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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:—

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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

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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.

Investigation of complaint 45

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;
- (b) the form in which applications must be submitted, including any fee payable upon submission of an application;
- (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— 10
- (i) an agreement contemplated in section 11(3) has been concluded; and
 - (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*.

Annexure I

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 25 (twenty-five) year concession for Acquire, Operate, Maintain, refurbish and/or construct and Transfer a Liquid Bulk Terminal for a Twenty-Five (25) Year Concession Period at the Port of Cape Town Liquid Bulk Precinct 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 RFP process for which it submitted a Bid Response;

AND WHEREAS TNPA requires the Bidder to provide and on demand guarantee in favour of TNPA in the amount of Five Million Rand (R5 000 000) ("**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:
 2. **breached any law relating to the Procurement Programme or is disqualified from the Procurement Programme as a result of its actions or omissions;**
 - 2.1. **failed to extend the term of guarantee after agreeing to the TNPA's request to extend the expiry date of the Preferred Bidder Guarantee: and or**
 - 2.2. **failed to sign the Terminal Operator Agreement within the time period agreed;**

2.3. revoked, repudiated or withdrawn its Bid Response.

3. More than one demand may be made under this Preferred Bidder Guarantee, provided that the aggregate amount payable shall not exceed the Guarantee Amount.
4. Payment of the amounts so demanded will be made without set-off or deduction to TNPA's bank account. or to other accounts as TNPA may notify the Bank in writing.
5. 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.
6. 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.
7. 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 the aggregate, equal the Guarantee Amount, or of expiry of Preferred Bidder Guarantee as set out above.
8. 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: _____



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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

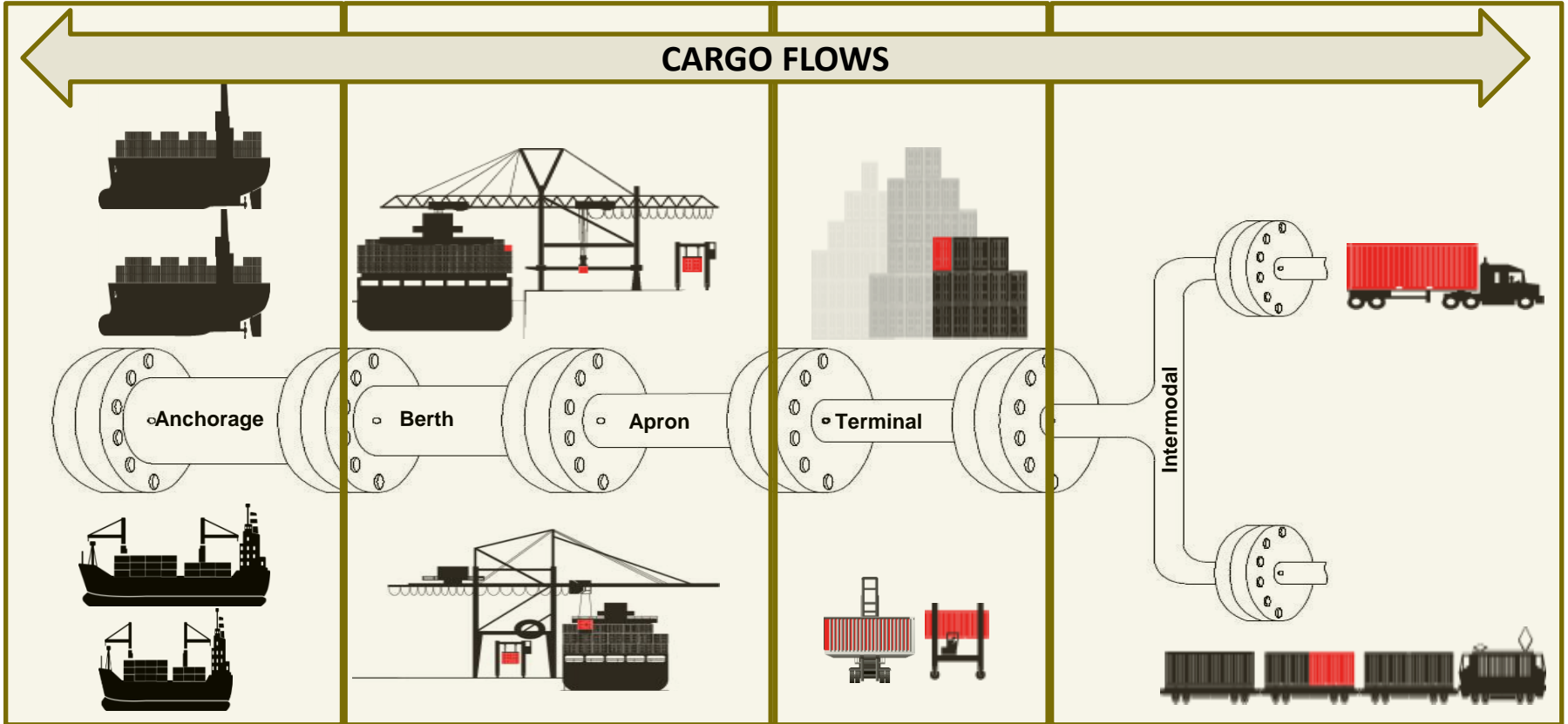


- Constructive engagement between the TNPA and Terminal Operators to improve port performance
- A consultative approach to inform the determination of TOPS
- Standardized and consistent methodology as per TNPA TOPS Toolkit across all Terminal Operators
- Emphasis on cargo flows, productivity, efficiency 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





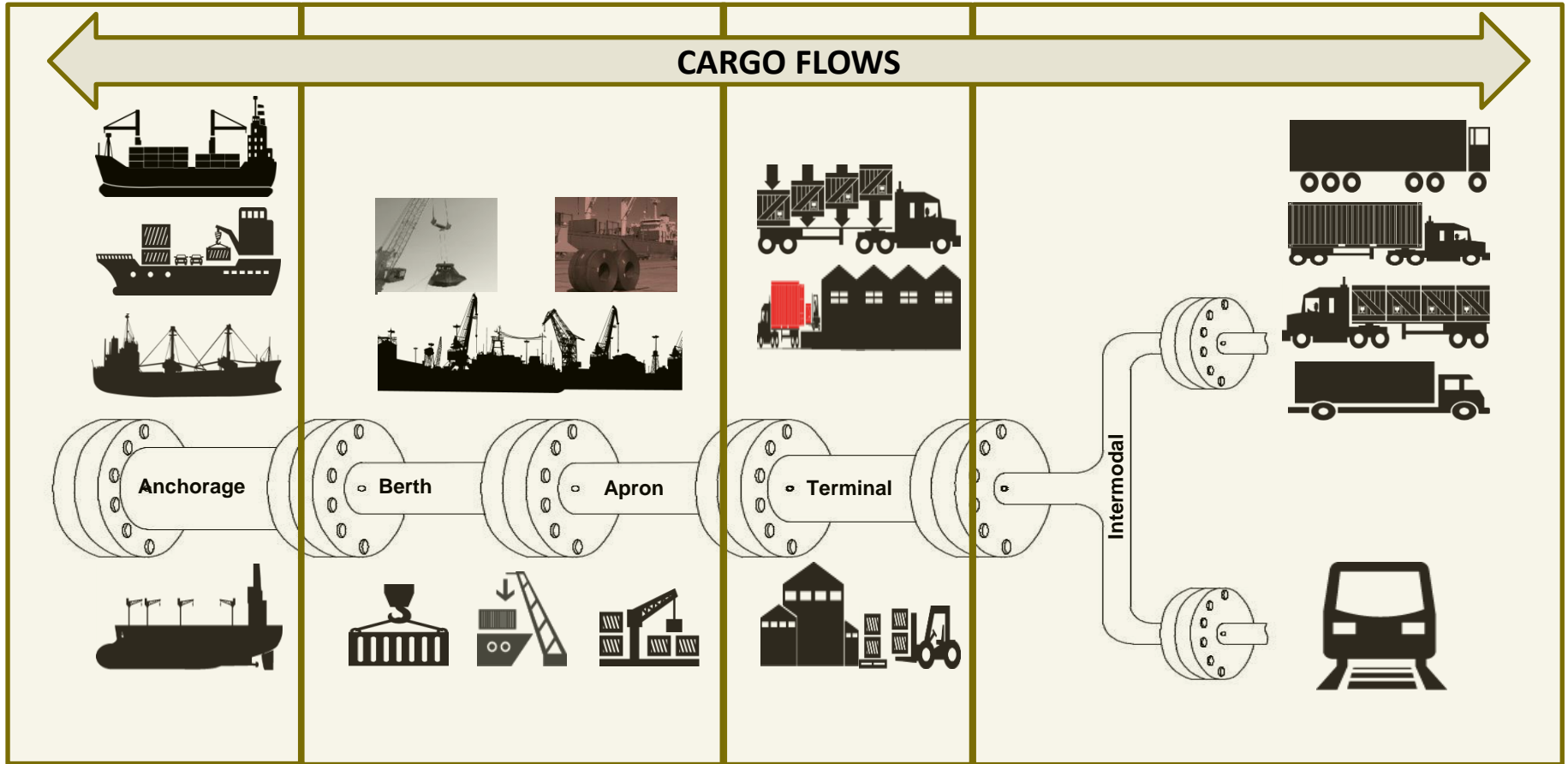
TOPS Aims To Facilitate The Smooth Flow Of Cargo (Containers)



- | | | | |
|---|---|--|---|
| <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

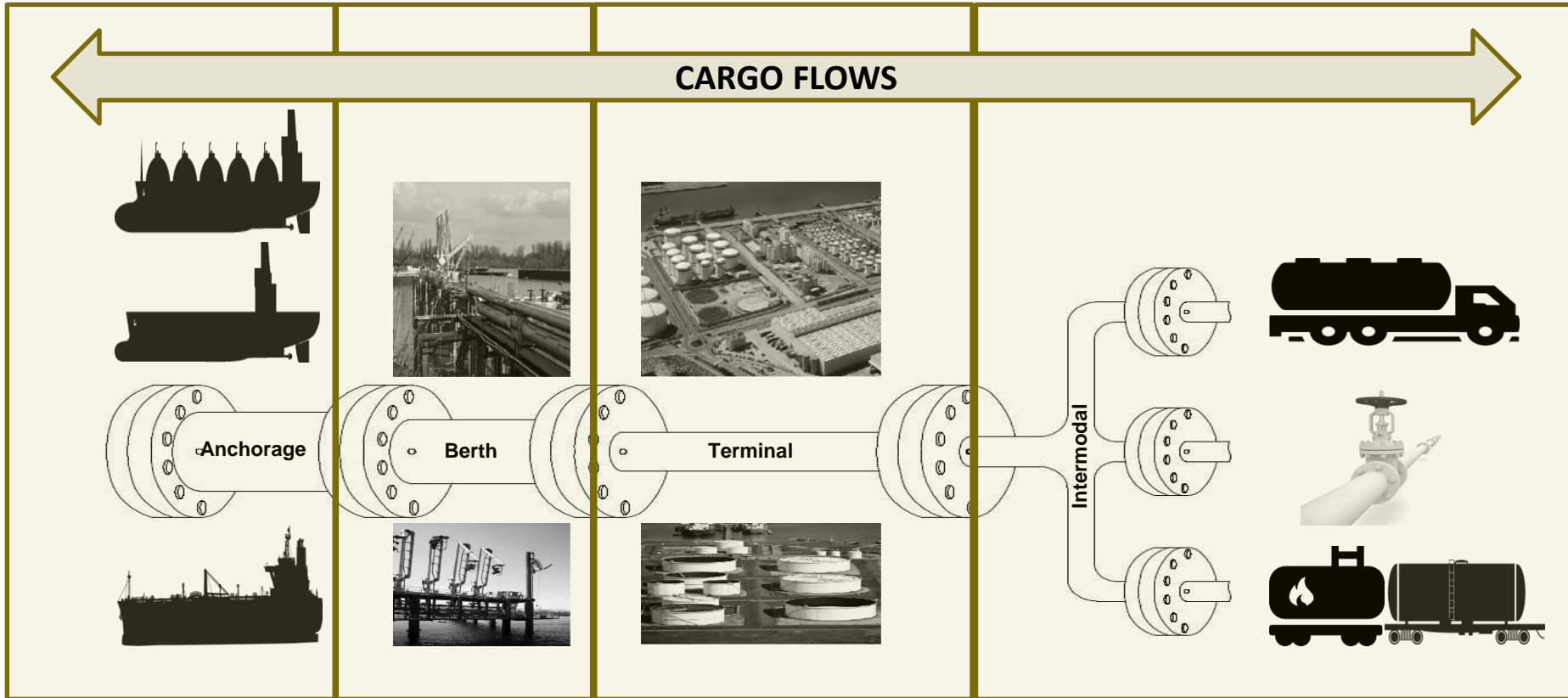
- Throughput
- Cargo dwell time

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



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



- Berthing delays

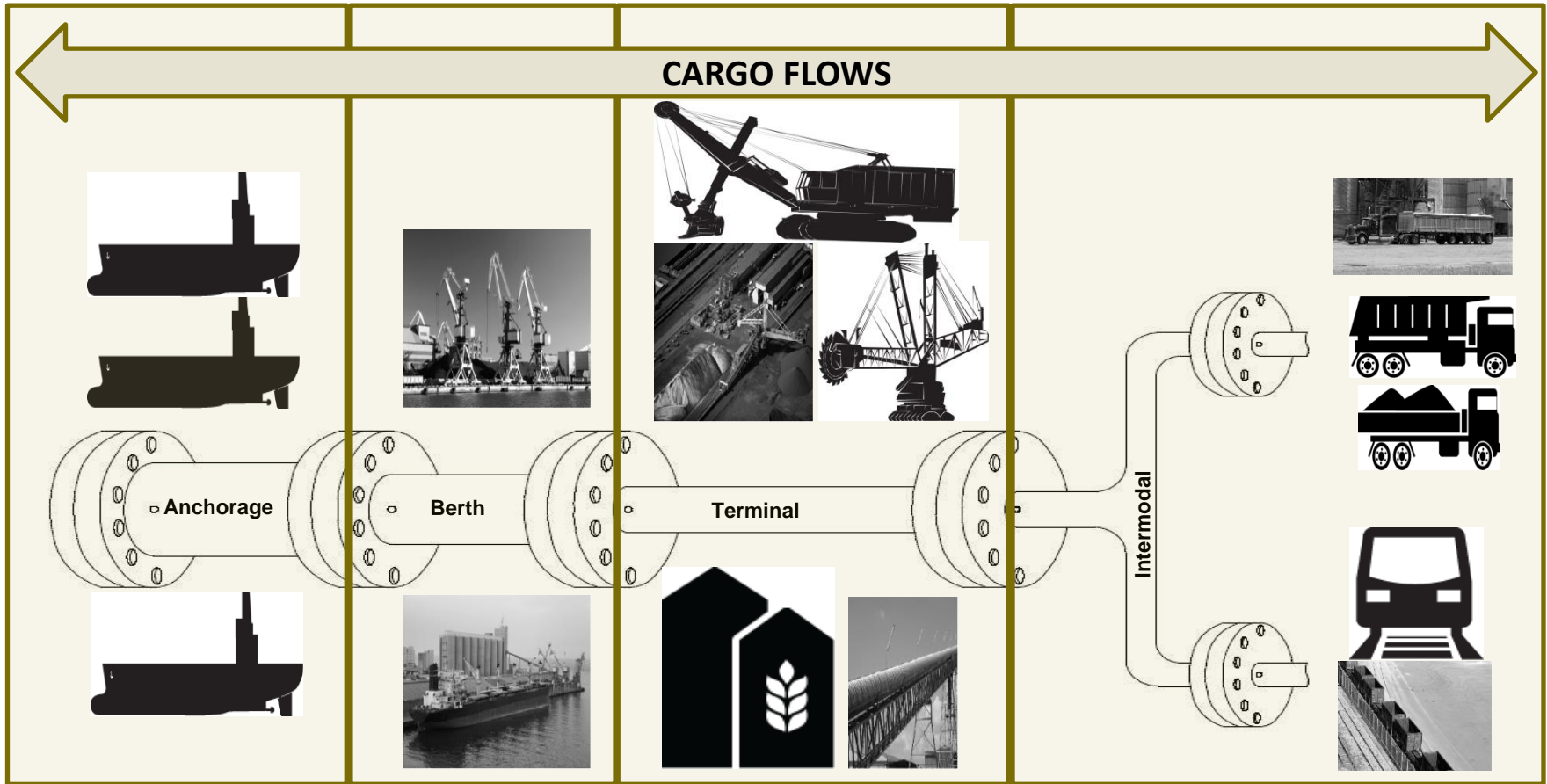
- Berth productivity
- Ship Working Hour / ATS

- Throughput
- Cargo dwell time

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



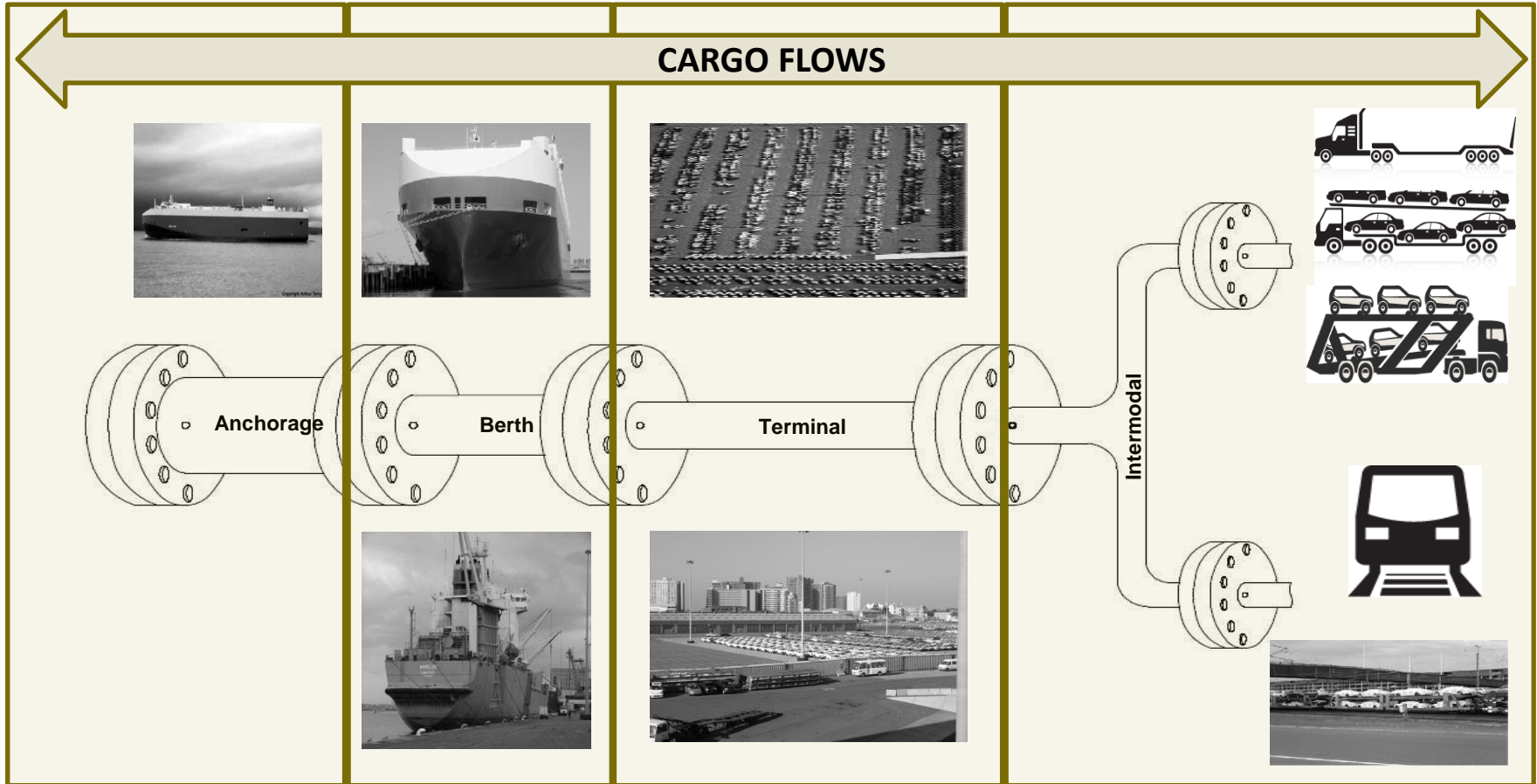
TOPS Aims To Facilitate The Smooth Flow Of Cargo (Dry Bulk)



- | | | | |
|---|---|--|---|
| <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)



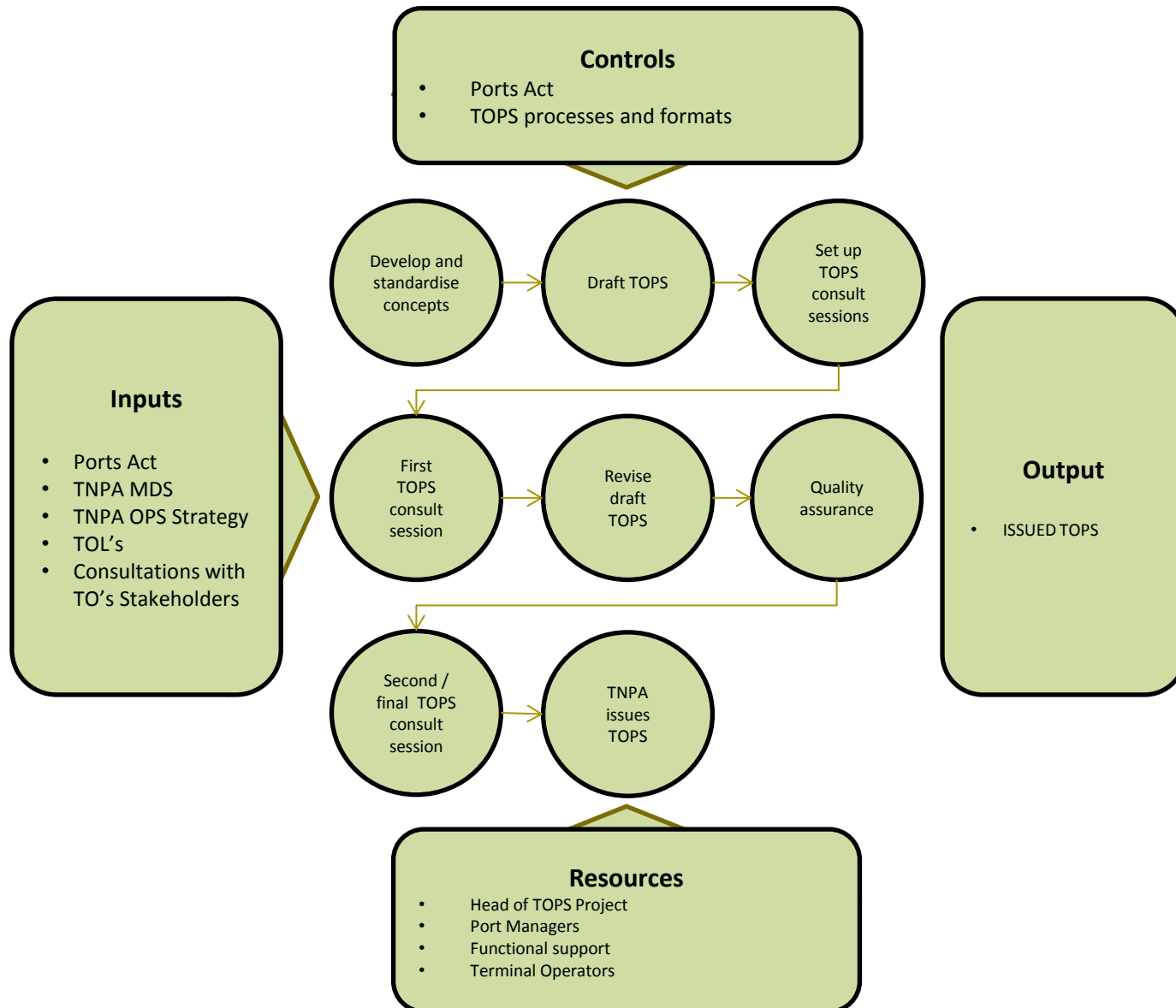
- Berthing delays

- Berth productivity
- Ship Working Hour / ATS

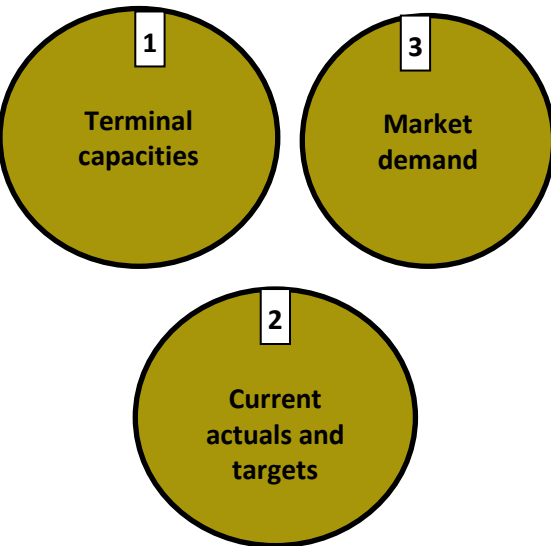
- Throughput
- Unit dwell time

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

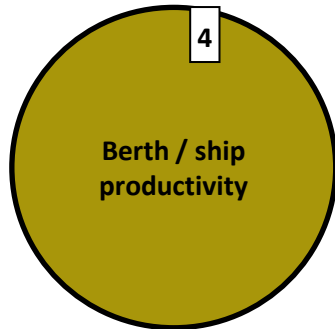
Standard TOPS Development Process



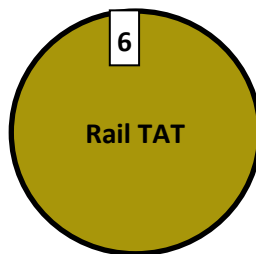
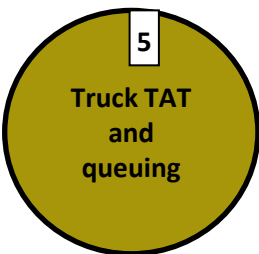
| Who | Purpose |
|----------------------------------|--|
| Terminal Operators | Determine TOPS through a consultative development process and to embed TOPS within the operational and oversight relationship between TNPA and the Terminal Operator |
| Transnet | Alignment with Transnet of corporate targets (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 |



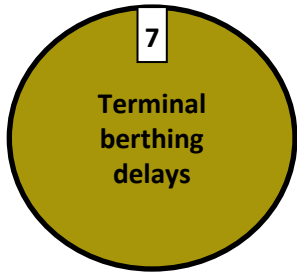
| Question | Source of info / Action |
|--|--|
| <ul style="list-style-type: none"> • What is the current terminal capacity? | <ul style="list-style-type: none"> • TNPA or terminal simulations, desktop calculations |
| <ul style="list-style-type: none"> • What is the level of market demand to be serviced 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

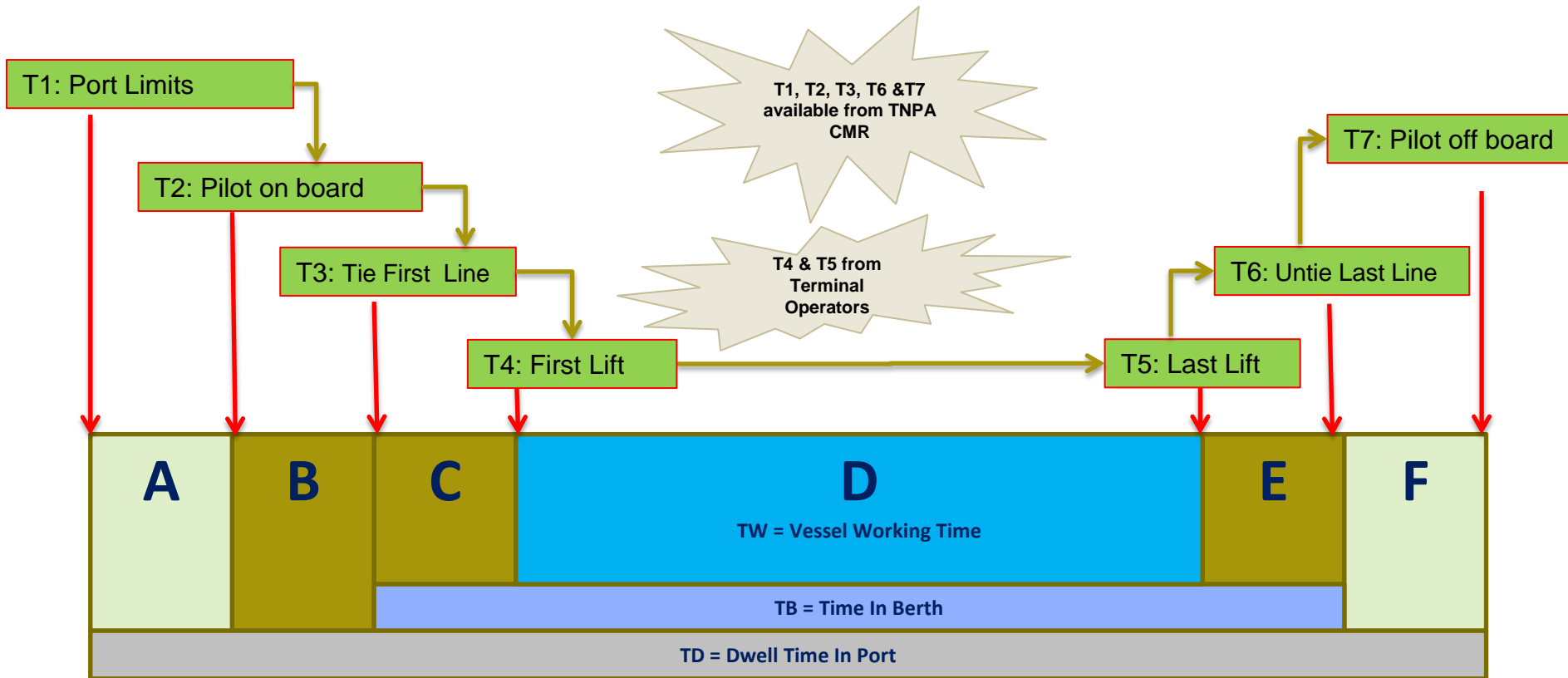
| Measure | Stated in | Applicable to | Managed by |
|--|---|----------------------------------|---|
| Terminal Berthing Delays | Average hours per vessel | Terminals using dedicated berths | Operational relationship, quarterly assessments, Clause 14.9 and Clause 20 of TOL |
| Berth Productivity | TEU's 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



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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)



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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



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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 N (*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 been put in calling for Bid Responses afresh and or having to accept any less favourable Bid Response.

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 B-BBEE 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.

5 ADDRESS FOR NOTICES

- 5.1 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 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.

- 5.2 Bidder to indicate the details of its *domicilium citandi et executandi* hereunder:

Name of Entity:

Facsimile:

Address:

6 NOTIFICATION OF AWARD OF RFP

6.1 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. Unsuccessful Bidders will be advised in writing of the name of the Preferred Bidder and the reason why their Bid Responses have been unsuccessful, for example, in the category of administrative responsiveness, technical criteria, B-BBEE status, or for any other reason.

7 VALIDITY PERIOD

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

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

8.1 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 [C.C.] on whose behalf the RFP is submitted.

8.2 Registration number of company or CC

8.3 Registered name of company or CC or name of consortium

| 8.4 Full name(s) of director or member(s) Number(s) | Address/Addresses | ID |
|--|-------------------|----|
|--|-------------------|----|

9 CONFIDENTIALITY

9.1 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 P (*Certificate of Acquaintance with RFP Documents*) with Annex M (*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.

10 DISCLOSURE OF THE CONCESSION TENDERED

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

| | | | |
|------------|--|-----------|--|
| YES | | NO | |
|------------|--|-----------|--|

11 RETURNABLE DOCUMENTS

11.1 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.

11.2 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.

a) 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] |
|--------------------------------|---------------|--------------------------|
| Concession Fee Offer | Clause 66.1 | |

11.3 Essential Returnable Documents

- a) Bidders are further required to submit with their Bid Responses the following essential Returnable Documents as detailed below.

Failure to provide all essential Returnable Documents may result in a Bidder's disqualification at TNPA's sole discretion. Bidders are therefore urged to ensure that all these documents are returned with their Bid Responses.

- b) Please confirm the submission of these essential Returnable Documents by so indicating [Yes or No] in the table below.
- c) Full responses and documentation in respect of each qualification criterion in Part II of the RFP, including the following:

| ESSENTIAL RETURNABLE DOCUMENTS & SCHEDULES | RFP REFERENCE | SUBMITTED [Yes or No] |
|--|----------------------|----------------------------------|
| Technical and Functional Criteria Assessment | | |
| Previous Experience | Clause 64.1.1. | |
| Track Record | Clause 64.1.2. | |
| SHE Requirements | Clause 64.2. | |
| Financial Capabilities | Clause 64.3. | |
| ANNEXES | RFP REFERENCE | SUBMITTED [Yes or No] |
| Annex A (<i>Bid Notice</i>) | N/A | |
| Annex K (<i>Bid Response Form</i>) | N/A | |
| Annex L (<i>TNPA Declaration of Bidder</i>) | N/A | |
| Annex M (<i>Non-Disclosure Agreement</i>) | N/A | |
| Annex N (<i>Resolution of Board of Directors</i>) | N/A | |
| Annex O (<i>Resolution of Each Member</i>) | N/A | |
| Annex P (<i>Certificate of Acquaintance with the RFP Documents</i>) | N/A | |
| Annex Q (<i>Declaration of Interest</i>) | N/A | |
| Annex R (<i>Tax Clearance Requirements</i>) | N/A | |
| Annex S (<i>Certificate of Acquaintance with the Requirements of the RFP</i>) | N/A | |
| Annex T (<i>Certificate of Acquaintance with Conditions of Contract with TNPA</i>) | N/A | |
| Annex GG (<i>Economic Development Plan by Bidder</i>) | N/A | |

| ESSENTIAL RETURNABLE DOCUMENTS & SCHEDULES | RFP REFERENCE | SUBMITTED [Yes or No] |
|---|---------------|--------------------------|
| Annex Y (<i>Lenders Support Letter</i>) | N/A | |
| Annex BB (<i>B-BBEE Verification Certificate</i>) | N/A | |
| Annex X (<i>Standard RFP Response Form: Information about Bidder</i>) | N/A | |
| Annex CC (<i>Business Case</i>) | N/A | |
| Annex Z (<i>Terminal Operator Agreement</i>) | N/A | |
| Annex I (<i>Form of Preferred Bidder Guarantee</i>) | N/A | |

12 CONTINUED VALIDITY OF RETURNABLE DOCUMENT

12.1. 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.

12.2. 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 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 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: _____

TNPA DECLARATION OF BIDDER

NAME OF ENTITY: _____
[insert name of Bidder] ("the Bidder")

We _____ do hereby certify that:

1. In this declaration, words and expressions which are defined in the Request for Proposals for 25 (twenty five) year concession for the Development, Design, Financing, Construction, Operation, Maintenance, and Transfer a Liquid Bulk Terminal at the Port of Cape Town back to TNPA, Tender No:shall bear the same meaning when used in this letter, unless the context requires otherwise.
2. The Bidder further certifies that:
 - 2.1 the TNPA has supplied and we have received appropriate responses to any or all questions, as applicable, which were submitted by ourselves for the RFP clarification purposes;
 - 2.2 we have received all information we deemed necessary for the completion of this RFP;
 - 2.3 at no stage have we received additional information relating to the subject matter of this RFP from the TNPA sources, other than information formally received from the designated the TNPA contact(s) as nominated in the RFP documents;
 - 2.4 we are satisfied, insofar as our entity is concerned, that the processes and procedures adopted by the TNPA in issuing this RFP and the requirements requested from Bidders in responding to this RFP have been conducted in a fair and transparent manner; and
 - 2.5 furthermore, we declare that a relationship formed on the basis of any one or more of family (including spouses and in-laws), friendship, business acquaintance, professional engagement, or employment exists or does not exist [delete as applicable] between an owner or member or director or partner or shareholder of our entity and an employee or board member of the TNPA including any person who may be involved in the evaluation and or adjudication of this Bid.
 - 2.6 In addition, we declare that an owner or member or director or partner or shareholder of our entity is or is not [delete as applicable] an employee or board member of the TNPA.
 - 2.7 If such a relationship as indicated in paragraph 2.5 and or 3 exists, the Bidder is to complete the following section:

FULL NAME OF OWNER/MEMBER/DIRECTOR/PARTNER/SHAREHOLDER:



ADDRESS:

Indicate nature of relationship with TNPA:

DATE:

SIGNATURE:

[Failure to furnish complete and accurate information in this regard will lead to the disqualification of a response and may preclude a Bidder from doing future business with TNPA]

- 2.8 We declare, to the extent that we are aware or become aware of any relationship between ourselves and the TNPA (other than any existing and appropriate business relationship with the TNPA) which could unfairly advantage our entity in the forthcoming adjudication process, we shall notify TNPA immediately in writing of such circumstances.
- 2.9 We accept that any dispute pertaining to this Bid Response will be resolved through the Ombudsman process and will be subject to the Terms of Reference of the Ombudsman. The Ombudsman process must first be exhausted before judicial review of a decision is sought.
- 2.10 We further accept that TNPA reserves the right to reverse an award of business or decision based on the recommendations of the Ombudsman without having to follow a formal court process to have such award or decision set aside.

SIGNED at _____ on this ____ day of _____
20__

For and on behalf of

AS WITNESS:

duly authorised hereto

Name: _____

Name: _____

Position: _____

Position: _____



Signature: _____

Signature: _____

Date: _____

Place: _____

Annexure M

NON-DISCLOSURE AGREEMENT

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:

- 2.1 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,**
- 2.2 shall be protected and kept 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,**
- 2.3 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.**
- 2.4 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:**
- 2.5 Was at the time of receipt otherwise known to the Receiving Party**
- 2.6 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**
- 2.7 Subsequently is developed independently in good faith by employees of the Receiving Party who did not have access to the Proprietary Information**
- 2.8 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**
- 2.9 Becomes part of the public domain without breach of the Agreement by the recipient**
- 2.10 Is so disclosed or used with the written approval of the Disclosing Party**
- 2.11 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 earlier terminated by either Party by operation of law and without demand at any time upon 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.**

- 2.12 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.**
- 2.13 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.**
- 2.14 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.**
- 2.15 This Agreement shall be governed by and interpreted in accordance with the laws of the Republic of South Africa**
- 2.16 Any dispute arising from or in connection with this Agreement, which cannot be settled amicably by the Parties, shall be finally resolved in accordance of the Arbitration Foundation of Southern Africa (AFSA) by an arbitrator or arbitrators appointed by the Foundation. 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 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 if the evidence.**
- 2.17 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.**
- 2.18 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.**
- 2.19 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.**

- 2.20** 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 consents of the other Party.
- 2.21** 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.
- 2.22** 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.
- 2.23** With respect to any exchange of Proprietary Information which may occur as a result of the Agreement, it is expressly understood and agrees 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:

TNPA

2.23.1 As regard the individuals identified in Paragraph Error! Reference source not found. here above, each Party shall have the right and power to redesignate such persons within their organisation as are authorized to receive/transmit Proprietary Information, which are made by a Party, shall be effected by rendering written notice of such change to the other Party.

2.23.2 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).....

.....
.....



Terminal Operator

Date:

Place:

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

.....
.....

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

.....
.....

RESOLUTION OF BOARD OF MEMBERS

(TO BE COMPLETED BY LEAD MEMBER OF A BIDDER CONSORTIUM OR BY THE PROJECT COMPANY IF ESTABLISHED AT BID SUBMISSION DATE)

[Name of Entity] (Registration Number: [insert])
(the "Company")

RESOLUTION OF THE BOARD OF DIRECTORS OF THE COMPANY PASSED AT A MEETING HELD ON [•],

RESOLVED THAT:

1. the Company participates as the Bidder [***OR, in the case of a Bidder consortium***], in the [**insert name of Bidder**] consortium ("**Bidder**") in responding to the RFP issued by the TNPA on or about [**insert date**] under Tender Reference number TNPA/2024/04/0016/62969/RFP, in respect of the 25 (twenty-five) year concession for Acquire, Operate, Maintain, refurbish and/or construct and Transfer a Liquid Bulk Terminal for a Twenty-Five (25) Year Concession Period at the Port of Cape Town Liquid Bulk Precinct..
2. [***Note: This paragraph is for Bidders that are consortia***] the Company, by agreement with the other Members, be the Lead Member of the Bidder consortium (the "**Lead Member**"); and
3. [***Note: This paragraph is for all Bidders***] [**insert name of authorised individual in the Company**] be and hereby is authorised to authorised to enter into, sign, execute and complete any documents relating to this Bid Response and any subsequent agreement for the provision of services.

Signed by the Directors

Name: _____

Date: _____

RESOLUTION OF EACH MEMBER

(OTHER THAN THE LEAD MEMBER) OF A BIDDER CONSORTIUM OR EACH
SHAREHOLDER OF A BIDDER PROJECT COMPANY

[Name of Entity] (Registration number: [insert])
(the "Company")

RESOLUTION OF THE BOARD OF DIRECTORS OF THE COMPANY PASSED AT A
MEETING HELD ON [INSERT DATE]

RESOLVED THAT:

1. the Company participates as the Bidder [***OR, in the case of a Bidder consortium***, in the [insert name of Bidder] consortium ("**Bidder**") in responding to the RFP issued by the TNPA on or about **16 April 2024** under Tender Reference number TNPA/2024/04/0016/62969/RFP, in respect of the for 25 (twenty-five) year concession for Acquire, Operate, Maintain, refurbish and/or construct and Transfer a Liquid Bulk Terminal for a Twenty-Five (25) Year Concession Period at the Port of Cape Town Liquid Bulk Precinct.
2. [***Note: This paragraph is for Bidders that are consortia***] the Company, by agreement with the other Members, be the Lead Member of the Bidder consortium (the "**Lead Member**"); and
3. [***Note: This paragraph is for all Bidders***] [insert name of authorised individual(s) in the Company] be and hereby is authorised to authorised to enter into, sign, execute and complete any documents relating to this Bid Response and any subsequent agreement for the provision of services.

Signed by the Directors

Name: _____

Date: _____

CERTIFICATE OF ACQUAINTANCE WITH 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 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.
 1. 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:
 - 1.1 has been requested to submit a Bid Response in respect of the RFP;
 - 1.2 could potentially submit a Bid Response in response to RFP, based on their qualifications, abilities or experience; and
 - 1.3 provides the same services as the Bidder and/or is in the same line of business as the Bidder.
 2. 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.

- 3.** In particular, without limiting the generality of paragraph 5 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
- 3.1** prices;
 - 3.2** geographical area where Services will be rendered (market allocation);
 - 3.3** methods, factors or formulas used to calculate concession;
 - 3.4** the intention or decision to submit or not to submit, a Bid Response;
 - 3.5** the submission of a Bid Response which does not meet the specifications and conditions of the RFP; or
 - 3.6** bidding with the intention not being awarded Preferred Bidder status.
- 4.** In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the services to which this RFP relates.
- 5.** 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.
- 6.** 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 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 12 of 2004 or any other applicable legislation.

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

SIGNATURE OF WITNESS

SIGNATURE OF BIDDER

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 the TNPA or Transnet and or to any other Government official or person directly involved in the Procurement Programme in respect of a Liquid Bulk 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 the 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 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 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 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 THE 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

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 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.

CERTIFICATE OF ACQUAINTANCE WITH THE REQUIREMENTS OF THE RFP

NAME OF ENTITY:

We **[insert name of Bidder]** _____ do hereby certify that we acquainted ourselves with all the documentation comprising the requirements of the RFP as received on _____ **[insert date]** from TNPA in respect of the Project for which we submitted our Bid Response.

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

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

SIGNATURE OF WITNESS

SIGNATURE OF BIDDER



Annexure T

**CERTIFICATE OF ACQUAINTANCE WITH CONDITIONS OF CONTRACT WITH
TNPA**

NAME OF ENTITY: **[insert name of Bidder]** _____

We _____ do hereby certify that we acquainted ourselves with all the documentation comprising the Terminal Operator Agreement and the provisions of Annexure ~~ZKK~~ of the RFP as received on _____ **[insert date]** from TNPA in respect of the Project for which we submitted our Bid Response.

We furthermore agree that TNPA shall recognise no claim from us for relief based on an allegation that we overlooked any requirement of the Terminal Operator Agreement or failed to take it into account for the purpose of calculating our offered concession or otherwise.

We also note the obligations as set out in the Terminal Operator Agreement.

SIGNED at _____ on this _____ day of _____ 20____

SIGNATURE OF WITNESS

SIGNATURE OF BIDDER

BREACH OF LAW FORM

NAME OF ENTITY:

We _____

do hereby certify that we **have/have not** been [**delete as applicable**] found guilty during the preceding 5 (five) years of a serious breach of law, including but not limited to a breach of the Competition Act, 89 of 1998, by a court of law, tribunal or other administrative body. The type of breach that the Bidder is required to disclose excludes relatively minor offences or misdemeanours, e.g., traffic offences.

Where found guilty of such a serious breach, please disclose:

NATURE OF BREACH:

DATE OF BREACH:

Furthermore, we acknowledge that TNPA reserves the right to exclude any Bidder from the bidding process, should that person or entity have been found guilty of a serious breach of law, tribunal or regulatory obligation.

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

SIGNATURE OF WITNESS

SIGNATURE OF BIDDER

Annexure W

SUPPLIER INTEGRITY PACT

- 1. TNPA’s Integrity Pact requires a commitment from Bidders to TNPA that they have not, nor will they engage in any:**
 - 1.1 corrupt and fraudulent practices;**
 - 1.2 anti-competitive practices; and**
 - 1.3 act in bad faith towards each other.**

- 2. The Integrity Pact also serves to communicate TNPA’s Gift Policy as well as the remedies available to TNPA where a Bidder contravenes any provision of the Integrity Pact.**

- 3. Bidders are required to familiarise themselves with the contents of the Integrity Pact which is available on the Transnet Internet site [www.transnet.net/Tenders/Pages/default.aspx] or on request.**

NAME OF ENTITY:

We _____

do hereby certify that we have acquainted ourselves with all the documentation comprising the TNPA Integrity Pact. We agree to fully comply with all the terms and conditions stipulated in the TNPA Supplier Integrity Pact.

- 4. We furthermore agree that TNPA shall recognise no claim from us for relief based on an allegation that we overlooked any terms and conditions of the Integrity Pact or failed to take it into account for the purpose of submitting our offer.**

5. We confirm having been advised that a signed copy of this Schedule can be submitted in lieu of the entire TNPA Integrity Pact as confirmation in terms of the Returnable Schedule.

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

SIGNATURE OF WITNESS

SIGNATURE OF BIDDER

Annexure X**STANDARD RFP RESPONSE FORM: INFORMATION ABOUT BIDDER**

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 clause (*Information about the Bidder and the Project*) of Part II (*Qualification Criteria*) of the RFP must be submitted as requested and provided for in the response forms contained in this Annex X (*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 clause 66.2.1 (*Information about the Bidder and the project*) of Part II (*Qualification Criteria*) of the RFP and are inserted as headings for the Bidders' reference throughout the response forms in this Annex X (*Standard RFP Response Form: Information about the Bidder*) of the RFP to broadly indicate which responses will be evaluated under each evaluation item:
 - 1.1.3. Information about the Bidder (Bidder's Details);
 - 1.1.4. Member Information;
 - 1.1.5. Government Contracts; and
 - 1.1.6. Legal Proceedings.
 - 1.2. **Notes for Completion**
 - 1.2.1. 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.
 - 1.2.2. Please answer using the electronic forms, in the manner and space provided for in the response forms in this Annex X (*Standard RFP Response Form: Information about the Bidder*) of the RFP, the questions stated in the following sections as fully as possible. Extra pages may be appended to the response form if necessary.

- 1.2.3. Bidders should note that the provision of false or misrepresenting information may result in an entity's exclusion from the RFP.
- 1.2.4. 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.

2. Information about the Bidder

2.1. Please state (in the format provided):

2.1.1. 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 agreements 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 RFP. 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: | |

2.1.2. 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;

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

| | |
|--------------------|--|
| Telephone numbers: | |
| Telefax number: | |

2.1.3. 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:

| NAME LEGAL ADVISORS | ROLES AND RESPONSIBILITIES |
|----------------------------|-----------------------------------|
| | |
| | |
| | |
| | |
| | |

| NAME FINANCIAL CONSULTANTS | ROLES AND RESPONSIBILITIES |
|-----------------------------------|-----------------------------------|
| | |

| | |
|--|--|
| | |
|--|--|

| NAME TECHNICAL ADVISORS | ROLES AND RESPONSIBILITIES |
|--|-----------------------------------|
| | |
| | |

2.1.4. 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), (ii) friendship, (iii) business acquaintance, (iv) professional engagement, or (v) employment. If the Advisor 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. Failure by the relevant Advisors to disclose an interest may result in the Bidder being disqualified from the RFP.

2.1.5. _____

2.1.6. Please attach to this response form an organogram which details the entire structure of the Bidder with explanatory notes in respect of the identity and role of each Member of the Bidder.

2.2. Member Information

- 2.2.1. Please state (in the format provided) the following name and contact detail information in relation to each Member:
- 2.2.2. name and legal status of the Member, its registration number, date and country of registration;
- 2.2.3. registered address and website address (if any) of each Member;
- 2.2.4. street address, postal address, telephone number and telefax numbers and e-mail address of each Member; and
- 2.2.5. 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: | |
| 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: | |

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

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

| NAME OF DIRECTOR OR EQUIVALENT | ADDRESS |
|---------------------------------------|----------------|
| | |
| | |
| | |
| | |

2.2.8. Brief description of each Member's primary business and main products or services, comprising of no more than 4 (four) pages.

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

2.3.1. certified copies of all Constitutional Documents, including all documents that evidence changes thereto, such as change of name certificates;

2.3.2. certified copies of documents that evidence the Member's directorship; and

2.3.3. 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.

2.3.4. Please provide (in the format provided) the following information in relation to either the Bidder or the Member with the appropriate experience:

2.3.5. 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;

2.3.6. a detailed description of how the Member or Bidder will approach the leadership and 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;

2.3.7. 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.

2.4. Government Contracts

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

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

2.4.4. Details of any current 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:

2.5. 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:

2.5.1. 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;

2.5.2. 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;

2.5.3. 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. If so, please provide details thereof as well as the outcome or current status thereof;

2.5.4. 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 (five million Rand). If so, please furnish details of the nature of such dispute as well as the current status or outcome thereof;

2.5.5. 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. If so, please furnish details of the reasons for such deductions; and

2.5.6. 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.



Annexure Y

Letter of Support Template from Lender

Dear Sirs,

1. **Transnet National Port Authority – Cape Town– tender for 25 (twenty – five) year concession for a Liquid Bulk Terminal in the Port of Cape Town (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.]