, provided a certificate is given to the effect that they are being returned to the original sender for refilling, as well as new MT ISO containers will be regarded as an empty container. Transshipments are excluded from this ruling.

Cargo Dues Orders can be grouped and submitted as a list, i.e. one order supported by a list containing the relevant container numbers, to the relevant Port Revenue Offices, as follows (Imports and Exports separately):

- **Containers: On a per vessel, per container operator basis, separated between deepsea, coastwise and transshipment movements.**
- **Breakbulk and Bulk: On a per vessel, per agent basis, separated between deepsea, coastwise and transshipment movements.**

A single Cargo Dues Order can also be submitted for multiple containers provided that the container numbers are indicated on the order and import and export orders are submitted separately. Orders should further be separated between deepsea, coastwise and transshipments.

Any cancellations and amendments on this order will be applicable per cargo dues order. Any applicable fees will be levied per cargo dues order.

1.1 TYPES OF DOCUMENTATION

The following documentation must be provided to the Authority:

Container Import and Exports:

- Cargo Dues Order
- Vessel Manifest
- Empty Container List

Bulk and Breakbulk Exports:

- Cargo Dues Order
- Mates Receipt
- Vessel Manifest
- Draft survey for bulk exports

Bulk and Breakbulk Imports:

- Cargo Dues Order
- Bill of Lading / Delivery Order
- Vessel Manifest
- Landing Order

Coastal Cargo:

- Cargo Dues Order per inward and outwards movement, supported by an inwards or outwards list, differentiated between full, empty, 6m (20'), 12m (40') or 13,75m (45').

Transshipment Cargo:

- Cargo Dues Order per inward and outwards movement, supported by an inwards or outwards list, differentiated between full, empty, 6m (20'), 12m (40') or 13,75m (45').

At the request of the Authority, including relevant Customs documentation must be provided to substantiate cargo declarations.

Supporting documentation: Vehicles

In addition to the types of documentation listed in Section 8, Clause 1.1 above please include any of the following documentation below specifying the length/s of the vehicle/s when passing Cargo Dues Orders for vehicles:

- Post load / Delivery Report
- Certificate and list of Measurement and Weight
- Export Certificate
- Packing Specification
- Suppliers Invoice
- Affidavit — (**only applicable** to instances where owners are relocating and vehicle/s form part of "personal/household effects")

Where such documentation cannot be provided the following average length will be applied for tariffing purposes:

- Passenger vehicle.....5.00 metres
- Light commercial vehicles/tractors.....8.00 metres
- Heavy commercial vehicles (trucks, tractors, etc.).....10.00 metres
- Cranes/excavators/bulldozers, etc.....12.00 metres
- Trailers.....14.00 metres

1.2 TIMING OF DOCUMENTATION

IMPORT DOCUMENTATION

1. Cargo Dues Orders must be submitted within five (5) days after vessel departure for bulk (dry and liquid) cargo and within three (3) days after vessel departure for all other cargo types. The only exception to this rule being fresh fish imports where cargo dues orders must be submitted within seven (7) days after vessel arrival.

2. Manifests must be submitted within one (1) day before vessel arrival.

2.1 Manifest in respect of empties must be submitted within three (3) days after vessel departure.

3. Breakbulk and Bulk Cargo Dues Orders must be supported by the Bill of Lading or Delivery Order or survey reports for bulk vessels.

4. The supporting documents are required for empty returns and a Customs approved Bill of Entry for vessel stores / spares for vessels own consumption.

EXPORT DOCUMENTATION

1. Cargo Dues Orders must be submitted within three (3) days after vessel departure for all other cargo types.

2. Manifests must be submitted within seven (7) days after vessel departure.

2.1 Manifests in respect of empties must be submitted within seven (7) days after vessel departure.

3. Breakbulk and Bulk Cargo Dues Orders must be supported by the mate's receipt or draft survey.

4. The supporting documents are required for empty returns and a Customs approved Bill of Entry for vessel stores / spares for vessels own consumption.

INBOUND TRANSSHIPMENT AND COASTWISE DOCUMENTATION

1. Cargo Dues Orders must be submitted within three (3) days after vessel departure.

2. Inbound transshipment manifests must be submitted within three (3) days after vessel departure.

3. Coastal manifests must be submitted within three (3) days after vessel departure for inward moves.

4. Manifests in respect of empties must be submitted within three (3) days after vessel departure.

OUTBOUND TRANSSHIPMENT AND COASTWISE DOCUMENTATION

1. Cargo Dues Orders must be submitted within three (3) days after vessel departure.

2. Outbound transshipment manifests must be submitted within three (3) days after vessel departure.

3. Coastal manifests must be submitted within three (3) days after vessel departure for outward moves.

4. Manifests in respects of empties must be submitted within three (3) days after vessel departure.

The above time frames excludes the first weekend and public holiday.

2. RESPONSIBLE PARTY

Cargo dues is payable by the importer/exporter of cargo who may appoint a clearing and forwarding agent to undertake transactions on their behalf. The account number appearing on the cargo dues order will be debited accordingly.

In instances where cargo dues orders have not been received, such charges will be billed to the container operator per TEU for container traffic and the vessel agent for bulk and breakbulk traffic.

Cargo Dues and all related charges for uncleared containers will be billed to the container operator per TEU for containerised cargo.

Cargo Dues Orders submitted for individual LCL consignments will be invoiced at the full cargo dues tariff per TEU as published in the Tariff Book. In all cases, a Cargo Dues Order must be presented, indicating all the container numbers on the order, or alternatively the Cargo Dues Order can be presented, with an attached list containing the relevant container numbers.

3. LATE ORDER FEES

3.1 Late order fees for late submission of Cargo Dues Orders

Cargo Dues Orders will be considered late when submitted to the Authority after the stipulated timeframes. The Authority will charge interest on the normal cargo dues payable, calculated at the prevailing prime rate plus one percent of the value of the Cargo Dues Order. The following **example** illustrates this calculation:

Prime Rate 9.0%

Prime Rate plus 1% = 10.0%

Value of Order R10 000

Number of days late 14

Interest Calculation $(10.0\% \times (14/365)) = R38.37$

Total Cargo Dues Payable R10 038.37

The first public holiday and first weekend will be excluded if it falls within the number of days that the Order has been submitted late for purposes of interest calculation.

3.2 Non-submission of Cargo Dues Orders

The Authority will apply an incremental late order fee based on the cargo dues payable and dependent on how late documentation is submitted or when a non-submission is discovered by the Authority’s internal verification process. Refer below for late order application:

Number of days late	Penalty application
31-60 days	(10% Value of Cargo dues order)
61-90 days	(30% Value of Cargo dues order)
91-120 days	(50% Value of Cargo dues order)
>120 days	(100% Value of Cargo dues order)

Where an amendment of a cargo dues order is submitted, late order fee charges, if applicable, will be levied from the date of the new order on the under declared quantum, in addition to the amendment fee of **R346.94** per order

3.3 Late and incomplete or non-submission of Manifests/Outturn reports

The late order fee for late and incomplete or non-submission of manifests/outturns will be **R1 734.76** per manifest/outturn.

3.4 The responsible parties for the late order fee is stipulated in Section 8, Cargo Dues Orders (Page 49) and Responsible Party (Page 52).

4. AMENDING ORDERS

1. Cargo dues orders amended within seven (7) days from the date of submission (inclusive of public holidays) will not attract an amending fee for any changes to container/engine numbers/country of origin or country of destination/Bill of lading or Mates receipt/Port of loading and discharge/Terminal/Container Operator or Shipping Agent. (Note that the same order number and invoice number will be retained and an updated confirmation will be issued).
2. The first amendment made to a cargo dues order within 7 days of initial submission, including weekends and public holidays, and which does not impact on the value of the initial invoice, will not attract an amending/cancelling fee.
3. After seven (7) days, an amending fee of **R 346.94** will be charged per order.

5. TERMINAL OUTTURN REPORT

Outturn reports are required on a per vessel basis from all terminals at the respective ports, within 5 days after the vessel departure.

6.1 PORT REVENUE OFFICES

The Authority’s Port Revenue Office at the various ports, are located as follows:

Port of Port Elizabeth/ Ngqura Ground Floor Customer Service Centre Port Admin Building Port of Port Elizabeth	Port of Durban 2nd Floor 45 Bay Terrace Point	Port of Richards Bay Ground Floor Venture Road Bayvue Centre Port of Richards Bay
Port of Cape Town Ground Floor Customer Service Centre TNPA House South Arm Road Port of Cape Town	Port of East London Port Admin Building Hely Hutchinson Road Quigney Port of East London	Port of Saldanha Bayvue Centre Marine Drive Port of Saldanha
Port of Mossel Bay Port Admin Building 55 Bland Street Port of Mossel Bay		

6.2 Order-to-Cash

Registered customers must submit electronic cargo dues and/manifest or EDI data (cargo dues, outturns, manifest) via electronic platforms..

For additional information visit our website www.transnetnationalportsauthority.net or contact our call centre on 086 010 9333. Email: customercare.tnpa@transnet.net

6.3 IMPORT AND EXPORT CARGO DUES ORDER

Import and export cargo dues order forms are available on the website at: www.transnetnationalportsauthority.net

Certificate of Attendance of RFP Briefing

It is hereby certified that –

1. _____
2. _____
3. _____
4. _____

Representative(s) of _____ [name of entity]

attended the RFP briefing session in respect of the proposed development of a LNG Terminal in the Port of Richards Bay.

Name:

Entity Details: _____



Annex NN – Letter of Support Template from Lender

Dear Sirs,

Transnet National Port Authority – Port Elizabeth– tender for 25 (twenty – five) year concession for a Multi-Purpose Terminal in the Port of Port Elizabeth (the Project)

We, [Lender] ("**abbreviated Tier 1 Lender name**"), are delighted to provide this letter of support to [Bidder name] ("**abbreviated Bidder name**") in our role as External Debt provider to [name of project vehicle] in respect of its Bid Response to the Request for Qualification and Proposals for [xxx] (Tender no:) ("**the RFP**").

This letter details the work we have undertaken in our role as External Lender to confirm our support to [abbreviated Bidder name] in the Bid Response to the RFP.

For purposes of this letter, the capitalised terms shall have the meanings assigned in the RFP, unless the context requires otherwise.

In support of the Bid Response from [abbreviated Bidder name] we confirm that, except as specifically stated in this letter, we have completed sufficient due diligence to enable us to issue this letter of support. We are not aware of any material issues that may impact on the proposed External Debt or the achievement of Financial Close other than those indicated below.

[insert material issues (if any)]

Specifically, we have received and reviewed the following information:

1. The RFP and the Terminal Operator Agreement ;
2. The Base Case Financial Model(s) based on our offered terms and required sensitivities [insert name of Financial Model];
3. A model audit review opinion for the Financial Model(s) submitted in the Bid Response dated [insert date of model audit opinion letter], prepared by and signed off by [the Bidder's model auditor]. We confirm that any issues raised from the model audit opinion letter have been discussed with [insert bidder name] and confirm that, to our knowledge, there are no material issues that may impact on the Project or achievement of Financial Close and confirms in particular that the tariff formula is correctly reflected ; and

4. The Business Plan

Timetable

We are of the opinion that the proposed transaction is deliverable as currently structured and within the proposed timetable to Financial Close. The Project has preliminary credit committee approval. Obtaining final credit approval is not expected to impede the proposed timetable. Our analysis to date confirms that the Project lies within our expected risk and return profile.

Legal

In providing this letter of support we confirm that we have reviewed the RFP and the Terminal Operator Agreement.

Following this review we confirm acceptance of the commercial terms and risk profile presented in the Terminal Operator Agreement.

Technical

We have reviewed the technical and commercial details of this Bid Response and confirm that there are no material issues in relation to the technical and commercial aspects of the Bid Response that may impact on the achievement of Financial Close.

Financial

In providing this letter of support we confirm that, we have reviewed the Financial Model to be submitted with the Bid Response and have performed all required sensitivities and are satisfied that Financial Close is achievable within the timeframes indicated by the Bidder in its Bid Response.

We confirm that the Banking Case Financial Model accurately reflects the relevant terms in the term sheet.

Terms

[Attach term sheet]

We confirm our commitment to keeping the terms attached in the term sheet, subject to material changes to the Bid Responses resulting from conducting further due diligence as identified in paragraph 6 below.



Other conditions

[Please identify other conditions if any, with regards to the Project generally, as well as Bidder specific issues.]



Port Tariff Methodology
For Tariff Years 2021/22 – 2023/24

Published: March 2020

Table of Contents

1.	Introduction.....	3
2.	The Tariff Methodology.....	5
2.1.	Background.....	5
2.2.	In Context.....	5
3.	Port Tariff Methodology.....	6
3.1.	Methodology Period.....	6
4.	The Elements.....	6
4.1.	Rate of Return Regulation - Revenue Required (RR) Methodology/Revenue Cap.....	6
4.2.	Regulatory Asset Base (RAB).....	9
4.3.	Inflation Trending.....	13
4.4.	Capital Works in Progress (CWIP).....	14
4.5.	Working Capital.....	15
4.6.	Weighted Average Cost of Capital (WACC) - Vanilla WACC.....	15
4.7.	Cost of Equity (k_e).....	16
4.8.	Risk Free Rate (r_f) (RFR).....	16
4.9.	Market Risk Premium (MRP).....	17
4.10.	Beta (β).....	17
4.11.	Gearing (g).....	18
4.12.	Cost of Debt (k_d).....	18
4.13.	Taxation Expense (T).....	19
4.14.	Operating Expenditure (OPEX).....	20
4.15.	Claw-Back.....	20
4.16.	Excessive Tariff Increase Margin Credit (ETIMC).....	21
5.	Volume Forecast.....	22
6.	Weighted Efficiency Gains in Operations (WEGO).....	22
7.	Operational Performance Calculations.....	24
8.	WEGO Downtime Adjustment / Disincentive.....	25
9.	Corporatisation.....	27
10.	Annexure A: Information Requirements.....	28
11.	Confidentiality.....	29
12.	Annexure B: RAB Calculation.....	30
13.	Annexure C: Asset Treatment.....	31
14.	Annexure D: Clawback Calculation.....	32

1. Introduction

In 2007, the Ports Regulator of South Africa ('the Regulator') was established through the promulgation of the National Ports Act, Act 12 of 2005 ('the Act') as '*an independent ports regulatory body*¹', with a mandate to "*exercise economic regulation of the ports system in line with government's objective*²". The Act also sets out the functions of the National Ports Authority ('the NPA / the Authority') as the landlord of South Africa's (SA) ports and requires that "*the NPA must, with the approval of the Ports Regulator, determine tariffs for services and facilities offered by the Authority and annually publish a tariff book containing those tariffs*³".

Subsequently, the Directives to the Act (as approved on 13 July 2009, gazetted on 06 August 2009 and amended on 29 January 2010) requires that when considering the proposed tariffs the Regulator must give due consideration to whether it is desirable that the tariffs which it approves enables the NPA to:

- Recover its investment in owning, managing, controlling and administering ports and its investment in port services and facilities;
- Recover its costs in maintaining, operating, managing, controlling and administering ports and its costs in providing port services and facilities; and
- Make a profit commensurate with the risk of owning, managing, controlling and administering ports and of providing port services and facilities⁴ if prudent.

This mandate, coupled with the history of both SA and the NPA, required regulatory intervention as well as various tools and mechanisms to ensure the ports system of SA is fair, transparent, and competitive.

In line with the functions of NPA, as defined in Section 11 of the Act, the revenue generated from NPA's services is utilised inter alia to:

- Provide and arrange for road and rail access within ports;
- Regulate and control port access (navigation within port limits; enhancement of safety and security);
- Provide and arrange for tugs, pilot boats, and other services and facilities for the navigation and berthing of vessels in the ports; and
- Provide, control and maintain vessel traffic services.

The Regulator's approval is required for the tariffs charged for services and facilities offered by the NPA in accordance with the National Ports Act, 12 of 2005 (the Act).

i. 1 Section 29 of the National Ports Act

² Section 30(1)(a) of the National Ports Act

³ Section 72(1)(a) of the National Ports Act

⁴ Directive 23(2)

In terms of Section 72(1) of the Act, and Chapter 7 of the Directives of 2009 promulgated in terms of Section 30(3) of the Act as amended in 2010, the NPA must submit to the Regulator an application regarding the tariffs it proposes to charge for the services and facilities that it offers. The Regulator's approval of such tariffs is subsequently required and therefore takes into consideration the Application, all subsequent submissions, written and oral comments received during the consultation process, including the responses thereto, as well as conducts its own research prior to publishing a Record of Decision (ROD).

Since the commencement of economic regulation with the 2009/10 ROD, the Regulator has issued, on an annual basis, a ROD for each application year in which an assessment of the NPA's compliance with the Regulatory Framework has been made. All RODs have contained an outline of corrective action required.

Furthermore, the Regulator has formulated a long term Tariff Strategy (the 'Strategy') which is based on a 'use and benefit' approach to cost allocation. The Strategy (updated in 2019/20) depends on the adapted Revenue Requirement (RR) approach to allocate costs to specific user groups. Tariffs from 2017/18 onwards were adjusted in accordance with the consulted and adopted Tariff Strategy. The Act, its Regulations, and the Directives constitute the South African Ports' Economic Regulatory Framework which, amongst other instruments, allows for a transparent tariff setting process.

Reference: <https://www.portsregulator.org/about/legislation-regulations-and-policies>

Reference: <https://www.portsregulator.org/images/documents/PRSA-Tariff-Strategy-2015-2016.pdf>

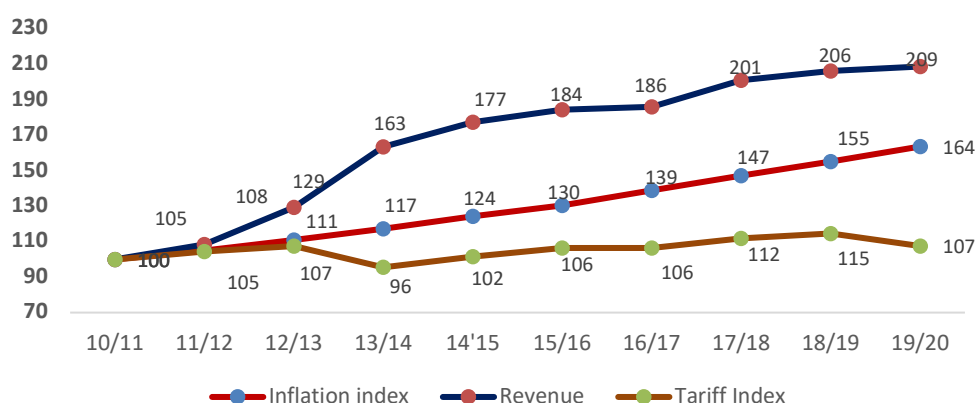
2. The Tariff Methodology

2.1. Background

Significant strides have been made since the first Regulatory decision in 2009/10 and the development of the first multi-year tariff methodology in 2015/16 and again in 2018/19 further contributed to increased regulatory certainty. Whilst retaining the fundamental elements of earlier determinations, the most recent Tariff Methodology was multi-year in its approach, applicable to the 2018/19-2020/21 tariff years, and resulted in increased levels of transparency and consistency in the tariff setting process. The Methodology has allowed a significant smoothing of the Authority’s return and at the same time, it has allowed the Regulator to establish a lower tariff trajectory whilst still ensuring the profitability of the NPA, as can be seen in Figure 1: Tariffs vs Inflation below.

This Tariff Methodology, applicable to the 2021/22 – 2023/24 tariff years, seeks to continue and strengthen the transparency and effectiveness of the regulatory tariff setting process whilst expanding its scope and providing greater focus on the embedded incentives inherent to the Tariff Strategy published in July 2015 and updated in 2019. In addition, this Tariff Methodology serves to provide some guidance as to the regulatory approach prior to, during and after the transition of the NPA as a corporate entity in terms of the National Ports Act.

Figure 1: Tariffs vs Inflation



2.2. In Context

The “multi-year” tariff methodology (the ‘Methodology’) in the current instance refers to the determination of tariffs over the period 2021/22 – 2023/24 based on a single methodology.

The Authority’s multi-year tariff application contains different calculations for each tariff year in the tariff period, consisting of forecasts and calculations of each of the components of the Required Revenue (RR) approach. Annual adjustments to the values of the components will be taken into account through a claw-back (or give-back) mechanism.

The NPA publishes a revised tariff book of all prices reflecting the decisions of the Regulator as set out in the Record of Decision (ROD), for the first year of each rolling multi-year period. In addition, the NPA is required to submit, as part of the application, any proposed changes to the existing tariff book that will reflect increases (or decreases) different from the average tariff increase applied for.

3. Port Tariff Methodology

3.1. Methodology Period

This Tariff Methodology is applicable for tariffs within the period 2021/22, 2022/23, and 2023/24.

The Regulator has previously allowed for an annual review and an annual adjustment of tariffs within a three-year period as opposed to fixing the prices for the period as a whole; this is intended to protect users from possible large step changes in the tariff. In addition, unlike other regulated industries such as electricity or oil and gas pipelines, there are large variations in the users and usage of port infrastructure and services. Therefore, an annual review allows a more efficient and appropriate allocation / distribution of prices attributable directly to particular port users in the short term as opposed to adjustments only after three years.

Provision for an annual review and adjustment of tariffs within a three-year period is contained within the Methodology, and the NPA is required to apply for a fixed tariff adjustment for each year under review as well as to provide indicative tariffs for the two outlying years. This in turn allows the Regulator, and port users, to take a medium term view of the operational expenses, volume forecasts, and tariff trajectories, whilst at the same time provides the Regulator the flexibility to adjust, in the short term, for economic or other external impacts.

This Methodology will therefore apply until the end of 2023/24 tariff year, and incorporates future changes being introduced by Government; this includes a change in the corporate structure of the NPA in line with the National Ports Act, as well as the establishment of the Transport Economic Regulator. As such, the Regulator may, from time to time, make corrections or changes to the Methodology as required.

4. The Elements

4.1. Rate of Return Regulation - Revenue Required (RR) Methodology/Revenue Cap

The Rate of Return regulation methodology is often used to determine fair and reasonable prices for all parties. The prices are considered reasonable as they provide a regulated company the opportunity to recover its costs, as well as to earn a fair return on the capital employed. Simultaneously, the method protects customers from paying excessive monopolistic prices, with the argument being that monopolistic firms should be required to charge the price that would prevail in a competitive market.

The Revenue Required⁵ methodology as adopted by the Ports Regulator embraces the Rate of Return principle as in the determination (and capping) of the overall revenue requirement of the regulated entity for a year, it enables the firm to make a reasonable return on their assets after covering all operating costs, depreciation and taxes. This approach further satisfies the requirements of the Directives to the Act, as set out in section 1.

⁵ The inclusion of a claw back mechanism results in a Required Revenue approach which closely reflects a Revenue Cap approach. For purposes of consistency in terminology we continue to use the term Revenue Requirement (RR).

An assessment of the various components of the RR formula is required in order to determine a feasible outcome. In regulatory practice, tariffs for far-lying future years are based on forecasts of various considerations. As a general rule, the longer the forecast period is, the less accurate the forecasts towards the end of the period is likely to be. In time, forecasts can be replaced with actual data for the forecasted variables and when sufficient actual data is available for a tariff year, the tariff is recalculated. Claw-backs or give backs are then calculated to offset any differences. This calculation and subsequent claw-back will be completed during each year of a multi-year tariff decision, as has been the practice of the Regulator. As actual data for tariff year one will only be available in tariff year two, the applicable claw back or giveback, if any, will only be fully implemented in tariff year three.

Actual volumes will replace estimates for the calculation of claw backs or give backs. The use of a three-year period in the current Methodology includes a mid-period adjustment, that should, in theory, reduce the volatility over the period as a result of the claw-back.

The Regulator will apply the adapted Revenue Required approach for the 2021/22 – 2023/24 financial years, and the formula is as follows:

Revenue Requirement

$$\begin{aligned}
 &= \text{Regulatory Asset Base (RAB)} \\
 &\times \text{Weighted Average Cost of Capital (WACC) + Operating Costs} \\
 &+ \text{Depreciation + Taxation Expense} \pm \text{Clawback} \\
 &\pm \text{Excessive Tariff Increase Margin Credit (ETIMC)} \\
 &\pm \text{Weighted Efficiency Gains from Operations (WEGO)}
 \end{aligned}$$

The above formula reflects a standard building block approach to setting the revenue requirement of a regulated service provider and has been used by the Regulator in a similar manner in previous tariff determinations. This approach accords with the rate-of-return revenue requirement calculations by Regulators in SA as well as internationally (as modified in the ports regulatory practice over time) and has been used as the basis for assessments by the Regulator in preceding tariff periods.

The Methodology requires that the NPA estimate its operating costs, depreciation, taxation expenses, and return on capital; a product of the Weighted Average Cost of Capital (WACC) as well as the value of assets in the RAB for the period under review. In addition, the Methodology contains a claw-back mechanism (that corrects for over or under recoveries in previous tariff periods) and an Excessive Tariff Increase Margin Credit (ETIMC) facility. The ETIMC allows for large increases in required revenue and/or tariffs that may arise from volume volatility or substantial capital expenditure programmes in future years to be partly offset by moderately higher tariff increases in the short-term.

Whilst the Methodology as set out below contains an efficiency variable (the Weighted Efficiency Gains from Operations) and will continue to incentivise operational efficiencies, the Regulator still retains the right to include, at any time during this methodology period, positive incentives in support of any national objectives or positive operational or financial outcomes in the Records of Decision.

The exposition of the Revenue Requirement approach is:

$$RR = (v - d + w) r + D + E + T \pm C \pm ETIMC \pm WEGO$$

Where:

<i>RR</i>	=	<i>Revenue Requirement</i>
<i>v</i>	=	<i>Value of the assets used in the regulated services</i>
<i>d</i>	=	<i>Accumulated depreciation on such assets</i>
<i>w</i>	=	<i>Working Capital</i>
<i>r</i>	=	<i>Regulated Return on Capital</i>
<i>D</i>	=	<i>Depreciation on the RAB accounted for in the tariff period</i>
<i>E</i>	=	<i>Operating Expenditure (OPEX)</i>
<i>T</i>	=	<i>Taxation expense</i>
<i>C</i>	=	<i>Claw-back</i>
<i>ETIMC</i>	=	<i>Excessive Tariff Increase Margin Credit</i>
<i>WEGO</i>	=	<i>Weighted Efficiency Gains from Operations</i>
<i>(v - d + w)</i>	=	<i>Regulated Asset Base (RAB)</i>

4.2. Regulatory Asset Base (RAB)

The RAB represents the value of those assets the NPA is allowed to earn a return on. As the return earned on these assets is expressed in real terms, the value of total assets in the RAB is indexed to inflation each year using the Trended Original Cost (“TOC”) approach⁶. Each year, estimated capital expenditure (CAPEX) and depreciation is added to the closing balance for the previous year to arrive at an updated closing balance for the current year. The expected working capital balance is added to arrive at a total RAB estimate, which is averaged over the year to account for the progressive spending of capital works in progress (CWIP) over the period.

4.2.1. Calculation and Adjustment of the RAB

The Regulator concluded that the appropriate (minimum) criteria elements, as determined by the Regulator for the purpose of setting an appropriate RAB and asset valuation system must:

- be based on a principled and sound rationale;
- produce a reasonable asset value for existing assets;
- result in an acceptable price-path;
- ensure financial capital maintenance;
- encourage efficiency and caution with respect to new investment decisions on the part of the NPA;
- be reconcilable back to the NPA asset register, at least at a particular point in time; and
- minimise regulatory information asymmetry problems.

The Regulator concluded that the TOC approach (satisfying the principle of Financial Capital Maintenance) based on the capitalisation dates and values in the NPA asset register best meets the criteria, however, some concerns related to the older assets capitalised before 1990 were raised. Therefore, assets with capitalisation dates prior to 1990 will be treated on a historical cost (HC) basis. The underlying assumption is that assets in existence at 1990 have now been in existence for a long period of time and, for most of that time, have been depreciated on a trajectory following this method. The Regulator will therefore treat these assets with the HC method, while treating any assets created from 1990 onwards on the basis of the TOC approach.

The following is the approach to be implemented:

- i. TOC values provide a viable approach to setting the value of the RAB and will be applied to newer (post 1990) assets.
- ii. The Regulator will differentiate between assets in existence in 1990 and those with capitalisation dates after 1990 and will treat the older (pre-1990) assets on a HC valuation basis.
- iii. On application by the NPA as part of its annual Tariff Application, the Regulator may, in considering the revenue impact of the implementation of the methodology decide to accelerate the depreciation period of the pre-1990 assets in order to smooth out the revenue impact thereof.

⁶ This excludes the pre-1990 assets, on which a Historical Cost approach to depreciation and a nominal WACC will apply.

- iv. If during the period of this Tariff Methodology, the National Ports Authority is corporatised from a division of Transnet, into a subsidiary or stand-alone SOC with borrowing powers, the Regulator will, in order to ensure good credit ratings of the NPA, consider applying the TOC to both pre-1990 assets as well as post 1990 assets (as a deviation) until credit metrics like cash-interest cover (not applicable to a non-borrowing division) have been proven to be within sustainable limits.
- v. The Board/governing body of the NPA must write a motivation to the Regulator at least three months prior to the tariff application submission requesting a deviation on the RAB calculation, filing its Memorandum of Incorporation with the Regulator and providing all its credit metric calculations, or alternatively or citing significant progress on corporatisation, if any. On subsequent approval by the Ports Regulator, the NPA may make its tariff application on a RAB valuation calculation based on the decision of the Regulator. The NPA deviation letter as well as the Regulator's ROD on the RAB valuation calculation will be published.
- vi. See section 9 for more details on the implications and requirements with respect to corporatisation.

4.2.2. Rules for Inclusion in the Regulatory Asset Base (RAB)

The RAB covers all assets employed/owned by the NPA in the provision and supply of port capacity and services. The following are the conditions that must be met in order to include an asset in the RAB. The following rules set out the criteria for inclusion and valuation of assets and treatment of maintenance on the RAB:

Prudency tests are applicable to new and used assets for inclusion in the RAB.

The amount by which the capital base may be increased in any specific year is the amount of the actual project capital expenditure incurred in that specific year provided that:

- i. The amount does not exceed the amount that would be invested by a prudent landlord port owner acting efficiently in accordance with good industry practice to achieve the lowest sustainable cost of delivering the required services; and
- ii. At least one of the following conditions is satisfied:
 - a. The anticipated incremental revenue (subjected to the claw back mechanism in outer years if found to not be true) generated by the capital expenditure exceeds the investment cost;
 - b. The NPA can satisfy the Regulator that the new capital expenditure has system wide benefits that, in the Regulator's opinion, justify its inclusion in the capital base; or
 - c. The new capital expenditure is necessary to maintain physical safety and functional integrity of National Ports Authority infrastructure, installations and marine services equipment in the port system.
- iii. The fixed asset is long-term in nature and is operationally used and useable;
- iv. Fixed and other assets that are not in an operationally used and useable (useful) form will not be included in the RAB;
- v. The asset is used and useable and should be in a condition that makes it possible to supply demand for port services in the short to medium-term (within 12-36 months).

Additional conditions regarding assets include:

- New assets will be included in the RAB and subjected to the TOC methodology as set out if the expected life of the asset exceeds five years.
- Inclusion in the RAB of land outside of port limits for strategic purposes, will be assessed on a case by case basis.
- If the asset's lifespan is five or less years (i.e. depreciation periods of five years or less at the acquisition of said assets) it will attract straight line depreciation to be included in the tariff calculation. Maintenance on these "short term assets" may have maintenance costs included if used beyond full depreciation.
- The NPA shall, with each tariff application, provide a list of temporary and long term unused assets (i.e. all assets not used operationally). This list will be published.
- All capital expenditure must be approved by formal PCC and NPCC resolutions and communicated to the Regulator.
- All capital expenditure must be submitted to the Regulator as part of the annual Tariff Applications for consideration by the Regulator on 01 August.
- All capital expenditure forming part of the annual tariff application to the Regulator must be accompanied by an approval letter signed by the Chairperson of the relevant Board/Governing body of the Authority, outlining capital expenditure approved in each port and all other business units of the Authority.

4.2.3. Calculation of the RAB

The RAB value for the period under review is determined using the following formulas:

$$RAB_y = \frac{1}{2} [RAB_{c,y} + RAB_{o,y}] + w_y$$

$$RAB_{c,y} = RAB_{o,y}(1 + CPI_y) + CWIP_y \cdot (1 + CPI_y)/2 - D_y$$

Where:

RAB_y	=	<i>value of the RAB used to determine the returns for period y</i>
$RAB_{o,y}$	=	<i>opening value of RAB for the period y</i>
$RAB_{c,y}$	=	<i>closing value of RAB for the period y</i>
w_y	=	<i>forecast average net working capital over period y</i>
$CWIP_y$	=	<i>value of expected capital investment over period y</i>
D_y	=	<i>depreciation allowance for assets over review period y</i>
CPI_y	=	<i>annual rate of Headline CPI expected over period y</i>

- i. Working capital will be included in the RAB for the purposes of calculating the return as per the Tariff Methodology.
- ii. The return on capital will be based on the TOC value of the assets for assets with capitalisation dates post 1990, and HC value for assets predating 1990, to ensure financial capital maintenance.
- iii. A *real* return will be applied in the case of assets that is valued on a TOC basis and a *nominal* return will be applied to the HC asset values in the RAB.

- iv. The net TOC value is determined by calculating the accumulated and annual depreciation on a straight line basis over the elapsed life for those assets that are depreciated (with appropriate adjustments for refurbishments etc.).
- v. The historic asset base as at 31 March 1990 will be used as an opening asset base (This asset base will be used as a basis to determine the current trended net value of NPA's assets).
- vi. Concession funded assets and prepayments (e.g. concessions that resulted in assets transferring back to the NPA) will be recorded on the regulatory asset base at R1 (One Rand).

4.2.4. RAB Depreciation

The fundamental contextual decision for the Regulator in determining the appropriate application of depreciation centres around the aim of regulation, specifically the intention to satisfy the principle of financial capital maintenance. Currently, to fully take into account capital expenditure and inflation, the following formula is used in the calculation of depreciation:

$$D_y = (RAB_{(o,y)} + (RAB_{(o,y)} \cdot CPI_{(y)}) + (Capex_{(y)} / 2 \cdot CPI_{(y)})) / RUL$$

Where:

RAB_y	=	<i>value of the RAB used to determine the returns for period y</i>
$RAB_{o,y}$	=	<i>opening value of RAB for the period y</i>
$RAB_{c,y}$	=	<i>closing value of RAB for the period y</i>
D_y	=	<i>depreciation allowance for assets over review period y</i>
CPI_y	=	<i>annual rate of Headline CPI expected over period y</i>
RUL	=	<i>Remaining useful life in years</i>

It must be noted that the Tariff Methodology includes the use of asset specific depreciation rates as opposed to an average asset life. The treatment of those assets that have exceeded their expected lifespan and/or depreciation periods are dealt with in Annexure C.

Depreciation will only be allowed in the calculation of the tariff upon commissioning, and as such will require an annual re-investment of the return on equity proportional to the depreciation calculated for non-completed investment projects and will therefore result in an adjusted depreciation based on the RUL at the date of commissioning. Efficient implementation and management of capital projects, timely completion of infrastructure construction, and on-schedule acquisition of capital equipment is thereby incentivised.

The following provisions apply:

- i. The depreciation should be calculated on the historical cost of an asset (this is independent of the amortization of the trended portion) and be based on the remaining useful life of each asset; See Annexure B;
- ii. The total accumulated depreciation and accumulated amortisation is deducted from the TOC cost of the RAB to obtain the RAB on which the return is calculated. See Annexure B;
- iii. Mothballed and/or impaired assets will not earn a return although the maintenance of mothballed assets with a definite plan for future use, will be allowed in the OPEX;
- iv. Similarly, the maintenance on assets still in use, but fully depreciated, will be allowed in the OPEX; and

- v. A complete list of assets in this category must be compiled and updated on an annual basis by the NPA. The required information must be supplied to the Regulator.

4.2.5. Maintenance

- i. Maintenance to be treated as *operational expenditure* (i.e. not capitalised and included in the RAB) for purposes of tariff calculation and will be defined as: “work undertaken within the port system with the intention of:
 - a. re - instating the physical condition of an asset to its original specified/design standard (e.g. dredging to the specified/design depth);
 - b. preventing pre-mature deterioration or failure in order to ensure functionality for the duration of the asset’s designed useful life;
 - c. restoring correct operation within specified parameters;
 - d. replacing *components* of assets at the end of their useful/economic life with modern engineering equivalents;
 - e. making temporary repairs or servicing for immediate health, safety and security reasons; and/or
 - f. assessing assets for maintenance requirements (e.g. to obtain accurate and objective knowledge of physical and operating condition, including risk and financial impact, for the purpose of maintenance).
- ii. Expenditure on assets or projects that **may be included** in the RAB as *capital expenditure* when it results in the following:
 - a. an increase in the asset’s useful function or service capacity (e.g. dredging to a greater than specified depth);
 - b. an extension of the useful life of an asset;
 - c. an improvement to the quality of the service(s) delivered through utilisation of the asset, or resolving the unintended consequences of a poor engineering design (e.g. the installation of a mooring system in Ngqura);
 - d. a reduction in future operating costs; and/or
 - e. the upgrade or enhancement becoming an integral part of the asset.
- iii. Maintenance dredging must be subjected to the criteria above.

Annexure C summarises the treatment of different assets descriptions in the RAB.

4.3. Inflation Trending

The inflation rate for calculating the trend in the value of assets between rebasing periods will be the Headline Consumer Price Index (CPI) forecast in each financial year during the tariff period. The same inflation rate is used in the calculation of the Weighted Average Cost of Capital (WACC).

Due to the Regulator finalising a RoD by 01 December, it will utilise a final National Treasury published CPI forecast from the National Treasury’s October/November Medium Term Budget Policy Statement (MTBPS) and if it deems necessary, also estimates published by the South African

Reserve Bank, the Bureau of Economic Standards, other institutions, and its own economic forecasts in its assessment of future price changes.

4.4. Capital Works in Progress (CWIP)

CAPEX implementation since the publication of the last multi-year Tariff Methodology has been dismal. Therefore the Regulator will require the following from the NPA with every tariff application:

- i. CWIP projections for the tariff period detailed as follows:
 - a. per asset class;
 - b. per service;
 - c. per project; and
 - d. monthly planned expenditure schedules.

These projections are to serve as motivation for the inclusion of the CWIP in the RAB. All CAPEX which has been approved and not fully implemented shall be taken into account as part of the claw-back process and the RAB, and its return shall be then adjusted accordingly. In addition, no depreciation allowance will be included until commissioning of the relevant asset. The Authority shall officially inform the Regulator of the commissioning of each asset in writing in each year as part of its Tariff Application supplying the date of commissioning, final expenditure value, and any other information the Regulator deems necessary.

The Regulator has in the past relied on the PCCs to “in principle” approve or support the NPA’s CAPEX requirements, however, the NPA’s ability to implement projects, recent CAPEX implementation record, as well as the relevance and appropriateness of the CAPEX plan will be taken into consideration in future. In addition, each project in the application⁷ must contain the underlying motivation (business case) for all CAPEX projects, including volume projections etc. (See Annexure A) . Whilst the NPA will be allowed to approach the Regulator to amend the RAB within the cycle, any amendments will require the same rigorous probity assessment. This is particularly important in the early stages of the implementation of the Methodology during the ramp up in terms of business case submissions.

As such, the assessment of determining the final closing balance at the end of the CAPEX period will require an assessment of actual achievement of the approved CAPEX plan. This will require an assessment of the various construction elements including disbursements, actual outputs, and cumulative project specific Engineer’s payment certificates and completion certificates.

⁷ In excess of R10 million

4.5. Working Capital

The regulatory purpose of the RR approach is to determine the revenue required by the NPA to recover its costs and an appropriate return. This must include the concept of the time value of money as the time at which a particular cost is incurred may not necessarily be matched with the associated tariff. Therefore, capital is required to cover the time delay, however there is a cost associated with the additional capital requirement. In order to correct for the inherent assumption in the RR approach (that expenses and revenues occur at the same point in time), an allowance for the time difference is included.

The estimate of working capital included to adjust for the cash requirements related to CAPEX requirements, equates to the actual *net* working capital as per the latest available NPA annual financial statements (not the change in working capital), consisting of accounts receivable plus inventory less accounts payable (i.e. operating cash is excluded), adjusted by forecast volume growth and CPI inflation for the following year. In addition, CWIP *payables*, which are estimated at 1/12th of the CAPEX projected for that year is included. This is adjusted for the previous year's proportion of under-expenditure on the capex programme. Volume and CPI forecasts used in the calculation of outer years' working capital will be updated as and when these numbers become available as part of the claw-back mechanism.

4.6. Weighted Average Cost of Capital (WACC) - Vanilla WACC

In general, the WACC represents the risk adjusted opportunity costs of capital, and is the minimum return for an investment in order to continue to attract capital, given the risks.

A real WACC⁸ (the cost of equity and the cost of debt) will be applied and expressed in Vanilla terms (i.e. post-tax cost of equity and pre-tax cost of debt) to the post-1990 assets and a nominal WACC will be applied to pre-1990 assets. Accordingly, a separate allowance for the tax expense in the RR formula is required.

$$WACC_{vanilla} = k_d \cdot g + k_e (1 - g)$$

Where:

k_d	=	<i>pre-tax cost of debt</i>
k_e	=	<i>post tax cost of equity</i>
g	=	<i>gearing, which is debt over total capital</i>

⁸ Adjusting for inflation will use Fisher's Equation: $(1 + \text{nominal WACC}) = (1 + \text{real WACC}) * (1 + \text{cpi})$

4.7. Cost of Equity (k_e)

The post-tax Cost of Equity is calculated with reference to the Capital Asset Pricing Model (CAPM), which is expressed as:

$$k_e = r_f + \beta \times MRP$$

Where:

Rf	=	<i>Real risk free rate</i>
β	=	<i>Measure of NPA's exposure to market (non-diversifiable) risk</i>
MRP	=	<i>The market risk premium measuring the premium over and above the risk free rate that investors might expect to earn</i>

The exclusion of the return on equity rate from the claw back calculation ensures that the use of a CAPM calculation establishes a clear and consistent determined risk premium above the RFR, significantly reducing the NPA's revenue risk as well as additional tariff volatility.

4.8. Risk Free Rate (r_f) (RFR)

In establishing a risk profile for a regulated entity like the NPA involved in the development of billions of Rands of infrastructure through debt, one of the main risks facing the business is that of the volatility of interest rates and other associated borrowing costs. In addition, over-runs, lack of engineering and project management skills, cost uncertainty, and regulatory risk further contributes to their risk profile. With regards to the latter two risks, namely cost uncertainty and regulatory risk, the RR methodology, as implemented by the Regulator in this instance, adequately covers the perceived risk. In the first instance, the granting of operational expenditure as a revenue item and the inclusion of a claw back, together with a transparent tariff methodology sufficiently compensates the NPA for the associated risk. To compensate for the interest rate risk, regulators are generally in agreement that longer dated government bonds should apply for two reasons, firstly to retain consistency in the calculations, the RFR should be set on a basis that is consistent with other variables in CAPM, notably the MRP. Secondly, to ensure alignment with the average length of remaining life of an asset in the RAB or at least the remaining debt maturity periods.

This Methodology utilises the South African Reserve Bank's published time series KBP2003M "Yield on loan stock traded on the stock exchange: Government bonds - 10 years and over" in order to avoid anomalies in single data series bond as an appropriate measure of the RFR, and is seen to adequately reflects the market's perception of sovereign risk and inflation over the regulatory period. The average RFR is calculated as a monthly moving average over a five-year period.

The Real RFR is deduced by using the Fisher Equation.

$$1 + i = (1 + r)(1 + E(I))$$

Where:

i	=	<i>Nominal rate</i>
r	=	<i>Real rate</i>
$E(I)$	=	<i>Expected inflation</i>

4.9. Market Risk Premium (MRP)

The MRP is in essence forward-looking and therefore cannot be observed but must rather be forecasted. A general consensus exists that the historical premium is, in fact, the best estimate of the forward looking MRP. For this purpose, the Regulator uses the latest available Dimson, Marsh and Staunton (DMS) estimate of the mean MRP as measured against bonds for SA to determine an MRP for the NPA's cost of equity calculation. The existence of negative serial correlation in the returns on South African equities results in an overestimation of the MRP when using the arithmetic mean. In addition, the relative (and recent) changes in terms of market diversification, improvements in the regulatory and legal frameworks safeguarding investors points to the appropriate risk premium forecast to be at the lower end of the long term view.

As such the Regulator will retain the use of the geometric mean of the DMS MRP. The calculation of the MRP average is done over the full period available in the DMS dataset as the cost associated with the larger standard error of a shorter period surpasses any advantages of using a more recent shorter period MRP.

4.10. Beta (β)

As the NPA is not a traded company, there is no published beta (β) which reflects its risk relative to firms listed on the market. Therefore, a β has to be set in order to reflect the risks faced by the NPA under the RR methodology that will ensure an appropriate return (for the risk faced).

The inclusion of a claw-back mechanism reduces exposure to systematic risk and the existence of an interventionist regulatory regime ensuring future returns to a state-owned monopoly with no competitors to its business in SA, requires the Regulator to use a β substantially lower than that of large firms listed on the market such as the JSE top forty. The unique nature of the NPA as a regulated monopoly with an implied government guarantee, makes any comparison with other private sector port companies impossible as by definition, they cannot be in the same business as a monopoly.

The consistent returns allowed by the Regulator and the claw back mechanism that effectively removes systematic risk (mainly through decreasing volumes) combined with the view that the β must be considered as endogenous to the methodology applied, argues for a lower beta. Due to the complexity of establishing the correct β , the Regulator will apply an asset beta of 0.35 over the period.^{9 10} The lower asset beta value (as opposed to the 0.5 previously applied) responds to the slow-down of CAPEX by the NPA over the last Tariff Methodology period relative to CAPEX applied for in tariff applications over the period. With a lower beta, equity returns on the RAB are reduced, however increased delivery of CAPEX will lead to higher values of the RAB and in turn higher returns. Efficient implementation and management of capital projects, re-establishment of engineering capacity in the NPA, timely completion of infrastructure construction, and on-schedule acquisition of capital equipment is thereby incentivised, and if such results are not achieved, the Regulator may again revise the beta downwards in future years. The Hamada equation will be used to re-lever the beta to result in an equity β .

⁹ The actual calculated beta of the NPA is closer to 0 due to the reasons set out above.

¹⁰ This should also serve as an incentive to the NPA to increase CAPEX implementation efficiencies as increased profit can still be achieved through higher capex spend.

4.11. Gearing (g)

The Regulator, taking into consideration previous applications, previous patterns of variation in the applications, various submissions, and its own analysis of the NPA's gearing, has determined that an appropriate gearing for the entity (an infrastructure heavy landlord monopoly) for the period is (at least) 50%. Further, this reflects a median position within a sample of ports as well as adequately signals a required re-investment of profits into the port system whilst balancing costs with a lower cost of debt.

If during the period of this Tariff Methodology, the National Ports Authority is corporatized from a division of Transnet, into a subsidiary or stand-alone entity with an independent Board, independent financial disclosure, borrowing powers, and control of its own cash flow bank account, the Regulator will consider using the actual gearing calculated through a due diligence process. See section 0 for more details on the implications and requirements with respect to corporatisation.

4.12. Cost of Debt (k_d)

NPA's *actual*, embedded (adjusted for an *effective weighted*) debt costs should be used to determine the cost of debt applied within the WACC. Until such time that the corporate structure of the NPA is amended, the use of the Transnet Group short term vs long term debt structure will be applied to determine an efficient deemed short term vs long term debt ratio for the NPA.

The NPA is required to submit the initial calculation of the variable as well as revised average embedded debt costs based on the average embedded **NPA allocated** Transnet Group cost of debt on a group level, on an annual basis as part of the annual tariff application. This forecast will be corrected on an annual basis based on audited financial information through the claw back mechanism.

If during the period of this Tariff Methodology, the National Ports Authority is corporatized from a division of Transnet, into a subsidiary or stand-alone entity the Regulator will consider using the actual short term vs long term debt structure. The actual cost of debt of the National Ports Authority must be determined through a due diligence process. See section 9 for more details on the implications and requirements with respect to corporatisation.

4.13. Taxation Expense (T)

The Regulator will accept the current corporate tax rate of 28% (t) (to be adjusted if amended by the National Treasury) if the NPA is corporatized from a division of Transnet, into a subsidiary or stand-alone entity. If not, the Equitable Tax Rate, as outlined below, will be utilised.

As the current corporate structure of Transnet enables the Group to offset profits of one operating division against losses elsewhere, a taxation allowance based on the corporate tax rate granted to the NPA may result in excess revenue, if large losses incurred by other divisions result in lower taxes payable by the Group. An equitable tax rate, based on the assumption that the NPA is still an operating division, as opposed to a subsidiary of the Transnet Group, will be calculated and corrected through the claw back mechanism.

The equitable tax rate is calculated as that rate which will result in the proportional sharing of the Transnet Group taxation liability by each of its profitable divisions/segments/business units. The equitable tax rate is thus the rate which if applied to the profits of each profitable division/segment, will amount, if added together, to the full 28% tax payable by the group to the Tax Authority (SARS) on its pre-tax net profit in any one financial year.

The Equitable Tax Rate is calculated as follows:

$$te = t \left(\frac{Pg}{\sum Pi} \right)$$

Where:

- te = equitable tax rate,
- t = 28% or the corporate tax rate,
- Pg = Transnet Group pre-tax net profit for the year,
- $\sum Pi$ = Sum of pre-tax profits of profitable divisions/segments/units for the year

The equitable tax rate will be applied by the Regulator in its tax calculation (for the NPA as a profitable division) in the RR calculation, as the average equitable tax rate over the previous 5 years. The clawback mechanism will be used to correct for the actual equitable tax rate in any year when appropriate audited segmental financial statements are published. All fair value and similar once-off accounting adjustments on segmental profits will be not be considered in the calculation of the equitable tax rate in future and in the retrospective 5 years forming part of the calculation.

The calculation of the equitable tax rate is contingent on Transnet publishing (or providing the Ports Regulator) audited segmental financials each year that shows the group net profit as well as the profits and losses, costs and revenues, for each division/segment/business unit as well as any adjustments. Failure to do this will result in the Regulator not providing for taxation in the revenue required calculation, and revenue required for tax will be deemed to be a part of the allowed return on equity.

4.14. Operating Expenditure (OPEX)

The Regulator currently analyses the operating cost estimates for the period on a detailed, line by line item basis. The NPA is requested to provide detailed and complete motivation for each of the expenses applied for, especially on large items such as labour and energy costs.

The Regulator continues to allow the inclusion of the Transnet Group costs in the total allowed expenses, subject to the requirement that the NPA submits detailed explanations and motivations for the amounts to be transferred to the Transnet group. These are expected on a level of detail that will allow assessment of its necessity, as well as the actual services/goods received, and for which function of the NPA it will be utilised. Adjustments are made on an annual basis if and when the Regulator determines any group cost component to be inappropriate based on audited reports if made available timeously.

In addition, the NPA shall provide an externally and independently audited financial report (with all supporting documentation and detailed explanations including basis of allocation and policy documents that support such allocation) on all line items that form part of the group costs that have been expended for the NPA each year. This shall be provided in the year after the close of the financial year or until an alternative methodology or amendment of this methodology is published.

Furthermore, the Regulator reserves the right to claw-back all or any portion of the amount in future tariff decisions, should the Regulator not be satisfied that the expenditure is within the scope and mandate of the NPA, and that the amounts are reasonable, or reasonably allocated to the NPA.

Comprehensive information requirements must be met with for each application. See Annexure A.

4.15. Claw-Back

The key purpose of applying claw-backs is to ensure that the NPA or any port user is fairly treated and is not subjected to unfair gains or losses that are the result of incorrect forecasting, inaccurate information and system shocks. This includes the reducing and the sharing of risks faced by all port system participants including the NPA. Its main application is to reduce the impact of differences between allowed revenue (based on a number of forecasts and assumptions) calculated at the time of the tariff application, and actual audited figures, and is intended to ensure the coherence and integrity of the regulatory regime. The volatility of trade volumes and the difficulty in forecasting imports and exports accurately presents significant problems, especially regarding the prediction of volumes in outer years of a multi-year tariff period.

However, the following variables that are estimated (in line with the Regulatory Manual) on an annual basis, prior to the start of the following tariff year, for claw-back purposes are the:

- RAB (excluding CAPEX): The RAB is adjusted annually to reflect actual working capital requirements in line with audited AFS numbers and inflation trending;
- Depreciation: Re-calculated based on the adjusted RAB;
- Volumes: Actual volume numbers are used to calculate the clawback;
- Inflation (CPI): Whilst the return on equity is not changed, the actual inflation rate is used in the recalculation of a number of variables, including the trending of the RAB, working capital forecasts, and other latest estimates during the assessment; and

- Taxation: The taxation allowance will be corrected to recalculate the equitable tax rate based on group and segmental profit performance based on published Transnet Group's actual audited financial statements.

The forecast or estimation of these variables is conducted annually and actual data is used in determining the claw-back pertaining to the previous tariff year where the 50% rule applies. The final claw-back is determined in the following year when actual numbers are available.

As noted in section 0, the Return on Equity (rate) will be fixed upon assessment for claw-back purposes – the amount included in the claw-back will still depend on RAB corrections.

Detailed steps for the calculation of the Clawback can be found in Annexure D.

4.16. Excessive Tariff Increase Margin Credit (ETIMC)

The Regulator regulates in the long term interest of the maritime sector and the SA economy. This requires that the Regulator not only confine itself to the immediate tariff decision, but also considers ways to ease any future shocks to the system. It is generally accepted that CAPEX may spike at some point in the foreseeable future, but that these projects have not as yet been specified to a level of detail that allows for accurate prediction. In addition, external market related factors such as unexpected (or expected) fluctuations in volumes, inflation, the RFR etc. may result in significant spikes to the tariff as well.

As such, the Regulator has, in the past, considered it prudent to avoid excessive future tariff changes by retaining and increasing the NPA's Excessive Tariff Increase Margin Credit (ETIMC), in order to allow the smoothing of unaffordable tariff spikes over multiple periods in the future or to apply a countercyclical tariff decision in time of depressed economic activity.

As the ETIMC is 'revenue collected from port users' before the NPA is entitled to it, it should yield a return for users to compensate them for the opportunity cost of their capital. The ETIMC will therefore earn a return which is equal to the WACC allowed by the Regulator as the opportunity cost of the fund available to the NPA is indeed the WACC. The return on the ETIMC will be factored into the balance and the calculation of the total available under the ETIMC facility will be published annually (as part of the RoD).

Currently, the Regulator further deems it necessary to define the use of the ETIMC facility in the following way:

"The Regulator may authorise the release of part, or the whole, of the value of the ETIMC facility to influence tariff levels whenever it deems necessary including, but not limited to, spikes in tariffs (defined as an average tariff increase in excess of the CPI inflation forecast) due to a sharp increase in capital expenditure, volume volatility, or any market related factor. Further, the Regulator may consider national objectives when making decision to add to, or to utilise the ETIMC facility to adjust tariffs."

5. Volume Forecast

The NPA is required to submit detailed volume forecasts with reasons as well as revenue calculations based on the forecast volumes and current tariff levels as well as proposed tariffs for the period. The level of detail will be agreed to with the Authority.

6. Weighted Efficiency Gains in Operations (WEGO)

The incentives built into the RR methodology do not favour increased efficiency or competitiveness as the claw back mechanism takes away the gains from higher efficiency with additional market volume effects. This is therefore be addressed in an integrated manner through the inclusion of an efficiency measure within the Methodology.

Whilst the introduction of efficient pricing through the Tariff Strategy is intended to have positive effects, these will only impact over the long term. The response is thus to identify and differentiate between volume gains (or volume losses) due to efficiency impacts and market effects and to incentivise or disincentivise these respectively, as an increase or decrease on profit earned by the NPA.

The introduction and continued evolution of the Terminal Operator Performance Standards (TOPS), Rail Operator Performance Standards (ROPS), Road Operator Performance Standards (HOPS), as well as the Marine Operators Performance Standards (MOPS), is of high interest to the Regulator. The measurement and monitoring role that the operator performance standard systems play will produce an input for the tariff system in order to establish more transparent and concrete incentive targets with benefits to both the port owner as well as port users.

In particular, the inclusion of an efficiency variable Weighted Efficiency Gains from Operations (WEGO) is proposed as set out in the RR formula (page 6). The formula for calculating the WEGO is as follows:

$$WEGO_t = EG_{t-1} \times 0.075 \times Re_{t-1} - \text{Downtime Adjustment}$$

Where:

Efficiency Gain (EG) = Agreed efficiency gain through operations, excluding the effect of market driven volume growth.

Return on Equity (Re) = Return on equity as determined in the ROD.

t = Current financial year under review

Composite Ports System Efficiency Gain % as calculated	EG for inclusion in the WEGO formula
≥15%	1
12%	0.9
10%	0.8
8%	0.7
6%	0.6
5%	0.5
4%	0.4
3%	0.3
2%	0.2
1%	0.1
0%	0
-1%	-0.1
-2%	-0.2
-3%	-0.3
-4%	-0.4
-5%	-0.5
-6%	-0.6
-8%	-0.7
-10%	-0.8
-12%	-0.9
≤-15%	-1

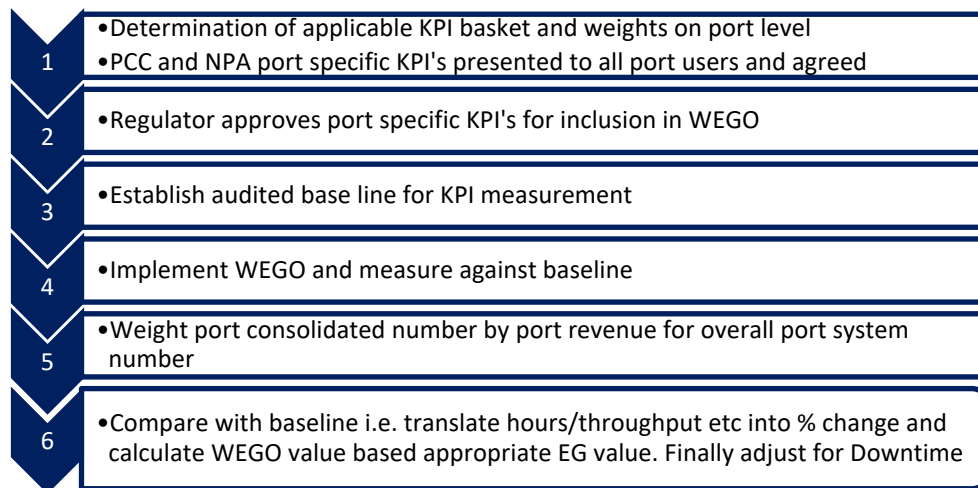
EG will be a weighted average growth rate of a selected group of audited performance results on a port by port basis. These key performance indicators, as well as the appropriate weightings for every port, will be selected by the Regulator in consultation with port users through the PCC process as well as with the NPA. It will be required that the WEGO TOPS and MOPS results be signed off by PCC representatives at a port level, and agreed to with the Regulator.

For the calculation of operational efficiency, port revenue contribution will establish the weighted contribution on a per port basis to calculate the overall EG, however, all ports' PCC's must present signed off results to the Regulator for consideration and inclusion in the Tariff Assessment.

Efficiency gains in individual KPI's per port will be capped for calculation purposes at 15%, similarly, reductions in efficiencies will be capped at 15%. Measured performance of a particular KPI in a port will be compared against a WEGO historical best measured performance (the Baseline) to produce a percentage efficiency gain or loss (EG) for that KPI in that port, and contribute towards and overall/composite port level efficiency gain or loss (EG).

A declining or negative value of EG_{t-1} will result in an increased claw back over period t .

7. Operational Performance Calculations



The Regulator has, in the final year of the previous Tariff Methodology (2019/20), developed and consulted on key performance indicators that form part of the WEGO over the three year period. The approved results from 2017/18 formed the baseline for measurement in the first year of this Tariff Methodology (2018/19) and the process will continue on an annual basis with the “best recorded achievement” forming the baseline.

KPI's and their relative weights will be annually consulted per port and the NPA and port users are free to propose new weights as well as new KPI's including land-side measures, as well as the formulation of KPI's and the proposed measurement methodology. The Regulator will come to a decision and publish the final list of KPIs for the NPA to measure and report on over the following period.

The process, and the requirements of the different role-players in establishing the KPIs for inclusion in the tariff setting process, is outlined below.

Process	Y1	Y2	Y3 etc.
Process for port users	- Port by Port KPI determinations presented to port users by PCC	- Port by Port KPI determinations presented to port users by PCC	- Port by Port KPI determinations presented to port users by PCC
Process for NPA	<ul style="list-style-type: none"> - Port by Port KPI determinations presented to port users by NPA - Report on achieved performance to PRSA by year end to establish an annual result and baseline 	<ul style="list-style-type: none"> - Application to include report on actual audited KPI performance in previous year - Report to PRSA on actual performance - Port by Port KPI determinations presented to port users by NPA 	<ul style="list-style-type: none"> - Application to include report on actual audited KPI performance - Port by Port KPI determinations presented to port users by NPA
Tariff Setting Process	<ul style="list-style-type: none"> - Regulator to approve final Port by Port and national KPI's - Implement WEGO as per audited KPI performance through the claw-back mechanism. 	<ul style="list-style-type: none"> - Regulator to approve final Port by Port and national KPI's - Implement WEGO as per audited KPI performance through the claw-back mechanism. 	<ul style="list-style-type: none"> - Regulator to approve final Port by Port and national KPI's - Implement WEGO as per audited KPI performance through the claw-back mechanism

8. WEGO Downtime Adjustment / Disincentive

The unacceptable levels of downtime resulting from breakdowns due to lack of maintenance and other concerns in container terminals in mainly 2019/20, has forced the Regulator to respond to the tariff risk faced by port users as a result thereof (the clawback mechanism will compensate for any under recoveries). As such, the Regulator is of the view that shifting the tariff risk from the port users to the NPA incentivises stronger regulatory oversight on terminal operators, and allows the NPA to play its legislated “Authority” role as the regulator of operators.

The adjustment of the WEGO allowance for downtime due to mechanical breakdown, unavailability of equipment, labour related incidents, or any other similar unplanned occurrence resulting in a services not being rendered, (excluding weather delays and ‘*force majeure*’), will be calculated on the basis of previous (3 year moving average) revenue streams as a ratio of the collected Cargo Dues per port and terminal. These ratios will be applied to the number of days of operational delay applicable at each terminal of each port and the resulting calculated reduction in cargo dues will be used as an adjustment to the WEGO calculated revenue amount (i.e. it will be an adjustment to profit or the Return on Equity).

$$\text{Operational Profit Reduction Ratio (OPRR)} = \frac{1}{365} \sum_{i=1}^p [PR_i \sum_{j=1}^n (D_j \times TR_{i,j})]$$

Downtime adjustment = OPRR × TCD

Where:

D_j	=	<i>Days lost per terminal j due to, mechanical breakdown, labour action or similar*</i>
PR_i	=	<i>Port Revenue Ratio- Proportional cargo dues per commercial port i**</i>
TR_{ij}	=	<i>Terminal Revenue Ratio- Proportional cargo dues per terminal j in port i ***</i>
TCD	=	<i>Total cargo dues collected in port system</i>
i	=	<i>Individual port reference</i>
j	=	<i>Individual terminal reference</i>
n	=	<i>Total number of Terminals in each port</i>
p	=	<i>Total number of Ports</i>

- *Days lost will be based on recorded downtime due to equipment failure or unavailability, or labour strike. In the case of a ‘go-slow’ every day recorded as a “go-slow” strike action, 0.5 days will be assumed lost. Downtime due to weather delays and force majeure will not be taken into consideration.
- **The proportional cargo dues revenue ratio will be based on all cargo dues revenue collected from the individual ports as a share of total cargo dues revenue collected (moving average of the previous 3 years).
- ***The proportionally cargo dues revenue ratio will be based on all cargo dues collected per terminal as a ratio of total cargo dues revenue collected per port. (moving average of the previous 3 years).

Information requirement to be submitted to the Regulator by the NPA (quarterly):

- a) All Cargo Dues per terminal per port; and
- b) All recorded operational delays per terminal per port with reasons for delays.

9. Corporatisation

The exact corporate structure, dividend policies, transitional arrangements, debt allocation, and other related matters of the corporatized National Ports Authority as per the National Ports Act remains unknown at the time of publishing this Tariff Methodology (March 2020). The Regulator needs to consider the sustainability of the NPA on an ongoing basis, and corporatisation may require consideration of assessment of the entity from a credit rating perspective as a standalone borrowing entity (in the future). As such, the following arrangements with regard to the application of the Tariff Methodology will apply:

- Three months prior to the date of the Tariff Application, the Governing Body / Board of the NPA is required to engage with the Regulator in order to determine the applicable methodology under which to apply. See section 4.1 for details/requirements.
- In the instance of an announcement by the Minister of Public Enterprises on the corporatisation of the NPA in terms of section 3(2), or alternatively section 3(2) and section 4(1) of the Act, the following information must be submitted to the Regulator within 30 days of announcement or incorporation as applicable:
 - o Memorandum of Incorporation;
 - o Proof of Registration (Registration/Enterprise number, registration certificate, etc);
 - o Due Diligence analysis conducted;
 - o All other assessments completed by the Department of Public Enterprises / Transnet / NPA;
 - o Full audited Annual Financial Statements;
 - o Full debt portfolio with conditions and other attached requirements;
 - o Debt Allocation Policy – transitional process;
 - o Complete and updated (to date) Asset Register;
 - o Comprehensive report on services provided by Transnet Group including value of services;
 - o Detailed plan to acquire cost competitive replacements; and
 - o Dividends Policy that will apply (if relevant).

10. Annexure A: Information Requirements

The following information requirements must accompany the annual application of the NPA.

- Business cases must be provided on all CAPEX projects in excess of R10 million in the ffg stages:
 - During every application, business cases for the next three years will be required;
 - The nature of the content and detail of business will be further defined and developed between the Authority and the Regulator. Further, the nature and content of the business case submissions would be summarised to focus on the more salient aspects including:
 - Objective of project;
 - Demand to be addressed
 - Alignment to Port Development Plans
 - Solution alternatives
 - Project Costing
 - Financial Returns and Payback periods
 - Timing of Delivery
 - Key Risks
- All acquisition of land and other Capital Assets (including motivation thereof);
- All disposal/or removal of land and assets (including motivation thereof);
- Data, results and progress applicable to the implementation and monitoring of Operator Performance Standards, as per TOPS/ MOPS/ ROPS/ HOPS;
- Audited Financial Statements as well as port level financials. A full set of segmental financial statements of the Transnet Group must be included.
- Historical information: All NPA relevant annual debt stock levels as well as annual debt redemption payments itemised, as well as the relevant debt instruments and applicable interest/coupon rates since the inception of Regulation;
- Current debt cost information including estimated debt costs (calculation and forecasts) for the current tariff year (i.e. the year that the application is made in) as well as the outlying tariff year. Schedule to reflect the estimated annual change to the relevant debt stock levels of the NPA; itemized annual debt redemption payments, as well as the relevant debt instruments and applicable interest/coupon rates;
- Itemized maintenance schedule for the next 3 years for all planned and unplanned maintenance projects above R1 million, categorized as OPEX as well as “capitalized maintenance”.
- All infrastructure assets on the Authority’s RAB, not operated by the NPA, and for which the NPA does not charge an operator for rental / lease; and
- Completed, updated Lease Register (as per agreed to template) setting out:
 - All port lessees;
 - Leased area;
 - Tenure of leases;
 - B-BBEE levels; and
 - Rental received

The following information must be submitted by the NPA to the Regulator on a quarterly basis:

- Lease Information
 - Copies of all new agreements and licences entered into or issued in the quarter, as well as the supporting documentation thereof, including Sections 79s, 72s, 56s, 57s, and lease agreements (inclusive of all annexures, including but not limited to updated rentals and terminal operator tariffs); and
 - All applicable B-BBEE certificates for the abovementioned licences and agreements;
 - Schedule of vacant properties available for lease.
- All CAPEX projects (infrastructure and capital acquisitions) underway (to include, but not limited to, information pertaining to project stage, tender specifics, construction progress etc.), Itemisation of Contractors and Consultants with regard to NPA projects undertaken by Transnet Group Capital / Transnet Capital Projects, and B-BBEE certificates;
- List all land paid for by the NPA/port users funds, transferred to Transnet properties or any other division;
- Key performance indicators relating to port capacity, port performance, and volumes per port and all WEGO information requirements as per template;
- All due diligence and other information pertaining to the implementation of Sections 3(2), 26 and 27 of the National Ports Act; and
- Compliance Risk Management Plans and its quarterly progress report for all mandatory legislative provisions in the National Ports Act.

Timelines

All quarterly progress information must be submitted to the Ports Regulator by no later than the end of the month after the end of the applicable quarter, based on the reporting templates provided to the NPA by the Ports Regulator on 16 March 2016. The Ports Regulator reserves the right to amend these on an ongoing basis.

11. Confidentiality

The Ports Regulator remains bound by the confidentiality provisions of the directives.

The Ports Regulator strives to assure that all information, including internal, third party, personal and electronic data, is treated with complete confidentiality; maintain integrity of all such information; ensure that our information system and the information contained therein meet the needs of our core and supporting business operations; comply with all applicable statutory and regulatory requirements and perform reliable access control to protect our information system against unauthorised access.

12. Annexure B: RAB Calculation

The example below illustrating the calculation of depreciations and the TOC value (for new assets and those that postdates 1990 capitalisation dates) of the RAB is based on the following basic assumptions:

- Historical cost of R100 m;
- Inflation 5% per annum;
- Depreciation on a straight line basis over 30 years life of asset;
- Service life of the asset is 30 years; and
- No adjustment in the Remaining Useful Life.

RAB Calculation		Yr 0	Yr1	Yr2	Yr29	Yr30	
		R'm					
Original Cost	1	100.00	100.00	100.00	100.00	100.00	
Capex	2	100.00	-	-	-	-	
Depreciated original cost brought forward	3	-	100.00	96.67	6.67	3.33	
Current period depreciation	2/RUL	4	-	3.33	3.33	3.33	
Depreciated original cost carried forward	3-4	5	100.00	96.67	93.33	3.33	
	6						
TOC opening balance	13	7	-	100.00	101.50	26.13	13.72
Accumulated trend	8	8	-	-	4.83	19.47	10.39
Current period trend	7*cpi	9	-	5.00	5.08	1.31	0.69
Trended balance on which Return earned	8+9	10	-	5.00	9.91	20.77	11.07
Trend depreciation allowance	10/RUL	11	-	0.17	0.34	10.39	11.07
Accumulated trend carried forward	10-11	12	-	4.83	9.57	10.39	-
TOC closing balance	5+12	13	100.00	101.50	102.90	13.72	-
	14						
Total depreciation and amortisation	4+11	15	-	3.50	3.68	13.72	14.41
	16						
Regulatory Asset Base	3+10	17	-	105.00	106.58	27.44	14.41

13. Annexure C: Asset Treatment

Asset Description	Remaining Useful Life	RAB Depreciation and Valuation Treatment	Maintenance allowed as part of OPEX	Return allowed (included in RAB calc. for return purposes)	Notes
Short term assets	5 years or less	Straight line Historical Cost	Yes	Yes	
Existing assets in use not fully depreciated	More than 5 years	Trended Original Cost	Yes	Yes	
Existing asset in use-fully depreciated	Any	If leased – lease revenue will be assumed value If not leased (e.g. breakwater – maintenance on the asset may be capitalised)	Yes/optional	Allowed to capitalise maintenance. Value on RAB for return calculation will be 0.	Risk of gold plating requires prudency assessment and NPCC approval for capex inclusion in RAB
Assets no longer in use	Any	Removed from RAB	Yes	No	

Notes:

Capitalisation dates will be 1990 if no capitalisation date post 1990 is available

14. Annexure D: Clawback Calculation

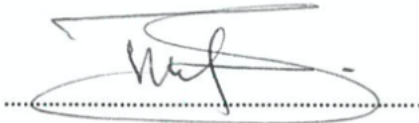
The Claw Back to be applied in the Tariff Application must be calculated in the following way:

Step	Action
Step 1:	Recalculate the Required Revenue for yr1 since we have actual numbers as at 31 March (Let the Recalculated RR be $S1$)
Step 2:	Compare $S1$ to yr1 AFS Revenue ($T1$), subtract Bilateral Agreements ($B1$)
Step 1 & 2:	[Corrected RR yr1 – AFS Revenue yr1 – Bilateral Agreements yr1] or $[S1 - T1 - B1]$
Step 3:	Add or Subtract 50% of the estimated Provisional Claw back Adjustment made in yr1 ($P1$)
Step 1, 2, & 3:	$[S1 - T1 - B1] \pm P1 =$ Final Claw back yr1 adjusted in Yr3 ROD ($W1$)
Step 4:	Calculate then add or subtract Claw back Return for yr1 $[(W1 \times WACC \text{ yr1})/2]$ ($V1$)
Step 5:	Calculate then add or subtract Claw back Return for yr2 $[(W1 + V1) \times WACC \text{ yr2})/2]$ ($X1$)
Thus Far:	Full Claw back yr1 $(G1) = W1 + V1 + X1$ Estimated Claw back for yr2 $(YY2) =$ Revenue Required as per ROD yr2 – Latest Estimate Revenue yr2
Step 6:	$YY2 \times 50\% = (VV2)$
Total Clawback for ROD	$G1 + VV2$

The total Claw Back amount calculated will be included in the Revenue Requirement formula as set out in section 4.15 on page 6.

End.

Approved by



Mr Thabadiwa Mufamadi

Chairperson: Ports Regulator of South Africa

Date: 05/03/2020



TRANSFORMEX
constant change

TRANSNET NATIONAL PORTS AUTHORITY (TNPA)

A DIVISION OF TRANSNET SOC LTD

BBBEE Contribution Level:

4

BEE Supplier Recognition:

100%

A Transformex Generic Verification Scorecard

Products and Services	Responsible for the safe, efficient, effective and economic functioning of the national ports system
Physical Address	30 Wellington Road, Parktown, Johannesburg, 2193
Registration Number	1990/000900/30
Vat Number	4720103177

Scorecard Elements	Maximum Score	Company Score	Principle Used	Yes/No
BEE Ownership	N/A	N/A	Modified Flow through	No
BEE Management Control	11.00	9.86	Exclusion Principle	No
Employment Equity	18.00	15.53	Discounting Principle	No
Skills Development	25.00	17.78	Participated in Y.E.S Initiative	No
Preferential Procurement	33.00	23.07	Achieve Y.E.S Target and 2.5% Absorption	No
Enterprise Development	15.00	1.70	Achieve 1.5 x Y.E.S Target and 5% Absorption	No
Socio-Economic Development	5.00	3.72	Achieve Double Y.E.S Target and 5%	No
Total Score	107.00	71.65	Absorption	
Value Adding Supplier	YES		Issue Date	23 December 2021
Certificate Number	TRA001G6951221		Re-Issue Date	N/A
Issue Number	1		Expiry Date	22 December 2022

Analysis	Result	Analysis	Result
Black Economic Ownership:	N/A	Black Disabled Ownership:	N/A
Black Voting Rights:	N/A	Black Unemployed Ownership:	N/A
Black Women Economic Ownership:	N/A	Black People living in Rural Areas:	N/A
Black Women Voting Rights:	N/A	Black Military Veterans:	N/A
Black Designated Ownership:	N/A	Black New Entrant:	N/A
Black youth Ownership:	N/A		

Financial Year End:	31 March 2021
Measurement Period:	01 April 2020 - 31 March 2021
Standard Used:	Public Entities including SOE's for BBBEE Gazette No. 32511 Released 21 August 2009
Act	Broad-Based Black Economic Empowerment Amendment Act, 2013: Gazette No. 37271

Carmanthra Naidoo
For Transformex CC

TRANSFORMEX CC. Reg 2007/043419/23
Contact 011 477-5622 or visit www.transformex.co.za



BVA 151

COR07-C2: GENERIC VERIFICATION CERTIFICATE V01R101020

Annexure RR Pricing Schedule

COST OF INFRASTRUCTURE

Item No	Description of Item	A Unit	B Qty	C Rate	D= (BxC) TOTAL COST OF ITEM (ZAR)
1.1	Management fees	Lump Sum	1		
1.2	Site Investigations / Geotechnical studies	Lump Sum	1		
1.3	Detailed Engineering and Design (Marine infrastructure, Bulk services and Pipeline)	Lump Sum	1		
1.4	Environmental scoping and approvals	Lump Sum	1		
1.5	Regulatory approvals	Lump Sum	1		
1.6	Construction costs (As per the detailed design and bill of quantities for Port Infrastructure and Common User Infrastructure)	Lump Sum	1		
SUB-TOTAL					
ADD VAT @15%					
TOTAL PRICE					



**ECONOMIC DEVELOPMENT GUIDELINE DOCUMENT
[March 2015]**

TABLE OF CONTENTS

1 What is ECONOMIC DEVELOPMENT? 3

2 Background and Guidance on the ECONOMIC DEVELOPMENT Objectives for South Africa 3

3 Transnet’s ECONOMIC DEVELOPMENT Objectives and Framework 4

4 Response based on the IC³ Matrix Quadrants 6

5 ECONOMIC DEVELOPMENT Category Definitions and High Level Descriptions 9

6 Market Intelligence Assistance..... 13

7 Government Policy Documents..... 13

8 Other Reference Websites 14

GLOSSARY OF WORDS..... 15

Note

For the purposes of this document, any reference to a/the “**Concessionaires**” shall be construed to mean a reference to a Respondent (in terms of this RFP) and/or to a successful Respondent (to whom the concession is to be awarded), as so indicated by the context hereinafter.

1 WHAT IS ECONOMIC DEVELOPMENT?

The ECONOMIC DEVELOPMENT (**ED**) Programme is an initiative of the Department of Public Enterprises (**DPE**) supported by Transnet. The aim of ED is to increase the competitiveness, capability and capacity of the South African supply base where there are comparative advantages and potential for local or regional supply. This can be achieved through skills transfer, as well as building new capability and capacity in the South African supply base. In addition, ED has its roots grounded firmly around the transformation of South Africa and the empowerment of previously disadvantaged individuals and enterprises.

2 BACKGROUND AND GUIDANCE ON THE ECONOMIC DEVELOPMENT OBJECTIVES FOR SOUTH AFRICA

As a developing economy with inherent structural and social imbalances, South Africa is facing the significant economic challenge of increasing growth in a manner that includes all South Africans. The historical lack of investment in infrastructure in South Africa has negatively impacted on local industry, resulting in a loss of key skills and a decrease in manufacturing industry capabilities. To respond to this, Government policies have been designed to address these imbalances and to act as a catalyst of change for the benefit of South Africa.

One of these Government policies, the National Development Plan (**NDP**) aims to enhance growth, employment creation and equity by reducing the dependencies of South African industries on imports, and promoting the development of skills and capabilities that are in short supply within the country. It identifies strategies that will enable South Africa to grow in a more equitable and inclusive manner and promotes the development of new industry to attain South Africa's developmental agenda.

Transnet's ED effort is closely aligned to the NDP objectives and as a result we are able to fulfil our commitment to sustainability within South Africa whilst at the same time addressing other corporate objectives including increasing productivity and efficiency, volume growth, capital investment, financial stability, funding, human capital, SHEQ regulatory compliance and improving customer service.

The combined objectives of Transnet and Government will be realised through:

- aggressively implementing capital investment plans which will result in competitive local industries;
- improving operational efficiency;
- using procurement to influence the development of the local supplier industry; and
- ensuring it creates sufficient economic opportunities for the participation of previously disadvantaged groups.

This will lead to Transnet achieving its long-term objective of increasing both shareholder and societal value using its procurement expenditure to ensure local development through the sustainable growth of capability and capacity in South Africa's supply chain and the inclusion of the previously disadvantaged individuals in the economy in a manner that is beneficial to Transnet, South African industry and the people of South Africa. As a result this State Owned Company (**SOC**) is able to fulfil its responsibility as the biggest link in the South African freight logistics chain whilst complementing the objectives of Government.

3 **TRANSNET'S ECONOMIC DEVELOPMENT OBJECTIVES AND FRAMEWORK**

To aid its implementation of ED, Transnet has adapted an existing framework from the DPE. This framework allows for a basic set of principles to be applied to appropriately target ED initiatives. ECONOMIC DEVELOPMENT initiatives aim to assist local concessionaires in developing their competitive advantage through increasing their capability and capacity potential. Hence the framework has been termed the Increased Competitiveness, Capability and Capacity (**IC³**) ECONOMIC DEVELOPMENT Classification Matrix.

This framework encapsulates the types of ED opportunities which Transnet currently considers effective and allows Transnet to move its ED structure away from a dynamic policy environment towards a framework that is designed around general ECONOMIC DEVELOPMENT objectives. This enables Transnet to adopt a standard structure but also allows the flexibility to reconsider emphasis on certain aspects as objectives change. The IC³ Matrix (refer to Figure 1 below) categorises ED opportunities in a matrix based on their value, extent of industrial leverage and strategic importance to Transnet. Further categorisation of opportunities into the relevant quadrants is based on concessionaire-new business development manager power, industrial complexity, risk and the length of procurement period.

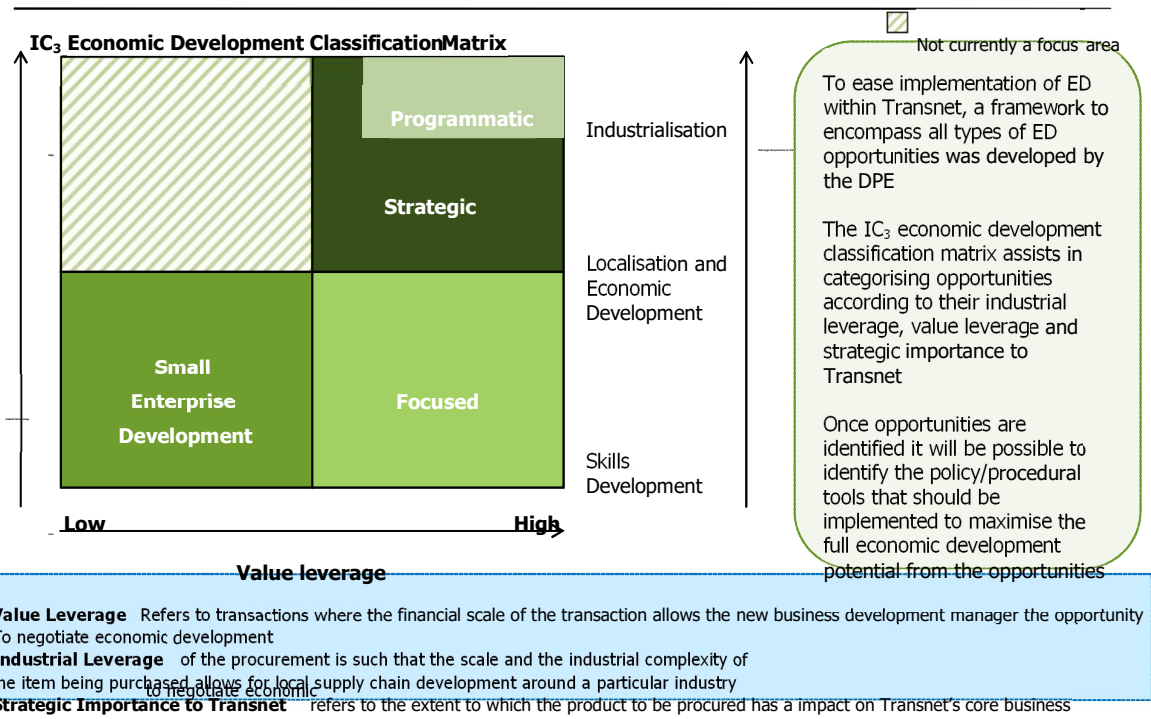


Figure 1: The IC³ ECONOMIC DEVELOPMENT Classification Matrix

In order for Concessionaires to successfully meet the needs of a particular initiative, a detailed understanding of each quadrant is required.

3.1 Programmatic

Programmatic initiatives follow a longer than normal planning horizon and generally exceed the funding capacity of Transnet's balance sheet. Collaboration between the SOC and Government is achieved through focused task teams whereby infrastructure development and industrialisation is achieved through joint support and in some cases public spending. Investment is focused in plant, technology and skills in both intermediate and advanced capabilities to develop competitive advantage.

3.2 Strategic

Strategic initiatives follow a three to five year planning horizon, involving investment in at least plant, technology and/or skills in intermediate capabilities. This enforces the need for multinational corporations and Original Equipment Manufacturers (**OEMs**) to develop a certain percentage of their products locally. Strategic initiatives can therefore be used to achieve Transnet's objectives by increasing the competitiveness, capability and efficiency of local concessionaires. Strategic initiatives can sometimes focus on advanced capabilities but will in most cases require Government support to develop local capability.

3.3 Focused

Focused initiatives include all high value transactions with limited industrial leverage and medium to low strategic importance. These initiatives address short to medium-term contracts that can be leveraged to encourage ECONOMIC DEVELOPMENT, with a focus on investment in technology or skills to enhance existing local capability. Emphasis will largely be placed on benefiting previously disadvantaged individuals. The overall result improves the socio-economic environment by creating competitive local concessionaires and furthers objectives of empowerment, transformation and regional development.

3.4 Small Enterprise Development

Small Enterprise Development initiatives are typically of low value and have no industrial leverage as they are characterised by typically low complexity goods and high competition. These initiatives concentrate on increasing the capability of small local concessionaires and are targeted toward historically disadvantaged individuals and communities, providing basic skills development and improving local employment and quality job creation. It includes a wide range of non-financial services that help entrepreneurs start new business and grow existing ones.

4 **RESPONSE BASED ON THE IC³ MATRIX QUADRANTS**

Based on the concessionaire-new business development manager power, industrial complexity, risk and the length of procurement period, the Concessionaire is expected to formulate a ED Plan to identify the opportunities that it will pursue. Ideally the ED Bid Plan should address factors that are specific to the applicable quadrant of the IC³ matrix.

Transnet has identified a number of opportunities which may aid a Concessionaire in formulating its response based on each quadrant. Each of the opportunities identified by the Concessionaire should have a direct or indirect effect on the value it creates for the country in order to maximise the socio-economic impact.

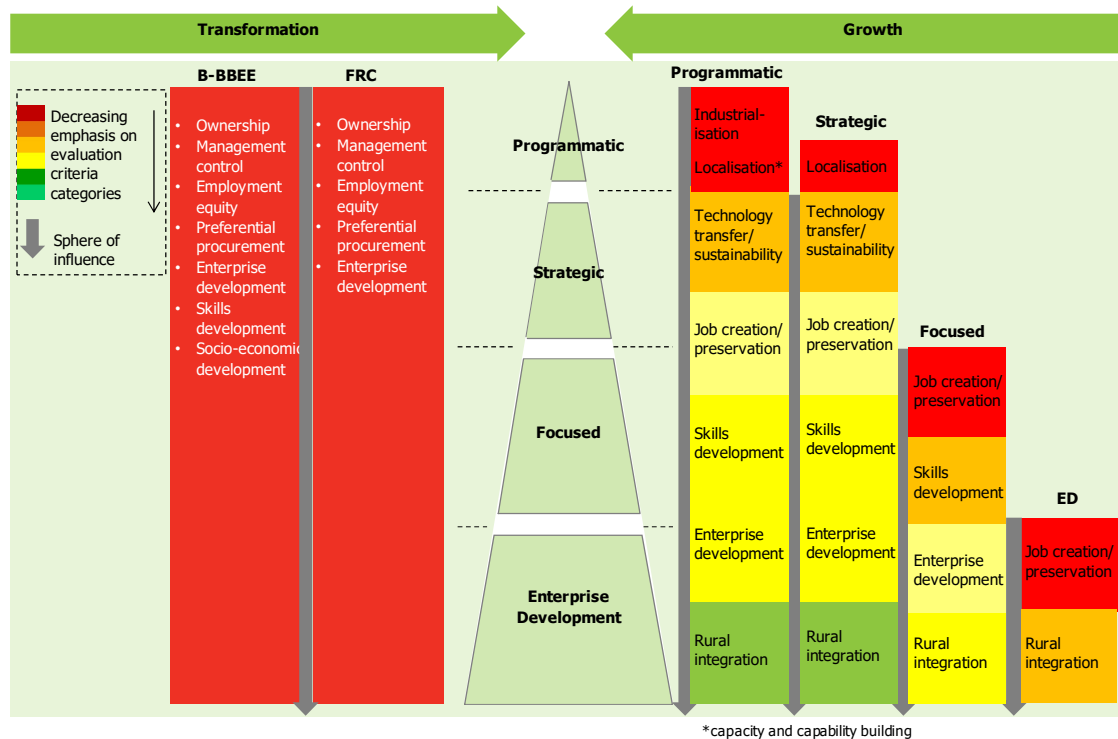


Figure 2: Transnet value capture through supplier influence

4.1 Programmatic

The strategic objective of “Programmatic transactions” is to assist Government to achieve its industrialisation objectives through the development of the local concessionaire base, in order to increase the cost efficiency of SOC procurement, support and maintenance programmes. In order to satisfy this objective a number of focus areas and key outcomes have been identified:

4.1.1 Programmatic Focus Areas -

- Industrialisation
- Capability and capacity building in South Africa
- Technology transfer
- Skills development related to the manufacturing process and the industry
- Development of new technology and innovation
- Investment in plant

- Development of local companies aligned to empowerment objectives

4.1.2 Key Outcomes -

- Industrialisation
- Manufacturing capability and capacity building
- Technology transfer
- Skills development

4.2 Strategic

The main objective of Strategic transactions is to leverage local downstream concessionaires through large-scale SOC procurement in order to develop a competitive local concessionaire base. In response to these objectives the following are the specific focus areas and key outcomes applicable:

4.2.1 Strategic Focus Areas -

- Capability and capacity building in South Africa
- Transfer of technology and innovation to local concessionaires from foreign OEM's
- Skills development related to the industry
- Development of local companies aligned to empowerment objectives

4.2.2 Key Outcomes -

- Increased S.A. manufacturing capability and capacity
- Increased technology transfer
- Skills development
- Job creation/preservation

4.3 Focused

Focused initiatives assist local concessionaires to improve their performance, enhance their existing production and skills capabilities with emphasis being placed on benefiting previously disadvantaged individuals and rural development. In order to satisfy these objectives a number of focus areas and key outcomes have been identified:

4.3.1 Focused Focus Areas -

- Developing a local concessionaire base that supports preferential procurement outcomes
- Developing skills within the specific industry
- Creating opportunity for job preservation
- Reducing income inequality in specific regions

4.3.2 Key Outcomes -

- Empowerment
- Skills development
- Rural development
- Job creation/preservation

4.4 Small Business Development

Enterprise Development (**ED**) objectives are centred around assisting local concessionaires to improve their skills by placing increased emphasis on benefiting previously disadvantaged individuals and rural development in line with the Broad-Based Black Economic Empowerment (B-BBEE) strategy. The following focus areas and key outcomes have been identified:

4.4.1 Small Business Development Focus Areas -

- Providing small businesses with opportunities and preferential trading terms, increased focus on Black woman-owned enterprises, focus on the youth, people with disabilities and region-specific initiatives
- Empowering previously disadvantaged individuals to create their own businesses resulting in quality job creation

4.4.2 Key Outcomes -

- Empowerment
- Rural development
- Skills development
- Job creation/preservation

Based on these focus areas and key outcomes, a concessionaires would need to actively focus on the quadrant-specific requirements in order to maximise the potential commercial benefit for Transnet, South Africa and themselves. In doing so value can be created across all lines of reporting resulting in continued relations.

5 ECONOMIC DEVELOPMENT CATEGORY DEFINITIONS AND HIGH LEVEL DESCRIPTIONS

5.1 Industrialisation

Industrialisation refers specifically to industrial development that will result in globally leading capabilities within South Africa.

Criteria	Description
➤ Value of investment in plant	➤ Quantification of the monetary value invested in machinery, equipment and/or buildings as a result of this RFP
➤ Percentage of the investment of plant purchased in South Africa	➤ Percentage value invested in machinery, equipment and/or buildings that are sourced from local companies
➤ Reduction in import leakage	➤ A percentage indication of the increase in locally supplied products and therefore the resultant decrease in imports as a result of the award of a contract
➤ Potential increase in export content	➤ The percentage increase in exports that will result from increased industrial capability locally in relation to the award of a contract

5.2 South African Capability and Capacity Building

South African capability and capacity building refers specifically to industrial development that focuses on value-added activities for the local industry through manufacturing or service-related functions.

Criteria	Description
➤ Value-added manufacturing activity/activities to be undertaken in South Africa	➤ Description of value-added activities to be performed during the contract period in South Africa
➤ Service-related functions to be undertaken in South Africa	➤ Description of service-related functions to be performed during the contract period in South Africa
➤ Number of local suppliers in the supply chain	➤ Number of South African suppliers that are to be utilised in the fulfilment of a contract

5.3 Technology transfer/sustainability

Technology improvements are intangible assets with significant economic value. The concessionaires will be measured on its plan to transfer knowledge and IP to contribute towards capability building of the local supply base, which ultimately leads to improved efficiency and capability. Plans to assist in this by a concessionaires must be assessed to enable the local supply base to potentially export its newly-acquired technological know-how, thereby decreasing capital leakage.

Criteria	Description
Technology transfer including:	
➤ Methods of manufacturing	➤ Introduction of a new/improved method of manufacturing
➤ Introduction of new technologies	➤ Provision of new technologies: <ul style="list-style-type: none"> ○ For processes ○ ICT
➤ IP transfer (number and value)	➤ The provision of patents, trademarks and copyrights
➤ Number of local concessionaires to be evaluated for integration into the OEM supply chain	➤ An indication of the number of South African concessionaires that an OEM/Service Provider plans to evaluate for possible inclusion into its supply chain, should it meet the requirements

5.4 Skills development

Skills development indicates the company's commitment to education and whether that fits in with targeted groups (artisans, technicians, etc.). Consideration needs to be directed towards the adequate quality and value of skills so developed in order to allow for better evaluation in line with Government's objectives.

Criteria	Description
➤ Number of downstream supply chain individuals to be trained including: <ul style="list-style-type: none"> • Number of artisans trained • Number of technicians trained 	➤ Number of individuals that the concessionaires plans to train in the local industry over the contract period; training undertaken in the previous year will be taken into account

Criteria	Description
<ul style="list-style-type: none"> • Number of black people trained • Total number of people trained 	
➤ Number of company employees to be trained	➤ Number of individuals within the company (in South Africa) that the concessionaires plans to train over the contract period; training undertaken in the previous year will not be taken into account as past employee training appears in the skills development pillar of the B-BBEE scorecard; criteria broken down as for industry training above
➤ Certified training (yes/ no)	➤ Compliance with local and/or international skills accreditation
➤ Rand value spent on training	➤ Total planned monetary value spend (as a % of contract value) on skills development /training for the contract period within the industry; money spent in the previous year will be included in year 1 to make allowance for concessionaire who have just completed a training drive within the industry
➤ Number of bursaries/ scholarships (specify field of study)	➤ The number of higher education bursaries/scholarships provided in the previous year and planned for the length of the contract
➤ Number of apprentices (sector must be specified)	➤ The number of apprentices that the concessionaire plans to enlist during the course of the contract
➤ Investment in Schools in specific sectors e.g. engineering	➤ The monetary value that the concessionaire is prepared to invest in the development and running of schools to increase technical skills development

5.5 Job creation/preservation

Job creation and/or preservation allows assessment of Government's objectives to increase labour absorption, focusing on unskilled workers and the youth.

Criteria	Description
➤ Number of jobs preserved	➤ Number of jobs which would be preserved through Award of Contract
➤ Number of jobs created including: <ul style="list-style-type: none"> • New skilled jobs created • New unskilled jobs created 	➤ Number of jobs to be created during the period of the contract <ul style="list-style-type: none"> • Jobs for people in a specialised field of work requiring a defined training path and / or requisite level of experience in order for them to perform that role. These people could be in possession of a certificate, diploma or degree from a higher education institution. • Jobs for people where the field of work does not require extensive formal training or from whom no minimum level of education is required
➤ Number of jobs created for youth	➤ Jobs created for individuals aged 16 – 35 years

➤ Number of jobs created for Black youth	➤ Jobs created for Black individuals aged 16 – 35 years
--	---

5.6 Enterprise and ECONOMIC DEVELOPMENT

Small business promotion criteria give an indication of the Supplier/Service Provider's commitment to developing small business in line with NDP and B-BBEE requirements.

Criteria	Description
➤ Percentage procurement from: <ul style="list-style-type: none"> • QSEs • EMEs • Start-ups • B-BBEE Facilitators 	➤ Refers to the planned procurement from small business as a % of the total planned procurement spend
➤ Sub-contracting	➤ Refers to sub-contracting to QSEs/EMEs that are preferably Black Owned, Black Women Owned, Black Youth Owned or owned by Black People with disabilities
➤ Non-financial support provided to small business	➤ Concessionaires will be credited for each non-financial ED support that they are planning to give to small business e.g. Professional support; employee time allocated to assisting small business
➤ Financial support provided to small business	➤ Concessionaires will be credited for each financial ED support initiative that they are planning to undertake during the contract period e.g. Shorter payment terms; interest free loans
➤ Joint ED initiatives with Transnet	➤ The number of ED initiatives that the Concessionaires will jointly run with Transnet: <ul style="list-style-type: none"> • That are aligned to Transnet's objectives • That are non-financial in nature

5.7 Rural development/integration

Rural development / integration indicates the Supplier's/Service Provider's planned use of local labour and business which will contribute to Governments NDP objectives and result in supply chain efficiencies. Commitment to rural development will result in the alleviation of poverty and thereby contribute to development objectives. The development must be sustainable in order to have a long-term and meaningful impact.

Criteria	Description
➤ Number of local employees	➤ Number of people employed from within the town/city of operation
➤ Value spent on local business	➤ Monetary value spent on businesses within the town/city of operation
➤ Proximity of business to operations	➤ The locality of the business in relation to operations, preference is given for regional (provincial) locality
➤ Number of rural businesses to be developed	➤ The number of rural businesses that the Concessionaire plans to develop as a result of the contract

➤ Value of development to local community (sustainable)	➤ The monetary value spent on rural community development that will result in long-term social improvements
---	---

6 MARKET INTELLIGENCE ASSISTANCE

Concessionaires with limited knowledge of the local market, supply base and its capabilities may require assistance in identifying local concessionaires and the development needs in order to develop its ED Plan. The United Nations Industrial Development Organisation (UNIDO) supplies a benchmarking service in South Africa which will be able to assist concessionaires in identifying potential local suppliers with which to work. In addition, this service will provide insight as to the type of support that these local suppliers require in order to become more competitive. UNIDO's benchmarking tool gives insight into the performance levels being seen in Suppliers'/Service Providers' businesses and the practices used to deliver the products or services being offered. The benchmarking tool focuses on:

- 6.1 Performance data relating to -
 - 6.1.1 Financial performance
 - 6.1.2 Customer data
 - 6.1.3 Processes
 - 6.1.4 Learning & growth
- 6.2 Company's current business situation -
 - 6.2.1 Plans for the business and capabilities to manage their fulfilment
 - 6.2.2 Ability to generate business
 - 6.2.3 Employee relationships
 - 6.2.4 Developing new markets
 - 6.2.5 Developing products and services
 - 6.2.6 Managing money

The UNIDO benchmarking tool provides a basic framework through which an understanding of the South African market can be established. Whilst the list of criteria may not be exhaustive, Concessionaires are free to meet with UNIDO to further understand how they can work together to develop a deeper understanding of the market and the ED opportunities available.

7 GOVERNMENT POLICY DOCUMENTS

- NIPP http://www.thedti.gov.za/industrial_development/nipp.jsp
- IPAP2 <http://www.thedti.gov.za/DownloadFileAction?id=561>
- CEDP <http://www.dpe.gov.za/res/transnetCEDP1.pdf>

8 **OTHER REFERENCE WEBSITES**

References	Website
Department of Public Enterprise (DPE)	www.dpe.gov.za
United Nations Industrial Development Organisation (UNIDO)	www.unido.org/spx

GLOSSARY OF WORDS

Broad-Based Black Economic Empowerment (B-BBEE)	A South African legal requirement that require all entities operating in the South African economy to contribute to empowerment and transformation
Enterprise Development (ED)	An element contained within the B-BBEE scorecard whereby a Measured Entity can receive recognition for any Qualifying Enterprise Development Contributions towards Exempted Micro-Enterprises or Qualifying Small Enterprises which are 50% black owned or 30% black woman owned. Enterprise Development Contributions consists of monetary and non-monetary, recoverable and non-recoverable contributions actually initiated in favour of a beneficiary entity by a measured entity with the specific objective of assisting or accelerating the development, sustainability and ultimate financial independence of the beneficiary. This is commonly accomplished though the expansion of a beneficiaries financial and/ or operation capacity.
Industrial Policy Action Plan II (IPAPII)	The implementation plan for the National Industrial Policy Framework (NIPF) which details key action plans (KAPs) and timeframes for the implementation of industrial policy actions in line with the NIPF.
Integrated Supply Chain Management (iSCM)	Refers to an integrated "one supply chain management" strategy within Transnet which has been developed with Centres of Excellence (COEs) with cross-functional teams comprising divisional and corporate task team members, to deliver value through improved efficiencies and compliance with the regulatory environment.
National Development Plan (NDP)	Developed by the National Planning Commission in 2010 and tabled in 2013, the plan frames a new approach to unlocking economic growth by knitting together the IPAP2 as well as policies and programmes in rural development, agriculture and, sciences & technology, education, skills development, labour, mining and beneficiation, tourism and social development with the aim to target limited capital and capacity at activities that maximise the creation of decent work opportunities. Key indicators include: Quality job creation, Youth employment, Labour intensive growth, and Equity.

Original Equipment Manufacturer (OEM)

Refers to a manufacturing company that owns the intellectual property rights and patents for the equipment it sells and services

Socio-economic Development

Refers to development which addresses social and economic aspects such as job creation, poverty reduction and increased national value add and which not only focuses on the business's financial bottom line.

State Owned Company (SOC)

Refers to Government-owned corporations. They are legal entities created, and owned, by Government to undertake commercial activities on behalf of an owner Government, and are usually considered to be an element or part of the state. They are established to operate on a commercial basis.

ECONOMIC DEVELOPMENT (ED)

Improving the socio-economic environment by creating competitive local suppliers via Enterprise Development, CEDP and other initiatives such as Preferential Procurement. This results in a supply base that can eventually be competitive to market its goods on the international market leading to increased exports.

United Nations Industrial Development Organisation (UNIDO)

A specialised agency of the United Nations. Its mandate is to promote and accelerate sustainable industrial development in developing countries and economies in transition, and work towards improving living conditions in the world's poorest countries by drawing on its combined global resources and expertise.

ECONOMIC DEVELOPMENT VALUE SUMMARY

Annex

Respondents must complete this Annexure AC which summarises your Economic Development [ED] Bid Document and related value commitments.

Please insert the ED Value Indicators in the table below. Cross-reference the Value Indicators quoted under the column heading "ED BID DOCUMENT CROSS-REFERENCE" with the corresponding section in your ED Bid Document.

		ED VALUE INDICATORS				
ED CATEGORY	ED MEASUREMENT	NUMBER	PERCENTAGE	RAND VALUE	YES/NO	ED BID DOCUMENT CROSS-REFERENCE
1	Capability and Capacity Building	Capability and capacity building refers specifically to industrial development in South Africa that focuses on value-add activities of the South African industry through manufacturing or service-related functions				
	1.1	Design and Build: Indicate percentage of projected design and build spend which will be subcontracted to South African suppliers				
	1.1.1	Design and Build: Indicate the percentage of projected design and build spend which will be subcontracted to Black Owned companies				
	1.1.2	Design and Build: Indicate the percentage of projected design and build spend which will be subcontracted to Black Women Owned companies				
	1.2	Design and Build: Indicate percentage of projected design and build spend which will be as a result of a joint venture with South African suppliers				
	1.2.1	Design and Build: Indicate the percentage of projected design and build spend which will be as a result of a joint venture with Black Owned companies				
	1.2.2	Design and Build: Indicate the percentage of projected design and build spend which will be as a result of a joint venture with Black Women Owned companies				
2	New Skills Development	New skills development initiatives indicate your company's commitment to skills education, and how this would match with targeted groups. Consideration needs to be directed towards the adequate quality and value of proposed skills development to allow for better evaluation in line with Government objectives				
	2.1	Design and Build: Number and Rand value of people to be trained in Engineering Skills (i.e. architectural design, quantity surveying, blueprints, computer systems used in design) or equivalent over the design and construction contract period				
	2.2	Design and Build: Number and Rand value of Black* people to be trained over the design and construction contract period				
	2.3	Design and Build: Indicate number and Rand value of Black women to be trained over the design and construction period of the contract				

		ED VALUE INDICATORS					
ED CATEGORY	ED MEASUREMENT	NUMBER	PERCENTAGE	RAND VALUE	YES/NO	ED BID DOCUMENT CROSS-REFERENCE	
2.4	Design and Build: Indicate number and Rand value of Black youth to be trained over the design and construction period of the contract [where "Youth" means individuals between the ages of 16 - 35 years]						
2.5	Design and Build: Indicate number and Rand Value of Black People with Disabilities over the design and construction period of the contract						
2.6	Design and Build: Is the level of the training offered above in compliance with the National Qualification Framework guidelines [NQF] ? - Yes / No						
2.7	Number and Rand value of higher education bursaries and/or scholarships to be offered by your company over the Construction period [provide details in your SD Bid Document]						
2.8	Of the number listed above, indicate the number and Number and Rand Value of higher education bursaries and/or scholarships to be offered in the engineering (or related) field to Black people from Rural Areas within the Kwazulu Natal						
<i>*Where "Black" means South African Blacks, Coloureds and Indians, as defined in the B-BBEE Act, 53 of 2003</i>							
3	Job Creation	The potential for job creation directly due to the award of this Contract allows for assessment of your company's intentions in terms of the Government's objective to increase labour absorption focusing on unskilled workers and the youth					
3.1	Design and Build: TOTAL Number and Rand value of new jobs to be created, relating to the primary operations of the liquid bulk terminal, excluding ad-hoc services due to award of this contract over the Design and Build phase of the contract:						
3.1.1	Of the jobs indicated in 3.1 above, Indicate the number of new jobs which will be created for Black men over the contract period						
3.1.2	Of the jobs indicated in 3.1 above, Indicate the number of new jobs which will be created for Black Women over the contract period						
3.1.3	Of the jobs indicated in 3.1 above, Indicate the number of new jobs which will be created for Black People with Disabilities over the contract period						
3.1.4	Of the jobs indicated in 3.1 above, Indicate the number of new jobs which will be created for Black Youths over the contract period[where "Youth" means individuals between the ages of 18 - 35 years] over the contract period						
<i>*Where one job is calculated as one person employed for 12 months in a year, where one month equates to 160 hours of work. Therefore one full time job represents 1920 hours per year.</i>							

ED VALUE INDICATORS						
ED CATEGORY	ED MEASUREMENT	NUMBER	PERCENTAGE	RAND VALUE	YES/NO	ED BID DOCUMENT CROSS-REFERENCE
4	Small Business Promotion	These ED value measurements give an indication of your commitment to developing small businesses in line with the Government's New Growth Path [NGP] and B-BBEE requirements				
	4.1	Design: Percentage of the estimated design spend which would be subcontracted to Black Owned Qualifying Small Enterprises [QSEs], Exempt Micro Enterprises [EME's] and start-up enterprises with annual turnover of less than R35 million				
	4.2	Build (Construction): Percentage of the estimated construction value which would be subcontracted to Black Owned Qualifying Small Enterprises [QSEs], Exempt Micro Enterprises [EME's] and start-up enterprises with annual turnover of less than R35 million				
	4.3	Design: Percentage of the estimated design spend which would be procured from Black Owned Qualifying Small Enterprises [QSEs], Exempt Micro Enterprises [EME's] and start-up enterprises with annual turnover of less than R35 million				
	4.4	Build (Construction): Percentage of the estimated construction value which would be procured from Black Owned Qualifying Small Enterprises [QSEs], Exempt Micro Enterprises [EME's] and start-up enterprises with annual turnover of less than R35 million				
5	Regional Development/ Local to site	The Service Provider's planned use of regional labour and businesses will contribute to the Government's NGP objectives and result in supply chain efficiencies. Commitment to rural development will result in poverty alleviation, thereby contributing to development objectives. This development must be sustainable in order to have a long-term and meaningful impact.				
	5.1	Design: Percentage of the estimated design spend which will be spent within the Region				
	5.2	Build (Construction): Percentage of the estimated construction value which will be spent within the Region				
	5.3	Build (Procurement of Equipment): Percentage of the estimated equipment spend which will be spent within the Region				
	5.4	Build (Procurement of Raw Materials): Percentage of the estimated raw materials (for construction) spend which would be spent within the Region				
	5.5	Design & Build: Total Number and Rand Value of people to be employed within the region of construction over the design and construction phase				
	5.5.1	Design & Build -Of the 5.5 above please indicate: Number of black people to be employed within the region of construction over the design and construction phase				
	5.5.2	Design & Build -Of the 5.5 above please indicate: Number of black women to be employed within the region of construction over the design and construction phase				
	5.5.3	Design & Build -Of the 5.5 above please indicate: Number of black youth to be employed within the region of construction over the design and construction phase				
	5.5.4	Design & Build -Of the 5.5 above please indicate: Number of black people with disabilities to be employed within the region of construction over the design and construction phase				

				ED VALUE INDICATORS		
ED CATEGORY	ED MEASUREMENT	NUMBER	PERCENTAGE	RAND VALUE	YES/NO	ED BID DOCUMENT CROSS-REFERENCE
ESTIMATED RAND VALUE TOTAL OF ECONOMIC DEVELOPMENT COMMITMENT :				R 0.00		
ECONOMIC DEVELOPMENT COMMITMENT EXPRESSED AS A PERCENTAGE OF ESTIMATED CONTRACT VALUE :				%		

ECONOMIC DEVELOPMENT VALUE SUMMARY

Respondents must complete this Annexure II which summarises your Economic Development [ED] Bid Document and related value commitments.

Please insert the ED Value Indicators in the table below. Cross-reference the Value Indicators quoted under the column heading "ED BID DOCUMENT CROSS-REFERENCE" with the corresponding section in your ED Bid Document.

		ED VALUE INDICATORS				
ED CATEGORY	ED MEASUREMENT	NUMBER	PERCENTAGE	RAND VALUE	YES/NO	ED BID DOCUMENT CROSS-REFERENCE
1	Capability and Capacity Building	Capability and capacity building refers specifically to industrial development in South Africa that focuses on value-add activities of the South African industry through manufacturing or service-related functions				
1.1	Operations and Maintenance: Indicate percentage of projected operations and maintenance spend which will be subcontracted to South African suppliers					
1.1.1	Operations and Maintenance: Indicate the percentage of projected operations and maintenance spend which will be subcontracted to Black Owned companies					
1.1.2	Operations and Maintenance: Indicate the percentage of projected operations and maintenance spend which will be subcontracted to Black Women Owned companies					
1.2	Operations and Maintenance: Indicate percentage of projected operations and maintenance spend which will be as a result of a joint venture with South African suppliers					
1.2.1	Operations and Maintenance: Indicate the percentage of projected operations and maintenance spend which will be as a result of a joint venture with Black Owned companies					
1.2.2	Operations and Maintenance: Indicate the percentage of projected operations and maintenance spend which will be as a result of a joint venture with Black Women Owned companies					
2	Skills Development	New skills development initiatives indicate your company's commitment to skills education, and how this would match with targeted groups. Consideration needs to be directed towards the adequate quality and value of proposed skills development to allow for better evaluation in line with Government objectives				
2.1	Operations and Maintenance: Indicate percentage of estimated EBITDA to be spent on training of Black People over the operations period of the contract					
2.1.1	Operations and Maintenance: Indicate percentage of estimated EBITDA to be spent on training of Black men over the operations period of the contract					
2.1.2	Operations and Maintenance: Indicate percentage of estimated EBITDA to be spent on training of Black Women over the operations period of the contract					
2.1.3	Operations and Maintenance: Indicate percentage of estimated EBITDA to be spent on training of Black Youths over the operations period of the contract [where "Youth" means individuals between the ages of 18 - 35 years]					
2.1.4	Operations and Maintenance: Indicate percentage of estimated EBITDA to be spent on training of Black people with disabilities over the operations period of the contract					
2.2	Operations and Maintenance: Is the level of the training offered above in compliance with the National Qualification Framework guidelines [NQF] ? - Yes / No					
2.3	Number and Rand value of higher education bursaries and/or scholarships to be offered by your company over the 20 year concession period of the contract [provide details in your SD Bid Document]					
2.4	Of the number listed above, indicate the number and Number and Rand Value of higher education bursaries and/or scholarships to be offered in the engineering (or related) field to Black people from Rural Areas within the Eastern Cape					

		ED VALUE INDICATORS				
ED CATEGORY	ED MEASUREMENT	NUMBER	PERCENTAGE	RAND VALUE	YES/NO	ED BID DOCUMENT CROSS-REFERENCE
*Where "Black" means South African Blacks, Coloureds and Indians, as defined in the B-BBEE Act, 53 of 2003						
3	Job Creation	The potential for job creation directly due to the award of this Contract allows for assessment of your company's intentions in terms of the Government's objective to increase labour absorption focusing on unskilled workers and the youth				
3.1	Operations and Maintenance: TOTAL Number and Rand value of new jobs to be created, relating to the primary operations of the liquid bulk terminal, excluding ad-hoc services due to award of this contract over the Operations and Maintenance phase of the contract:					
3.1.1	Of the jobs indicated in 3.1 above, Indicate the number of new jobs which will be created for Black men over the contract period					
3.1.2	Of the jobs indicated in 3.1 above, Indicate the number of new jobs which will be created for Black Women over the contract period					
3.1.3	Of the jobs indicated in 3.1 above, Indicate the number of new jobs which will be created for Black People with Disabilities over the contract period					
3.1.4	Of the jobs indicated in 3.1 above, Indicate the number of new jobs which will be created for Black Youths over the contract period [where "Youth" means individuals between the ages of 18 - 35 years] over the contract period					
3.2	Operations and Maintenance: TOTAL Number and Rand value of new jobs to be created, relating to ad-hoc services (e.g. secondary uses, retail, restaurant and entertainment facilities etc.) due to award of this contract over the Operations and Maintenance phase of the contract:					
3.2.1	Of the jobs indicated in 3.2 above, Indicate the number of new jobs which will be created for Black men over the contract period					
3.2.2	Of the jobs indicated in 3.2 above, Indicate the number of new jobs which will be created for Black Women over the contract period					
3.2.3	Of the jobs indicated in 3.2 above, Indicate the number of new jobs which will be created for Black People with Disabilities over the contract period					
3.2.4	Of the jobs indicated in 3.2 above, Indicate the number of new jobs which will be created for Black Youths over the contract period [where "Youth" means individuals between the ages of 18 - 35 years] over the contract period					
*Where one job is calculated as one person employed for 12 months in a year, where one month equates to 160 hours of work. Therefore one full time job represents 1920 hours per year.						

ED VALUE INDICATORS

ED CATEGORY	ED MEASUREMENT	NUMBER	PERCENTAGE	RAND VALUE	YES/NO	ED BID DOCUMENT CROSS-REFERENCE
4	Small Business Promotion	These SD value measurements give an indication of your commitment to developing small businesses in line with the Government's New Growth Path [NGP] and B-BBEE requirements				
	4.1	Operations and Maintenance: Percentage of projected operations and maintenance spend which will be as a result of a joint venture with Black Owned QSEs, EMEs and start-up enterprises with annual turnover of less than R35 million over the operations and maintenance phase of the contract period				
	4.2	Operations and Maintenance: Percentage of projected operations and maintenance spend which will be subcontracted to Black Owned QSEs, EMEs and start-up enterprises with annual turnover of less than R35 million over the operations and maintenance phase of the contract period				
5	Regional Development/ Local to site	The Service Provider's planned use of regional labour and businesses will contribute to the Government's NGP objectives and result in supply chain efficiencies. Commitment to rural development will result in poverty alleviation, thereby contributing to development objectives. This development must be sustainable in order to have a long-term and meaningful impact.				
	5.1	Operations and Maintenance: Total Number of people to be employed within the region over the operations and maintenance				
	5.2	Operations and Maintenance -Of the 5.1 above please indicate: Number of black people to be employed within the region of operation over the operations and maintenance phase				
	5.3	Operations and Maintenance -Of the 5.1 above please indicate: Number of black men to be employed within the region of operation over the operations and maintenance phase				
	5.4	Operations and Maintenance -Of the 5.1 above please indicate: Number of black women to be employed within the region of operation over the operations and maintenance phase				
	5.5	Operations and Maintenance -Of the 5.1 above please indicate: Number of black people with disabilities to be employed within the region of operation over the operations and maintenance phase				
	5.6	Operations and Maintenance: Percentage of Outsourced functions which will be conducted by businesses within the Region				

ESTIMATED RAND VALUE TOTAL OF ECONOMIC DEVELOPMENT COMMITMENT :

R 0.00

ECONOMIC DEVELOPMENT COMMITMENT EXPRESSED AS A PERCENTAGE OF ESTIMATED CONTRACT VALUE :

%

**DRAFT TERMINAL OPERATOR AGREEMENT IN RESPECT OF THE LNG TERMINAL AND
REGASIFICATION FACILITY AT SOUTH DUNES IN THE PORT OF RICHARDS BAY**

between

**TRANSNET NATIONAL PORTS AUTHORITY, a division of TRANSNET SOC LTD
(registration number 1990/000900/06)**

and

[NAME OF TERMINAL OPERATOR TO BE INSERTED]
(registration number [●])

Note to Bidders:

1. All Bidders and to note the provisions of clause 19.4 and 19.5 of the RFP and are reminded to submit “marked up” versions of the negotiable clauses of this Terminal Operator Agreement.
2. As the Terminal Operator Agreement has been drafted in B general terms, TNPA reserves the right to amend or vary any of the terms of this Terminal Operator Agreement to ensure alignment with the preferred Bidders Business Case and the commercial risk allocation between the TNPA and the Preferred Bidder.
3. Schedule 25 (Financiers Direct Agreement, will be negotiated and agreed between the TNPA, the Preferred Bidder and the Lenders of the Preferred Bidder should third party finance be provided to undertake the project. This Financiers Direct Finance Agreement and the negotiable clauses of the Terminal Operator Agreement will be revised to ensure consistency between Terminal Operator Agreement and the Financiers Direct Finance Agreement.

Table of Contents

	Page No
PART I – GENERAL PROVISIONS.....	7
1. Definitions and Interpretation.....	7
2. Introduction.....	43
3. Appointment of Terminal Operator and grant of rights.....	44
4. Duration of this Agreement.....	49
5. Concession Fee.....	50
6. Ownership and return of the Project Site and the Terminal Facility.....	53
7. Indemnity.....	54
8. Related Party Transactions.....	56
9. Limitation on financial indebtedness.....	56
10. Compliance with D&C Specifications and Operating Specifications.....	57
11. Contracts.....	57
12. Environmental Compliance.....	58
13. Economic Development Obligations.....	62
14. Access to documents, copyright and related matters.....	62
15. Performance Guarantees.....	64
16. Project Insurance.....	68
17. Port Users and Port Rules.....	69
18. Shareholding in the Terminal Operator.....	69
19. Assignment.....	69
20. The TNPA's Assistance and Rights and Limitations on Liability.....	70
21. The TNPA Step-in.....	71
PART II – PROVISION OF THE PROJECT SITE AND THE PORT.....	72
22. Provision of the Port.....	72
23. Port Site.....	72
24. Key Personnel and Removal of Personnel.....	75

25. Health and Safety	76
26. Security	77
PART III – DESIGN AND CONSTRUCTION, OPERATION AND MAINTENANCE.....	78
27. Independent Certifier	82
28. Design and Construction	79
29. Commissioning	83
30. Operation and Maintenance	85
31. Reporting Requirements	89
32. Financial Accounts, Reports, inspection and reporting of changes.....	90
33. Rights of Access	94
PART IV – FINANCIAL PROVISIONS.....	95
34. Fees in respect of Services	95
35. Marine services.....	95
36. Port Dues	96
37. Refinancing.....	96
38. Penalties	96
39. Foreign exchange risk.....	97
40. Default Interest.....	97
PART V –COMPENSATION AND FORCE MAJEURE EVENTS, CHANGE OF LAW	97
41. Consequences of a Compensation Event	97
42. Force Majeure.....	99
43. Unforeseeable Conduct	101
PART VII – TERMINATION	103
45. Terminal Operator Default	103
46. The TNPA Default.....	107
47. Invalidation in terms of Section 67 of the Act	108
48. Effects of Termination	108
49. Termination Amount for the TNPA Default	113
PART VIII – PROCEDURAL ISSUES	115

50.	Corrupt gifts and fraud	115
51.	Terminal Operator's warranties and undertakings	117
52.	TNPA Warranties	124
53.	Dispute Resolution	125
54.	Liability	128
55.	Confidentiality	129
56.	Miscellaneous matters	131

Schedules

Schedule 1.	D&C Specifications	137
Schedule 2.	Operating Specifications	138
Schedule 3.	Constitutional Documents	139
Schedule 4.	Construction Agreement	140
Schedule 5.	Operations Agreement	141
Schedule 6.	Financial Model	142
Schedule 7.	Direct Agreement	143
Schedule 8.	Project Deliverables	144
Schedule 9.	OEMP Required Authorisations	145
Schedule 10.	B-BBEE Requirements	146
Schedule 11.	Terminal Operator's Supplier Development Plan	147
Schedule 12.	Penalties	148
Schedule 13.	Project Site: Schedule	149
Schedule 14.	Description of Services	165
Schedule 15.	Terminal Equipment	150
Schedule 16.	Construction Performance Guarantee	151
Schedule 17.	Operating Performance Guarantee	152
Schedule 18.	Final Maintenance Guarantee	153
Schedule 19.	Existing TNPA Agreements	154
Schedule 20.	Access and Way Leaves	155
Schedule 21.	Terminal Operator Fees	156
Schedule 22.	Marine Service Charges	157
Schedule 23.	Port Dues	158
Schedule 24.	Programme for Construction Works	159
Schedule 25.	Details of Subcontractors' and Suppliers' Loss of Profits	160
Schedule 26.	Port Facility and Operating Arrangements	161
Schedule 27.	Terminal Operator Performance Standards	177

Schedule 28. Penalty and Incentive Cascade Model..... 178

PART I – GENERAL PROVISIONS**1. Definitions and Interpretation**

1.1 In this Agreement and its Schedules, the following terms shall, unless inconsistent with the context in which they appear, have the following meanings and cognate expressions shall bear corresponding meanings:

- | | | | |
|--------|---------------------------------------|---|---|
| 1.1.1. | “Act” | - | the National Ports Act, 12 of 2005; |
| 1.1.2. | “Actual Operations Commencement Date” | - | the date of Operation Commencement as stated in the Operations Certificate issued by the Independent Certifier in accordance with clause 29.3 (approval to provide Services); |
| 1.1.3. | “Agent | - | the agent bank appointed by the Lenders as their agent; |
| 1.1.4. | “Agreed Interest Rate” | | |
| 1.1.5. | “this Agreement” | - | this Terminal Operator Agreement and its schedules, as amended, extended, replaced and varied from time to time |
| 1.1.6. | “Associated Agreement” | - | the Construction Agreement, the Operations Agreement, [the Charter Agreement, the Management Agreement,] [the Terminal Use Agreements], the Constitutional Documents and any other agreements entered into by the Terminal Operator in respect of the Project (other than the Financing Agreements) that the TNPA may designate as falling within this clause 1.1.6 |
| 1.1.7. | "Base Case Equity IRR" | - | the nominal post-tax internal rate of return on Equity over the full period up to the expiry of the Term as specified in the Financial Model at the Effective Date; |
| 1.1.8. | “B-BBEE” | - | Broad-Based Black Economic Empowerment |

- 1.1.9. "Berth" - the berth 207 to be located at South Dunes in the Port as demarcated in Schedule 12;
- 1.1.10 "Bidder" - means a Bidder, who having received an RFP, responds thereto by submitting a Bid Response to undertake the Project
- 1.1.1. "Bid Response" - the bid submitted by a Bidder in response to the RFP;
- 1.1.2. "Briefing Note" any document issued in writing by the TNPA that amended the RFP issued by the TNPA in respect of the Project;
- 1.1.3. "Business Day" - means any Day other than a Saturday, Sunday or gazetted national public holiday in South Africa;
- 1.1.4. "Business Case" - means the business case relating to the Project as prepared by the Terminal Operator and approved by the TNPA
- 1.1.5. "Cargo" - means a quantity of LNG expressed in MMBTU carried by an LNG Carrier to be loaded at the LNG Terminal.
- 1.1.6. "Change in Control" - any change whatsoever in Control whether effected directly or indirectly, excluding any change of Control in respect of a company listed on a stock exchange;
- 1.1.7. "Change in Law" means:
- any enactment, promulgation, execution, ratification or issue of any new Law or any change, amendment, alteration, modification, repeal or commencement of any existing Law, or any change in the interpretation or application of any Law, by a competent court, tribunal or legislature in South Africa, other than any Law which, at the Effective Date, has been published in a

bill or draft statutory instrument and is available for public scrutiny, to the extent such Law is enacted in the form so published; or

- any enactment, promulgation, execution, ratification or issue of any new Law or any change, amendment, alteration, modification, repeal or commencement of any existing Law, or any change in the interpretation or application of any Law, by a competent court, tribunal or legislature in South Africa, other than any Law which, at the Effective Date, has been published in a bill or draft statutory instrument and is available for public scrutiny, to the extent such Law is enacted in the form so published; or;

- any change in any requirement in relation to any Consent as a result of any administrative action which is contrary to the interpretation thereof which existed and was generally accepted at the Effective Date,

in each case coming into effect after the Effective Date

1.1.8. "Charter Agreement"

- means the charter agreement entered into between the Terminal Operator and the FSRU / FSU Supplier and or Owner on or by the Effective Date;

1.1.9. "Claims"

- means any and all suits, sanctions, legal proceedings, claims, assessments, judgments, damages, penalties, fines, liabilities, demands and or losses by, on behalf of or in favour of any third party;

- 1.1.10. "Codes" - means, as may be applicable, any code in respect of electricity generation, dispatch, scheduling, communications, distribution or transmission as published by NERSA from time to time
- 1.1.11. "Common User Terminal Infrastructure" - means loading arms, pipe racks, pipelines, interconnection manifolds, flow meters and the like as is more fully described in the D & C Specifications.
- 1.1.12. "Companies Act" - the Companies Act, 71 of 2008 and where relevant, applicable provisions of the Companies Act No. 61 of 1973
- 1.1.13. "Company" - a private company incorporated in the Republic of South Africa, in terms of the relevant Companies Act;
- 1.1.14. "Compensation Event" - any breach by the TNPA of any of its obligations under this Agreement (save for any breach that constitutes the TNPA Default), and to the extent in each case that the breach is not caused or contributed to by the Terminal Operator or any of its Subcontractors, and any other event that is designated in this Agreement to be dealt with in accordance with clause 41 (Consequences of a Compensation Event);
- 1.1.15. "Completion Certificate" - the certificate to be issued by the Independent Certifier in terms of clause 28.4 (completion of Construction Works) upon the completion of the Construction Works;
- 1.1.16. "Conduit Shareholder" - means an entity that is established for the purpose only to hold Equity in a member of the Terminal Operator and or equity in other entities undertaking projects similar to the Project;

- 1.1.17. "Confidential Information" - has the meaning ascribed to it in clause 55
- 1.1.18. "Consents" - all consents, permissions, permits, clearances, authorisations, approvals, rulings, exemptions, registrations, filings, decisions, licences, required to be issued by or made with or from any Responsible Authority, which is required from time to time in respect of the Project or to be held by the Terminal Operator or which has any impact (whether direct or indirect) on the Project or the Terminal Operator
- 1.1.19. "Constitution" - the Constitution of the Republic of South Africa, 1996
- 1.1.20. "Constitutional Documents" - the Terminal Operator's memorandum of incorporation and registration certificate, as well as the shareholders' agreement, equity subscription agreements and equity guarantees entered into and provided in respect of the Terminal Operator and any documents or agreements in respect of any debentures issued by the Terminal Operator, all of which are attached to this Agreement as Schedule 3 and the terms all of which are to be to the satisfaction of the TNPA;
- 1.1.21. "Construction Agreement" - each and every written agreement to be entered into between the Terminal Operator and the Construction Contractor in respect of any of the Construction Works, which agreement shall, in respect of the Construction Works, be in substantially the same form and content as the agreement attached hereto as Schedule 4

- 1.1.22. "Construction Completion" - the execution of the Construction Works that are required for the use of the Terminal Facility and for the Services to be provided in safety;
- 1.1.23. "Construction Contractor" - the person who is appointed as the construction contractor by the Terminal Operator in the Construction Agreement in force at the relevant time and any replacement or successor-in-title of such person;
- 1.1.24. "Construction Documents" - all documents, drawings, data, reports, specifications, bill of quantities and other information (whether in printed form or in electronic form) produced in respect of the Construction Works
- 1.1.25. "Construction Period" - the period commencing on the Effective Date and terminating on the issue of the Completion Certificate, and shall not be for a period longer than 18 to 24 months, unless otherwise agreed
- 1.1.26. "Construction Performance Guarantee" - the performance guarantee to be issued by a financial institution, of whom the TNPA approves on behalf of the Construction Contractor in respect of the Construction Works in favour of the Terminal Operator, substantially in the form of the guarantee attached to this Agreement as Schedule 14 and which is to be on terms to the satisfaction of the TNPA;
- 1.1.27. "Construction Works" - the construction works and any other design, construction, equipping and commissioning of and in respect of the Terminal Facility pursuant to the Operating Rights but excluding the Operation and Maintenance.

- 1.1.28. “Contract Year”
- means each twelve (12) Month period, commencing at 00:00 hours on 1 April and ending at 24:00 hours on 31 March of the following year, provided that:
 - the first Contract Year shall commence at 00:00 hours on the first day of the Operations Period, or otherwise at 00:00 hours on the Commercial Operation Date, and shall end at 24:00 hours on 31 March of the following year; and;
 - the final Contract Year shall end at 24:00 hours on the Termination Date
- 1.1.29. “Control”
- the power, directly or indirectly, to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities or any interest carrying voting rights, or to appoint or remove or cause the appointment or removal of any directors (or equivalent officials) or those of its directors (or equivalent officials) holding the majority of the voting rights on its board of directors (or equivalent body), whether by contract or otherwise, and "Controlled" shall be construed accordingly
- 1.1.30. C
or
ru
pt
- “Corrupt Act”
- means any offence involving any act of corruption or corrupt activities contemplated in the Prevention and Combating of Corrupt Activities Act No. 12 of 2004 and or similar legislation/law of a foreign jurisdiction.
- 1.1.31. “CPI”
- means the consumer price inflation
- 1.1.32. “Day”
- any period of 24 (twenty-four) hours that starts at 00h01 and ends at 24h00;

- 1.1.33. "D & C Specifications" - the design and construction specifications detailed in Schedule 1;
- 1.1.34. "Debt" - means, at any date, all amounts due and payable by the Terminal Operator that are outstanding under the Financing Agreements at that date, excluding Shareholder Loans or interest thereon and all default interest;
- 1.1.35. "Decommissioning Costs" - the costs of decommissioning each of the Terminal Infrastructure upon the termination of this agreement, whether prematurely or due to the effluxion of time, which costs are detailed, in respect of each Contract Year, in the Financial Model, which costs must, at a minimum, include the costs of undertaking the following:
- (a) the rehabilitation of the adverse environmental impacts of the listed or specified activities detailed in the environmental consents;
 - (b) engagement with all necessary stakeholders and Responsible Authorities, TNPA and relevant port users;
 - (c) rehabilitation of the impacts of making the Terminal available and the generation and dispatch of Energy Output, including:
 - (i) the pumping, treatment and storage of any waste material;
 - (ii) the handling and storage of fuel (if applicable);

- (iii) the pumping, storage and containment of fuel oil;
 - (iv) any other waste or hazardous material including asbestos, insulation, other oils, grease, industrial gases, PCBs, heavy metals and chemicals; and;
 - (v) polluted or extraneous water;
- (d) removal and disposal of waste, including any waste associated with any battery or other storage technologies;
 - (e) securing, making safe, decommissioning, isolation and closure of the LNG Terminal and supporting infrastructure;
 - (f) remediation of latent or residual environmental impacts which are presently identifiable pursuant to the Consents;
 - (g) demolition and removal of buildings, structures, plant, equipment and other objects including subsurface, foundations and services;
 - (h) rehabilitation of the Project Site, in respect of each Facility comprising the Project, any or all of the Facility Site(s) making up the Project, including capping and covering if necessary and landscaping;

- (i) consideration and management of the heritage requirements;
 - (j) compliance with all Laws applicable to the decommissioning, demolition or rehabilitation process;
 - (k) monitoring of residual risks such as dam condition and leachate;
 - (l) obtaining all necessary permits or approvals for decommissioning, demolition, remediation and rehabilitation; and;
 - (m) remediation of any other negative environmental impacts.
- 1.1.36. "Decommissioning Bank Guarantee" - means a bank guarantee issued by a financial institution that meets the TNPA's satisfaction, not to be unreasonably withheld, and substantially in the form of the bank guarantee attached hereto as Schedule 9 (Form of Decommissioning Costs Bank Guarantee);
- 1.1.37. "Decommissioning Reserve" - means one or a combination of a S37A Trust and or a Decommissioning Cost Bank Guarantee;
- 1.1.38. "Detailed Designs" - the detailed design for the Construction Works, which is to be prepared by the Terminal Operator and reviewed and approved by the Independent Certifier, in terms of clause 28.1 (performance of Preliminary Design and Detailed Design) and the Detailed Design Procedure;
- 1.1.39. "Detailed Design Procedure" - the procedure in respect of the preparation and approval of the Detailed Design that is contained in the D&C Specifications

- 1.1.40. "Direct Agreement" - he Direct Agreement to be entered into between the TNPA, the Terminal Operator and the Lenders, which shall be substantially in the form and substance of the agreement attached to this Agreement as Schedule 7
- 1.1.41. "Effective Date" - the date on which this Agreement has been duly executed by each of the Parties;
- 1.1.42. "Energy" - means electrical energy generated by the power generation facility as may be applicable, as the case may be, and measured in MWh;
- 1.1.43. "Environment" the surroundings within which humans exist and that are made up of:
- (a) the land, water and atmosphere of the earth;
 - (b) micro-organisms, plant and animal life;
 - (c) any part or combination of (a) and (b) and the interrelationships among and between them; and
 - (d) the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and well-being;
- 1.1.44. "Environmental Authorisation" any authorisations or consents to be obtained from the Responsible Authority in compliance with the Environmental Laws in order to perform the Project Deliverables
- 1.1.45. "Environmental Laws" means any Laws designed to:
- (a) protect ecosystems and dependant animal and plant species;

- (b) regulate the harm caused to the environment and or public health by pollution or degradation; or
- (c) regulate the generation, handling, storage, use, release, emission or spillage of any substance which, alone or in combination with any other, is capable of causing harm to the environment, including, without limitation, any waste;
- 1.1.46. "Environmental Management Plan" the environmental management plan and system prepared in respect of the Project for the monitoring and management of environmental issues raised as a result of the Environmental Impact Assessment and based on the TNPA's environmental policy and any Environmental Consents issued in respect of the Project pursuant to the Environment and the Environmental Laws;
- 1.1.47. "Equity" the entire issued share capital of and Shareholder Loans to the Terminal Operator;
- 1.1.48. "Expiry Date" - the expiry date of the Terminal Operator Agreement;
- 1.1.49. "Final Maintenance Guarantee" - the final maintenance guarantee to be issued by a financial institution (of whom the TNPA approves) on behalf of the Operator in favour of the Terminal Operator, substantially in the form of the guarantee attached to this Agreement as Schedule 16 and shall be on terms to the TNPA's satisfaction;
- 1.1.50. "Finance Agreements" - Agreements relating to the Debt payable by the Terminal Operator to the Lenders as the

Effect Date and excluding all amendments thereto not approved by the TNPA

- 1.1.51. "Financial Model" - means the financial base case for the Project as reflected in the computer model to be attached to this Agreement on an electronic storage device that can be used to store data, as provided for in Schedule 5 (Financial Model), which model incorporates the forecast cash flow statements of the Terminal Operator including all expenditure, revenues, taxation and financing of the Construction, Operation and Maintenance of the Facility together with the income statements and balance sheets for the Terminal Operator over the Term, and details of all assumptions, calculations and methodology used in the compilation thereof;
- 1.1.52. "Force Majeure" - any act, event or circumstance or any combination of acts, events or circumstances which:
- (a) is beyond the reasonable control of the Affected Party;
 - (b) is without fault or negligence on the part of the Affected Party and is not the direct or indirect result of a breach by the Affected Party of any of its obligations under any Project Documents;
 - (c) could not have been (including by reasonable anticipation) avoided or overcome by the Affected Party, acting in accordance with the

standards of a Reasonable and Prudent Operator;

(d) prevents, hinders or delays the Affected Party in its performance of all (or part) of its obligations under this Agreement

- Without limiting the generality of the foregoing, a Force Majeure Event may include any of the following acts, events or circumstances, but only to the extent that it satisfies the requirements set out in subclauses (a) and (b) above:

(e) any action or failure to act by a Responsible Authority, including without limitation, any Consent or Supplier Consent (a) ceasing to remain in full force and effect other than in accordance with the terms and conditions upon which it was issued or by reason of the failure of the holder thereof to comply with any of its terms or conditions or (b) not being issued or renewed upon application having been properly made;

(f) lightning, fire, earthquake, tsunami, drought, unusual flood, storm, cyclone, typhoon, tornado or other natural calamity or act of God;

(g) epidemic or plague;

(h) strikes, lock outs and other industrial action other than by employees of the Affected Party or of any Affiliate

or of any contractor of the Affected Party or of any Affiliate;

- (i) accidents or explosions;
- (j) acts of war whether declared or not, invasion, armed conflict, act of foreign enemy or blockade in each case occurring within or involving the Republic of South Africa;
- (k) acts of rebellion, riot, civil commotion, act or campaign of terrorism, or sabotage of a political nature, in each case occurring within the Republic of South Africa;
- (l) boycott, sanction or embargo;
- (m) any natural event, disaster or Act of God, (which includes but is not limited to cyclone, drought, fire, lightning, earthquake, explosion, tsunami, tempest, unusual flood, violent storm, typhoon, tornado, ionising radiation, epidemic or plague); or

each such act, event or circumstance or combination thereof being a Force Majeure Event, provided always that the following shall not constitute Force Majeure:

- (n) failure of either Party to make any payment of money in accordance with its obligations under this Agreement;
- (o) late delivery of fuel, equipment, machinery, plant, spare parts or materials caused by negligent

conduct or wilful misconduct on the part of the Affected Party or any of its Suppliers or contractors;

- (p) late performance by either Party, caused by such Party's or such Party's Subcontractor's failure to engage qualified Subcontractors and suppliers or to hire an adequate number of personnel or labour;
- (q) mechanical or electrical breakdown or failure of equipment, machinery or plant owned or operated by either Party due to the manner in which such equipment, machinery or plant has been operated or maintained;
- (r) delays resulting from reasonably foreseeable unfavourable weather or reasonably foreseeable unsuitable ground conditions or other similar reasonably foreseeable adverse conditions;
- (s) any failure by the Affected Party to obtain and/or maintain or cause to be obtained or and maintained any Consent;
- (t) strikes, lockouts and other industrial action by the employees of the Affected Party, any of its Affiliates or any contractor of the Affected Party or of any Affiliate, unless such action is part of any wider industrial action involving a significant section of the public sector, the public administration, the construction

industry or the electricity supply sector;

- (u) wear and tear or random flaws in materials and equipment or breakdown in or degradation of equipment or machinery of the Affected Party;
- (v) an event, circumstance or situation that arises as a direct or indirect result of any appeal or review being lodged against any amendment to any of the Consents issued in terms of any Environmental Laws;
- (w) an event, circumstance or situation that arises as a direct or indirect result of the Terminal Operator's failure to obtain the conversion of its provisional air emissions licence into a final air emissions licence, in terms of the Environmental Laws, due to its failure to comply with the terms and conditions of the provisional air emissions licence;
- (x) an event, circumstance or situation that arises as a direct or indirect result of any Responsible Authority imposing additional conditions on the Terminal Operator in terms of any Consents issued in terms of any Environmental Laws, pursuant to a review by the Responsible Authority of the Terminal Operator's provisional or final air emissions licence or waste management licence; or

- (y) an event, circumstance or situation that arises as a direct or indirect result of the Responsible Authority declaring the area in which the Project Site is situated as an air pollution priority area and imposing additional requirements on the Terminal Operator in terms of its air emissions licence to align with the air quality management plan for that area;
- 1.1.53. "Force Majeure Event" - any event of Force Majeure as more fully described in 1.1.62 above
- 1.1.54. "FSRU" - means the LNG floating storage and regasification unit;
- 1.1.55. "FSU" - a floating storage unit with onshore regasification [including modulated solutions allowing for future expansions];
- 1.1.56. "Hazardous Substances" - means:
- (a) any petroleum or petroleum products, radioactive materials, asbestos in any form, urea formaldehyde foam insulation, transformers or other equipment that contain dielectric fluid containing regulated levels of polychlorinated biphenyls (PCBs) and radon gas; and
- (b) any pollutants, contaminants, pesticides, chemicals, materials or other substances (including any special, dangerous or toxic wastes) defined as or included in the definition of "pollutant", "hazardous

substances", "hazardous wastes", "hazardous materials", "extremely hazardous wastes", "restricted hazardous wastes", "toxic substances", "toxic pollutants", or other words of similar import, by any Responsible Authority.

- 1.1.57. "IFRS" - means the International Financial Reporting Standards;
- 1.1.58. "Independent Certifier" - the person appointed by the Terminal Operator in respect of the Project, and whose duties are specified in this Agreement under clause 27. (Independent Certifier), the Construction Agreement, the Operations Agreement and the Independent Certifier Agreement;
- 1.1.59. "Independent Certifier Agreement" - the agreement entered into between the Terminal Operator and the Independent Certifier
- 1.1.60. "Independent Expert" - shall mean:
- (a) an accountant of not less than 10 (ten) years professional experience or investment banker agreed to between the Parties, and failing agreement nominated (at the request of either Party) by the President for the time being of the South African Institute of Chartered Accountants: Northern Region, if the matter relates primarily to a financial matter; or
 - (b) an attorney or advocate of not less than 10 (ten) years professional experience agreed to between the Parties, and failing agreement

nominated (at the request of either Party) by the Chairman for the time being of the Law Society of the Northern Provinces, if the matter relates primarily to a legal matter; or

(c) an engineer of not less than 10 (ten) years professional experience agreed to between the Parties and failing agreement nominated (at the request of either Party) by the President for the time being of the Engineering Council of South Africa, if the matter relates primarily to an engineering matter; or

(d) a port LNG Terminal / Terminal Equipment manager of not less than 10 (ten) years professional experience agreed to between the Parties and failing agreement nominated (at the request of any Party) by the President for the time being of South African Facilities Management Association, if the matter relates primarily to a port facilities management matter;

- 1.1.61. "Intellectual Property Rights" - all registered or unregistered trademarks, service marks, patents, design rights (whether the aforementioned rights are registered, unregistered or formed pending applications), utility models, applications for any of the a foregoing, copyrights (including copyright in any software programmes, data and documents), database rights, the sui generis rights of extraction relating to databases and any similar or analogous rights to any of the above, whether arising or

granted under the Laws or any other jurisdiction;

- | | | |
|---------|-------------------------------|--|
| 1.1.62. | “Insurance” | - the project insurance that the Terminal Operator is required to purchase and maintain in terms of clause 16 (Project Insurance); |
| 1.1.63. | “International Best Practice” | - in relation to the design, construction, equipping and commissioning of the Terminal Facility, and in relation to the provision of the Operation and Maintenance and the Services, the exercise of that degree of skill, diligence, prudence, foresight and operating practice that would reasonably and ordinarily be expected from a skilled and experienced person engaged in providing a facility similar to the Terminal Facility or the same type of business as the Services (irrespective of whether or not that facility or that business is conducted by or on behalf of any organ of State), under the same or similar circumstances; |
| 1.1.64. | “Laws” | - the Constitution, the common law, Legislation, and all judicial decisions and any notifications or other similar directives made pursuant thereto that have the force of law, issued by any executive, legislative, judicial or administrative entity in the Republic of South Africa or by the TNPA or the municipality in which the Port is located; |
| 1.1.65. | “Legislation” | - all applicable statutes, statutory instruments, by-laws, regulations, orders, rules, executive orders and other secondary, provincial or local legislation, treaties, directives and codes of practice having the force of law in South Africa; |

- 1.1.66. "Lender" - any funder, other than in its capacity as a Member or Shareholder
- 1.1.67. "LNG" - means Liquefied Natural Gas;
- 1.1.68. "LNG Carrier" - means an ocean-going vessel carrying LNG which calls at the Port for the purpose of discharging Cargo at the LNG Terminal;
- 1.1.69. "LNG Terminal" - means the Port Infrastructure, Common User Infrastructure, Terminal Infrastructure and Terminal equipment located at the Project Site and used for the import, export and or transshipment of Cargo.
- 1.1.70. "Long Stop Date" - the date which falls twenty four (24) months after the Scheduled Operations Commencement Date being the date by which the Services must have commenced failing which the TNPA shall be entitled to terminate this Agreement in accordance with the provisions in clause 45 (Terminal Operator Default);
- 1.1.71. "Losses" - losses, damages, liabilities, claims, actions, proceedings, demands, costs, charges or expenses of any nature in respect of the Project;
- 1.1.72. "Management Agreement" - means the operation and management agreement entered into between the Terminal Operator and the Management Company on or by the Effective Date;

- 1.1.73. "Member" - in relation to any Respondent, any legal entity and or natural person which will become a Shareholder (either itself or through an intermediary entity) once the Project Company is incorporated to undertake the Project, and if the Project Company has already been incorporated, then any Shareholder
- 1.1.74. "National Energy Regulator Act" - means the National Energy Regulator Act No. 40 of 2004
- 1.1.75. "NERSA" - the National Energy Regulator of South Africa, established pursuant to Section 3 of the National Energy Regulator Act;
- 1.1.76. "Operating Performance Guarantee" - the performance guarantee to be issued by a financial institution (of whom the TNPA approves) on behalf of the Operator in favour of the Terminal Operator, substantially in the form of the guarantee attached to this Agreement as Schedule 15 and the terms of which are to be to the satisfaction of the TNPA;
- 1.1.77. "Operating Rights" - all the rights and obligations conferred and imposed on the Terminal Operator in terms of and pursuant to this Agreement in respect of and for the purposes of carrying out the Project;
- 1.1.78. 1 "Operating Specifications" - the specifications and standards in accordance with which the Services are to be provided, the Operation and Maintenance conducted and the LNG Terminal is to be maintained and upgraded, all of which are detailed in Schedule 2

- | | | | |
|---------|-----------------------------|---|--|
| 1.1.79. | “Operating Term” | - | the period for which the Operating Rights are granted to the Terminal Operator, which period is as detailed in clause 4 (Duration of this Agreement); |
| 1.1.80. | “Operating Term” | - | all operation and maintenance activities in respect of the Project, that are requirements in order to provide the Services and for the operation and maintenance of the LNG Terminal, in accordance with the requirements of Schedule 2 of this Agreement, the Operating Specifications and International Best Practice; |
| 1.1.81. | “Operation and Maintenance” | - | the commencement of the Services subsequent to the issue of the Operations Certificate in accordance with clause 30.3 (approval to provide Services); |
| 1.1.82. | “Parties” | - | the TNPA and the Terminal Operator |
| 1.1.83. | “Payment Expert” | - | a chartered accountant of not less than 10 (ten) years professional experience or investment banker as agreed to between the Parties, and failing agreement, nominated (at the request of either Party) by the President for the time being of the South African Institute of Chartered Accountants: Northern Region, if the matter relates primarily to a financial matter or financial management matter |
| 1.1.84. | “Performance Guarantees” | - | the Construction Performance Guarantee, the Operating Performance Guarantee and the Final Maintenance Guarantee |
| 1.1.85. | “PFMA” | - | the Public finance Management Act, 1 of 1999 |

- 1.1.86. "Port Infrastructure" - the basic common use structures of the Port of Richards Bay, including the Berths, breakwaters, seawalls, channels, basins, quay walls, jetties, roads, railways and infrastructure used for the provision of water, lights, power, sewage and similar services, other than the Terminal Infrastructure
- 1.1.87. N "Port Rules" - any rules, by-laws, regulations and delegated legislation issued from time to time in respect of the operate of the Port specifically or ports in South Africa generally and or in respect of the behaviour, conduct and manner of conducting business of users of the Port specifically or ports in South Africa generally;
- 1.1.88. "Port Users" - any person other than the Terminal Operator, organisation and or agency utilizing the facilities of the Port and or conducting business within the Port limits, including shipping lines, vessel agents, licenced operators, operators of other terminals within the Port and any Subcontractor and or any third parties authorised to conduct business on behalf of any Port User
- 1.1.89. "Preliminary Design" - the preliminary design of the LNG Terminal and required Port Infrastructure carried out prior to the Effective Date by the Terminal Operator in accordance with the Preliminary Design Procedure
- 1.1.90. "Preliminary Design Procedure" - the procedure designated as such in the D&C Specifications
- 1.1.91. "Project" - the Design, Development, Financing, Construction, Operation, Maintenance of Port Infrastructure, Common User

			Infrastructure, Terminal Infrastructure and Terminal Equipment in accordance with the terms of this Agreement
1.1.92.	“Project Company”	-	
1.1.93.	“Project Site”	-	the site on which the Project will be undertaken as demarcated on Schedule 12A (Project Site);
1.1.94.	“Project Deliverables”	-	the deliverables in respect of the design, development and commissioning of the required Terminal Infrastructure and required Port Infrastructure to be undertaken by the Terminal Operator, as specified in Schedule 8 of this Agreement;
1.1.95.	“Project Documents”		all drawings, data, books, reports, documents, software, source codes and manuals and other information, which the Terminal Operator, Construction Contractor and or Operator has or have been using and which are necessary for the Construction Works and or continuing Operation and Maintenance
1.1.96.	“Provisional Operations Certificate”	-	the certificate to be issued by the Independent Certifier prior to Construction Completion when, in the reasonable opinion of the Independent Certifier, Construction Completion is likely to be achieved by the Construction Contractor by the date specified in the certificate
1.1.97.	“Rand”	-	the lawful currency of South Africa

- 1.1.98. "Reasonable and Prudent Terminal Operator"
- a person seeking in good faith to perform its contractual obligations and, in so doing and in the general conduct of its undertaking, exercising that degree of skill, diligence, prudence, responsibility and foresight which would reasonably and ordinarily be expected from a skilled and appropriately experienced developer, contractor, owner or operator internationally, who is complying with all applicable Laws, engaged in the same or a similar type of undertaking, in the same or similar circumstances and conditions, and any references herein to the "standards of a Reasonable and Prudent Operator" shall be construed accordingly
- 1.1.99. "Refinancing"
- at any time after the Signature Date:
 - (a) any material amendment, assignment, novation, replacement or supplementing of any of the Finance Agreements and or the Constitutional Documents, whether independently or in combination with any connected arrangements;
 - (b) the exercise of any right or grant of any waiver, indulgence or approval under any of the Finance Agreements (other than a Permitted Borrowing) and or the Constitutional Documents;
 - (c) the disposition or encumbering (by whatever means) of any rights under any of the Finance Agreements and or the Constitutional Documents or the creation or granting of any other benefit or interest in any of the Finance Agreements and or the Constitutional Documents or any of

the Terminal Operator's other contracts, revenues or the Terminal; and/or

- (d) any other arrangements having any of the effects in clauses (a) to (c) above.

1.1.100. "Related Party"

- a person who:

- (a) directly, or indirectly through one or more intermediaries, controls, or is controlled by, a person who holds, at least 5% Equity in the Terminal Operator;
- (b) is under common control with any person who holds at least 5% Equity in the Terminal Operator; or
- (c) any person who holds at least 5% Equity in the Terminal Operator,

where "control" in respect of any person means the power to direct the management and policies of such person, whether through the holding of voting rights or the ability to nominate and or appoint a majority of the directors or through any contractual arrangement (whether at Law or pursuant to a contractual arrangement) and the term "controlled" has a cognitive meaning;

1.1.101. "Related Party Transaction"

- any transaction relating in any way directly or indirectly to the Project in which the Terminal Operator or any Subcontractor of the Terminal Operator leases, transfers or otherwise disposes of any of its properties or assets to, or purchases any property or assets from, or enters into any contract, agreement, understanding, loan, advance or

- guarantee with, or for the benefit of, a Related Party (other than the Terminal Operator), but excluding the Financing Agreements;
- 1.1.102. "Responsible Authority" - any ministry or department, any minister, any organ of state, any official in the public administration or any other governmental or regulatory department, commission, institution, entity, service utility, board, agency, instrumentality or authority (in each case, whether national, provincial or municipal) or any court, each having jurisdiction over the matter in question
- 1.1.103. "Schedules" - the schedules to this Agreement, as amended, replaced and varied from time to time
- 1.1.104. "Scheduled Operations Commencement Date" - [insert date], the date stipulated in the Programme for Construction Works, set out in Schedule 22, as the day after the date on which the Operations Certificate is scheduled to be issued and the Services are due to commence;
- 1.1.105. "Services" - the provision of services at the LNG Terminal in respect of the berthing of LNG Carriers at the LNG Terminal at the designated Port locations, the unloading and receipt of LNG from LNG carriers at the Terminal receipt point, storage of the Terminal User's inventory and regasification of LNG held in storage, transportation of the Gas to the delivery point and other activities related to performance by the Terminal Operator of the foregoing, and including the maintenance of the LNG Terminal , which services are more fully described in and are to be provided in accordance with the specifications and standards detailed in

Operating Specifications and Schedule 12B
(Description of the Services);

- 1.1.106. "Shareholders" - means the holders of the Equity, whether directly or as a Conduit Shareholder
- 1.1.107. "Signature Date" - the date on which this Agreement has been signed by both Parties and, if signed on different dates, the last of such dates
- 1.1.108. "South Africa" - the Republic of South Africa;
- 1.1.109. "Special Loss"
c - means, in relation to either Party, any loss or damage suffered or incurred by it which does not constitute a Direct Loss, including indirect losses, consequential or special losses and wasted or increased overheads;
- 1.1.110. "Subcontractor" - any subcontractor of the Terminal Operator, who has contracted directly with the Terminal Operator in respect of the Project
- 1.1.111. "Subcontractor and Suppliers Cost" - the reasonable costs and or losses of a Subcontractor or Supplier resulting directly from the early termination of its agreement with the Terminal Operator which in turn arises as a consequence of the early termination of this Agreement as a consequence of a TNPA Default, but only to the extent that:
- (a) such costs are incurred under agreements that have been entered into in the ordinary course of business and on an arms-length and otherwise reasonable commercial basis;
- (b) the Subcontractor's or Supplier's losses of profits included in such costs, shall be for a period not

exceeding 6 (six) months and shall not exceed the amount detailed in Schedule 23 (Details of Subcontractors' and Suppliers' loss of profits); and

(c) each of the Terminal Operator and the relevant Subcontractor or Supplier has used reasonable endeavours to mitigate such costs and or losses;

- 1.1.112. "Substitute Entity" - a person duly and properly appointed to be the new terminal operator in the place and stead of the Terminal Operator in terms of the Direct Agreement;
- 1.1.113. "Supplier" - equipment suppliers of the Terminal Operator [including the Regasification and Storage Unit Provider]
- 1.1.114. "Supplier Development Plan" - the Terminal Operator's Supplier Development Plan as set forth in Schedule 10B hereto
- 1.1.115. "Target Completion Date" - the date by which Construction Completion is, at the Signature Date, intended to occur, which date is specified in Schedule 22
- 1.1.116. "Tax" - VAT, any tax, levy, impost, duty or other charge or withholding of a similar nature (including any related penalty or interest);
- 1.1.117. "Terminal Delivery Point" - the point of interconnection between the LNG Terminal and the downstream pipeline at the battery limits of the LNG Terminal
- 1.1.118. "Terminal Equipment" - the assets, including equipment and machinery, tanks (whether affixed to the Project Site or not), including but not limited to the FSU and / or FSRU and any other

related regasification facilities that are required in order to operate the Terminal;

- 1.1.119. "Terminal Infrastructure" - the land-based structures including the storage facilities, terminal buildings, sheds, workshops, substations, surfacing and the internal network for the provision of water, lights, power, sewerage and similar services within the Terminal boundaries demarcated in Schedule 12A
- 1.1.120. "Terminal Operator" - [insert name, registration number and description of the Terminal Operator];
- 1.1.121. "Terminal Receipt Point" - the point at the LNG Terminal at which the flange coupling of the LNG Terminal 's receiving line joins the flange coupling of the LNG unloading manifold on board an LNG Carrier
- 1.1.122. "Terminal Use Agreement" - the agreement between the Terminal Operator and each of the Terminal Users in respect of the provision of the Services by the Terminal Operator
- 1.1.123. "Terminal Users" - the users or customers of the LNG Terminal;
- 1.1.124. "Termination Amount" - the amount payable on termination of this Agreement in terms of Part VII
- 1.1.125. "Termination Date" - any dates on which this Agreement is terminated in accordance with its terms, other than by way of effluxion of time
- 1.1.126. "Third Party Access" - the granting of access to the uncommitted capacity in the LNG Terminal to parties other than the Project Company on a:

- (a) commercial basis; and
 - (b) transparent, non-discriminatory and an arms-length basis in line with applicable law; and
 - (c) in accordance with the provisions of the Gas Act and any Directives and or Rules as may be issued by NERSA
- 1.1.127. "TNPA" - Transnet National Ports Authority
- 1.1.128. "Unforeseeable Conduct" - such conduct shall occur if, after the Signature Date, the TNPA or any Responsible Authority takes any action (including the introduction, application, or change of any law, regulation, by-law or order having the force of law) or fails to carry out its obligations as prescribed by law:
- (a) the principal effect of which is directly borne by:
 - (i) the Project and not other similar transactions;
 - (ii) the Terminal Operator and not other persons; or
 - (iii) parties undertaking port terminal operations and not other persons;
 - (b) in respect of which the Terminal Operator is not entitled to any other relief pursuant to any other provisions of this Agreement;

(c) which was not foreseen by the Terminal Operator on or before the Signature Date; and

(d) which could not reasonably have been foreseen by any person in the position of the Terminal Operator on or before the Signature Date;

provided that:

(e) Unforeseeable Conduct shall be deemed not to have occurred under circumstances where any action or omission of the TNPA or Responsible Authority is in direct response to any act or omission of the Terminal Operator which is illegal (other than an act or omission rendered illegal by virtue of such conduct of the TNPA or Responsible Authority) or in violation of agreements to which the Terminal Operator is a party;

(f) an increase in taxes of general application which does not discriminate against the TNPA or against the TNPA and other parties undertaking similar transactions shall be deemed not to be Unforeseeable Conduct; and

(g) Unforeseeable Conduct shall be deemed not to have occurred if such conduct by the TNPA or any Responsible Authority is required as a result of an event of Force Majeure and is reasonably proportionate thereto;

1.1.129. "Utilities"

- all facilities serving the public and Port Users such as water, electricity, sewage, gas and

telecommunications and where appropriate includes the relevant provider thereof

1.1. Interpretation

1.1.1. In this Agreement, unless inconsistent with the context, words referring to:

1.1.1.1. one gender include a reference to the other genders;

1.1.1.2. the singular includes the plural and vice versa;

1.1.1.3. natural persons include juristic persons and vice versa, and "**person**" includes a corporation, company, firm, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of any of the foregoing that is recognised by Law as the subject of rights and duties, and references to a "person" (or to a word incorporating a person) shall be construed so as to include that person's successors in title and assigns or transferees.

1.1.2. When a number of days is prescribed in this Agreement, such number shall be calculated including the first and excluding the last day, unless the last day falls on a day that is not a Business Day, in which case, the last day shall be the first succeeding day which is a Business Day. In computation of periods of time from a specified day to a later specified day, "**from**" means from and including and "**until**" or "**to**" means to and including. Unless otherwise specified, all references to any time shall be to the time of day in Johannesburg, South Africa.

1.1.3. The words "**include**", "**including**" and "**in particular**" shall not be construed as being by way of limitation, illustration or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding words. The words "**other**" and "**otherwise**" shall not be construed so as to be limited or defined by any preceding words, where a wider construction is reasonably possible.

1.1.4. The terms "**hereof**", "**herein**", "**hereunder**" and similar words refer to this entire Agreement and not to any particular clause, paragraph, Part, Schedule or any other subdivision of this Agreement.

1.1.5. References to any recital, clause, paragraph, Schedule or Annex are to those contained in this Agreement, and references to a part of a Schedule are to the part of the Schedule in which the reference is relevant, and all Schedules and Annexes to this Agreement are an integral part of this Agreement. If there is a conflict between

the provisions of a Schedule and the provisions of this Agreement, the provisions of this Agreement shall prevail.

- 1.1.6. Any reference to legislation, a statute, a statutory instrument, by-law, regulation, rule, subordinate legislation or delegated legislation or order or a standard in this Agreement shall be a reference to such legislation, statute, statutory instrument, by-law, regulation, rule, subordinate legislation or delegated legislation or order or standard as amended, replaced, consolidated, varied or re-enacted from time to time.
- 1.1.7. Words and expressions defined in any sub-clause shall, for the purpose of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause.
- 1.1.8. If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, effect shall be given to it as if it were a substantive clause in the body of the agreement, notwithstanding that such provision is contained in such clause.
- 1.1.9. Any reference in this Agreement to this "**Agreement**" or to another agreement shall be to this "**Agreement**" or such agreement as amended, supplemented, varied, novated or replaced from time to time in accordance with its terms and conditions provided that, in the case of any other document, such amendment, variation, novation, supplement or replacement has received the prior written approval of the TNPA.
- 1.1.10. The index and titles of clauses and schedules of and to this Agreement are inserted for the sake of convenience only and shall not be used in respect of or in any way affect the interpretation of any provision of this Agreement.
- 1.1.11. A reference in this agreement to any person shall be a reference to such person's permitted successor, transferee, cessionary and or delegatee.
- 1.1.12. Any reference in this Agreement to the Updated Financial Model shall, unless the context requires otherwise, be a reference to such document as most recently updated, amended or replaced and approved by the TNPA, in accordance with the terms of this Agreement.
- 1.1.13. Where this Agreement requires that the waiver, consent, approval or permission of the TNPA is to be obtained:
 - 1.1.13.1. such waiver, consent, approval or permission shall at all times be required to be obtained by the Terminal Operator prior to undertaking or failing to

undertake the course of action to which such waiver, consent, approval or permission pertains; and

- 1.1.13.2. the granting or withholding of such waiver, consent, approval or permission shall not be valid unless it is issued in writing by the TNPA.
- 1.1.14. The terms "**holding company**" and "**subsidiary**" shall have the meanings ascribed to them in the Companies Act.
- 1.1.15. References in this Agreement to the TNPA, the Terminal Operator, the Independent Certifier, the Agent and the Lenders shall include their respective authorised agents and representatives and successors and permitted assignees.
- 1.1.16. Any provision of this Agreement that contemplates or provides for performance of an obligation or compliance with a provision of this Agreement subsequent to any termination or expiry of this Agreement shall survive and termination or expiry of this Agreement and shall continue in force and effect for the period contemplated in said provision, notwithstanding that these provisions do not expressly state this.
- 1.1.17. Termination or expiry of this Agreement shall not affect and shall be without prejudice to the accrued rights, obligations, claims, duties and liabilities of either Party which such accrued rights, obligations, claims, duties and liabilities arose prior to such termination or expiry. For the avoidance of doubt, such rights, claims and liabilities shall include any rights of a Party in respect of an antecedent breach or non-performance by either Party of any of the terms or conditions of this Agreement.
- 1.1.18. The *eiusdem generis* rule and the *contra proferentem* rule shall not be applicable to this Agreement.

2. Introduction

- 2.1. In terms of the Act, the TNPA exercises authority, power, control and responsibility in respect of commercial ports in South Africa, including the Port and has procured the appointment of the Terminal Operator in accordance with the provisions of Section 56 of the National Ports Act.
- 2.2. The TNPA accordingly wishes to appoint the Terminal Operator to undertake the Project and the Terminal Operator wishes to accept this appointment on the terms and conditions as recorded in this Agreement.

- 2.3. The Parties have been duly authorised to enter into this Agreement for the design, financing, construction, operation and maintenance of an LNG Terminal in the Port in accordance with the terms and conditions recorded this agreement.

3. Appointment of Terminal Operator and Grant of Rights¹

3.1. Grant of Rights

The TNPA hereby appoints the Terminal Operator to undertake the Project on the terms and conditions contained in this Agreement. The Terminal Operator accepts such appointment on the terms and conditions contained in this Agreement.

3.2. Exclusivity of Rights

- 3.2.1. Subject to the provisions of this Agreement, the Operating Rights are granted exclusively to the Terminal Operator from the Signature Date until the termination or expiry of this Agreement in accordance with its terms.
- 3.2.2. The Terminal Operator shall also be entitled to use the Port and Port Infrastructure at the LNG Terminal for the purposes of the Project in accordance with the Port Rules, subject to the use thereof by any other Port Users in accordance with the Port Rules.
- 3.2.3. The Terminal Operator acknowledges the LNG Terminal shall be operated on a common-user open Third-Party Access basis in terms of the relevant NERSA guidelines, rules, regulations and as provided for in this Agreement.
- 3.2.4. The Terminal Operator will accordingly in the exercise of its Operating Rights be obliged to:
- 3.2.4.1. provide reasonable equality of access to the LNG Terminal and to all Terminal Users and prospective Terminal Users wishing to use the LNG Terminal and the services of the Terminal Operator;
 - 3.2.4.2. not unreasonably discriminate, in its tariff structure or in its trading conditions (including but not limited to all commercial terms and conditions) between various users or potential users of the Terminal and the loading facilities; and

¹ Bidders are to note that this clause has been drafted in the widest possible terms and will be updates and aligned to the Preferred Bidders Bid Response.

- 3.2.4.3. afford all Terminal Users who require access and use of the LNG Terminal the right to use the LNG Terminal, on a first come, use it or lose it, basis, with open access to the LNG Terminal and uncommitted capacity;
- 3.2.4.4. not engage in any other form of anti-competitive behaviour in exercising its Operating Rights at the LNG Terminal.
- 3.2.5. In the event that the Terminal Operator fails and or refuses to grant a Third - Party Access to LNG Terminal, TNPA shall within its sole and absolute discretion rights grant such Third - Party Access to the Common User Infrastructure, alternatively direct the Terminal Operator to provide such access, notwithstanding the Terminal Operator's exclusive right to exercise its Operating Rights.

3.3. Terminal Operator's obligations

- 3.3.1. The Terminal Operator shall undertake the Project at its own cost and risk in accordance with the terms of this Agreement. The TNPA shall not be obliged to provide any guarantee, subsidy, grant or any financial support of any nature to the Terminal Operator or in respect of the Project, unless otherwise agreed to in writing.
- 3.3.2. This Agreement shall not be interpreted as granting the Terminal Operator any rights or imposing any obligations or duties on the TNPA or any Responsible Authority, except as expressly and specifically stated in this Agreement.

3.4. Subcontracting

- 3.4.1. Regardless of the fact that this Agreement permits or requires the Terminal Operator to appoint third parties to perform part of the Project, such appointment shall not relieve or excuse the Terminal Operator of any duty, obligation, liability or responsibility under this Agreement and in respect of the Project.
- 3.4.2. The Terminal Operator shall be responsible for the management and supervision of any third parties appointed by it to perform any part of the Project. The Terminal Operator shall be and shall remain, at all times, fully responsible and liable for the actions and omissions (whether negligent, wilful or intentional) of all such third parties and of the agents, representatives and employees of such third parties, whether such third parties are employed directly or indirectly by the Terminal Operator.
- 3.4.3. Nothing in this Agreement is intended to create or should be interpreted as creating any privity of contract between the TNPA and any third parties appointed by the Terminal Operator to perform any part of the Project. The Terminal Operator shall ensure that a provision to this effect is inserted into every contract entered into by it with such a third party.

3.5. General Rights and Obligations of the Terminal Operator

- 3.5.1.** The LNG Terminal shall be used solely for the Services and activities described in this Agreement, for purposes incidental to the provision of those Services and activities, and for the exercise of the rights and the fulfilment of the obligations set out in this Agreement, and for no other purpose whatsoever unless the prior written consent of the TNPA has been obtained, in terms of this clause 3.5, for such other purpose.
- 3.5.2.** the Terminal Operator shall, acting as a Reasonable and Prudent Operator, make available the following services to the Terminal Users (such available services being herein referred to as the "**Services**") in the manner set out in Schedule 12B (*Description of Services*):
- 3.5.2.1. the berthing of LNG Carriers at the LNG Terminal at the designated Port locations;
 - 3.5.2.2. the unloading and receipt of LNG from LNG Carriers at the Terminal Receipt Point;
 - 3.5.2.3. re-gasifying the LNG;
 - 3.5.2.4. the Storage of the Terminal User's Cargo;
 - 3.5.2.5. the transportation and delivery of the Cargo to the Terminal Delivery Point; and
 - 3.5.2.6. other activities directly related to the performance by the Terminal Operator of the foregoing.
- 3.5.3.** Without limiting the other obligations of the Terminal Operator as specified in this Agreement or imposed by Law, the Terminal Operator shall be obliged to:
- 3.5.3.1. provide reliable, secure and efficient services and facilities to Port Users and Terminal Users;
 - 3.5.3.2. obtain, maintain and renew all documents, permits or other authorisations necessary to operate the LNG Terminal, render the Services and perform the activities referred to in clauses 3.5.2 and This clause 3.5.3;
 - 3.5.3.3. ensure that if any Subcontractors, agents and service providers used by it require a licence in terms of the Act, such persons are duly licensed;

- 3.5.3.4. provide, maintain or replace, according to International Best Practice, Terminal Equipment and all operating and other equipment necessary for the efficient operation of the LNG Terminal ;
 - 3.5.3.5. procure, install and operate communication, control and administrative systems necessary for the efficient operation of the Terminal;
 - 3.5.3.6. in the future and in accordance with clause 30.4.1, promote customer relations and market the LNG Terminal to potential customers;
 - 3.5.3.7. to the extent that the relevant service at the Terminal is not provided by the TNPA, be responsible for the disposal of garbage and waste, including garbage and waste generated by LNG Carriers visiting the LNG Terminal;
 - 3.5.3.8. keep the LNG Terminal in a clean, orderly and sanitary condition;
 - 3.5.3.9. comply with all applicable provisions of the Act, the Port Rules, the Regulations and any directives issued in terms of the Act;
 - 3.5.3.10. comply with the requirements of SAMSA, including any applicable legislation and codes relating to safe working practices;
 - 3.5.3.11. comply with the ISPS Code and the IMDG Code in relation to security and dangerous goods, respectively; and
 - 3.5.3.12. comply with all other applicable legislation and generally conduct its activities and operations in accordance with the Law.
- 3.5.4. The Terminal Operator may not:
- 3.5.4.1. use the Terminal for residential purposes or as sleeping quarters, save that the TNPA may in writing authorise a portion of the Terminal to be used as sleeping quarters for operational or security purposes;
 - 3.5.4.2. do or cause anything to be done that may cause a nuisance to the TNPA or to any other port service provider or the occupants of adjoining properties or the operators of nearby offshore facilities;
 - 3.5.4.3. do anything that materially detracts from the appearance of the Terminal;
or
 - 3.5.4.4. undertake the Services in any area within the Port, other than in the Terminal, unless with the TNPA's prior written consent or with permission from another person legally in control of the area.

3.5.5. The Terminal Operator shall take all reasonable steps to prevent the spilling, leaking of the Cargo and or any other matter at the Port or into the Port's water. The Terminal Operator shall:

3.5.5.1. immediately notify the TNPA if any Cargo and or any other matter is spilled, leaked or dropped in the water as a result of its operation of the LNG Terminal or the conduct of its employees, agents, service providers, Subcontractors or persons responsible for the LNG Carriers calling at the LNG Terminal; and

3.5.5.2. immediately take steps to recover such Cargo or otherwise deal with same to prevent the contamination of the Environment.

3.5.6. If the Terminal Operator fails to recover any spilled Cargo and or any other matter as envisaged above, the TNPA may take whatever steps are necessary to recover the Cargo, and or any other matter and to claim the reasonable costs of taking such steps from the Terminal Operator, without prejudice to its right to terminate this agreement in terms of clause 45 of this Agreement.

3.6. Terminal Operator's Replacement, Repair and Maintenance Obligations

3.6.1. The Terminal Operator shall generally be responsible for maintaining the LNG Terminal and shall at its own cost undertake all maintenance and make all repairs, renewals and replacements necessary for the efficient operation of the LNG Terminal, and shall specifically be responsible for the following:

3.6.1.1. The maintenance, repair and or replacement of the Terminal Infrastructure (including the surface of the quay, if applicable) and Terminal Equipment in accordance with the provisions of clause 30.2. which must always be maintained and kept in good order and condition, in accordance with the standards of a Reasonable and Prudent Operator, International Best Practice and the international standards for a terminal comparable to the LNG Terminal.

3.6.1.2. The maintenance, repair and or replacement of Common User Infrastructure in accordance with the provisions of clause 30.2. which must always be maintained and kept in good order and condition, in accordance with the standards of a Reasonable and Prudent Operator, International Best Practice and the international standards for a terminal comparable to the LNG Terminal.

3.6.1.3. The Terminal Operator shall in addition provide additional equipment or replace equipment in order to ensure the efficient operation of the LNG

Terminal in accordance with the standards of a Reasonable and Prudent Operator, International Best Practice and the international standards for a terminal comparable to the Terminal.

3.6.1.4. The Terminal Operator shall conduct annual inspections of the LNG Terminal and must prepare annual reports on those inspections, which reports must be submitted to the TNPA, at least 2 (two) Months prior to the start of each of the Terminal Operator's Financial Years.

3.6.1.5. The Terminal Operator shall provide the TNPA with an annual maintenance programme for the LNG Terminal and a replacement programme for the Terminal Equipment, at least 2 (two) Months prior to the start of each of the Terminal Operator's Financial Years.

3.7. Surfaces and Access to the Terminal

3.7.1. The Terminal Operator shall, at its own cost, construct or maintain in good order and condition such surfaces as may be required within the LNG Terminal for the provision of the Services and the performance of the activities contemplated in this Agreement.

3.7.2. The Terminal Operator shall ensure that all LNG Carriers mooring at the LNG Terminal shall be scheduled by way of a LNG Carriers calling schedule so as to minimise congestion and any queuing of the LNG Carriers outside the LNG Terminal.

3.7.3. The TNPA's duly authorised agents, employees and contractors shall have the right of access to the LNG Terminal for purposes of performing the TNPA's functions, provided that the TNPA ensures that its agents, employees and contractors comply with all reasonable safety and security stipulations, environmental and site rules of the Terminal Operator whilst in the LNG Terminal.

4. Duration of this Agreement

4.1. This Agreement shall commence on the Effective Date and shall continue for a period of 25 (twenty-five) years during which time the Terminal Operator shall be required to under the project and which is inclusive of

4.1.1. a period of 6 (six) months to complete the Detailed Designs and Specifications for the LNG Terminal

4.1.2. a period at least 12 (twelve) months from the Effective Date for the Terminal Operator obtain all Consents and Environmental Authorisations to undertake the Project;

- 4.1.3. a period of at least 24 (twenty - four) months from the date the Terminal Operator is issued with an Environmental Authorisation to complete the Construction and commissioning of the LNG Terminal;
- 4.1.4. an Operating Term that commences on the Actual Operations Commencement Date and which comes to an end on the Expiry Date.
- 4.2. This Agreement shall come to and end and terminate on
- 4.2.1.its termination in accordance with Part VII (*Termination*); or
- 4.2.2.the Expiry Date,
- (such period being the "**Term**" of this Agreement).
- 4.3. The TNPA shall within its sole discretion be entitled to extend the duration of this Agreement on such terms and conditions as it determines, unless otherwise agreed, in the event that the Terminal Operator submits a bankable business case and financial model for the development and landside LNG storage and regasification facilities on the Project Site and demonstrates that extended tenure is required to enable the Terminal Operator to make whatever capital investment it is required to make.

5. Concession Fee

- 5.1. The Terminal Operator shall pay to the TNPA, upon signature of this Agreement, a Concession Fee in respect of the granting to the Terminal Operator of the right to operate and maintain the LNG Terminal for the Term of the Agreement, which sum shall comprise of:
- 5.1.1. R.....per square meter of land and water area occupied and used by the Terminal Operator in advance for the Construction Period;
- 5.1.2. R.....per square meter of land and water area occupied and used by the Terminal Operator, for the Operating Term;
- which amount shall be paid monthly in advance on or before the 1st day of each and every month for the first Contract Year of this Agreement ("the Concession Fee Commencement Date").
- 5.2. Thereafter the monthly Concession Fee payable by the Terminal Operator in terms of clause 5.1. shall be reviewed and or escalated annually in accordance with the following principles:

- 5.2.1. For the period commencing [insert], the monthly Concession Fee amount shall be escalated by TNPA on each anniversary of such date by% (.... per centum) per annum, with the first such escalation being based on the amount that was payable in terms of clause 5.1. above;
- 5.2.2. For the 5 (five) year period commencing [insert] and for each subsequent period of 5 (five) years, the Concession Fee payable shall be a market related Concession Fee and escalation determined in accordance with the remaining provisions of this clause;
- 5.2.3. No later than 6 (six) months prior to the expiry of the first 5 (five) Contract Year period referred to in clause 5.2.2. or the expiry of each subsequent discrete 5 (five) Contract Year period thereafter, the Parties shall meet in order to endeavour to agree the Concession Fee and the annual escalation that shall apply in respect of the subsequent 5 (five) Contract Year period.
- 5.2.4. Should the Parties not be able to agree upon the Concession Fee and escalation rate in terms of clause 5.2.3 above, the Concession Fee and escalation rate shall be determined by a registered Transnet approved Valuer (or such other Valuer as Transnet may appoint) and a Valuer that the Terminal Operator may appoint.
- 5.2.5. In the event that the two Valuers referred to in clause 5.2.4. fail to reach agreement, within a period of 14 (fourteen) days from the date of referral thereto, the Concession Fee and escalation rate shall be determined by an expert Valuer mutually agreed upon by the Parties ("External Valuer").
- 5.2.6. In the event that Parties fail to agree on an Expert Valuer within 10 (ten) days after the expiry of the said 14 (fourteen) day period, the dispute shall be referred to the Chairman of the South African Council for the Property Valuers Profession who shall appoint a Valuer of at least 10 (ten) years standing for the purpose of determining the Concession Fee and escalation rate ("SAIV Valuer").
- 5.2.7. Forthwith following the appointment of the External Valuer, or the SAIV Valuer, as the case may be, each Party shall submit a written Concession Fee estimate to such Valuer, together with any information supporting such estimate.
- 5.2.8. The External Valuer or SAIV Valuer, as the case may be, will act as an expert (and not as an arbitrator) and, within 30 (thirty) days after being appointed, will determine the Concession Fee and the escalation rate for the Site for the relevant Concession Fee review period, which determination shall be reduced to writing and shall be final and binding on the parties.

- 5.2.9. The costs of the External Valuer or the SAIV Valuer, as the case may be, shall be borne equally by the parties.
- 5.2.10. Notwithstanding anything to the contrary contained in this Agreement, pending the determination of the Concession Fee and the escalation rate applicable during any Concession Fee review period, the Terminal Operator shall continue to pay Concession Fee equal to the Concession Fee which prevailed in the month immediately prior to the dispute referred to in clause 5.2.4. until such determination is made. Thereafter, if applicable, the Terminal Operator shall on demand pay any additional amount it would have had to pay in respect of the period from the date of the dispute arising to the end of the month during which the determination is made.
- 5.3. The Terminal Operator shall not be entitled to set-off against the bank guarantee referred to in clause 5.1.8 any amount owed to TNPA in terms of or arising out of this Agreement.
- 5.4. Except if TNPA otherwise agrees in writing, all payments shall be made in Rand.
- 5.5. All payments to be made in terms of this Agreement by the Terminal Operator to TNPA shall be made in full without set-off or counterclaim in immediately available funds, free of bank exchange or any other charges or deductions, electronically into the following bank account:
- 5.6. TNPA shall be entitled in its sole and absolute discretion to appropriate or re-appropriate any amounts received from the Terminal Operator towards the payment of any other amounts owing by the Terminal Operator to it.
- 5.7. The Terminal Operator shall, no later than the Concession Fee Commencement Date, furnish to TNPA an unconditional bank guarantee in an amount equal to ...(quantum of guarantee to be inserted))months Concession Fee as payable during the first year, excluding VAT thereon (the "Guarantee") as security for the payment of any and all amounts payable by the Terminal Operator in terms of this Agreement. The Guarantee shall be in favour of TNPA and shall have a term no shorter than the full duration of this Agreement and any renewal or extension thereof. In addition, the Guarantee shall be the security for the payment of any and all amounts payable by the Terminal Operator in terms of this Agreement. The Terminal Operator shall be required, annually within 30 (thirty) days after expiry of the annual anniversary of the Concession Fee Commencement Date, to increase the amount of the Guarantee to such amount as is equal, at the relevant time, to an amount of 3 (three) months Concession Fee, excluding VAT thereon.
- 5.8. TNPA shall have the right to apply the whole or portion of the Guarantee towards the payment of any amounts owing by the Terminal Operator, when any such amount has not

been paid within 15 (fifteen) Business Days of written notice requesting such payment that is due and payable. If any portion or the whole of the guaranteed amount is so applied, the Terminal Operator undertakes, within 30 (thirty) days of receipt of request from TNPA, to reinstate the amount of the Guarantee to the original amount.

- 5.9. The rights and claims to the Guarantee shall be retained by TNPA until the termination of this Agreement, the vacating of the Terminal by the Terminal Operator and the complete discharge by the Terminal Operator of all its payment obligations under the Agreement, whereafter the rights and claims to such amount (or the remaining balance thereof in the event that a portion thereof has been applied by TNPA in terms of clause 5.1.9. shall then be returned to the Terminal Operator.
- 5.10. The Concession Fee is payable irrespective of the performance and volume handled at the Terminal.

6. Ownership and Transfer of the Project Site and the LNG Terminal

- 6.1. The Terminal Operator agrees and acknowledges that the TNPA is and shall at all times be the owner of the Project Site.
- 6.2. The Terminal Operator shall transfer the Port Infrastructure to the TNPA on the commissioning thereof and once the TNPA has reimbursed the Terminal Operator for the fixed lump sum capital expenditure incurred by the Terminal Operator in undertaking such works.
- 6.3. The Terminal Operator shall transfer the Common User Infrastructure to the TNPA on the commissioning thereof and once the TNPA has reimbursed the Terminal Operator for the fixed lump sum capital expenditure incurred by the Terminal Operator in undertaking such works.
- 6.4. Terminal Operator shall transfer all rights title and interest in and to the Terminal Infrastructure developed to undertake the Project, to the TNPA at no cost on the Expiry of the Agreement and in the event that the TNPA does not require the Terminal Operator to undertake the Decommissioning of the Terminal Infrastructure as provided for in clauseof this agreement.
- 6.5. The Terminal Operator hereby grants to TNPA the first option to purchase the Terminal Equipment on the following terms and conditions:
- 6.5.1. the option shall be exercisable by written notice given by the Terminal Operator to the TNPA at any time between the date on which notice of termination of this

Agreement is given by either Party to the other in terms of this Agreement and the Termination Date and at least two (2) years prior to the Expiry Date;

- 6.5.2. the purchase price for the Terminal Equipment shall be its fair value as agreed by the Terminal Operator and TNPA as at the Termination Date;
- 6.5.3. the Parties shall use their reasonable endeavours to agree the purchase price and complete the transfer of the Terminal Equipment to the TNPA within [30] days after the Termination Date and or Expiry Date, failing which the TNPA shall be deemed not to have exercised the option, and the option shall no longer be capable of being exercised.
- 6.6. At least 2 (two) Contract Years prior to the expiry of the Operating Term, TNPA shall notify the Terminal Operator whether it is required to Decommission Terminal Infrastructure and Terminal Equipment. Should TNPA notify the Terminal Operator to Decommission the Terminal Infrastructure and Terminal Equipment, the Terminal Operator shall decommission, demolish and remove all or the selected Terminal Infrastructure during the Decommissioning Period.
- 6.7. Upon the termination for any reason or expiry of the Operating Term or subject to clause 6.6, (the Decommissioning Period), the Terminal Operator will be required to:
 - 6.7.1. give free and vacant possession of the Terminal, the Project Site, the Terminal Infrastructure and subject to clause 6.3, the Terminal Equipment to TNPA;
 - 6.7.2. hand over all associated manuals, certificates and documents in respect of the Terminal Infrastructure and the Terminal Equipment, if applicable;
 - 6.7.3. leave the Project Site in a safe, clean and orderly condition in accordance with the terms and conditions contained in the Draft Terminal Operator Agreement.
- 6.8. Subject to clause 6.3, the TNPA shall not be liable for any Decommissioning Costs and related costs which shall be for the account of the Terminal Operator.

7. Indemnity

- 7.1. Subject to clauses 7.2 and 7.4, the Terminal Operator shall fully and effectively indemnify and hold the TNPA or any Port User harmless in respect of all Losses suffered or incurred by the TNPA, or any Port User which arise in connection with the breach of this Agreement or the Laws by the Terminal Operator, including, without limitation to the generality of the foregoing, any Losses which may be incurred or suffered by the TNPA, or any Port User, in respect of personal injury (including injury resulting in death).

- 7.2. Clause 7.1 shall not apply to:
- 7.2.1. any Losses to the extent that they arise directly from the wilful default of the TNPA or the relevant Port User;
- 7.2.2. Losses to the extent that the TNPA or the relevant Port User is reasonably able to mitigate such Losses.
- 7.3. If the Terminal Operator pays to the TNPA an amount in respect of Losses and the TNPA subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise howsoever) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the Losses, the TNPA shall forthwith repay to the Terminal Operator:
- 7.3.1. an amount equal to the sum recovered or the value of the savings or benefit obtained, less any reasonable costs and expenses incurred by the TNPA in recovering the same; or
- 7.3.2. if the figure resulting under clause 7.3.1 above is greater than the amount paid by the Terminal Operator to the TNPA in respect of the Losses, such lesser amount that has been paid by the Terminal Operator to the TNPA.
- 7.4. The Terminal Operator shall indemnify the TNPA in respect of all Losses relating to the use or infringement or alleged use or infringement by the Terminal Operator of Intellectual Property Rights.
- 7.5. Except as expressly provided in this Agreement, the Terminal Operator shall not make any claim against the TNPA or any Port User in respect of any Losses sustained by the Terminal Operator by reason of or arising out of or in any way connected with the performance of this Agreement.
- 7.6. For the avoidance of doubt, this clause 7 (*Indemnity*) shall take effect without prejudice to the Terminal Operator's obligations under the other provisions of this Agreement.
- 7.7. The TNPA agrees that it will forthwith notify the Terminal Operator of any claim or any matter or thing which comes to its attention and which may give rise to a claim by the TNPA against the Terminal Operator under this Agreement pursuant to this clause 7 (*Indemnity*), as follows:
- 7.7.1. The TNPA will at all times after such notification, disclose in writing to the Terminal Operator all information and documents relating to such claim and the matter giving rise thereto and will allow the Terminal Operator to see appropriate files and records relating to the same and take copies of all relevant documents.

- 7.7.2. The TNPA will take such action as the Terminal Operator may reasonably request at the Terminal Operator's expense to avoid disputes, settle, compromise, defend or appeal against such claim and the TNPA will take no steps to avoid disputes, settle, compromise, defend or appeal against such claim without the Terminal Operator's consent, which consent shall not be unreasonably withheld or delayed. The Terminal Operator shall procure that its Subcontractors shall provide identical undertakings to the TNPA.

8. Related Party Transactions

- 8.1. Unless otherwise agreed to by the TNPA and without prejudice to the provisions of clause 8.3, the Terminal Operator shall not enter into any Related Party Transactions which are no less favourable to the Terminal Operator than those that could have been obtained in a comparable arm's length transaction by the Terminal Operator with a person who is not a Related Party.
- 8.2. The TNPA shall have the right to review the basis for all costs charged, directly or indirectly, to the Terminal Operator under any Related Party Transaction. The Terminal Operator shall give prior notice to the TNPA of any Related Party Transaction, together with all relevant details relating thereto.
- 8.3. ~~[/The TNPA acknowledges that /the Construction Agreement and the Operations Agreement] are regarded as Related Party Transactions which are no less favourable to the Terminal Operator than the ones that could have been obtained in comparable arm's length transactions by the Terminal Operator with persons which are not Related Parties, provided that, on the dates of signing of the /Construction Agreement and the Operations Agreement], the contract price and the remuneration payable by or to the Terminal Operator, Construction Contractor and the Operator, respectively, do not exceed the relevant amount indicated in the Financial Model.]~~

9. Limitation on financial indebtedness

The Terminal Operator shall not incur, assume or permit to exist any indebtedness including guarantees issued to third parties, the creation of charges, pledges or other encumbrances over its assets and or shares and, in general, any claims and rights otherwise than:

- 9.1. in accordance with the Associated Agreements or the Financing Agreements; or
- 9.2. in the ordinary and normal course of business; or
- 9.3. with the prior consent of the TNPA.

10. Compliance with D&C Specifications and Operating Specifications

- 10.1. The Terminal Operator shall comply with, and shall ensure that its Subcontractors comply with, the D&C Specifications in respect of the Construction Works and the Operating Specifications in respect of the Operation and Maintenance at all times.
- 10.2. The Terminal Operator warrants that the Project shall be carried out in conformity with the D&C Specification and the Operating Specifications using Equipment and materials, which are of suitable quality for the purposes and uses intended and are free of defects and deficiencies. All such work shall be completed and undertaken in accordance with the D&C Specifications and the Operating Specifications to the reasonable satisfaction of the Independent Certifier.
- 10.3. The Terminal Operator shall ensure that any decision, determination, instruction, inspection, examination, testing, consent, approval, expression of satisfaction, acceptance, agreement, exercise of discretion (whether sole or otherwise) or similar act by any Responsible Authority or the Independent Certifier in respect of this Agreement or the Associated Agreements shall be applied for or requested promptly by the Terminal Operator.

11. Contracts

- 11.1. The Terminal Operator shall enter into the Associated Agreements, the Financing Agreements and such other contracts as are necessary to ensure the timeous and proper completion and undertaking of the Project in accordance with the D&C Specifications and the Operating Specifications. The Terminal Operator shall satisfy itself that the terms of such agreements fully describe the rights, obligations, risk allocation and protection of the Terminal Operator's rights. None of the TNPA, any other Responsible Authority or their respective officers, employees, agents and or representatives shall have any liability whatsoever to the Terminal Operator arising from the Associated Agreements and or the Financing Agreements except as provided in or arising from this Agreement.
- 11.2. The Terminal Operator shall not:
 - 11.2.1. amend, replace or cancel any term of the Associated Agreements or the Financing Agreements;
 - 11.2.2. terminate any of the Associated Agreements or the Financing Agreements;
 - 11.2.3. replace the Construction Contractor or the Operator or the Regasification and Storage Unit Provider;

- 11.2.4. enter into a new Construction Agreement, Operations Agreement or Charter Agreement;
 - 11.2.5. consent to the cession, delegation or novation of any Associated Agreement and or the Financing Agreements,
- without the prior written consent of the TNPA.

12. Environmental Compliance

- 12.1. The TNPA shall procure that the Consents set out in table A of Schedule 9 in terms of Environmental Laws are transferred to the Terminal Operator on or before the Effective Date.
- 12.2. Notwithstanding the above, the Terminal Operator shall be responsible for obtaining all the Consents that are required in respect of the Project in terms of any Environmental Laws and shall comply with, maintain and implement such Consents in accordance with their respective terms within the period of their validity. The TNPA shall use its reasonable endeavours to assist the Terminal Operator to obtain such Environmental Consents, heritage Consents and other Consents as may be required to enable the Terminal Operator to execute the Project, provided that the TNPA shall bear no liability or responsibility for any failure of the Terminal Operator to obtain such Consents save as provided in this Agreement.
- 12.3. The Terminal Operator shall take all necessary steps to ensure that appropriate pollution control and other environmental protection measures are taken in accordance with the Environmental Laws. The Terminal Operator shall comply with the Environmental Management Plan at all times.
- 12.4. Upon written request by the TNPA, the Terminal Operator shall conduct an environmental site assessment, at the Terminal Operator's expense and within the period specified by the TNPA, in respect of all the works conducted at the Port.
- 12.5. Such environmental site assessment shall:
 - 12.5.1. include a systematic identification and evaluation of any potential impacts of any current or proposed work on the environment, this includes biophysical, biological, social, cultural, economic, aesthetic and technological aspects, to such an extent that those aspects are relevant to the works conducted at the Port;
 - 12.5.2. be conducted by an independent environmental assessment practitioner;

- 12.5.3. form part of the Terminal Operator's Environmental Management Plan (the "**EMP**") and inform the Terminal Operator's Environmental Management System (the "**EMS**"); and
- 12.5.4. comply with any other reasonable requirements stipulated for such an assessment by the TNPA.
- 12.6. Within a period of 3 (three) months of the **[Actual Operations Commencement Date]**, the Terminal Operator shall submit, for the approval of the TNPA, the EMP which shall comply with National Environmental Management Act, 107 of 1998 ("**NEMA**") and the TNPA's written requirements (which requirements shall be provided to the Terminal Operator). The EMP and EMS shall be developed and implemented by the Terminal Operator for the duration of this Agreement. The EMP and EMS shall be binding upon the Terminal Operator.
- 12.7. The TNPA shall have the right at all times to conduct audits of the Terminal Operator's compliance with the EMP and the EMS. If, and where the TNPA is of reasonable belief that there is non-compliance, inefficiency or inadequacy, then the TNPA may require that the Terminal Operator rectify such non-compliance, inefficiency or inadequacy, without any delays, to the reasonable satisfaction of the TNPA.
- 12.8. The Terminal Operator, as required by law, shall comply with:
 - 12.8.1. all the requirements of the South African Maritime Safety Authority (the "**SAMSA**") in relation to the environment;
 - 12.8.2. all the conditions laid down in respect of the LNG Terminal , if the LNG Terminal is declared as a protected natural environment or a special nature reserve;
 - 12.8.3. the TNPA's requirements for the regular waste removal, including waste originating from cleaning or unloading of LNG Carriers;
 - 12.8.4. all the conditions in environmental permits, consents, licences, certificates, authorisations, orders and exemptions from the Responsible Authority in respect of the LNG Terminal ; and
 - 12.8.5. all applicable statutory requirements related to the environment including NEMA, the National Water Act, 36 of 1998, the Air Quality Act, 39 of 2004 and the Biodiversity Act, 10 of 2004, and any other environmental legislation enacted or promulgated before or after the Effective Date.

- 12.9. The TNPA shall appoint, at the Terminal Operator's reasonable cost, and with the prior approval of the Terminal Operator, which shall not be unreasonably withheld, an independent environmental monitor who shall be responsible for:
- 12.9.1. ensuring that the Construction Works and Operation and Maintenance are performed in accordance with the D&C Specifications, the Operating Specifications and the Environmental Laws; and
 - 12.9.2. monitoring and ensuring the implementation and effectiveness of mitigation measures and other requirements and targets set forth in the D&C Specifications, Operating Specifications and the Environmental Laws.
- 12.10. During the construction, Operation and Maintenance of the Port, and in terms of the Operational Environmental Management Programme (the "**OEMP**"), there are conditional authorisations and or environmental requirements to be fulfilled by the Parties. Such authorisations are set out in Schedule 9 of this Agreement.
- 12.11. The Parties shall review the Environmental Management Plan at the start of each Contract Year in order to ascertain whether that plan needs to be amended or replaced. If the Parties are unable to agree whether the Environmental Management Plan should be amended or replaced or on the contents of such amendment or replacement, then such dispute shall be referred to the monitor detailed in clause 12.9 for determination in terms of clause 53.5 (*fast-track dispute resolution*). The decision of such monitor shall, in the absence of manifest error or fraud, be final and binding on the Parties.
- 12.12. The Terminal Operator shall, upon the request of the TNPA and within a reasonable period of such request, provide the TNPA with certified copies of:
- 12.12.1. all environmental permissions obtained regarding the works and Services it provides at the Port, and, where the permissions are renewable, in each instance a certified copy of a new or updated permission; and
 - 12.12.2. any measurements undertaken of emissions, effluent, storm water quality and material safety data sheet for hazardous substances, which it is, obliged to submit to a Responsible Authority.
- 12.13. The Terminal Operator may, as required by Law, not by any means cause significant pollution or degradation of the environment and shall:
- 12.13.1. provide the TNPA within a reasonable period with certified copies of any notices and directives issued by a Responsible Authority to the Terminal Operator to take steps to address pollution or negative impact on the environment;

- 12.13.2. provide the TNPA with certified copies of any report, including an emergency report, submitted by the Terminal Operator to a Responsible Authority regarding pollution or negative impacts on the environment;
 - 12.13.3. take all reasonable measures as envisaged by applicable Environmental Laws, including NEMA and the National Water Act, 36 of 1998, to investigate, assess and evaluate the impact of its activities on the environment of the Port and on the water resources on or below the Port;
 - 12.13.4. if the Terminal Operator's works and Services directly or indirectly cause any significant pollution, environmental degradation or negative impact on the environment, which is not authorised by the TNPA or a Responsible Authority, the Terminal Operator shall, at its own costs, undertake efficient and effective means of combating, mitigating, cleaning, collecting and or disposing of all pollutants, or of otherwise addressing the environmental damages or other negative impact with the appropriate remedial and or rehabilitative measures, to the satisfaction of the TNPA and any Responsible Authority; and
 - 12.13.5. take every reasonable precaution to prevent the spillage of Cargoes, Gas and or other material (including fuel and waste) from LNG Carriers, [vehicles], Cargo handling equipment and Terminal Infrastructure, and take immediate steps to mitigate and remedy any spillage to the satisfaction of SAMSA and the TNPA, at the Terminal Operator's expense.
- 12.14. If the Terminal Operator fails to comply promptly with any of the obligations imposed under this clause, the TNPA shall be entitled to immediately take whatever steps necessary to combat, mitigate and remedy any such pollution, environmental degradation or other impact on the environment, and to recover all reasonable costs incurred by the TNPA from the Terminal Operator.
- 12.15. Should the TNPA, in writing, determine that the LNG Terminal shall be decommissioned upon cancellation or termination of this Agreement, the Terminal Operator shall develop and submit a Decommissioning-EMP to the TNPA and the Responsible Authority for implementation during the decommissioning phase in terms of the Decommissioning-EMP guidelines, which guidelines shall be provided to the Terminal Operator by the TNPA. The Decommissioning-EMP shall be required to be approved by the TNPA and all applicable Relevant Authorities in order for the duly approved Decommissioning-EMP to be submitted to the TNPA within a period of 6 (six) months after termination.

13. Economic Development Obligations

- 13.1. The Terminal Operator shall comply with the B-BBEE obligations specified in Schedule 10A and the Supplier Development Plan in Schedule 10B of this Agreement for the duration of this Agreement.
- 13.2. [The Terminal Operator shall provide an annual report to the TNPA on the extent to which the Terminal Operator's undertakings contained in this clause 13 and Schedules 10A and 10B have been met, as well as documenting other achievements in promoting the empowerment of the BEE Entities. The Terminal Operator shall, on an annual basis and [by the date determined by the TNPA], provide the TNPA with a certificate of accreditation from an accredited verification agency verifying the Terminal Operator's B-BEEE status.]
- 13.3. If the Terminal Operator fails to achieve the specific and quantifiable targets detailed in Schedule 10A and Schedule 10B within the relevant periods, the Terminal Operator shall pay the Penalties detailed in Schedule 11 in respect of the specific targets, to the TNPA in accordance with Schedule 11.

14. Access to documents, copyright and related matters

- 14.1. The Terminal Operator shall, at no cost to the TNPA or any other Responsible Authority, at any time make available to the TNPA and or such Responsible Authority, as the case may be, upon request by any of them, all documents which are or were acquired or brought into existence by the Terminal Operator for the purpose of or in connection with the Project or supplied to the Terminal Operator from other parties to the Associated Agreements and or the Financing Agreements.
- 14.2. The Terminal Operator shall use its best endeavours to procure that all software, source codes and manuals, programmes and documentation shall be provided to the Terminal Operator by the Operator upon termination of each Operating Contract and that the Terminal Operator shall be granted a perpetual non-exclusive, royalty-free licence to use the same for the continued Operation and Maintenance of the LNG Terminal , which licence shall be transferred to a Substitute Entity or to a third party for continuing the Operation, Maintenance and or upgrade of the LNG Terminal in accordance with the provisions of the Operations Agreement in force at that time.
- 14.3. Copyright owned by the Terminal Operator, Construction Contractor or Operator in all Project Documents shall be transferred free of any cost to the TNPA on termination of this Agreement or expiry of the Operating Term, whichever is the earlier.
- 14.4. Copyright in the D&C Specifications, the Operating Specifications and other documents issued by the TNPA or the Terminal Operator, to the extent that the Terminal Operator is

the owner of the copyright in any such documents, shall be the property of the TNPA and, to the extent necessary, shall be ceded, assigned and made over to the TNPA. The Terminal Operator may at its cost (and shall allow other parties to the Associated Agreements and the Lenders and prospective Lenders at their cost to), copy, use and communicate any such document for the purposes of the respective Associated Agreements and Financing Agreements. The Terminal Operator shall not (and shall ensure that other parties to the Associated Agreements, the Lenders and prospective Lenders shall not), without the TNPA's consent, use, copy or communicate to a third party such documents, except as strictly necessary for the purposes of the Associated Agreements and the Financing Agreements. In addition to and without limiting the foregoing, the Terminal Operator shall deliver the Construction Documents and Operating Documents, and to the extent that the Terminal Operator is the owner of the copyright in any such documents or the Terminal Operator is otherwise lawfully able or entitled to do so, transfer the copyright in such documents to the TNPA on the earlier of:

14.4.1. the termination of this Agreement; or

14.4.2. the termination of the Construction Contract; or

14.4.3. the termination of the Operations Agreement; or

14.4.4. if the appointment of a Substitute Entity and provided that such documents have or such copyright has not already been delivered or transferred to the TNPA, as the case may be, upon the appointment of such Substitute Entity.

14.5. Upon termination of this Agreement due to Terminal Operator Default, the Terminal Operator shall, upon request by the TNPA, provide copies of or access to the TNPA in respect of, or to any other Responsible Authority designated by the TNPA, the Project Documents, which access and copies shall be at no cost to the TNPA or such Responsible Authority, and shall be for their use in relation to the Construction Works and or Operation and Maintenance before the appointment of a Substitute Entity, if any. The Terminal Operator further agrees, upon expiry of the Operating Term or termination of this Agreement for whatsoever cause, to ensure the transfer of ownership of the Project Document (to the extent owned by the Terminal Operator, Construction Contractor or Operator) to the TNPA. The Terminal Operator shall procure that the TNPA is legally entitled to use such Project Documentation and any other information which is not owned by the Terminal Operator, Construction Contractor or Operator and which is necessary for the Construction Works and or continued Operation and Maintenance.

14.6. Save in the course of the proper discharge of its duties hereunder, the Terminal Operator shall not, and shall ensure that other parties to the Associated Agreements and the Financing Agreements shall not, during the Construction Period and Operating Term or at

any time thereafter, disclose to any person (other than to the Lenders or prospective Lenders) or otherwise make use of any information relating to the Project, the TNPA or the Terminal Operator (including, but without limitation, information relating to the Construction Works, Operation and Maintenance, the contents of any documents, including any legal agreements, prepared by or on behalf of the Terminal Operator or to which the Terminal Operator is a party), save for such information that is or comes into the public domain (other than through the default of the Terminal Operator or other parties to the Associated Agreements or the loan agreements), other than with the prior approval of the TNPA. Nothing contained in this clause shall preclude the Terminal Operator from using such information in enforcing its rights against the TNPA or any other person.

- 14.7. Unless otherwise agreed to by the TNPA, and except as provided for in this Agreement or the Associated Agreements, the Terminal Operator and other parties to the Associated Agreements shall have no other interest or benefit in or to not receive any other remuneration in connection with the Project or any part thereof. The Terminal Operator shall not (and shall ensure that other parties, excluding the Lenders acting in their capacity as lenders, to the Associated Agreements shall not) be engaged in any activity which might conflict with the interests of the TNPA under this Agreement or the Associated Agreements, unless such activity is carried out pursuant to the enforcement of its rights thereunder. Nothing in this clause shall prevent the Terminal Operator or the Lenders from enforcing their rights under this Agreement, the Associated Agreements, the Direct Agreement or the Financing Agreements.

15. Performance Guarantees

15.1. Delivery of Performance Guarantees

The Terminal Operator shall obtain, at its own cost, from a bank or a financial institution approved by the TNPA, the Performance Guarantees referred to below in this clause 15 (*Performance Guarantees*), in the form of an on demand guarantee in the format, amount and currencies specified below or in a form mutually agreed between the TNPA and the Terminal Operator. Where applicable, the Terminal Operator shall cede or assign its right, title and interest thereunder and alternatively, where applicable, shall deliver them, to the TNPA on or before the dates specified below.

15.2. Construction Performance Guarantee

- 15.2.1. The Terminal Operator shall obtain the Construction Performance Guarantee, which shall be an on demand guarantee in favour of the Terminal Operator, from the Construction Contractor as at the Effective Date in the amount of R[*insert amount in millions*], (which amount shall reduce to R[*insert amount in*

millions] upon the issue of the Completion Certificate upon completion of the Construction Works as contemplated in clause 28.4 (*completion of Construction Works*) to secure the performance by the Construction Contractor of its obligations in terms of the Construction Agreement, as at the Effective Date.

15.2.2. The Construction Performance Guarantee shall be substantially in the form of the guarantee attached to this Agreement as Schedule 14.

15.2.3. The Construction Performance Guarantee shall be valid from the Effective Date until the expiry of the Completion Defects Rectification Period (as this latter term is defined in the Construction Agreement) and shall be returned to the Terminal Operator within 14 (fourteen) days after the expiry of the Completion Defects Rectification Period.

15.3. **Operating Performance Guarantee**

15.3.1. The Terminal Operator shall obtain the Operating Performance Guarantee, which shall be an on demand guarantee in favour of the Terminal Operator, from the Operator in an initial amount of R[**insert amount in millions]** (in [**insert month and year**] prices) to secure the performance by each Operator of its obligations in terms of each Operating Contract.

15.3.2. Each Operating Performance Guarantee shall be substantially in the form of the guarantee attached to this Agreement as Schedule 15.

15.3.3. An Operating Performance Guarantee shall be provided by the Terminal Operator in respect of each Contract Year after the issue of the Completion Certificate so that the amount to be guaranteed by such Operation Performance Guarantee for each successive year of the Operating Term takes into account any fluctuations in CPI. The Operation Performance Guarantees for the second and successive Contract Years shall be provided not later than 14 (fourteen) days before the expiry of the Contract Year in respect of which such guarantee was provided.

15.3.4. Each Operating Performance Guarantee shall be valid from its commencement until 14 (fourteen) days after the expiry of the Contract Year in respect of which such guarantee was provided and shall be returned to the Terminal Operator within 14 (fourteen) days after such later date.

15.4. **Final Maintenance Guarantee**

15.4.1. The Terminal Operator shall obtain a Final Maintenance Guarantee in favour of the Terminal Operator from the Operator in an amount equal to the aggregate

amount expended by the Operator on Operation and Maintenance (as reported by the Terminal Operator to the TNPA in accordance with clause 32 (*Financial Accounts, Reports, inspection and reporting of changes*)) in the period of time from the commencement of Contract Year [●] of the Operating Term to the end of Contract Year [●] of the Operating Term, and in any event not less than [●] of the average annual gross revenues for Contract Years [[●], [●] and [●]] (all inclusive) of the Operating Term.

15.4.2. The Final Maintenance Guarantee shall be substantially in the form of the guarantee attached to this Agreement as Schedule 16.

15.4.3. The Final Maintenance Guarantee shall be valid from the commencement of Contract Year [●] of the Operating Term until 90 (ninety) Business Days after the expiry or earlier termination of this Agreement. The Final Maintenance Guarantee shall be returned to the Terminal Operator upon the expiry of the Operating Term, subject to the TNPA's right to call such guarantee in respect of any obligations of the Terminal Operator in respect of maintenance of the LNG Terminal as detailed in the Operating Specifications that have not be performed in full or to the TNPA's satisfaction.

15.5. **Security in respect of Decommissioning of the LNG Terminal**

15.5.1. The Terminal Operator shall, in respect of the Decommissioning Costs, for the duration of the Operating Term and or for the entire life of the Project including the LNG Terminal (whichever shall be the latest):

15.5.1.1. either establish a S37A Trust, of which the TNPA is the sole beneficiary, or provide a Decommissioning Costs Bank Guarantee, of which the TNPA is the sole beneficiary, or provide a combination of such trust and bank guarantee;

15.5.1.2. ensure that the Decommissioning Reserves, at all times from [Scheduled Unit Commercial Operations Date or Scheduled Commercial Operations Date (as the case may be)], contain and or provide sufficient funds to undertake the Decommissioning Costs in full, from time to time;

15.5.1.3. if the Terminal Operator issues a Decommissioning Cost Bank Guarantee in favor of the TNPA, which is withdrawn by the issuing financial institution in accordance with its terms, the Terminal Operator shall ensure that a replacement Decommissioning Cost

Bank Guarantee is issued before the lapse of the withdrawn Decommissioning Cost Bank Guarantee; and

- 15.5.1.4. the Terminal Operator shall, on an annual basis (commencing from the Commercial Operation Date) in respect of each Contract Year, ensure that the Decommissioning Reserves contain amounts equal to the Decommissioning Costs designated in the Terminal Operator's Financial Model as the Decommissioning Costs applicable for that Contract Year, by not later than the last day of the relevant Contract Year. The Terminal Operator shall provide confirmation from the Terminal Operator to the TNPA, on an annual basis, of the amount of the Decommissioning Costs that is provided by the Decommissioning Reserves, as well as a reconciliation statement of that amount against the amount of the Decommissioning Costs that is required, in accordance with the Financial Model, to be provided in respect of the relevant Contract Year. The Terminal Operator shall procure that the Terminal Operator ensures that the reconciliation shows that the amounts are the same.

15.6. Terminal Operator's obligations incorporated into Associated Agreements

- 15.6.1. The Terminal Operator shall ensure that the Construction Contractor and the Operator incur the same obligations to the Terminal Operator under each Construction Agreement and Operations Agreement, respectively, as the Terminal Operator has imposed upon it in terms of this Agreement in respect of the Construction Works and Operation and Maintenance.
- 15.6.2. The Performance Guarantees shall also secure the obligations of the Construction Contractor and the Operator under the Associated Agreements in favour of the Terminal Operator.

15.7. Cession of Performance Guarantees

- 15.7.1. It is recorded that the Terminal Operator has ceded to and in favour of the Lenders, as security for the performance by the Terminal Operator of its obligations to the Lenders in respect of the Financing Agreements, all its right, title and interest in and to the Construction Performance Guarantee and the Operating Performance Guarantee. The Terminal Operator hereby irrevocably cedes all reversionary interests in the Construction Performance Guarantee and each Operating Performance Guarantee (which it may have after the aforesaid cession to the Lenders) to and in favour of the TNPA, as security for the Terminal Operator's obligations to the TNPA in terms of this Agreement.

15.7.2. As security for the performance by the Terminal Operator of its obligations to the TNPA in terms of this Agreement, the Terminal Operator hereby irrevocably cedes *in securitatem debiti* to and in favour of the TNPA all its right, title and interest in and to the Final Maintenance Guarantee, with effect from the date such guarantee is executed. The Terminal Operator shall be entitled, but not obliged, to cede any reversionary interest in the Final Maintenance Guarantee (which it may have after the aforesaid cession to the TNPA) to and in favour of any Lender as security for the Terminal Operator's obligations to such Lender under the Financing Agreements.

15.8. Enforcement Action

15.8.1. Pursuant to the cession of the Terminal Operator's right, title and interest, or any reversionary interest, (as the case may be) in and to the Performance Guarantees as contemplated in clause 15.7 (*cession of Performance Guarantees*), such Performance Guarantees shall secure the Terminal Operator's performance of its obligations to the TNPA in respect of the Construction Works and Operation and Maintenance and may be called on by the TNPA to the extent of any losses, costs, damages or expenses suffered or incurred by the TNPA as a result of a breach by the Terminal Operator of the aforesaid obligations including, but not limited to, compensation to the TNPA for any actions taken by the TNPA as a result of such breach by the Terminal Operator of its obligations.

15.8.2. Prior to enforcing any such Performance Guarantee as aforesaid, the TNPA shall give notice to the Terminal Operator, informing the Terminal Operator of the breach giving rise to the right, on the part of the TNPA, to enforce the Performance Guarantee. If such breach is not remedied within the stipulated remedy period (as contemplated in clause 45.4 (*remedy provisions*)), and subject to the terms and conditions contained in the relevant or applicable Performance Guarantee, the TNPA may enforce the applicable Performance Guarantee for an amount equal to any cost, losses, damages or expenses incurred by the TNPA in respect of any such breach by the Terminal Operator.]

16. Project Insurance

16.1. Insurances and information

16.1.1. The Terminal Operator shall, in accordance with this clause 16 (*Project Insurance*), obtain and maintain in effect, at its own cost and expense, such insurance coverage as is required by:

16.1.1.1.any Laws; and

16.1.1.2.the standards of a Reasonable and Prudent Operator.

16.1.2. The Terminal Operator shall take reasonable steps to ensure that its Subcontractors obtain and maintain in effect at all times such insurance cover as is appropriate for a reasonable and prudent contractor.

16.2. Application of insurance proceeds

Unless the TNPA (acting reasonably) otherwise agrees in writing, the Terminal Operator shall apply all proceeds of any insurance claim made due to loss or damage to the Project or any part of the LNG Terminal (other than claims under any loss of revenue policies) towards reinstatement, reconstruction, replacement, repair or renewal of such loss or damage in the first instance.

17. Port Users and Port Rules

The Terminal Operator shall fulfil its obligations, duties and responsibilities under this Agreement and in particular (without limitation) its duties in respect of the provision of the Construction Works, the Operation and Maintenance and the Services:

17.1. so as not to interfere with the use of the Port, its facilities and the Port Infrastructure by other Port Users; and

17.2. in compliance at all times with the Act and the Port Rules.

18. Shareholding in the Terminal Operator

The Terminal Operator shall procure that there is no change in the equity of the Terminal Operator (or in any subsidiary or company of which the Terminal Operator is a subsidiary), unless such change in equity has been approved by the TNPA

19. Assignment

19.1. The Terminal Operator may not assign its rights and obligations under this Agreement to a third party without the written consent of the TNPA which consent shall not be unreasonably held.

19.2. The Terminal Operator may not Assign its rights under this Agreement for the purpose of providing security under the relevant Financing Agreements without the consent of the TNPA which consent shall not be unreasonably held.

19.3. The TNPA may not Assign all or any part of its rights and or obligations under this Agreement to a creditworthy third party, save with the prior written approval of the Terminal

Operator (such approval not to be unreasonably withheld, conditioned or delayed) or to give effect to any mandatory requirement of any Law, and provided that all of the TNPA's rights and or obligations under the Direct Agreement are assigned together with this Agreement.

20. The TNPA's Assistance and Rights and Limitations on Liability

- 20.1. Except as otherwise provided in this Agreement, the TNPA shall;
- 20.1.1. apply its best endeavours, assist the Terminal Operator in its dealings with any Responsible Authority in connection with implementing the Project in accordance with the terms and conditions set forth herein; and
 - 20.1.2. apply its best endeavours to assist the Terminal Operator to obtain those consents necessary for the Construction Works and Operation and Maintenance or Services, provided that the TNPA shall not be liable or responsible for any failure of the Terminal Operator to obtain any such Consents. If the Terminal Operator fails to obtain any such Consents, the Terminal Operator shall discuss with the TNPA mutually acceptable solutions.
- 20.2. Nothing in this Agreement shall preclude or in any manner limit the rights of the TNPA or any other Responsible Authority from granting such further or other concessions as it in its sole discretion deems fit, nor shall the Terminal Operator have any claim against the TNPA or any other Responsible Authority arising from the grant of such further or other concessions, provided that the TNPA agrees and undertakes for the duration of the Operating Term, and the Construction Period that, subject to Part VI of this Agreement, it will not itself, nor will it grant a concession or similar right to any person to, operate a facility substantially similar to the LNG Terminal at the Port.
- 20.3. The TNPA shall not be liable to the Terminal Operator for the volume of demand for the Services.
- 20.4. No warranties, representations or undertakings are given as to the accuracy or completeness of any information provided by the TNPA and any other Responsible Authority and or its advisors. None of the TNPA nor its advisors shall be liable for any error, misrepresentation or omission in any such information.
- 20.5. Notwithstanding anything else contained in this Agreement, the Terminal Operator shall not in any way be relieved from any obligation under this Agreement nor shall it be entitled to claim against the TNPA or any other Responsible Authority and or their respective officers, employees, agents and or representatives on grounds that any information, whether obtained from or made available by the TNPA or any such other Responsible Authority and or their respective officers, employees, agents and or representatives or

otherwise is incorrect or insufficient and shall make its own enquiries as to the accuracy and adequacy of that information.

20.6. Where in this Agreement any power, duty, function or discretion is given or is to be carried out or exercised by the TNPA, such power, duty, function or discretion may be carried out or exercised by any person nominated by the TNPA.

21. The TNPA Step-in

21.1. In the event that a serious and urgent risk arises to the health or safety of persons, property, the environment and or to the national and public safety of persons and or to discharge a statutory duty, the TNPA may be authorised by the Minister of Public Enterprises, with the concurrence of the Minister of Transport, to take any action necessary in in respect of the Operation, Maintenance, Construction Works and or the Services of the Port to prevent or curtail the risk or to discharge the statutory duty. The TNPA shall be entitled to take action in accordance with the following provisions:

21.1.1. If pursuant to clause 21.1, the TNPA wishes to take action, it shall as soon as possible after reaching its determination to do so notify the Terminal Operator in writing of:

21.1.1.1. the action it wishes to take;

21.1.1.2. its reasons for taking such actions;

21.1.1.3. the date when it wishes to commence such action;

21.1.1.4. the time period (the "**Step-in Period**") which it reasonably believes will be necessary for such action and which must be a fixed period; and

21.1.1.5. to the extent practicable, the effect of such action on the Terminal Operator on its obligations to perform the Operation and Maintenance and Construction Works, and or Services during Step-in Period.

21.1.2. Following the service of such notice, the TNPA shall take such action as notified under clause 21.1.1 and any ancillary action as it reasonably believes is necessary (the "**Required Action**") and the Terminal Operator shall give all reasonable assistance to the TNPA in the conduct of such Required Action.

21.1.3. If the Terminal Operator is not in breach of its obligations in terms of this Agreement in respect of which the Required Action is proposed to be taken, then for so long as and to the extent that the Required Action is taken, and this prevents the Terminal Operator from providing any part of the Project:

21.1.3.1. the Terminal Operator shall be relieved from such obligations; and

21.1.3.2. in respect of the time period over which such Required Action is conducted and provided that the Terminal Operator provides the TNPA with such reasonable assistance as the TNPA may need in the conduct of such Required Action (such assistance, however, to be at the expense of the TNPA to the extent of any incremental costs), the TNPA shall pay to the Terminal Operator an amount of monies that is equal to the revenue that the Financial Model projects to have been earned by the Terminal Operator at the time of and during the period of the Required Action if the Terminal Operator was fulfilling all its obligations in respect of the Project that are affected by the Required Action over such period.]

21.1.4. If the Required Action is taken as a result of a breach by the Terminal Operator of any of its obligations under this Agreement, then for so long as and to the extent that such Required Action is taken and this prevents the Terminal Operator from providing any part of the Project:

21.1.4.1. the Terminal Operator shall be relieved of its obligations in respect of such part; and

21.1.4.2. the Terminal Operator shall owe the TNPA an amount equal to the TNPA's costs of taking such Required Action,

provided that, if by the expiry of the Step-in Period, the breach still subsists and if it constitutes a Terminal Operator Default, then the TNPA will be entitled to serve a notice in terms of clause 45.3 (*the TNPA's option*) requiring the Terminal Operator to remedy the Terminal Operator Default or to put forward a remedial programme.

PART II – PROVISION OF THE PROJECT SITE AND THE PORT

22. Provision of the Port

TNPA shall provide, manage and maintain the Port, in accordance with the Act and any other Laws that are applicable to such provision, management and maintenance from time to time and in accordance with the Act and other applicable Laws.

23. Project Site

23.1. The Terminal Operator acknowledges that the Project Site as at Signature Date, is occupied by the Outgoing Terminal Operator. The TNPA shall facilitate the handover of

the Project Site from the Outgoing Terminal Operator to the Terminal Operator during the Transitional Period in accordance with the Transition Schedule as set out in clause 28. (Operations Commencement).

- 23.2. As provided for in clause 6 above TNPA, shall remain the owner of the Project Site for the duration of this Agreement. The Terminal Operator acknowledges the ownership rights of TNPA in respect of the Project Site on which the Port is constructed and shall not in any way challenge or procure that any Person challenges or assists any other Person to challenge, such ownership rights and title of TNPA.
- 23.3. The Terminal Operator acknowledges that it does not have and shall not have any rights of title, ownership, lien, leasehold or any other rights in respect of the Project Site, other than the rights of occupation and use as detailed in this Agreement. The Terminal Operator also acknowledges that the Lenders do not have and shall not have any rights of title, ownership, lien, leasehold or any other rights in respect of the Project Site by virtue of providing funding to the Terminal Operator in respect of the Project.
- 23.4. The Terminal Operator shall bear all risks and costs with regard to the physical conditions or obstructions on the Project Site (both above ground and subsurface and whether artificial or not) whether foreseen or unforeseen which are encountered during Construction Works or otherwise. The Terminal Operator shall be deemed as at the date of this Agreement to have satisfied itself in all respects as to the properties, nature, condition and extent of the Project Site.
- 23.5. The Terminal Operator shall, for the duration of this Agreement, have the right to use and occupy the Project Site, commencing on the Effective Date.
- 23.6. The Terminal Operator shall, in respect of its rights of use of the Project Site, pay to the TNPA the Concession Fee amount in accordance with the provisions of clause **Error! Reference source not found.** (*Concession Fee*) of this Agreement.
- 23.7. In addition to the payment of Concession Fee in terms of clause **Error! Reference source not found.** (*Concession Fee*), the Terminal Operator accepts responsibility for the payment of all municipal Operation and Maintenance and Utilities provided in respect of the Project Site, rates, Taxes, charges, levies, assessments or any equivalent taxation which may at any time be levied by a Relevant Authority upon or in connection with the Project Site, in respect of the period covered by this Agreement, other than any Taxes imposed in relation to the receipt by TNPA of the payment detailed in clause **Error! Reference source not found.** or in connection with its disposal of its interest in the Project Site used by the Terminal Operator or in relation to any other amounts received by or

accrued to TNPA as a result of or in connection with this Agreement or the Project Site used by the Terminal Operator. All amounts payable by the Terminal Operator in terms of this clause 21.7 shall be paid monthly within 30 (thirty) days of been issued with an invoice from TNPA.

- 23.8. The Terminal Operator may object to any rates valuation made by any Relevant Authority of the Project Site used by the Terminal Operator or the Project Site of which they form part. The Terminal Operator shall be liable for all costs in prosecuting any such objection and the Terminal Operator shall be entitled to any benefit accruing as a result of a successful objection.
- 23.9. If TNPA is obliged by the Relevant Authority to make payments referred to in clause 23.7, as a result of which TNPA makes such payments on behalf of the Terminal Operator, TNPA shall notify the Terminal Operator in writing about such payments and following such notice the Terminal Operator shall, within 30 (thirty) Days after being called upon to do so, refund to TNPA such payments as TNPA may have made in respect of the rates, Taxes, charges, levies, assessments or equivalent Taxes levied.
- 23.10. TNPA shall use its reasonable endeavours to ensure that no other Port Users negatively affect the use by the Terminal Operator of the Project Site. The Terminal Operator shall not negatively affect the use of the Port by TNPA and the other Port Users, other than the Project Site and then only to the extent detailed in this Agreement.
- 23.11. TNPA shall have the right to enter into and inspect the Project Site and the Terminal at reasonable times and on reasonable notice so as to enable it to inspect the Project Site and the Terminal, to fulfil its obligations of maintenance in respect of the Port and to fulfil its obligations as the port authority of South Africa.
- 23.12. The Terminal Operator shall use the Project Site solely for the uses and purposes contemplated in this Agreement in respect of the Project.
- 23.13. The Terminal Operator shall be responsible for maintaining the Project Site in good condition, fair wear and tear excepted, at no cost to TNPA or any other Port User. TNPA shall maintain or shall use its reasonable endeavours to procure that other Port Users maintain the Port, other than the Project Site, in good condition, fair wear and tear excepted, at the cost of TNPA or the relevant Port User. The Parties shall meet and discuss any intended maintenance or repair activities so as to ensure that such activities are conducted in a manner that minimises any interference with the operations of the other Party.

- 23.14. The Terminal Operator shall not be able to transfer any of its rights in respect of the Project Site or the use thereof to any other Person without the prior written consent of TNPA.
- 23.15. The Terminal Operator shall, subject to TNPA 's approval, provide for:
- 23.15.1.the clearance of the Project Site;
- 23.15.2.any diversions to and re-routing of roads not forming part of the Project Site; and
- 23.15.3.the clearance, relocation and diversion of all Utilities on the Project Site,
- from the date the Project Site is delivered to the Terminal Operator and which are necessary for the execution of the Project.
- 23.16. The Terminal Operator shall, at its cost, apply for all Consents required for the clearance of the Project Site.
- 23.17. The Terminal Operator shall continue to be bound by and shall honour any existing agreements between TNPA and any person, which grant access or way-leaves to the Project Site. The Terminal Operator may, however, apply to TNPA for any necessary modifications or cancellations of such agreements, such application to be made timeously in order to avoid any delay or additional cost. To the extent that TNPA has the right to modify or cancel such agreements, it shall comply timeously with the Terminal Operator's reasonable request to modify and or cancel any such agreements.
- 23.18. TNPA shall make available to the Terminal Operator to the extent that it is able to do so, all of agreements referred to in clause 23.17.

24. Key Personnel and Removal of Personnel

- 24.1. The Terminal Operator shall at all times ensure that it has sufficient suitable and appropriately qualified and experienced personnel to undertake the Project and that such personnel shall be located in South Africa. Without limiting the generality of the foregoing, the Terminal Operator shall ensure that the key personnel positions are always filled as soon as reasonably possible.
- 24.2. The Terminal Operator shall implement all measures as are required by Law and or as may be reasonably necessary to ensure the safety of its employees or Subcontractors and shall provide them or ensure that they are provided, free of charge, with any necessary personal protective clothing and equipment.

- 24.3. The Terminal Operator accepts full responsibility for the training of staff and shall ensure that all its employees and Subcontractors are properly trained for the work they are undertaking and are familiar with safety and security requirements that apply to the Terminal.
- 24.4. The TNPA may require the Terminal Operator to remove any employee or other personnel of the Terminal Operator or any Subcontractor from the Project Site and the Terminal Operator shall do so (subject to applicable law) if in the reasonable opinion of the TNPA such employee or personnel engages in any conduct which might reasonably result in a breach of any provision of this Agreement or threaten public health, safety or security, and the Terminal Operator shall immediately comply and replace such employee or personnel with suitable appropriately qualified and experienced replacements, subject to applicable law.

25. Health and Safety

- 25.1. Within 3 Months of the Actual Operations Commencement Date, the Terminal Operator shall, at its cost, complete a comprehensive risk assessment of its business, in respect of all areas of the Terminal, and the Services or processes it intends to undertake, in accordance with the requirements of the Occupational Health and Safety Act No 85 of 1993, and shall provide the TNPA with a full report on its risk assessment so undertaken within 1 (one) Month of completing the assessment.
- 25.2. The Terminal Operator shall be responsible for:
- 25.2.1. the implementation of and adherence to the IMDG Code and its regulations;
 - 25.2.2. compliance with the Occupational Health and Safety Act No 85 of 1993 and regulations promulgated in terms of that Act;
 - 25.2.3. procuring and implementing systems and Services for the prevention, monitoring, detection and extinguishment of fires or explosions; and
 - 25.2.4. maintaining a working environment which is safe and designed to minimise the risk of injury or illness to any person present on the Project Site and to minimise the risk of loss or damage to Cargoes, LNG Carriers or other moveable and immovable property in accordance with Law and the further written requirements of the TNPA.
- 25.3. Save for the storage of LNG and or Gas, the Terminal Operator may not keep or store on the Terminal any hazardous or flammable substances unless:

- 25.3.1. it reasonably requires such hazardous or flammable substances to be kept or stored to enable it to conduct its business on the Port Site;
 - 25.3.2. it has obtained the prior written approval of the TNPA; and
 - 25.3.3. it complies with the applicable Law in respect of hazardous substances in general and that specific hazardous substance in particular.
- 25.4. In addition to the general Port water network provided by the TNPA, the Terminal Operator shall provide, at its own cost, such fire water network, facilities or equipment, or other protective measures, that are, in the TNPA's reasonable opinion, necessary in order to provide effective fire protection installations and water supply to the Port Site.
- 25.5. The TNPA may, from time to time, require the Terminal Operator, by notice in writing, to provide and install, at the Terminal Operator's cost, such further devices, appliances and installations as the TNPA may reasonably consider necessary to minimise the risk of any fire occurring or to prevent the spread of any fire which may occur. The Terminal Operator shall, when so required, comply with the requirements set forth in such notice within the time period specified in the notice.]

26. Security

- 26.1. The Terminal Operator must ensure, to the extent necessary, that the perimeter of the LNG Terminal is fenced with security fencing of a standard reasonably acceptable to the TNPA and which is in compliance with the ISPS Code, and that such fencing is maintained at that standard (and repaired as necessary) during the term of this Agreement.
- 26.2. The Terminal Operator must otherwise provide for the security of the Terminal Infrastructure and Terminal Equipment at its own cost.
- 26.3. The Terminal Operator shall comply in all material respects with the provisions of the International Maritime Organisation Convention of Safety and Security at Sea, the ISPS Code, and the Terminal Operator shall be responsible for the security of the Terminal and for all persons and movables therein, including Cargoes, and for the implementation of and adherence to the ISPS Code. The Terminal Operator shall submit to the TNPA, within 1 (one) Month of the Actual Operations Commencement Date, a Terminal security assessment and develop a Terminal security plan for security levels 1, 2 and 3, corresponding with normal, medium and high threat situations. The plan shall indicate the operational and physical security measures the Terminal Operator will take to ensure that it normally operates at security level 1. The plan shall also indicate the additional, or intensified, security measures the Terminal Operator will take when instructed to do so by the TNPA, to move to and operate at security level 2, and to operate at security level 3.

The Terminal Operator will nominate a LNG Terminal security officer, organise regular security drills and at all times provide the necessary security equipment on the Terminal.

- 26.4. As part of the Terminal security plan the Terminal Operator shall monitor and control all Cargo, vehicles and people entering and leaving the Terminal and ensure that security communications are always readily available.

PART III – DESIGN AND CONSTRUCTION, OPERATION AND MAINTENANCE

27. Independent Certifier

27.1. Appointment of Independent Certifier

It is recorded that the Independent Certifier has been appointed by the Terminal Operator in terms of the PPA, at the Terminal Operator's cost and expense on terms substantially similar to the terms contained in the Independent Certifier Agreement.

27.2. Performance of duties of Independent Certifier

27.2.1. The Terminal Operator shall provide the Independent Certifier with a copy of this Agreement and shall, to the extent available to the Terminal Operator, provide the Independent Certifier with the requisite information and documentation in order to enable the Independent Certifier to discharge its duties and or obligations. This information includes, but not limited to, the following:

- 27.2.1.1. copies of working drawings, Schedules and specifications prepared by the Terminal Operator and its Subcontractors sufficient to demonstrate compliance of the Terminal Operator and Subcontractor against the requirements of this Agreement;
- 27.2.1.2. copies of the Terminal Operator's correspondence relating to the LNG Terminal or building control matters;
- 27.2.1.3. copies of the Terminal Operator's commission reports;
- 27.2.1.4. copies of the operating and maintenance manual;
- 27.2.1.5. a copy of the health and safety plan of the Terminal Operator; and
- 27.2.1.6. any other information that the Independent Certifier reasonably requires in order to fulfil its duties and responsibilities.

27.2.2. The Independent Certifier shall be required to perform the duties set forth in this Agreement and in the Independent Certifier Agreement.

- 27.2.3. The TNPA and the Terminal Operator shall be entitled to consult with the Independent Certifier on any matter relating to the Project. The TNPA and or the Terminal Operator may request the Independent Certifier to deliver and issue an opinion, instruction, certificate or valuation, or other determination as applicable with respect to all technical matters relating to the Project, in accordance with the provisions of and as contemplated in this Agreement. The Parties agree to comply with such decisions of the Independent Certifier until and unless otherwise determined pursuant to clause 53 (*Dispute Resolution*).
- 27.2.4. The Independent Certifier's duties shall include, but shall not be limited to, the review, inspection, testing, approving and certification of the Construction Contractor's work to ensure proper performance and completion of the Construction Works in accordance with this Agreement, the Construction Agreement and the Independent Certifier Agreement. The Independent Certifier's duties may also include the review, analysis, audit, inspection and testing of the Operator's work to ensure proper Operation and Maintenance in accordance with the terms of this Agreement, the Operations Agreement and the Independent Certifier Agreement.
- 27.2.5. Nothing in this clause shall alter the rights and obligations of the Parties under this Agreement nor prevent the Parties from challenging any opinion, instruction, determination, certification or valuation of the Independent Certifier in accordance with clause 53 (*Dispute Resolution*), provided that the Parties shall comply with such decisions by the Independent Certifier until and unless otherwise determined pursuant to clause 53 (*Dispute Resolution*).
- 27.2.6. If any determination, which the Independent Certifier is required to make in terms of this Agreement or the Independent Certifier Agreement, involves an evaluation or assessment of any matter outside the Independent Certifier's field of expertise as Independent Certifier, the Independent Certifier shall rely on independent expert advice in making such evaluation or assessment.

28. Design and Construction²

28.1. Performance of Preliminary Design and Detailed Design

- 28.1.1. The Terminal Operator shall complete the preliminary design prior to the Effective Date, perform or procure the performance of the Preliminary Design.

² Bidders to note that this clause is drafted on the premise that the Terminal Operator will undertake the design and construction of all the infrastructure and will be revised to the extent that the TNPA confirms that it will undertake the financing, design and construction of the Port Infrastructure and Common User Infrastructure.

28.1.2. The Terminal Operator shall perform or procure the performance of the Detailed Design in accordance with the Detailed Design Procedure and the D&C Specifications.

28.1.3. The LNG Terminal shall be designed and constructed so as to fulfil the following requirements of the Operating Specifications.

28.2. Execution of Construction Works

28.2.1. The Terminal Operator shall perform or procure the performance of the Construction Works in accordance with the provisions of this Agreement and the D&C Specifications provided by the bidder.

28.2.2. The Terminal Operator shall bear sole responsibility for the procurement of all construction materials, the adequacy of the design and compliance with the D&C Specifications provided by the bidder.

28.2.3. The Terminal Operator may submit to the Independent Certifier proposals for modifications by the Terminal Operator to the design, which, in the Terminal Operator's opinion, would improve the quality or safety of the LNG Terminal.

28.2.4. The location, design and construction of any points of access to and or egress from the Project Site both during construction and afterwards shall be in accordance with the D&C Specifications or otherwise be subject to the prior consent of the TNPA and the Terminal Operator.

28.3. Commencement of Construction Works

The Terminal Operator shall be entitled to commence construction of the Construction Works at any time after the Effective Date.

28.4. Completion of Construction Works

28.4.1. Completion of the Construction Works shall be effected not later than the Target Completion Date unless such date is extended in terms of this Agreement.

28.4.2. Upon the Construction Contractor giving notice to the Terminal Operator in terms of the relevant Construction Agreement of the anticipated date of completion of the Construction Works, the Terminal Operator shall promptly and, in any event within 7 (seven) days after receipt of such notice, notify the TNPA and the Independent Certifier of such anticipated date, provided that such notice shall be given not less than 28 (twenty-eight) days before such anticipated date.

- 28.4.3. The TNPA and the Independent Certifier shall inspect the Construction Works on such anticipated date of Construction Completion or as soon as reasonably practicable thereafter, but in any event within 7 (seven) days after such anticipated date.
- 28.4.4. If the Independent Certifier is reasonably of the opinion that completion of the Construction Works has taken place, the Independent Certifier shall forthwith issue the Completion Certificate.
- 28.4.5. If the Independent Certifier is not satisfied that completion as set out in clause 28.4.4 has occurred, the Independent Certifier shall notify the Terminal Operator and the TNPA of such failure to attain completion of the Construction Works within 5 (five) Business Days after the inspection referred to in clause 28.4.3 specifying those elements of the LNG Terminal or other conditions that remain to be satisfied by the Terminal Operator.
- 28.4.6. The issuing of a Completion Certificate shall not be withheld or delayed notwithstanding that minor items have yet to be completed and or attended to and such outstanding items shall be reflected in a Snagging List (as defined in clause 28.4.8).
- 28.4.7. The Independent Certifier shall issue a Completion Certificate within 5 (five) Business Days after the completion, to the Independent Certifier's satisfaction, of the Construction Works specified in the notice contemplated in clause 28.4.5 and the satisfaction of any other conditions specified.
- 28.4.8. The Independent Certifier shall identify in a list ("**Snagging List**") appended to the Completion Certificate any unfulfilled obligations of the Terminal Operator ("**Unfulfilled Obligations**"), which the Terminal Operator has undertaken to complete in respect of the Construction Works and the time within such Unfulfilled Obligations are to be completed or certify that there are no Unfulfilled Obligations in respect of the Construction Works. The Terminal Operator shall attend to such Unfulfilled Obligations within the time specified in the Snagging List.

28.5. Archaeological Matters

- 28.5.1. All fossils, coins, articles of value or antiquity, structures and other remains or things of geological or archaeological interest or burial sites discovered on the Site ("**Archaeological Articles**") shall (as between the Parties) be the property of the TNPA. The Terminal Operator shall take all reasonable precautions to prevent its agents, representatives and employees, labour or other persons from removing or damaging any such Archaeological Articles. The Terminal Operator shall,

immediately upon discovery of such Archaeological Articles, advise the TNPA and the Independent Certifier, who shall issue instructions for dealing with it, accordingly.

- 28.5.2. If the Terminal Operator has suffered delay in the execution of its rights or obligations in terms of this Agreement as a result of having followed the Independent Certifier's instructions as contemplated in clause 28.5.1 or any obtaining the Consents required in respect of such Archaeological Articles and their removal or preservation, the Terminal Operator shall be granted an extension to the Target Completion Date and or the Scheduled Operations Commencement Date, equivalent to the delay suffered in suspending the Construction Works complying with any instructions of the Independent Certifier and the Terminal Operator shall be entitled to compensation for any Losses caused as a result of the discovery of such Archaeological Articles.

28.6. Utilities and Utility Way- Leaves

- 28.6.1. The TNPA shall provide Utilities between the Port Boundary and the LNG Terminal provided that, for the avoidance of doubt, the TNPA shall not be liable or responsible for any Utilities at the LNG Terminal , including the removal and disposal of waste.
- 28.6.2. The TNPA shall have the right to approve the establishment on or over and or relocation from the Port Site, at the request of any public or private Utility, of Utility way-leaves including, but not limited to, power pylons or lines, water or gas pipes and telecommunication lines or pylons.
- 28.6.3. If such establishment and or relocation has delayed the Construction Works or the Scheduled Operations Commencement Date or adversely affected the normal course of Operation and Maintenance, the Terminal Operator shall be granted an extension to the Target Completion Date and or the Scheduled Operations Commencement Date, equivalent to the delay suffered in suspending the Construction Works and the Terminal Operator shall be entitled to compensation for any Losses caused as a result of the establishment and or relocation.

28.7. Information relating to the Project and the Construction Works

- 28.7.1. The Terminal Operator shall furnish to the TNPA, or any of its duly authorised representatives, all such reports and other such information in relation to the Project and the Construction Works as the TNPA may reasonably request from time to time.
- 28.7.2. The Terminal Operator shall cause the Construction Contractor to provide directly to the TNPA copies of the reports of the Construction Contractor as set forth in this Agreement and the relevant Construction Agreement.

28.7.3. Upon completion of any part of the Construction Works, the Terminal Operator shall supply the TNPA with the Construction Documents, copies of all "as-built" drawings and such other technical and design information and completion records relating to the finished Construction Works as the TNPA may reasonably request.

28.8. Disruption to Port and Port Users

The Terminal Operator shall ensure that none of the Construction Works cause any disruption to existing Port Users nor to activities on adjoining land except to the extent that such disruption cannot reasonably be avoided as a result of any Construction Works being carried out. Where disruption cannot reasonably be avoided, the Terminal Operator shall ensure that appropriate traffic and other appropriate management measures are implemented to minimise the effect of any such disruption on Port Users.

29. Commissioning

29.1. Commencement of Operation and Maintenance

The Terminal Operator shall perform or procure the performance of Operation and Maintenance in accordance with the D&C Specifications and the Operating Specifications.

29.2. Inspection

29.2.1. Upon the Construction Contractor giving notice to the Terminal Operator in terms of the Construction Agreement of the anticipated date of Operation Commencement, the Terminal Operator shall promptly and, in any event within 7 (seven) days after receipt of such notice, notify the TNPA, and the Independent Certifier of such anticipated date, provided that such notice shall be given not less than 28 (twenty-eight) days before such anticipated date.

29.2.2. The TNPA, and the Independent Certifier shall, no later than 21 (twenty-one) days before such anticipated date of Operation Commencement, inspect the Construction Works in conjunction with the Terminal Operator to verify whether or not Operation Commencement will be achieved by the anticipated date.

29.2.3. If the Independent Certifier is reasonably of the opinion that Operation Commencement will be achieved by the anticipated date and that provision of the Services can commence from such anticipated date, the Independent Certifier shall within 5 (five) Business Days after such inspection issue the Provisional Operations Certificate to the Terminal Operator.

29.2.4. If any of the conditions set out in clause 29.2.3 have not been satisfied, the Independent Certifier shall, within 5 (five) days after the inspection referred to in

clause 29.2.2, notify the Terminal Operator, and the TNPA of such failure to satisfy the conditions, and shall specify those elements of the Construction Works or other conditions that remain to be satisfied by the Terminal Operator and shall state the date on which the Independent Certifier reasonably estimates those elements or other conditions will be satisfied.

29.2.5. On the date referred to in clause 29.2.4, the Independent Certifier shall again inspect the Construction Works and, if the matters referred to in the notice have been satisfied, the Independent Certifier shall issue the Provisional Operations Certificate forthwith. If necessary, the procedure provided for in clause 29.2.4 shall be repeated until the Independent Certifier has issued the Provisional Operations Certificate. Nothing shall prevent the Independent Certifier from inspecting earlier than the date given by him if so requested by either the Terminal Operator or the TNPA.

29.2.6. On the anticipated date for Operation Commencement determined in terms of clause 29.2.3 or 29.2.5, the Independent Certifier shall inspect the Construction Works and, if he is satisfied that Operation Commencement will be achieved, shall forthwith and on the same day as the inspection issue to the Terminal Operator the Operations Certificate. If the Independent Certifier is not so satisfied, he shall notify the Terminal Operator of those items which require to be attended to in order to achieve Operation Commencement and, when such items have been attended to, the Independent Certifier shall forthwith and on the same day as the relevant items are finally attended to by the Terminal Operator, issue the Operations Certificate to the Terminal Operator.

29.3. Approval to provide Services

29.3.1. The TNPA shall, subject to and in accordance with the provisions of the Act, grant approval to the Terminal Operator to provide the Services and shall at the same time announce the LNG Terminal open and that the Terminal Operator is authorised to charge and collect fees in respect of the Services, with effect from the date that the Independent Certifier issues the Operations Certificate. The date specified by the TNPA in the relevant notice issued in respect of such approval, as the date upon which the aforesaid approval and authorisation comes into operation or takes effect, shall be the Actual Operations Commencement Date.

29.3.2. Notwithstanding but without prejudice to the provisions of clause 29.3.1, the Terminal Operator shall not operate the LNG Terminal or charge or collect fees in respect of the Service until the Independent Certifier has issued the Operations Certificate in terms of clause 29.2.6.

30. Operation and Maintenance

30.1. Obligation to Operate and Maintain

During the Operations Period, the Terminal Operator shall be obliged to undertake Operation and Maintenance subject to and in accordance with the terms of this Agreement.

30.2. Standards of Operation and Maintenance

30.2.1. Operation and Maintenance shall be carried out in accordance with the standards of a Reasonable and Prudent Operator, the Law and in conformity with the standard of care and workmanship prescribed in the Operating Specification, using equipment and materials which are of suitable quality for the purposes and uses intended and free of defects and deficiencies, and in accordance with the Operating Specifications.

30.2.2. Prior to the Target Completion Date, the Terminal Operator shall prepare operation and maintenance manuals based on the Operating Specifications and shall submit such manuals to the TNPA for approval. Once the TNPA has approved such manuals, the manuals shall be the ("**Operation and Maintenance Manuals**").

30.2.3. Any changes to the Operation and Maintenance Manuals, after such manuals have been approved by the TNPA as contemplated in clause 30.2.2, shall require the prior approval of the TNPA.

30.3. Management

30.3.1. The Terminal Operator shall ensure that, subject to the other provisions of this Agreement, the LNG Terminal is open to provide the Services and that the use of the LNG Terminal and provision of the Services are convenient and safe at all times and (for the avoidance of doubt) 24 (twenty-four) hours of each day.

30.3.2. The Terminal Operator shall take all reasonable steps in the performance of its obligations hereunder in such a way so as to prevent the occurrence of any Environmental or health and safety hazards.

30.3.3. The Terminal Operator shall otherwise manage the LNG Terminal and all LNG Carriers using the LNG Terminal in accordance with the Act, the Port Rules, the Operation and Maintenance Manuals and the Operating Specifications.

30.3.4. The Terminal Operator shall at all times exercise the Operating Rights strictly in compliance with the provisions of this Agreement and applicable Law.

30.4. Marketing

- 30.4.1. Upon the written request of the TNPA providing the Terminal Operator with no less than 6 months prior written notice, the Terminal Operator shall actively market the LNG Terminal and the Services internationally. The Terminal Operator shall submit all information, materials, documents and any other data that it intends to use in respect of its marketing campaign in respect of the marketing of the LNG Terminal and the Services to the TNPA for approval prior to its use thereof.
- 30.4.2. Within 30 (thirty) days of the receipt by the TNPA of the information, materials, documents and other data detailed in clause 30.4.1, the TNPA shall either grant or withhold its consent in respect of the use thereof in the marketing of the LNG Terminal and the Services. If the TNPA withholds its consent, it will provide its written reasons for such withholding at the time that it notifies the Terminal Operator that it is withholding its consent. If the TNPA has withheld its consent in respect of any such information, materials, documents or other data, the Terminal Operator shall not be entitled to use it in the marketing of the LNG Terminal and the Services.

30.5. Performance Measures

- 30.5.1. Subject to clause 30.5.6, the Terminal Operator shall, from the first anniversary of the Actual Operation Commencement Date, meet the minimum performance standards to be determined by the TNPA, after consultation with the Terminal Operator, and notified to the Terminal Operator in writing at least 3 (three) Months prior to such anniversary.
- 30.5.2. The minimum performance standards determined in terms of clause 30.5.1 shall be reviewed by the TNPA on an annual basis after consultation with the Terminal Operator, and new minimum performance standards shall be determined by the TNPA and notified in writing to the Terminal Operator prior to expiry of the year in which such review is conducted.
- 30.5.3. The performance of the Terminal Operator will be reviewed quarterly by the TNPA.
- 30.5.4. In order to conduct the quarterly review, the Terminal Operator shall provide the TNPA, within 10 (ten) Business Days after the end of each Quarter, with all information that is, in the reasonable opinion of the TNPA, necessary to conduct the review.

- 30.5.5. The TNPA shall communicate its initial comments and any requests for additional information within 10 (ten) Business Days after information has been provided to the TNPA, by the Terminal Operator in respect of its performance against the agreed TOPS. The TNPA will take into consideration any response by the Terminal Operator to these initial comments and provided that this response is submitted within 10 (ten) Business Days of the initial comments. Where TNPA makes a negative finding regarding any aspect of the performance of the Terminal Operator, it shall give reasonable notice to that effect to the Terminal Operator and representatives of TNPA and the Terminal Operator shall meet to discuss and develop a performance improvement plan or a performance remediation strategy, in terms of which:
- 30.5.5.1. a plan of action with appropriate timelines shall be implemented by the Terminal Operator without delay, and
- 30.5.5.2. the results thereof be submitted within the set timelines to TNPA for review and final decision and/or outcome.
- 30.5.6. When, in the opinion of the Terminal Operator, circumstances occur which may impact negatively on its achievement of its performance targets, the Terminal Operator shall notify the TNPA in writing within 10 (ten) Business Days of the occurrence and both the Terminal Operator and the TNPA shall document the details of the occurrence. The performance standards may be relaxed should the Terminal Operator be prevented or delayed in performing its obligations by reason of a Force Majeure Event. The performance standards may be reviewed and amended, by agreement between the Parties, in the case of any other event or circumstance demonstrably beyond the control of the Terminal Operator, which had a material, negative impact on the achievement of the targets by the Terminal Operator.
- 30.5.7. Subject to the provisions of clause 42, if the Terminal Operator fails to achieve any of the minimum performance standards following receipt of the Annual Report, TNPA shall review compliance by the Terminal Operator with the performance standards annually in respect of the preceding Contract Year.
- 30.5.8. In this clause, **Performance Penalties and Incentives**” shall mean penalties payable by the Terminal Operator to the TNPA for a failure to meet or comply with the minimum performance standards and incentives payable to the Terminal Operator by the TNPA where the minimum performance standards are achieved. The performance standards as set out in Schedule 25 of the TOA shall continue to apply and remain binding on the parties.

- 30.5.9. If Terminal Operator achieves the minimum performance standards as agreed for the Assessment Period, TNPA will notify the Terminal Operator of their entitlement to an Incentive applicable to it as shall be determined in accordance with the cascade formula contained in Schedule 25A (*Penalty and Incentive Cascade Formula*).
- 30.5.10. Subject to the rights of TNPA to terminate this Agreement under clause 39 (Terminal Operator Default), if the Terminal Operator fails to achieve the terminal operator performance standards set out in Schedule 25 (*Performance Standards*) at the conclusion of the year under assessment (the “**Assessment Period**”), and such failure is not attributable to any action, inaction or breach by the TNPA of its obligations under this Agreement (“**Failure**”), the TNPA will notify the Terminal Operator of such Failure and the manner in which the Penalty, as determined in accordance with the cascade formula in Schedule 25A (*Penalty and Incentive Cascade Formula*), shall be imposed.
- 30.5.11. Any monies due to TNPA or due by TNPA pursuant to the provisions of this clause shall be payable over a period of 12 (twelve months) after TNPA has certified (as the case may be) that the Terminal Operator is liable or is entitled (as the case may be) to such payment.
- 30.5.12. The TNPA shall be entitled to set-off any amounts payable as aforesaid against any monies due or which may become due to the Terminal Operator under this Agreement or against any Performance Guarantee provided that, should the Terminal Operator notify TNPA with appropriate supporting information that the Terminal Operator has not committed the breach complained of and that no such right to set-off or deduct penalties has arisen.
- 30.5.13. Any penalty amount payable in terms of this Agreement shall be due and payable within the period specified by the TNPA in writing.
- 30.5.14. In the instance that a dispute arises under this clause, either Party shall approach an “**Independent Expert**” (a person with appropriate expertise) to determine whether TNPA shall be entitled to the aforesaid penalties, the costs of whom shall be borne by the Party that refers the dispute and whose determination shall be final and binding. The payment or set-off of such penalties shall not relieve the Terminal Operator from any liability or any of its obligations under this Agreement.

31. Reporting Requirements

- 31.1. The Terminal Operator shall within 3 (three) Months after the end of the Terminal Operator's Financial Year, submit to the TNPA a report of its Operation and Maintenance during that financial year, including:
- 31.1.1. the quality and level of service in the financial year under review;
 - 31.1.2. its compliance with the terms of this Agreement, the Act and the Regulations;
 - 31.1.3. steps taken to eliminate anti-competitive and discriminatory practices; and
 - 31.1.4. the quality and level of performance with regard to such environmental criteria and social responsibility requirements as may be set by the TNPA or required by other national legislation.
- 31.2. On an annual basis, the Terminal Operator shall submit to the TNPA:
- 31.2.1. such statistical information relating to its operations as may reasonably be required by the TNPA, including but not limited to statistics on the quantity and status of the LNG and or Gas handled at the Port Site; statistics on the number, type and size of LNG Carriers serviced at the Port Site; ~~and~~ statistics on the number of wagons and trucks handled at the Project Site interface with land transport and Container dwell time statistics; and
 - 31.2.2. its Cargo forecast for the remainder of the Operating Term, or such other shorter period as specified, in the form determined by the TNPA.
- 31.3. The Terminal Operator shall, if requested by the TNPA in writing, submit to the TNPA an information summary regarding the information in clauses 31.1 and 31.2, excluding any confidential information and or any information not required to be provided by the Terminal Operator, which summary may be disclosed to members of the public.
- 31.4. Outturn reports in respect of all Cargo unloaded, must be provided to the TNPA by the Terminal Operator on a per vessel basis, 72 (seventy-two) hours subsequent to the LNG Carriers having entered the Port.
- 31.5. The TNPA may require the Terminal Operator, at the Terminal Operator's cost, to submit such additional information as may be necessary to explain or amplify any report or information submitted by the Terminal Operator in terms of clauses 31.1 and 31.2 above.
- 31.6. Any information required by the TNPA must be lodged by the Terminal Operator within the period and in the manner determined by the TNPA.

31.7. The Terminal Operator must, within 24 (twenty-four) hours of its occurrence or discovery, inform the TNPA of:

- 31.7.1. any industrial dispute between the Terminal Operator and its employees;
- 31.7.2. any industrial accident or disaster involving any employee or agent of the Terminal Operator or any injury on duty or fatality;
- 31.7.3. any occurrence of fire within the Port Site;
- 31.7.4. any theft or pilferage within the Project Site or any theft or pilferage involving any Cargo in the Terminal Operator's possession or control;
- 31.7.5. any proceedings or claim instituted or made against the Terminal Operator which could materially affect its ability to perform any obligation or to comply with any term or condition of this Agreement; and
- 31.7.6. any spillage or pollution that may have an impact on the Environment.

32. Financial Accounts, Reports, inspection and reporting of changes

32.1. Financial accounts and auditors

- 32.1.1. The Terminal Operator shall arrange at its own expense and cost for an accounting and cost control system consistent with IFRS and for the appointment as auditors of a firm of independent accountants.
- 32.1.2. The Terminal Operator shall keep all its financial books and records at all times within South Africa. The accounts of the Terminal Operator will be kept in Rand. Such accounts and the reports of such accountants shall be provided to the TNPA.
- 32.1.3. The TNPA may meet with the Terminal Operator's auditors regarding the Terminal Operator's accounts and operations twice in a Contract Year. The TNPA may also, at its own cost, require that officers of the TNPA or a firm of independent accountants conduct additional audits of the Terminal Operator after 10 (ten) days prior notice to the Terminal Operator.

32.2. Right of inspection

- 32.2.1. The Terminal Operator shall furnish to the TNPA any information that the TNPA may reasonably request and shall permit representatives of the TNPA to visit the Construction Works, the LNG Terminal and the Port Site, and any of the other offices where the business of the Terminal Operator is conducted, and to have

access to the Terminal Operator's books of accounts and records, designs, drawings and generally to all information that is customarily available to any shareholder of the Terminal Operator and in connection with the Project, and shall cause the Operator to make such information, books of accounts and records, drawings and other data relating to Operation and Maintenance, available to the TNPA. The Terminal Operator shall provide the TNPA with full read only access to the Operator's computer for the review and monitoring of revenue collection at the LNG Terminal .

32.3. Periodic Reports

32.3.1. The Terminal Operator shall furnish the TNPA, as soon as practicable but in any event not later than 4 (four) calendar months after the end of each Contract Year, with:

32.3.1.1. 3 (three) copies of the Terminal Operator's complete financial statements for such financial year (which are consistent with the books of accounts and prepared in accordance with IFRS), together with an audit report thereon, all in accordance with the requirements of the laws and regulations pertaining to accounting;

32.3.1.2. a copy of any management letter or other communication sent by the auditors to the Terminal Operator or to its management in relation to the Terminal Operator's financial, accounting and other systems, management and accounts;

32.3.1.3. an annual report by the auditors certifying that, based on its said financial, accounting and other systems, management and accounts, the Terminal Operator was in compliance with its financial obligations under the Financing Agreements and as contemplated in the Financial Model as at the end of the relevant financial year or detailing any non-compliance by the Terminal Operator therewith;

32.3.1.4. a reconciliation of the current year's profit and loss account and the budget for the year, and an analysis thereof.

32.3.2. The Terminal Operator shall furnish the TNPA and, as soon as practicable but in any event no later than 45 (forty-five) days after the end of each quarterly period of each Contract Year (except for the last quarterly period of each financial year), with:

- 32.3.2.1. 3 (three) copies of the Terminal Operator's complete financial statements for such quarterly period (which are consistent with its books of account and prepared in accordance with IFRS), including in each such report a balance sheet, a statement of income and a statement of cash flows as of the end of and for such period, and for the period from the beginning of such year to the close of such quarterly period, certified by an officer of the Terminal Operator, all in accordance with the requirements of the laws and regulations pertaining to accounting;
- 32.3.2.2. a report on any factors materially and adversely affecting or which might materially and adversely affect the Terminal Operator's business and operation or its financial condition;
- 32.3.2.3. a list of each of its lenders and creditors to which the Terminal Operator owes a sum in excess of R[*insert appropriate threshold*] (in [*month and year*] prices) including the amounts due to each of them;
- 32.3.2.4. a statement describing in detail any Related Party Transaction during the respective period;
- 32.3.2.5. a report on the implementation and progress of the Project, containing such information as the TNPA may reasonably require and disclosing any factors of which the Terminal Operator is aware materially and adversely affecting or which would be otherwise likely, materially and adversely to affect, the carrying out of the Project; and
- 32.3.2.6. a statement identifying separately the capital costs, construction costs and Operation and Maintenance costs, during the respective period, for the LNG Terminal and the provision of the Services separately.

32.3.3. The Terminal Operator shall furnish to the TNPA as soon as practicable, but in any event no later than 35 (thirty-five) days prior to the end of each Contract

Year, the projected profit and loss account and the budget for the following year, together with an analysis thereof.

32.3.4. The Terminal Operator shall furnish to the TNPA as soon as practicable, but in any event no later than the end of each quarterly period of each Contract Year, projected cash flow for the following quarterly period, together with an analysis thereof.

32.3.5. The Terminal Operator shall immediately report to the TNPA, details of the following events:

32.3.5.1. any charge, lien or attachment imposed on any of the Terminal Operator's property and any seizure thereof which charge, lien, attachment or seizure will have a material adverse effect on the ability of the Terminal Operator to perform its obligations under this Agreement;

32.3.5.2. any transaction in respect of the shares of the Terminal Operator of which the Terminal Operator is aware;

32.3.5.3. any default under any Finance Agreement, the circumstances thereof and possible results as viewed by the Terminal Operator; and

32.3.5.4. any matter the Terminal Operator is aware of, which might influence the validity of this Agreement or any matter that constitutes a material breach, including without limitation, any possible termination event, the circumstances thereof, and possible results as viewed by the Terminal Operator.

32.3.6. The Terminal Operator shall provide a monthly written report to the TNPA with respect to the matters specified in the D&C Specifications and Operating Specifications to be reported relating to provision of the Operation and Maintenance and or the Services.

32.4. **Delivery of Records**

For a period of not more than 4 (four) months following the termination of this Agreement for whatever reason, the Terminal Operator shall retain in safe custody and storage all such records as are referred to in clause 32.3 (*periodic reports*) which were in existence at the date of termination. Upon expiry of such period or such earlier date as may be agreed by the TNPA and the Terminal Operator, the Terminal Operator shall deliver all such records (or where such records are required by legislation to remain with the Terminal Operator or the Terminal Operator's shareholders, copies thereof) to the TNPA or to its

duly authorised representative, in such manner and at such location as the TNPA shall determine. The TNPA shall make such records available for inspection by the Terminal Operator at any reasonable time. All costs of retaining such records in safe storage and delivering the same shall be borne by the Terminal Operator.

32.5. Reporting of Changes

32.5.1. The Terminal Operator shall not without the prior consent of the TNPA:

32.5.1.1. make or allow any change in or to its corporate structure, the Terminal Operator Constitutional Documents or its financial year end;

32.5.1.2. make or allow any material change in the Terminal Operator's organisational structure, or any other material change which might materially adversely affect the performance of the Terminal Operator's obligations under this Agreement;

32.5.1.3. save for the Financing Agreements and the Associated Agreements, enter into any agreement or series of agreements which contemplates or could involve one or more payments by or to the Terminal Operator in the aggregate in excess of the equivalent of R[insert appropriate threshold] (in **[month and year]** prices);

32.5.1.4. enter into any Related Party Transaction, save for the Terminal Use Agreement;

32.5.1.5. enter into any agreement or incur any liability which is not in the ordinary course of business of the Terminal Operator; or

32.5.1.6. make any change in the insurance policies contemplated in clause 16 (*Project Insurance*).

32.5.2. The Terminal Operator shall notify the TNPA of any claim brought or threatened which is reasonably likely to have a material effect on the Terminal Operator or on its ability to perform its obligations under this Agreement.

33. Rights of Access

33.1. Subject to the reasonable safety requirements of the Terminal Operator, the TNPA, the Lenders, the Independent Certifier and or their representatives may, at their own risk, enter upon the LNG Terminal and the Project Site (or any other site or property used by the Terminal Operator for the purposes of the Project) to inspect the Construction Works, the LNG Terminal and Operation and Maintenance, and to monitor compliance by the Terminal Operator with its obligations under this Agreement.

- 33.2. The TNPA, the Lenders, the Independent Certifier and or their representatives may at all times, but subject to the reasonable security and safety requirements of the Terminal Operator, enter upon any property used by the Terminal Operator as training or workshop facilities and places where work is being prepared or materials being obtained for the Project.
- 33.3. The Terminal Operator shall procure that adequate facilities are made available to the TNPA, the Lenders, the Independent Certifier and or their representatives and that reasonable assistance is given for the purposes of clauses 33.1 and 33.2, subject to the Terminal Operator's construction or operational requirements not being adversely affected and to reimbursement of any reasonable costs or expenses of the Terminal Operator.

PART IV – FINANCIAL PROVISIONS

34. Fees in respect of Services

- 34.1. The Terminal Operator shall have the exclusive right and obligation for its benefit and risk to levy and collect fees in respect of the Services in terms of the Terminal Use Agreement, with effect from the Actual Operations Commencement Date.
- 34.2. None of the TNPA or any other Responsible Authority shall incur or assume any liability for or in connection with the fees charged in respect of the Services, any system used in respect of such fees or any defect or deficiency therein in terms of the Terminal Use Agreement.
- 34.3. With effect from the Actual Operations Commencement Date, the Terminal Operator shall apply the initial fee rates which accords and complies with the approved the NERSA approved tariff as revised from time to time and as recorded in the Terminal Use Agreement.

35. Marine services

- 35.1. Marine services shall be provided by the TNPA in accordance with the agreed service between the LNG Carrier agent and the harbour master at the Port, and marine services charges will be payable by the LNG Carrier owners to the LNG Carrier agent to cover for pilotage, tugs or craft assistance, berthing services running of ships lines and LNG Carrier tracking systems. The details of the marine services tariffs as at the Signature Date are stipulated in the table in Schedule 20. The tariffs specified in Schedule 20 are in **[month and year]** prices.

35.2. The TNPA shall provide port and marine services to the Terminal Operator in accordance with its berthing and marine resource policies and procedures, as may be revised from time time.

36. Port Dues

Port dues shall be levied by the TNPA for its costs in providing Port protective works and dredging. The port dues will be payable by the LNG Carrier owner based on each LNG Carrier's technical characteristics. The port dues as at the Signature Date are specified in Schedule 21 and are in **[month and year]** prices.

37. Refinancing

37.1. The Terminal Operator agrees that it shall not be entitled to undertake any refinancing or re-arrangement of its Debt or Equity at any time during the Operating Term unless it has obtained the prior written approval of the TNPA, which consent shall not be unreasonably withheld. The Terminal Operator shall ensure that it obtains the prior written approval of the TNPA in respect of such refinancing or re-arrangement.

38. Penalties

38.1. Subject to the rights of the TNPA to terminate this Agreement and or claim damages or otherwise in respect of any Terminal Operator Default, but not in addition to or in lieu of penalties, if the Terminal Operator fails to perform any of its obligations under this Agreement (a "**Failure**"), the Independent Certifier shall notify the TNPA and the Terminal Operator of such Failure or if there is no Independent Certifier, the TNPA may notify the Terminal Operator of such Failure. If the Terminal Operator fails to rectify such Failure, within such reasonable period of time specified by the Independent Certifier or the TNPA (as the case may be) for such rectification, to the reasonable satisfaction of the Independent Certifier or the TNPA (as the case may be), the latter shall notify TNPA and the Terminal Operator of such Failure or the TNPA may notify the Terminal Operator of such Failure (if there is no Independent Certifier), and the Terminal Operator shall thereupon be liable to pay to the TNPA the penalties specified in relation to such Failure, as set forth in Schedule 11, commencing from the first day of such Failure.

38.2. Any monies due to the TNPA pursuant to clause 38.1 shall be payable by the Terminal Operator within 30 (thirty) days after certification by the Independent Certifier or the TNPA (as the case may be) that the Terminal Operator is liable for such payment to the TNPA and the TNPA shall be entitled to set-off any amounts payable as aforesaid against any monies due or which may become due to the Terminal Operator under this Agreement or against any Performance Guarantee provided that, should the Terminal Operator notify the Independent Certifier with appropriate supporting information that the Terminal

Operator has not committed the breach complained of and that no such right to set-off or deduct penalties has arisen, the Independent Certifier shall determine whether the TNPA shall be entitled to the aforesaid penalties. The payment or set-off of such penalties shall not relieve the Terminal Operator from any liability or from any of its obligations under this Agreement.

39. Foreign exchange risk

To the extent that the Terminal Operator at any time enters into any agreement in any currency whereby the risk of currency fluctuations is hedged, the TNPA shall not in any circumstances be liable for such hedging arrangements and the Terminal Operator shall not enter into in any such arrangements whereby the TNPA is or may become so liable. The costs and losses arising out of such hedging arrangements shall not be included in or form part of the Termination Amount.

40. Default Interest

Interests shall accrue on all overdue amounts payable in terms of this Agreement at the Agreed Interest Rate) plus ~~2~~2% (two percent).

PART V –COMPENSATION AND FORCE MAJEURE EVENTS, CHANGE OF LAW

41. Consequences of a Compensation Event

41.1. If, as a direct result of the occurrence of a Compensation Event:

- 41.1.1. the Terminal Operator is unable to complete the Construction Works before the Target Completion Date or to provide the Services on or before the Scheduled Operations Commencement Date;
- 41.1.2. the Terminal Operator is unable to comply with its obligations under this Agreement; and or
- 41.1.3. the Terminal Operator incurs costs or loses revenue,

then the Terminal Operator is entitled to apply for relief from its obligations and or claim compensation in terms of this clause.

41.2. In order for the Terminal Operator to obtain relief and or claims compensation, the Terminal Operator must:

- 41.2.1. as soon as practicable, and in any event within ~~14~~14 (fourteen) days after it became aware that the Compensation Event has caused or is likely to cause delay, breach of an obligation under this Agreement and or the Terminal Operator to incur costs or lose revenue, give to the TNPA a notice of its claim for

- an extension of time of the Target Completion Date and or the Scheduled Operations Commencement Date, payment of compensation and or relief from its obligations under this Agreement;
- 41.2.2. within **[10 (ten)]** days of receipt by the TNPA of the notice referred to in clause 41.2.1, give full details of the Compensation Event and the extension of time and or any estimated change in project costs claimed; and
- 41.2.3. demonstrate to the reasonable satisfaction of the TNPA that:
- 41.2.3.1. the Compensation Event was the direct cause of the estimated change in project costs and or any delay in the achievement of the Target Completion Date and or the Scheduled Operations Commencement Date; and
- 41.2.3.2. the estimated change in project costs, time lost, and or relief from the obligations under the Agreement claimed, could not reasonably be expected to be mitigated or recovered by the Terminal Operator acting in accordance with International Best Practice.
- 41.2.4. If the Terminal Operator has complied with its obligations under clause 41.2 above, then the Target Completion Date and or the Scheduled Operations Commencement Date shall be postponed by such time as shall be reasonable for such a Compensation Event, taking into account the likely effect of delay;
- 41.2.5. In the case of an additional cost being incurred by the Terminal Operator:
- 41.2.5.1. on or before the Scheduled Operations Commencement Date; or
- 41.2.5.2. as a result of capital expenditure being incurred by the Terminal Operator at any time,
- the TNPA shall compensate the Terminal Operator for the actual estimated change in project costs as adjusted to reflect the actual costs reasonably incurred within **[60 (sixty)]** days of its receipt of a written demand by the Terminal Operator supported by all relevant information;
- 41.2.5.3. in the case of a payment of compensation for the estimated change in the costs of the Project that does not result in capital expenditure being incurred by the Terminal Operator but which reflects a change in the costs being incurred by the Terminal Operator after the Actual Operations Commencement Date, the TNPA shall compensate the Terminal Operator; and or

41.2.5.4. the TNPA shall give the Terminal Operator such relief from its obligations under this Agreement, as is reasonable for such a Compensation Event.

41.3. If the information is provided after the dates referred to in clause 41.2, then the Terminal Operator shall not be entitled to any extension of time, compensation, or relief from its obligations under this Agreement in respect of the period for which the information is delayed.

41.4. If the Parties cannot agree the extent of any compensation, delay incurred, relief from the Terminal Operator's obligations under this Agreement, or the TNPA disagrees that a Compensation Event has occurred (or as to its consequences), or that the Terminal Operator is entitled to any relief under this clause, the Parties shall resolve the matter in accordance with clause 53.5 (*fast-track dispute resolution*).

42. Force Majeure

42.1. If a Party (the "**Affected Party**") is unable to perform all or part of its obligations under this Agreement by reason of Force Majeure, the Affected Party shall, as soon as reasonably practicable, notify the other Party in writing (such notice being a "**Force Majeure Notice**") setting out:

42.1.1. full particulars of the Force Majeure Event;

42.1.2. the impact of the Force Majeure Event on the Affected Party's obligations under this Agreement;

42.1.3. the Affected Party's reasonable estimate of the length of time by which its performance has been and will be affected by such Force Majeure Event; and

42.1.4. the steps which it is taking or intends to take or will take to remove and mitigate the adverse consequences of the Force Majeure Event on its performance hereunder.

42.2. The Affected Party shall have the burden of proving both the existence of any Force Majeure Event and the effect (both as to nature and extent) which any such Force Majeure Event has on its performance.

42.3. If the Parties are, on the basis of the Force Majeure Notice and any supporting documentation, unable to agree as to the existence or as to the effect of a Force Majeure Event by the date falling sixty (60) Days after the receipt by the non-Affected Party of the Force Majeure Notice, either Party shall be entitled to refer the matter to dispute resolution in accordance with clause 53.5 (*Fast-Track Dispute Resolution*).

42.4. If it is agreed or determined that a Force Majeure event has occurred, the Affected Party shall, provided that it has complied with the requirements of this clause 42, not be liable for any failure to perform an obligation under this Agreement as a consequence of such Force Majeure event to the extent only that:

42.4.1. such performance is prevented, hindered or delayed by Force Majeure; and

42.4.2. such failure could not have been mitigated by the Affected Party (acting as a Reasonable and Prudent Operator).

42.5. Provided that the Terminal Operator has complied with the requirements of this clause 42, if the Terminal Operator's performance of all (or part) of its obligations under this Agreement is prevented, hindered or delayed by a Force Majeure event:

42.5.1. occurring prior to Scheduled Operations Commencement Date, then Scheduled Operations Commencement Date shall be extended by a period equal to the period by which its performance is prevented, hindered or delayed by the Force Majeure Event;

42.5.2. occurring after Scheduled Operations Commencement Date but prior to the Actual Operations Commencement Date, then Long Stop Date shall be extended by a period equal to the period by which its performance is prevented, hindered or delayed by the Force Majeure event; and

42.5.3. during any twelve (12) month period commencing on 1 April, where the period by which the Terminal Operator's performance of all (or part) of its obligations under this Agreement has been prevented, hindered or delayed by one or more Force Majeure events (each of which events lasts twenty four (24) hours or longer) for a period in excess of thirty (30) days in such twelve (12) month period, the Expiry Date shall be extended to such date as shall place the Terminal Operator in the same overall economic position (after taking into account any other relief and compensation to which the Terminal Operator may be entitled pursuant to any other provisions of this Agreement for the acts, events or circumstances constituting Force Majeure) as the Terminal Operator would have been in but for the Force Majeure Events which have prevented, hindered or delayed the Terminal Operator's performance, provided further that the aggregate extensions to the Expiry Date under this clause 42.5.3 shall not result in the Expiry Date ~~falling~~ falling more than forty (40) years after Scheduled Operations Commencement Date]. The Terminal Operator shall not be entitled to enforce this clause 42.5.3 pursuant to any Force Majeure Event in respect of which it is entitled to bring a claim under any insurance policy or would have been so entitled had it been in compliance with clause 16.1 (*Project Insurance*).

42.6. The Affected Party shall use all reasonable efforts to mitigate, rectify and overcome the effects of such Force Majeure event and to minimise the effect on the Project and shall give the other Party:

42.6.1. regular reports on the progress of the mitigation measures; and

42.6.2. notice promptly on the cessation of the Force Majeure event.

43. Unforeseeable Conduct

43.1. Should any Unforeseeable Conduct occur which materially and adversely affects the general economic position of the Terminal Operator, the Terminal Operator shall be entitled to such compensation and or relief from the TNPA as shall place the Terminal Operator in the same overall economic position as the Terminal Operator would have been in but for such Unforeseeable Conduct.

43.2. Should any Unforeseeable Conduct occur which materially beneficially affects the general economic position of the Terminal Operator, the Terminal Operator shall pay the value of such benefit to the TNPA so that the Terminal Operator remains in the same overall economic position it would have been in had the materially beneficial Unforeseeable Conduct not occurred.

43.3. The Party claiming the occurrence of the Unforeseeable Conduct ("**Claiming Party**") shall give written notice to the other Party ("**Receiving Party**") containing reasonable particulars of such conduct and its likely economic consequences to the Terminal Operator.

43.4. The Receiving Party shall have 60 (sixty) days from the date of receipt of such notice to effect a remedy for the Unforeseeable Conduct which restores the general economic position of the Terminal Operator to that which it would have been in if such Unforeseeable Conduct had not occurred. If the Receiving Party does not effect such a remedy within such period, the Parties shall consult within 10 (ten) Business Days after the expiration of such period with a view to reaching a mutually satisfactory resolution of the situation. If a mutually satisfactory resolution has not been reached within such 10 (ten) Business Day consultation period, the matter shall be dealt with in accordance with clause 53 (*Dispute Resolution*).

43.5. In so far as the Terminal Operator is the Claiming Party, it shall use all reasonable endeavours to minimise and mitigate the effects of any Unforeseeable Conduct.

43.6. If the Terminal Operator is the Claiming Party, and the remedy contemplated by the TNPA under clause 43.4 is monetary compensation, the TNPA shall have the option to compensate the Terminal Operator as a result of the Unforeseeable Conduct either:

- 43.6.1. in one lump-sum payment, payable within sixty (60) Business Days of its receipt of the notice contemplated in clause 43.4 from the Terminal Operator; or
- 43.6.2. in equal monthly installments for the remainder of the Operating Term, commencing within sixty (60) Business Days of its receipt of the notice contemplated in clause 43.4 from the Terminal Operator, provided that interest shall accrue on the full amount due and payable, at the Agreed Interest Rate, from the due date to, but excluding, the date of final payment.

44. Change in Law

- 44.1. If any Change in Law occurs after the Effective Date, which requires the Terminal Operator to incur any additional Capital Expenditure or Operating Expenditure, then the Terminal Operator shall be entitled to an extension of the Term as shall place the Terminal Operator in the same overall economic position as it would have been in but for such Change in Law, provided that the total extension of the Term shall not exceed ~~ten (10) years~~, and the Terminal Operator shall be entitled to relief from such other obligations to the extent that it is unable to perform or fulfil such obligations as a result of the Change in Law.
- 44.2. The provisions of this clause 44 shall not apply in respect of any Change in Law which:
- 44.2.1. was foreseen or could reasonably have been foreseen by the Terminal Operator on or before the Effective Date as being reasonably likely to occur and to impact the Project; and
- 44.2.2. could reasonably have been foreseen by any person in the position of the Terminal Operator on or before the Effective Date as being reasonably likely to occur and to impact the Project; or
- 44.2.3. relates to any changes in the rates, effect, application, implementation, enforcement or interpretation of any tax of any nature (including income, capital gains and value added taxes), custom duties, dues, levies, stamp duty, excise fees or charges; or
- 44.2.4. arises as a direct or indirect result of any appeal or review being lodged against any amendment to any of the Consents issued in terms of any Environmental Laws; or

- 44.2.5. arises as a direct or indirect result of the Terminal Operator's failure to obtain the conversion of its provisional air emissions licence into a final air emissions licence, in terms of the Environmental Laws, due to its failure to comply with the terms and conditions of the provisional air emissions licence; or
- 44.2.6. arises as a direct or indirect result of any Responsible Authority imposing additional conditions on the Terminal Operator in terms of any Consents issued in terms of any Environmental Laws, pursuant to a review by the Responsible Authority of the Terminal Operator's provisional or [final air emissions licence or waste management licence]; or
- 44.2.7. arises as a direct or indirect result of the Responsible Authority declaring the area in which the Project Site is situated as an air pollution priority area and imposing additional requirements on the Terminal Operator in terms of its [air emissions licence to align with the air quality management plan for that area].
- 44.2.8. The Terminal Operator shall use all reasonable endeavours to minimise and mitigate the effects of any Change in Law on the Terminal Operator.
- 44.3. The Terminal Operator shall not be entitled to claim both Unforeseeable Conduct and Change in Law or a combination of Unforeseeable Conduct and Change in Law in respect of the same event or circumstance or the same series of events or circumstances.
- 44.4. Any Change in Law which constitutes Unforeseeable Conduct shall be dealt with in terms of clause 43(*Unforeseeable Conduct*).

PART VII – TERMINATION

45. Terminal Operator Default

45.1. Definition

"Terminal Operator Default" means any of the following events or circumstances (in each case, other than where solely due to Force Majeure, a Compensation Event, TNPA Default, Change in Law or Unforeseeable Conduct):

- 45.1.1. a resolution being passed or an order being made for the administration or the commencement of business rescue proceedings, winding-up, liquidation or dissolution of the Terminal Operator (in any of these cases, where applicable, whether provisional or final and whether voluntary or compulsory);

- 45.1.2. the Terminal Operator fails to complete the Construction Works on or before the Target Completion Date;
- 45.1.3. the Terminal Operator fails to commence with providing the Services on or before the Long Stop Date;
- 45.1.4. the Terminal Operator commits a breach of any of its material obligations under this Agreement;
- 45.1.5. the Terminal Operator abandons the Construction Works (other than as a consequence of a breach by the TNPA of its obligations under this Agreement);
- 45.1.6. the Terminal Operator ceases to provide all or a substantial part of the Services in accordance with this Agreement (other than as a consequence of a breach by the TNPA of its obligations under this Agreement);
- 45.1.7. the Terminal Operator failing to comply with any provision of clause 18;
- 45.1.8. the Terminal Operator fails to pay any sum or sums due to the TNPA under this Agreement (which sums are not bona fide in dispute) which, either singly or in aggregate, exceeds R[●] (in [month and year] prices) and such failure continues for [60 (twenty)] Business Days from receipt by the Terminal Operator of a notice of non-payment from the TNPA;
- 45.1.9. the Terminal Operator failing to maintain any required insurance in terms of clause 16 (*Project Insurance*);
- 45.1.10. an event of default under the Financing Agreements;
- 45.1.11. any of the warranties in clause 51 (*Terminal Operator Warranties*) fails, at any time during the existence of this Agreement, to be true and correct in all material respects and the Terminal Operator fails to remedy, cure or correct that untruth and incorrectness within a period of one hundred and twenty (120) days of such warranty failing to be true and correct in all material respects;
- 45.1.12. any breach of any provision of this Agreement has occurred more than once and:
 - 45.1.12.1. the TNPA has given an initial warning notice to the Terminal Operator describing that breach in reasonable detail and stating that if that breach persists or recurs then the TNPA may take further steps to terminate the Agreement; and
 - 45.1.12.2. the TNPA has issued a second and final warning notice following the persistence or recurrence of that breach in the period of [45 (forty

five)] days after the initial warning notice, stating that if that breach persists or recurs within the period of [45 (forty five)] days after the final warning notice then the TNPA may terminate the Agreement on [10 (ten)] days' notice to the Terminal Operator.

45.2. Notification

The Terminal Operator shall notify the TNPA of the occurrence, and provide details, of any Terminal Operator Default and of any event or circumstance which is likely, with the passage of time or otherwise, to constitute or give rise to a Terminal Operator Default, in either case promptly upon the Terminal Operator becoming aware of its occurrence.

45.3. TNPA's options

45.3.1. On the occurrence of a Terminal Operator Default, or within a reasonable time after the TNPA becomes aware of the same, the TNPA may:

45.3.1.1. in the case of the Terminal Operator Default referred to in clauses 45.1.1, 45.1.2, 45.1.5, 45.1.6, 45.1.7, 45.1.8, 45.1.9 and 45.1.10 terminate this Agreement in its entirety by notice in writing having immediate effect;

45.3.1.2. and while the same is subsisting, in the case of any other Terminal Operator Default referred in clauses 45.1.3 and 45.1.11, serve notice of default on the Terminal Operator requiring the Terminal Operator at the Terminal Operator's option either:

45.3.1.2.1. to remedy the Terminal Operator Default referred to in such notice of default (if the same is continuing) within [30 (thirty)] Business Days of such notice of default; or

45.3.1.2.2. to put forward within [20 (twenty)] Business Days of such notice of default a reasonable programme for remedying the Terminal Operator Default. The programme shall specify in reasonable detail the manner in, and the latest date by, which such Terminal Operator Default is proposed to be remedied. The Terminal Operator shall only have the option of putting forward a programme in accordance with this clause if it first notifies the TNPA within [15 (fifteen)] Business Days of such notice of default that it proposes to do so.

45.4. Remedy Provisions

45.4.1. Where the Terminal Operator puts forward a programme in accordance with clause 45.3.1.2.2, the TNPA shall have **[15 (fifteen)]** Business Days from receipt of the same within which to notify the Terminal Operator that it does not accept the programme, failing which the TNPA shall be deemed to have accepted the programme. The TNPA shall act reasonably in rejecting the programme. Where the TNPA notifies the Terminal Operator that it does not accept the programme, the Parties shall endeavour within the following **[10 (ten)]** Business Days to agree any necessary amendments to the programme put forward. In the absence of agreement within **[10 (ten)]** Business Days, the question of whether the programme (as the same may have been amended by agreement) will remedy the Terminal Operator Default in a reasonable manner and within a reasonable time period (and, if not, what would be a reasonable programme) may be referred by either Party for resolution in accordance with clause 53.5 (*fast-track dispute resolution*).

45.4.2. If:

45.4.2.1.the Terminal Operator Default notified in a notice of default is not remedied before the expiry of the period referred to in the notice; or

45.4.2.2.where the Terminal Operator puts forward a programme which has been accepted by the TNPA or has been determined to be reasonable and the Terminal Operator fails to achieve any element of the programme or to complete the programme by the specified end date for the programme (as the case may be); or

45.4.2.3.any programme put forward by the Terminal Operator is rejected by the TNPA as not being reasonable, and the dispute resolution procedure does not find against that rejection, then the TNPA may terminate this Agreement in its entirety by written notice to the Terminal Operator with immediate effect, provided that if the Terminal Operator's execution of the programme is adversely affected by the occurrence of a Force Majeure Event or a Relief Event

then, subject to the Terminal Operator complying with the mitigation and other requirements in this Agreement concerning Force Majeure Events or Compensation Events (as the case may be), the time for execution of the programme or any relevant element of it shall be deemed to be extended by a period equal to the delay caused by the Force Majeure Event or Compensation Event (as the case may be) which is agreed by the Parties or determined in accordance with clause 53.5.

45.5. TNPA's costs

45.5.1. The Terminal Operator shall reimburse the TNPA with all costs incurred by the TNPA in exercising any of its rights in terms of this clause 0 (*Terminal Operator Default*) (including, without limitation, any relevant increased administrative expenses).

45.5.2. The TNPA shall not exercise, or purport to exercise, any right to terminate this Agreement except as expressly set out in this Agreement. The rights of the TNPA (to terminate or otherwise) under this clause are in addition (and without prejudice) to any other right which the TNPA may have in law to claim the amount of loss or damages suffered by the TNPA on account of the acts or omissions of the Terminal Operator (or to take any action other than termination of this Agreement).

45.6. Lenders' step-in

Upon the occurrence of a Terminal Operator Default and for so long as such Terminal Operator Default persists, the Lenders shall be entitled to exercise their rights to step-in under the Direct Agreement.

46. The TNPA Default

46.1. definition

"the TNPA Default" means any one of the following events:

46.1.1. an expropriation or requisition of a material part of the LNG Terminal and or shares of the Terminal Operator by the TNPA or other Responsible Authority, or a material part of the LNG Terminal being removed from the possession of the Terminal Operator by the TNPA or other Responsible Authority, other than in terms of this Agreement; and or

46.1.2. a failure by the TNPA to make payment of any amount or amounts that are due and payable by the TNPA under this Agreement (which amounts are not bona fide in dispute) which, either singly or in aggregate exceeds the sum of R[*insert threshold*] (in [*month and year*] prices) and such failure continues for [*20 (twenty)*] Business Days from receipt by the TNPA of a notice of non-payment from the Terminal Operator.

46.2. termination for the TNPA Default

46.2.1. On the occurrence of the TNPA Default, or within [*90 (ninety)*] days after the Terminal Operator becomes aware of same, the Terminal Operator may serve notice on the TNPA of the occurrence (and specifying details) of such the TNPA Default. If the relevant matter or circumstance has not been remedied or rectified

within ~~30~~ **[30 (thirty)]** Business Days of such notice, the Terminal Operator may enforce its rights to terminate this Agreement, on the basis of Government Default.

46.2.2. The Terminal Operator shall not exercise or purport to exercise any rights to terminate this Agreement (or accept any repudiation of this Agreement) except as expressly provided for herein.

47. Invalidation in terms of Section 67 of the Act

If it is necessary to change the use to which the Project Site or Terminal is put in order to improve the safety, security, efficiency and effectiveness of the operations of the Port, and the new use is incompatible with this Agreement, the TNPA may issue a directive, subject to the provisions of section 67(2)(b) of the Act, stipulating that this Port Concession Agreement is invalid from the date stipulated in that directive.

48. Effects of Termination

48.1. termination

Notwithstanding any provision of this Agreement, on service of a notice of termination, this Agreement shall only terminate in accordance with the provisions of this clause 48 (*Effects of Termination*).

48.2. continued effect - no waiver

Notwithstanding any breach of this Agreement by either Party, and without prejudice to any other rights which the other Party may have in relation to it, the other Party may elect to continue to treat this Agreement as being in full force and effect and to enforce its rights under this Agreement. The failure of either Party to exercise any right under this Agreement, including any right to terminate this Agreement and any right to claim damages, shall not be deemed a waiver of such right for any continuing or subsequent breach.

48.3. continued performance

Subject to any exercise by the TNPA of its rights to perform, or to procure a third party to perform, the obligations of the Terminal Operator, the Parties shall continue to perform their obligations under this Agreement, notwithstanding the giving of any notice of default or notice of termination, until the termination of the Agreement becomes effective in accordance with the provisions of this clause 48 (*Effects of Termination*).

48.4. transfer to the TNPA of LNG Terminal , Associated Agreements and other assets

On the expiry or termination date of this Agreement or, where applicable, the service of a notice of termination in accordance with this Agreement for any reason, the TNPA shall have the option to take over the right, title and interest in and to the LNG Terminal and the Approvals. The TNPA shall be required to notify the Terminal Operator in writing of whether it intends to exercise such option within a [120] Business Days of the notice terminating this Agreement. If the TNPA exercises its option:

48.4.1. if termination occurs prior to the Target Completion Date, in so far as any transfer shall be necessary fully and effectively to transfer property to the TNPA, the Terminal Operator shall transfer to, and there shall vest in, the TNPA such part of the Construction Works and or the Facilities as shall have been constructed and such items of the plant and equipment as shall have been procured by the Terminal Operator, and if the TNPA so elects:

48.4.1.1. all plant and all materials on or near to the Project Site shall remain available to the TNPA for the purposes of completing the Construction Works; and

48.4.1.2. the construction plant shall remain available to the TNPA for the purposes of completing the Construction Works, subject to payment of the Terminal Operator's reasonable costs;

48.4.1.3. if the TNPA so elects, the Terminal Operator shall procure that any of the Associated Agreements specified by the TNPA are assigned to the TNPA or any third party nominated by it; provided that where termination occurs under clause 46 (*The TNPA Default*), the consent of the relevant Subcontractors shall be required. Where the TNPA does not so elect, or any Subcontractor whose consent is required refuses that consent, the Terminal Operator shall procure that all relevant Associated Agreements automatically terminate when this Agreement terminates.

48.4.2. On service of a notice of termination in accordance with this Agreement for any reason or not less than [10 (ten)] days prior to the expiry date of this Agreement, the Terminal Operator shall:

48.4.2.1. hand over to, and there shall vest in, the TNPA, free from all encumbrances, the LNG Terminal which shall be in the state required in accordance with the Operating Specifications; or

- 48.4.2.2. shall procure that any Subcontractor shall (as the case may be), transfer to the TNPA, free from any security interest full and unencumbered title in and to all or any part of the LNG Terminal required by the TNPA in connection with the Project and the Services;
- 48.4.2.3. shall procure that any Intellectual Property Rights shall be provided to the TNPA and the TNPA shall be granted a perpetual nonexclusive, royalty-free license to use such Intellectual Property Rights;
- 48.4.2.4. deliver to the TNPA (as far as not already delivered to the TNPA) one complete set of:
- 48.4.2.4.1. "as built drawings" showing all alterations made to the Facilities since the commencement of operation of the LNG Terminal;
 - 48.4.2.4.2. Maintenance, Operation and training manuals for the LNG Terminal; and
 - 48.4.2.4.3. the historical operating data and plans of the LNG Terminal, its furniture, fittings and Equipment in a format acceptable to the TNPA;
 - 48.4.2.4.4. use all reasonable endeavours to procure that the benefit of all manufacturer's warranties in respect of mechanical and electrical plant and equipment used or made available by Terminal Operator under this Agreement and included in the LNG Terminal are assigned, or otherwise transferred, to the TNPA;
 - 48.4.2.4.5. deliver to the TNPA the information referred to in the clause 32 (*Financial Accounts, Reports, inspection and reporting changes*), except where such documents are required by Law to be retained by the Terminal Operator or any Subcontractor concerned, in which case complete copies shall be delivered to the TNPA; and
 - 48.4.2.4.6. ensure that provision is made in all contracts of any description whatsoever to ensure that the TNPA will be in a position to exercise its rights, and the Terminal

Operator will be in a position to comply with its obligations, under this clause 48.4.2.

48.5. **termination**

On completion of the transfer required by clause 48.4 (*transfer to the TNPA of LNG Terminal , Associated Agreements and other assets*) (except in so far as any of the requirements of that clause may be waived by the TNPA), this Agreement shall terminate and, save as provided in clause 48.7 (*continuing obligations*), all rights and obligations of the TNPA and the Terminal Operator under this Agreement shall cease and be of no further force and effect.

48.6. **transitional arrangements**

On the expiry of this Agreement or earlier termination of this Agreement for any reason, for a period of **[3 (three)]** months both before and after that expiry or any earlier termination, Terminal Operator shall have the following duties:

- 48.6.1. the Terminal Operator shall co-operate fully with the TNPA and any person who is providing services in the nature of any of the Services or any part of the Services, in order to achieve a smooth transfer of the manner in which the TNPA obtains services in the nature of the Services and to avoid or mitigate in so far as reasonably practicable any inconvenience or any risk to the health and safety of the employees of the TNPA, the Port Users and members of the public;
- 48.6.2. the Terminal Operator shall as soon as practicable remove from the Project Site all property not required by the TNPA pursuant to clause 48.4 (*transfer to the TNPA of LNG Terminal , Associated Agreements and other assets*) and if it has not done so within **[20 (twenty)]** Business Days after any notice from the TNPA requiring it to do so, the TNPA may (without being responsible for any loss, damage, costs or expenses) remove and sell any such property and shall hold any proceeds less all costs incurred for the credit of the Terminal Operator;
- 48.6.3. the Terminal Operator shall be solely responsible for, shall bear full responsibility for and shall discharge all obligations pursuant to any obligations or requirements to decommission the LNG Terminal pursuant to and in accordance with the applicable Consents and Environmental Laws;
- 48.6.4. the Terminal Operator shall, by no later than the expiry or the date of any earlier termination of this Agreement becoming effective, deliver to the TNPA:
 - 48.6.4.1. **[any remote access apparatus and computer access cards to the LNG Terminal]**; and

- 48.6.4.2. without prejudice to clause 14 (*Access to documents, copyright and related matters*), any copyright licence for any computer programmes (or licence to use the same) necessary for the operation of the LNG Terminal (but excluding computer programmes which have been developed or acquired by the Terminal Operator for its own use and not solely for the purposes of provision of any of the Services at the LNG Terminal or the assignment or transfer of which is otherwise restricted); and
- 48.6.4.3. the Terminal Operator shall as soon as practicable vacate the Project Site and (without prejudice to the rest of this clause 48 (*Effects of Termination*)) shall leave the Project Site and the LNG Terminal in a safe, clean and orderly condition.
- 48.6.5. If the TNPA wishes to conduct a tender process with a view to entering into a contract for the provision of services (which may or may not be the same as, or similar to, the Services or any of them) following the expiry or earlier termination of this Agreement, the Terminal Operator shall co-operate with the TNPA fully in such tender process including (without limitation) by:
- 48.6.5.1. providing any information which the TNPA may reasonably require to conduct such tender excluding any information which is commercially sensitive to the Terminal Operator (and, for the purpose of this sub-clause, commercially sensitive shall mean information which would if disclosed to a competitor of the Terminal Operator give that competitor a competitive advantage over the Terminal Operator and thereby prejudice the business of the Terminal Operator but shall exclude any information dealing with employment matters); and
- 48.6.5.2. assisting the TNPA, by providing all (or any) participants in such tender process with access to the Project Site and the LNG Terminal

48.7. continuing obligations

Save as otherwise expressly provided in this Agreement:

- 48.7.1. termination of this Agreement shall be without prejudice to any accrued rights and obligations under this Agreement as at the date of termination; and
- 48.7.2. termination of this Agreement shall not affect the continuing rights and obligations of the Terminal Operator and the TNPA under clauses 1 (*Definitions and Interpretation*), 7 (*Indemnity*), (*Terminal Operator's warranties and undertakings*),

12 (*Environmental Compliance*), 14 (*Access to documents, copyright and related matters*), 15.1 (*delivery of Performance Guarantees*), 19 (*The TNPA's Assistance and Rights and Limitations on Liability*), 48.6 (*transitional arrangements*), 48.7 (*continuing obligations*), 50 (*Corrupt gifts and fraud*), 53 (*Dispute Resolution*) and 56.15 (*Information and audit access*) or under any other provision of this Agreement which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

49. Termination Amount for the TNPA Default

49.1. ~~I~~On termination of this Agreement as a result of the TNPA Default, the TNPA shall pay the Terminal Operator an amount equal to the direct actual costs incurred or sustained by the Terminal Operator as a consequence of the termination of the Agreement. The direct actual costs will be limited to the following:

49.1.1.1. the Debt; and

49.1.1.2. the Subcontractors' and Suppliers' Costs;

49.1.1.3. an amount equal to the redundancy payments for employees of the Terminal Operator not transferring to the TNPA or its nominee that have been or will reasonably be incurred by the Terminal Operator as a direct result of the termination of this Agreement; and

49.1.1.4. the Transfer Costs (for the Terminal Operator to take over the LNG Terminal, the Project Sites, the Approvals and the Project or to nominate a third party to do so),

provided that the Terminal Operator shall use reasonable endeavours to mitigate its liability in respect of all such amounts;

less, to the extent it is a positive amount, the aggregate, as at the Termination Date, of:

49.1.1.5. all credit balances on any bank accounts held by or on behalf of the Terminal Operator and or its Affiliates on the Termination Date and the value of any right of the Terminal Operator and or its Affiliates or the Lenders to receive any proceeds pursuant to letters of credit and bank guarantees and sums due and payable from the Subcontractors or the Suppliers (save to the extent that such sums are included in the calculation under clause 49.1.1.2) and any other third parties;

49.1.1.6. the fair market value of any other assets and rights of the Terminal Operator (other than those transferred or to be transferred to the TNPA or its nominee

pursuant to this Agreement) less liabilities of the Terminal Operator properly incurred in connection with this Agreement, unless such liabilities fall within clauses 49.1.1.1 to 49.1.1.3 above, provided that no account shall be taken of any liabilities and obligations of the Terminal Operator arising out of agreements or arrangements entered into by the Terminal Operator to the extent that such agreements or arrangements were not entered into in:

49.1.1.6.1. connection with the Terminal Operator's obligations in relation to the Project; and

49.1.1.6.2. the ordinary course of business and on commercial arm's length terms;

49.1.1.7. if termination of this Agreement occurs after the Actual Commercial Operations Date and if the LNG Terminal is not found to be in the condition reasonably expected with due regard to the age and use of the LNG Terminal and the performance expected of the LNG Terminal in accordance with the terms of this Agreement, the amount determined by the Independent Expert as being required to bring the condition of the LNG Terminal to the standard expected as at the Termination Date by a Reasonable and Prudent Operator,

provided that, if the aggregate of the amounts referred to in clauses 49.1.1.1 to 49.1.1.4 after the deductions made in clauses 49.1.1.5 to 49.1.1.7 above is less than zero (0) then, for the purposes of the calculation in this definition, the aggregate shall be deemed to be zero (0).

49.2. Payment Expert Calculations

49.2.1. If any calculation or valuation is required to be made for the purposes of determining an amount payable by the TNPA to the Terminal Operator pursuant to clause 49.1, the same shall be made by the Payment Expert appointed by the Parties and the Lenders or, in the absence of agreement within **fifteen (15)** Business Days, by the President of the South African Institute of Chartered Accountants.

49.2.2. The Terminal Operator and the TNPA shall ensure that the Payment Expert is appointed within **fifteen (15)** Business Days of delivery by the Terminal Operator of the second notice in terms of clause 46.2.1. The Payment Expert shall have **fifteen (15)** Business Days to calculate the amount payable by the TNPA to the Terminal Operator pursuant to this clause 49 (*Compensation on Termination for TNPA Default*).

49.2.3. Upon determination of the amount payable by the TNPA to the Terminal Operator pursuant to this clause 49 (*Compensation on Termination for TNPA Default*), the

Terminal Operator shall be entitled to issue a written demand to the TNPA for payment of such amount.

49.2.4. In making any determination pursuant to this clause 49.2 (*Payment Expert Calculations*), the Payment Expert shall act as an expert and not an arbitrator.

PART VIII – PROCEDURAL ISSUES

50. Corrupt gifts and fraud

50.1. The Terminal Operator warrants that in entering into this Agreement it has not committed any Corrupt Act.

50.2. If the Terminal Operator, any Shareholder, any Subcontractor or any Affiliate of any of them (or anyone employed by or acting on behalf of any of them) admits to or is convicted of having committed any Corrupt Act in relation to the Project or in respect of any of the Project Documents, then the TNPA shall be entitled to act in accordance with clauses 50.2.1 to 50.2.9 below:

50.2.1. if the Corrupt Act is committed by the Terminal Operator, any Shareholder, any director of the Terminal Operator, any director of any Shareholder, or any employee of the Terminal Operator or of any Shareholder acting under the authority of or with the knowledge of a director of the Terminal Operator or such Shareholder, as the case may be, then in any such case, the TNPA may terminate this Agreement with immediate effect by giving written notice to the Terminal Operator;

50.2.2. if the Corrupt Act is committed by an employee of the Terminal Operator or of any Shareholder acting of his or her own accord, then in any such case, the TNPA may give written notice to the Terminal Operator of termination and this Agreement will terminate, unless within ~~thirty (30)~~ Business Days of the Terminal Operator's receipt of such notice that employee's involvement in the Project is terminated and (if necessary) the performance of any part of the Project Deliverables previously performed by him or her is performed by another person;

50.2.3. if the Corrupt Act is committed by a Subcontractor or supplier, director of a Subcontractor or supplier or an employee of a Subcontractor or supplier acting under the authority or with the knowledge of a director of that Subcontractor or supplier, then in any such case, the TNPA may give written notice to the Terminal Operator of termination and this Agreement will terminate, unless within ~~sixty (60)~~ Business Days of its receipt of such notice the Terminal Operator terminates the relevant Subcontract or supply contract and procures the performance of the relevant part of the Project Deliverables by another person, where relevant;

- 50.2.4. if the Corrupt Act is committed by an employee of a Subcontractor acting of his or her own accord, then the TNPA may give notice to the Terminal Operator of termination and this Agreement will terminate, unless within **[thirty (30)]** Business Days of its receipt of such notice the Terminal Operator procures the termination of that employee's involvement in the Project and (if necessary) procures the performance of that part of the Project Deliverables previously performed by that employee to be performed by another person;
- 50.2.5. if the Corrupt Act is committed by a Lender, a director of a Lender or any employee of a Lender acting under the authority or with the knowledge of a director of that Lender, then in any such case the TNPA may give written notice to the Terminal Operator of termination and this Agreement will terminate, unless within **[eighty (80)]** Business Days of its receipt of such notice the Terminal Operator procures the termination of such Lender's involvement in the Project (in any capacity whatsoever including, without limitation, as Lender under the Financing Agreements) and provides the TNPA with satisfactory proof that such Lender's entire participations in the Debt and in any undrawn financial commitments under the Financing Agreements have been assumed by any other financial institution (including any one or more of the remaining Lenders) or any of the Shareholders, whether by means of Equity contributions or otherwise;
- 50.2.6. if the Corrupt Act is committed by any employee of a Lender acting of his or her own accord, then the TNPA may give written notice to the Terminal Operator of termination and this Agreement will terminate, unless within **[thirty (30)]** Business Days of the Terminal Operator's receipt of such notice, that employee's involvement in the Project is terminated;
- 50.2.7. if the Corrupt Act is committed by an Affiliate of any of the persons detailed in any of clauses 50.2.1 to 50.2.6, a director of such an Affiliate or an employee of such an Affiliate acting under the authority or with the knowledge of a director of that Affiliate, then the TNPA may give notice to the Terminal Operator of termination and this Agreement will terminate, unless the Terminal Operator procures the termination of the involvement in the Project of the person detailed in any of clauses 50.2.1 to 50.2.6 who is affiliated to that Affiliate, within the time period specified in the clause amongst clauses 50.2.1 to 50.2.6 that is relevant in the circumstances;
- 50.2.8. if the Corrupt Act is committed by any other person not specified in clauses 50.2.1 to 50.2.6 above but involved in the Project as a Subcontractor or supplier to any Subcontractor or to the Terminal Operator, then the TNPA may give notice to the Terminal Operator of termination and this Agreement will terminate unless within **[sixty (60)]** Business Days the Terminal Operator procures the termination of such person's involvement in the Project and (if necessary) procures the performance of the relevant part of the Project by another person; and
- 50.2.9. any notice of termination under this clause 50.2 shall specify:

- 50.2.9.1. the nature of the Corrupt Act;
 - 50.2.9.2. the identity of the party or parties who has committed the Corrupt Act; and
 - 50.2.9.3. the date on which this Agreement will terminate in accordance with the applicable provisions of this clause 50.2.
- 50.3. Without prejudice to its other rights or remedies under this clause or any other Laws, the TNPA shall be entitled to recover from the Terminal Operator, the greater of:
- 50.3.1. the amount or value of the gift, consideration or commission which is the subject of the Corrupt Act; and
 - 50.3.2. any direct losses sustained by the TNPA in consequence of any breach of this clause 50 by the Terminal Operator.
- 50.4. Nothing contained in this clause 50 shall prevent the Terminal Operator from paying any proper commission or bonus to its employees within the agreed terms of their employment.
- 50.5. The Terminal Operator shall notify the TNPA of the occurrence (and details) of any Corrupt Act promptly on the Terminal Operator becoming aware of its occurrence.

51. Terminal Operator's warranties and undertakings

51.1. Terminal Operator's general undertakings

51.1.1. As between the Parties and save as otherwise expressly provided for in this Agreement, at all times during the Operating Term, the Terminal Operator shall exercise its rights and perform all of its obligations as provided for in this Agreement, at its sole cost and risk and in compliance with the requirements of:

51.1.1.1. applicable Laws;

51.1.1.2. the Consents;

51.1.1.3. the terms and conditions of this Agreement;

51.1.1.4. the standards of a Reasonable and Prudent Operator; and

51.1.1.5. relevant manufacturers' guidelines and instructions.

- 51.1.2. If there is a conflict between the documents listed in clause 51.1.1, the order of priority between the documents shall be the order of priority in which the sub clauses to clause 51.1.1 are listed.
- 51.1.3. The Terminal Operator agrees and undertakes that, as between the Terminal Operator and the TNPA:
- 51.1.3.1. the Terminal Operator shall be solely responsible for, shall bear full responsibility for and shall discharge, all environmental and or health and safety obligations in relation to the Terminal Facilities and the Project Site pursuant to and in accordance with the applicable Consents and Environmental Laws; and
 - 51.1.3.2. the Terminal Operator shall be solely responsible for, shall bear full responsibility for and shall discharge all obligations in relation any contamination of the Port Sites pursuant to and in accordance with the applicable Consents and Laws, whether such contamination was existing at the time that the Terminal Operator obtained its rights in respect of the Project Site or arises during the term of this Agreement;
 - 51.1.3.3. the Terminal Operator shall be solely responsible for, shall bear full responsibility for and shall discharge all obligations pursuant to any remediation order issued by any Responsible Authority pursuant to and in accordance with the applicable Consents and Environmental Laws in respect of any contamination of the Port Site, whether such contamination was existing at the time that the Terminal Operator obtained its rights in respect of the Project Site or arises during the term of this Agreement;
 - 51.1.3.4. the Terminal Operator shall be solely responsible for, shall bear full responsibility for, shall discharge all obligations and shall bear all consequences (including the possibility that any of the following could lead, directly or indirectly, to a Terminal Operator Default) that:
 - 51.1.3.4.1. arise as a direct or indirect result of any appeal or review being lodged against any amendment to any of the Consents issued in terms of any Environmental Laws; or
 - 51.1.3.4.2. arise as a direct or indirect result of the Terminal Operator's failure to obtain the conversion of its provisional air emissions licence into a final air emissions

licence, in terms of the Environmental Laws, due to its failure to comply with the terms and conditions of the provisional air emissions licence; or

51.1.3.4.3. arise as direct or indirect result of any Responsible Authority imposing additional conditions on the Terminal Operator in terms of any Consents issued in terms of any Environmental Laws, pursuant to a review by the Responsible Authority of the Terminal Operator's provisional or final air emissions licence or waste management licence; or

51.1.3.4.4. arise as a direct or indirect result of the Responsible Authority declaring the area in which the Project Site is situated as an air pollution priority area and imposing additional requirements on the Terminal Operator in terms of its air emissions licence to align with the air quality management plan for that area; and

51.1.3.4.5. the Terminal Operator shall be solely responsible for, shall bear full responsibility for and shall discharge all obligations pursuant to any obligations or requirements to decommission the LNG Terminal at the end of its life, pursuant to and in accordance with the applicable Consents and Laws, in accordance with the provisions of clauses 12.15 and 15.5 and the provisions of any applicable Laws and or the terms and conditions of any Consents; and

51.1.3.5. if any consequence arises pursuant to any circumstance, event or situation detailed in clause 51.1.3, the Terminal Operator shall be liable for and bear the full responsibility of and consequences for such circumstance, event or situation, and the TNPA shall not bear any liability, responsibility or consequence for or of such circumstance, event or situation, including any consequential Terminal Operator Default; and

51.1.3.6. that the TNPA has no obligations of any nature to monitor compliance with or to enforce the terms and conditions of any of the Consents; and

- 51.1.3.7. that the TNPA has no obligations of any nature to monitor compliance with or to enforce the terms and conditions of any remediation order issued by any Responsible Authority in respect of any contamination of the Port Site; and
 - 51.1.3.8. if the Terminal Operator fails to comply with any of its obligations under clause 51.1.3, it alone shall be liable for and bear the full responsibility of and consequences for such failure, and the TNPA shall not bear any liability, responsibility or consequence for or of such failure; and
 - 51.1.3.9. the Terminal Operator indemnifies and shall hold harmless, upon demand, the TNPA against any claims, damages, losses, expenses and any other consequences of or arising out of the Terminal Operator's failure to comply with this clause 51.1.3; and
 - 51.1.3.10. the Terminal Operator indemnifies and shall hold harmless, upon demand, the TNPA against any claims, damages, losses, expenses and any other consequences of or arising out of any consequence arises pursuant to any circumstance, event or situation detailed in clause 51.1.3.
- 51.1.4. The provisions of clause 51.1.3 shall remain in full force and effect after the Termination Date.
- 51.1.5. The Terminal Operator shall:
- 51.1.5.1. provide the TNPA with copies of all of the Associated Agreements (that have been signed at Financial Close) and all of the Financing Agreements, at Financial Close;
 - 51.1.5.2. provide to the TNPA copies of any changes to the Financing Agreements at any time after Financial Close, for the duration of the Operating Term;
 - 51.1.5.3. obtain the TNPA's prior written consent for any changes to the Associated Agreements at any time after Financial Close, for the duration of the Operating Term; and
 - 51.1.5.4. obtain the TNPA's prior written consent for any changes to any of the Financing Agreements.

- 51.1.6. In respect of those Associated Agreements that have not been signed by Financial Close, the Terminal Operator shall deliver a copy of each Associated Agreement to the TNPA within ~~five (5)~~ Business Days of the date of signature of that agreement by the last of the parties to it, to sign it.
- 51.1.7. If the Terminal Operator requires any change to the Associated Agreements as a result of any replacement of any Associated Agreements or a counterparty to any Associated Agreements, it shall, before effecting such replacement, promptly notify the TNPA of the need for the replacement. The prior written consent of the TNPA (acting reasonably) shall be required in respect of the replacement of any of the Lenders, Subcontractors or an equipment supplier, unless such replacement Lender, Subcontractor or equipment supplier was included, in that role, in the bid response that was submitted by the Terminal Operator or on behalf of the Terminal Operator and that was the basis on which the TNPA entered into this Agreement with the Terminal Operator.
- 51.1.8. The Terminal Operator shall ensure that the Independent Certifier shall, in the exercise of its duties for the duration of this Agreement, owe a duty of care to the TNPA and that the TNPA shall be entitled to receive copies of all notices, reports and any other documentation issued to the Terminal Operator by the Independent Certifier and or issued by the Terminal Operator to the Independent Certifier in terms of such agreement.

51.2. Terminal Operator's warranties

The Terminal Operator represents and warrants to the TNPA as on the Effective Date and on each day thereafter during the Operating Term (unless the contrary is indicated in the relevant provision), that:

- 51.2.1. the Terminal Operator is a limited liability company, duly incorporated and validly existing under the Laws and has taken all necessary actions to authorise its execution of and to fulfil its obligations under this Agreement, the Associated Agreements, the Financing Agreements and the Project Documents;
- 51.2.2. the Terminal Operator has the sole purpose, object and business of undertaking the Project and providing Services in terms of the Terminal Use Agreements;
- 51.2.3. its obligations under this Agreement are legal, valid and binding and enforceable against it, in accordance with the terms of this Agreement;
- 51.2.4. all the Financing Agreements have been duly executed on proper authority and are in full force and effect as at the Effective Date;

- 51.2.5. once a Associated Agreement has been executed, it has been duly executed on proper authority and is in full force and effect;
- 51.2.6. the execution and performance of any of the Associated Agreements, Project Documents or Financing Agreements do not and will not contravene any provision of the memorandum of incorporation of the Terminal Operator as at the Effective Date, or any order or other decision of any Responsible Authority or arbitrator that is binding on the Terminal Operator;
- 51.2.7. all Consents (whether provisional or final) required by the Terminal Operator, its Subcontractors or suppliers for the conduct of the Project are in full force and effect as at the Effective Date, save for any Consents which are not required under the Laws to be obtained by the Effective Date, provided that:
- 51.2.7.1. the Terminal Operator warrants that it knows of no reason (having made all reasonable enquiries in this regard) why any such Consent will not be granted on reasonable terms by the time the Terminal Operator, its Subcontractors or suppliers are required to obtain such Consent; and
- 51.2.7.2. the Terminal Operator knows of no reason why any provisional Consents issued to it in terms of the Environmental Laws will not be converted into final Consents in order for it to be permitted to commence the Project Deliverables;
- 51.2.8. subject to clause 51.2.7, the Terminal Operator, Subcontractors and or suppliers have, at all times during the Operating Term, all Consents required to enable them to fulfil their obligations in terms of this Agreement, the Associated Agreements and have complied in all material or relevant respects, with such Consents and the Laws applicable to the Terminal Operator, Contractors and or the Suppliers;
- 51.2.9. the Terminal Operator shall inform the TNPA of any cancellations, amendments, disputes, penalisations and or revocations in respect of any Consents within ~~three~~ (3) Business Days of becoming aware of such occurrence. If any such cancellation, amendment, dispute, penalisation and or revocation takes place, the Terminal Operator shall within ~~five~~ (5) Business Days of the receipt of the notification thereof by the TNPA, provide the TNPA with a detailed plan explaining how the Terminal Operator will deal with the issue so as to ensure that it does not cause any interruptions to the provision of the Services, and the TNPA shall, in its sole discretion, be entitled to decide whether or not to accept such plan;
- 51.2.10. no litigation, arbitration, investigation or administrative proceeding is in progress as at the Effective Date or, to the best of the knowledge of the Terminal Operator as at

the Effective Date (having made all reasonable enquiries), threatened against it or any of the Subcontractors or suppliers, which is likely to have a material adverse effect on the ability of the Terminal Operator to conduct the Project;

51.2.11.the Terminal Operator is not subject to any obligation or non-compliance which is likely to have a material adverse effect on its ability to conduct the Project;

51.2.12.no proceedings or any other steps have been taken or, to the best of the knowledge of the Terminal Operator (having made all reasonable enquiries), are threatened for the winding-up or liquidation (whether voluntary or involuntary, provisional or final), judicial management (whether provisional or final), business rescue or deregistration of Terminal Operator or for the appointment of a liquidator, judicial manager business rescue practitioner or similar officer over it or over any of its assets;

51.2.13.the Terminal Operator has not carried out any trading or business activities since its incorporation or incurred any liabilities other than in connection with the operations of the Project (including the entry into of this Agreement, the Financing Agreements, the Associated Agreements and the other Project Documents);

51.2.14.all information disclosed by or on behalf of the Terminal Operator to the TNPA at any time up to the Effective Date and, in particular, during the bid process preceding the award of this Agreement to the Terminal Operator, is true, complete and accurate in all material respects and the Terminal Operator is not aware of any material facts or circumstances not disclosed to the TNPA and which would, if disclosed, be likely to have an adverse effect on the TNPA's decision (acting reasonably) to enter into this Agreement with the Terminal Operator;

51.2.15.the copies of the Financing Agreements have been delivered to the TNPA in accordance with the terms of this Agreement, and those copies are true and complete copies of such Financing Agreements and there are no other documents replacing or relating to any such Financing Agreements, which would materially affect the performance of these Financing Agreements;

51.2.16.following the execution from time to time of Project Documents and the Associated Agreements, copies of the Project Documents and the Associated Agreements have been delivered to the TNPA and in accordance with the terms of this Agreement, and those copies are true and complete copies of such Project Documents and Associated Agreements, and the Terminal Operator has promptly delivered copies of any other documents replacing or relating to any such Project Documents and Associated Agreements, where such documents would materially affect the performance of these Project Documents, the Associated Agreements and or this Agreement, to the TNPA.

51.2.17. as at the Effective Date:

- 51.2.17.1. the Terminal Operator has an authorised share capital as set out in the its memorandum of incorporation and issued share capital as set out its shareholders agreement (to the extent that there is such an agreement) and all shares in the issued share capital of the Terminal Operator are fully paid up;
- 51.2.17.2. all shares in the issued share capital of the Terminal Operator are legally and beneficially owned as represented in the Terminal Operator's memorandum of incorporation and shareholders agreement (to the extent that there is such an agreement);
- 51.2.17.3. save as provided in the Financing Agreements, the memorandum of incorporation or the Terminal Operator's shareholders agreement (to the extent that there is such an agreement), no person has the right (whether actual or contingent) to call for the issue of any share or loan capital in the members of the Terminal Operator whether pursuant to any option or otherwise including any realisation of security;
- 51.2.17.4. save as provided in the Financing Agreements (in respect of all of the security provided by the Terminal Operator to the Lenders or their nominee), the memorandum of incorporation or the Terminal Operator's shareholders agreement (to the extent that there is such an agreement), there are no Encumbrances over or affecting any of the Equity or the Shareholder Loans and there is no agreement or commitment to grant or create any such Encumbrance; and

51.2.18. no person (whether the Terminal Operator, a Shareholder, Subcontractor, supplier or any other third person) has agreed to pay or be paid any Success Payment in respect of, in connection with or pursuant to the Project, other than the Success Payments detailed in the Financial Model.

51.3. Breach of Terminal Operator warranties

If the Terminal Operator fails to comply with any of the warranties in terms of clause 51.2, then the Terminal Operator shall notify the TNPA of such non-compliance within **[5 (five)]** Business Days of becoming aware thereof.

52. TNPA Warranties

The TNPA represents and warrants to the Terminal Operator as on the Effective Date and on each day thereafter during the Operating Term, as follows:

- 52.1. it is duly established under the laws of South Africa and has the right, power and authority to enter into this Agreement and to perform its obligations hereunder; and
- 52.2. the execution and performance of this Agreement by it has been duly authorised by all necessary action, and its obligations hereunder constitute valid, binding and enforceable obligations.

53. Dispute Resolution

53.1. referable disputes

The provisions of this clause 53 (*Dispute Resolution*) shall, save where expressly provided otherwise, apply to any dispute arising in relation to or in connection with any aspect of this Agreement between the Parties.

53.2. internal referrals

53.2.1. If a dispute arises in relation to any aspect of this Agreement, the Parties shall attempt in good faith to come to an agreement in relation to the disputed matter, in accordance with the following informal process:

53.2.1.1. all disputes shall first be referred to a meeting of the liaison officers or other designated executives from each Party who are actively involved in the Project, and have sufficient authority to be able (if necessary with consultation back to their respective organisations) to resolve it; and

53.2.1.2. if the Parties have been unable to resolve the dispute within 15 (fifteen) days of referral to the persons specified in clause 53.2.1.1, either Party may refer the dispute for a decision by the chief executive officer of the TNPA and the chief executive officer or equivalent officer of the Terminal Operator.

53.2.2. In attempting to resolve the dispute in accordance with the provisions of this clause 53.2 (*internal referral*), the Parties shall (and shall procure that their employees and representatives shall) use reasonable endeavours to resolve such dispute without delay by negotiations or any other informal procedure which the relevant representatives may adopt. Those attempts shall be conducted in good faith in an effort to resolve the dispute without necessity for formal proceedings.

53.2.3. Any dispute which has not been resolved by the representatives contemplated in clause 53.2.1 within 15 (fifteen) days of the dispute being referred to them (or

any longer period agreed between the Parties) shall be treated as a dispute in respect of which informal resolution has failed.

53.3. performance to continue

No reference of any dispute to any resolution process in terms of this clause 53 (*Dispute Resolution*) shall relieve either Party from any liability for the due and punctual performance of its obligations under this Agreement.

53.4. litigation

53.4.1. Save where any dispute has been expressly referred for determination in terms of clause 53.5 (*fast-track dispute resolution*), if informal resolution of any dispute has failed, then the dispute may be referred to litigation in the High Courts by either Party.

53.4.2. Neither Party is limited in any proceedings before the High Court to the information, evidence or arguments used in the informal attempts to resolve the dispute.

53.5. fast-track dispute resolution

53.5.1. Disputes expressly referred for determination pursuant to this clause 53.5 (*fast-track dispute resolution*) shall be determined by the Independent Expert.

53.5.2. Within 5 (five) Business Days after a dispute has been referred by either Party to the appropriate Independent Expert, the Independent Expert shall require the Parties to submit in writing their respective arguments. The Independent Expert shall, in his or her absolute discretion, consider whether a hearing is necessary in order to resolve the dispute.

53.5.3. It shall be entirely within the power and competence of the Independent Expert to decide upon any matters related to the proper preparation of the dispute for hearing and in that regard the Independent Expert shall direct the Parties accordingly.

53.5.4. The Independent Expert shall set the date for the hearing, choose the venue (which must be a venue in South Africa) for the hearing and determine all matters regarding any aspect of the hearing. Moreover, the Independent Expert can decide whether at the hearing the Parties are to give oral evidence or confine themselves to presenting their cases in writing or by some other appropriate procedure. In this regard, the Independent Expert must be guided by considerations of fairness, the cost-effective resolution of the dispute, and the need to resolve the dispute quickly.

- 53.5.5. The Independent Expert shall provide both Parties with his or her written decision on the dispute, within 20 (twenty) Business Days of the referral (or such other period as the Parties may agree after the referral). The Independent Expert shall give his or her reasons for the award, if so requested by either Party.
- 53.5.6. The Independent Expert's costs of any referral shall be borne as the Independent Expert shall specify or, if not specified, equally by the Parties. Each Party shall bear its own costs arising out of the referral, including its legal costs and the costs and expenses of any witnesses.
- 53.5.7. The Independent Expert shall act impartially and may take the initiative in ascertaining the facts and the law.
- 53.5.8. Should the need arise for either Party to seek interim or temporary relief before the adjudication is finalised, that Party may apply to the Independent Expert to grant such interlocutory order or give the required temporary relief and the Independent Expert shall have the same power to do so as if the matter were one heard by a Judge in the High Court of South Africa, save that if by law such power or order cannot be exercised or given by an Independent Expert then, and then only, should the Parties refer such matter to such High Court.
- 53.5.9. The proceedings shall be confidential and all information, data or documentation disclosed or delivered by either Party to the Independent Expert in consequence of or in connection with his or her appointment as Independent Expert shall be treated as confidential. Neither the Parties nor the Independent Expert shall, save as permitted by the confidentiality provisions of this Agreement contained in clause 55, disclose to any person any such information, data or documentation unless the Parties otherwise agree in writing, and all such information, data or documentation shall remain the property of the Party disclosing or delivering the same and all copies shall be returned to such Party on completion of the Independent Expert's work.
- 53.5.10. The Independent Expert is not liable for anything done or omitted in the discharge or purported discharge of his or her functions as Independent Expert, unless the act or omission is grossly negligent or in bad faith. Any employee or agent of the Independent Expert is similarly protected from liability.
- 53.5.11. Should any Party fail to co-operate with the Independent Expert with the result that in the view of the Independent Expert such default or omission prejudices the adjudication process, then the Independent Expert can either:

- 53.5.11.1. give that Party written notice that unless it remedies the default or omission within a given time, it will forfeit the right to continue to participate in the adjudication; or
 - 53.5.11.2. warn the Party in writing that its default or omission may make it liable to a punitive order of costs irrespective of whether it succeeds in the adjudication or not and such punitive award of costs may include an order of attorney and client costs or attorney and own client costs as those expressions are understood in the Uniform Rules of Court.
- 53.5.12. The Independent Expert shall be deemed not to be an arbitrator but shall render his or her decision as an expert and the provisions of the Arbitration Act No. 42 of 1965 and any other law relating to arbitration shall not apply to the Independent Expert or his or her determination or the procedure by which he or she reaches his or her determination. The Independent Expert's decision shall be final and binding on the Parties.

54. Liability

54.1. Direct losses

- 54.1.1. The Parties' liability to each other in respect of any claim that arises pursuant to this Agreement, whether under delict or contract, shall be as detailed in this Agreement, and no Party shall have any additional liability to the other Party in respect of such claim.
- 54.1.2. Notwithstanding anything contained to the contrary in this Agreement, neither Party shall be liable to the other Party for any Special Loss suffered by such other Party as a result of any act or omission by the first Party.
- 54.1.3. Save as expressly provided elsewhere in this Agreement, neither Party shall be liable to the other Party for any losses, liabilities, expenses, damages, costs and claims (including Claims) suffered or claimed which arise out of, under or in connection with any alleged breach of any statutory duty or delictual act or omission or otherwise.

54.2. Mitigation

The Parties shall comply with their common law duties to mitigate any losses, liabilities, expenses, damages, costs and claims (including Claims) they may have pursuant to this Agreement.

55. Confidentiality

55.1. Confidential Information

Each Party shall treat any and all information and data disclosed to it by the other Party in connection with this Agreement in any form whatsoever, and this Agreement itself (the "**Confidential Information**") as confidential and proprietary, shall preserve the secrecy of the Confidential Information and shall not use the Confidential Information for any purpose other than solely in connection with the Project or, in respect of the TNPA, for the purposes of complying with any obligations imposed on it by any Laws, to report to Parliament, any committee of Parliament or any other part of Government.

55.2. Exclusions to Confidential Information

For the purposes of this clause 55, the term "**Confidential Information**" shall not include information which:

- 55.2.1. at the time of disclosure or at any time thereafter is in, or becomes part of, the public domain other than through a breach of this clause 55;
- 55.2.2. the Party receiving the information can prove was already known to it, or was independently acquired or developed by it without being in breach of its obligations under this clause 55;
- 55.2.3. became available to the Party receiving the information from another source in a non-confidential manner otherwise than in breach of an obligation of confidentiality; or
- 55.2.4. is published by, or the publication of which is required by, a Responsible Authority or any court.

55.3. Permitted disclosure of Confidential Information

Notwithstanding the provisions of this clause 55, the Confidential Information may be disclosed:

- 55.3.1. by either Party to any Responsible Authority (where for the purposes of this clause 55.3 such definition shall be limited to South Africa) or to any of the shareholders (direct or indirect), agents, consultants, contractors, advisers, financiers, potential financiers, investors, potential purchasers of the interests of a shareholder (direct or indirect), insurers or lenders of such Party or its Affiliates, in any such case for the purpose of enabling the disclosing Party to comply with its obligations under this Agreement, provided that:

- 55.3.1.1. such Party notifies the recipient at or about the time of such disclosure that the information is confidential and should not be disclosed by the recipient to third parties; and
- 55.3.1.2. such Party shall be responsible for ensuring that the recipient keeps the Confidential Information confidential and shall accordingly be responsible for any failure of the recipient to do so;
- 55.3.2. by either Party as may be required by the regulations of any recognised securities exchange upon which the share capital of the Party (or any shareholder (direct or indirect) in the Party) is or is proposed to be from time to time listed or dealt in, and the Party making the disclosure shall, if reasonably practicable prior to making the disclosure, and in any event as soon as reasonably practicable thereafter, supply the other Party with a copy of such disclosure or statement and details of the persons to whom the Confidential Information is to be, or has been, disclosed;
- 55.3.3. by either Party as may be necessary to comply with any obligation under any applicable Law;
- 55.3.4. by either Party if required by any court, any arbitrator or administrative tribunal or an expert in the course of proceedings before it to which the disclosing Party is a party; or
- 55.3.5. by either Party, if so agreed in writing by the Parties prior to the disclosure.

55.4. Ownership and treatment

- 55.4.1. Save for all Project Data, all information supplied by or on behalf of a Party shall remain the property of such Party, and this Agreement shall not operate to transfer ownership interest therein.
- 55.4.2. The Parties shall, in so far as is reasonably practicable, ensure that any copies of the Confidential Information, whether in hard copy or computerised form, shall clearly identify the Confidential Information as confidential.

56. Miscellaneous matters

56.1. notices

56.1.1. methods of delivery

Unless otherwise provided in this Agreement, all notices, requests, statements and other communications required or permitted between the Parties by this Agreement shall be in writing and either hand-delivered or sent by pre-paid registered post or facsimile to the address or number within South Africa of the Party concerned set out in clause 56.1.2.1 or such other address or number as contemplated in clause 56.1.2.1. No communication shall be effective until received by the addressee and a communication shall be deemed to have been received:

56.1.1.1. if delivered by hand during ordinary business hours, to its physical address in clause 56.1.2.1, when so delivered;

56.1.1.2. if delivered by pre-paid registered post, to its postal address in clause 56.1.2.1, **[seven (7)]** Business Days after posting, subject to proof of posting; and

56.1.1.3. if delivered by facsimile, upon sending, subject to confirmation of uninterrupted transmission on a transmission report and provided that a hard copy is promptly dispatched to the recipient in the manner provided in clauses 56.1.1.1 or 56.1.1.2 above.

56.1.2. addresses

56.1.2.1. The Parties choose the following addresses to which notices may be given, and at which documents in legal proceedings may be served (ie their *domicilia citandi et executandi*), in connection with this Agreement:

56.1.2.1.1.in the case of the TNPA: **[insert]**

postal address: **[insert]**

physical address: **[insert]**

current fax no: **[insert]**

attention: **[insert]**

56.1.2.1.2.in the case of the Terminal Operator: **[insert]**

postal address: **[insert]**

physical address: *[insert]*

current fax no: *[insert]*

attention: *[insert]*

56.1.2.2. Notwithstanding anything to the contrary herein, a written legal notice or process actually received by a Party shall be an adequate written notice or process, notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

56.1.2.3. A Party may change that Party's physical or postal addresses for this purpose to another physical or postal address, as the case may be, in South Africa (and not in any other country) or its contact details, by giving at least fifteen (15) days' prior notice in writing to the other Party.

56.2. no partnership or agency

This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in this Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.

56.3. entire contract

56.3.1. This Agreement contains the whole agreement between the Parties with regard to the subject matter hereof and supersedes any prior written or oral agreement between them, and the Parties waive the right to rely on any alleged express provision not contained in this Agreement.

56.3.2. If there is a conflict between the terms of this Agreement and those of any Schedule, the terms of this Agreement shall prevail.

56.3.3. This Agreement, and the rights and obligations of the Parties shall take effect on the Signature Date.

56.4. rights and remedies

The rights and remedies of the TNPA under this Agreement are cumulative, may be exercised as often as the TNPA requires and are in addition to any other rights and remedies which the TNPA may have under the Law.

56.5. further undertakings

The TNPA and the Terminal Operator shall perform, or procure the performance, of all further things, and execute and deliver (or procure the execution and delivery) of all further documents, as may be required by the Law or as may be desirable or necessary to implement or give effect to the Project, the purposes and intent of this Agreement and the transactions contemplated therein.

56.6. no representations

Each Party acknowledges and agrees that it is not entering into this Agreement in reliance on, and shall have no right of action against the other Party in respect of, any assurance, promise, undertaking, representation or warranty made by the other Party at any time prior to the Effective Date, unless the representation is recorded in this Agreement.

56.7. variation, cancellation and waiver

56.7.1. This Agreement may not be released, discharged, supplemented, interpreted, amended, varied or modified in any manner except by an instrument in writing signed by a duly authorised officer or representative of each of the Parties to this Agreement.

56.7.2. The failure of any Party to exercise any contractual right or remedy shall not constitute a waiver thereof. No waiver shall be effective unless it is communicated in writing to the other Parties. No waiver of any right or remedy arising from a breach of contract shall constitute a waiver of any right or remedy arising from any other breach of this Agreement.

56.7.3. The expiry or termination of this Agreement shall not prejudice the rights of any Party in respect of any antecedent breach or non-performance of or in terms of this Agreement.

56.8. invalidity and severability

If any of the provisions of this Agreement becomes invalid, illegal or unenforceable for any reason, the validity, legality and enforceability of the remaining provisions of this Agreement shall not be impaired or affected in any way by such invalidity, illegality or unenforceability. In the event of any such deletion the Parties shall negotiate in good faith in order to agree the terms of a mutually acceptable and satisfactory alternative provision in place of the provision so deleted.

56.9. set-off

Either Party shall be entitled to set-off against monies owed by them to the other Party, monies that the Party owes to them.

56.10. costs

Each Party shall bear its own costs in relation to the negotiation and preparation of this Agreement and any amendments hereof.

56.11. applicable law

This Agreement is to be interpreted and implemented in accordance with the law of South Africa.

56.12. language

All notices or communications under or in connection with the Project shall be in English.

56.13. jurisdiction of South African courts

Subject to clause 53.5 (*fast-track dispute resolution*) and 53 (*Dispute Resolution*) generally, the Parties consent to the exclusive jurisdiction of the High Court of South Africa, Gauteng Division, Johannesburg, for any proceedings arising out of or in connection with the Project and this Agreement.

56.14. public relations and publicity

56.14.1. The Terminal Operator acknowledges that certain information pertaining to the Project and the Project Data is required to be disclosed in accordance with the statutory reporting obligation of the TNPA to publish information about the performance of the Terminal Operator and or any other information as it may be required to publish from time to time in response to enquiries from:

56.14.1.1. Parliament and its members and officers;

56.14.1.2. the Auditor-General under the Public Audit Act No. 25 of 2004; and

56.14.1.3. persons acting in the public interest in accordance with the provisions of the Promotion of Access to Information Act No. 2 of 2000.

56.14.2. Subject to clause 56.14.3, neither Party shall communicate with representatives of the press, television, radio or other communications media on any matter concerning this Agreement without the prior approval of the other Party, such consent not to be unreasonably withheld.

56.14.3. To the extent that the TNPA is obliged to disclose or publish information pursuant to clause 56.14.1, it undertakes to the Terminal Operator, if time permits, to consult with the Terminal Operator prior to any communication contemplated by

this clause 56.14.3, and if time does not so permit, such consultation shall be dispensed with by the Parties.

- 56.14.4. No facilities to photograph or film in or upon the Port Sites shall be given to or permitted by the Terminal Operator unless the TNPA has given prior written approval.

56.15.information and audit access

- 56.15.1. The Terminal Operator shall provide to the TNPA all information, documents, records and the like in the possession of, or available to, the Terminal Operator (and to this end the Terminal Operator shall use all reasonable endeavors to ensure that all such information in the possession of any counter-party to any Project Document shall be available to it and the Terminal Operator has included, or shall include, relevant terms in all Project Documents to this effect) as may reasonably be requested by the TNPA for the purpose of complying with any of its statutory reporting obligations including where pursuant to the PFMA or the Auditor-General Act, 1995.

- 56.15.2. Without limiting the generality of the foregoing, the Terminal Operator shall:

56.15.2.1. provide and shall procure that its Subcontractors shall provide all such information as the TNPA may reasonably require from time to time to enable the TNPA to provide reports and returns as required by any Relevant, including reports and returns regarding the physical condition of any building occupied by the TNPA, health and safety, national security, and environmental safety; and

56.15.2.2. note and facilitate the TNPA's compliance with the Promotion of Access to Information Act, 2000 if the TNPA is required to provide information to any person pursuant to that Act.

56.16.counterparts

This Agreement may be executed in any number of counterparts or duplicates, each of which shall be an original, and such counterparts or duplicates shall together constitute one and the same agreement.

56.17.third parties

The Parties intend that terms and conditions of this Agreement shall be solely for the benefit of the Parties and their respective successors and shall not confer any rights upon any third Parties.

56.18.Lenders' benefits

Any right or benefit that is conferred on the Lenders or the Agent by any provision of this Agreement may be accepted by the Lenders or the Agent (as the case may) in writing provided that the Lenders and the Agent (as the case may be) simultaneously bind themselves in favour of the TNPA accepting and undertaking to fulfil any obligations imposed upon them by this Agreement.

Signed at _____ on _____ 2022

Witness _____ **for Transnet National Port Authority**

1.
.....
duly authorised and warranting such authority

2.

Signed at _____ on _____ 2022

Witness _____ **for [insert Terminal Operator]**

1.
.....
duly authorised and warranting such authority

2.

Schedule 1

D&C Specifications

[To be derived from the preferred bidder's bid submission]

Schedule 2

Operating Specifications

[To be derived from the preferred bidder's bid submission]

Schedule 3

Constitutional Documents

[These documents will be derived from the actual constitutional documents of the Terminal Operator and derived from the term sheets submitted as part of the preferred tender submission]

Schedule 4

Construction Agreement

[To be derived from the term sheet submitted as part of the preferred tender submission and prepared by the preferred bidder]

Schedule 5

Operations Agreement

[To be derived from the term sheet submitted as part of the preferred tender submission and prepared by the preferred bidder]

Schedule 6

Financial Model

[To be derived from the preferred bidder's tender submission]

Schedule 7

Direct Agreement

[Note: to be provided in standard form with this Agreement]

Schedule 8

Project Deliverables

Schedule 9

OEMP Required Authorisations

Schedule 10A

B-BBEE Requirements

Schedule 10B

Terminal Operator's Supplier Development Plan

[Note: to be derived from the preferred bidder's tender submission]

Schedule 11

Penalties

[Note: the penalties should be determined with reference to the financial and economic strength of the Project. The penalties applicable to each project are specifically devised for that project.]

Schedule 12A

Port Site: Description of Services

[Description of Services at Port Site]

Schedule 13

Equipment

[To be provided by the TNPA]

Schedule 14

Construction Performance Guarantee

Schedule 15

Operating Performance Guarantee

Schedule 16

Final Maintenance Guarantee

Schedule 17

Existing TNPA Agreements

Schedule 18

Access and Way Leaves

Schedule 19

Fees

Schedule 20

Marine Service Charges

Schedule 21

Port Dues

Schedule 22

Programme for Construction Works

[Refer to Target Completion Date and Scheduled operations Commencement Date]

Schedule 23

Details of Subcontractors' and Suppliers' Loss of Profits

Schedule 24

Port Facility and Operating Arrangements

Annexure QQ – Concession Fee Offer from Bidder

NAME OF ENTITY: _____

We

_____ do

hereby offer:

1. R_____ per square meter per month for proposed _____
square meter of total land required as per available land depicted in Annexure B.

2. R_____ per square meter per month for proposed _____
square meter of total water space required for the Floating Storage Unit (“FSU”) or the
Floating Storage and Regasification Unit (“FSRU”) as the case may be.

Note: Area proposed to be inclusive of exclusion zones.

3. We agree that the Concession Fee Offer is subject to acceptance by TNPA and is also subject
to further negotiation at the discretion of the TNPA.

4. The Concession Fee amount or if applicable, the negotiated and agreed Concession Fee amount
will be incorporated in the Terminal Operator Agreement.

SIGNATURE OF BIDDER