

ANNEXURE A

TRANSNET SOC Ltd ACTING THROUGH ITS OPERATING DIVISION TNPA NATIONAL PORTS AUTHORITY("TNPA")

BID NOTICE: REQUEST FOR PROPOSAL FOR THE APPOINTMENT OF A TERMINAL OPERATOR TO OPERATE AND MAINTAIN PORT AND COMMON USER INFRASTRUCTURE FINANCED, DESIGNED AND CONSTRUCTED BY THE TNPA, AND TO DESIGN, DEVELOP, FUND, CONSTRUCT, OPERATE, MAINTAIN TERMINAL STORAGE TANKS FOR THE HANDLING OF LIQUID BULK AT THE LIQUID BULK PRECINCT IN THE PORT OF NGQURA FOR A TWENTY-FIVE (25) YEAR CONCESSION PERIOD.

June 2025

Information Request Description	REQUEST FOR PROPOSAL FOR THE APPOINTMENT OF A TERMINAL OPERATOR TO OPERATE AND MAINTAIN PORT AND COMMON USER INFRASTRUCTURE FINANCED, DESIGNED AND CONSTRUCTED BY THE TNPA, AND TO DESIGN, DEVELOP, FUND, CONSTRUCT, OPERATE, MAINTAIN TERMINAL STORAGE TANKS FOR THE HANDLING OF LIQUID BULK AT THE LIQUID BULK PRECINCT IN THE PORT OF NGQURA FOR A TWENTY-FIVE (25) YEAR CONCESSION PERIOD.
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RFP Number	TNPA/2024/05/0004/65042/RFP
Issue Date	20 June 2025
Bid Fee and Banking Details	This is RFP is issued free of charge
Non Compulsory Briefing Session	09 July 2025 @ 10h00

Briefing Venue	Port of Ngqura, Emendi Building, Elwandle Boardroom
RSVP for: (1) Compulsory Briefing Session (2) Site visit	Requests to be emailed by 05 2025 to: NgquraLiquidBulkRFP@transnet.net
Bid Submission Closing Date	19 September 2025 at 16:00

ANNEXURE B

ANNEXURE A1

1. DEED DESCRIPTION:ERF 312 Coega
2. TOTAL AREA OF ERF:51 512 415 m²
3. LEASE PERIOD:
4. LEASE START DATE:
5. LEASE END DATE:
6. PORTION OF LAND LEASED: ± 205 520 m²

LEASE SIGNATORIES

FOR	WITNESS 1.		
SIGNATURE	DATE	SIGNATURE	DATE
		WITNESS 2.	
CAPACITY		SIGNATURE	DATE
FOR TRANSNET NATIONAL PORTS AUTHORITY		WITNESS 1.	
SIGNATURE	DATE	SIGNATURE	DATE
		WITNESS 2.	
CAPACITY		SIGNATURE	DATE

LEASE DRAWING

No.	DESCRIPTION / REVISIONS	DATE
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PROJECT / AREA / ASSET / SUBJECT

PORT OF NGQURA

LEASE AGREEMENT

-LIQUID BULK STORAGE FACILITY-

DRAWING TITLE

LEASE OF LIQUID BULK STORAGE FACILITY AT

THE PORT OF NGQURA

TO: ...

LEASE OUT NO.: _____

DATE	2023-03-07		
SCALE	AS SHOWN	SIGNATURE	DATE

SUPPORTED

D
E
S

IGNED BY

CHECKED BY

DESIGN & DRAWING SIGN OFF



LEGEND:

- SEWER
- WATERMAIN
- COMMS
- STORMWATER
- MV ELECTRICAL
- LV ELECTRICAL
- SANDBYPASS
- SEA SALT PUMP

LEGEND :

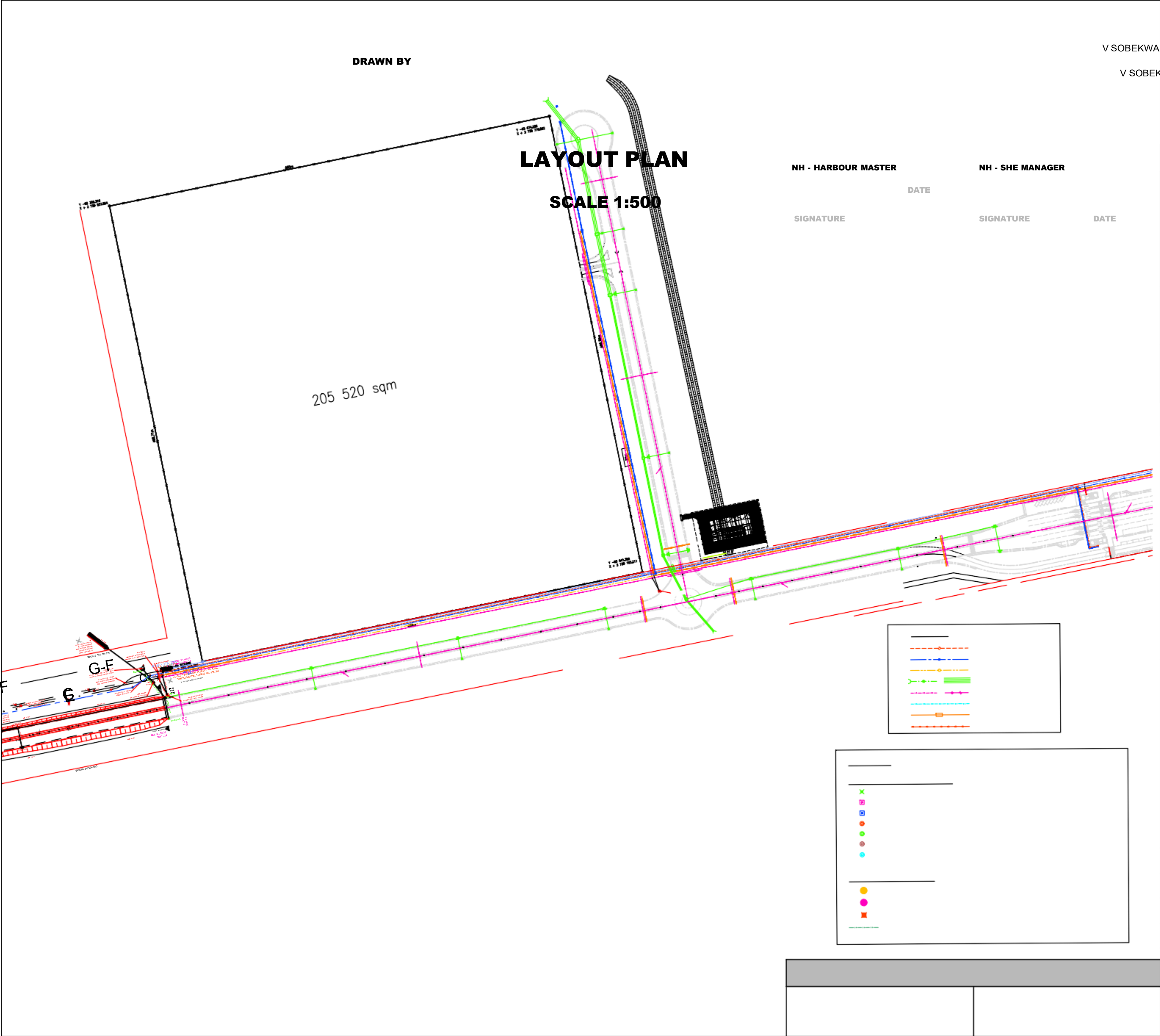
HIGH MAST/LIGHT POLES

- L15 : 30m HIGH MAST C/W - 9 x 400w H.P.S. FLOODLIGHTS.
- L7-1 : 20m HIGH MAST C/W - 6 x1000w H.P.S. FLOODLIGHTS.
- L7-1 : 20m HIGH MAST C/W - 8 x1000w H.P.S. FLOODLIGHTS.
- L1 : 14m FIBER POLES - 2 x BACK-BACK 250w H.P.S. LUMINAIRES.
- L1 : 9m FIBER POLES - 2 x BACK-BACK 250w H.P.S. LUMINAIRES.
- L1 : 4.5m FIBER POLES - 1 x SINGLE LUMINAIR.

- L1 : 14m FIBER POLES - 2 x BACK-BACK 250w H.P.S. LUMINAIRES.

CAMERA/MANHOLES

- CAMERA POSTION (AS BUILT)
- CAMERA POSTION (FUTURE)
- 800 x 800mm MANHOLE POSITION.
- CAMERA DUCT



DRAWN BY

V SOBEKWA L DODI
V SOBEKWA

NH - DEPUTY
PORT ENG.

SIGNATURE

DATE

NH - PORT
ENG.

NH - HARBOUR MASTER

NH - SHE MANAGER

DATE

SIGNATURE

SIGNATURE

DATE

CHECKED BY

T NGXABANI

SIGNATURE

DATE

PAPER SIZE

A3

TRANSNET

NH73A0602-036-10

DRW. NO.

SHEET

REV.



TRANSNET
national ports
authority

ANNEXURE C

BUSINESS CASE GUIDELINES

Bidders will be required to submit a detailed business case including as a minimum the information listed below. The Business Case is mandatory and will contribute to the scoring as detailed in the RFP.

1) Executive Summary

2) Company Description

Shareholding of entity

B-BBEE Shareholding

Advisors

Products and services

Long Term Aim of Business

Objectives

S.W.O.T. Analysis

3) Technical aspects

TECHNICAL CRITERIA	ITEM
Previous experience	<ul style="list-style-type: none"> Number of years operating in the Liquid Bulk sector.
Throughput volumes	<ul style="list-style-type: none"> Average throughput volumes over the past 3 years (kilo litres per annum)
Market analysis	<ul style="list-style-type: none"> a clear statement of the vision, mission, and strategic objectives of the Bidder; value proposition of business, identification of the status quo market and services at the Port; identification of the potential market and segment analysis for the Facility; a market strategy which includes a SWORT analysis; economic spin-offs per market segment; provide the short-, medium- and long-term projection forecast;

	<ul style="list-style-type: none"> • provide the strategy for open access (Third Party access) • sustainability and growth assumptions of the Terminal; and • details of sources of information on all market information or analysis
Commercial and Operations Analysis	<ul style="list-style-type: none"> • Profitability and price forecast; • Liquid Bulk distribution plan between pipelines, and road linking to regional and hinterland destinations; • Competitor analysis;
Project schedule	<ul style="list-style-type: none"> • a project schedule, highlighting key sequential milestones and relevant timelines.
Preliminary Design	<ul style="list-style-type: none"> • Terminal plan layout of the full site arrangement indicating; <ul style="list-style-type: none"> ○ Safety infrastructure and equipment (including safety distances i.e. tank to tank spacing, tank to bund wall spacing, tank to road spacing); ○ Linkages to pipeline, and road for distribution; and • Other

SHE Requirements	<ul style="list-style-type: none"> • Environmental Management <ul style="list-style-type: none"> ○ ISO 14001:2004 Environmental Management System or the equivalent; ○ A typical environmental risk assessment that is associated with the intended infrastructure and its operation. It should identify aspects and impacts and mitigation controls in respect thereof • Occupational Health & Safety <ul style="list-style-type: none"> ○ an Occupational Health and Safety policy that deals with the Bidder's commitment in their current business signed by a director of the Bidder or another properly delegated person; ○ a valid letter of good standing from the Department of Labour or Federated Employers Mutual Assurance or equivalent. ○ The budgeted amount assigned to health and safety for the duration of the Project. • Risk Management <ul style="list-style-type: none"> ○ A business continuity management plan from the Bidder's existing business aligned to a recognised BCM system that will ensure that resilience is considered as part of the Bidders operations in order to mitigate potential business continuity risks to the Project ○ separate risk management plan aligned to a recognised written SHE management system which stipulates how the risks pertaining to construction, development and operational
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	<p>phases will be identified, assessed, and managed by the Bidder.</p> <ul style="list-style-type: none"> • Health and Safety Performance <ul style="list-style-type: none"> ○ Compliance Strategy / framework; ○ Compliance Risk Assessment; ○ Health and Safety policy document together with objectives and targets; ○ The bidder must have an existing Safety Management System (SMS) Certificate which is certified by a recognised body or assurance audit;
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4) Financial Aspects

Profitability EBITDA	<ul style="list-style-type: none"> • Profitability of the Bidder averaged over the past 3 (three) year period
Proposed funding model	<ul style="list-style-type: none"> • The Bidder must provide the proposed funding model that supports the business case and capital investment required; • The source of the capital investment required must be explained in terms of the debt/equity structure
Past Experience in raising capital	<ul style="list-style-type: none"> • The details for each Member relating to its past experience (within the last 10 (ten) year period) of raising debt on a project finance and or corporate finance basis, which demonstrates an ability to: (i) provide equity; (ii) secure and structure such equity; and (iii) letters from the lenders or funders that provided the finance setting out their role and confirming the Member's past experience in raising the capital disclosed in response to the criterion
Operational Cost (projected)	<ul style="list-style-type: none"> • Maintenance Cost • Environmental Management Cost • Other Operating Costs

Operational Revenue (projected)	<ul style="list-style-type: none"> Income generation information, providing revenue generation streams and indicating the cyclical nature of the business (both Qualitative and quantitative information) Other revenue sources identified
Key Financial indicators (projected)	<ul style="list-style-type: none"> Cash flow projections Present value of future cash flow Statement of financial position (projected) Return on investment
Key Financial Ratios (projected)	<ul style="list-style-type: none"> Current Solvency

5) Marketing strategy for the Terminal

6) Appendices

ANNEXURE E

TERMINAL OPERATOR PERFORMANCE STANDARDS (TOPS)

(tops definition of measures and calculations)

NB: These may apply differentially as per the nature of the terminal operations

Measure	Definition	Calculation	Applicable	Exclusions
Terminal berthing delays	The average delay per vessel as a direct result of the terminal expressed in hours	Total of all (vessel actual berthing time - vessel planned berthing time) / total number of vessels delayed for a given period. The allowance of 30 minutes is to be considered as a buffer, thus any delay that is less than 30 minutes won't	Terminals with dedicated berths only	Force majeure (Weather delays) Surge, under currents External power supply failures
Vessel Service Delays – Terminal Operator (%)	The average delay to vessels as a direct result of Terminal Operator expressed in percentage.	be considered Total number of vessels delayed as a delay. / total of all vessels serviced	All terminals	Force majeure (weather delays), surge, under currents, and external power supply failures.
Handling Rate	Average volumes handled during productive time of cargo handling equipment (Per Crane for Containers, Per Line for Liquid Bulk, Per Ship Loader for Dry Bulk etc.)	Sum of volumes performed during the period /Total number of cargo handling equipment productive hours during that period (first cargo operation to end of cargo operation).	All terminals	Force majeure (Weather delays)
Berth Productivity	Total volume handled during the total time vessel is on berth expressed in tons/hour, Kl/hour, Moves/hour, Units/hour	Total volume for a given period (in tons, Kl, units or containers) /Total time vessel is on berth. Total time vessel is on berth is the sum for all vessels during the month (last rope untied – first rope tied)	Terminals with dedicated berths only	

Ship Working Hour	Total volume handled during the total productive working hours for the vessel expressed in tons/hour, KI/hour, Moves/hour or units/hour.	Total volume for a given period (in tons, KI, units or containers) / Total vessel productive. Total vessel productive time is the sum for all vessels during the month (last swing or cargo move) – (first swing or cargo	All terminals	Surge, under currents External power supply failures
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TOPS DEFINITION OF MEASURES AND CALCULATIONS

Measure	Definition	Calculation	Applicable	Exclusions
Truck turnaround time	The average service time of road haulers within the terminal expressed in minutes or hours	Total of (gate time out - gate time in) / total number of haulers for the period	Terminals using road trucks	Force majeure (Weather delays) External power supply failures
Truck queuing outside Terminal	The truck congestion on public roads outside the terminal resulting from unmanaged truck arrival patterns. Average waiting time for trucks outside terminal expressed in minutes or hours	Total of all (truck gate in time minus truck arrival in queue) / number of trucks per sample	Terminals using road trucks	Trucks not en-route to terminal or without firm delivery / upliftment order External power supply failures
Rail turnaround time	The average service time of trains arriving and departing the terminal expressed in hours	Total of (yard time out - yard time in) / total number of trains for the period	Terminals using Rail	Rolling stock in holding in rail yards Force majeure (Weather delays) External power supply failures

Cargo dwell time in terminal	The average period that cargo stays within the terminal between the times of arrival to loading and vessel discharge until terminal gate exit expressed in hours or days. Imports, exports and transhipments to be indicated separately	Total dwell time per container, ton, KI or units / Total units through the system for the period	All commodities except Liquid Bulk	Commercial arrangements borne in mind
	For liquid bulk terminals the average dwell time is to be the tank turn days.	Tank turn = volume for the period divided by tank capacity. Tank turn days (which should be the average dwell time) = Available days divided by tank turn.	Liquid Bulk Terminals	Planned outage days.

TOPS DEFINITION OF MEASURES AND CALCULATIONS

Measure	Definition	Calculation	Applicable	Exclusions
Terminal throughput	Total cargo handled (imported, exported and transhipped) by the terminal over a given period expressed in tons, KI, TEU's or units	Total of imports + exports + transhipments handled by the terminal over a given period.	All Terminals	Volume of refinery product stored in port is not regarded as import or export cargo but included in capacity
Number of Vessel Calls	Total number of vessels handled by the terminal over a given period across the quay.	Total number of vessels handled over a given period.	All Terminals	Bunkering process.

ANNEXURE F

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

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.**

2

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

REQUEST FOR RFP CLARIFICATION

ANNEXURE J

TNPA DECLARATION OF BIDDER

NAME OF ENTITY: _____

[insert name of Bidder] ("the Bidder")]

We _____ do hereby certify that:

In this declaration, words and expressions which are defined in the Request for Proposals for 25 (twenty-five) year concession for the design, finance, develop, construct, operate, maintain and transfer a liquid bulk Terminal at the Port of Ngqura; Tender No: TNPA/2024/10/0013/79500/RFP shall bear the same meaning when used in this letter, unless the context requires otherwise.

The Bidder further certifies that:

- 1.1 the TNPA has supplied, and we have received appropriate responses to any or all questions, as applicable, which were submitted by us for the RFP clarification purposes;
- 1.2 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

duly authorised hereto

Name: _____

Position: _____

Signature: _____

Date: _____

Place: _____

AS WITNESS:

Name: _____

Position: _____

Signature: _____

ANNEXURE K

RESOLUTION OF BOARD OF DIRECTORS

(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 TNPA on or about **[insert date]** under Tender Reference number [■], in respect of the 25 (twenty-five) year concession for the design, finance, develop ,construct, operate, maintain and transfer a liquid bulk Terminal at the Port of Ngqura;
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, 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: _____

Annexure L

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 in 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 **20 June 2025** under Tender Reference number TNPA/2024/10/0013/79500/RFP, in in respect of the for 25 (twenty-five) year concession for the operation and maintenance of port and common user infrastructure financed, designed, and constructed by TNPA, and to design, develop, finance, construct, operate, maintain terminal storage tanks for the handling of liquid bulk at the Port of Ngqura;
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, 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: _____

ANNEXURE N

ESSENTIAL RETURNABLE DOCUMENTS

ESSENTIAL RETURNABLE DOCUMENTS & SCHEDULES	RFP REFERENCE	SUBMITTED [Yes or No]
Information of the Bidder		
Stage 1 of the evaluation criteria	Clause 63	
Evaluation Criteria 1: Experience & Track Record	Clause 63.1	
Evaluation Criteria 2: Safety Health Environment & Risk	Clause 63.2	
Evaluation Criteria 3: Financial Capability	Clause 63.3	
Stage 2 of the evaluation criteria	Clause 64	
Concession Fee Offer	Clause 65.1	
evaluation criteria 2: specific goals	Clause 65.2	
Objective Criteria (Due Diligence)	Clause 66	

ANNEXURE O

MANDATORY DOCUMENT/ CONCESSION FEE OFFER

NAME OF ENTITY: [insert name of]

Bidder_____

We

do hereby offer.

R_____per square meter per month.

1. We agree that this concession fee offer is subject to acceptance by TNPA and is also subject to further negotiation at the discretion of the TNPA.
2. The Concession Fee amount or if applicable, the negotiated and agreed upon Concession Fee will be incorporated in the Terminal Operator Agreement.

We also note the obligations as set out in the Terminal Operator Agreement in respect of the payment thereof.

SIGNATURE OF BIDDER

Transnet *Safety*

Our Vision

Zero Harm

Transnet Safety Excellence

Our Safety

Mission Statement

Achieve Zero Harm through effective management of safety risks and hazards in our workplaces. Assure Transnet employees of safety in their occupation.

Our Fundamental Safety Principles



No Injuries

All injuries are preventable.



No Repeats

We learn from incidents and prevent recurrence.



Just Culture

There is accountability and reinforcement for safety conducts and behaviour.



Compliant

We are compliant to the requisite regulatory regime and policies.



Standardised

Procedures, Standards and rules are consistently applied across Transnet.



Measured

Safety performance is measured and visible.

Our Safety Flagship Programs

Leadership

Visible Felt Leadership (VFL)

Transnet leadership at all levels engage in regular shop floor and operations visits to engage, guide, provide support, and coach others in all aspects of Safety in the workplace.

Employee Participation

Health Safety Rep agreement

Our workplaces have designated workplace first responders in the categories of SHE Reps, First Aiders, Fire Marshals and Evacuation Chair Operators.

Competence & Proficiency programs

Safety training, licensing, competitions.

Behavioural Based Safety

Cardinal rule

Safety cardinal rules are established to embed a safety culture and promote safe conducts and behaviors across the organization.

Just culture.

A focus is established on Safety reinforcements wherein positive safety conducts, behaviors and performance is recognized.

Environment and Conditions

5Ss Of Safety (House Keeping)

The 5Ss Of Safety (House Keeping) seeks to promote high standards of house keeping in our offices and in operations.

Occupational Hygiene Program for monitoring prevalent stressors

Our workplaces are consistently monitored for all occupational hygiene stressors to prevent undue employee exposure.

Safety Compliance

Safety Regulatory Universe

Safety Regulatory Universe Is monitored in order keep abreast with the changes, notices and updates.

Control Compliance Plans

Are developed and kept up to date to cover the entirety of Safety regulatory universe.

Control Self Assessments

Are regularly conducted to ensure compliance assurance with the safety regulatory universe.

Our Safety Policy (Statement of commitment)

Transnet SOC Ltd (Transnet) strives for a safe handling and transportation of freight, passengers, and providing excellent service to its customers. Accordingly, Safety has become one of our (Transnet's) core strategic objectives, inculcated into Transnet Values and the way of doing business, as we are committed to the health and safety our employees, contractors, visitors and other stakeholders who may be directly or indirectly impacted by our business operations.

The Occupational Health and Safety Act 85 of 1993 (the Act), sets the tone in stating that "Every employer shall provide and maintain, as far as is reasonably practicable, a working environment that is safe and without risk to the health of his employees", We further strive to achieve "Zero Harm" Safety Vision through an effective management of safety risks and hazards within our work environments. It is our belief that it is the right of every employee and other impacted stakeholders to work in safe and healthy environment.

The management of Safety applies to everyone at Transnet, across all the Operating Divisions (ODs), subsidiaries and supporting functions in accordance with all applicable legislations.

In principle, Transnet will:

- Comply, as a minimum, with all applicable legislations, regulations and will subscribe to both local and internationally recognised standards and good practices.
- Embed the Transnet Integrated Management System (TIMS) as a credible Safety Management System (SMS), aligned to applicable International Standards and certifiable by an Accredited Certification Body.
- Institutionalise safety as a Leadership imperative through a Safety Just Culture Practices and Accountability.
- Adhere to inherent safety designs, asset and infrastructure maintenance regimes, and operations discipline as guided by the industry and international best practices in order to maintain reliable and safe operations.
- Proactively and formal identify, assess and mitigate all safety hazards and risks likely to have adverse impact to the safety of employees and other relevant stakeholders.
- Ensure that employees are well informed of safety hazards and risks associated with their respective work environment and that they are trained on the relevant identified controls.
- Conduct applicable Safety Training in a most convenient language to ensure employees perform their daily activities safely, with no harm to themselves and or nearby colleagues.
- Provide approved Personal Protective Equipment (PPE) to employees in all designated work areas as required, ensure training in proper usage and handling whilst holding them accountable for maintenance thereof.
- Engage and or collaborate with the relevant key Stakeholders, including Regulators with a view to enhance a safe and healthy work environment of all impacted. Provide Supervision to ensure that employees are not exposed to the work environment with any uncontrolled potential hazards and possible risks.
- Ensure employees undergo Medical examinations, periodically as required and are fit for duty before commencing with their respective shifts' activities.
- Ensure that all accidents / incidents are immediately reported, and records are kept accordingly.
- Investigate all reported accidents / incidents and constitute the Board of Inquiry (BOI) for all accidents / incidents classified as levels 1 and 2.
- Provide Emergency response resources and ensure the status of readiness and accessibility.
- Monitor, conduct audits, control self-assessments and inspections to ensure compliance.
- Provide both financial and human resources to enable and sustain the safe working environment.
- Establish the Governance Structure(s) to monitor safety performance, progress and recommend interventions as may be deemed fit.
- Review the SMS for adequacy, efficiency and for continual improvement

Transnet shall review this Safety policy statement every 5 years or as and when circumstances dictate to ensure that it remains current and relevant.


Portia Derby
Group Chief Executive



HARBOUR MASTER'S WRITTEN INSTRUCTIONS, 2007**Issued in terms of the National Ports Act No. 12 of 2005, Section (74)(3)****HARBOUR MASTER'S WRITTEN INSTRUCTIONS FOR THE HANDLING OF BULK
FLAMMABLE LIQUIDS 1**

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9.	Safety measures during handling of cargo	4
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**HARBOUR MASTER'S WRITTEN INSTRUCTIONS FOR THE HANDLING OF
FLAMMABLE LIQUID CONTAINERS..... 8**

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HARBOUR MASTER'S WRITTEN INSTRUCTIONS FOR THE HANDLING OF BULK FLAMMABLE LIQUIDS

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

1. Purpose of these instructions

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

2. Application of these instructions

In addition to the Port Rules, these written instructions apply at a port to *tankers* that are conveying, discharging or shipping *flammable liquids* in bulk or during bunkering operations.

3. Interpretation

(1) In these instructions, unless the context indicates otherwise —

- (a) "**cargo deck**" means the deck of the *tanker* on which openings to oil are situated;
- (b) "**certified chemist**" means a person who holds a B. Sc degree in chemistry or a recognised equivalent certificate, or who has successfully completed a specialised course in Chemical Tanker or Oil Tanker Safety Training Program in accordance with the South African Code of Maritime Qualifications published by *SAMSA*, and who has at least two years laboratory experience and specialised training in the testing of atmospheres in vessels;
- (c) "**flammable liquids**" means a liquid, or mixture of liquids, or liquids containing solids in solution or suspension (except substances otherwise classified on account of their dangerous characteristics), which give off a flammable vapour at or below 61 degrees Celsius closed-cup test (corresponding to 65.6 degrees Celsius open-cup test), normally referred to as the "flashpoint". This includes liquids offered for transport at temperatures at or above their flashpoint, and, substances transported or offered for transport at elevated temperatures in a liquid state, which give off a flammable vapour at temperatures equal to or below the maximum transport temperature;
- (d) "**flammable liquid in bulk**" means any flammable liquid conveyed otherwise than in containers;
- (e) "**flash point**" means the lowest temperature at which the application of a flame causes the vapour above a liquid to ignite when the product is heated under prescribed conditions, in a closed container;
- (f) "**gas free**" means that the tank, compartment or container has sufficient fresh air introduced into it in order to lower the level of any flammable, toxic or inert gas to that required for any purpose;
- (g) "**industry guidelines**" means the industry reference works referred to in rule 41(1), as amended from time to time.

- (h) "**Prohibited area**" means any area declared as a *prohibited area* by the Authority and includes the entire water surface within 30 metres of the *tanker*;
- (i) "**tank**" means any hold, tank, compartment, pipeline (whether ashore or afloat), or any enclosed place, which contains or has contained any *flammable liquid in bulk*, or any sludge, deposit or residue from the flammable liquid or bulk;
- (j) "**Tanker**" means a vessel designed to carry liquid cargo in bulk, including a combination carrier being used for this purpose.
- (k) "**Vapour pressure**" means the absolute pressure of a liquid exerted by the gas produced by evaporation from the liquid when gas and liquid are in equilibrium at the prevailing temperature and the gas or liquid ratio is effectively zero.

4. Industry guidelines

- (1) All persons involved in the handling of bulk flammable liquids must comply with the standards, procedures, practices and requirements set out in the *industry guidelines*, as amended from time to time, including:
 - (a) The International Safety Guide for Oil Tankers and Terminals (presently in its fifth edition);
 - (b) Marine Terminals Baseline Criteria and Assessment Questionnaire;
 - (c) Liquified Gas Handling Principles on Ships and in Terminals;
 - (d) Ship/Shore Interface Safe Working Practice for LPG and Liquified Chemical Gas Cargoes;
 - (e) Guidelines for the Handling, Storage, Inspection and testing of Hoses in the Field;
 - (f) Chemical carriers entered into the CDI Scheme.
- (2) The Harbour Master may permit a vessel to follow a procedure or practice other than those required by the *industry guidelines* or these written instructions, if he or she is satisfied that the other procedure or practice is as safe as that required by the *industry guideline* or these written instructions and it is in the interests of security, good order, protection of the environment and the effective and efficient working of the port.
- (3) Contravention of a procedure or practice substituted pursuant to sub-rule (2) is deemed to constitute a contravention of the practice or procedure required by the *industry guidelines* or these written instructions.

5. Safety measures on berthing

- (4) The terminal operator in a port must on berthing cause a telephone and a VHF radio communication link to be established with port control.
- (5) A *tanker* must not lie within 30 meters of any other vessel except by express direction of the Harbour Master, but in case of transshipment this sub-rule may be departed from on the written authority of the Harbour Master.

6. *Tanker* moorings

- (1) All *tanker* moorings must be capable of being readily cut or slipped from both the *tanker* and the shore in case there is an emergency.
- (2) Wire towing pendants must be rigged at all times while the *tanker* is in a port.
- (3) Wire towing pendants must be made fast to bitts and ranged out through bow and stern on a *tanker's* offshore side so that it is convenient to tugs.
- (4) If insulation is required between the *tanker* and pipelines, all moorings must be insulated with fibre tails for a distance of at least two metres. The fibre tails must be at least 25% stronger than the wire ropes to which they are attached.

7. Safety measures after berthing

- (1) The main engines, steering engine, or deck machinery of a *tanker* may not be immobilised, except with the permission of the Harbour Master.
- (2) A *tanker* must be sufficiently manned for the purposes of dealing with any situation that may detrimentally affect the safety, security, good order and the protection of the environment.
- (3) The terminal operator must ensure that fire-fighting personnel are in attendance at all times when a *tanker* is berthed in the port and is —
 - (a) loaded with flammable liquid having a flashpoint of less than 61 degrees Celsius; and
 - (b) in ballast, but is not gas-free.
- (4) The Harbour Master may order the removal of a *tanker* that has *flammable liquids* on board from the berth at which it is lying, if the Harbour Master is of the opinion that this is in the interests of safety.

8. Hoses

- (1) The hoses that are used must be sufficiently flexible to allow for any movement of the *tanker* whilst moored.
- (2) All connections must be properly and tightly made, with oil-tight gaskets and every bolthole in the flange being securely fastened.
- (3) In the event of any section of flexible hose showing signs of bulging or of percolation, the section in question must be replaced immediately.
- (4) The flexible hose must be supported and raised above the deck wharf level.
- (5) Drip pans must be placed under each joint where practicable and the flexible hose and drip pans must be kept under constant supervision at all times while pumping is in progress.

9. Safety measures during handling of cargo

- (1) No loading or discharge of *flammable liquids* after sunset may take place unless deck lighting is provided to the satisfaction of the Harbour Master.
- (2) Before any cargo handling operations commence, the master must —
 - (a) ensure that all scuppers are plugged effectively; and
 - (b) all sea valves and overboard discharges in the pump rooms and cofferdams are securely closed and remain closed and lashed during discharging or shipping operations.
- (3) A *tanker's* manifold valves and shore pipeline valves must be kept closed until —
 - (a) a hose connection has been made;
 - (b) the vessel's cargo valves have been set and outlet valves checked; and
 - (c) safety precautions have been complied with.
- (4) As soon as pumping has commenced and when full pressure has been reached, the *tanker's* officer on duty and the terminal operator must ensure that no oil or ballast is discharged into sea or onto the quayside.
- (5) In order to minimize the risk of spills, the pressure during pumping must be increased gradually and all flexible pipe joints must be carefully examined during this period.
- (6) The terminal operator must secure the *tank* immediately after all *flammable liquids* have been removed from that *tank*.
- (7) The lid of any tank may only be opened after it has been established that the *tank* is *gas-free*.

10. Conditions when pumping or ballasting may be stopped

- (1) The Harbour Master may order that pumping of *flammable liquids* or ballasting be stopped if —
 - (a) There is spillage of flammable liquid beyond a minor drip leakage;
 - (b) Anything occurs that necessitates repair to the plant, pipes, pumps or connections;
 - (c) If there is a failure of lighting either on the *cargo deck* or on the wharf;
 - (d) An electric storm is approaching and during that storm;
 - (e) If there is any undue concentration of vapor being detected in the accommodation, engine room or pump room; or

- (f) Anything occurs or any condition is observed, which in the opinion of the Harbour Master, may not be conducive to the safe working of the *tanker* or may endanger the *tanker*, wharf or be threat to safety, security or protection of the environment.
- (2) If the Harbour Master orders that pumping be stopped, then pumping may only be resumed with the Harbour Master's permission and in accordance with the Harbour Master's safety precautions and directives.

11. Safety measures for the handling of stores and equipment

- (1) The handling of the stores and equipment of a *tanker* must be completed before any *tank* on the *tanker* is opened for any purpose whatsoever.
- (2) Stores for consumption on the voyage may be loaded during cargo handling operations only if they carried on board by hand or are placed aboard on the after-deck away from the discharge and the loading manifolds.

12. Repairs

- (1) A *tanker* that is conveying or has conveyed *flammable liquids* may not enter a repair quay unless it is certified *gas free* by a *certified chemist*.
- (2) A *tanker* that is conveying or has conveyed *flammable liquids* may not carry out any repairs while it is in a port, unless –
 - (a) a gas-free certificate for the vessel has been issued or all the tanks are inert;
 - (b) the Harbour Master has permitted the repairs; and
 - (c) the vessel abides by the Harbour Master's conditions that are determined in the interests of maintaining safety, security, good order and the protection of the environment.
- (3) The Harbour Master may direct that –
 - (a) a fresh gas-free certificate issued by a *certified chemist* be obtained daily before work is commenced or at any time if, in the opinion of the Harbour Master, this is in the interests of safety;
 - (b) work be suspended until a further gas-free certificate is obtained, if, during the course of the work, the Harbour Master is of the opinion that there is any risk of flammable vapour or a threat to safety.
- (4) The Harbour Master may permit minor repairs to be carried out on board a *tanker*, but may specify conditions for that work in the interests of safety, security, good order and the protection of the environment, including the following:
 - (a) a gas-free certificate must be obtained daily in respect of the tank, compartment or hold where the minor repairs are to be carried out and for each adjoining tank, compartment or hold.

- (b) a sign must be prominently displayed on each tank hatch on the *cargo deck* indicating the condition of that tank, namely "danger" or "gas-free", as the case may be.
 - (c) similar signs must be displayed at the entrance to any hold or compartment affected.
 - (d) "Danger" signs must have white letters on a red background.
 - (e) "Gas-free" signs must have black letters on a white background.
 - (f) any electrical equipment required to carry out repairs may be examined and approved by the Harbour Master, if the Harbour Master so directs.
- (5) Despite the provisions of this rule, repairs, other than minor routine maintenance, may be carried out in the engine room of a *tanker* if the Harbour Master has approved the repairs.
- (6) If a *tanker* is not gas-free, the Harbour Master may permit immobilisation at a berth outside the security area designated by the Harbour Master, but;
- (a) only before breaking cargo or after completion of discharging or ballasting; and
 - (b) when all openings, except the gas-line vent, are closed.
- (7) Until a *tank*, compartment or hold has been certified gas-free, no person may —
- (a) take into or within close proximity of the *tank*, compartment or hold anything that could cause ignition; or
 - (b) enter the *tank*, compartment or hold, unless the person is —
 - (i) provided with a suitable self-contained breathing apparatus consisting of a helmet or face-piece that has the necessary connections for the person to breath outside air;
 - (ii) wearing a safety belt connected to a lifeline that is tended by two persons; and
 - (iii) kept in sight at all times by one of the attending persons.
- (8) No portable electronic device or any device that is capable of emitting or causing a spark that has not been certified intrinsically safe by a recognized testing authority may be used in any *prohibited area*.
- (9) No person may enter, remain in or leave a *prohibited area* at a *tanker* berth without a permit issued by the Harbour Master.
- (10) When cargo is being handled or ballast taken on board, all *cargo deck* doors and ports as well as all upper deck doors facing the *cargo deck* must be kept closed. These doors may only be opened for the purpose of entry and exit where this is essential to the working of the *tanker*.

13. General safety measures

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

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

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

1. Purpose of these instructions

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

2. Application of these instructions

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

3. Interpretation

(1) For the purposes of these instructions —

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

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

4. Notices of prohibited areas

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

5. Loading and discharging of flammable liquid containers

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

6. Stowing of flammable liquids

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

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



TRANSNET NATIONAL PORTS AUTHORITY

SECURITY POLICY


DEPARTMENT:PORT

SECURITY

and

COMPLIANCE

Transnet National Ports Authority: Security Policy

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Transnet National Ports Authority: Security Policy

1. STATEMENT OF PURPOSE

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

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management, asset control, real estate and financial resources).

2. SCOPE

2.1 To create safe and secured working environment, and ensure that the TNPA internal controls are intensified for the effective protection of assets and proprietary Information. This policy applies to the following individuals and entities.

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

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

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

3. LEGISLATIVE OR REGULATORY REQUIREMENTS

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

4.1 TNPA will not be sympathetic towards any action of dishonesty, subversion or non-compliance to security measures. Injuries to employees, reputational damage and financial losses that result from crime or misconduct will be viewed in a serious light and be investigated by the Head of Security-Port Security and Compliance Department, consultation with internal and external role players is essential if a relatively crime free working environment is to be created and maintained.

4.2.1 All individuals and institutions mentioned in par. 2 above must comply with the baseline requirements (refer 4.3 below) of this Policy and its associated with Security Directives as contained in the Port Security Plans of TNPA (i.e. security plans of the respective ports). These requirements shall be based on integrated security Threat and Risk Assessments (TRA's) as per the Department of Transport and security cluster standards to the national interest as well as employees, information and assets of TNPA. The necessity of security measures above baseline levels will also be determined by the continual updating of the security TRA's.

All projects and programmes must be prior endorsed by the Head of TNPA Port Security and Compliance, that include amongst others, the following,

- Security Systems Installation;
- Security Audits;
- Surveys;
- Investigations;
- Information requests etc.

4.2.3.1 The Chief Executive (CE) of TNPA or his delegate shall ensure that information and assets of TNPA are used in accordance with procedures as stipulated in the Security Directives as contained in the Security Plan of TNPA, and other related policies.

4.2.3.2 All employees of TNPA shall be accountable for the proper utilisation and protection of such information and assets. Employees that misuse, abuse assets, lose, damage assets due to negligent shall be held accountable, therefore disciplinary action shall be taken against any such employee taking into account the Labour Law requirements.

Port Security Plans

See Disciplinary Code

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4.2.3.3 Compliance with the security policy, procedures and or directives is compulsory

4.2.4 Specific baseline requirements

4.2.4.1 Security organization

- a. The CE of TNPA has appointed the Head of Department: Port Security and Compliance to establish and direct a security program and projects to ensure coordination of all policy functions and implementation of this policy requirements;
- b. Given the importance of this role, the Head of Department: Port Security and Compliance with sufficient security experience and training, who is strategically positioned within the organisation to provide the wide strategic advice and guidance to TNPA top management, shall be appointed.
- c. The CE of TNPA must ensure that the Head of Department: Port Security and Compliance has an effective support structure (security component) to fulfil its mandate more effectively, as required by the provisions of the National Ports Act (Act No. 12 of 2005, ISPS Code, relevant legislative mandates, and directives to the satisfaction of internal and external stakeholders referred to in par. 4.3.2 below.
- d. Individuals that will be appointed in the support structure of the Head of Department: Port Security and Compliance must be security professionals with sufficient security education, experience, and training to effectively cope with their respective job functions.

4.2.5 Security administration

The functions referred to in par. 4.3.1 above are, but not limited to:

- a. General security administration (company directives and procedures, training and awareness, security risk management, security audits, sharing of information and assets);
- b. Setting of access limitations;
- c. Administration of security screening (refer par. 4.3.5 below);
- d. Implementing physical security;
- e. Ensuring the protection of employees;
- f. Ensuring the protection of information;
- g. Ensuring ICT security (CCTV & Security control rooms);
- h. Ensuring security in emergency and increased threat situations;
- i. Facilitating business continuity planning;
- j. Ensuring security in contracting; and
- k. Facilitating security reports, breach reporting and investigations.

See organizational diagram of the security component.

See detailed functions In the Security Component SOP'S In the Security Plan

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<p>4.2.6 Security incident/breaches reporting process</p> <ul style="list-style-type: none"> a. Whenever an employee of TNPA, visitors or contractors becomes aware of an incident that might constitute a security breach or a breach of Transnet Ethics or an unauthorised disclosure of information (whether accidentally or intentionally), he/she shall report that to the Head of Department: Port Security and Compliance of TNPA by utilizing the formal reporting procedure prescribed in the Security Breach Directive of TNPA; who will then report to the CE. b. The CE of TNPA shall report to the appropriate authority (as indicated in the Security Breach Directive of TNPA) all cases or suspected cases of security breaches, for investigations; c. The Head of Department: Port Security and Compliance of TNPA shall ensure that all employees are informed about the procedure for reporting security breaches. <p>4.2.7 Security incidents/breaches response process</p> <ul style="list-style-type: none"> a. The Security Department shall develop and implement security breach response mechanisms for TNPA in order to address all security breaches/ethical breaches/alleged breaches which are reported; b. The Head of Department: Port Security and Compliance shall ensure that the CE of TNPA is advised of such incidents as soon as possible; c. It shall be the responsibility of the Port Security and Compliance department to ensure that investigations are carried out. Where necessary investigations can be done in conjunction with, State Security Agency Structures (e.g. SSA or SAPS) to conduct further investigation on reported security breaches and provide feedback with recommendations to TNPA. This clause does not preclude any case reporting responsibilities to the mentioned agencies. d. Access privileges to classified information, assets and/or to premises may be suspended by the CE of TNPA until administrative, disciplinary and/or criminal processes have been concluded, flowing from investigations into security breaches or alleged security breaches; e. The result of these investigations, disciplinary action or criminal prosecutions may be taken into consideration by the CE of TNPA in determining whether to restore, or limit, the security access privileges of an individual or whether to revoke or alter the security clearance of the individual. 	<p>See Security Directive: Reporting of Security Breaches</p> <p>See Security Directive: Security Breaches Response Process</p>
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4.2.8 Information Security

4.2.8.1 Categorization of information and information classification system

- a. The Head of Department: Port Security and Compliance must ensure that a comprehensive information classification system is developed and implemented at TNPA. All sensitive information produced or processed by TNPA must be identified, categorized and classified according to the origin of its source and contents and according to its sensitivity to loss or disclosure;
- b. All sensitive information must be categorized into one of the following categories in accordance with the applicable legislation:
 - State Secret;
 - Trade Secret; and
 - Personal Information.
- c. And subsequently classified according to its level of sensitivity by using one of the recognized levels of classification:
 - Confidential;
 - Secret; and
 - Top Secret
- d. Employees of TNPA who generate sensitive information are responsible for determining information classification levels and the classification thereof, subject to management review. This responsibility includes the labelling of classified documents;
- e. The classification assigned to documents must be strictly adhered to and the prescribed security measures to protect such documents must be applied at all times;
- f. Access to classified information will be determined by the following principles:
 - Intrinsic secrecy approach;
 - Need-to-know;
 - Level of security clearance.

**See Security Directive:
Information
Classification Process**

**See Security Directive:
Protection of
Information: General
Requirements**

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4.2.8.2 Physical Security

- a. Physical security involves the proper layout and design of facilities of TNPA and the use of physical security measures to delay and prevent unauthorized access to assets of TNPA. It includes measures to detect attempted or actual unauthorized access and the activation of an appropriate response.
- b. Physical security measures must be developed, implemented, and maintained in order to ensure that the entire personnel, property, and information are secured. These security measures shall be based on the findings of the Threat and Risk Assessment (TRA) conducted by the Head of Department: Port Security and Compliance, Port Security Officer and or delegated personnel.
- c. TNPA shall ensure that physical security is fully integrated with business processes early in the process of planning, selecting, designing, and modifying of its security systems and facilities. TNPA shall:
 - Select, design and modify its security systems and facilities in order to facilitate the effective control of access thereto;
 - Demarcate restricted access areas and have the necessary entry barriers, security systems and equipment to effectively control access thereto;
 - Include the necessary security specifications in planning, request for proposals and tender documentation;
- d. TNPA will also ensure the implementation of appropriate physical security measures for the secure storage, transmittal and disposal of classified and protected information in all forms;
- e. All employees, respective State Agents personnel, employees of facilities at the respective ports, private port users, and port users' visitors are required to comply with access control procedures of TNPA at all times. This includes the producing of Corporate ID Cards/permits upon entering any sites of TNPA including ports, the display thereof whilst on the premises and the escorting of official visitors.
- f. All visitors to TNPA restricted areas must be pre-authorised by the Head of Department for the respective area and security shall be notified of intended notices.
- g. All un-authorised access will be a breach of security and internal disciplinary procedures and/ or criminal procedures shall be instituted.

**See Security Directive:
Physical Security**

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4.2.8.3 Personnel Security

4.2.8.3.1 Security Screening

- a. All employees, contractors and consultants of TNPA, who require access to classified information and critical assets in order to perform their duties or functions, must be subjected to a security screening investigation conducted by the State Security Agency (SSA) so that they could be granted a security clearance at the appropriate level;
- b. The level of security clearance given to a person will be determined by the content of or access to classified information entailed by the post already occupied or to be occupied in accordance with their respective responsibilities and accountability;
- c. Any company, contractor who is providing a security service which may bring them into contact with Transnet confidential, or any kind of intellectual property, the Head of Security must be requested to arrange screening of that entity and their employees by the SSA or any other law enforcement agency, which may enhance the integrity of the procurement process.
- d. A security clearance provides access to classified information subject to the need-to-know principle;
- e. A declaration of secrecy shall be signed by every individual issued with a security clearance to complement the entire security screening process. This will remain valid even after the individual has terminated his/her service with TNPA;
- f. A security clearance will be valid for a period of ten years in respect of the Confidential Level and five years for Secret and Top Secret. This does not preclude re-screening on a more frequent basis as and when need arises and/or as determined by the CE of TNPA, based on information which impact negatively on an individual's security competence;
- g. Security clearances in respect of all individuals who have terminated their services with TNPA shall be immediately withdrawn.

4.2.8.3.2 Polygraph Examination

- a. A polygraph examination shall be utilized to provide support to the security screening process. All employees subjected to a Top Secret security clearance will also be subjected to a polygraph examination. The polygraph shall only be used to determine the reliability of the information gathered during the security screening investigation and

**See Security Directive:
Protection of
Information: General
Requirements**

**See Security Directive:
Security Screening**

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<p>4.2.8.3.5 Information and Communication Technology (ICT) Security</p> <p>4.2.8.3.5.1 ICT Security</p> <ol style="list-style-type: none"> a. A secure network shall be established for TNPA in order to ensure that information systems are secured against rapidly evolving threats that have the potential to impact on their confidentiality, integrity, availability, intended use and value; b. To prevent the compromise of ICT systems, TNPA shall implement baseline security controls and any additional control identified through the security TRA. These controls, and the security roles and responsibilities of all personnel, shall be clearly defined by the Head of Security, documented and communicated to all employees; c. To ensure policy compliance, the Chief Information Officer of TNPA shall: <ul style="list-style-type: none"> • Certify that all its systems are secure after procurement, accredit ICT systems prior to operation and comply with minimum security standards and directives; • Conduct periodic security evaluations of systems, including assessments of configuration changes conducted on a routine basis; • Periodically request assistance, review, and audits from the state security cluster in order to get an independent assessment. d. Server rooms and other related security zones where ICT equipment is kept shall be secured with adequate physical security as defined in the TNPA standard for server and equipment rooms and strict access control shall be enforced and monitored by the ICT in consultation with Security Department; e. Access to the resources on the network of TNPA shall be strictly controlled by ICT Department and where access is needed to CCTV or security networks permission must be obtained from the designated Port Security Officer to prevent unauthorized access. Access to all computing and information systems and peripherals of TNPA shall be restricted unless explicitly authorised; f. System hardware, operating and application software, the network and communication systems of TNPA shall be adequately configured and safeguarded against both physical attack and unauthorized network intrusion; 	<p>See ICT Security Policy and Security Directive: ICT Security</p>
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<ul style="list-style-type: none"> g. All employees shall make use of ICT systems of TNPA in an acceptable manner and for business purposes only. All employees shall comply with the IT Security Directives in this regard at all times; h. The selection of passwords, their use, and management as a primary means to control access to systems is to strictly adhere to best practice guidelines as reflected in the ICT Security Directives. In particular, passwords shall not be shared with any other person for any reason; i. To ensure the on-going availability of critical services, JCT Department shall develop an JCT continuity plans as part of its overall Business Continuity Planning (BCP) and recovery activities. 	<p>See Security Directive: ICT Security</p>
<p>4.2.8.3.S.2 Internet Access</p> <ul style="list-style-type: none"> a. The Chief Information Officer (CIO) of TNPA, having the overall responsibility for setting up Internet Access for TNPA, shall ensure that the network of TNPA is safeguarded from malicious external intrusion by developing, as a minimum, a configured firewall. Human Resources management shall ensure that all personnel with Internet access (including e-mail) are aware of, and will comply with, an acceptable code of conduct in their usage of the Internet; b. The CIO of TNPA shall be responsible for controlling user access to the Internet, as well as ensuring that users are aware of the threats, and are trained in the safeguards, to reduce the risk of Information Security breaches and incidents; c. Incoming e-mails must be treated with the utmost care due to its inherent Information Security risks. The opening of e-mail with file attachments is not permitted unless such attachments have already been scanned for possible computer viruses or other malicious code; 	<p>See Security Directive: ICT Security</p>
<p>4.2.8.3.5.3 Use of Laptop Computers</p> <ul style="list-style-type: none"> a. Usage of laptop computers by employees of TNPA is restricted to business purposes only, and users shall be aware of, and accept the terms and conditions of use, especially the responsibility for the security of the asset, and information held on such devices; b. The information stored on a laptop computer of TNPA shall be suitably protected at all times, in line with the protection measures prescribed in the IT Security Directive; c. Employees shall also be responsible for implementing the appropriate security measures for the physical protection of laptop 	

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<p>computers at all times, in line with the protection measures prescribed in the IT Security Directive.</p>	
<p>4.2.8.3.5.4 Communication Security</p> <ul style="list-style-type: none"> a. The application of appropriate security measures shall be instituted in order to protect all sensitive and confidential communication of TNPA in all its forms and at all times; b. All sensitive electronic communications by employees or contractors of TNPA must be encrypted in accordance with the South African Communication Security Agency (SACSA) standards, standards and the Communication Security Directive of TNPA. Encryption devices shall only be purchased from SACSA or COMSEC and will not be purchased from commercial suppliers; c. Access to communication security equipment of TNPA and the handling of information transmitted and/or received by such equipment, shall be restricted to authorised personnel only i.e. personnel with a Top Secret Clearance who successfully completed the SACSA Course. 	<p>See Security Directive: ICT Security</p>
<p>4.2.8.3.6 Technical Surveillance Counter Measures (TSCM)</p> <ul style="list-style-type: none"> a. All offices, meeting, conference and boardroom venues of TNPA where sensitive and classified matters are discussed on a regular basis shall be identified and shall be subjected to proper and effective physical security and access control measures. Periodic electronic Technical Surveillance Counter Measures (sweeping) will be conducted by SSA to ensure that these areas are kept sterile and secure; b. The Head of Security of TNPA shall ensure that areas that are utilised for discussions of a sensitive nature as well as offices or rooms that house electronic communications equipment, are physically secured in accordance with the standards laid down by SSA in order to support the sterility of the environment after a TSCM examination, before any request for a TSCM examination is submitted; c. No unauthorized electronic devices shall be allowed in any boardrooms and conference facilities where sensitive information of TNPA is discussed. Authorisation must be obtained from the Head of TNPA Port Security and Compliance Department. 	<p>See Securly Directive: Secure Discussion Areas</p>

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4.2.8.3.7 Business Continuity Planning (BCP)

- a. The Head of Department: Port Security and Compliance of TNPA must establish a Business Continuity Plan (BCP) to provide for the continued availability of critical services, information and assets if a threat materializes and to provide for appropriate steps and procedures to respond to an emergency situation to ensure the safety of employees, contractors, consultants, facilities, private port users and visitors;
- b. The BCP shall be periodically tested to ensure that the management and employees of TNPA understand how it is to be executed;
- c. All employees of TNPA shall be made aware and trained on the content of the BCP to ensure understanding of their own respective roles in terms thereof;
- d. The Business Continuity Plan shall be kept up to date and re-tested periodically by the Head of Department: Port Security and Compliance.

See BCP

5. SPECIFIC RESPONSIBILITIES

5.1 Chief Executive

5.1.1 The CE of TNPA bears the overall responsibility for implementing and enforcing the security programs and projects of TNPA. In executing this responsibility, the CE shall:

- a. Establish the post of the Head of Security and appoint a well-trained and competent security official in the post;
- b. Establish a Security Advisory Committee for the company and ensure the participation of all Senior Management members of all core business functions of TNPA in the activities of the Committee;
- c. Approve and ensure compliance with this Policy and its associated Security Plans and Directives.

5.2 Head of Department: Port Security and Compliance

5.2.1 The delegated security responsibility lies with the Head of Department: Port Security and Compliance of TNPA who will be responsible for the implementation of TNPA Security Strategy, and programs within TNPA (planning, controlling, organising, activating). In executing his/her responsibilities, the Head of Department: Port Security and Compliance shall, amongst others;

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<ul style="list-style-type: none"> a. Chair the TNPA Security and Compliance Management Committee; b. Draft the internal Security Policy and Security Plan (containing the specific and detailed Security Directives) of TNPA in conjunction with the Security Committee; c. Ensure that Port Security and Port Facility Security Plans are in place and reviewed annually for all regulated ports falling under the TNPA jurisdiction; d. Research, develop and or review the Security Policy and Security Plans at regular intervals; e. Conduct a security TRA of TNPA with the assistance of the Security Committee; f. Advise management on the security implications of management decisions; g. Implement a security risk awareness/training program to empower individuals with security functions within the organisation, h. Conduct internal security compliance audits and inspections at TNPA at regular intervals; i. Conduct preliminary enquiries on security breaches within TNPA; j. Strengthen collaborations with security counterparts at national, regional and international level, and liaise with these institutions on a regular basis. k. Design and implement an organisational structure that is aligned to and supports the TNPA Security and Compliance Departmental' s goals, <p>5.3 Security Management Committee</p> <p>5.3.1 The Security Committee referred to in par. 5.1.1 above shall consist of senior managers of TNPA representing all main business units of TNPA.</p> <p>5.3.2 Participation in the activities of the Security Committee by the appointed representatives of business units of TNPA shall be compulsory;</p> <p>5.3.3 The Security Committee of TNPA shall be responsible for, amongst others, assisting the Head of Department: Port Security and Compliance in the execution of all security related responsibilities at TNPA, including completing tasks such as drafting/reviewing of the Security Policy and Plan; conducting of a security TRA; conducting of security audits; drafting of BCP; and assisting with security risk awareness and training.</p> <p>5.4 Port Managers</p> <p>5.4.1 All Port Managers have a delegated responsibility and commensurate authority to support security initiatives at their respective regulated ports and advise the Head of Department: Port Security and Compliance's Office about port structural changes and security needs;</p>	<p>See Disciplinary</p>
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<p>5.4.2 Port Managers must ensure that appropriate measures are implemented and steps are taken immediately to rectify any non-compliance issues that may come to their attention. This includes taking disciplinary action against employees if warranted.</p> <p>5.5 Port Security Officer (PSO)</p> <p>A Port Security Officer shall:</p> <p>5.5.1 Manage, lead, co-ordinate, plan and organize the total TNPA security function within a specified port;</p> <p>5.5.2 Carry out duties as specified in the Maritime Security Regulations 2004 and Code of practice on security in ports of Geneva, 2003.</p> <p>5.5.3 Port security Officers shall ensure duties defined in the Port Security Officer's Workbook (as reviewed) are implemented in their respective ISPS regulated Ports.</p> <p>5.6 Port Facilities (Terminal Operators)</p> <p>5.6.1 All Terminal Operators are required to manage their security in accordance with their approved Port Facility Security Plans.</p> <p>5.6.2 All Terminal Operators are required to act upon the security levels as set by the Director General, National Department of Transport.</p> <p>5.6.3 All Terminal Operators are required to comply with all applicable legislation and International Legal Instruments.</p> <p>5.7 Line Management</p> <p>5.7.1 All managers of TNPA shall ensure that their subordinates comply with this policy and the Security Directives as contained in the Security Plan of TNPA at all times;</p> <p>5.7.2 Managers must ensure that appropriate measures are implemented and steps are taken immediately to rectify any non-compliance issues that may come to their attention. This includes taking disciplinary action against employees if warranted.</p> <p>5.7.3 All Line Managers will ensure that all their staff cooperate with any legitimate security investigation and treat such investigation with the seriousness and confidentiality it deserves.</p>	<p>See Disciplinary</p>
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5.8 Port Facility Security Officer (PFSO)

A Port Facility Security Officer shall:

- 5.8.1 Ensure that Port Facility Security Plans are developed in line with the respective overall Port Security Plan;
- 5.8.2 Ensure that regular reviews are held and plans updated accordingly;
- 5.8.3 Carry out functions as per the Maritime Regulations 2004; and the ISPS Code;
- 5.8.4 Report incidents as provided for in Section 62 (5) of the National Ports Authority Act (Act 12 of 2005).
- 5.8.5 Carry out duties as specified in the Maritime Security Regulations 2004 and Code of practice on security, Geneva 2003.

5.9 Employees, Consultants, Contractors, and Other Service Providers

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

6 AUDIENCE

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

7 ENFORCEMENT

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

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<p>said contracts and shall be strictly enforced. Such consequences may include the payment of prescribed penalties or termination of the contract, depending on the nature of any non-compliance.</p> <p>8 EXCEPTIONS</p> <p>8.1 Deviations from this policy and its associated security directives will only be permitted in cases where material and compelling circumstances merit deviation(s) from particular provision(s) of a policy and procedures, e.g. protection of the people's lives during emergency situations. Written submissions shall be sent to the CE of TNPA, who shall have full authority to grant permission of such request, in whole or in part, or to refuse same, however, each case will be decided based on its merit.</p> <p>9 OTHER CONSIDERATIONS</p> <p>9.1 The following shall be taken into consideration when implementing this Policy:</p> <p>9.1.1 Occupational Health and Safety issues within TNPA operations;</p> <p>9.1.2 Disaster management at TNPA;</p> <p>9.1.3 Disabled persons shall not be inconvenienced by physical security measures and must be catered for in such a manner that they have access without compromising security or the integrity of this Policy;</p> <p>9.1.4 Environmental issues as prescribed and regulated in relevant legislation (e.g. when implementing physical security measures that may impact on the environment).</p> <p>10 COMMUNICATING THE POLICY</p> <p>10.1 The Head of Department: Port Security and Compliance of TNPA shall ensure that the content of this Policy (or applicable aspects thereof) is communicated to all employees, port facilities and various port users, consultants, contractors, other service providers, clients, visitors, members of the public that may officially interact with TNPA. The Head of Department: Port Security and Compliance will further ensure that all security policy and directive prescriptions are enforced and complied with.</p> <p>10.2 The Head of Department: Port Security and Compliance must ensure that a comprehensive security risk awareness program is developed and implemented within TNPA to facilitate the above said communication. Communication of the Policy by means of this program shall be conducted as follows:</p> <p>a. Awareness workshops and briefings to be attended by all employees, port facilities and various port users;</p> <p>b. Distribution of memos and circulars to all employees;</p>	
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c. Access to the policy and applicable directives on the intranet of TNPA.	
11 REVIEW AND UPDATE PROCESS	
11.1 The Head of Department: Port Security and Compliance, assisted by the Security Committee of TNPA, must ensure that this Policy and its associated Security Directives is reviewed and updated on an annual basis. Amendments shall be made to the Policy and Directives as need arises.	
12 IMPLEMENTATION	
12.1 The Head of Department: Port Security and Compliance must manage the implementation process of this Policy and its associated Security Directives (contained in the Security Plan) by means of an action plan (also to be included in the Security Plan of TNPA).	
12.2 Implementation of the Policy and its associated Security Directives is the responsibility of each and every individual this Policy is applicable to (see par. 2.1 above).	
13 MONITORING OF COMPLIANCE	
13.1 The Head of Department: Port Security and Compliance, with the assistance of the security department and Security Committee of TNPA must ensure compliance with this policy and it's associated Security Directives by means of conducting internal security audits and inspections on a frequent basis.	See Security Directive: Security Audits and Inspections
13.2 The findings of the said audits and inspections shall be reported to the CE of TNPA forthwith after completion thereof.	
14 DISCIPLINARY ACTION	
14.1 Non-compliance with this Policy and its associated Security Directives shall result in disciplinary action which may include, but is not limited to: <ul style="list-style-type: none"> a. Re-training; b. Verbal and written warnings; c. Termination of contracts in the case of contractors or consultants delivering a service to TNPA; d. Demotions; e. Dismissal; f. Suspension; g. Loss of TNPA information and asset resources access privileges; 	
14.2 Any disciplinary action taken in terms of non-compliance with this Policy	

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and its associated directives will be in accordance with the Disciplinary Code of TNPA.

15. APPROVAL

APPROVED BY

Mr. R. VALLIHU (CE TNPA)

Date: 11. . . \t. . ft _

Summary of Changes

No.	Paraaraoh	Chancies
1.	1.1	Modified the statement of puroose
2.	2.1	Modified the security oolicy scope
3.	4.1	Additions to the policv statement
4.	4.2.2	Modification of threats and risk assessments
5.	4.2.3.3	Additions to staff accountability
6.	4.2.4.1	Modifications to security organisation
7.	4.2.8.2 (b)	Modifications to phvsical securitv
8.	4.2.8.3.4(d)	Addition in respect of surveys and inspections
9.	5.2.1	Modifications and additions to Head of TNPA Securitv responsibilities
10.	5.4.1	Modification to Port Managers resoonsibilities
11.	8.1	Modification to exception

Version	Status/ Changes	Author	Year of Issue
02	Second Issue	Maj. General (Ret.) RodneyToka (General Manager, Port Security & Compliance)	2016/10

Distribution: To all.

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ANNEXURE 'A' APPLICABLE LEGISLATION AND OTHER REGULATORY FRAMEWORK DOCUMENTS

1. Applicable Legislation

The Constitution Act 108 of 1996

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

2. Other Regulatory Framework Documents

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

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ANNEXURE 'B' GLOSSARY AND DEFINITIONS

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

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

ANNEXURE 'C' SUPPORTING DOCUMENTS

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

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- Security Directive: ICT Security
- Security Directive: Secure Discussions Areas
- Security Directive: TRA
- Security Directive: Security Audits and Inspections
- ICT Security Policy
- BCP
- OHS Policy
- Disciplinary Code

Annexure S

B-BBEE Verification Certificate

Bidders are to note the requirements for B-BBEE compliance as required by Clause 26 of Part I (General Requirements, Rules and Provisions) of this RFP and submit proof of their B-BBEE Contributor Status Level in the form of a B-BBEE verification certificate in order to obtain preference points for their B-BBEE status.



Port Tariff Methodology

Tariff Years 2024/25 – 2026/27

March 2023

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1. Introduction

In 2007, the Ports Regulator of South Africa ('the Regulator') was established through the promulgation of the National Ports Act, Act 12 of 2005 ('the Act') as '*an independent ports regulatory body*¹', with a mandate to "*exercise economic regulation of the ports system in line with government's objective*²". The Act also sets out the functions of the National Ports Authority ('the NPA / the Authority') as the landlord of South Africa's (SA) ports and requires that "*the NPA must, with the approval of the Ports Regulator, determine tariffs for services and facilities offered by the Authority and annually publish a tariff book containing those tariffs*³".

Subsequently, the Directives to the Act (as approved on 13 July 2009, gazetted on 06 August 2009 and amended on 29 January 2010) requires that when considering the proposed tariffs the Regulator must give due consideration to whether it is desirable that the tariffs which it approves enables the NPA to:

- Recover its investment in owning, managing, controlling and administering ports and its investment in port services and facilities;
- Recover its costs in maintaining, operating, managing, controlling and administering ports and its costs in providing port services and facilities; and
- Make a profit commensurate with the risk of owning, managing, controlling and administering ports and of providing port services and facilities⁴ if prudent.

This mandate, coupled with the history of both SA and the NPA, required regulatory intervention as well as various tools and mechanisms to ensure the ports system of SA is fair, transparent, and competitive.

In line with the functions of NPA, as defined in Section 11 of the Act, the revenue generated from NPA's services is utilised inter alia to:

- Provide and arrange for road and rail access within ports;
- Regulate and control port access (navigation within port limits; enhancement of safety and security);
- Provide and arrange for tugs, pilot boats, and other services and facilities for the navigation and berthing of vessels in the ports; and
- Provide, control and maintain vessel traffic services.

The Regulator's approval is required for the tariffs charged for services and facilities offered by the NPA in accordance with the National Ports Act, 12 of 2005 (the Act).

i. 1 Section 29 of the National Ports Act

² Section 30(1)(a) of the National Ports Act

³ Section 72(1)(a) of the National Ports Act

⁴ Directive 23(2)

In terms of Section 72(1) of the Act, and Chapter 7 of the Directives of 2009 promulgated in terms of Section 30(3) of the Act as amended in 2010, the NPA must submit to the Regulator an application regarding the tariffs it proposes to charge for the services and facilities that it offers. The Regulator's approval of such tariffs is subsequently required and therefore takes into consideration the Application, all subsequent submissions, written and oral comments received during the consultation process, including the responses thereto, as well as conducts its own research prior to publishing a Record of Decision (RoD).

Since the commencement of economic regulation with the 2009/10 RoD, the Regulator has issued, on an annual basis, a RoD for each application year in which an assessment of the NPA's compliance with the Regulatory Framework has been made. All RoDs have contained an outline of corrective action required and have made significant contributions to the maturity of regulation in South Africa.

Furthermore, the Regulator has formulated a long term Tariff Strategy (the 'Strategy') which is based on a 'use and benefit' approach to cost allocation. The Strategy (updated in 2019/20) depends on the adapted Revenue Requirement (RR) approach to allocate costs to specific user groups. Tariffs from 2017/18 onwards were adjusted in accordance with the consulted and adopted Tariff Strategy. The Act, its Regulations, and the Directives constitute the South African Ports' Economic Regulatory Framework which, amongst other instruments, allows for a transparent tariff setting process.

2. The Tariff Methodology

2.1. Background

Significant strides have been made since the first Regulatory decision in 2009/10. The multi-year tariff methodology was first developed in 2015/16 for the period 2015/16 – 2017/18. A review was conducted and additional versions were published for 2018/19-2020/21 tariff years and subsequently for the 2021/22 – 2023/24 tariff years. The refinements of the multi-year tariff methodology have contributed immensely to regulatory certainty, transparency of the process and consistency in the tariff setting process. The Methodology has allowed a significant smoothing of the Authority's return and at the same time, it has allowed the Regulator to establish a lower tariff trajectory whilst still ensuring the profitability of the NPA, as can be seen in Figure 1: Tariffs vs Inflation below.

The multi-year tariff methodology for 2021/22 – 2023/24 tariff years coincided with the transitioning of the NPA in terms of its corporate status. The process of corporatisation is currently underway which will result in a subsidiary of Transnet SOC Ltd ("Transnet"), as envisioned in government policy statements and the National Ports Act, including the following:

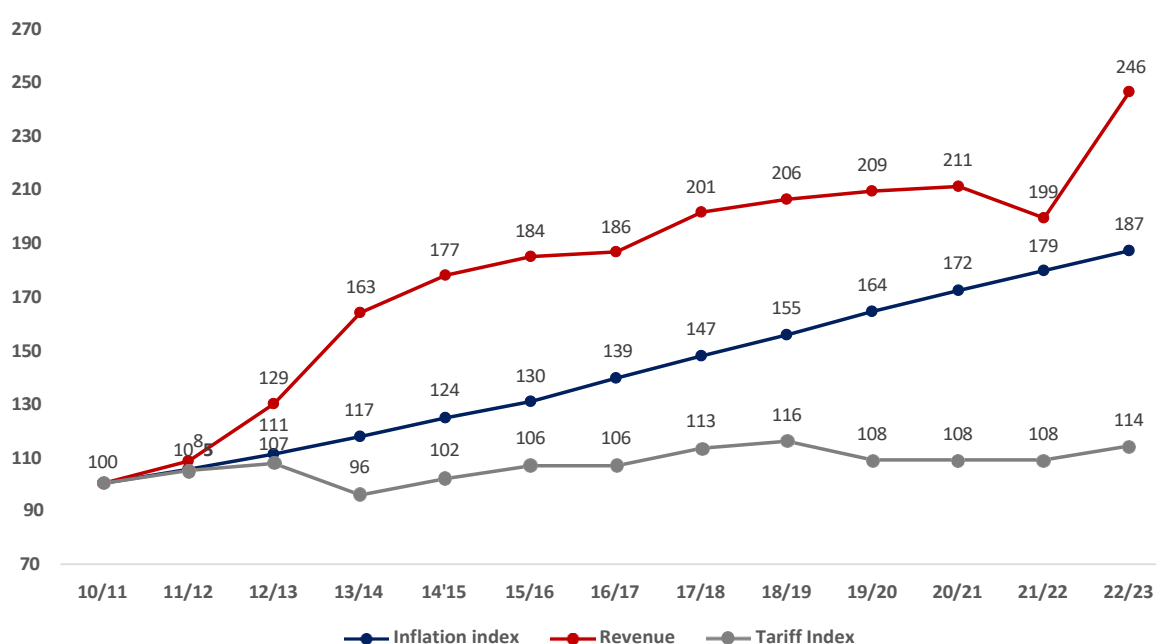
- a) Indication to Cabinet, by the Department of Public Enterprise that corporatisation was imminent (2018);
- b) Announcements by President Cyril Ramaphosa on 22 June 2021;
- c) Gazetting of the intent to corporatise by the Minister of Public Enterprises; and
- d) the public advertisement for nominations of members to serve on the Board of the National Ports Authority in line with section 14 of the Act (13th October 2021).

Furthermore, the NPA's Tariff Applications for the 2023/24 tariff year has been prepared on the basis of an entity that has become a subsidiary of Transnet, with the Authority stating that it has

noted progress in the incorporation of the NPA to an independent subsidiary. The Tariff Methodology, applicable to the 2024/25 – 2026/27 tariff years, seeks to regulate the independent subsidiary which will be fully capacitated to execute on the mandate of landlord and regulator of the port and its operations.

The Regulator, normally observes the economic climate within which tariff increases are requested and makes a consideration over the welfare of the ports system. However, the Regulator going into the 2024/25-2026/27 tariff years, has recognised that some of the drivers of costs will be investments in infrastructure capital assets and will continue to incentivise investments to ensure a reliable port system that will enable competitiveness of South Africa on a global scale.

Figure 1: Tariffs vs Inflation



2.2. In Context

The “multi-year” tariff methodology (the ‘Methodology’) in the current instance refers to the determination of tariffs over the period 2024/25 – 2026/27 based on a single methodology.

The Authority’s multi-year tariff application contains different calculations for each tariff year in the tariff period, consisting of forecasts and calculations of each of the components of the Required Revenue (RR) approach. Annual adjustments to the values of the components will be taken into account through a claw-back (or give-back) mechanism.

The NPA publishes a revised tariff book of all prices reflecting the decisions of the Regulator as set out in the Record of Decision (ROD), for the first year of each rolling multi-year period. In addition, the NPA is required to submit, as part of the application, any proposed changes to the existing tariff book that will reflect increases (or decreases) different from the average tariff increase applied for.

3. Port Tariff Methodology

3.1. Methodology Period

The Tariff Methodology is applicable for tariffs within the periods 2024/25, 2025/26, and 2026/27.

The Regulator allows for an annual review and an annual adjustment of tariffs within a three-year period as opposed to fixing the prices for the period as a whole. This is intended to protect users from possible large step changes in tariffs at the end of the three year period. In addition, unlike other regulated industries such as electricity or oil and gas pipelines, there are large variations in the users and usage of port infrastructure and services. Therefore, an annual review allows a more efficient and appropriate allocation / distribution of prices attributable directly to particular port users in the short term as opposed to adjustments only after three years.

Provision for an annual review and adjustment of tariffs within a three-year period is contained within the Methodology, and the NPA is required to apply for a fixed tariff adjustment for each year under review as well as to provide indicative tariffs for the two outlying years. This in turn allows the Regulator, and port users, to take a medium term view of the operational expenses, volume forecasts, and tariff trajectories, whilst at the same time provides the Regulator the flexibility to adjust for economic or other external impacts.

This Methodology will therefore apply until the end of 2026/27 tariff year. It incorporates future changes being introduced by Government including; changes in the corporate structure of the NPA in line with the National Ports Act, as well as the establishment of the Transport Economic Regulator. As such, the Regulator may, from time to time, make corrections or changes to the Methodology as required and the Regulator maintains discretion with regards to amending elements of the Methodology in the event of a change in the corporate structure of the regulated entity.

4. Separation of NPA

4.1. Ring Fencing of NPA business

The Ports Regulator, in its November 2018/19 RoD, allowed the implementation of a varied and hybrid valuation of assets approach pending the implementation of Section 3(2) of the Act. These variations and conditions were thereafter incorporated into the Tariff Methodology since then. The review of the Tariff Methodology is meant to reflect on the treatment of the Authority as a corporatised entity as per Section 3(2) of the Act. Although efforts have been made by the Regulator to encourage corporatisation, the corporate nature of the NPA is still not in compliance with the requirements of the Act.

When the NPA is corporatised, it will be expected to raise own financing separately. As a result, the NPA will be expected to manage its operations in an efficient manner to enable easy access to financing, capital and sources of liquidity on reasonable terms in order to lower its cost of capital and reduce the cost of doing business.

This Methodology must make provision for the treatment of NPA in the event that it continues to operate as a division of Transnet Soc Ltd or alternatively, when it becomes a corporatised entity.

5. The Elements

5.1. Rate of Return Regulation - Revenue Required (RR) Methodology

The Revenue Required⁵ methodology as adopted by the Ports Regulator embraces the Rate of Return principle as in the determination (and capping) of the overall revenue requirement annually for the NPA. It has enabled a reasonable return and full cost recovery. This approach has and continues to satisfy the requirements of the Directives to the Act, as set out in section 1.

In regulatory practice, tariffs for far-lying future years are based on forecasts of various considerations. As a general rule, the longer the forecast period is, the less accurate the forecasts towards the end of the period is likely to be. In time, forecasts can be replaced with actual data for the forecasted variables and when sufficient actual data is available for a tariff year, the tariff is recalculated. Claw-backs or give backs are then calculated to offset any differences. This calculation and subsequent claw-back will be completed during each year of a multi-year tariff decision, as has been the practice of the Regulator. As actual data for tariff year one will only be available in tariff year two, the applicable claw back or giveback, if any, will only be fully implemented in tariff year three.

Actual volumes will replace estimates for the calculation of claw backs or give backs. The use of a three-year period in the current Methodology includes a mid-period adjustment, that should, in theory, reduce the volatility over the period as a result of the claw-back.

The Regulator will apply the adapted Revenue Required approach for the 2024/25 – 2026/27 financial years, and the formula is as follows:

Revenue Requirement

$$\begin{aligned} &= \text{Regulatory Asset Base (RAB)} \\ &\times \text{Weighted Average Cost of Capital (WACC)} + \text{Operating Costs} \\ &+ \text{Depreciation} + \text{Taxation Expense} \pm \text{Clawback} \\ &\pm \text{Excessive Tariff Increase Margin Credit (ETIMC)} \\ &\pm \text{Weighted Efficiency Gains from Operations (WEGO)} \end{aligned}$$

The above formula reflects a standard building block approach to setting the revenue requirement of a regulated service provider and has been used by the Regulator in a similar manner in previous tariff determinations. This approach accords with the rate-of-return revenue requirement calculations by Regulators in SA as well as internationally (as modified in the ports regulatory practice over time) and has been used as the basis for assessments by the Regulator in preceding tariff periods. Due to the suitability of this method, and the maturity of regulation in SA, this method continues to be both relevant and applicable.

The Methodology requires that the NPA estimate its operating costs, depreciation, taxation expenses, and return on capital; a product of the Weighted Average Cost of Capital (WACC) as well as the value of assets in the RAB for the period under review. In addition, the Methodology contains a claw-back mechanism (that corrects for over or under recoveries in previous tariff periods) and

⁵ The inclusion of a claw back mechanism results in a Required Revenue approach which closely reflects a Revenue Cap approach. For purposes of consistency in terminology we continue to use the term Revenue Requirement (RR).

an Excessive Tariff Increase Margin Credit (ETIMC) facility. The ETIMC allows for large increases in required revenue and/or tariffs that may arise from volume volatility or substantial capital expenditure programmes in future years to be partly offset by moderately higher tariff increases in the short-term.

Whilst the Methodology as set out below contains an efficiency variable (the Weighted Efficiency Gains from Operations) and will continue to incentivise operational efficiencies, the Regulator still retains the right to include, at any time during this methodology period, positive incentives in support of any national objectives or positive operational or financial outcomes in the Records of Decision.

The exposition of the Revenue Requirement approach is:

$$RR = (v - d + w)r + D + E + T \pm C \pm ETIMC \pm WEGO$$

Where:

<i>RR</i>	=	<i>Revenue Requirement</i>
<i>v</i>	=	<i>Value of the assets used in the regulated services</i>
<i>d</i>	=	<i>Accumulated depreciation on such assets</i>
<i>w</i>	=	<i>Working Capital</i>
<i>r</i>	=	<i>Regulated Return on Capital</i>
<i>D</i>	=	<i>Depreciation on the RAB accounted for in the tariff period</i>
<i>E</i>	=	<i>Operating Expenditure (OPEX)</i>
<i>T</i>	=	<i>Taxation expense</i>
<i>C</i>	=	<i>Claw-back</i>
<i>ETIMC</i>	=	<i>Excessive Tariff Increase Margin Credit</i>
<i>WEGO</i>	=	<i>Weighted Efficiency Gains from Operations</i>
<i>(v - d + w)</i>	=	<i>Regulated Asset Base (RAB)</i>

5.2. Regulatory Asset Base (RAB)

The RAB represents the value of those assets the NPA is allowed to earn a return on. As the return earned on these assets is expressed in real terms, the value of total assets in the RAB is indexed to inflation each year using the Trended Original Cost ("TOC") approach⁶. Each year, estimated capital expenditure (CAPEX) and depreciation is added to the closing balance for the previous year to arrive at an updated closing balance for the current year. The expected working capital balance is added to arrive at a total RAB estimate, which is averaged over the year to account for the progressive spending of capital works in progress (CWIP) over the period.

⁶ This excludes the pre-1990 assets, on which a Historical Cost approach to depreciation and a nominal WACC will apply.

5.2.1. Calculation and Adjustment of the RAB

The Regulator concluded that the appropriate (minimum) criteria elements, for the purpose of setting an appropriate RAB and asset valuation system must:

- be based on a principled and sound rationale;
- produce a reasonable asset value for existing assets;
- result in an acceptable price-path;
- ensure financial capital maintenance;
- encourage efficiency and caution with respect to new investment decisions on the part of the NPA;
- be reconcilable back to the NPA asset register, at least at a particular point in time; and
- minimise regulatory information asymmetry problems.

The Regulator concluded that the TOC approach (satisfying the principle of Financial Capital Maintenance) based on the capitalisation dates and values in the NPA asset register best meets the criteria. However, some concerns related to the older assets capitalised before 1990 were raised. Therefore, assets with capitalisation dates prior to 1990 will be treated on a historical cost (HC) basis. The underlying assumption is that assets in existence at 1990 have now been in existence for a long period of time and, for most of that time, have been depreciated on a trajectory following this method. The Regulator will therefore treat these assets with the HC method, while treating any assets created from 1990 onwards on the basis of the TOC approach.

The following is the approach to be implemented:

- TOC values provide a viable approach to setting the value of the RAB and will be applied to newer (post 1990) assets.
- The Regulator will differentiate between assets in existence in 1990 and those with capitalisation dates after 1990 and will treat the older (pre-1990) assets on a HC valuation basis.
- On application by the NPA as part of its annual Tariff Application, the Regulator may, in considering the revenue impact of the implementation of the methodology decide to accelerate the depreciation period of the pre-1990 assets in order to smooth out the revenue impact thereof.
- If during the period of this Tariff Methodology, the NPA is corporatised from a division of Transnet, into a subsidiary or stand-alone SOC with borrowing powers, the Regulator will, in order to ensure good credit ratings of the NPA, consider applying the TOC to both pre-1990 assets as well as post 1990 assets (as a deviation) until credit metrics like the cash-interest coverage ratio (not applicable to a non-borrowing division) have been proven to be within sustainable limits.
- The Board/governing body of the NPA must write a motivation to the Regulator at least three months prior to the tariff application submission requesting a deviation on the RAB calculation, filing its Memorandum of Incorporation with the Regulator and providing all its credit metric calculations, or alternatively or citing significant progress on corporatisation, if any. On subsequent approval by the Ports Regulator, the NPA may make its tariff application on a RAB valuation calculation based on the decision of the Regulator. The NPA deviation letter as well as the Regulator's ROD on the RAB valuation calculation will be published.*

- vi. See Section 10 for more details on the implications and requirements with respect to corporatisation.

5.2.2. Rules for Inclusion in the Regulatory Asset Base (RAB)

The RAB covers all assets employed/owned by the NPA in the provision and supply of port capacity and services. The following are the conditions that must be met in order to include an asset in the RAB. The following rules set out the criteria for inclusion and valuation of assets and treatment of maintenance on the RAB:

Prudency tests are applicable to new and used assets for inclusion in the RAB.

The amount by which the capital base may be increased in any specific year is the amount of the actual project capital expenditure incurred in that specific year provided that:

- i. The amount does not exceed the amount that would be invested by a prudent landlord port owner acting efficiently in accordance with good industry practice to achieve the lowest sustainable cost of delivering the required services; and
- ii. At least one of the following conditions is satisfied:
 - a. The anticipated incremental revenue (subjected to the claw back mechanism in outer years if found to not be true) generated by the capital expenditure exceeds the investment cost;
 - b. The NPA can satisfy the Regulator that the new capital expenditure has system wide benefits that, in the Regulator's opinion, justify its inclusion in the capital base; or
 - c. The new capital expenditure is necessary to maintain physical safety and functional integrity of National Ports Authority infrastructure, installations and marine services equipment in the port system.
- iii. The fixed asset is long-term in nature and is operationally used and useable;
- iv. Fixed and other assets that are not in an operationally used and useable (useful) form will not be included in the RAB;
- v. The asset is used and useable and should be in a condition that makes it possible to supply demand for port services in the short to medium-term (within 12-36 months).

Additional conditions regarding assets include:

- New assets will be included in the RAB and subjected to the TOC methodology as set out if the expected life of the asset exceeds five years.
- If the asset's lifespan is five or less years (i.e. depreciation periods of five years or less at the acquisition of said assets) it will attract straight line depreciation to be included in the tariff calculation. Maintenance on these "short term assets" may have maintenance costs included if used beyond full depreciation.
- The NPA shall, with each tariff application, provide a list of temporary and long term unused assets (i.e. all assets not used operationally). This list will be published.
- All capital expenditure ("CAPEX") must be consulted on with the PCC and NPCC as per the requirements of the Act and Directives, the outcomes of which must be communicated to the Regulator.
- All CAPEX must be submitted to the Regulator as part of the annual Tariff Applications for consideration by the Regulator on 01 August.

- All CAPEX forming part of the annual tariff application to the Regulator must be accompanied by an approval letter signed by the Chairperson of the relevant Board/Governing body of the Authority, outlining capital expenditure approved in each port and all other business units of the Authority.
- Growth related CAPEX adding new capacity should be presented separately with the related (anticipated or actual) volume growth and the expected time when that growth will be realised in the port system.
- Asset replacement CAPEX must be presented separately indicating the capacity in the specific areas of the port system (with total volume replacement)
- The NPA should also share and indicate the approximate ages of assets due for replacement.
- Safety, Environmental and Compliance related CAPEX should be presented separately.

The tariff methodologies have over the years incentivised CAPEX in the ports sector even when the Authority has not successfully invested approved CAPEX.

5.2.3. Calculation of the RAB

The RAB value for the period under review is determined using the following formulas:

$$RAB_y = \frac{1}{2}yRAB_{c,y} + RAB_{o,y} + w_y$$

$$RAB_{c,y} = RAB_{o,y}(1 + CPI_y) + (CAPEX_y \cdot (1 + CPI_y)) - D_y$$

Where:

RAB_y	=	value of the RAB used to determine the returns for period y
$RAB_{o,y}$	=	opening value of RAB for the period y
$RAB_{c,y}$	=	closing value of RAB for the period y
w_y	=	forecast average net working capital over period y
$CAPEX_y$	=	value of expected capital investment over period y
D_y	=	depreciation allowance for assets over review period y
CPI_y	=	annual rate of Headline CPI expected over period y

- Working capital will be included in the RAB for the purposes of calculating the return as per the Tariff Methodology.
- The return on capital will be based on the TOC value of the assets for assets with capitalisation dates post 1990, and HC value for assets predating 1990, to ensure financial capital maintenance.
- A *real* return will be applied in the case of assets that is valued on a TOC basis and a *nominal* return will be applied to the HC asset values in the RAB.
- The net TOC value is determined by calculating the accumulated and annual depreciation on a straight line basis over the elapsed life for those assets that are depreciated (with appropriate adjustments for refurbishments etc.).
- The historic asset base as at 31 March 1990 will be used as an opening asset base (This asset base will be used as a basis to determine the current trended net value of NPA's assets).
- Concession funded assets and prepayments (e.g. concessions that resulted in assets transferring back to the NPA) will be recorded on the regulatory asset base at R1 (One Rand).

5.2.4. RAB Depreciation

The fundamental contextual decision for the Regulator in determining the appropriate application of depreciation centres around the aim of regulation, specifically the intention to satisfy the principle of financial capital maintenance. Currently, to fully take into account capital expenditure and inflation, the following formula is used in the calculation of depreciation:

$$D^* = (RAB_{(o,y)} + (RAB_{(o,y)} \cdot CPI_{(y)})) / RUL$$

Where:

RAB_y	=	value of the RAB used to determine the returns for period y
$RAB_{o,*}$	=	opening value of RAB for the period y
$RAB_{+,*}$	=	closing value of RAB for the period y
D^*	=	depreciation allowance for assets over review period y
CPI	=	annual rate of Headline CPI expected over period y
RUL	=	Remaining useful life in years

It must be noted that the Tariff Methodology includes the use of asset specific depreciation rates as opposed to an average asset life. The treatment of those assets that have exceeded their expected lifespan and/or depreciation periods are dealt with in Annexure C.

Depreciation will only be allowed in the calculation of the tariff upon commissioning. Efficient implementation and management of capital projects, timely completion of infrastructure construction, and on-schedule acquisition of capital equipment is thereby incentivised.

The following provisions apply:

- i. The depreciation should be calculated on the historical cost of an asset (this is independent of the amortization of the trended portion) and be based on the remaining useful life of each asset; See Annexure B;
- ii. The total accumulated depreciation and accumulated amortisation is deducted from the TOC cost of the RAB to obtain the RAB on which the return is calculated. See Annexure B;
- iii. Mothballed and/or impaired assets will not earn a return although the maintenance of mothballed assets with a definite plan for future use, will be allowed in the OPEX;
- iv. Similarly, the maintenance on assets still in use, but fully depreciated, will be allowed in the OPEX; and
- v. A complete list of assets in this category must be compiled and updated on an annual basis by the NPA. The required information must be supplied to the Regulator.

5.2.5. Maintenance

- i. Maintenance to be treated as *operational expenditure* (i.e. not capitalised and included in the RAB) for purposes of tariff calculation and will be defined as: “work undertaken within the port system with the intention of:
 - a. re - instating the physical condition of an asset to its original specified/design standard (e.g., dredging to the specified/design depth);
 - b. preventing pre-mature deterioration or failure in order to ensure functionality for the duration of the asset’s designed useful life;
 - c. restoring correct operation within specified parameters;

- d. replacing *components* of assets at the end of their useful/economic life with modern engineering equivalents;
 - e. making temporary repairs or servicing for immediate health, safety and security reasons; and/or
 - f. assessing assets for maintenance requirements (e.g., to obtain accurate and objective knowledge of physical and operating condition, including risk and financial impact, for the purpose of maintenance).
- ii. Expenditure on assets or projects that **may be included** in the RAB as *capital expenditure* when it results in the following:
 - a. an increase in the asset's useful function or service capacity (e.g. dredging to a greater than specified depth);
 - b. an extension of the useful life of an asset;
 - c. an improvement to the quality of the service(s) delivered through utilisation of the asset, or resolving the unintended consequences of a poor engineering design (e.g. the installation of a mooring system in Ngqura);
 - d. a reduction in future operating costs; and/or
 - e. the upgrade or enhancement becoming an integral part of the asset.
- iii. Maintenance dredging must be subjected to the criteria above.

Annexure C summarises the treatment of different assets descriptions in the RAB.

5.3. Inflation Trending

The inflation rate for calculating the trend in the value of assets between rebasing periods will be the Headline Consumer Price Index (CPI) forecast in each financial year during the tariff period. The same inflation rate is used in the calculation of the Weighted Average Cost of Capital (WACC).

Due to the Regulator finalising a RoD by 01 December, it will utilise a final National Treasury published CPI forecast from the National Treasury's October/November Medium Term Budget Policy Statement (MTBPS) and if deemed necessary, also estimates published by the South African Reserve Bank, the Bureau of Economic Standards, other institutions, and its own economic forecasts in its assessment of future price changes.

5.4. Capital Works in Progress (CWIP)

CAPEX implementation since the publication of the last multi-year Tariff Methodology has been dismal. Therefore the Regulator will require the following from the NPA with every tariff application:

- i. CWIP projections for the tariff period detailed as follows:
 - a. per asset class;
 - b. per service;
 - c. per project; and
 - d. monthly planned expenditure schedules.

All CAPEX which has been approved and not fully implemented shall be taken into account as part of the claw-back process and the RAB, and its return shall be then adjusted accordingly. In addition,

no depreciation allowance will be included until commissioning of the relevant asset. The Authority shall officially inform the Regulator of the commissioning of each asset in writing in each year as part of its Tariff Application supplying the date of commissioning, final expenditure value, and any other information the Regulator deems necessary.

The Regulator has in the past relied on the PCCs to “in principle” consider or support the NPA’s CAPEX requirements, however, the NPA’s ability to implement projects, recent CAPEX implementation record, as well as the relevance and appropriateness of the CAPEX plan will be taken into consideration in future. In addition, each project in the application⁷ must contain the underlying motivation (business case) for all CAPEX projects, including volume projections etc. (See Annexure A). Whilst the NPA will be allowed to approach the Regulator to amend the RAB within the cycle, any amendments will require the same rigorous probity assessment. This is particularly important during the ramp up of capital expenditure phase as guided by the business case submissions.

As such, the assessment of determining the final closing balance at the end of the CAPEX period will require an assessment of actual achievement of the approved CAPEX plan. This will require an assessment of the various construction elements including disbursements, actual outputs, and cumulative project specific Engineer’s payment certificates and completion certificates.

5.5. Working Capital

The regulatory purpose of the RR approach is to determine the revenue required by the NPA to recover its costs and an appropriate return. This must include the concept of the time value of money as the time at which a particular cost is incurred may not necessarily be matched with the associated tariff. Therefore, capital is required to cover the time delay, however there is a cost associated with the additional capital requirement. In order to correct for the inherent assumption in the RR approach (that expenses and revenues occur at the same point in time), an allowance for the time difference is included.

The estimate of working capital included to adjust for the cash requirements related to CAPEX requirements, equates to the actual *net* working capital as per the latest available NPA annual financial statements (not the change in working capital), consisting of accounts receivable plus inventory less accounts payable (i.e. operating cash is excluded), adjusted by forecast volume growth and CPI inflation for the following year. In addition, CWIP *payables*, which are estimated at 1/12th of the CAPEX projected for that year is included. This is adjusted for the previous year’s proportion of under-expenditure on the CAPEX programme. Volume and CPI forecasts used in the calculation of outer years’ working capital will be updated as and when these numbers become available as part of the claw-back mechanism.

⁷ In excess of R10 million

5.6. Weighted Average Cost of Capital (WACC) - Vanilla WACC

In general, the WACC represents the risk adjusted opportunity costs of capital, and is the minimum return for an investment in order to continue to attract capital, given the risks.

A real WACC⁸ (the cost of equity and the cost of debt) will be applied and expressed in Vanilla terms (i.e. post-tax cost of equity and pre-tax cost of debt) to the post-1990 assets and a nominal WACC will be applied to pre-1990 assets. Accordingly, a separate allowance for the tax expense in the RR formula is required.

$$WACC_{vanilla} = k_d \cdot g + k_e(1 - g)$$

Where:

$$\begin{aligned} k_d &= \text{pre-tax cost of debt} \\ k_e &= \text{post tax cost of equity} \\ g &= \text{gearing, which is debt over total capital} \end{aligned}$$

5.7. Cost of Equity (k_e)

The post-tax Cost of Equity is calculated with reference to the Capital Asset Pricing Model (CAPM), which is expressed as:

$$k_e = r_f + \beta \times MRP$$

Where:

$$\begin{aligned} R_f &= \text{Real risk free rate} \\ \beta &= \text{Measure of NPA's exposure to market (non-diversifiable) risk} \\ MRP &= \text{The market risk premium measuring the premium over and above the risk free rate that investors might expect to earn} \end{aligned}$$

The exclusion of the return on equity rate from the claw back calculation ensures that the use of a CAPM calculation establishes a clear and consistent determined risk premium above the RFR, significantly reducing the NPA's revenue risk as well as additional tariff volatility.

5.8. Risk Free Rate (r_f) (RFR)

In establishing a risk profile for a regulated entity like the NPA involved in the development of billions of Rands of infrastructure through debt, one of the main risks facing the business is that of the volatility of interest rates and other associated borrowing costs. In addition, over-runs, lack of engineering and project management skills, cost uncertainty, and regulatory risk further contributes to their risk profile. With regards to the latter two risks, namely cost uncertainty and regulatory risk, the RR methodology, as implemented by the Regulator in this instance, adequately covers the perceived risk. In the first instance, the granting of operational expenditure as a revenue item and the inclusion of a claw back, together with a transparent tariff methodology sufficiently compensates the NPA for the associated risk. To compensate for the interest rate risk, regulators are generally in agreement that longer dated government bonds should apply for two reasons, firstly to retain consistency in the calculations, the RFR should be set on a basis that is consistent with other variables in CAPM, notably the MRP. Secondly, to ensure alignment with the average length of remaining life of an asset in the RAB or at least the remaining debt maturity periods.

⁸ Adjusting for inflation will use Fisher's Equation: $(1 + \text{nominal WACC}) = (1 + \text{real WACC}) * (1 + \text{cpi})$

This Methodology utilises the South African Reserve Bank’s published time series KBP2003M “Yield on loan stock traded on the stock exchange: Government bonds - 10 years and over” in order to avoid anomalies in single data series bond as an appropriate measure of the RfR, and is seen to adequately reflects the market’s perception of sovereign risk and inflation over the regulatory period.

As such the Regulator will retain the use of the geometric mean of the KBP2003. The calculation of the RfR average is done over the full period available in the SARB dataset as the cost associated with the larger standard error of a shorter period surpasses any advantages of using a more recent shorter period RfR.

The Real RfR is deduced by using the Fisher Equation.

$$1 + i = (1 + r)(1 + E(I))$$

Where:

$$\begin{array}{lll} i & = & \text{Nominal rate} \\ r & = & \text{Real rate} \\ E(I) & = & \text{Expected inflation} \end{array}$$

5.9. Market Risk Premium (MRP)

The MRP is in essence forward-looking and therefore cannot be observed but must rather be forecasted. A general consensus exists that the historical premium is, in fact, the best estimate of the forward looking MRP. For this purpose, the Regulator uses the latest available Dimson, Marsh and Staunton (DMS) estimate of the mean MRP as measured against bonds for SA to determine an MRP for the NPA’s cost of equity calculation. The existence of negative serial correlation in the returns on South African equities results in an overestimation of the MRP when using the arithmetic mean. In addition, the relative (and recent) changes in terms of market diversification, improvements in the regulatory and legal frameworks safeguarding investors points to the appropriate risk premium forecast to be at the lower end of the long term view.

As such the Regulator will retain the use of the geometric mean of the DMS MRP. The calculation of the MRP average is done over the full period available in the DMS dataset as the cost associated with the larger standard error of a shorter period surpasses any advantages of using a more recent shorter period MRP.

5.10. Beta (β)

As the NPA is not a traded company, there is no published beta (β) which reflects its risk relative to firms listed on the market. Therefore, a β has to be set in order to reflect the risks faced by the NPA under the RR methodology that will ensure an appropriate return (for the risk faced).

The inclusion of a claw-back mechanism reduces exposure to systematic risk and the existence of an interventionist regulatory regime ensuring future returns to a state-owned monopoly with no competitors to its business in SA, requires the Regulator to use a β substantially lower than that of large firms listed on the market such as the JSE top forty. The unique nature of the NPA as a regulated monopoly with an implied government guarantee, makes any comparison with other private sector port companies impossible as by definition, they cannot be in the same business as a monopoly.

The consistent returns allowed by the Regulator and the claw back mechanism that effectively removes systematic risk (mainly through decreasing volumes) combined with the view that the β must be considered as endogenous to the methodology applied, argues for a lower beta. Due to the complexity of establishing the correct β , the Regulator will apply an asset beta of 0.35 over the period. The lower asset beta value (as opposed to the 0.5 previously applied) responds to the slow-down of CAPEX by the NPA over the last Tariff Methodology period relative to CAPEX applied for in tariff applications over the period. This signals relatively lower risk hence a lower beta, the risk adjusted equity returns on the RAB are reduced, however increased delivery of CAPEX will lead to higher values of the RAB and in turn higher returns. Efficient implementation and management of capital projects, re-establishment of engineering capacity in the NPA, timely completion of infrastructure construction, and on-schedule acquisition of capital equipment is thereby incentivised, and if such results are not achieved, the Regulator may again revise the beta downwards in future years. The Hamada equation will be used to re-lever the beta to result in an equity β .

5.11. Gearing (g)

The Regulator, taking into consideration previous applications, previous patterns of variation in the applications, various submissions, and its own analysis of the NPA's gearing, has determined that an appropriate gearing for the entity (an infrastructure heavy landlord monopoly) for the period is (at least) 50%. Further, this reflects a median position within a sample of ports as well as adequately signals a required re-investment of profits into the port system whilst balancing costs with a lower cost of debt.

If the NPA is corporatised with an independent Board, independent financial disclosure, borrowing powers, and control of its own cash flow bank account, the Regulator will consider using the actual gearing calculated through a due diligence process. The Regulator has not changed its position on Gearing given the inability to observe the level of gearing for a stand-alone, separate NPA.

5.12. Cost of Debt (k_d)

Currently the NPA's *actual*, embedded (adjusted for an *effective weighted*) debt costs as allocated by Transnet is used to determine the cost of debt applied within the WACC. The cost of debt, as per the Annual Financial Statements, and the ability of the Authority to raise finance through the strength of its books should be used in the determination of the WACC. However, the actual embedded debt should be considered provided it reflects debt funding and credit risk of the NPA as a separate entity. Alternatively, the Regulator reserves the right to benchmark the NPA's cost of debt for the purposes of determining WACC.

5.13. Taxation Expense (T)

The Regulator proposes the use of corporate tax rate (t) subject to the actual tax payment to the tax authorities. This will serve as ex ante tax allowance. A claw back should be applied on allowances for tax which were not paid over to the tax authorities. With the continuation of the status of a Transnet OD, the Regulator will continue to apply claw back using Equitable Tax Rate which is a proxy for actual tax.

The equitable tax rate is calculated as that rate which will result in the proportional sharing of the Transnet Group taxation liability by each of its profitable divisions/segments/business units. The equitable tax rate is thus the rate which if applied to the profits of each profitable division/segment,

will amount, if added together, to the full corporate tax payable by Transnet to the South African Revenue Services (SARS) on its pre-tax net profit in any one financial year.

The Equitable Tax Rate is calculated as follows:

$$te = t \left(\frac{Pg}{\sum Pi} \right)$$

Where:

- te = equitable tax rate,
- t = 27% or the corporate tax rate,
- Pg = Transnet Group pre-tax net profit for the year,
- $\sum Pi$ = Sum of pre-tax profits of profitable divisions/segments/units for the year

The equitable tax rate to be applied will be the average equitable tax rate over the previous 5 years. The clawback will remain as a mechanism to be used to correct for the actual equitable tax rate in any year when appropriate audited segmental financial statements are published. All fair value and similar once-off accounting adjustments on segmental profits will be not be considered in the calculation of the equitable tax rate in future and in the retrospective 5 years forming part of the calculation.

The calculation of the equitable tax rate is contingent on Transnet publishing (or providing the Ports Regulator) audited segmental financials each year that shows the group net profit as well as the profits and losses, costs and revenues, for each division/segment/business unit as well as any adjustments. Failure to do this will result in the Regulator not providing for taxation in the revenue required calculation, and revenue required for tax will be deemed to be a part of the allowed return on equity.

5.14. Operating Expenditure (OPEX)

The Regulator currently analyses the operating cost estimates for the period on a detailed, line by line item basis. The NPA is requested to provide detailed and complete motivation for each of the expenses applied for, especially on large items such as labour, energy costs, and sundry costs. The Regulator will also consider the efficiency of the costs and will develop a regulatory framework for inclusion and treatment of the various OPEX line items.

The OPEX of the Authority is expected to reflect the events in the economy and country as a whole and should the required increases not be reflective or considered prudent, the Regulator may exclude portions of OPEX from the required revenue.

The Regulator has consistently applied a cost pass-through on allowances for costs incurred by the NPA which it has limited, to no control over and are considered reasonable for the full costs to be recoverable. The most prudent approach is to align the cost base with the inflationary expectations. The Methodology will allow the Authority to adjust OPEX where the scope of work has changed of which creates value-add to port users.

Furthermore, over and above the OPEX budget submitted in the Tariff Application, the Regulator will analyse drivers of OPEX which the forecast thereof could further be split into:

- a) Ports related;
- b) Business support which includes IT & telecoms, Head Quarters, Office equipment etc.;
- c) Employee costs, renewal, additions etc.; and
- d) Real price effects.

The Regulator is concerned regarding the efficiency of the Authority's OPEX and intends, together with the Authority, on developing a measure for efficiency.

The Regulator continues to allow the inclusion of the Transnet Group Costs ("TGC") in the total allowed expenses, subject to the requirement that the NPA submits detailed explanations and motivations for the amounts to be transferred to Transnet. When the NPA becomes a corporatized entity, it will be expected that some of the costs will be undertaken by the Authority and as a result, the TGC must reduce. Where Transnet continues to service NPA, it should be at a reasonable market cost of which the NPA will be expected to compare to transactions of similar nature in the open market.

In addition, the NPA shall provide an externally and independently audited financial report (with all supporting documentation and detailed explanations including basis of allocation and policy documents that support such allocation) on all line items that form part of the group costs that have been expended for the NPA each year. This shall be provided in the year after the close of the financial year or until an alternative methodology or amendment of this methodology is published.

Furthermore, the Regulator reserves the right to claw-back all or any portion of the amount in future tariff decisions, should the Regulator not be satisfied that the expenditure is within the scope and mandate of the NPA, and that the amounts are reasonable, or reasonably allocated to the NPA.

Comprehensive information requirements must be met with for each application. See Annexure A.

5.15. Claw-Back

The key purpose of applying claw-backs is to ensure that the NPA or any port user is fairly treated and is not subjected to unfair gains or losses that are the result of incorrect forecasting, inaccurate information and system shocks. This includes the reducing and the sharing of risks faced by all port system participants including the NPA. Its main application is to reduce the impact of differences between allowed revenue (based on a number of forecasts and assumptions) calculated at the time of the tariff application, and actual audited figures, and is intended to ensure the coherence and integrity of the regulatory regime. The volatility of trade volumes and the difficulty in forecasting imports and exports accurately presents significant problems, especially regarding the prediction of volumes in outer years of a multi-year tariff period.

However, the following variables that are estimated (in line with the Regulatory Manual) on an annual basis, prior to the start of the following tariff year, for claw-back purposes are the:

- RAB (excluding CAPEX): The RAB is adjusted annually to reflect actual working capital requirements in line with audited AFS numbers and inflation trending;
- Depreciation: Re-calculated based on the adjusted RAB;
- Volumes: Actual volume numbers are used to calculate the clawback;
- Inflation (CPI): Whilst the return on equity is not changed, the actual inflation rate is used in the recalculation of a number of variables, including the trending of the RAB, working capital forecasts, and other latest estimates during the assessment; and
- Taxation: The taxation allowance will be corrected to the actual taxation cost as per the audited Annual Financial Statements.
- WEGO penalties or incentives should be considered as part of clawback recalculation.

The forecast or estimation of these variables is conducted annually and actual data is used in determining the claw-back pertaining to the previous tariff year where the 50% rule applies. The final claw-back is determined in the following year when actual numbers are available.

As noted in section, the Return on Equity (rate) will be fixed upon assessment for claw-back purposes – the amount included in the claw-back will still depend on RAB corrections.

Detailed steps for the calculation of the Clawback can be found in Annexure D.

5.16. Excessive Tariff Increase Margin Credit (ETIMC)

The Regulator regulates in the long term interest of the maritime sector and the SA economy. This requires that the Regulator not only confine itself to the immediate tariff decision, but also considers ways to ease any future shocks to the system. It is generally accepted that CAPEX may spike at some point in the foreseeable future, but that these projects have not as yet been specified to a level of detail that allows for accurate prediction. In addition, external market related factors such as unexpected (or expected) fluctuations in volumes, inflation, the RFR etc. may result in significant spikes to the tariff as well.

As such, the Regulator has, in the past, considered it prudent to avoid excessive future tariff changes by retaining and increasing the NPA's Excessive Tariff Increase Margin Credit (ETIMC), in order to allow the smoothing of unaffordable tariff spikes over multiple periods in the future or to apply a countercyclical tariff decision in time of depressed economic activity.

As the ETIMC is 'revenue collected from port users' before the NPA is entitled to it, it should yield a return for users to compensate them for the opportunity cost of their capital. The ETIMC will therefore earn a return which is equal to the WACC allowed by the Regulator as the opportunity cost of the fund available to the NPA is indeed the WACC. The return on the ETIMC will be factored into the balance and the calculation of the total available under the ETIMC facility will be published annually (as part of the RoD).

Currently, the Regulator further deems it necessary to define the use of the ETIMC facility in the following way:

"The Regulator may authorise the release of part, or the whole, of the value of the ETIMC facility only when conditions require an influence on tariff levels including, but not limited to, spikes in tariffs (defined as an average tariff increase in excess of the CPI inflation forecast) due to a sharp increase in capital expenditure, volume volatility, or any market related factor. Further, the Regulator may consider national objectives when making decisions to add to, or to utilise the ETIMC facility to adjust tariffs."

The ETIMC facility is not intended to be used for the Authority's inefficiencies.

6. Volume Forecast

The NPA is required to submit detailed volume forecasts with reasons as well as revenue calculations based on the forecast volumes and current tariff levels as well as proposed tariffs for the period. The level of detail will be agreed to with the Authority. Prior to the finalisation of the Record of decision, the Authority is required to submit the Latest Estimates with regards to current volumes, as well as any changes to forecasts etc.

The Regulator, based on the submission of the Authority, its own calculations and estimates, and various engagements and submissions from port users, will determine the final volume forecast. Any deviations from the NPA's submitted volumes will be set out in the RoD.

7. Weighted Efficiency Gains in Operations (WEGO)

The incentives built into the RR methodology do not favour increased efficiency or competitiveness as the claw back mechanism takes away the gains from higher efficiency with additional market volume effects. This is therefore be addressed in an integrated manner through the inclusion of an efficiency measure within the Methodology.

Whilst the introduction of efficient pricing through the Tariff Strategy is intended to have positive effects, these will only impact over the long term. The response is thus to identify and differentiate between volume gains (or volume losses) due to efficiency impacts and market effects and to incentivise or disincentivise these respectively, as an increase or decrease on profit earned by the NPA.

WEGO presents the measurement of the operator performance standard and apply an incentive or punitive measure on the outcomes measured. WEGO continues to evolve and the Regulator has been discussing with the industry on areas requiring improvements.

In particular, the inclusion of an efficiency variable Weighted Efficiency Gains from Operations (WEGO) is proposed as set out in the RR formula (page 7). The formula for calculating the WEGO is as follows:

$$WEGO_t = EG_{t-1} \times 0.075 \times Re_{t-1} - \text{Downtime Adjustment}$$

Where:

Efficiency Gain (EG) = Agreed efficiency gain through operations, excluding the effect of market driven volume growth.

Return on Equity (Re) = Return on equity as determined in the ROD.

t = Current financial year under review

Composite Ports System Efficiency Gain % as calculated	EG for inclusion in the WEGO formula
≥15%	1
12%	0.9
10%	0.8
8%	0.7
6%	0.6
5%	0.5
4%	0.4
3%	0.3
2%	0.2
1%	0.1
0%	0
-1%	-0.1
-2%	-0.2
-3%	-0.3
-4%	-0.4
-5%	-0.5
-6%	-0.6
-8%	-0.7
-10%	-0.8
-12%	-0.9
≤-15%	-1

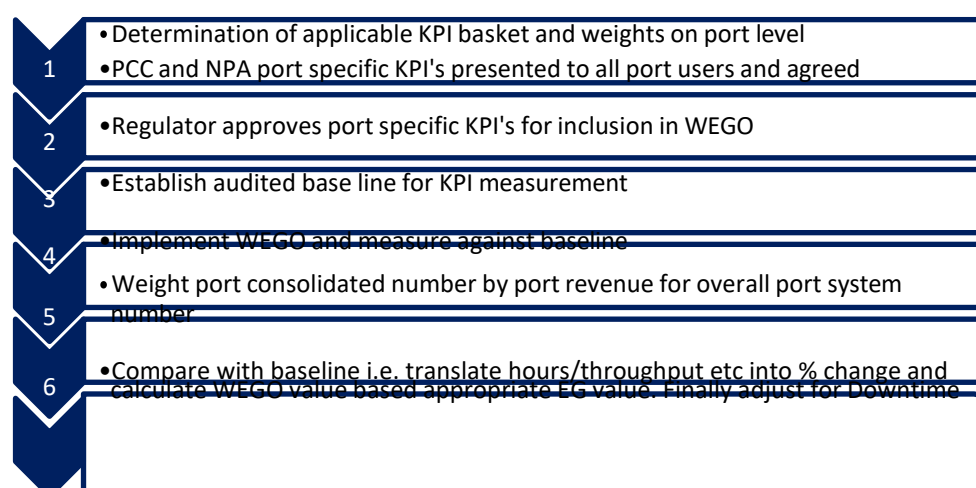
EG will be a weighted average growth rate of a selected group of audited performance results on a port by port basis. These key performance indicators, as well as the appropriate weightings for every port, will be selected by the Regulator in consultation with port users through the PCC process as well as with the NPA. It will be required that the WEGO TOPS and MOPS results be signed off by PCC representatives at a port level, and agreed to with the Regulator.

For the calculation of operational efficiency, port revenue contribution will establish the weighted contribution on a per port basis to calculate the overall EG, however, all ports' PCC's must present signed off results to the Regulator for consideration and inclusion in the Tariff Assessment.

Efficiency gains in individual KPI's per port will be capped for calculation purposes at 20%, similarly, reductions in efficiencies will be capped at 20%. Measured performance of a particular KPI in a port will be compared against a WEGO historical best measured performance (the Baseline) to produce a percentage efficiency gain or loss (EG) for that KPI in that port, and contribute towards and overall/composite port level efficiency gain or loss (EG).

A declining or negative value of EG_{t-1} will result in an increased claw back over period t .

8. Operational Performance Calculations



KPI's and their relative weights will be annually consulted per port and the NPA and port users are free to propose new weights as well as new KPI's including land-side measures, as well as the formulation of KPI's and the proposed measurement methodology. The Regulator is consulting with the industry on the list of KPIs for the NPA to measure and report on over the following period.

The process, and the requirements of the different role-players in establishing the KPIs for inclusion in the tariff setting process, is outlined below.

Process	Y1	Y2	Y3 etc.
Process for port users	- Port by Port KPI determinations presented to port users by PCC	- Port by Port KPI determinations presented to port users by PCC	- Port by Port KPI determinations presented to port users by PCC
Process for NPA	- Port by Port KPI determinations presented to port users by NPA - Report on achieved performance to PRSA by year end to establish an annual result and baseline	- Application to include report on actual audited KPI performance in previous year - Report to PRSA on actual performance - Port by Port KPI determinations presented to port users by NPA	- Application to include report on actual audited KPI performance - Port by Port KPI determinations presented to port users by NPA
Tariff Setting Process	- Regulator to approve final Port by Port and national KPI's - Implement WEGO as per audited KPI performance through the claw-back mechanism.	- Regulator to approve final Port by Port and national KPI's - Implement WEGO as per audited KPI performance through the claw-back mechanism.	- Regulator to approve final Port by Port and national KPI's - Implement WEGO as per audited KPI performance through the claw-back mechanism

9. WEGO Downtime Adjustment / Disincentive

The unacceptable levels of downtime resulting from breakdowns due to lack of maintenance and other concerns in container terminals in mainly 2019/20, has forced the Regulator to respond to the tariff risk faced by port users as a result thereof (the clawback mechanism will compensate for any under recoveries). As such, the Regulator is of the view that shifting the tariff risk from the port users to the NPA incentivises stronger regulatory oversight on terminal operators, and allows the NPA to play its legislated “Authority” role as the regulator of operators.

The adjustment of the WEGO allowance for downtime due to mechanical breakdown, unavailability of equipment, labour related incidents, or any other similar unplanned occurrence resulting in a services not being rendered, (excluding weather delays and ‘force majeure’), will be calculated on the basis of previous (3 year moving average) revenue streams as a ratio of the collected Cargo Dues per port and terminal. These ratios will be applied to the number of days of operational delay applicable at each terminal of each port and the resulting calculated reduction in cargo dues will be used as an adjustment to the WEGO calculated revenue amount (i.e. it will be an adjustment to profit or the Return on Equity).

$$\text{Operational Profit Reduction Ratio (OPRR)} = \frac{1}{365} \cdot \left[\frac{PR_i}{7} \cdot \left(\frac{D_j}{8} \times \frac{TR_{ij}}{7,8} \right) \right]$$

$$\text{Downtime adjustment} = \text{OPRR} \times \text{TCD}$$

Where:

D_j	=	Days lost per terminal j due to, mechanical breakdown, labour action or similar*
PR_i	=	Port Revenue Ratio- Proportional cargo dues per commercial port i **
TR_{ij}	=	Terminal Revenue Ratio- Proportional cargo dues per terminal j in port i ***
TCD	=	Total cargo dues collected in port system
i	=	Individual port reference
j	=	Individual terminal reference
n	=	Total number of Terminals in each port
p	=	Total number of Ports

- *Days lost will be based on recorded downtime due to equipment failure or unavailability, or labour strike. In the case of a ‘go-slow’ every day recorded as a “go-slow” strike action, 0.5 days will be assumed lost. Downtime due to weather delays and force majeure will not be taken into consideration.
- **The proportional cargo dues revenue ratio will be based on all cargo dues revenue collected from the individual ports as a share of total cargo dues revenue collected (moving average of the previous 3 years).
- ***The proportionally cargo dues revenue ratio will be based on all cargo dues collected per terminal as a ratio of total cargo dues revenue collected per port. (Moving average of the previous 3 years).

Information requirement to be submitted to the Regulator by the NPA (quarterly):

- a) All Cargo Dues per terminal per port; and
- b) All recorded operational delays per terminal per port with reasons for delays.

10. Corporatised Entity

The exact corporate structure, dividend policies, transitional arrangements, debt allocation, and other related matters of separate NPA as per the National Ports Act remains unknown at the time of publishing this Tariff Methodology (March 2023). The Regulator needs to consider the sustainability of the NPA on an ongoing basis, and as a corporatized entity may require consideration of assessment of the entity from a credit rating perspective as a standalone borrowing entity (in the future). As such, the following arrangements with regard to the application of the Tariff Methodology will apply:

- Three months prior to the date of the Tariff Application, the Governing Body / Board of the NPA is required to engage with the Regulator in order to determine the applicable methodology under which to apply. See section 5.1 for details/requirements.
- In the instance of an announcement by the Minister of Public Enterprises on the corporatisation of the NPA in terms of section 3(2), or alternatively section 3(2) and section 4(1) of the Act, the following information must be submitted to the Regulator within 30 days of announcement or incorporation as applicable:
 - o Memorandum of Incorporation;
 - o Proof of Registration (Registration/Enterprise number, registration certificate, etc);
 - o Due Diligence analysis conducted;
 - o All other assessments completed by the Department of Public Enterprises / Transnet / NPA;
 - o Full audited Annual Financial Statements;
 - o Full debt portfolio with conditions and other attached requirements;
 - o Debt Allocation Policy – transitional process;
 - o Complete and updated (to date) Asset Register;
 - o Comprehensive report on services provided by Transnet Group including value of services;
 - o Detailed plan to acquire cost competitive replacements; and
 - o Dividends Policy that will apply (if relevant).

11. Confidentiality

The Ports Regulator remains bound by the confidentiality provisions of the directives.

The Ports Regulator strives to assure that all information, including internal, third party, personal and electronic data, is treated with complete confidentiality; maintain integrity of all such information; ensure that our information system and the information contained therein meet the needs of our core and supporting business operations; comply with all applicable statutory and regulatory requirements and perform reliable access control to protect our information system against unauthorised access.

12. Annexure A: Information Requirements

The following information requirements must accompany the annual application of the NPA.

CAPEX

- All CAPEX projects (infrastructure and capital acquisitions) underway (to include, but not limited to, information pertaining to project stage, tender specifics, construction progress etc.); itemisation of Contractors and Consultants with regard to Authority projects undertaken by TGC/TCP in the prescribed CAPEX Register;
- Business cases must be provided on all CAPEX projects in excess of R10 million
 - The nature of the content and detail of business will be further defined and developed between the Authority and the Regulator. Further, the nature and content of the business case submissions would be summarised to focus on the more salient aspects including:
 - Objective of project;
 - Demand to be addressed
 - Alignment to Port Development Plans
 - Solution alternatives
 - Project Costing
 - Financial Returns and Payback periods
 - Timing of Delivery
 - Key Risks
- All acquisition of land and other Capital Assets (including motivation thereof);
- All disposal/or removal of land and assets (including motivation thereof);
- All costs associated with CWIP that resulted in no commissionable assets or assets that have been (or expected to be) written off. A detailed list is required per project;
- An Asset Replacement Schedule detailing those assets to be replaced in the next three years; and
- Itemized maintenance schedule for the next 3 years for all planned and unplanned maintenance projects above R1 million, categorized as OPEX as well as “capitalized maintenance”.

Real Estate

- Completed, updated Lease Register (as per agreed to template) setting out:
 - All port lessees;
 - Leased area;
 - Tenure of leases;
 - B-BBEE levels; and
 - Rental received
- All infrastructure assets on the Authority’s RAB, not operated by the NPA, and for which the NPA does not charge an operator for rental / lease.
- All information relating to lease improvements and the associated financial implications and incurred taxes.

Operational

- Data, results and progress applicable to the implementation and monitoring of Operator Performance Standards, as per TOPS/ MOPS/ ROPS/ HOPS.

Financial

- Audited Financial Statements as well as port level financials. A full set of segmental financial statements of the Transnet Group must be included;
- Historical information: All NPA relevant annual debt stock levels as well as annual debt redemption payments itemised, as well as the relevant debt instruments and applicable interest/coupon rates since the inception of Regulation;
- Current debt cost information including estimated debt costs (calculation and forecasts) for the current tariff year (i.e. the year that the application is made in) as well as the outlying tariff year. Schedule to reflect the estimated annual change to the relevant debt stock levels of the NPA; itemized annual debt redemption payments, as well as the relevant debt instruments and applicable interest/coupon rates.

Other

- Compliance Risk Management Plans (CRMP's) and its quarterly progress report for all mandatory legislative provisions in the National Ports Act; and
- All due diligence and other information pertaining to the implementation of Sections 3(2), 26, 27 and 28 of the National Ports Act.

The following information must be submitted by the NPA to the Regulator on a quarterly basis:

- Lease Information
 - Copies of all new agreements and licences entered into or issued in the quarter, as well as the supporting documentation thereof, including Sections 79s, 72s, 56s, 57s, and lease agreements (inclusive of all annexures, including but not limited to updated rentals and terminal operator tariffs); and
 - All applicable B-BBEE certificates for the abovementioned licences and agreements;
 - Schedule of vacant properties available for lease.
- All CAPEX projects (infrastructure and capital acquisitions) underway (to include, but not limited to, information pertaining to project stage, tender specifics, construction progress etc.), Itemisation of Contractors and Consultants with regard to NPA projects undertaken by Transnet Group Capital / Transnet Capital Projects, and B-BBEE certificates;
- List all land paid for by the NPA/port users funds, transferred to Transnet properties or any other division;
- Key performance indicators relating to port capacity, port performance, and volumes per port and all WEGO information requirements as per template;
- All due diligence and other information pertaining to the implementation of Sections 3(2), 26 and 27 of the National Ports Act; and
- Compliance Risk Management Plans and its quarterly progress report for all mandatory legislative provisions in the National Ports Act.

Timelines

All quarterly progress information must be submitted to the Ports Regulator by no later than the end of the month after the end of the applicable quarter, based on the reporting templates provided to the NPA by the Ports Regulator on 16 March 2016. The Ports Regulator reserves the right to amend these on an ongoing basis.

13. Annexure B: RAB Calculation

The example below illustrating the calculation of depreciations and the TOC value (for new assets and those that postdates 1990 capitalisation dates) of the RAB is based on the following basic assumptions:

- Historical cost of R100 m;
- Inflation 5% per annum;
- Depreciation on a straight line basis over 30 years life of asset;
- Service life of the asset is 30 years; and
- No adjustment in the Remaining Useful Life.

RAB Calculation			Yr 0	Yr1	Yr2	Yr29	Yr30
			R'm				
Original Cost	1		100.00	100.00	100.00	100.00	100.00
Capex	2		100.00	-	-	-	-
Depreciated original cost brought forward	3		-	100.00	96.67	6.67	3.33
Current period depreciation	2/RUL	4	-	3.33	3.33	3.33	3.33
Depreciated original cost carried forward	3-4	5	100.00	96.67	93.33	3.33	-
		6					
TOC opening balance	13	7	-	100.00	101.50	26.13	13.72
Accumulated trend		8	-	-	4.83	19.47	10.39
Current period trend	7*cpi	9	-	5.00	5.08	1.31	0.69
Trended balance on which Return earned	8+9	10	-	5.00	9.91	20.77	11.07
Trend depreciation allowance	10/RUL	11	-	0.17	0.34	10.39	11.07
Accumulated trend carried forward	10-11	12	-	4.83	9.57	10.39	-
TOC closing balance	5+12	13	100.00	101.50	102.90	13.72	-
		14					
Total depreciation and amortisation	4+11	15	-	3.50	3.68	13.72	14.41
		16					
Regulatory Asset Base	3+10	17	-	105.00	106.58	27.44	14.41

14. Annexure C: Asset Treatment

Asset Description	Remaining Useful Life	RAB Depreciation and Valuation Treatment	Maintenance allowed as part of OPEX	Return allowed (included in RAB calc. for return purposes)	Notes
Short term assets	5 years or less	Straight line Historical Cost	Yes	Yes	
Existing assets in use not fully depreciated	More than 5 years	Trended Original Cost	Yes	Yes	
Existing asset in use-fully depreciated	Any	If leased – lease revenue will be assumed value If not leased (e.g. breakwater – maintenance on the asset may be capitalised)	Yes/optional	Allowed to capitalise maintenance. Value on RAB for return calculation will be 0.	Risk of gold plating requires prudency assessment and NPCC approval for capex inclusion in RAB
Assets no longer in use	Any	Removed from RAB	Yes	No	

Notes:

Capitalisation dates will be 1990 if no capitalisation date post 1990 is available

15. Annexure D: Clawback Calculation

The Claw Back to be applied in the Tariff Application must be calculated in the following way:

Step	Action
Step 1:	Recalculate the Required Revenue for yr1 since we have actual numbers as at 31 March (Let the Recalculated RR be $S1$)
Step 2:	Compare $S1$ to yr1 AFS Revenue ($T1$), subtract Bilateral Agreements ($B1$)
Step 1 & 2:	[Corrected RR yr1 – AFS Revenue yr1 – Bilateral Agreements yr1] or $[S1 - T1 - B1]$
Step 3:	Add or Subtract 50% of the estimated Provisional Claw back Adjustment made in yr1 ($P1$)
Step 1, 2, & 3:	$[S1 - T1 - B1] \pm P1 = \text{Final Claw back yr1 adjusted in Yr3 ROD } (W1)$
Step 4:	Calculate then add or subtract Claw back Return for yr1 $[(W1 \times WACC \text{ yr1})/2] (V1)$
Step 5:	Calculate then add or subtract Claw back Return for yr2 $[(W1 + V1) \times WACC \text{ yr2})/2] (X1)$
Thus Far:	Full Claw back yr1 $(G1) = W1 + V1 + X1$ Estimated Claw back for yr2 $(YY2) = \text{Revenue Required as per ROD yr2} - \text{Latest Estimate Revenue yr2}$
Step 6:	$YY2 \times 50\% = (VV2)$
Total Clawback for ROD	$G1 + VV2$

The total Claw Back amount calculated will be included in the Revenue Requirement formula as set out in section 5.15.

End

ANNEXURE U

DECLARATION OF INTEREST

1. General

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

2. Disclosure of Interest

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

Yes / No [*The Member is required to circle the applicable response*] If so, state particulars:

.....

.....

.....

- 2.2. Please state if the Bidder or any Member or any individual who is a director, officer, employee, or shareholder of any Member is Related, in any manner, to any employee of TNPA or Transnet and or any other Government official or

person with the ability to influence the decision of TNPA with respect to the appointment of the Preferred Bidder and or the Reserve Bidder.

Yes/No [The Member is required circle the applicable response] If so, state particulars:

.....

.....

.....

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

Yes / No [*The Member is required to circle the applicable response*] If so, state particulars:

.....

.....

.....

3. Declaration in respect of Litigation

- 3.1. Please describe the extent of any material pending or threatened litigation or legal proceedings (civil or criminal, and including any investigations or complaint proceedings conducted against the Member in terms of the Competition Act, 89 of 1998 or in terms of any other legislation providing for investigations or complaint proceedings) in which the Member is involved as at the Bid Submission Date, or has been involved during the last 5 (five) years, instituted by any South African organ of state against the Member. If the Bidder or Member has something to declare, please provide all details in the space provided below. If

the Bidder or Member has nothing to declare, please insert “nothing to declare” in the space provided below. **[Add extra pages to be appended to this Declaration if necessary.]**

.....

.....

.....

.....

.....

.....

3.2. Please describe in detail:

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

.....

.....

.....

.....

.....

4. Declaration of Past Supply Chain Practices

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

Yes / No [*The Member is required to circle the applicable response*] If yes, state particulars:

.....

.....

.....

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

Yes / No [*The Member is required to circle the applicable response*] If yes, state particulars:

.....

.....

.....

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

Yes / No [*The Member is required to circle the applicable response*] If yes, state particulars:

.....

.....

.....

DECLARATION

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

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

Signature_____

Date_____

Position_____

Name of Member_____

Name of Bidder_____

Who warrants his / her authority hereto

Annexure V

CONCESSION FEE OFFER

NAME OF ENTITY: [insert name of bidder]

We _____ do

hereby offer R_____per square meter per month for _____square meter of

total available land of 200 000m².

1. We agree that this rental offer is subject to acceptance by TNPA and is also subject to negotiation at the discretion of the TNPA.
2. The offered rental amount or if applicable, the negotiated and agreed upon rental amount will be incorporated in the Terminal Operator Agreement.

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

SIGNATURE OF BIDDER

Annexure W

FORM OF PREFERRED BIDDER GUARANTEE

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

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

favour of: Transnet National Ports Authority.

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

WHEREAS Transnet National Ports Authority ("TNPA"), a division of Transnet SOC Limited has issued a Request for Proposals ("RFP") for the appointment of a terminal operator to design, develop, finance, construct, operate, maintain and transfer a liquid bulk at the Port of Ngqura; a period of 25 (twenty-five years).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 Twenty Million Rand (R20 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 nonexclusive 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

What Is TOPS And How Will It Work?

- 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.

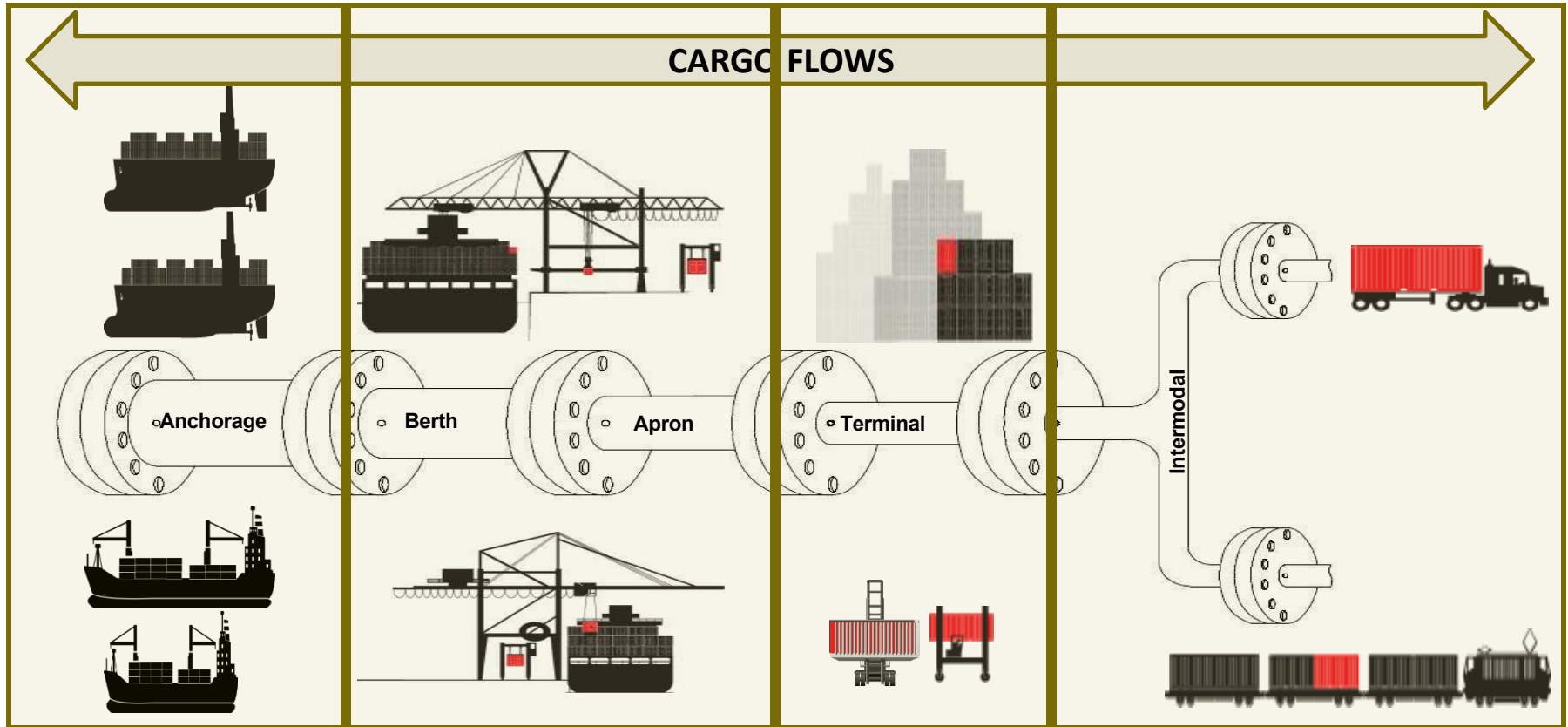
- TOPS PERFORMANCE CRITERIA
- Volume throughput
- Volume of cargo per ship working hour
- Turnaround times (cargo, ship, road and rail)

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)



- Berthing delays

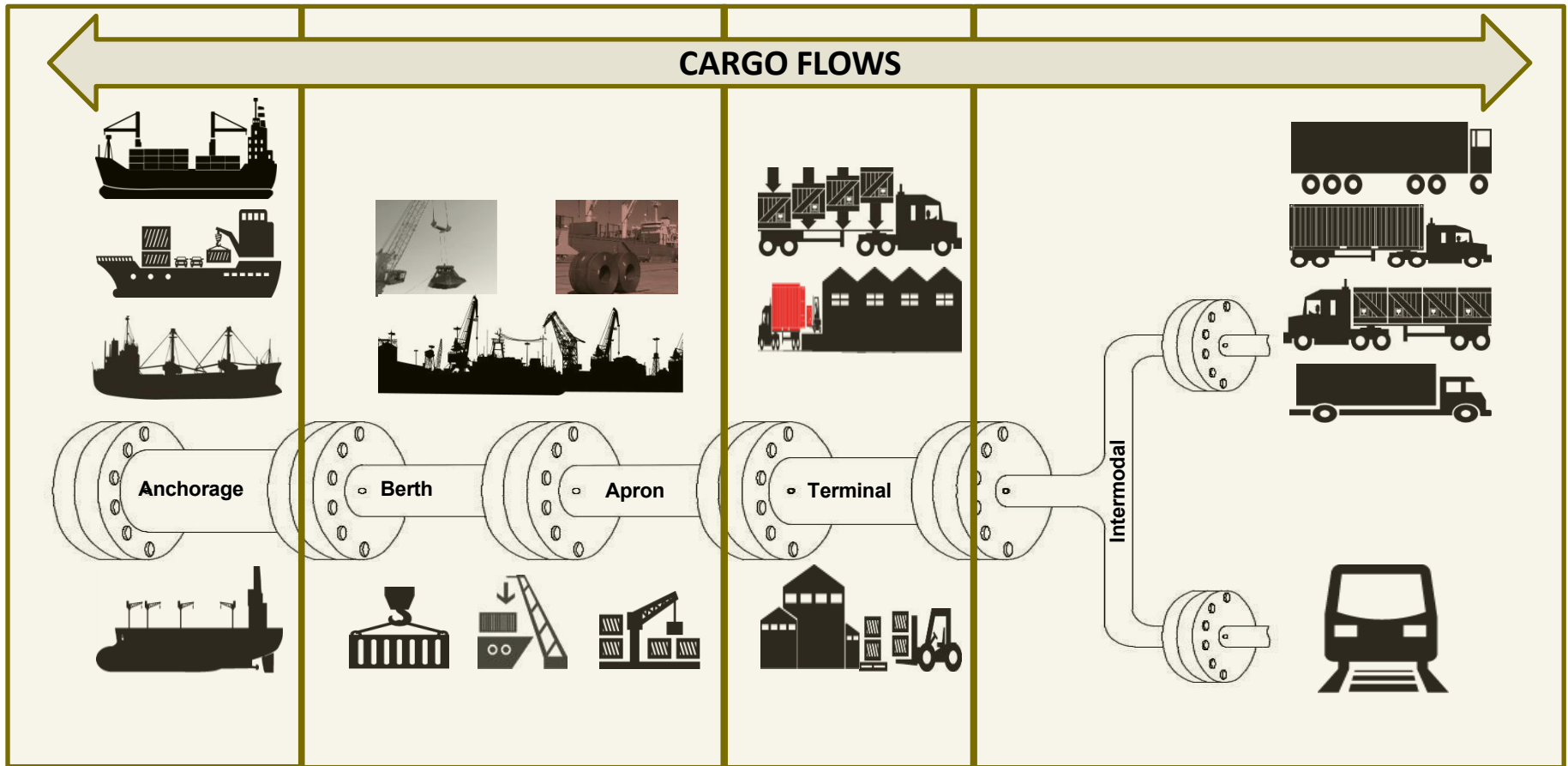
- Berth productivity
- Ship Working Hour / ATS

- Throughput
- Container dwell time

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



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



- Berthing delays

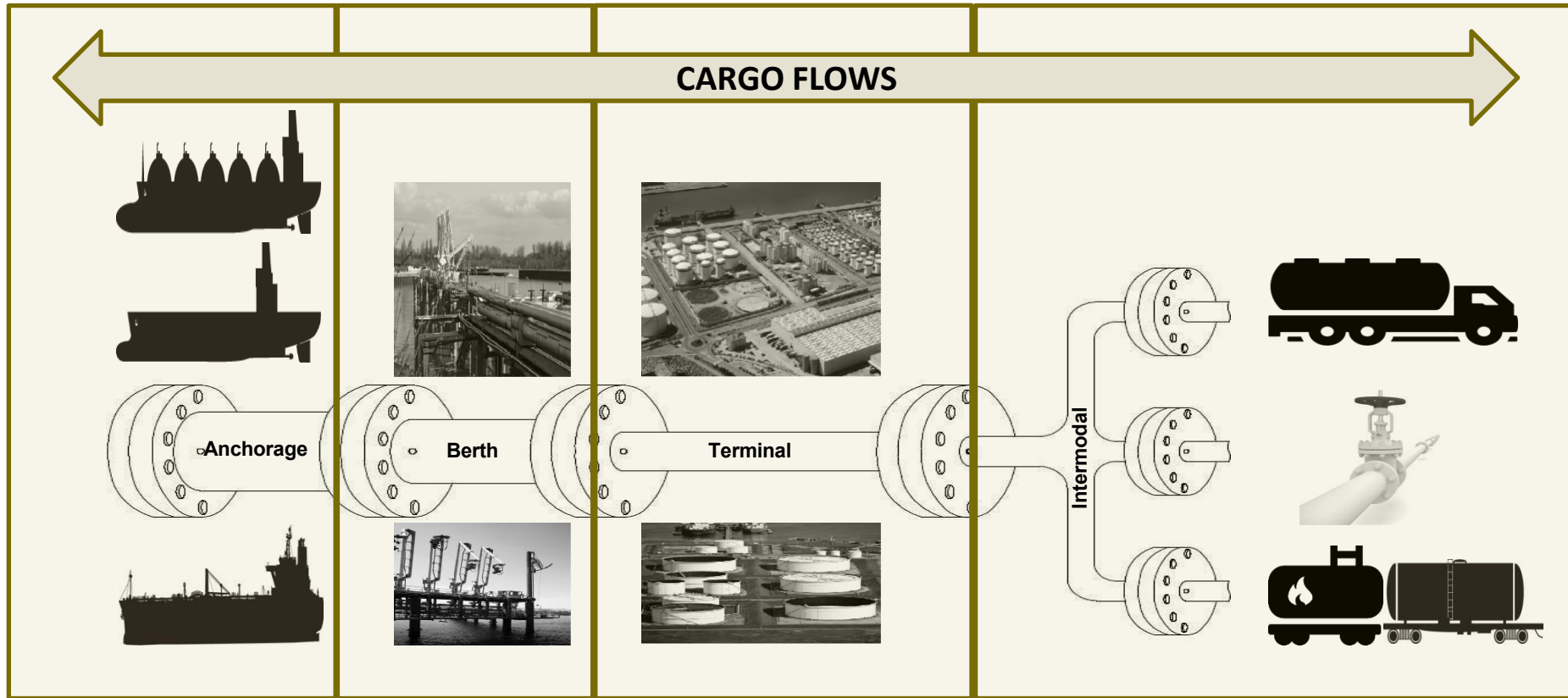
- Berth productivity
- Ship Working Hour / ATS

- Throughput
- Cargo dwell time

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



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



- Berthing delays

- Berth productivity
- Ship Working Hour / ATS

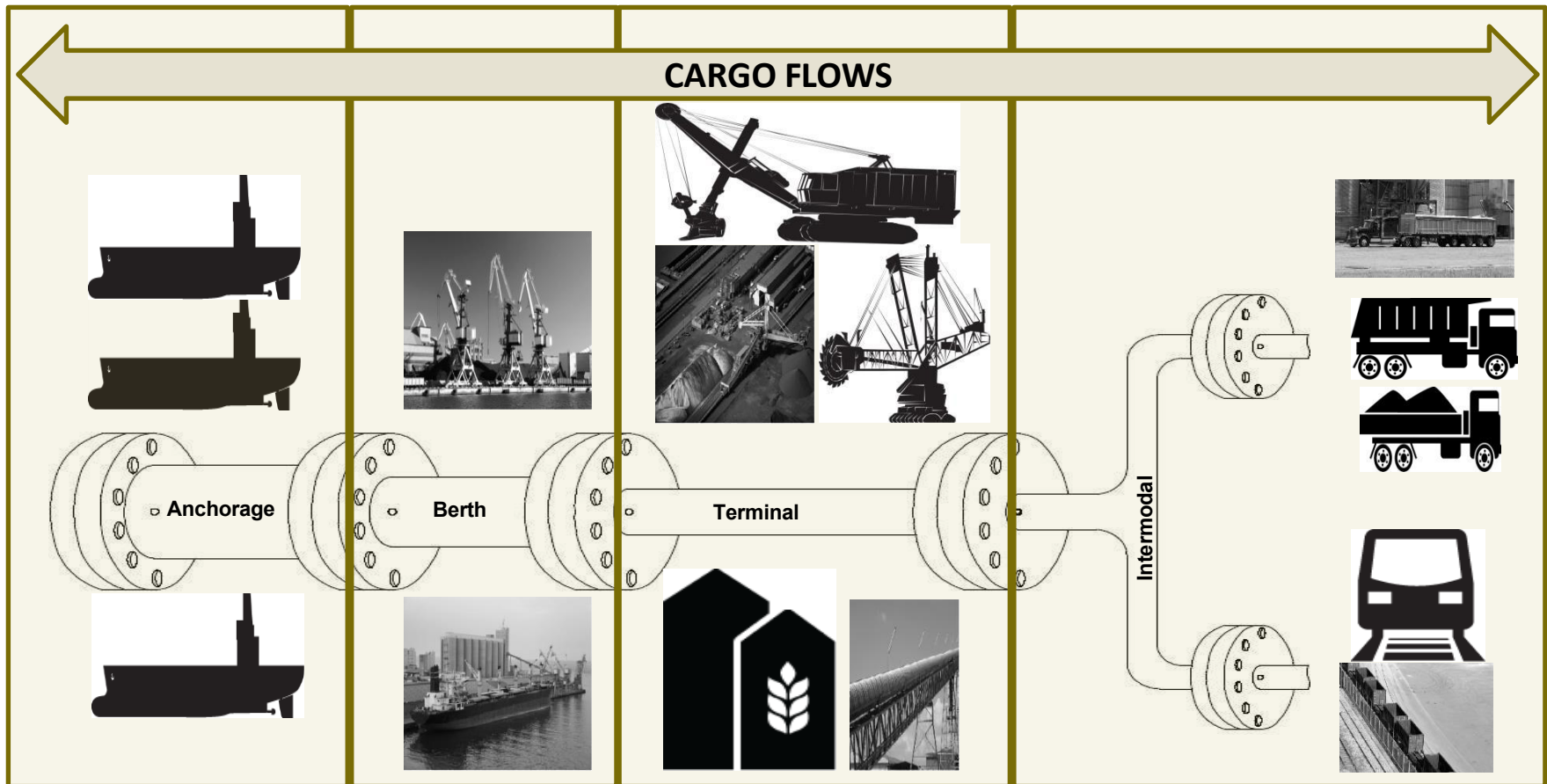
- Throughput
- Cargo dwell time

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



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



- Berthing delays

- Berth productivity
- Ship Working Hour / ATS

- Throughput
- Cargo dwell time

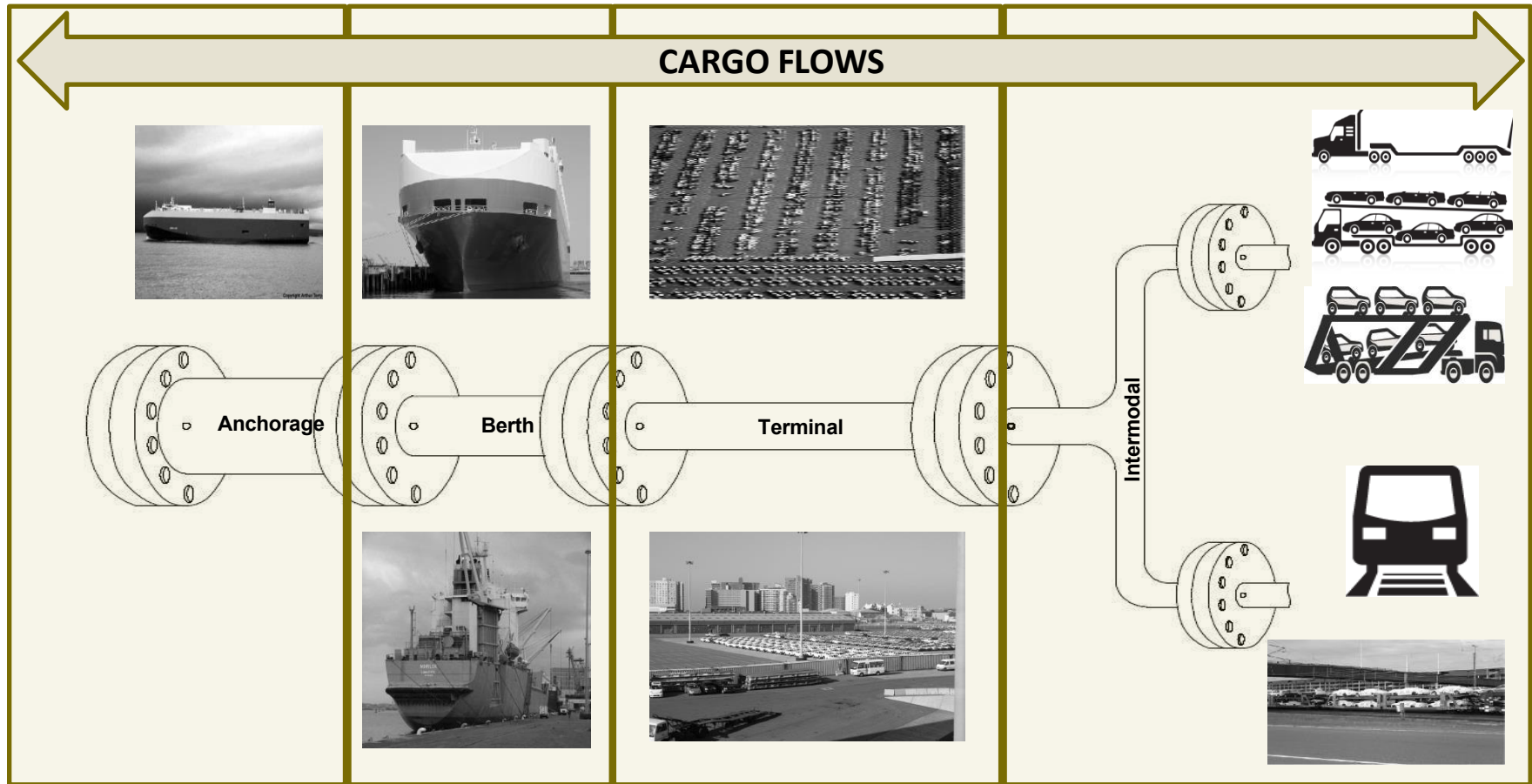
- Truck turnaround time
- Truck waiting time
- Rail turnaround time

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

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- Berthing delays

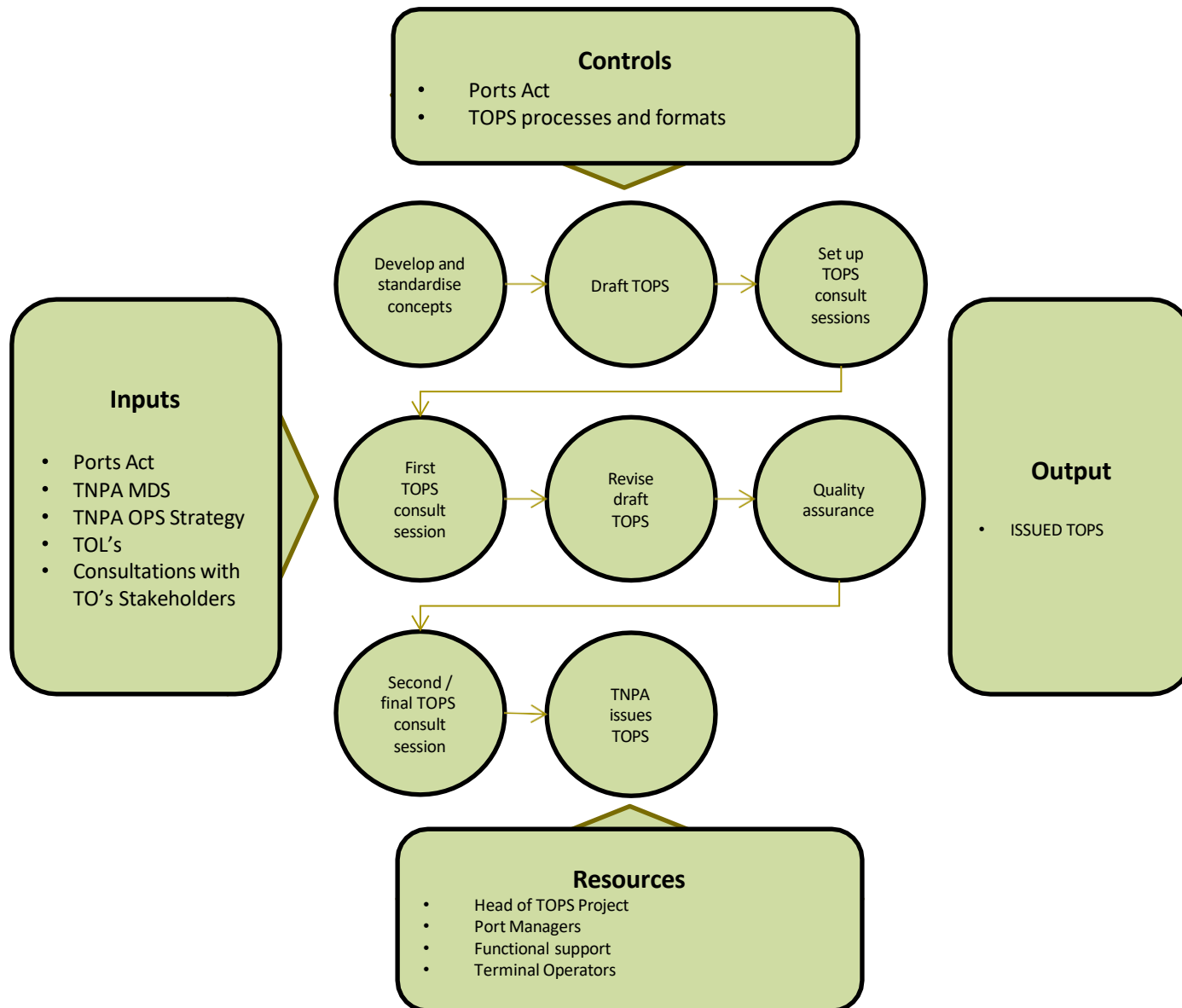
- Berth productivity
- Ship Working Hour / ATS

- Throughput
- Unit dwell time

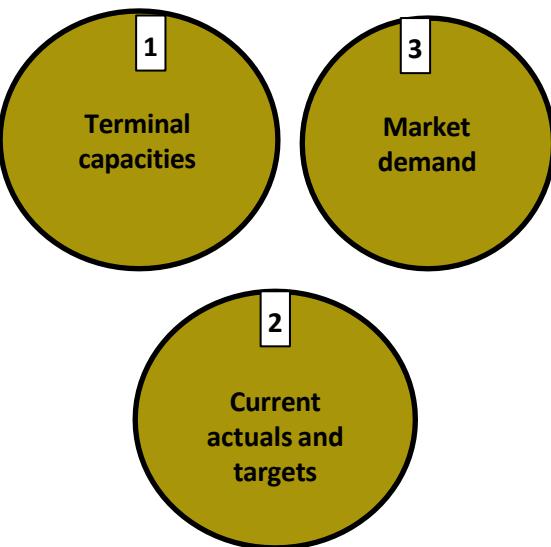
- Truck turnaround time
- Truck waiting time
- Rail turnaround time



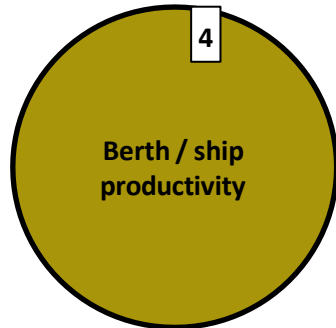
Standard TOPS Development Process



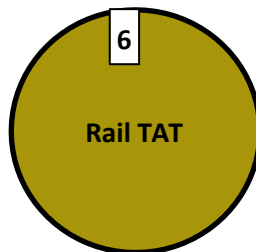
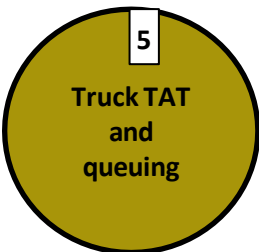
Who	Purpose
Terminal Operators	Determine TOPS through a consultative development process and to embed TOPS within the operational and oversight relationship between TNPA and the Terminal Operator
Transnet	Alignment with Transnet of corporate targets (MDS) to ensure integration with CAPEX and operational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



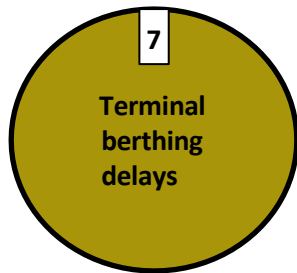
Question	Source of info / Action
<ul style="list-style-type: none"> What is the current terminal capacity? 	<ul style="list-style-type: none"> TNPA or terminal simulations, desktop calculations
<ul style="list-style-type: none"> What is the level of market demand to be serviced and what portion will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

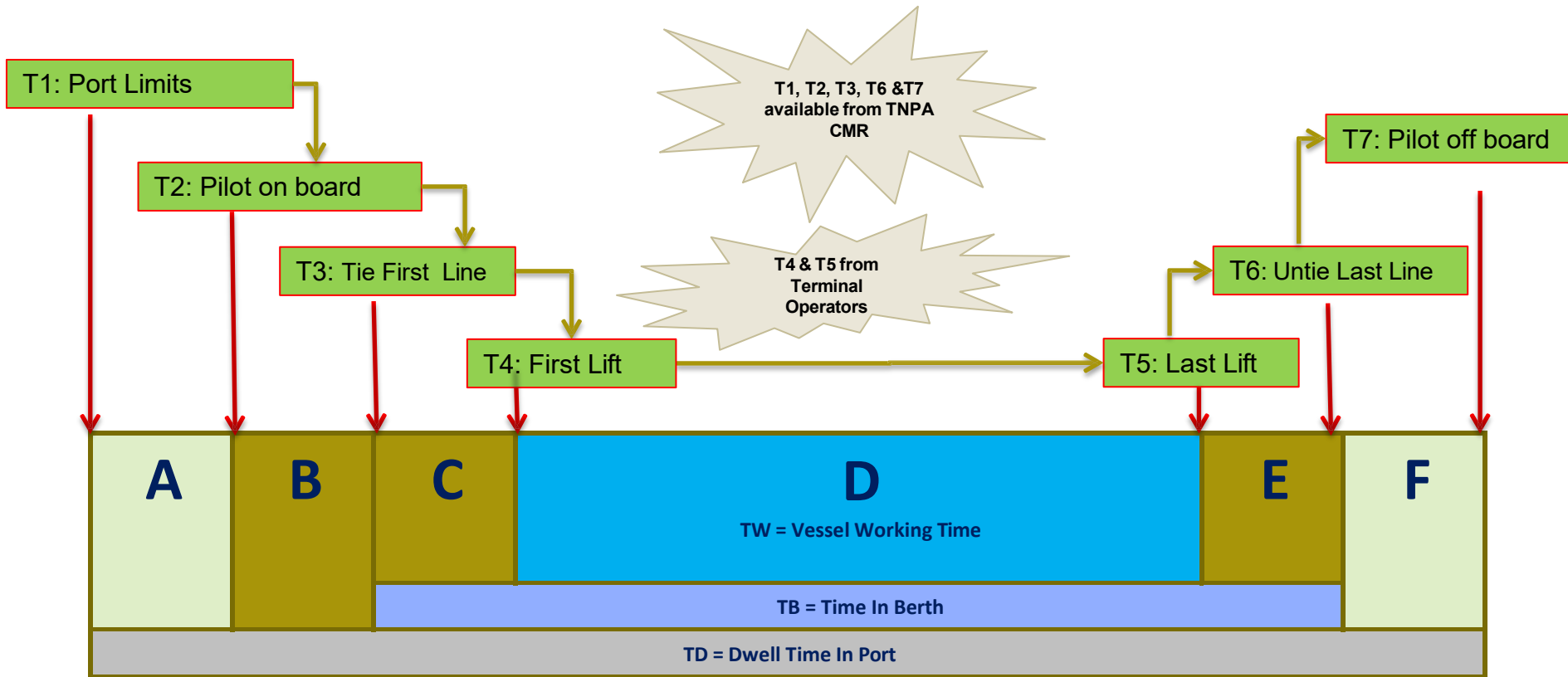
**Draft TOPS /
Revised TOPS /
Issued TOPS**

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 KI 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, KI, Units	All terminals	

The above measures are supported by standard definitions and calculation methods

Systemic View Of Ship Turnaround



A = WAITING FOR BERTH (T2– T1)
C = WAITING FOR GANGS (T4– T3)
E = PREPARING TO SAIL (T6– T5)
TB = TOTAL TIME ON BERTH (T6 – T3)

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



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Thank you





Corner Belmont Terrace/ Castle Hill Central Port Elizabeth 6001
Private Bag X500 I Greenacres 6057 Republic of South Africa

Contact Person: Andries Struwig

Tel: 041 5085800 **Fax:** 041 5085865 **Email:** Andries.Struwig@dedea.lmv.za

Ref: ECm1/LN2/M/11-57
Enq: A. Struwig

Oiltanking Grindrod Calulo (Pty) Ltd
Unit 17 Victoria Junction
Green Point
Cape Town
8001

Attention: Mr Gideon Loudon

Gideon.loudon@oiltanking.com

AUTHORISATION IN TERMS OF SECTION 24 OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, ACT 107 OF 1998: CONSTRUCTION AND OPERATION OF A BULK LIQUID STORAGE AND HANDLING FACILITY WITHIN ZONE 8 OF THE COEGA IDZ IN THE PORT OF NGQURA WITHIN THE NELSON MANDELA BAY MUNICIPALITY

Refer to the application for amendment of the Environmental Authorisation issued to Oiltanking Grindrod Calulo (Pty) Ltd (OTGC) on 27 March 2014 submitted to the Department by the CSIR on 8 February 2016 on behalf of OTGC.

You are hereby notified that the Environmental Authorisation has been amended as follows:

• **Section 2 - Activities and regulations for which authorisation has been issued:**

- ▶ Reference to **2006** EIA Regulations amended to refer to **2010** EIA Regulations;
- ▶ Contact details of applicant changed to reflect:
Unit 17, Victoria Junction, Green Point, Cape Town, 8001
Telephone - **021 421 6250**
Fax - **021 421 4334;**
- ▶ Reference to **R455** (LN 2) changed to **R545** (LN2);
- ▶ Reference to **R456** (LN 3) changed to **R546** (LN 3); and
- ▶ Coordinates changed to reflect

25° 41' 00.4" E and 33° 46' 34" S
25° 41' 14.6" E and 33° 46' 25.5" S
25° 41'
25° 41'

"Innovation for Sustainable Development"

- **Section 3.1 - Duration of Authorisation:**
 - ▶ Condition 3.1.1. amended to indicate that construction of the OTGC bulk liquid storage and handling facility and associated infrastructure must commence within 36 months of the date of issue of this Amended Environmental Authorisation.
 - ▶ Conditions 3.3.3 and 3.3.4 added regarding applications for amendment that specifically deal with extension of the Environmental Authorisation.
- **Section 3.7 - Conditions specific to waste management:**
 - ▶ Reference to DWA in Conditions 3.7.4 and 3.7.5 changed to refer to DEA.

It must be noted that the amendments considered has been effected by means of changes to the relevant sections in the original Environmental Authorisation and as such a new, Amended Environmental Authorisation has been issued that replaces the original Environmental Authorisation in totality.

It is acknowledged that the amendments to the Environmental Authorisation as set out above is administrative in nature and therefore not substantive. It is further confirmed that these amendments do not change the rights and duties of any person materially. There are thus no obligation for any Public Participation to be followed in this regard.

It is trusted that you find this in order.



DAVALAN GOVENDER
DEPUTY DIRECTOR: ENVIRONMENTAL AFFAIRS
CACADU R
DATE: / 2 /



Corner Belmont Terrace/ Castle Hill Central Port Elizabeth 6001

Private Bag X5001 Greenacres 6057 Republic of South Africa

Contact Person: Andries Struwig

Tel: 041 5085800 **Fax:** 041 5085865 **Email:** Andries.Struwig@dedea.lwy.za

Environmental Authorisation as amended

AUTHORISATION NOTICE REGISTER NUMBER	ECm1/LN2/M/11-57
LAST AMENDED	18 March 2016
HOLDER OF AUTHORISATION	Oiltanking Grindrod Calulo (Pty) Ltd referenced as OTGC.
LOCATION OF ACTIVITY	Within Zone 8 of the Coega Industrial Development Zone in the Port of Ngqura - See Figure 1.

DEFINITIONS:

The following definitions are applicable to this Environmental Authorisation:

"AEL" - Air Emissions Licence.

"EIA regulations" - These are the Environmental Impact Assessment Regulations published in Government Notice R543 of 18 June 2010 in terms of Chapter 5 of the National Environmental Management Act, Act 107 of 1998.

"The Department" - The Department of Economic Development, Environmental Affairs & Tourism, Eastern Cape Province.

"Commencement" - Any physical activity on site that can be viewed as associated with the establishment of the mixed use development node described under Section 2 of this Environmental Authorisation, inclusive of initial site preparation.

"CDC" - Coega Development Corporation.

"CEMP" - Construction phase Environmental Management Programme.

"Coega ELC" - Coega Environmental Liaison Committee.

"Coega EMC" - Coega Environmental Monitoring Committee.

"DEA" - The Department of Environmental Affairs

"DWA" - The National Department of Water Affairs

"EIR" - Environmental Impact Report

"IDZ" - Industrial Development Zone.

"MHI" - Major Hazardous Installation.

"NEMAQA" - National Environmental Management: Air Quality Act, Act 39 of 2004.

"NEMBA" - National Environmental Management: Biodiversity Act, Act 10 of 2004.

"NEMWA" - National Environmental Management: Waste Act, Act 59 of 2008.

"NMBM" - Nelson Mandela Bay Municipality.

"OEMP" - Operational Phase Environmental Management Programme.

"SANS" - South African National Standard.

"TNPA" - Transnet National Ports Authority.

1. Decision

The Department is satisfied, on the basis of information available to it and subject to compliance with the conditions of this Environmental Authorisation that the applicant should be allowed to undertake the activity specified below. Details regarding the basis on which the Department reached this decision are set out Section 4 of this Environmental Authorisation.

2. Activities and regulations for which authorisation has been granted

By virtue of the powers conferred on it by the National Environmental Management Act, Act 107 of 1998 as amended and the Environmental Impact Assessment Regulations, 2010 the Department hereby authorises Oiltanking Grindrod Calulo (Pty) Ltd being the legal or natural organisation who has applied for this authorisation, with the following contact details:

Name	Oiltanking Grindrod Calulo (OTGC) (Pty) Ltd		
Address	Unit 17, Victoria Junction, Greenpoint, Cape Town, 8001		
Telephone	021 4216250	e-mail	Gideon.loudon(@oiltanking.com
Cell Phone	082 3236473	Fax	021 4214334
Contact	Mr Gideon Loudon		

To undertake the following activity (hereafter referred to as "the activity"), in terms of the scheduled activities listed in the table below:



Detailed description of activity

The activity entails the construction and operation of a bulk liquid storage and handling facility and associated infrastructure with a total storage capacity of 790 000m³ within Zone 8 of the Coega Industrial Development Zone (IDZ) in the Port of Ngqura as described in Chapter 2 of the Final EIR.

The facility will cover an area of 20ha and contain the following main components;

- Offices;
- Fencing around the perimeter of the site;
- Bulk liquid storage tanks;
- Bunding;
- Road Tanker Loading Gantry;
- Possible Rail Tanker Loading Gantry depending on the availability of a rail connection to the bulk liquid storage and handling facility;
- Fire Protection Measures; and
- Stormwater Management Systems.

In addition to the above components that will be situated on the 20ha site the following associated infrastructure will also be provided:

- Bulk liquid pipelines extending between the proposed bulk liquid storage and handling facility and the berths at the Ngqura harbour; and
- Berth infrastructure in the Ngqura Harbour.

The main components described above can be further described by the following detailed description.

Bulk Liquid Storage and Handling Facility (the actual bulk liquid storage and handling facility):

- The bulk liquid storage and handling facility will cover an area of approximately 20 hectares along the east bank of the Coega River, within the boundaries of the Port of Ngqura.
- A fence will be constructed around the boundary of the bulk liquid storage and handling facility site.
- Offices and parking areas will be constructed within the bulk liquid storage and handling facility site for the operator of the bulk liquid storage and handling facility (i.e. OTGC), as well as the various oil companies (i.e. users/customers of the bulk liquid storage and handling facility).
- The bulk liquid storage and handling facility is expected to contain a total storage capacity of 790 000m³ and will consist of a number of tanks designated for the storage of hydrocarbon and chemical products, such as petrol, diesel, jet fuel, fuel oil, carbon black feedstock, paraffin, Liquefied Petroleum Gas (LPG), biofuel, and petrol and diesel additives.

Three types of tanks are proposed for usage in the bulk liquid storage and handling facility based on the type of product, pressure and composition and will include Bulk Liquid Tanks, LPG Tanks and Additive Tanks.

- The Bulk Liquid Tanks will be constructed of steel, and are expected to range from 14 m to 45 m in diameter, and 14 m to 18 m in height. The bulk liquid tanks will be designed to store product at atmospheric pressure and will be above-ground. In the event of a storage temperature, the tanks will be at ambient temperature, with the exception of the tanks containing black oils, which may be heated to a certain

degree. The storage tanks containing low-volatility products will be fitted with fixed roofs and those containing volatile products will consist of internal floating roofs. The diesel and paraffin storage tanks will be installed with free venting roofs. The bulk storage tanks are expected to be equipped with a high accuracy Radar Tank Gauging (RTG) system and an independent High Level Alarm. A leak detection pit will be installed adjacent to each tank.

- It is anticipated that LPG tanks or bullets will contain capacities of 1000 m³ and 2000 m³. The 1000 m³ LPG bullets are expected to be 40 m long with a 6 m diameter, and the 2000 m³ LPG bullets are expected to be 45 m long with a 7.5 m diameter. The LPG vessels will be pressurized and are expected to be semi-buried.
- The additive tanks are proposed to contain capacities of up to 9 m³. The petrol additives will be stored above-ground, whilst the diesel additives might be installed underground.
- The storage tanks will be surrounded by bund walls that will be composed of reinforced concrete. The floor of the bunds will be constructed of concrete and sealed with an HOPE membrane. The bund floors will be sealed and sloped away from the storage tanks. The bund wall capacity will be able to retain 100% of the largest tank capacity within the main bund area, as well as 100 mm of freeboard. The drainage from the bund areas will be valved to ensure that the drainage is controlled.
- A road tanker loading gantry will be constructed within the bulk liquid storage and handling facility site to facilitate the transfer of Bulk Liquids from the bulk liquid storage and handling facility to the road tankers. The road tanker loading gantry is estimated to contain up to seven loading bays (with a possible increase to nine loading bays at a later stage), and will be covered with a fixed canopy. Black oils and white oils will be handled in separate loading bays. The road tanker loading gantry will contain bottom loading arms and API dry break couplers with a loading flow rate of up to 2200 l/m per loading arm. The gantry will be equipped with a truck grounding or earthing monitor system. A vapour recovery unit will be installed within the road tanker loading gantry. The road tanker loading gantry will also include a system to allow additives to be injected. The gantry area will be fitted with spill control slabs and each loading bay will contain a central drain to collect spills, which will then lead to a separator. The gantry will also be equipped with mezzanine floors.
- A rail tanker loading gantry may be constructed mainly to ensure that the necessary equipment is provided to facilitate rail loading should it become necessary in the future. The rail gantry will be constructed only if the demand arises. The rail gantry would initially contain up to 20 loading bays, which may be expanded up to 40 loading bays. The rail gantry would contain a concrete spill containment area that would direct any drainage to a separator.
- The bulk liquid storage and handling facility will be equipped with fire protection measures that will be designed according to the largest credible fire event. The bulk liquid storage and handling facility will be equipped with foam generating and water facilities to assist during a potential fire. A water reservoir will be provided on site with sufficient water storage capacity (i.e. two storage tanks) to ensure that municipal water will be utilized for replenishing purposes only. Furthermore, a water ring main will be fitted at the bulk liquid storage and handling facility in order to supply the water hydrants. The storage tank cooling facilities and the fixed cooling sprays within the road loading gantry for LPG will be connected to the water ring main. A water/foam deluge system will be installed at both the road and rail loading gantries.
- It is anticipated that the storm water management system at the bulk liquid storage and handling facility will be designed according to a 1:10 year rainfall pattern of 1

hour duration. The bulk liquid storage and handling facility and gantries will be equipped with oil water separators. Contaminated storm water, process waste water and fire water will be directed to the oily water system. Clean storm water, process waste water and fire water will be released directly into the storm water system or the sewer. If the treatment is not adequate and does not meet necessary standards, the waste will be disposed of at an appropriate registered waste disposal facility. The oily water system will be designed to contain at least two minutes flow of product at the proposed pumping rate (for a single pump) for the road gantry and one tank car capacity for the rail gantry.


- The bulk liquid storage and handling facility will be constructed in two phases (i.e. Phase 1 and Phase 2). Phase 1 will accommodate the construction of storage and handling facilities for liquid hydrocarbon products currently being handling at the existing bulk liquid storage and handling facility in the Port Elizabeth Harbour and will include make-bulk and break-bulk operations therefor. Phase 2 will include additional make-bulk and break-bulk operations and possibly the ability to rail liquid products to storage facilities around South Africa as well as to load product onto vessels calling at the berth. It is probable that phase 2 construction will follow on immediately after the completion of phase 1.

Bulk Liquid Pipelines extending between the proposed Bulk liquid storage and handling facility and the Berth(s):

- The use of both Berth B100 and the A-series Berth has been assessed as part of the EIA. Two indicative pipeline routings extending from the bulk liquid storage and handling facility have been included in the proposed project. The pipeline routing from the bulk liquid storage and handling facility to the existing Berth B100 will result in a crossing of the Coega River. The river crossing assessed in the EIA is the worst case scenario in terms of its location. The Coega River crossing is proposed to be above-ground via means of a causeway (provided by the landowner). However, culverts or trenches will be utilized if above-ground installation is not possible. The pipeline routing from the bulk liquid storage and handling facility to the proposed new A-series Berth will not cross the Coega River.
- About eight pipelines are anticipated to be constructed for both phases of the bulk liquid storage and handling facility. Separate pipelines are proposed to be installed for white products, black products and LPG. The pipelines are expected to be constructed mainly of steel, with a diameter varying between 12 inches and 28 inches. The flow rate of each pipeline is expected to reach up to 2000 m³/hour. The pipelines will be constructed within a 10 m wide fuel reserve that will be provided by Transnet SOC Ltd. The pipelines are proposed to be mounted on concrete sleepers between 40 cm and 50 cm above the ground. However, should underground pipelines be required, these will be buried with at least 1 m cover, wrapped and adequately protected (with a leak detection system) and housed in culverts. Furthermore, road crossings will be achieved by means of culverts under the roads, where required.

Berth Infrastructure

- Both Berth B100 and the proposed A-series Berth are expected to be used in the proposed project. OTGC are proposing to adopt a phased approach that involves the initial construction of the inland project components such as the bulk liquid storage and handling facility, followed by the pipelines and lastly the installation of the infrastructure at the berth. If the A-series Berths have been constructed and OTGC have constructed the inland components of the project, it is planned that


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OTGC will proceed immediately with the usage of the A-series Berths. However, if for any reason the A-series Berths are not constructed or authorised by the time OTGC are ready to commence with the installation of infrastructure on the berth, then the project will proceed with the use of Berth B100, with the possibility of relocating to the A-series Berths once they have been constructed. Should this be the case, it is anticipated that the pipelines and associated berth infrastructure will be decommissioned from Berth B100 and relocated to the proposed A-series Berths (once constructed).

- The following infrastructure will be installed and constructed at the berth for Phase 1 of the project:
 - ▶ Marine loading arms at the new A-series Berths to link the pipelines to the vessels calling at the berth.
 - ▶ Hoses at the existing Berth B100 to link the pipelines to the vessels calling at the berth.
 - ▶ Associated equipment such as valves and instrumentation from the loading arms to the designated pipelines, including a pig launcher and receiver.
 - ▶ An office will be established on the jetty for monitoring purposes.
- Additional loading arms (or hoses) and pipelines will be constructed and installed at the berth(s) for exporting purposes during Phase 2 of the project.
- Separate marine loading arms (or hoses) will be fitted at the berth for white products, black products and LPG. Adequate portable facilities will be provided to drain the marine loading arms (or hoses).
- A vapour return line is proposed to be installed from the berth(s) to connect to the vapour recovery unit at the road tanker loading gantry in the bulk liquid storage and handling facility.
- The berth(s) will also be equipped with all necessary amenities for safety in relation to emergency shutdown, fire fighting and pollution prevention.

Project Development Cycle:

- It is anticipated that the construction phase will include activities such as site clearance, levelling and bulk earthworks. During the construction phase, a temporary construction area will be located within the site boundary.
- During the operational phase, processes such "Making Bulk", "Breaking Bulk" and "Blending" will take place. Daily tasks will involve discharge of Bulk Liquids from vessels, ascertaining the quality and quantities of the product received, domestic distribution via road tankers or rail wagons, exporting via vessels, and inter tank transfer.

Services to the bulk liquid storage and handling facility and associated infrastructure will be supplied by Transnet. These services were the subject of a separate application for Environmental Authorisation lodged by Transnet with the National DEA. Environmental Authorisation for these services and associated infrastructure has been issued by DEA on 8 January 2014 (reference number 14/12/16/3/3/1/675). This Environmental Authorisation addressed amongst others:

- Access roads to the bulk liquid storage and handling facility site inclusive of a new entrance facility to the Ngqura Harbour on the east bank of the Coega River;
- Fuel reserves to accommodate pipelines for the piping of product;
- Stormwater pipeline and outlet structures; and

- Electrical infrastructure to service structures and infrastructure on the east bank of the Coega River within the port limits.

Water supply

The operational water needs of the bulk liquid storage and handling facility will be supplied via the potable water reticulation network in the Coega IDZ and the Port of Ngqura as well as return effluent once such become available.

Sewage

Sewage emanating from the bulk liquid storage and handling facility will be discharged via the Coega IDZ and the Port of Ngqura's sewerage system for treatment at the Fishwater Flats Waste Water Treatment Works or alternatively at the proposed Coega Waste Water Treatment Works if and when such become available.

Process waste water/effluent

An oil/water separator will be installed at the bulk liquid storage and handling facility during the operational phase of the bulk liquid storage and handling facility to separate oil from water in the event of spillages. The separator will assist with the treatment of contaminated storm water and process water.

Listed Activities applied for in terms of the EIA Regulations, 2010 and hereby authorised.

R544 (LN1) Activity 11	The construction of - (xi) Infrastructure or structures covering 50 square metres or more where such construction occurs within a watercourse or within 32 metres of a watercourse, measured from the edge of a watercourse, excluding where such construction will occur behind the development setback line.
R544 (LN1) Activity 13	Construction of facilities or infrastructure for the storage, or for the storage and handling of a dangerous good, where such storage occurs in containers with a combined capacity of 80 but not exceeding 500 cubic metres.
R544 (LN1) Activity 14	The construction of structures in the coastal public property where the development footprint is bigger than 50 square metres, excluding (i) the construction of structures within existing ports or harbours that will not increase the development footprint or throughput capacity of the port or harbour; (ii) the construction of a port or harbour, in which case activity 24 of Notice 545 of 2010 applies; (iii) the construction of temporary structures within the beach zone where such structures will be demolished or disassembled after a period not exceeding 6 weeks.
R544 (LN1) Activity 16	Construction or earth moving activities in the sea, an estuary, or within the littoral active zone or a distance of 100 metres inland of the high-water mark of the sea or an estuary, whichever is the greater, in respect of- (vi) infrastructure covering 50 square metres or more.
R544 (LN1) Activity 1	/The infilling or depositing of any material of more than 5 cubic metres <u>into, or the dredging, excavation,</u> removal or moving of soil, sand, shells,



	shell grit, pebbles or rock of more than 5 cubic metres from: (i) a watercourse; and (iv) the littoral active zone, an estuary or a distance of 100 metres inland of the highwater mark of the sea or an estuary, whichever distance is the greater.
R544 (LN1) Activity 24	The transformation of land bigger than 1000 square metres in size, to residential, retail, commercial, industrial or institutional use, where, at the time of the coming into effect of this Schedule or thereafter such land was zoned open space, conservation or had an equivalent zoning.
R544 (LN 1) Activity 27	The decommissioning of existing facilities or infrastructure, for - (v) storage, or storage and handling, of dangerous goods of more than 80 cubic metres.
R544 (LN1) Activity 45	The expansion of facilities in the sea, an estuary, or within the littoral active zone or a distance of 100 metres inland of the high-water mark of the sea or an estuary, whichever is the greater, for - (vi) infrastructure by more than 50 square metres.
R544 (LN1) Activity 55A	The construction of facilities for the treatment of effluent, wastewater or sewage with a daily throughput capacity of more than 2000 cubic metres but less than 15 000 cubic metres.
R545 (LN2) Activity 3	The construction of facilities or infrastructure for the storage, or storage and handling of a dangerous good, where such storage occurs in containers with a combined capacity of more than 500 cubic metres.
R545 (LN2) Activity 4	The construction of facilities or infrastructure for the refining, extraction or processing of gas, oil or petroleum products with an installed capacity of 50 cubic metres or more per day, excluding facilities for the refining, extraction or processing of gas from landfill sites.
R545 (LN2) Activity 5	The construction of facilities or infrastructure for any process or activity which requires a permit or licence in terms of national or provincial legislation governing the generation or release of emissions, pollution or effluent and which is not identified in Notice R544 of 18 June 2010 or included in list of waste management activities published in terms of section 19 of the National Environmental Management: Waste Act, 2008 (Act 59 of 2008) in which case that Act will apply.
R545 (LN2) Activity 15	Physical alteration of undeveloped, vacant or derelict land for residential, retail, commercial, recreational, industrial or institutional use where the total area to be transformed is 20 hectares or more.
R545 (LN2) Activity 24	Construction or earth moving activities in the sea, an estuary, or within the littoral active zone or a distance of 100 metres inland of the high-water mark of the sea or an estuary, whichever distance is the greater, in respect of: (i) facilities associated with the arrival and departure of vessels and the □)ndling of cargo.
R545:□□L Activi 6/	12::encing of an activity, which requires an atmospheric emission lie se in terms of section 21 of the National Environmental

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	Management: Air Quality Act, 2004 (Act No. 39 of 2004), except where such commencement requires basic assessment in terms of Notice of No. R544 of 2010.
R546 (LN3) Activity 2	<p>The construction of reservoirs for bulk water supply with a capacity of more than 250 cubic metres.</p> <p>(a) In Eastern Cape</p> <p>iii. Outside urban areas, in:</p> <p>(dd) Critical biodiversity areas as identified in systematic biodiversity plans adopted by the competent authority or in bioregional plans;</p> <p>(ff) Areas within 10 kilometres from national parks or world heritage sites or 5 kilometres from any other protected area identified in terms of NEMPAA or from the core area of a biosphere reserve;</p> <p>(gg) Areas seawards of the development setback line or within 1 kilometre from the high-water mark of the sea if no such development setback line is determined.</p>
R546 (LN3) Activity 10	<p>The construction of facilities or infrastructure for the storage, or storage and handling of a dangerous good, where such storage occurs in containers with a combined capacity of 30 but not exceeding 80 cubic metres.</p> <p>(a) In Eastern Cape</p> <p>ii. Outside urban areas, in:</p> <p>(ee) Critical biodiversity areas as identified in systematic biodiversity plans adopted by the competent authority or in bioregional plans;</p> <p>(gg) Areas within 10 kilometres from national parks or world heritage sites or 5 kilometres from any other protected area identified in terms of NEMPAA or from the core area of a biosphere reserve;</p> <p>(hh) Areas seawards of the development setback line or within 1 kilometre from the high-water mark of the sea if no such development setback line is determined.</p> <p>(ii) Areas on the watercourse side of the development setback line or within 100 metres from the edge of a watercourse where no such setback line has been determined;</p>
R546 (LN3) Activity 12	<p>The clearance of an area of 300 square metres or more of vegetation where 75% or more of the vegetative cover constitutes indigenous vegetation.</p> <p>(c) Within the littoral active zone or 100 metres inland from high water mark of the sea or an estuary, whichever distance is the greater, excluding where such removal will occur behind the development setback line on erven in urban areas.</p>
R546 (LN3) Activity 13	<p>The clearance of an area of 1 hectare or more of vegetation where 75% or more of the vegetative cover constitutes indigenous vegetation.</p> <p>(a) Critical biodiversity areas and ecological support areas as identified in systematic biodiversity plans adopted by the competent authority.</p> <p>(c) In Eastern Cape:</p> <p>ii. Outside urban areas, the following:</p> <p>(ff) Areas within 10 kilometres from national parks or world heritage sites or 5 kilometres from any other protected area identified in terms of NEMPAA or from the core area of a biosphere reserve;</p> <p>(g) Areas seawards of the development setback line or within 1 kilometre from the high-water mark of the sea if no such development setback line is determined.</p>

R546 (LN3) Activity 14	The clearance of an area of 5ha or more of vegetation where 75% or more of the vegetative cover constitutes indigenous vegetation (a) In the Eastern Cape: i All areas outside urban areas.
R546 (LN3) Activity 16	The construction of: (iii) buildings with a footprint exceeding 10 square metres in size. (a) In Eastern Cape: ii. Outside urban areas, in: (ff) Critical biodiversity areas or ecosystem service areas as identified in systematic biodiversity plans adopted by the competent authority or in bioregional plans; (hh) Areas within 10 kilometres from national parks or world heritage sites or 5 kilometres from any other protected area identified in terms of NEMPAA or from the core area of a biosphere reserve; (ii) Areas seawards of the development setback line or within 1 kilometre from the high-water mark of the sea if no such development setback line is determined.

At the locality defined in the Table below, hereafter referred to as "the property" and as depicted in Figure 1:

District	Cacadu
Municipal Area	Nelson Mandela Bay Municipality
Farm Name	NIA
Farm Number and Portion	NIA
Erf Number and Township Extension or Suburb	Zone 8 within the Coega IDZ in the Port of Ngqura as depicted in Figure 1.
Coordinates of the site corners	25° 41' 00.4" E and 33° 46' 34" S
	25° 41' 14.6" E and 33° 46' 25.5" S
	25° 41' 25.1" E and 33° 46' 37.9" S
	25° 41' 10.9" E and 33° 46' 46.3" S
Physical address	Within the Port of Ngqura on the east bank of the Coega River.



Figure 1: Proposed locality of the OTGC Bulk Liquid Storage and Handling facility within the Coega IDZ and the Port of Ngqura.



This Environmental Authorisation is granted subject to the conditions set out below.

3. Conditions

The Department of Economic Development, Environmental Affairs and Tourism may from time to time review this Environmental Authorisation and on good grounds and after written notice to the holder thereof, suspend or amend such Environmental Authorisation.



3.1. Duration of authorisation

- 3.1.1. Construction of the OTGC bulk liquid storage and handling facility and associated infrastructure as described in Section 2 of this Environmental Authorisation Notice must commence within 36 months of the date of issue of this amended Environmental Authorisation. Should the activity not have commenced within this time period, this Environmental Authorisation will lapse and the applicant will be required to re-apply for authorisation in terms of the Environmental Impact Assessment regulations promulgated in terms of the National Environmental Management Act, Act 107 of 1998.
- 3.1.2. Construction of the OTGC bulk liquid storage and handling facility and associated infrastructure to be completed within 60 months of commencement of construction.
- 3.1.3. Extension of the Environmental Authorisation may be applied for in writing at least 3 (three) months prior to the expiry thereof. If no request for extension is received at least three months prior to the expiry of this Environmental Authorisation, it may result in the lapsing of the Environmental Authorisation.
- 3.1.4. On receipt of any such application for extension, the Department reserves the right to request such information as it may deem necessary to consider the application for extension which may include but not limited to:
- 3.1.4.1. An updated CEMP; and
- 3.1.4.2. Such public participation process as may be deemed necessary at the time of the application for extension.
- 3.1.5. Conditions relating to the operation of the project are valid for the lifetime of the project.

3.2. Standard conditions

- 3.2.1. Environmental Authorisation is subject to the conditions contained in this Environmental Authorisation which conditions form part of the Environmental Authorisation and are binding on the holder thereof.
- 3.2.2. This Environmental Authorisation applies only to the activities and property described therein.
- 3.2.3. This Environmental Authorisation does not negate the holder thereof of his/her responsibility to **comply with any other statutory requirements** that may be applicable to the undertaking of the activity, including but not limited to:
- 3.2.3.1. The National Environmental Management: Air Quality Act, Act 39 of 2004;
- 3.2.3.2. The National Environmental Management: Waste Act, Act 58 of 2008;
- 3.2.3.3. The National Water Act, Act 36 of 1998;
- 3.2.3.4. The Hazardous Substances Act, Act 15 of 1993;
- 3.2.3.5. The Occupational Health and Safety Act, Act 85 of 1993;
- 3.2.3.6. The National Forest Act, Act 84 of 1998;
- 3.2.3.7. The National Environmental Management: Biodiversity Act, Act 10 of 2004; and

- 3.2.3.8. The National Heritage Resources Act, Act 25 of 1999.
- 3.2.4. The holder of this Environmental Authorisation shall be responsible for ensuring compliance with the conditions by any person acting on his or her behalf, including but not limited to, an agent, sub-contractor, employee or person rendering a service to the holder of this Environmental Authorisation.
- 3.2.5. Should any environmental damage be detected, that in the opinion of this Department, is the result of the development, then the applicant shall be required to make good that damage to the satisfaction of the said authority at his/her own expense, this without limiting the generality of the provisions of Section 28 of the National Environmental Management Act, Act 107 of 1998.
- 3.2.6. In the event of any dispute as to what constitutes environmental damage, this Department's opinion will prevail.
- 3.2.7. This Department reserves the right to impose additional conditions or requirements on the applicant in respect of impacts identified during the EIA process, or withdraw this authorisation, in the event that such impacts exceed its significance as predicted in the consultant's Final Environmental Impact Report (EIR) and supporting documentation provided by the CSIR.
- 3.2.8. This authorisation applies strictly to the project description as outlined in Section 2 of this Authorisation. Should the applicant wish to amend any component or aspect of the project hereby authorised, then approval will be required from this Department. The Department will advise what information is required as well as the process that must be followed in order to apply for an amendment to this Record of Decision or, if needed, for authorisation in terms of the applicable EIA regulations promulgated in terms of the National Environmental Management Act, Act 107 of 1998.
- 3.2.9. This Environmental Authorisation is issued to the applicant described above. Should the applicant wish to transfer this Environmental Authorisation to another person (whether legal or natural), then written notification of such proposed transfer must be sent to this Department a reasonable time before such transfer is proposed to take place. The Department will then consider the request and inform the applicant in writing as to whether the transfer is approved or not. Transfer may only take place if the Department has approved the transfer and issued such written approval. Conditions established in this Environmental Authorisation must be made known to and are binding on the new owner/developer.
- 3.2.10. This Environmental Authorisation must be made available to any interested and affected party who has registered their interest in the proposed development. The applicant is responsible for ensuring that a copy of this Environmental Authorisation is given to any such interested and affected party within 12 (twelve) days of receiving this Environmental Authorisation.
- 3.2.11. The authorisation must be produced to any authorised official of the Department who requests to see it and must be made available for inspection by any employee or agent of the holder of the authorisation who works or undertakes work at the site.
- 3.2.12. Where any of the applicant's contact details change, including the name of the responsible person, the physical or postal address and/or telephonic details, the applicant must notify the Department as soon as the new details ☐e known to the applicant.
- 3.2.13. In alrtas.es, the holder of the Environmental Authorisation must notify the Department (in writing, within 30 days if a condition of this authorisation is

not adhered to. Any notification in terms of this condition must be accompanied by reasons for the non-compliance.

- 3.2.14. Any recommendations/ mitigatory measures contained in the Final EIR, its appendixes and any additional information submitted subsequent to submission of the Final EIR and not explicitly covered under the conditions contained in this Environmental Authorisation, are regarded as conditions in terms of this Environmental Authorisation. In the event that any such recommendation / mitigatory measure are contradictory to a condition contained in this Environmental Authorisation, such condition will be deemed to take precedence.
- 3.2.15. Further to Condition 3.2.14, OTGC to compile a detailed record of all Conditions, inclusive of recommendations / mitigatory measures, in tabular format for inclusion in the Construction phase Environmental Management Programme and / or Operational Phase Environmental Management Programme as applicable.
- 3.2.16. Non-compliance with a condition of this Environmental Authorisation may result in criminal prosecution or other actions provided for in the National Environmental Management Act, Act 107 of 1998 and the regulations.
- 3.2.17. OTGC will be held liable in the event of non-compliance by any contractor and/or subcontractor involved in this activity.
- 3.2.18. Any upgrading of the bulk liquid storage and handling facility will be subject to further approval from this Department. For the purposes of this condition, upgrading is defined as the enlargement or expansion of the bulk liquid storage and handling facility, inclusive of its storage and/or development footprint, but excluding regular or routine maintenance and the replacement of inefficient or old equipment, plants or machinery where such will not result in a detrimental impact on the environment that will be more significant than that predicted in the Final EIR.
- 3.2.19. Furthermore, any approval required in terms of Condition 3.2.18 to be considered in terms of the EIA Regulations applicable at the time if relevant or else by any such process as the Department may prescribe in terms of this condition provided that such process must be in line with the applicable Environmental Assessment Processes prescribed by law.
- 3.2.20. Fourteen days written notice must be given to the Department that the activity will commence. Commencement for the purposes of this condition includes site preparation. The notice must include a date on which it is anticipated that the activity will commence.
- 3.2.21. Any conditions of agreement between OTGC and the TNPA and/or the CDC including but not limited to those dealing with potable water, storm water discharge, air quality monitoring, emergency preparedness and sewage effluent must be adhered to. Copies of such agreements to be supplied to the Department.
- 3.2.22. All environmental standards and guidelines for development within the Coega IDZ and the Port of Ngqura as set by TNPA and / or the CDC to be adhered to.
- 3.2.23. The relevant conditions of this Environmental Authorisation shall form part of any contracts entered into between the applicant and any contractor(s) and or any sub-contractor(s).
- 3.2.24. ☐ **Condition** 3.2.23, a performance based requirement with regard to environmental impact management must be included in all contracts

related to any activity relating to this Environmental Authorisation inclusive of incentives and penalties.

3.3 Conditions specific to Establishment and layout

- 3.3.1 A detailed overall site layout plan (inclusive of construction lay down areas) to be submitted to the Department for approval prior to construction commencing on site.
- 3.3.2 Final, detailed design and layout plans to be submitted to the Department on request. General layout plans and detailed plans for all environmental installations to be submitted to the Department prior to construction of such installations.
- 3.3.3 With reference to Condition 3.2.3 the following to be obtained by OTGC:
- 3.3.3.1 An Air Emissions Licence in terms of the NEMAQA prior to construction of the bulk liquid storage and handling facility;
- 3.3.3.2 Water use licence and / or general authorisation in terms of the NWA as may be applicable prior to the commencement of construction of the bulk liquid storage and handling facility; and
- 3.3.3.3 Permits for the removal of vegetation in terms of the NEMBA prior to the commencement of any site clearing.
- 3.3.4 Further to Condition 3.3.3.1, this Environmental Authorisation becomes null and void in the event that no Air Emissions Licence is issued for the facility.
- 3.3.5 A Major Hazard Installation (MHI) Risk Assessment must be undertaken and completed in terms of the Occupational Health and Safety Act, Act 85 of 1993 (OSH Act) prior to the commencement of any construction on site. Furthermore the design of the bulk liquid storage and handling facility must comply with all statutory requirements and applicable SANS codes or equivalent international codes of good design and practise relating to bulk liquid storage and handling facilities.
- 3.3.6 The findings of the study contemplated in Condition 3.3.5 to be incorporated into the final design and construction of the bulk liquid storage and handling facility.
- 3.3.7 Approval of Site Development and Building Plans by the TNPA and/or the CDC and the Nelson Mandela Bay Municipality for storm water management, sewage pipelines, and facilities for storage of flammable or hazardous materials based on the applicable SASS / SANS codes, as well as any other applicable local authority by-laws to be obtained prior to the commencement of construction.
- 3.3.8 An agreement to be in place between OTGC and TNPA prior to the commencement of construction that clearly outlines the roles and responsibilities for the implementation of the mitigation measures stipulated in the review of the Oil Spill Contingency Plan arrangements in the Port of Ngqura as contained in chapter 7 of the Final EIR.

3.4 Conditions specific to construction

- 3.4.1 A dedicated Construction Phase Environmental Management Programme (CEMP-) to be compiled and submitted to and approved by this Department prior to the commencement of construction. In this regard the sections 'Construction' in Part B of the Final EIR (Draft Environmental Management

Plan) dealing with construction may be used as framework. The CEMP to include as a minimum:

- 3.4.1.1 Applicable conditions of this Record of Decision;
- 3.4.1.2 All recommendations, measures, responsibilities, key actions and other provisions contained in the Final EIR (inclusive of all its volumes);
- 3.4.1.3 Copies of all permits / licences issued to OTGC (Pty) Ltd that have relevance to the environment; and
- 3.4.1.4 A framework for all contracts associated with the construction phase of the development and the Environmental Method Statements that will be associated with such contracts.
- 3.4.2 The CEMP referred to in Condition 3.4.1 to be implemented and strictly adhered to for the duration of the construction phase.
- 3.4.3 OTGC shall appoint a suitably qualified construction Environmental Control Officer (ECO) who must be based on site for the duration of construction and who will be responsible for ensuring that the CEMP is implemented and strictly adhered to (inclusive of the relevant conditions contained within this Environmental Authorisation).
- 3.4.4 The ECO referred to in Condition 3.4.3, shall be required to report to the Coega Environmental Committee via the ECO for the IDZ and the Port of Ngqura on environmental performance related to the implementation of the CEMP.
- 3.4.5 OTGC must ensure that all contracting companies tendering for any work related to the construction of the facility receive a copy of the CEMP referred to in Condition 3.4.1. Furthermore OTGC Ltd must ensure that all appointed contractors have made appropriate allowance for managing the environmental aspects related to their work in accordance with the provisions of such CEMP.
- 3.4.6 Proof of compliance with Conditions 3.2.3, 3.2.21, 3.3.1, 3.3.3, 3.3.5, 3.3.6, 3.3.7, 3.3.8, 3.4.1, and 3.4.3 and must be submitted to the Department at least 30 days prior to the commencement of any construction activities related directly or indirectly to this project.
- 3.4.7 No construction village to be established on the site.
- 3.4.8 The principle of Best Practicable Environmental Option to be applied to all technologies used/implemented during construction.
- 3.4.9 No blanket clearing of vegetation to take place on the site. Vegetation only to be cleared to facilitate the installation of infrastructure and the construction of the various components of the bulk liquid storage and handling facility. All indigenous vegetation on areas within the site that are not part of the development footprint to remain intact.
- 3.4.10 The development footprint as contemplated in Condition 3.4.9 to be clearly demarcated with pegs. Construction activities, stockpiling of any building material and the storing of machinery must be accommodated within such demarcated area and in accordance with the relevant provisions of the CEMP.
- 3.4.11 An archaeologist must inspect the construction site after the removal of surface vegetation and prior to any further activities on the site to establish the presence of any archaeological material / sites present.



- 3.4.12 Further to Condition 3.4.11, if any archaeological sites or concentrations of archaeological material are uncovered during the removal of surface vegetation, such to be reported to the Eastern Cape Province Heritage Resources Agency (ECPHRA) and the Albany Museum and the necessary permits/ permissions obtained from the ECPHRA in terms of the National Heritage Resources Act, Act 25 of 1999.
- 3.4.13 All major bedrock excavations (below a depth of 2m) at the Bulk Liquid Storage and Handling Facility are to be monitored by a professional palaeontologist for the occurrence of fossil material.
- 3.4.14 Further to Condition 3.4.13, if any substantial fossil remains are found, these to remain in situ and reported to the ECPHRA and the necessary permits/ permissions obtained from the ECPHRA for the sampling, recording and collection of such fossil material.
- 3.4.15 A Dust Management Plan to be compiled and implemented for the construction phase of the development and the following key issues to be included:
- 3.4.15.1 Avoidance of unnecessary removal of vegetation;
 - 3.4.15.2 Routine spraying of unpaved site roads and access roads with water;
 - 3.4.15.3 Limiting vehicle-entrained dust from unpaved roads through traffic control measures;
 - 3.4.15.4 Re-vegetation of disturbed areas not occupied by facility infrastructure to take place as soon as possible (This must be done in accordance with the landscaping plan contemplated in Section 3.10 of these conditions).
- 3.4.16 A Storm Water Management Plan to be designed and implemented for the construction phase of the development.
- 3.4.17 The Storm Water Management Plan to address the reduction of surface water run-off and resultant erosion.
- 3.4.18 A Waste Management Plan to be designed and implemented for the construction phase of the development.
- 3.4.19 A complete materials mass balance and waste inventory for the construction phase to be compiled as part of the Waste Management Plan contemplated in Condition 3.4.18 and such to be submitted to this Department and the DEA on a quarterly basis.
- 3.4.20 The ECO must compile monthly progress / audit reports and submit them to the TNPA, this Department as well as the ECO for the IDZ and the Port of Ngqura within 2 weeks of the end of each month. Furthermore, any significant deviations from the CEMP, any major non-compliances or any imminent risk to the environment must be reported immediately to the NPA and this Department.
- 3.4.21 A post construction environmental audit to be carried out and the report submitted to this Department. This audit to, as a minimum, consider adherence to the relevant conditions contained in this Environmental Authorisation and the stipulations of the CEMP.

3.5 Conditions relating to operational management

- 3.5.1 A dedicated Operational Phase Environmental Management Programme (OEMP) to be compiled and submitted to this Department prior to the commissioning of the bulk liquid storage and handling facility. In this regard the sections contained in Part B of the Final EIR (Environmental Management Programme) dealing with operation may be used as framework. The OEMP to include as a minimum:
- 3.5.1.1 The implementation (inclusive of certification and accreditation) of a suitable independently audited, internationally recognised Environmental Management System (EMS) such as ISO 14001, for the operational life of the facility;
 - 3.5.1.2 A comprehensive air emissions management plan;
 - 3.5.1.3 A comprehensive waste management plan;
 - 3.5.1.4 A comprehensive groundwater monitoring plan;
 - 3.5.1.5 A comprehensive incident detection and emergency response plan inclusive of an oil spill contingency plan for the facility; and
 - 3.5.1.6 All recommendations, measures, responsibilities, key actions and other provisions relating to operation that are contained in the Final EIR (inclusive of all its volumes and specialist studies).
- 3.5.2 The EMS referred to in Condition 3.5.1.1 to be in place before commissioning of the bulk liquid storage and handling facility and to be certified and accredited within a specified period subsequent to start-up, which period will be agreed upon with this Department.
- 3.5.3 OTGC shall appoint a suitably qualified Environmental Manager who must be based on site for the duration of the operational life of the bulk liquid storage and handling facility and who will be responsible for ensuring that the OEMP (inclusive of the EMS) is implemented and strictly adhered to (inclusive of the relevant conditions contained within this Environmental Authorisation).
- 3.5.4 Proof of compliance with Conditions 3.5.1, 3.5.2 and 3.5.3 must be submitted to the Department at least 30 days prior to the commissioning of the facility.
- 3.5.5 The Environmental Manager must compile quarterly reports and submit them to the NPA, this Department and the Coega EMC or any other such body which may replace the Coega EMC in future, within 2 weeks of the end of each quarter. Furthermore, any significant deviations from the OEMP (inclusive of the EMS), any major non-compliances or any imminent risk to the environment must be reported immediately to TNPA and this Department.

3.6 Conditions specific to bulk liquid handling

- 3.6.1 All storage and handling facilities for hazardous substances to comply with the relevant SANS codes of practice for the handling and storage of hazardous substances, including adequate bunding of such facilities in order to contain possible spillages.
- 3.6.2 All bulk liquid handling areas on the site to be under cover or enclosed.
- 3.6.3 Bulk liquid handling equipment to be maintained and tested at regular intervals in order to ensure efficient and optimum operation.

3.6.4 The detailed incident detection and emergency response plan referred to in Condition 3.5.1.5 must amongst others address:

- 3.6.4.1 A detailed site management plan and layout indicating loading areas, storage areas, all bunded areas and other measures aimed at the containment of spills.
- 3.6.4.2 Appropriate identification, classification, recording, clean-up and disposal of spillages;
- 3.6.4.3 Responsibilities for clean-up and procedures for the training of workers and contractors; and
- 3.6.4.4 A programme for the audit of plant wide spillages.

3.7 Conditions specific to waste management

3.7.1 An efficient Waste Management Plan for the operational phase of the project to be designed and implemented in conjunction with the relevant authorities.

3.7.2 The Waste Management Plan must address amongst others:

- 3.7.2.1 The possible treatment of hazardous waste on site in order to allow recycling and/or possible disposal at a general waste disposal site.
- 3.7.2.2 Minimisation of waste including recycling and re-use of waste.
- 3.7.2.3 Possible opportunities for recycling and re-use of waste by small, medium and micro enterprises (SMMes).

3.7.3 The Waste Management Plan to be updated and resubmitted to the relevant authorities on an annual basis.

3.7.4 A complete materials mass balance and waste inventory for the operational phase of the project to be submitted to the Department and DEA prior to commissioning of the bulk liquid storage and handling facility.

3.7.5 The materials mass balance and waste inventory to be updated and resubmitted to this Department and DEA on an annual basis once the bulk liquid storage and handling facility is operational.

3.7.6 OTGC to participate and to subscribe to the implementation of the NMBM Integrated Waste Management Plan.

3.7.7 All waste storage areas on site to be designed according to the Minimum Requirements for Waste Management and licensed in terms of the National Environmental Management: Waste Act, Act 58 of 2008 where applicable.

3.8 Emissions to the atmosphere

3.8.1 Any requirements that may be stipulated in the Air Quality Licence to be obtained in terms of Condition 3.3.3.1 with regard to emission control and abatement, to be incorporated into the final design and subsequent construction of the bulk liquid storage and handling facility.

3.8.2 In the event that an Air Quality Licence is refused, this Environmental Authorisation becomes null & void.



- 3.8.3 All conditions that may be included in an Air Emissions Licence to be issued by the NMBM for the bulk liquid storage and handling facility to be complied with.
- 3.8.4 A comprehensive staff training programme to be designed and implemented to ensure adherence to best practice operating procedures with regard to emission control and abatement.
- 3.8.5 Particulate and other matter trapped in air pollution abatement equipment, to be identified in the waste inventory and disposal thereof addressed in the waste management plan.
- 3.8.6 The results of any ambient air quality monitoring programme must be used for optimal emissions management and immediate corrective action when necessary.
- 3.8.7 Not with standing any conditions that may be included in the AEL, reporting to the NMBM and this Department with regard to air quality monitoring and management must as a minimum:
- 3.8.7.1 Report on the failure of any equipment for a duration of 30 minutes or more immediately and corrective measures taken stated in a monthly report;
 - 3.8.7.2 Include measures for notification of planned maintenance and downtime at least three days in advance.
 - 3.8.7.3 Report on total particulate matter on a monthly basis;
 - 3.8.7.4 Reflect monitored and modelled ambient air quality results;
 - 3.8.7.5 Report on equipment availability on a monthly basis;
 - 3.8.7.6 Be summarised in an annual report;
- 3.8.8 A contingency plan to be compiled with details of steps to be taken in the event of a catastrophe and such plan to be submitted to the NMBM and this Department.
- 3.8.9 As a minimum, all emissions from the bulk liquid storage and handling facility, inclusive of fugitive emissions and dust must adhere to the minimum emission standards provided for listed Activities in terms of Section 21, Part 3 of the National Environmental Management: Air Quality Act, Act 39 of 2004 as contained in GN 248 of 31 March 2010 or its replacement.

3.9 Conditions relating to water use and liquid waste

- 3.9.1 Process water requirements to be met by means of return effluent as soon as it becomes available in Zone 8 of the IDZ located in the Port of Ngqura.
- 3.9.2 Any liquid effluent and /or storm water that are to leave the bulk liquid storage and handling facility site must conform to the standards to be set by TNPA and/ or the CDC in order to meet the water quality requirements at the point of release into the environment and to the standards set by the NMBM for discharge to sewer.
- 3.9.3 A Storm and Waste Water Management Plan to be compiled to the satisfaction of this Department, DWA, NMBM and TNPA and to be approved by DWA prior to construction of any permanent storm water

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- 3.9.4 The Storm and Waste Water Management Plan must be informed by a detailed study which must consider amongst others:
- 3.9.4.1 A comprehensive water balance;
 - 3.9.4.2 The principles of prevent, separate, concentrate and contain;
 - 3.9.4.3 An assessment of all appropriate management options and mitigatory measures including waste water minimisation, treatment, and contractual aspects;
 - 3.9.4.4 Identification of sources of pollutants reported to contaminate storm water;
 - 3.9.4.5 Mitigation measures of how such sources can be designed and engineered at source so that the potential for pollution is eliminated;
 - 3.9.4.6 Total storm water containment, treatment and re-use on site; and
 - 3.9.4.7 Appropriate site selection and design plans for storm water containment/ attenuation structures.
- 3.9.5 The storm water management infrastructure constructed on site must reflect the approved storm water management plan and must be fully functional prior to the commissioning of any of the liquid storage tanks.
- 3.9.6 Any storm water dams/ponds that will be constructed as part of the storm water management infrastructure must be designed to contain runoff from a 1:100 year storm event, and must be registered and licensed in terms of Section 21(g) of the National Water Act, Act 36 of 1998 if applicable.
- 3.9.7 Construction of the ponds contemplated in Condition 3.9.6 may only commence once licensing of such has been confirmed by DWA.
- 3.9.8 The storm water management system must be designed and constructed to trap particulates.
- 3.9.9 Particulate matter captured in the storm water system must be stipulated in the waste inventory and disposal thereof addressed in the Waste Management Plan.
- 3.9.10 Storm water management ponds/ attenuation dams must be lined with an appropriate impermeable material/substance to the satisfaction of DWA and this Department.
- 3.9.11 Storm water not re-used on site or diverted for treatment may be released into the storm water reticulation of the TNPA and/ or the CDC, provided that it complies with the quantity and quality requirements specified by the TNPA/CDC Storm Water Management Plan and in terms of any water licences that may have been issued to TNPA and the CDC.
- 3.9.12 OTGC to adopt water conservation best practice including but not limited to the following:
- 3.9.12.1 Implement water saving devices for domestic water use at the bulk liquid storage and handling facility (e.g. dual flush toilets, automatic shut-off taps, etc.);
 - 3.9.12.2 As a general principle, potable water should not be used for irrigation purposes and landscapes must be designed to absorb rainwater run-off rather than having to carry it off-site in storm water drains;

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- 3.9.12.3 Indigenous vegetation to be used for landscaping to minimise watering requirements;
- 3.9.12.4 Cleaning methods utilised for the cleaning of vehicles, floors etc. must aim to minimise water use;
- 3.9.12.5 Maintenance of proper pressure within fire water systems to limit water use;
- 3.9.12.6 Conducting of regular audits of water systems to identify and rectify any possible water leakages; and
- 3.9.12.7 Implementing a system for the proper metering and measurement of water use and wastewater discharges to enable proper performance review and management.
- 3.9.13 DWA to be kept informed of events/incidents that could lead to water pollution.
- 3.9.14 DWA to be involved in any mitigation/corrective measures undertaken as a result of such events/incidents.
- 3.9.15 A monitoring programme for water related impacts to be compiled and implemented to ensure that the predictions of the EIR are correct and such monitoring programme to be approved by DWA. Such a monitoring programme must amongst others consider:
 - 3.9.15.1 The quality and quantity of process wastewater;
 - 3.9.15.2 The quality and quantity of storm water;
 - 3.9.15.3 Determination of both particulate and dissolved concentrations of contaminants with separate reporting; and
 - 3.9.15.4 In the event that storm water may leave the property of OTGC, monitoring thereof inclusive of potential contaminants, needs to take place at the point where it leaves the property.

3.10 Conditions pertaining to site rehabilitation and landscaping

- 3.10.1 Vegetation removed during construction to be incorporated into landscaping of the bulk liquid storage and handling facility site wherever possible.
- 3.10.2 Topsoil removed during construction to be used wherever possible in site landscaping.
- 3.10.3 A detailed landscaping plan to be compiled to the satisfaction of this Department and landscaping of areas on the site that was disturbed as a result of construction activities to take place in accordance with such an approved plan.
- 3.10.4 The landscaping plan to address/incorporate amongst others but not limited to the following:
 - 3.10.4.1 Maximum use of construction rubble in landscaping and site rehabilitation;
 - 3.10.4.2 The use of indigenous vegetation native to the general area in site landscaping and rehabilitation;
 - 3.10.4.3 The controlled removal of all invasive alien plant species evident On the site;

- 3.10.4.4 The control and eradication of all invasive alien plant species that may colonize the site before such can attain the seed formation stage;
- 3.10.4.5 The addressing of the visual impact of large paved areas by planting vegetation/trees in such areas and through the construction of low walls or screens; and
- 3.10.4.6 The shaping of cut-and-fill slopes to allow for the re-establishment of indigenous vegetation.

3.11 Conditions pertaining to noise

- 3.11.1 OTGC to adhere to the noise regulations as implemented within the Nelson Mandela Bay Municipal Area.
- 3.11.2 As a minimum, ambient noise levels emanating from the bulk liquid storage and handling facility must not exceed 70 dBA at the site boundary.
- 3.11.3 If and when noise generating industries locate adjacent to the bulk liquid storage and handling facility, appropriate measures must be implemented by OTGC in conjunction with such industries to not exceed a maximum combined noise level of 70 dBA at the site boundary.
- 3.11.4 OTGC to comply with the occupational noise regulations of the Occupational Health and safety Act, Act 85 of 1993.
- 3.11.5 OTGC to institute a noise monitoring programme that must incorporate sound level metering at key locations during the construction and operation of the bulk liquid storage and handling facility.

3.12 Conditions pertaining to visual aspects

- 3.12.1 The CDC guidelines with regard to attenuation of visual impact (choice of colours, type of paint etc) to be applied and appropriate architectural modelling and surface colour treatment of buildings to reduce visual impact of the bulk liquid storage and handling facility to be used.
- 3.12.2 The use of primary colours to be limited and only paint that has a non-reflective finish (mat paint) to be used.
- 3.12.3 Visual impact of large paved areas to be avoided by planting vegetation and through construction of low walls or screens.
- 3.12.4 External signage to be minimised.
- 3.12.5 Signage that has a silhouette effect to be avoided.
- 3.12.6 Outdoor lighting with reflectors to be fitted to avoid light spillage and low-level lighting for parking areas to be used (also refer to the CDC guidelines with regard to lighting).
- 3.12.7 Cut-and-fill slopes to be shaped to allow the re-establishment of indigenous vegetation.
- 3.12.8 The final layout plan and architectural design of the OTGC bulk liquid storage and handling facility must be reviewed to:
 - 3.12.8.1 Ensure that visual mitigation measures have been incorporated into the final documentation for the General Contract Manager; and



- 3.12.8.2 Verify that the design satisfies the visual guidelines prepared by the CDC to attenuate visual impact within the IDZ.

3.13 Conditions pertaining to social aspects

- 3.13.1 Contract documentation for the General Construction Manager (GCM) and sub-contractors to include requirements for preferential use of local labour, designated employees in terms of the Employment Equity Act, goods and services, and SMMEs.
- 3.13.2 Contract documentation for the GCM and subcontractors to include requirements for the multi-skilling of construction workers, as per CDC rules and Zone Labour Agreement.
- 3.13.3 A skills development and training programme to be implemented.
- 3.13.4 A system for public reporting on compliance of the GCM and subcontractors to the EMP for construction to be established.
- 3.13.5 A Corporate Social Investment programme to be developed in consultation with relevant stakeholders.
- 3.13.6 Linkages with existing initiatives within the NMBM to be established in order to support training and SMME development.
- 3.13.7 Opportunities for downstream industries and SMME development to be facilitated.
- 3.13.8 An HIV/AIDS policy and programme to be implemented.
- 3.13.9 OTGC to support the community health monitoring undertaken by the CDC.

3.14 Conditions relating to decommissioning

- 3.14.1 A basic decommissioning plan to be compiled and submitted to this Department before commissioning of the bulk liquid storage and handling facility.
- 3.14.2 The decommissioning plan to be reviewed on a 5 year cycle during the operational phase and immediately prior to actual decommissioning taking place

4. Reasons for Decision

4.1. Information considered in making the decision

In reaching its decision, the Department took, *inter alia*, the following into consideration:

- 4.1.1 The information contained in the following documentation:
- ▶ Completed application form dated 4 July 2011 as amended on 13 February 2012 ;
 - ▶ "Final Scoping Report by CSIR dated June 2012 titled 'Environmental Impact Assessment for the proposed Bulk Liquid Storage & Handling Facility within Zone 8 of the Coega Industrial Development

Zone (IDZ), Port of Ngqura, Nelson Mandela Bay - Final Scoping Report" and its appendices;

- ▶ The Final Environmental Impact Report by the CSIR dated July 2013 titled "Environmental Impact Assessment for the proposed Bulk Liquid Storage & Handling Facility within Zone 8 of the Coega Industrial Development Zone (IDZ), Port of Ngqura, Nelson Mandela Bay - Final Environmental Impact Assessment Report" and its appendices;
- ▶ Supplementary information dated 9 December 2013 submitted in response to comments made by DEDEAT on the Final EIR; and
- ▶ Confirmation from the NMBM in a letter dated 6 December 2013 that they are in a position to grant a provisional Air Emissions Licence.

4.1.2 The Environmental Authorisation issued to Transnet by DEA on 8 January 2014 for the provision of landside structures and infrastructure to the bulk liquid storage and handling facility in the Port of Ngqura (DEA Reference 14/12/16/3/3/1/675);

4.1.3 The comments received from interested and affected parties as contained in the above-mentioned reports; and

4.1.4 The EIA regulations of 2010 and the requirements of relevant legislation, policies and guidelines, including Section 2 of the National Environmental Management Act, Act 107 of 1998.

4.2. Key factors considered in making the decision

4.2.1. The Environmental Impact Assessment process undertaken satisfies the procedural requirements of the EIA Regulations and the National Environmental Management Act, Act 107 of 1998.

4.2.2. Issues and concerns raised by interested and affected parties were adequately addressed in the Final EIR and supplementary information provided.

4.2.3. The Final EIR and its associated specialist studies provide adequate information on which to base an informed decision on the environmental implications of the various elements of the proposed project.

4.2.4. The Department is satisfied that, the risks to the natural environment and to humans can be adequately managed if all the conditions contained within this Environmental Authorisation are adhered to.

4.2.5. The Department is of the opinion that after implementation of the mitigation measures described in the Construction and Operational EMPs together with the conditions contained within this Authorisation, that the residual impacts and risks to the environment are acceptable.

4.2.6. The conditions set out in this Environmental Authorisation have been designed to ensure that the negative impacts and risks associated with the project are identified, addressed and/or managed effectively.

4.2.7. The bulk liquid storage and handling facility will be constructed in Zone 8 of the Coega Industrial Development Zone within the port limits of the Ngqura Port. This zone has been identified and earmarked for bulk liquid storage in the Subsequent Environmental Impact Report for the construction of the Port of Ngqura, dated September 2001 compiled by Coastal & Environmental Services and the subsequent Environmental Authorisation issued by DEA. The placement of the bulk liquid storage and handling facility within

this zone and on this specific site is appropriate and consistent with the port layout as envisaged.

- 4.2.8. Landside structures and infrastructure such as reserves for the fuel pipelines, entrance and road facilities and electrical supply will be provided by Transnet under a separate Environmental Authorisation issued by DEA on 8 January 2014.
- 4.2.9. Although there is an existing bulk liquid storage and handling facility within the Port Elizabeth Harbour, it is planned to decommission this facility as it is in a poor condition resulting in environmental, visual and safety impacts. Construction of the OTGC facility at the Port of Ngqura will ensure future supply of fuel to meet the requirements of the region. Furthermore, the OTGC facility will have substantial additional storage and handling capacity (790000m³ vs 200000m³) which will result in an increase of fuel import and export volumes at the Port of Ngqura. This in turn will influence the income potential for the port and the region.
- 4.2.10. Emissions to the atmosphere will be managed and controlled through an Air Emissions licence to be issued by the NMBM. In this regard the NMBM has confirmed that the information at their disposal with regard to potential emissions to the atmosphere and the control / abatement thereof is sufficient for them to issue a provisional AEL as contained in their letter to the Department dated 6 December 2013.
- 4.2.11. Impacts during construction will be managed through the implementation of a comprehensive Construction Environmental Management Programme (CEMP) as required in terms of Condition 3.4.1. Implementation of and adherence to this CEMP as well as compliance with the conditions of this Authorisation are to be overseen by a dedicated Environmental Control Officer (ECO) as provided for in Condition 3.4.3.
- 4.2.12. Impacts during operation will be managed through the implementation of a comprehensive Operational Environmental Management Programme (OEMP) incorporating an internationally recognized Environmental Management System (EMS) as required in Condition 3.5.1. Implementation of and adherence to this OEMP are to be overseen by a dedicated Environmental Manager as provided for in Condition 3.5.4.
- 4.2.13. In conclusion, this Department is satisfied that the benefits associated with the proposed project outweigh the environmental costs and are consistent with sustainable development principles.
- 4.2.14. In general the environmental process followed is deemed to be satisfactory. It is the opinion of the Department that the information at hand is sufficient and adequate to make an informed decision. In this regard the Department is satisfied that, subject to compliance with the conditions contained in the Environmental Authorisation, the proposed activity will not conflict with the general objectives of integrated environmental management as laid down in Chapter 5 of the National Environmental Management Act, Act 107 of 1998, and that any potentially detrimental environmental impacts resulting from the proposed activities can be mitigated to acceptable levels.

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5. Appeal of Environmental Authorisation

- 5.1 In terms of Regulation 10(2) of the Environmental Impact Assessment Regulations, 2010, you are instructed to notify all registered interested and affected parties, in writing and within 12 (twelve) calendar days of the date of this letter, of the Department's decision in respect of your application.
- 5.2 The written notification referred to in Condition 5.1 above must-
- 5.2.1 Specify the date on which the Authorisation was issued;
 - 5.2.2 Inform interested and affected parties of the appeal procedure provided for in Chapter 7 of the NEMA EIA Regulations, 2010; and
 - 5.2.3 Advise interested and affected parties that a copy of the Environmental Authorisation and reasons for the decision will be furnished on request
- 5.3 Notice of intention to appeal against the decision contained in this Authorisation must be addressed in writing, to the MEC for Economic Development & Environmental Affairs (hereinafter referred to as "the MEC") in terms of Regulation 60(1) of the NEMA EIA Regulations, 2010 and within 20 (twenty) days after the appellant has been notified in terms of Conditions 5.1 and 5.2, of the decision.
- 5.4 The address to which the **original** of any such a notice of intention to appeal must be mailed is outlined below. Please note that originals may also be delivered per hand or courier

Department	Economic Development , Environmental Affairs & Tourism
Attention	General Manager: Environmental Affairs
Postal Address	Private Bag X0054, BHISHO , 5605
Hand delivery	Beacon Hill, Hockey Close, King Williams town
In order to facilitate efficient administration of appeals copies of the notice of intention to appeal and any subsequent appeal documentation must also be submitted as follows:	
General Manager: Environmental Affairs per fax:	[043] 605 7300
Manager: Mr. S. Gqalangile - Environmental Impact Management per fax:	[043] 605 7300
It is strongly recommended that electronic copies of all appeal documentation also be e-mailed	E-mail addresses will be supplied on request

In the event that an appeal is lodged with regard to this Authorisation, the listed activities described in this Authorisation may not commence prior to the resolution of the appeal and prior to the Department's written confirmation of compliance with all conditions that must be met before construction can commence, whichever event is the latter.

ANDRIES STRUWIG
ASSISTANT DIRECTOR: EIM
CACADU REGION
DATE: _____



DAYAL/AN GOVENDER
DEPUTY DIRECTOR: ENVIRONMENTAL AFFAIRS
CACADU REGION
DATE: 17/03 ☐

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 K (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 4 (four) weeks thereafter, TNPA may, without prejudice to any other legal remedy which it may have, recover from us any expense to which it may have incurred in calling for Bid Responses afresh and/or having to accept any less favourable Bid Response.
5. We accept that the Terminal Operator Agreement resulting from this offer will be for a period of 25 (twenty-five) years only. Furthermore, we agree to the penalty Clauses to be negotiated with TNPA, which will allow TNPA to invoke a penalty against us for non-compliance with material terms of this RFP including the delayed delivery of the services due to non-performance by ourselves, failure to meet Economic Development and/or Black Ownership Improvement Plan commitments. In addition, we agree that non-compliance with any of the material terms of the RFP, including those mentioned above, will constitute a material breach of the Terminal Operator Agreement and provide TNPA with cause for cancellation.

6. **ADDRESS FOR NOTICES**

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

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

Entity: _____

Facsimile: _____

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

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

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

10. **CONFIDENTIALITY**

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

11. **DISCLOSURE OF THE CONCESSION TENDERED**

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

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

12. **RETURNABLE DOCUMENTS**

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

12.1.1 **Mandatory Returnable Documents**

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

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

MANDATORY RETURNABLE DOCUMENTS	RFP REFERENCE	SUBMITTED [Yes or No]
Concession Fee Offer	Clause 65.1.2	

12.1.2 Returnable Documents Used for Scoring Purposes

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

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

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

12.1.2.3. 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
(USED FOR SCORING PURPOSES)		[Yes or No]
B-BBEE Certificate / Sworn-Affidavit / B-BBEE CIPC Certificate (in case of JV, a consolidated scorecard will be accepted) as per DTIC guideline	Clause 25.1	
Sub-contracting agreements and Declaration / Joint Venture Agreement	Clause 20	
Experience & Track Record Template & Letters of Reference from Customers	Clause 63.1	

ESSENTIAL RETURNABLE DOCUMENTS & SCHEDULES	RFP REFERENCE	SUBMITTED
Safety Health Environment and Quality Certifications	Clause 63.2	
Audited Annual Financial Statements alternatively Closing Bank Balances, Closing Balance Short Term Investments, Closing Balance of Short Term committed unutilised facilities, long term committed Utilised Facilities	Clause 63.3	
Business Case	Clause 63.4	
Market Analysis	Clause 63.4.2.1	
Financial Management Plan	Clause 63.4.2.2	
Operating Model	Clause 63.4.2.3	
Project Schedule	Clause 63.4.2.4	
Concept Design	Clause 63.4.2.5	

13 Essential Returnable Annexures

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

ANNEXURES	RFP REFERENCE	SUBMITTED [Yes or No]
ANNEX A – BID NOTICE	N/A	PROVIDED BY TNPA
ANNEX B – SITE MAP	N/A	PROVIDED BY TNPA

ANNEXURES	RFP REFERENCE	SUBMITTED [Yes or No]
ANNEX BB – PORT OF NGQURA PORT DEVELOPMENT FRAMEWORK PLANS	N/A	PROVIDED BY TNPA
ANNEX R.....– TNPA SECURITY POLICY	N/A	PROVIDED BY TNPA
ANNEX P.....– SAFETY, HEALTH, ENVIRONMENT AND QUALITY POLICY	N/A	PROVIDED BY TNPA
ANNEX C– BUSINESS PLAN GUIDELINES	N/A	PROVIDED BY TNPA
ANNEX J – TNPA DECLARATION OF BIDDER	N/A	PROVIDED BY TNPA
ANNEX AA – NON-DISCLOSURE OF AGREEMENT	N/A	PROVIDED BY TNPA
ANNEX K.... – RESOLUTION OF BOARD OF DIRECTORS	N/A	PROVIDED BY TNPA
ANNEX DD - CERTIFICATE OF ACQUITTANCE WITH RFP DOCUMENTS	N/A	PROVIDED BY TNPA
ANNEX U – DECLARATION OF INTEREST	N/A	PROVIDED BY TNPA
ANNEX F – BREACH OF LAW FORM	N/A	PROVIDED BY TNPA
ANEEX KK.... – CERTIFICATE OF ATTENDANCE TO RFP BRIEFING SESSION	N/A	PROVIDED BY TNPA
ANNEX H ... – SUPPLIER INTERGRITY PACT	N/A	PROVIDED BY TNPA
ANNEX FF – TAX CLEARANCE REQUIREMENTS	N/A	PROVIDED BY TNPA

ANNEXURES	RFP REFERENCE	SUBMITTED [Yes or No]
ANNEX CC ... – STANDARD RFP RESPONSE: BIDDER INFORMATION	N/A	PROVIDED BY TNPA
ANNEX M...– DRAFT TOA	N/A	PROVIDED BY TNPA
ANNEX V ...- CONCESSION FEE OFFER FROM BIDDERS	N/A	PROVIDED BY TNPA

14. **CONTINUED VALIDITY OF RETURNABLE DOCUMENTS.** The Preferred Bidder will be required to ensure the validity of all returnable documents, including but not limited to its Tax Clearance Certificate and valid B-BBEE verification certificate, for the duration of any contract emanating from this RFP. Should the Preferred Bidder be awarded the Terminal Operator Agreement and fail to present TNPA with such renewals as and when they become due, TNPA shall be entitled, in addition to any other rights and remedies that it may have in terms of the Terminal Operator Agreement, to terminate such Terminal Operator Agreement forthwith without any liability and without prejudice to any claims which TNPA may have for damages against the Bidder.
15. By signing these RFP documents, the Bidder is deemed to acknowledge that it has made itself thoroughly familiar with all the conditions governing this RFP, including those contained in any printed or electronic form stated to form part hereof, and TNPA will recognise no claim for relief based on an allegation that the Bidder overlooked any such condition or failed properly to take it into account any information for the purpose of calculating tendered concession or otherwise.

SIGNED at _____ on this _____ day of _____ 20____

SIGNATURE OF WITNESSES

ADDRESS OF WITNESSES

1 _____

Name _____

2 _____

Name _____

SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE:

NAME: _____

DESIGNATION: _____

Annexure M

TERMINAL OPERATOR AGREEMENT TO DESIGN, DEVELOP, FINANCE, CONSTRUCT, OPERATE AND, MAINTAIN A LIQUID BULK TERMINAL AT THE LIQUID BULK PRECINCT IN THE PORT OF NGQURA FOR A PERIOD OF 25 (TWENTY-FIVE YEARS).

between

**TRANSNET NATIONAL PORTS AUTHORITY, an operating division of TRANSNET SOC LTD,
(Registration number 1990/000900/30)**

(Hereinafter called "TNPA")

and

[TERMINAL OPERATOR]

NOTE TO BIDDERS

1. All Bidders and to note the provisions of the RFP and are reminded to submit "marked up" versions of the negotiable clauses of this Terminal Operator Agreement.
2. As the Terminal Operator Agreement has been drafted in general terms, TNPA reserves the right to amend or vary any of the terms of this Terminal Operator Agreement to ensure alignment with the preferred Bidders Business Case and the commercial risk allocation between the TNPA and the Preferred Bidder.
3. The Financiers Direct Agreement will be negotiated and agreed between the TNPA, the Preferred Bidder and the Lenders of the Preferred Bidder should third party finance be provided to undertake the project. This Financiers Direct Finance Agreement and the negotiable clauses of the Terminal Operator Agreement will be revised to ensure consistency between Terminal Operator Agreement and the Financiers Direct Finance Agreement.
4. TNPA shall not in any way be bound to the terms and conditions provided for in this draft TOA and TNPA reserves the right to vary and negotiate the final terms with the Preferred Bidder.

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PART I – GENERAL PROVISIONS

1. Definitions and Interpretation

1.1. In this Agreement and its Schedules, the following terms shall, unless inconsistent with the context in which they appear, have the following meanings and cognate expressions shall bear corresponding meanings:

1.1.1. **"Act"** means the National Ports Act, 12 of 2005;

1.1.2. **"Actual Operations Commencement Date"** means the date of Operation Commencement as stated in the Provisional Operations Certificate issued by the Independent Certifier in accordance with clause 28.4 subject to all necessary and relevant, as may be applicable, NERSA authorisations being obtained;

1.1.3. **"Adjusted Estimated Project Value"** means the Estimated Project Value of this Agreement less the aggregate of:

1.1.3.1. the Calculation Costs; and

1.1.3.2. amounts that TNPA is entitled to set off or deduct under clause 59.11 (*set-off*),

plus, the aggregate of:

1.1.3.3. all credit balances on any bank accounts held by or on behalf of the Terminal Operator on the date that the Estimated Project Value of this Agreement is calculated; and

1.1.3.4. any insurance proceeds, and other undisputed amounts owing to the Terminal Operator (and which the Terminal Operator is entitled to retain), to the extent not included in clause 1.1.3.3;

to the extent that:

- 1.1.3.5. the amounts in clauses 1.1.3.3 and 1.1.3.4 have not been directly taken into account in calculating the Estimated Project Value; and
- 1.1.3.6. TNPA has received such amounts in accordance with this Agreement;
- 1.1.4. **"Adjusted Highest Compliant Tender Price"** means the Highest Compliant Tender Price as per clause 1 less, to the extent it is a positive amount, the aggregate of:
 - 1.1.4.1. the Tender Costs;
 - 1.1.4.2. amounts that TNPA is entitled to set off or deduct under clause 59.11 (*set-off*); and
 - 1.1.4.3. the rental amounts that would have been due and remaining unpaid from the date of the Terminal Operator Default until the date of appointment of the other terminal operator;plus, the aggregate of:
 - 1.1.4.4. all credit balances on any bank accounts held by or on behalf of the Terminal Operator on the date that the highest-priced Tender is received; and
 - 1.1.4.5. any insurance proceeds and other amounts owing to the Terminal Operator (and which the Terminal Operator is entitled to retain);to the extent that:
 - 1.1.4.6. the amounts in clauses 1.1.4.4 and 1.1.4.5 have not been directly taken into account in the Highest Compliant Tender Price; and
 - 1.1.4.7. TNPA is entitled to such amounts in accordance with this Agreement;
- 1.1.5. **"Agreement"** means this Terminal Operator Agreement and its Schedules, as amended, extended, replaced and varied from time to time;

- 1.1.6. **"Associated Agreements"** means any agreements entered into by the Terminal Operator in respect of the Project, including agreements entered into with Subcontractors and any other Project related agreements that TNPA may designate as falling within this clause 1.1.6;
- 1.1.7. **"Annual Report"** means the annual report which is required to be prepared and submitted by the Terminal Operator in accordance with clause 31 (*Reporting Requirements*);
- 1.1.8. **"Authority Change"** has the meaning ascribed to it in clause 34 (Authority Changes);
- 1.1.9. **"Base Case Financial Model"** means the base case financial model for the Project, as set out in the Business Case, and any updates thereto and which are to be agreed to between the Parties and which shall be annexed to this Agreement prior to the commencement of the Construction Works as Schedule 4 (*Base Case Financial Model*) once so agreed;
- 1.1.10. **"B-BBEE"** means broad-based black economic empowerment;
- 1.1.11. **"B-BBEE Act"** means the Broad-Based Black Economic Empowerment Act 53 of 2003;
- 1.1.12. **"B-BBEE Codes"** means the amended B-BBEE Codes of Good Practice, published under Government Gazette No. 36928, on 10 October 2013, in terms of section 9(1) of the B-BBEE Act;
- 1.1.13. **"Berths"** means the envisaged new berth A100 to be developed by TNPA in the Port of Ngqura.
- 1.1.14. **"Black People"** means a generic term defined in the B-BBEE Act to mean natural persons who are Africans, Coloreds, and Indians –
 - 1.1.14.1. who are citizens of the Republic of South Africa by birth or decent;
or
 - 1.1.14.2. who became citizens of the Republic of South Africa by naturalisation

1.1.14.3. before 27 April 1994; or

1.1.14.4. on or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalization prior to that date;

1.1.15. "**Black Ownership**" means the effective ownership of shares by Black People, which shall be determined with reference to the B-BBEE Codes and evidenced by way of a B-BBEE Level verification certificate in any supplier of the Terminal Operator and/or third party to whom the Terminal Operator may want to cede and/or assign the rights it holds in this Agreement in terms thereof;

1.1.16. "**Business Day**" means any Day other than a Saturday, Sunday or gazetted national public holiday in South Africa;

1.1.17. "**Business Case**" means the business case relating to the financing, design and construction, operation and maintenance of the Terminal in the Port of Ngqura, any revisions and amendments thereto in terms of this Agreement and which shall be annexed to this Agreement prior to the commencement of the Construction Works as Schedule 4 (*Base Case Financial Model*);

1.1.18. "**Calculation Costs**" means the total of all costs forecast to be incurred by TNPA as a result of termination, which shall be calculated and discounted at the Termination Date Discount Rate, such costs to include (without double counting):

1.1.18.1. a reasonable risk assessment of any cost overruns that will arise, whether or not forecast in the relevant base case;

1.1.18.2. the costs of the services forecast to be incurred by TNPA to the standard required;

1.1.18.3. any Rectification Costs required to deliver the services to the standard required (including any costs forecast to be incurred by TNPA to complete construction or development work and additional operating costs required to restore operating services standards); and

1.1.18.4. in each case such costs to be forecast at a level that will deliver the services in accordance with the output specifications;

1.1.19. "**Cargo**" shall mean but not be limited to any liquid bulk commodities proposed to be handled by the Bidders at the envisaged new berth A100 to be developed by TNPA in the Port of Ngqura, which may include hydrocarbon and chemical products, such as petrol, diesel, jet fuel, fuel oil, carbon black feedstock, paraffin, Liquefied Petroleum Gas (LPG), Biofuel & Petrol & Diesel additives, Green Fuels (ammonia/hydrogen and/or any other green fuels but excluding liquefied natural gas (LNG).

1.1.20. "**Certifications**" means the following certifications or certifications that are equivalent to the certifications listed below:

1.1.20.1. ISO 14001;

1.1.20.2. BS OHSAS 18001;

1.1.20.3. ISO 9001; and

1.1.20.4. NOSA 1 – 2 Star or Equivalent;

1.1.21. "**Change in Control**" means:

1.1.21.1. any change in the control of the Terminal Operator where the Terminal Operator is no longer able to make any decisions in respect of the management and operation of the Terminal provided that, without limitation to the generality of TNPA's right to refuse consent, TNPA shall be entitled to withhold its consents if it considers, in its reasonable opinion, that the proposed change in Control, constitutes a deviation from the objectives of the Directive and has or is reasonably likely to have a material adverse effect on the basis upon which the Terminal Operator was appointed to design, construct, equip, operate and maintain the Terminal or undertake

the Construction Works, and carry out the Operation and Maintenance of the Terminal;

1.1.21.2. any change in Control of the Terminal Operator or any change in the way in which the Terminal Operator is managed which results in or is reasonably likely to result in non-compliance with Schedule 10 (Terminal Operator's Supplier Development Plan) at any time prior to the expiry of the Operations Period;

1.1.21.3. any change whatsoever in Control of the Terminal Operator, whether effected directly or indirectly.

1.1.22. "**Change in Law**" means the coming into effect, after the Effective Date, of any Law, or any amendment or variation to any Law, other than any Law that on or before the Effective Date, has been published:

1.1.22.1. in a bill in a form substantially similar to the Law enacted pursuant to such publication; or

1.1.22.2. as an act but has not been brought into effect;

1.1.23. "**Companies Act**" means the Companies Act, 71 of 2008, as amended;

1.1.24. "**Compensation Date**" means either:

1.1.24.1. if clause 47.2 (*Retendering Procedure*) applies, the earlier of:

1.1.24.1.1. the date that the New Terminal Operator Agreement is entered into; and

1.1.24.1.2. the date on which TNPA pays the Highest Compliant Tender Price, as the case may be, to the Terminal Operator; or

1.1.24.2. if clause 47.3 (*No Retendering Procedure*) applies, the date that the Adjusted Estimated Project Value of this Agreement has been agreed or determined;

- 1.1.24.3. if clause 45 (*Invalidation in terms of section 67 of the Act*) applies, the date on which TNPA stipulates this Terminal Operator Agreement to be invalid;
- 1.1.25. "**Completion Certificate**" means the certificate to be issued by the Independent Certifier in terms of clause 28.4 (*Completion of Construction Works*) upon the completion of the Construction Works;
- 1.1.26. "**Concession**" means the concession rights granted by TNPA to the Terminal Operator.
- 1.1.27. "**Concession Period**" means 25 years from the Operations Commencement date, unless otherwise extended within the context of clause 5 of this Agreement;
- 1.1.28. "**Confidential Information**" means any and all:
- 1.1.28.1. information relating to the design of the Terminal or to any Intellectual Property Rights of the Terminal Operator;
 - 1.1.28.2. information in respect of or relating to the Base Case Financial Model as well as such model and each Updated Financial Model; and
 - 1.1.28.3. other information which relates to the undertaking or finances of any of the Parties and which is identified by the Party releasing such information as being confidential and the release of which is made in connection with this Agreement;
- 1.1.29. "**Consents**" means any consent, registration, clearance, filing, agreement, notarisation, certificate, licence, approval, ruling, permit, authority, or any exemption from the aforesaid, by, with or from any Relevant Authority in terms of the Laws, which is required from time to time in respect of the Project, or to be held by the Terminal Operator or which has any impact (whether direct or indirect) on the Project or the Terminal Operator, including the Environmental Authorisations and the Safety Authorisations; `
- 1.1.30. "**Constitutional Documents**" means the Terminal Operator's memorandum of incorporation and registration certificate, as well as the shareholders'

agreement, equity subscription agreements and equity guarantees entered into and provided in respect of the Terminal Operator and any documents or agreements in respect of any debentures issued by the Terminal Operator, all of which are attached to this Agreement as per Schedule 20 (*Constitutional Documents*);

- 1.1.31. "**Construction Agreement**" means each and every written agreement to be entered into between the Terminal Operator or its authorised agent and the Construction Contractor or ceded and/or transferred to the Terminal Operator in respect of any of the Construction Works, which agreement shall be annexed hereto as Schedule 6 (*Construction Agreement*);
- 1.1.32. "**Construction Completion**" means the execution of the Construction Works that are required for the operation of the Terminal;
- 1.1.33. "**Construction Contractor**" means the Person who is appointed as the construction contractor by the Terminal Operator or its authorised agent in the Construction Agreement in force at the relevant time and any replacement or successor-in-title of such Person;
- 1.1.34. "**Construction Documents**" means all documents, drawings, data, reports, specifications, and other information (whether in printed form or in electronic form) produced in respect of the Construction Works;
- 1.1.35. "**Contract Period**" means the Planning Period, the Concession Period and if applicable, the Decommissioning Period;
- 1.1.36. "**Construction Period**" means the period commencing at the end of the Planning Period, on the Effective Date and terminating on the issue of the Completion Certificate, which period shall not be longer than 24 (twenty-four) months, unless otherwise extended in writing, with the TNPA's consent and which consent shall not be unreasonably withheld;
- 1.1.37. "**Construction Performance Guarantee**" means the performance guarantee to be issued by a financial institution, on behalf of the Construction Contractor in respect of the Construction Works in favour of the Terminal Operator, which shall be annexed to this Agreement as Schedule [] (*Construction Performance Guarantee*);

- 1.1.38. "**Construction Works**" means the construction, installation, equipping, testing and commissioning of the Terminal Infrastructure and the Terminal Equipment required to operate the Terminal in accordance with the D&C Specifications and the Detailed Design;
- 1.1.39. "**Construction Works Programme**" means the programme for the Construction Works which shall be annexed to this Agreement as Schedule [] (*Construction Agreement*);
- 1.1.40. "**Contract Year**" means a period of 12 (twelve) consecutive calendar months, commencing on 1 April, provided that the 1st (first) contract year shall commence on the Effective Date and shall end on the 31st (thirty first) of March following the year in which the Effective Date occurs;
- 1.1.41. "**Contributor Status Level**" means the B-BBEE Contributor Status Level as determined by Terminal Operator's compliance with the applicable B-BBEE score - card in terms of the B-BBEE Codes;
- 1.1.42. "**Control**" means in relation to any entity, the ability, directly or indirectly, to direct or cause the direction of the votes attaching to the majority of its issued shares or interest carrying voting rights, or to appoint or remove or cause the appointment or removal of the majority of the board of directors;
- 1.1.43. "**Corrupt Act**" means any conduct that constitutes an offence under the Prevention and Combatting of Corrupt Activities Act 12 of 2004, including but not limited to:
- 1.1.43.1. offering, giving, or agreeing to give TNPA or any other organ of state or to any Person employed by or on behalf of TNPA or any other organ of state any gift or consideration of any kind as an inducement or reward;
 - 1.1.43.2. doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with TNPA or any other organ of state; or

1.1.43.3. showing or not showing favour or disfavour to any Person in relation to this Agreement or any other contract with TNPA or any other organ of state;

1.1.43.4. entering into this Agreement or any other contract with TNPA or any other organ of state in connection with which commission has been paid or has been agreed to be paid by the Terminal Operator or on its behalf, or to its knowledge, unless before this Agreement is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment of such commission have been disclosed in writing to TNPA;

1.1.43.5. committing any offence in connection with this Agreement:

1.1.43.5.1. under any Law from time to time dealing with bribery, corruption, or extortion; or

1.1.43.5.2. under any Law creating offences in respect of fraudulent acts; or

1.1.43.5.3. at common law, in respect of fraudulent acts in relation to this Agreement or any other contract with TNPA or any other public body; or

1.1.43.5.4. defrauding or attempting to defraud or conspiring to defraud TNPA or any other public body in relation to this Agreement;

1.1.44. "**CPI**" means the consumer price index excluding interest on mortgage bonds, for metropolitan and other urban areas (Base 2000=100) published from time to time by Statistics SA in Statistical Release P0141.1, provided that if, after the Signature Date:

1.1.44.1. such index ceases to be published; or

1.1.44.2. the Terminal Operator and TNPA agree or, failing agreement, if it is determined pursuant to clause 56.7 (*fast-track dispute resolution*)

that, due to a change in circumstances, the index is no longer representative;

1.1.44.3. then, from the date that the index was last published, the Parties shall use such other index as agreed between them or, failing agreement, as determined pursuant to clause 56.7 (*fast-track dispute resolution*) as being a fair and reasonable replacement index;

1.1.45. "**Day**" means any period of 24 (twenty-four) hours that starts at 00h01 and ends at 24h00;

1.1.46. "**D&C Specifications**" means the design and construction specifications submitted and approved in terms of clause 28 (*Design and Construction*) and which will be annexed hereto as Schedule 5 (*D&C Specifications*) on approval thereof by the Parties;

1.1.47. "**Decommissioning Period**" means a maximum period of 6 (six) months commencing on the Business Day following the expiry of the Operations Period;

1.1.48. "**Deemed New Terminal Operator Agreement**" means a contract on the same terms and conditions as this Agreement, as at the Termination Date, but with the following amendments:

1.1.48.1. if this Agreement is terminated prior to the Operations Commencement Date, then the Scheduled Operations Commencement Date shall be extended by a period to allow a Suitable Substitute New Terminal Operator to achieve Operation Commencement;

1.1.48.2. any penalties accrued in terms of Schedule [] (*Penalties*) shall be cancelled; and

1.1.48.3. the term of such contract shall be determined by TNPA;

1.1.49. "**Detailed Design**" means the detailed design for the Construction Works, which is to be submitted by the Terminal Operator after the Signature Date

and approved by the Independent Certifier, in accordance with clause 28.1 (*Performance of the Detailed Design*);

1.1.50. "**Distributions**" means whether in cash or in kind, any:

1.1.50.1. dividend or other distribution of share capital;

1.1.50.2. reduction of share capital, stated capital, any capital redemption fund or any share premium account;

1.1.50.3. cancellation, conversion, redemption or re-purchase of shares or any other variation whatsoever in share capital;

1.1.50.4. payment in respect of the shareholder loans (whether of principal, interest, breakage costs or otherwise);

1.1.50.5. payment, loan or other financial assistance, transfer of rights or other assets or receipt of any other benefit to the extent put in place after the Signature Date and not in the ordinary course of business, on an arm's-length basis or otherwise on reasonable commercial terms to any shareholders or their Related Parties in respect of the Project; or

1.1.50.6. any release of any contingent liability of any of the Terminal Operator's shareholders or their Related Parties in respect of their financial obligations to the Terminal Operator;

1.1.51. "**Economic Development Plan**" means the Terminal Operator's Development Plan as set forth in Schedule [] hereto;

1.1.52. "**Economic Development Construction Value Summary**" means the Terminal Operator's Economic Development for construction phase Value Summary as set forth in Schedule 10 hereto;

1.1.53. "**Economic Development Operation Value Summary**" means the Terminal Operator's Economic Development for operational phase Value Summary as set forth in Schedule [].

- 1.1.54. **"Effective Date"** means the 1st (first) Business Day following the Signature Date;
- 1.1.55. **"Environment"** means the surroundings within which humans exist and that are made up of:
- 1.1.55.1. the land, water and atmosphere of the earth;
 - 1.1.55.2. micro-organisms, plant and animal life;
 - 1.1.55.3. any part or combination of clauses 1.1.55.1 and 1.1.55.2 and the interrelationships among and between them; and
 - 1.1.55.4. the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and well-being;
- 1.1.56. **"Encumbrance"** means any encumbrance, lien, charge, hypothec, pledge, mortgage, title retention agreement, security interest of any nature, adverse claim, exception, reservation, easement, right of occupation, any matter capable of registration against title, option, right of pre-emption, right of first refusal, privilege or contract to create any of the foregoing; and variations of the word, including **"Encumber"** and **"Encumbered"**, shall have corresponding meanings;
- 1.1.57. **"Environmental Authorisations"** means any authorisations, licenses, permissions or consents to be obtained from the Relevant Authority in compliance with the Environmental Laws in order to undertake the Project;
- 1.1.58. **"Environmental Laws"** means all applicable Laws (including general remedies and duties of care), statutes, regulations, statutory guidance notes and final and binding court and other tribunal decisions of any relevant jurisdiction in force and binding on the Terminal Operator at the date of this Agreement whose purpose is:
- 1.1.58.1. to protect, or prevent pollution of, or to remedy damage to the Environment;

- 1.1.58.2. to protect or prevent or compensate harm to human health and safety; or
 - 1.1.58.3. to regulate emissions, discharges, or releases of Hazardous Substances into the Environment, or
 - 1.1.58.4. to regulate the use, treatment, storage, burial, disposal, transport or handling of Hazardous Substances,
 - 1.1.58.5. and all by-laws, codes, regulations, decrees or orders issued or promulgated or approved thereunder for such purposes to the extent that the same have force of law and are binding either or on both of TNPA and the Terminal Operator at the date of this Agreement;
- 1.1.59. **"Environmental Management Plan"** means the environmental management plan and system prepared in respect of the Project for the monitoring and management of environmental issues raised as a result of the environmental impact assessment undertaken by or on behalf of, the Terminal Operator and based on TNPA's environmental policy and any Environmental Authorisations issued in respect of the Project and in terms of the Environmental Laws;
- 1.1.60. **"Equity"** means any shares issued in the authorised share capital of the Terminal Operator, any share premium on such issued shares, any debentures issued by the Terminal Operator and any loans to the Terminal Operator by its shareholders or debenture-holders;
- 1.1.61. **"Equity IRR"** means the projected blended rate of return to the Terminal Operator's shareholders and their Related Parties over the full Operations Period, having regard to Distributions made and forecast to be made and as detailed in the Base Case Financial Model;
- 1.1.62. **"Estimated Project Value"** means the amount determined in accordance with clause 47.3 (*No Retendering Procedure*) that a third party would pay to TNPA as the market value of the Deemed New Terminal Operator Agreement;

- 1.1.63. **"Existing Buildings"** means the existing buildings, including warehouses and sheds, located within the Project Site and depicted in Schedule 2 (*Project Site*);
- 1.1.64. **"Expert"** has the meaning ascribed to it in clause 55 (*Expert Determination*) of this Agreement;
- 1.1.65. **"Expiry Date"** means the last day of the Concession Period, unless the Minister of Transport, in terms of Section 79, directs otherwise, irrespective of whether the Terminal Operator is required to decommission and demolish the Terminal Infrastructure or not and unless otherwise extended within the context of Clause 3;
- 1.1.66. **"Final Maintenance Guarantee"** means the final maintenance guarantee to be issued on behalf of the Terminal Operator, which shall be substantially in the form of the guarantee annexed to this Agreement as Schedule 15 (*Final Maintenance Guarantee*) and shall be on terms to TNPA's satisfaction, which satisfaction may not be unreasonably withheld nor delayed;
- 1.1.67. **"Force Majeure"** has the meaning ascribed to it in clause 40 (*Force Majeure*);
- 1.1.68. **"Force Majeure Event"** means any event of Force Majeure;
- 1.1.69. **"Hazardous Substances"** means:
- 1.1.69.1. any petroleum or petroleum products, radioactive materials, asbestos in any form, urea formaldehyde foam insulation, transformers or other equipment that contain dielectric fluid containing regulated levels of polychlorinated biphenyls (PCBs) and radon gas; and
 - 1.1.69.2. any pollutants, contaminants, pesticides, chemicals, materials or other substances (including any special, dangerous or toxic wastes) defined as or included in the definition of "pollutant," "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," or other words of similar import, by any Relevant Authority or in terms of any Environmental Laws;

- 1.1.70. "**Highest Compliant Tender Price**" means, as per clause 47.1 the price offered by the Tenderer (if any) with the highest tender price and, if no Tenders are received, zero;
- 1.1.71. "**IMDG Code**" means the International Maritime Dangerous Goods Code, published by the International Maritime Organisation as amended from time to time;
- 1.1.72. "**IAS 18**" means an International Accounting Standard 18 (revenue), applicable as at the Signature Date;
- 1.1.73. "**Independent Certifier**" means the person appointed from time to time jointly by TNPA and the Terminal Operator as the independent certifier in respect of the Project, and whose duties are specified in this Agreement under clause 26 (*Independent Certifier*);
- 1.1.74. "**Independent Expert**" shall mean:
- 1.1.74.1. an accountant of not less than 10 (ten) years professional experience or investment banker agreed to between the Parties, and failing agreement nominated (at the request of either Party) by the President for the time being of the South African Institute of Chartered Accountants: Eastern Cape Region, if the matter relates primarily to a financial matter; or
 - 1.1.74.2. an attorney or advocate of not less than 10 (ten) years professional experience agreed to between the Parties, and failing agreement nominated (at the request of either Party) by the Chairperson for the time being of the Legal Practice Council or its successor, if the matter relates primarily to a legal matter; or
 - 1.1.74.3. an engineer of not less than 10 (ten) years professional experience agreed to between the Parties and failing agreement nominated (at the request of either Party) by the President for the time being of the Engineering Council of South Africa, if the matter relates primarily to an engineering matter; or

- 1.1.74.4. a relevant Terminal manager of not less than 10 (ten) years professional experience agreed to between the Parties and failing agreement nominated (at the request of either Party) by the secretariat for the time being of the International Association of Ports and Harbours, if the matter relates primarily to a port facilities management matter;
- 1.1.75. **"Intellectual Property Rights"** means all registered or unregistered trademarks, service marks, patents, design rights (whether the aforementioned rights are registered, unregistered or formed pending applications), utility models, applications for any of the foregoing, copyrights (including copyright in any software programmes, data and documents), database rights, the sui generis rights of extraction relating to databases and any similar or analogous rights to any of the above, whether arising or granted under the Laws or any other jurisdiction;
- 1.1.76. **"Insurance"** means the project insurance that the Terminal Operator is required to purchase and maintain in terms of clause 16 (*Project Insurance*);
- 1.1.77. **"International Best Practice"** means, in relation to the design, construction, equipping and commissioning of the Terminal, and in relation to the provision of the Operation and Maintenance activities, a reasonable and prudent operator that exercises that degree of skill, diligence, prudence, foresight and operating practice that would reasonably and ordinarily be expected from a skilled and experienced Person engaged in providing a Terminal similar to the Terminal or the same type of business as that of the Terminal Operator (irrespective of whether or not that Terminal or that business is conducted by or on behalf of any organ of State), under the same or similar circumstances;
- 1.1.78. **"ISPS Code"** means the International Ship and Port Terminal Security Code, as referred to in the Merchant shipping (Maritime Security) Regulations, 2004, published under Government Notice R751 in Government Gazette 26488 of 21 June 2004;
- 1.1.79. **"IPMS"** means TNPA's Integrated Port Management System, which is TNPA's online internet terminal where Port Users can execute certain instructions to

TNPA, such as vessel management, vessel arrival notification, changes to estimated times of arrival, marine services requests, berth planning, vessel traffic services, dry dock, change of agent requests, supplementary services, security permit application and incident reporting;

- 1.1.80. "**Laws**" means the Constitution of the Republic of South Africa Act, 108 of 1996, the common law, all applicable statutes, statutory instruments, by-laws, regulations, orders, rules, directives, decrees, decisions, determinations, executive orders and other secondary, provincial or local legislation, treaties, directives and codes of practice having the force of law in South Africa including the Environmental Laws and the Port Regulations made in terms section 80(1) of the Act, and all judicial decisions, judgements, order of any competent court or the Government and any notifications, instrument or other similar directives made pursuant thereto that have the force of law in the Republic of South Africa, issued by any executive, legislative, judicial or administrative entity in South Africa or by TNPA or the municipality in which the Port is located, and "**Law**" shall have a corresponding meaning;
- 1.1.81. "**Long Stop Date**" means the last Business Day on the 6th (sixth) month after the Scheduled Operations Commencement Date (as that day may be amended from time to time in terms of this Agreement) being the date by which Operations of Project , must have commenced, failing which TNPA shall be entitled to terminate this Agreement in accordance with the provisions of clause 42 (*Terminal Operator Default*);
- 1.1.82. "**Losses**" means losses, damages, liabilities, claims, actions, proceedings, demands, costs, charges or expenses of any nature in respect of the Project;
- 1.1.83. "**NEMA**" means the National Environmental Management Act, 107 of 1998;
- 1.1.84. "**NERSA**" means the National Energy Regulator of South Africa;
- 1.1.85. "**New Terminal Operator Agreement**" means a contract on substantially the same terms and conditions as this Agreement at the Termination Date, however, with, *inter alia*, the following amendments:

- 1.1.85.1. if this Agreement is terminated prior to the Operations Commencement Date, then the Scheduled Operations Commencement Date shall be extended by a period to allow the Successor Terminal Operator to achieve Operation Commencement on or before the extended Scheduled Operations Commencement Date;
 - 1.1.85.2. any penalties accrued in terms of Schedule [] (*Penalties*) and/or warning notices shall be cancelled;
 - 1.1.85.3. the term of such contract shall be a period equal to the period from the Termination Date until the Expiry Date; and
 - 1.1.85.4. any other amendments, which do not adversely affect the Terminal Operator;
- 1.1.86. **"Operation Commencement Date"** means the 1st (first) Business Day following the date on which the Completion Certificate in respect of the Project is issued, from which date the Terminal Operator shall commence the operation of the Terminal;
- 1.1.87. **"Operation and Maintenance"** means all operation and maintenance activities and obligations of the Terminal Operator in respect of the Terminal, that are required in order to operate the Terminal and for the operation and maintenance of the Terminal Infrastructure and Terminal Equipment in good order and condition including where applicable, in accordance with OEM (original equipment manufacturer) requirements, in accordance with the requirements of this Agreement, the Operational Plan and International Best Practice and the terms **"Operate"** and **"Maintain"** shall have corresponding meanings;
- 1.1.88. **"Operating Performance Guarantee"** means the irrevocable, on-demand performance guarantee to be issued by such entity as approved by the TNPA on behalf of the Terminal Operator, substantially in the form of the guarantee annexed to this Agreement as per Schedule [] (*Operating Performance Guarantee*) for an amount that shall be set on agreement being reached on

the relevant Terminal Operator Performance Standards between the TNPA and the Terminal Operator;

- 1.1.89. "**Operational Plan**" means the operational plan, specifications and standards in accordance with which the Terminal is to be operated are to be provided and the Operation and Maintenance activities conducted, and the Terminal is to be maintained and upgraded, all of which are detailed in Schedule [] (*Terminal Operator's Operational Plan*);
- 1.1.90. "**Operating Rights**" means all the rights and obligations conferred and imposed on the Terminal Operator in terms of and pursuant to this Agreement in respect of and for the purposes of carrying out the Project;
- 1.1.91. "**Parties**" means TNPA and the Terminal Operator and "**Party**" shall mean either of them as the context may require;
- 1.1.92. "**Payment Expert**" means a chartered accountant of not less than 10 (ten) years professional experience or investment banker as agreed to between the Parties, and failing agreement, nominated (at the request of either Party) by the Regional Executive for the time being of the South African Institute of Chartered Accountants: Eastern Region, if the matter relates primarily to a financial matter or financial management matter;
- 1.1.93. "**Performance Guarantees**" means the Construction Performance Guarantee, the Operating Performance Guarantee and the Final Maintenance Guarantee;
- 1.1.94. "**Performance Penalties and Incentives**" means penalties payable by the Terminal Operator to TNPA for failure to meet or comply with the minimum performance standards and incentives payable to the Terminal Operator by TNPA for achieving performance better than last performance with reference to Schedule 17 (Terminal Operator Performance Standards) and Schedule [] (Terminal Operator's Operating Specifications)."
- 1.1.95. "**Port**" means the Port of Ngqura, as promulgated in terms of the Act, and situated at Gqeberha, in the province of the Eastern Cape, Republic of South Africa;

- 1.1.96. **"Port Terminal Security Officer"** means a security officer appointed by the Terminal Operator in accordance with the provisions of the ISPS Code and the certificate issued in terms of the ISPS Code in respect of the Terminal;
- 1.1.97. **"Port Infrastructure"** means the basic common use structures of the Port of Ngqura, including the Berths, breakwaters, seawalls, channels, basins, quay walls, jetties, roads, railways and infrastructure used for the provision of water, lights, power, sewage and similar services, other than the Terminal Infrastructure;
- 1.1.98. **"Port Regulations"** means the regulations made in terms of section 80(1) of the Act;
- 1.1.99. **"Port Rules"** means the rules made in terms of section 80(2) of the Act;
- 1.1.100. **"Port Users"** means any other Person, other than the Terminal Operator, organisation and/or agency utilizing the facilities of the Port and/or conducting business within the Port limits, including shipping lines, vessel agents, licenced operators, operators of other terminals within the Port and any Subcontractor and/or any third parties authorised to conduct business on behalf of any such Port User;
- 1.1.101. **"Project"** means the design, development, financing, construction, operation and maintenance of a liquid bulk terminal at the liquid bulk precinct in the Port of Ngqura for a period of 25 years (twenty-five years);
- 1.1.102. **"Project Documents"** means all drawings, data, books, reports, documents, software, source codes and manuals, the Construction Documents and other information, which the Terminal Operator has or have been using and which are necessary for the Construction Works and/or continuing Operation and Maintenance;
- 1.1.103. **"Project Site"** means the land described as depicted in Schedule []
(*Project Site*).
- 1.1.104. **"Provisional Operations Certificate"** means the certificate to be issued by the Independent Certifier prior to Construction Completion when, in the reasonable opinion of the Independent Certifier, Construction Completion is

likely to be achieved by the Construction Contractor by the date specified in the certificate;

1.1.105. "**Quarter**" or "**Quarterly**" means a three-month period commencing on 1 April annually and occurring every three months thereafter;

1.1.106. "**Rand**" or "**R**" or "**ZAR**" means the lawful currency of South Africa;

1.1.107. "**Real Base Case Project IRR**" means the real pre-Tax Project internal rate of return as set out in the Base Case Financial Model;

1.1.108. "**Rectification Costs**" means for the purposes of any Termination Date that occurs during the Operations Period, an amount equal to the reasonable and proper costs incurred by TNPA in ensuring that the services are available;

1.1.109. "**Related Party**" means a Person who:

1.1.109.1. directly, or indirectly through one or more intermediaries, controls, or is controlled by, a person who acquires and holds Equity in the Terminal Operator;

1.1.109.2. is under common control with any person who acquires or holds Equity in the Terminal Operator; or

1.1.109.3. any person who acquires or holds Equity in the Terminal Operator, where "**control**" in respect of any person means the power to direct the management and policies of such person, whether through the holding of voting rights or the ability to nominate and/or appoint a majority of the directors or through any contractual arrangement (whether at Law or pursuant to a contractual arrangement) and the term "**controlled**" has a cognitive meaning;

1.1.110. "**Related Party Transaction**" means any transaction relating in any way directly or indirectly to the Project in which the Terminal Operator or any Subcontractor of the Terminal Operator leases, transfers or otherwise disposes of any of its properties or assets to, or purchases any property or assets from, or enters into any contract, agreement, understanding, loan, advance or

guarantee with, or for the benefit of, a Related Party (other than the Terminal Operator);

1.1.111. "**Relevant Authority**" means National and/or Provincial legislature, any agency, local authority, department, inspectorate, minister, ministry, official or public or statutory person (whether autonomous or not) having jurisdiction over any or all of the Parties or the subject matter of this Agreement. A Relevant Authority shall not include any Utility operator or provider;

1.1.112. "**Relief Event**" means any of the following:

1.1.112.1. any fire, explosion, tempest, flood, ionising radiation (to the extent it does not constitute an event of Force Majeure), earthquakes, riot and civil commotion, or pressure waves caused by devices travelling at supersonic speed;

1.1.112.2. (without limiting the obligations of the Private Party regarding service level specifications) any failure by the Institution or any Responsible Authority, utility or other like body to carry out works or provide services;

1.1.112.3. any accidental loss or damage to the Works and/or the Facilities;

1.1.112.4. any off-site failure or shortage of power, fuel or transport;

1.1.112.5. any blockade or embargo which does not constitute an event of Force Majeure;

1.1.112.6. the discovery of any heritage objects or resources or conditions at the Terminal that could not reasonably have been discovered by proper due diligence, by the Terminal Operator;

1.1.112.7. any delay in obtaining any Consent; or

1.1.112.8. any official or unofficial strike, lockout, go slow or other such labour disputes generally affecting the Liquid bulk industry or a significant sector of it,

- 1.1.112.9. any breach by the TNPA of any of its obligations under this Agreement (save for any breach that constitutes TNPA Default), and provided that the breach is not caused or contributed to a material extent by the contributory negligence or wilful misconduct of the Terminal Operator or any of its Subcontractors, and any other event that is designated in this Agreement to be dealt with in accordance with clause 39 (Consequences of a Relief Event);
- 1.1.112.10. unless any of the events listed in Clauses (a) to (i) inclusive arises (directly or indirectly) as a result of any negligence, wilful conduct or default of the Private Party or any Subcontractor
- 1.1.113. "**Rental**" means the rental payable by the Terminal Operator to the TNPA in respect of the grant of the Concession as provided for in Clause 5 (Rental);
- 1.1.114. "**Safety Authorisations**" means any consents, license, authorisations, permissions or approvals required to be obtained by the Terminal Operator from any Relevant Authority required in terms of any health and safety Law for the Project;
- 1.1.115. "**SAMSA**" means the South African Maritime Safety Authority duly established in terms of South African Maritime Authority Act of 1998;
- 1.1.116. "**Schedules**" means the schedules to this Agreement, as amended, replaced and varied from time to time;
- 1.1.117. "**Scheduled Operations Commencement Date**" means the date which is specified in the Construction Works Programme as the Day after the date on which the Completion Certificate in respect of the Project is scheduled to be issued and the Terminal operations are due to commence;
- 1.1.118. "**Shareholder**" means the holder of Equity in the Terminal Operator;
- 1.1.119. "**Signature Date**" means the date on which this Agreement has been signed by both Parties and, if signed on different dates, the last of such dates;
- 1.1.120. "**South Africa**" means the Republic of South Africa;

- 1.1.121. "**Subcontractors**" means any subcontractor of the Terminal Operator, who has contracted directly with the Terminal Operator in respect of the Project including the Contractor/s;
- 1.1.122. " **Substitute Terminal Operator**" means a person duly and properly appointed and approved by TNPA to be the new operator of the Terminal (including, as applicable, the construction and/or Operation and Maintenance of the Terminal) in the place and stead of the Terminal Operator in terms of this Agreement and which:
- 1.1.122.1. has the appropriate technical and financial ability to perform the rights and obligations of the Terminal Operator under this Agreement;
 - 1.1.122.2. employs persons having the appropriate qualifications, experience and technical competence;
 - 1.1.122.3. has sufficient resources available to it (including financial resources and Subcontracts) to perform the obligations of the Terminal Operator under this Agreement; and
 - 1.1.122.4. has the same, or more favourable policies to ensure that there is no reduction in BBBEE;
- 1.1.123. "**Supplier Development Plan**" means the Terminal Operator's supplier development plan to be annexed to this Agreement as Schedule 10 (Terminal Operator's Supplier Development Plan) hereto;
- 1.1.124. "**Target Completion Date**" means the date by which Construction Completion is, at the Signature Date, intended to occur, which date is specified in the Construction Works Programme;
- 1.1.125. "**Tax**" means VAT, any tax, levy, impost, duty or other charge or withholding of a similar nature (including any related penalty or interest);
- 1.1.126. "**Tender**" means any tender submitted by a Tenderer that meets the qualification criteria notified under clause 47.2 (*Retendering Procedure*);

- 1.1.127. "**Tenderer**" means a tenderer who is a Suitable Substitute Terminal Operator having submitted a Tender that complies with the requirements of the Request for Proposal issued by TNPA in relation to the New Terminal Operator Agreement;
- 1.1.128. "**Tender Costs**" means the reasonable and proper costs of TNPA incurred in carrying out the Tender Process;
- 1.1.129. "**Tender Process**" means the process by which TNPA requests tenders from any parties interested in entering into a New Terminal Operator Agreement, evaluates the responses from those interested parties and negotiates the conclusion of a New Terminal Operator Agreement with a Successor Terminal Operator, in accordance with clause 47.2(*Retendering Procedure*);
- 1.1.130. "**Tender Process Monitor**" means a third party appointed by the Terminal Operator under clause 47.2 (*Retendering Procedure*);
- 1.1.131. "**Terminal**" means the land area situated at the Port of Ngqura liquid bulk Precinct measuring 209 700 088 m², including Terminal Infrastructure and Terminal Equipment, from which the Terminal Operator will undertake the Project;
- 1.1.132. "**Terminal Equipment**" means the movable assets, including equipment and machinery (whether affixed to the Project Site or not) that are required in order to operate the Terminal as is more fully described in Schedule 7A of this Agreement;
- 1.1.133. "**Terminal Infrastructure**" means the land based structures, including storage facilities, loading facilities, Terminal buildings, sheds, surfacing, and all other fixed and movable improvements to the Project Site or adjacent to the Project Site, that are required in order to operate the Terminal operate the Terminal as well as the internal network for the provision of water, lights, power, sewerage and similar services within the Project Site boundaries, all of which shall be designed and Constructed in accordance with the Detailed Design and the D&C Specifications;
- 1.1.134. "**Terminal Operator**" means {PREFFERED BIDDER}

- 1.1.135. **"Terminal Operator Financial Year"** means the financial year of {PREFERRD BIDDER}, which runs from 1 April to 31 March annually;
- 1.1.136. **"Terminal Operator Performance Standards"** means the minimum performance standards specified in Schedule [] (*Terminal Operator Performance Standards*) which shall take account of and be based upon the Business Case, and which shall include performance targets in respect of the operation of the Terminal at the Terminal expressed as volume throughout targets;
- 1.1.137. **"Termination Amount"** means the amount payable on termination of this Agreement in terms of Part VII;
- 1.1.138. **"Termination Calculation Expert"** means an accountant of not less than 10 (ten) years professional experience or investment banker agreed to between the Parties, and failing agreement, nominated (at the request of either Party) by the President for the time being of the South African Institute of Chartered Accountants: Eastern Cape, if the matter relates primarily to a financial matter;
- 1.1.139. **"Termination Date"** means the date on which this Agreement is terminated in accordance with its terms, other than by way of effluxion of time;
- 1.1.140. **"Termination Date Discount Rate"** means a discount rate expressed as:
- 1.1.140.1. $(1 + \text{Real Base Case Project Internal Rate of Return} + \text{Bond B} - \text{Bond A}) * (1 + i) - 1$,
- where:
- 1.1.140.2. **"i"** is the agreed assumed forecast rate of increase in the South African Reserve Bank's prevailing long-term inflation target;
- 1.1.140.3. **"Bond A"** is the real yield to maturity on a benchmark government bond instrument of the same or closest possible maturity as the average life of the Debt as at the Commencement Date; and

1.1.140.4. "**Bond B**" is the real yield to maturity on a benchmark government bond instrument of the same or closest possible maturity as the average life of the Debt as at the Termination Date;

1.1.141. "**TNPA**" means the Transnet National Ports Authority, an operating division of Transnet, established in terms of the Act, and/or its successor/s in title;

1.1.142. "**TNPA Policies**" means TNPA policies, operating manuals, operating conditions and rules as set out in Schedule [] (*TNPA Policies, Manuals and Operating Conditions*);

1.1.143. "**TNPA Approval Date**" means the date on which the TNPA accepts and approves the Terminal Operator's feasibility studies, technical reports and associated business and operational plans as provided for in clause 3;

1.1.144. "**TNPA Financial Year**" means the financial year of TNPA, which runs from 1 April to 31 March annually;

1.1.145. "**Transnet**" means Transnet SOC Ltd, registration number 1990/000900/30, as incorporated pursuant to the Legal Succession to the South African Transport Services Act, 9 of 1980;

1.1.146. "**Unforeseeable Conduct**" means such conduct that shall occur if, after the Signature Date, TNPA or any Relevant Authority takes any action (including the introduction, application, or Change in Law, regulation, by-law or order having the force of Law) or fails to carry out its obligations as prescribed by Law:

1.1.146.1. the principal effect of which is directly borne by:

1.1.146.1.1. the Project and no other similar transactions;

1.1.146.1.2. the Terminal Operator and no other persons;

1.1.146.1.3. parties undertaking port facility operations and no other persons;

1.1.146.1.4. in respect of which the Terminal Operator is not entitled to any other relief pursuant to any other provisions of this Agreement;

1.1.146.1.5. which was not foreseen by the Terminal Operator on or before the Signature Date; and

1.1.146.1.6. which could not reasonably have been foreseen by any person in the position of the Terminal Operator on or before the Signature Date;

provided that:

1.1.146.2. Unforeseeable Conduct shall be deemed not to have occurred in circumstances where any action or omission of TNPA or Relevant Authority is in direct response to any act or omission of the Terminal Operator which is illegal (other than an act or omission rendered illegal by virtue of such conduct of TNPA or Relevant Authority) or in violation of agreements to which the Terminal Operator is a party;

1.1.146.3. an increase in Taxes of general application which does not discriminate against TNPA or against TNPA and other parties undertaking similar transactions shall be deemed not to be Unforeseeable Conduct;

1.1.146.4. Unforeseeable Conduct shall be deemed not to have occurred if such conduct by TNPA or any Relevant Authority is required as a result of an event of Force Majeure and is reasonably proportionate thereto; and

1.1.146.5. Unforeseeable Conduct shall be deemed not to have occurred in the circumstances where the principal effect of any action or omission of a Relevant Authority is directly borne by both TNPA and the Terminal Operator;

1.1.147. "**Uninsurable**" means in relation to a risk, either that:

- 1.1.147.1. the required insurance is no longer available in the worldwide insurance market from reputable insurers; or
- 1.1.147.2. if the required insurance is available, the insurance premium payable for insuring that risk has increased to such a level that the risk is not generally being insured against in the South African insurance market on commercially acceptable terms;
- 1.1.148. **"Updated Financial Model"** means the Base Case Financial Model as amended and updated from time to time;
- 1.1.149. **"Utilities"** means all port infrastructure serving the public and Port Users such as water, electricity, sewage, gas and telecommunications and where appropriate includes the relevant provider thereof;
- 1.1.150. **"Valuer"** means a Property Valuer registered with the South African Council for the Property Valuers;
- 1.1.151. **"VAT"** means the value-added tax levied in terms of the Value Added Tax Act No.89 of 1999.
- 1.2. In this Agreement, unless inconsistent with the context, words referring to:
- 1.2.1. one gender includes a reference to the other genders;
 - 1.2.2. the singular includes the plural and vice versa;
 - 1.2.3. natural persons include juristic persons and vice versa.
- 1.3. When a number of Days is prescribed in this Agreement, such number shall be calculated including the first and excluding the last Day, unless the last Day falls on a Day that is not a Business Day, in which case, the last Day shall be the first succeeding Day which is a Business Day.
- 1.4. Any Schedules to this Agreement shall be deemed to form part of this Agreement. Those Schedules that are not available as at Signature Date shall be annexed to this Agreement as soon as they have been signed by the delegated representatives of the Parties and will form an integral part of this Agreement. If there is a conflict between

the provisions of a Schedule and the provisions of this Agreement, the provisions of this Agreement shall prevail.

- 1.5. Any reference to legislation, a statute, a statutory instrument, or a standard in this Agreement shall be a reference to such legislation, statute, statutory instrument or standard as amended, replaced, varied or re-enacted from time to time.
- 1.6. Words and expressions defined in any sub-clause shall, for the purpose of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause.
- 1.7. If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, effect shall be given to it as if it were a substantive clause in the body of the agreement, notwithstanding that it is only contained in the interpretation clause.
- 1.8. Any reference in this Agreement to another agreement shall be to such agreement as amended, supplemented, varied, novated, or replaced from time to time in accordance with its terms and conditions.
- 1.9. Titles of clauses and Schedules of and to this Agreement are inserted for the sake of convenience only and shall not be used in respect of or in any way affect the interpretation of any provision of this Agreement.
- 1.10. A reference in this Agreement to any Person shall be a reference to such Person's permitted successor, transferee, cessionary and/or delegatee.
- 1.11. Any reference in this Agreement to the Updated Financial Model shall, unless the context requires otherwise, be a reference to such document as most recently updated, amended, or replaced and approved by TNPA, in accordance with the terms of this Agreement.
- 1.12. Where this Agreement requires that the waiver, consent, approval, or permission of TNPA is to be obtained:
 - 1.12.1. such waiver, consent, approval, or permission shall at all times be required to be obtained by the Terminal Operator prior to undertaking or failing to

undertake the course of action to which such waiver, consent, approval or permission pertains; and

- 1.12.2. the granting or withholding of such waiver, consent, approval or permission shall not be valid unless it is issued in writing by TNPA.
- 1.13. The terms "**holding company**" and "**subsidiary**" shall have the meanings ascribed to them in the Companies Act.
- 1.14. The term "**Person**" shall mean a natural person, partnership, firm, corporation, joint stock company, trust, unincorporated association, joint venture, government body, limited liability company, close corporation, any sphere of government (including national, provincial, regional and local government, or organ of state) or any other legal entity which is considered a legal entity under the laws of South Africa or the country in which such an entity has been formed.
- 1.15. References in this Agreement to TNPA, the Terminal Operator, the Independent Certifier, shall include their respective authorised agents and representatives.
- 1.16. Any provision of this Agreement that contemplates or provides for performance of an obligation or compliance with a provision of this Agreement subsequent to any termination of this Agreement shall survive termination of this Agreement and shall continue in force and effect for the period contemplated in said provision.
- 1.17. Termination of this Agreement shall not affect and shall be without prejudice to the accrued rights, obligations, claims, duties, and liabilities of either Party which such accrued rights, obligations, claims, duties and liabilities arose prior to such termination. For the avoidance of doubt, such rights, claims and liabilities shall include any rights of a Party in respect of an antecedent breach or non-performance by either Party of any of the terms or conditions of this Agreement.
- 1.18. The *eiusdem generis* rule and the *contra proferentem* rule shall not be applicable to this Agreement.

2. Introduction

- 2.1. In terms of the Act, TNPA exercises authority, power, control, and responsibility in respect of commercial Ports of South Africa, including the Port of Ngqura. In addition,

certain powers, capacity, and Authority have been conferred on TNPA, as a division of Transnet, in respect of the Port by the Act.

- 2.2. The Terminal Operator has been authorised to enter into this Agreement with the TNPA, for the Port, following the conclusion of an open, fair, transparent, and competitive bid process in accordance with the provisions of Section 56 of the Act 12 of 2005;
- 2.3. In terms of this Agreement, the TNPA appoints the Terminal Operator who shall design, develop, finance, construct, operate and, maintain a liquid bulk terminal within the liquid bulk precinct at the Port for a period of 25 (twenty-five years). TNPA requires the said project to be designed, constructed, equipped, operated and maintained, in accordance with the standard of a Reasonable and Prudent Operator and International Best Practice.

3. Commencement, Duration and Concession Period

- 3.1. Save for the provisions of this clause and clause 1, 8, 9, 12, 14, 14.3, 15, 46.6, 51, 54, 55, 56, 57 and 58, which shall come into effect immediately upon signing of this Agreement ("**Immediately Operative Provisions**") , this Agreement shall not come into force and effect until the suspensive conditions set out below are fulfilled or waived as the case may be, within a period of 24 (Twenty Four) months from the Signature Date, or such later date as the Parties may agree to in writing prior to the expiry of the said period of 24 (Twenty Four) months ("**the Fulfilment Date**"):
 - 3.1.1. the Terminal Operator obtains all necessary Consents for the Works and the Operations and Maintenance of the Terminal, including but not limited to an Environmental Authorisations and consents required in terms of NERSA Legislation (other than a tariff determination by NERSA);
 - 3.1.2. the Terminal Operator has concluded the Construction Agreement, and such agreement has become unconditional in accordance with its terms except to the extent that any conditions contained therein relating to the effectiveness of this Agreement;

- 3.1.3. the Construction Agreement, the Works Programme, the Detailed Design and D&C Specifications have been approved by the Independent Certifier in accordance with the provisions of clause 28.1 (*Performance of the Detailed Design*) where applicable;
 - 3.1.4. the Terminal Operator has undertaken an insurance due diligence assessment and has obtained (i) an insurance report which confirms that the Project Insurance is appropriate for the Terminal as well as the obligations of the Terminal Operator and (ii) a letter of undertaking from an insurance broker confirming that the Project Insurances are available in the market and that the Terminal Operator qualifies for such Project Insurances; and
 - 3.1.5. the Parties have agreed to Schedule [] (*Business Case Financial Model*), Schedule [] (*Terminal Operator's Operating Specifications*), Schedule [] (*D&C Specifications*) where applicable, Schedule [] (*Base Case Financial Model*), Schedule [] (*Penalties*), Schedule [] (*Project Insurance*), and Schedule [] (*Annual Reporting*).
- 3.2. The Parties shall co-operate and shall use all reasonable endeavours to procure the fulfilment of the suspensive conditions in this clause. Each Party shall promptly inform the other Party, in writing, when the suspensive conditions for which it is responsible have been satisfied.
 - 3.3. Unless the suspensive conditions contained in this clause, are fulfilled or where applicable, waived, as the case may be, on or before the Fulfilment Date, the provisions of the *Immediately Operative Provisions* shall continue to be of full force and effect, but the remainder of this Agreement shall not become operative or effective and shall have no force or effect whatsoever.
 - 3.4. No Party shall have any claim, unless explicitly set out in this Agreement, against any other Party pursuant to the non-fulfilment of the suspensive conditions in this clause, save where a Party (**the "Guilty Party"**) has breached the terms of this clause and/or has deliberately frustrated the fulfilment of such condition or intentionally caused that condition not to be fulfilled, in which event the Guilty Party shall be liable to the other Party for such damages as such other Party may have suffered thereby.

3.5. Commencement and Duration

- 3.5.1. This Agreement shall commence on the Signature Date and shall endure for the Concession Period until the earlier of the Termination Date or the Expiry Date.
- 3.5.2. Notwithstanding the provisions of clause 3.5.1 above, it is expressly recorded that the Terminal Operator may only commence with any part of the Project on the first business day following the TNPA Approval Date and for the avoidance of doubt, by which time the Terminal Operator shall have completed and submitted to the reasonable satisfaction of the TNPA the following information, including but not limited to:
 - 3.5.2.1. SHE Risk Assessment and Plans;
 - 3.5.2.2. Civil and Bulk Services Studies;
 - 3.5.2.3. Navigation and Mooring Study;
 - 3.5.2.4. HAZOP Studies;
 - 3.5.2.5. Environmental Impact Assessment and related environmental authorisation;
 - 3.5.2.6. The Terminal Operator obtaining and submitting to the TNPA a resolution from its Board of Directors and/or the Shareholder (if applicable) approving and accepting the terms of this Agreement.

4. Appointment of Terminal Operator and Grant of Rights

4.1. Grant of Rights

- 4.1.1. TNPA hereby grants the Concession in favour of the Terminal Operator to undertake the Project on the Project Site, on the terms and conditions contained in this Agreement. The Terminal Operator accepts such appointment on the terms and conditions contained in this Agreement.

- 4.1.2. Subject to the provisions of this Agreement and with effect from the Effective Date, the Terminal Operator is hereby granted an exclusive right to undertake the Project on the Project Site until the expiry or earlier termination of this Agreement in accordance with its terms.
- 4.1.3. The Terminal Operator shall be entitled to use the Port Infrastructure that is within the Project Site and the quay that serves the Project Site including the land on which the Terminal Operator operates a pipeline. In the event that the pipeline shall traverse a portion of port land that lies outside the Project Site, then the provisions of a separate wayleave agreement shall apply.

4.2. Terminal Operator's Obligations

- 4.2.1. The Terminal Operator shall undertake the Project at its own cost and risk in accordance with the terms of this Agreement. TNPA shall not provide any guarantee, subsidy, grant or any financial support of any nature to the Terminal Operator or in respect of the Project, the Terminal or this Agreement.
- 4.2.2. The Terminal Operator shall at its own cost maintain the Certifications, if applicable, for the duration of the Concession Period.
- 4.2.3. This Agreement shall not be interpreted as granting the Terminal Operator any rights or imposing any obligations or duties on TNPA or any Relevant Authority, except as expressly and specifically stated in this Agreement.
- 4.2.4. No instructions or approvals given by TNPA or any Relevant Authority in accordance with the Law and this Agreement in respect of any aspect of the Project or the Terminal will affect, alleviate, excuse, or provide relief from the Terminal Operator's duties, obligations, liabilities and responsibilities under this Agreement and in respect of the Project.

4.3. Subcontracting

- 4.3.1. Regardless of the fact that this Agreement permits or requires the Terminal Operator to appoint third parties to perform part of the Project, such appointment shall not relieve or excuse the Terminal Operator of any duty, obligation, liability or responsibility under this Agreement and in respect of the

Project. Accordingly, for the avoidance of doubt, the cession and transfer of Operating Rights shall not be permitted.

4.3.2. The Terminal Operator shall be responsible for the management and supervision of any third parties appointed by it to perform any part of the Project. The Terminal Operator shall be and shall remain, at all times, fully responsible and liable for the actions and omissions (whether negligent, wilful or intentional) of all such third parties and of the agents, representatives and employees of such third parties, whether such third parties are employed directly or indirectly by the Terminal Operator.

4.3.3. Nothing in this Agreement is intended to create or should be interpreted as creating any privity of contract between TNPA and any third parties appointed by the Terminal Operator to perform any part of the Project. The Terminal Operator shall ensure that a provision to this effect is inserted into every contract entered into by it with such a third party.

4.4. General Rights and Obligations of the Terminal Operator

4.4.1. Use of Terminal and Project Site, No Alienation or Encumbrance and Site Condition

4.4.1.1. In accordance with the terms of this Agreement, the Terminal shall be used solely, for undertaking the Project, at the Terminal Operator's own cost and risk and for no other purpose whatsoever.

4.4.1.2. TNPA shall not, provide any guarantee, subsidy, grant or any financial support of any nature to the Terminal Operator or in respect of the Project, the Terminal or this Agreement.

4.4.1.3. The Terminal Operator shall be entitled to carry out tasks and activities that are reasonably necessary for and incidental to undertaking the Project.

4.4.1.4. In the event that the Terminal Operator wishes to make use of the Terminal for any other purpose, other than liquid bulk terminal operations, it shall not do so, unless the prior written consent of TNPA has been obtained and if deemed necessary by the TNPA.

- 4.4.1.5. The Terminal Operator shall not lease, sell, dispose of, or otherwise alienate or encumber the whole or any portion of the Project Site or the Terminal in any manner whatsoever.
- 4.4.1.6. The Terminal Operator shall not use the Terminal for residential purposes or as sleeping quarters, except if the Terminal Operator elects to provide accommodation facilities or if TNPA authorises (in writing) the use of a portion of the Terminal as sleeping quarters for operational or security purposes, which authority shall not be unreasonably withheld.
- 4.4.1.7. The Terminal Operator shall not do or cause anything to be done that may cause a nuisance to TNPA or to any other Port User or the occupants of adjoining properties.
- 4.4.1.8. The Terminal Operator shall not do anything that materially detracts from the appearance or safe Operation and Maintenance of the Terminal, the Terminal Infrastructure, or the Terminal Equipment.
- 4.4.1.9. The Terminal Operator acknowledges and agrees that the Terminal Operator has inspected the Project Site and has satisfied itself fully as to the location, condition, geotechnical characteristics and features, zoning, ownership, existing Encumbrances, nature and extent of the Project Site as well as any and all Consents already granted to or held by TNPA in respect of the Project Site and the Terminal Operator expressly records and agrees that TNPA does not warrant the suitability or otherwise of the Project Site for purposes undertaking the construction, Operation and/or Maintenance of the Terminal or for purposes of operating the Terminal and that the Terminal Operator shall have no claims whatsoever against TNPA in respect of the location, condition, geotechnical characteristics and features, zoning, ownership, existing Encumbrances, nature and extent of the Project Site as well as any and all Consents already granted to or held by TNPA in respect of the Project Site.

4.4.2. **Construction of Terminal Infrastructure and Equipment**

- 4.4.2.1. The Terminal Operator shall undertake the Construction Works (including the design, procurement, construction, installation, commissioning and testing of the Terminal Infrastructure and the Terminal Equipment) in respect of the Terminal, which shall include the following:
- 4.4.2.1.1. the Construction and installation of all Terminal Infrastructure in accordance with the Detailed Design, the D&C Specifications, International Best Practice and the terms and conditions of this Agreement, including but not limited to:
 - 4.4.2.1.1.1. all infrastructure required to operate the Terminal excluding Port Infrastructure;
 - 4.4.2.1.1.2. basic services infrastructure within the Project Site in respect of water, electricity, sewerage, and storm water reticulation;
 - 4.4.2.1.1.3. hard surfacing;
 - 4.4.2.1.1.4. restrooms;
 - 4.4.2.1.1.5. roads and parking areas;
 - 4.4.2.1.1.6. lighting (i.e., high mast) enabling 24/7 operations;
 - 4.4.2.1.1.7. perimeter fencing and entrance gate/s;
 - 4.4.2.1.1.8. security kiosk/s;
 - 4.4.2.1.1.9. firefighting capability as required (based on the type and volume of products handled at the Terminal);
 - 4.4.2.1.1.10. electrical sub-station/s linked to maximum demand;
 - 4.4.2.1.1.11. appropriate signage;
 - 4.4.2.1.1.12. The procurement, installation, testing, and commissioning of all Terminal Equipment in

accordance with the Detailed Design, the D&C Specifications, International Best Practice and the terms and conditions of this Agreement;

4.4.2.1.1.13. subject to obtaining the prior written approval of TNPA, the construction and alterations to the quayside for the installation of the Terminal Infrastructure;

4.4.2.1.1.14. any other construction activities necessary in accordance with the Detailed Design and the D&C Specifications.

4.4.2.2. Without limiting the other obligations of the Terminal Operator in this Agreement or which are imposed on it by Law, the Terminal Operator shall:

4.4.2.2.1. bear full responsibility to comply with conditions of the Environmental Authorisation;

4.4.2.2.2. bear full responsibility to apply for and obtain the required Consents which may be required to enable it to undertake the Construction Works (including the design, finance, procurement, construction, installation, commissioning and testing of the Terminal Infrastructure and the Maintenance of the Terminal, and the operation of the Terminal (as envisaged above); and

4.4.2.2.3. ensure that if any of its Contractors, or other Subcontractors, agents and service providers require a licence in terms of the Act or any applicable law, such persons shall be duly licensed at all times.

4.4.3. **Operation of the Terminal**

4.4.3.1. The Terminal shall, be used, managed and operated on a **common-user** basis and on an equal footing, meaning that:

- 4.4.3.1.1. The Terminal Operator shall have the right to operate the Terminal and shall provide reasonable equality of access to the Terminal in respect of uncommitted capacity to Terminal users and potential Terminal users wishing to utilise the services of the Terminal;
- 4.4.3.1.2. The Terminal Operator shall not unreasonably discriminate, in its tariff structure or in its trading conditions (including but not limited to all commercial terms and conditions) between various users or potential users of the Terminal and the Loading Facilities; and
- 4.4.3.1.3. Port Users have on a first come, use it or lose it basis, open access to the Terminal and the Loading Facilities available and uncommitted in accordance with any relevant and applicable legislation;
- 4.4.3.2. Without limiting the other obligations of the Terminal Operator, as specified in this Agreement, or imposed by Law, the Terminal Operator shall be obliged to manage and operate the Terminal for the purpose of:
 - 4.4.3.2.1. providing reliable, secure and efficient services and facilities to Port Users;
 - 4.4.3.2.2. receiving Cargo at the Project Site via Berth.
 - 4.4.3.2.3. storage of Cargo in storage tanks;
 - 4.4.3.2.4. transferring Cargo from the Terminal via Pipelines on Pipeline racks to the storage tanks;
 - 4.4.3.2.5. transferring Cargo from the vessel into the storage tanks for distribution and/ or transfer of Cargoes from the storage tanks into the vessel;

- 4.4.3.2.6. preparation of all necessary documentation associated with the shipment of Cargoes, and their inland transport to/from the Port;
- 4.4.3.2.7. submit reports in respect of all cargo exported, landed and shipped by the Terminal Operator on a per vessel basis, 72 (seventy-two) hours subsequent to the vessel having entered the Port;
- 4.4.3.2.8. performing maintenance related activities within the Terminal that the Terminal Operator may deem necessary;
- 4.4.3.2.9. obtaining, maintaining and renewing all documents, permits or other authorisations necessary to operate the Terminal and render the services and perform the activities referred to in this clause;
- 4.4.3.2.10. ensuring that if any sub-contractors, Agents and service providers used by it that require a document in terms of the Act, such persons are duly licensed at all times;
- 4.4.3.2.11. providing, maintaining or replacing, according to International Best Practice, all operating and other equipment necessary for the efficient operation of the Terminal;
- 4.4.3.2.12. procuring, installing and operating communication, control and administrative systems necessary for the efficient operation of the Terminal;
- 4.4.3.2.13. complying with all applicable provisions of the Act, the Port Rules, the Regulations and any directives issued in terms of the Act;
- 4.4.3.2.14. complying with "SAMSA", including any applicable Legislation and codes relating to safe working practices;

4.4.3.2.15. complying with the ISPS Code and the IMDG Code in relation to security and dangerous goods, respectively;

4.4.3.2.16. complying with all other applicable Legislation and generally conduct its activities and operations in accordance with the Law; and

4.4.3.2.17. anything reasonably necessary or incidental thereto.

4.4.3.3. For the avoidance of doubt, all the obligations of the Terminal Operator set out in this clause 4.4 and under this Agreement in its entirety, shall be in compliance with the IMDG Code as the context requires. In the event that the Terminal Operator contravenes the applicable IMDG Code, such contravention shall constitute a breach of this Agreement by the Terminal Operator. The Terminal Operator shall be fully conversant with the requirements of the IMDG Code in respect of the handling of Cargo and should in particular take note of the classification applied in the regulation of the handling practices required for the duration of this Agreement.

4.4.3.4 The Terminal Operator may not:

4.4.3.4.2. permit the growth upon the Terminal of noxious weeds;

4.4.3.4.3. do or cause anything to be done that may cause a nuisance to TNPA or to any other Port User or the occupants of adjoining properties;

4.4.3.4.4. do anything that materially detracts from the appearance of the Terminal; or

4.4.3.4.5. load vehicles in any area within the Port, other than in the Terminal, unless with TNPA's prior written consent or with permission from another person legally in control of the area which shall not be unreasonably withheld.

4.4.4. The Terminal Operator shall take all reasonable steps to prevent the spilling of Cargo and/or any other matter into the Port's water. The Terminal Operator shall:

- 4.4.4.1. immediately notify TNPA if any Cargo and/or any other matter is spilled in the water as a result of its operation of the Terminal or the conduct of its employees, Agents, service providers, sub-contractors or persons responsible for the vessels calling at the Terminal; and
- 4.4.4.2. immediately take steps to recover such cargo or any other matter.
- 4.4.5. If the Terminal Operator fails to recover any spilled cargo or any other matter as envisaged above, TNPA may take whatever steps are necessary to recover the cargo or any other matter and to claim the costs of taking such steps from the Terminal Operator.
- 4.4.6. The Terminal shall be used solely for the services and activities described in this Agreement for purposes incidental to the provision of those services and activities, and for the exercise of the rights and the fulfilment of the obligations set out under this Agreement, and for no other purpose whatsoever unless the prior written consent of TNPA which consent shall not be unreasonably withheld has been obtained, in terms of this Agreement, for such other purpose.

4.5. Terminal Operator's Replacement, Repair, Operation and Maintenance Obligations

- 4.5.1. The Terminal, the Terminal Infrastructure, the Terminal Equipment as well as the surface of the quay within the Project Site and any other equipment that is necessary for the safe and efficient Operation and Maintenance of the Terminal, shall be Operated and Maintained by the Terminal Operator at its own cost, and kept in good working order and condition and in a safe operating condition and in accordance with the Terminal Operator's Operational Plan, agreed Terminal Operator Performance Standards, International Best Practice and all relevant and applicable Laws as well as any applicable national standards, specifications and codes of practice

which are generally applied in South Africa in relation to such Operation and Maintenance.

- 4.5.2. The Terminal Operator shall be responsible for repairs, renewals and replacement of the Terminal Infrastructure and the Terminal Equipment as is necessary for the continued and efficient operation of the Terminal.
- 4.5.3. The Terminal Operator shall procure, install, commission, test, Operate and Maintain appropriate communications, safety, control and administrative systems and equipment as are necessary for the safe and proper use, Operation and Maintenance of the Terminal in accordance with Detailed Design, the Operational Plan, and the Terminal Operator Performance Standards, the IPMS and International Best Practice.
- 4.5.4. The Terminal Operator shall provide TNPA with an annual maintenance programme for the Terminal Infrastructure and a replacement programme for the Equipment, at least 2 (two) months prior to the start of each of the Terminal Operator's Financial Years.
- 4.5.5. The Terminal Operator shall to the extent that the relevant service, at the Terminal is not provided by the relevant local authority in the ordinary course as envisaged in clause 22.6, the Terminal Operator shall be responsible, at its own cost, for the disposal of garbage and waste, including garbage and waste generated by vessels visiting the Terminal and by the Terminal itself.
- 4.5.6. The Terminal Operator shall keep the Terminal and the Project Site in a clean, orderly and sanitary condition.
- 4.5.7. The Terminal Operator shall attend to removal of intrusive vegetation including regular control and removal of grass, noxious and other weeds, and other plants and vegetation on the Project Site (save for any landscaped gardens which may be provided for in the Detailed Design).
- 4.5.8. The Terminal Operator shall, in the Operation and Maintenance of the Terminal comply with all other applicable Laws (including all labour related Laws) the Port Rules, the Port Regulations, TNPA Policies, any directives

issued in terms of the Act, and generally, conduct its activities and operations at the Terminal in accordance with all applicable Laws.

- 4.5.9. The Terminal Operator shall conduct annual inspections of the Terminal and must incorporate the outcome of each such annual inspection in the Annual Report as provided for in clause 31 (*Reporting Requirements*) hereof. The Terminal Operator shall provide TNPA with a maintenance and replacement programme for the Terminal Infrastructure and Terminal Equipment, in accordance with the clause 31 (*Reporting Requirements*).

4.6. Erection of Improvements and Extensions of Terminal Infrastructure

- 4.6.1. The Terminal Operator shall be entitled to make, or cause to be made in the Terminal or in respect of the Terminal Infrastructure such improvements, alterations, additions and/or extensions as may be necessary or appropriate for the operation of the Terminal, the Operation and Maintenance of the Terminal upon the Project Site, provided that any improvements, alterations, additions and/or extensions which are not envisaged or provided for in the Detailed Design and/or the Construction Works Programme shall only be undertaken by or on behalf of the Terminal Operator after it has first submitted the plans, designs and specifications thereof to TNPA and has obtained the prior written approval of TNPA which approval shall not be unreasonably withheld.
- 4.6.2. Unless otherwise agreed in writing by the Parties or otherwise expressly provided for in this Agreement, all improvements, alterations, additions and/or extensions envisaged in clause 4.6.1 shall be undertaken by the Terminal Operator at its own cost and TNPA shall not be liable to compensate the Terminal Operator for improvements, alterations, additions and/or extensions which are effected to the Terminal (including the Terminal Infrastructure) whether or not such improvements, alterations, additions and/or extensions are effected pursuant to and with the prior approval of TNPA in terms of clause 4.6.1 and the value of such any and all such improvements, alterations, additions and/or extensions shall not be deducted from or set-off by the Terminal Operator against, or otherwise form the substance of counterclaim by the Terminal Operator or in other manner whatsoever affect or detract from any amounts which are or may

become payable by the Terminal Operator to TNPA in terms of this Agreement.

4.7. Roadways, Surfaces and Access to and Egress from the Terminal

- 4.7.1. The Terminal Operator shall not load vehicles (including a car or truck or tracked or wheeled equipment) in any area within the Port, other than in the Terminal, unless with the TNPA's prior written consent or with permission from another person legally in control of the area which consent shall not be unreasonably withheld.
- 4.7.2. The Terminal Operator shall, at its own cost, Operate and Maintain in good order and condition, all existing roads within the Project Site and shall construct Operate and Maintain in good order and condition all roadways and surfaces as may be required within the Terminal for the operation of the Terminal and the performance of the activities and obligations contemplated in this Agreement. Such roadways and surfaces shall be constructed Operated and Maintained in accordance with all applicable Laws, the Detailed Design and the Operational Plan and in accordance with a standard that complies with the permissible axle loads for the types and volumes of Cargo and traffic which will use the roads which is envisaged in the Business Case, Operational Plan and the Detailed Design, and in the absence of the provision of such standards at such standard as is stipulated by TNPA and communicated to the Terminal Operator in writing.
- 4.7.3. The Terminal Operator shall ensure that all vehicles entering and exiting the Terminal shall be organised to minimise traffic congestion, the parking of vehicles and any queuing outside the Project Site. To the extent that the weighing of vehicles entering and exiting a port Terminal in order to load or unload cargo is required by any Law, the Terminal Operator must check the weight of vehicles entering and exiting the Terminal.
- 4.7.4. TNPA's duly authorised agents, employees and contractors shall have the right of access to the Terminal for purposes of performing TNPA's functions, provided that TNPA ensures that its agents, employees and contractors comply with all reasonable safety and security stipulations, environmental and Project Site rules of the Terminal Operator whilst in the Terminal.

- 4.7.5. All other persons, vehicles and equipment shall have access to the Terminal and may use the roadways and the surfaces in the Terminal in the manner reasonably determined by the Terminal Operator in order to conduct normal legal business related to the Operation of the Terminal, provided that in the use of such roadways such persons, vehicles and equipment shall not unnecessarily interfere with or impede the activities of the Terminal Operator and shall comply with all the safety and security stipulations, environmental and Project Site rules of the Terminal Operator.
- 4.7.6. The Terminal Operator may not impose any fee for admission to the Terminal.

4.8. Spillage

- 4.8.1. The Terminal Operator shall take all reasonable steps to prevent the spilling or dropping of Cargo and/or any other matter into the Port's water. The Terminal Operator shall:
 - 4.8.1.1. immediately notify TNPA if any Cargo and/or any other matter is spilled or dropped in the water as a result of its operation of the Terminal or the conduct of its employees, agents, service providers, Contractors, Subcontractors or persons responsible for the vessels calling at the Terminal; and
 - 4.8.1.2. immediately take steps to recover such Cargo or any other matter.
- 4.8.2. If the Terminal Operator fails to recover any spilled Cargo or any other matter as envisaged above, TNPA may take whatever steps are necessary to recover the Cargo or any other matter and to claim the reasonable costs of taking such steps from the Terminal Operator.

4.9. General Safety and Security in the Terminal

Without detracting from the provisions of clauses 24 (*Health and Safety*) and 25 (*Security*), the Terminal Operator shall be responsible for the safety and security of the Terminal and for all persons and movables therein, including Cargoes, and for the

implementation of and adherence to the ISPS Code, and accordingly the Terminal Operator shall:

- 4.9.1. ensure that the perimeter of the Terminal is fenced with security fencing of a standard reasonably acceptable to TNPA and which is in compliance with the ISPS Code and that such fencing is maintained at that standard (and repaired as necessary) during the term of this Agreement;
- 4.9.2. as part of the security plan envisaged in clause 25 (*Security*), monitor and control all Cargo, vehicles and people entering and leaving the Terminal as part of the Terminal security plan, and ensure that security communications are always readily available;
- 4.9.3. comply with all applicable provisions of the Act, the Regulations, the Port Rules, prevailing security and safety requirements of the TNPA (including requirements relating to access to and exit from the Project Site), and any directives that may be issued in terms of the Act, from time to time;
- 4.9.4. comply with the requirements of the Port Regulator (established in terms of the Act);
- 4.9.5. comply with the provisions and requirements of the South African Maritime Safety Authority ("**SAMSA**"), including any applicable legislation and codes relating to safe working practices;
- 4.9.6. comply in all material respects with the provisions of the International Maritime Organisation Convention of Safety and Security at Sea, the ISPS Code and the Maritime Security Regulations 2004, adopted under the Merchant Shipping Act No 57 of 1951; and
- 4.9.7. comply with the IMDG Code in relation to security and dangerous goods.

4.10. Personnel, Contractors, and other Subcontractors - Generally

- 4.10.1. The Terminal Operator as well as its Contractors and other Subcontractors shall comply with all relevant labour Laws.
- 4.10.2. The Terminal Operator as well as its Contractors and other Subcontractors shall at all times employ or engage sufficient and suitably qualified and

competent personnel to enable it to efficiently operate the Terminal and Operate and Maintain the Terminal, all envisaged in the Terminal Operator Agreement.

4.10.3. The Terminal Operator shall implement all measures as are required by the relevant applicable Laws and/or as may be reasonably necessary to ensure the safety of its employees and that of its Contractors and other Subcontractors, and shall provide them or ensure they are provided, free of charge, with any necessary personal protective clothing and equipment and shall ensure that its Contractors and other Subcontractors do likewise.

4.10.4. The Terminal Operator accepts full responsibility for the training of staff and shall ensure that all its employees are properly trained for the work they are undertaking and are familiar with safety and security requirements that apply to the Terminal and shall ensure that its Contractors and other Subcontractors do likewise.

4.10.5. TNPA may require the Terminal Operator to remove any employee, agent, representative, Contractor/s or other Subcontractor, or any of their respective employees, agents or representatives, from the Terminal or to prevent such employees, agents or representatives, Contractors or other Subcontractors from entering the Terminal, if any such employees, agents or representatives, Contractors or other Subcontractors engage in any conduct which might threaten public health, or the safety or security of the Port or other Port User.

5. Duration of the Concession Period

5.1.1. The Concession shall endure for a 25 (Twenty-Five) Year operating term from the Actual Operations Commencement Date.

5.1.2. The Development Period shall commence on the Signature Date and shall terminate on the Effective Date.

5.1.3. The Construction Period shall commence on the Effective Date and shall terminate on the issue of the Completion Certificate.

5.1.4. The Operations Period shall commence on the Actual Operations Commencement Date.

6. Concession Fees

6.1. The Terminal Operator shall pay to TNPA, in consideration of the right to use the Terminal for the purpose set out in this Agreement :

- 6.1.1. the sum of [] per square meter, per month for [] [] square meters, during the Construction Period;
- 6.1.2. the sum of R[] per square meter, per month for [] square meters, being that portion of the Project Site where buildings are situated, during the Operations Period;
- 6.1.3. The amounts payable by the Terminal Operator in terms of clauses 6.1.1 and 6.1.2, shall be paid monthly in advance, by no later than the 7th (seventh) Day of each month.
- 6.1.4. For the period commencing on signature date of the Terminal Operator Agreement, the monthly Rental amount shall be escalated by TNPA on each anniversary of such date at an escalation rate of () percent),
- 6.1.5. Except if TNPA otherwise agrees in writing, all payments shall be made in South African Rands;
- 6.1.6. All payments to be made in terms of this Agreement by the Terminal Operator to TNPA shall be made in full without set-off or counterclaim in immediately available funds, free of bank exchange or any other charges or deductions, electronically into the following bank account: RMB Corporate Bank, A Division of FirstRand Bank Limited , **Account name: Transnet National Ports Authority, Type: CORPORATE CASHMAN ACCOUNT, Account Number 62875771315: branch Code: 255005;**

- 6.1.7. TNPA shall be entitled in its sole and absolute discretion to appropriate or re-appropriate any amounts received from the Terminal Operator towards the payment of any other amounts owing by the Terminal Operator to it;
- 6.1.8. TNPA shall have the right to apply the whole or portion of the rental towards the payment of any amounts owing by the Terminal Operator, when any such amount has not been paid within 15 (fifteen) Business Days of written notice requesting such payment that is due and payable.

7. Ownership and eventual handover of the Project Site and the Terminal Infrastructure

- 7.1. The Terminal Operator agrees and acknowledges that the ownership of the Project Site shall at all times vest in TNPA and nothing in this Agreement shall be construed as transferring ownership to the Terminal Operator.
- 7.2. The Parties agree that ownership of the Terminal Infrastructure and Terminal Equipment shall remain vested in the Terminal Operator, save where expressly stated to the contrary.
- 7.3. The Terminal Operator hereby grants to TNPA the first option to purchase the Terminal Equipment on the following terms and conditions:
 - 7.3.1. the option shall be exercisable by written notice given by the Terminal Operator to the TNPA at any time between the date on which notice of termination of this Agreement is given by either Party to the other in terms of this Agreement and the Termination Date and at least two (2) years prior to the Expiry Date;
 - 7.3.2. the purchase price for the Terminal Equipment shall be its fair value as agreed by the Terminal Operator and TNPA as at the Termination Date;
 - 7.3.3. the Parties shall use their reasonable endeavours to agree the purchase price and complete the transfer of the Terminal Equipment to the TNPA within 30

days after the Termination Date and/or Expiry Date, failing which the TNPA shall be deemed not to have exercised the option, and the option shall no longer be capable of being exercised.

- 7.4. At least 2 (two) Contract Years prior to the expiry of the Operations Period, TNPA shall notify the Terminal Operator whether it is required to demolish and remove all or some of the Terminal Infrastructure. Should TNPA notify the Terminal Operator to demolish and remove all or some of the Terminal Infrastructure, the Terminal Operator shall decommission, demolish and remove all or the selected Terminal Infrastructure during the Decommissioning Period.
- 7.5. Upon the termination for any reason or expiry of the Operations Period or subject to clause 7.4, (**the "Decommissioning Period"**), the Terminal Operator will be required to:
- 7.5.1. give free and vacant possession of the Terminal, the Project Site, the Terminal Infrastructure and subject to clause 7.3, the Terminal Equipment to TNPA;
 - 7.5.2. hand over all associated manuals, certificates and documents in respect of the Terminal Infrastructure and the Terminal Equipment, if applicable;
 - 7.5.3. leave the Project Site in a safe, clean and orderly condition in accordance with the terms and conditions contained in this Agreement.
- 7.6. Subject to clause 7.3, the Terminal Operator shall not be entitled to payment of any monies in connection with such delivery referred to in clause 7.5.

8. Indemnity

- 8.1. Subject to clauses 8.2 and 8.4, the Terminal Operator shall fully and effectively indemnify and hold TNPA or any Port User harmless in respect of all Losses suffered or incurred by TNPA, or any Port User or person which arise in connection with the breach of this Agreement or the applicable Laws by the Terminal Operator, or which the Terminal Operator is legally liable for, including, without limitation to the generality of the foregoing, any Losses which may be incurred or suffered by TNPA and/or any Port User, or any Person in respect of personal injury (including injury resulting in death).
- 8.2. This clause 8 shall not apply to:

- 8.2.1. any Losses to the extent that they arise directly from the wilful default and/or negligence of TNPA or the relevant Port User or relevant Person; and
 - 8.2.2. Losses to the extent that TNPA or the relevant Port User or relevant Person is reasonably able to mitigate such Losses.
- 8.3. If the Terminal Operator pays to TNPA an amount in respect of Losses and TNPA subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise howsoever) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the Losses, TNPA shall forthwith repay to the Terminal Operator:
- 8.3.1. an amount equal to the sum recovered or the value of the savings or benefit obtained, less any reasonable costs and expenses incurred by TNPA in recovering the same; or
 - 8.3.2. if the figure resulting under clause 8.3.1 above is greater than the amount paid by the Terminal Operator to TNPA in respect of the Losses, such lesser amount that has been paid by the Terminal Operator to TNPA.
- 8.4. The Terminal Operator shall indemnify TNPA in respect of all Losses relating to the use or infringement or alleged use or infringement by the Terminal Operator of TNPA's Intellectual Property Rights.
- 8.5. Except as expressly provided in this Agreement, the Terminal Operator shall not make any claim against TNPA or any Port User in respect of any Losses sustained by the Terminal Operator by reason of or arising out of and/or in any way connected with the performance of this Agreement.
- 8.6. For the avoidance of doubt, this clause 8 (*Indemnity*) shall take effect without prejudice to the Terminal Operator's obligations under the other provisions of this Agreement.
- 8.7. TNPA agrees that it will forthwith notify the Terminal Operator of any claim or any matter or thing which comes to its attention, and which may give rise to a claim by TNPA against the Terminal Operator under this Agreement pursuant to this clause 8 (*Indemnity*), as follows:

- 8.7.1. TNPA shall at all times after such notification, disclose in writing to the Terminal Operator all information and documents relating to such claim and the matter giving rise thereto and will allow the Terminal Operator to see appropriate files and records relating to same and take copies of all relevant documents; and
- 8.7.2. TNPA will take such action as the Terminal Operator may reasonably request at the Terminal Operator's expense to avoid disputes, settle, compromise, defend or appeal against such claim and TNPA will take no steps to avoid disputes, settle, compromise, defend or appeal against such claim without the Terminal Operator's consent, which consent shall not be unreasonably withheld or delayed. The Terminal Operator shall procure that its Subcontractors shall provide identical undertakings to TNPA.

9. Terminal Operator's Warranties and Undertakings

9.1. Registration

- 9.1.1. The Terminal Operator is, incorporated in South Africa in accordance with the provisions of the Companies Act. The Terminal Operator shall remain validly incorporated and registered in accordance with the provisions of the Companies Act for the entire duration of this Agreement.
- 9.1.2. The Terminal Operator shall maintain such incorporation and its Constitutional Documents and if any intended amendment, restatement, and supplement or any other modification thereof, has the effect of transferring any of the Operating Rights to another entity, the Terminal Operator shall obtain consent and authorisation of the Department of Transport and the consent of the TNPA, which consent shall not be unreasonably withheld.

9.2. Compliance with Laws

9.2.1. The Terminal Operator shall comply with the Laws applicable to it and the Project in all respects and shall obtain all Consents that are required in respect of it and all and any aspects or parts of the Project, in accordance with Laws.

9.2.2. TNPA shall use its reasonable endeavours to assist the Terminal Operator to obtain such Consents as may be required to enable the Terminal Operator to execute the Project, provided that TNPA shall bear no liability or responsibility for any failure of the Terminal Operator to obtain such Consents save as provided in this Agreement.

9.3. Related Party Transactions

9.3.1. Unless otherwise agreed to by TNPA and without prejudice to the provisions of clause 9.4 (*Limitation on Financial Indebtedness*), the Terminal Operator shall not enter into any Related Party Transactions, other than Related Party Transactions which are no less favourable to the Terminal Operator than those that could have been obtained in a comparable arm's length transaction by the Terminal Operator with a Person who is not a Related Party.

9.3.2. TNPA shall have the right to review the basis for all costs charged, directly or indirectly, to the Terminal Operator under a Related Party Transaction. The Terminal Operator shall give prior notice to TNPA of any Related Party Transaction, together with all relevant details relating thereto.

9.4. Limitation on Financial Indebtedness

9.4.1. The Terminal Operator shall not incur, assume, or permit to exist any indebtedness including guarantees issued to third parties, the creation of charges, pledges or other encumbrances over the Terminal Equipment and, in general, any claims and rights in respect of the Terminal otherwise than:

9.4.1.1. in accordance with the Associated Agreements, the financing plan included in the Business Case; or

9.4.1.2. in the ordinary and normal course of business; or

9.4.1.3. with the prior consent of TNPA.

10. Compliance with D&C Specifications and Operational Plan

- 10.1. The Terminal Operator shall comply with, and shall ensure that its Subcontractors comply with, the D&C Specifications and the Detailed Design in respect of the Construction Works and the Operational Plan in respect of the Operation and Maintenance at all times.
- 10.2. The Terminal Operator warrants that the Project shall be carried out in conformity with the Construction Works Programme, the D&C Specifications, the Detailed Design and the Operational Plan using equipment and materials, which are of suitable quality for the purposes and uses intended and are free of defects and deficiencies. All such Construction Works shall be completed and undertaken in accordance with the Construction Works Programme, the D&C Specifications and the Operational Plan to the reasonable satisfaction of the Independent Certifier.
- 10.3. The Terminal Operator shall ensure that any decision, determination, instruction, inspection, examination, testing, consent, approval, expression of satisfaction, acceptance, agreement, exercise of discretion (whether sole or otherwise) or similar act by any Relevant Authority or the Independent Certifier in respect of this Agreement shall be facilitated, carried out, applied for or requested promptly by the Terminal Operator.

11. Contracts

- 11.1. The Terminal Operator shall enter into the Associated Agreements, and such other contracts as are necessary to ensure the timeous and proper completion and undertaking of the Project in accordance with the D&C Specifications, the Detailed Design and the Operational Plan. The Terminal Operator shall satisfy itself that the terms of such agreements fully describe the rights, obligations, risk allocation and protection of the Terminal Operator's rights. None of TNPA, any other Relevant Authority or their respective officers, employees, agents and/or representatives, shall have any liability whatsoever to the Terminal Operator arising from the Associated Agreements and/or the Finance Agreements except as provided in or arising from this Agreement.
- 11.2. The Terminal Operator shall not:
- 11.2.1. amend, replace or cancel any term of the Associated Agreements;
 - 11.2.2. terminate any of the Associated Agreements;

- 11.2.3. replace the Construction Contractor;
- 11.2.4. enter into a new Construction Agreement; or
- 11.2.5. consent to the cession, delegation, or novation of any Associated Agreement, without the prior written consent of TNPA, which shall not be unreasonably withheld.

12. Environmental Compliance

- 12.1. The Terminal Operator shall comply with the Environmental Authorisations issued in terms of the National Environmental Management Act, 107 of 1998 (NEMA) and environmental impact assessment ("**EIA**") for the duration of the Concession Period. The Terminal Operator indemnifies TNPA in respect of all Losses incurred by it because of a failure to comply with the Environmental Authorisations or Environmental Laws.
- 12.2. The Terminal Operator shall, if applicable, comply with any existing EIA and the Environmental Authorisations and any existing environmental authorisation granted to TNPA in respect of the Project Site (the "**Existing TNPA Environmental Authorisation**") for the Concession Period. The Terminal Operator undertakes to indemnify TNPA in respect of all Losses for any failure to comply with the Environmental Authorisations and the Existing TNPA Environmental Authorisation during the Contract Period.
- 12.3. The Terminal Operator is responsible for and shall obtain all Consents (excluding Environmental Authorisations) that are required in respect of the Project and shall comply with all such Consents. TNPA shall use its reasonable endeavours to assist the Terminal Operator to obtain such Consents as may be required to enable the Terminal Operator to execute the Project, provided that TNPA shall bear no liability or responsibility for any failure of the Terminal Operator to obtain such Consents save as provided in this Agreement. For the avoidance of doubt, the Terminal Operator shall be required to undertake, at its own costs, any further studies as may be required to obtain further Environmental Authorisations for scope of works not covered in the Existing TNPA Environmental Authorisation.

- 12.4. The Terminal Operator shall take all necessary steps to ensure that appropriate pollution control and other environmental protection measures are taken in accordance with the Environmental Laws. The Terminal Operator shall comply with all Environmental Consents obtained by it in respect of the Project Site and the Terminal including the Environmental Authorisations and the Existing TNPA Environmental Authorisation and shall comply with the Environmental Management Plan in respect of the Project Site and the Terminal at all times.
- 12.5. The Terminal Operator shall conduct an environmental site assessment, at the Terminal Operator's expense and within the period specified by TNPA, in respect of all the works, activities and operations conducted by or on its behalf on Project Site or if applicable, elsewhere in the Port as required by the provisions of the NEMA.
- 12.6. Such environmental site assessment shall:
- 12.6.1. include a systematic identification and evaluation of any potential impacts of any current or proposed work on the environment, this includes biophysical, biological, social, cultural, economic, aesthetic and technological aspects, to such an extent that those aspects are relevant to the works, activities and operations conducted on Project Site or if applicable, elsewhere in the Port;
 - 12.6.2. be conducted by an independent environmental assessment practitioner;
 - 12.6.3. form part of the Terminal Operator's Environmental Management Plan (the "**EMP**"); and inform the Terminal Operator's Environmental Management System (the "**EMS**"); and
 - 12.6.4. comply with any other reasonable requirements stipulated for such an assessment by TNPA.
- 12.7. Within a period of 3 (three) months of the Target Completion Date, the Terminal Operator shall submit, for the approval of TNPA, the EMP which shall comply with NEMA and TNPA's written requirements (which requirements shall be provided to the Terminal Operator). The EMP and EMS shall be developed, updated and implemented by the Terminal Operator for the Construction Period of this Agreement. On or before the Operations Commencement Date, the Terminal Operator must develop a further EMP that will be implemented during the Operations Period. The EMP and EMS shall be binding on the Terminal Operator.

- 12.8. TNPA shall have the right at all times to conduct audits of the Terminal Operator's compliance with the EMP and EMS. If, and where TNPA is of a reasonable belief that there is non-compliance, inefficiency or inadequacy, then TNPA may require that the Terminal Operator rectify such non-compliance, inefficiency or inadequacy, without any delays, to the reasonable satisfaction of TNPA or provide TNPA with proof that such non-compliance, inefficiency or inadequacy does not exist.
- 12.9. The Terminal Operator, as required by Law, shall comply with:
 - 12.9.1. all the requirements of SAMSA in relation to the environment;
 - 12.9.2. all the conditions in respect of the Project Site, if the Project Site is declared as a protected natural environment or a special nature reserve;
 - 12.9.3. all the conditions in any authorisations or exemptions from the Relevant Authority in respect of the Project Site or the Terminal;
 - 12.9.4. TNPA's requirements for the regular waste removal, including waste originating from cleaning or loading of vehicles or wagons;
 - 12.9.5. all the conditions in environmental permits, consents, licences, certificates, authorisations, orders and exemptions from the Relevant Authority in respect of the Terminal; and
 - 12.9.6. all applicable statutory requirements related to the environment including NEMA, the National Water Act, 36 of 1998, the Air Quality Act, 39 of 2004 and the Biodiversity Act, 10 of 2004, and any other environmental legislation enacted or promulgated before or after the Effective Date.
- 12.10. In the event that the Terminal Operator contravenes the provisions of this clause and/or fails to remedy such contravention in accordance with the terms agreed to, the TNPA shall be entitled to appoint, at the Terminal Operator's reasonable cost, and with the prior approval of the Terminal Operator, which shall not be unreasonably withheld, an independent environmental monitor who shall be responsible for:
 - 12.10.1. ensuring that the Construction Works and Operation and Maintenance are performed in accordance with the D&C

Specifications, the Operational Plan, the Business Case and the Environmental Laws; and

12.10.2. monitoring and ensuring the implementation and effectiveness of mitigation measures and other requirements and targets set forth in the D&C Specifications, Operational Plan, the Business Case and the Environmental Laws.

12.11. The conditional authorisations and/or environmental requirements to be fulfilled by the Parties during the Construction Period in terms of the EMP, and during the Operations Period the further EMP, are set out in Schedule 8 (*Environmental Management Plan*) of this Agreement.

12.12. The Parties shall review the EMP at the start of each Contract Year in order to ascertain whether that plan needs to be amended or replaced. If the Parties are unable to agree whether the EMP should be amended or replaced or on the contents of such amendment or replacement, then such dispute shall be referred to the monitor detailed in clause 12.10 for determination in terms of clause 55 (*Expert Determination*). The decision of such monitor shall, in the absence of manifest error or fraud, be final and binding on the Parties.

12.13. The Terminal Operator shall, upon the request of TNPA and within a reasonable period of such request, provide TNPA with certified copies of:

12.13.1. all Environmental Authorisations obtained regarding the Construction Works and services it provides at the Port, and, where the permissions are renewable, in each instance a certified copy of a new or updated permission;

12.13.2. any measurements undertaken of emissions, effluent, storm water quality and material safety data sheet for hazardous substances, which it is, obliged to submit to a Relevant Authority; and

12.13.3. prepare and submit quarterly reports in respect of any environmental matters as may arise or require attention.

12.14. The Terminal Operator may, as required by Law, not by any means cause significant pollution or degradation of the environment and shall:

- 12.14.1. provide TNPA within a reasonable period with certified copies of any notices and directives issued by a Relevant Authority to the Terminal Operator to take steps to address pollution or negative impact on the environment;
 - 12.14.2. provide TNPA with certified copies of any report, including an emergency report, submitted by the Terminal Operator to a Relevant Authority regarding pollution or negative impacts on the environment;
 - 12.14.3. take all reasonable measures as envisaged by applicable Environmental Laws, including NEMA and the National Water Act, 36 of 1998, to investigate, assess and evaluate the impact of its activities on the environment of the Port and on the water resources on or below the Port;
 - 12.14.4. if the Construction Works or services directly or indirectly cause any pollution, environmental degradation or negative impact on the Environment, the Terminal Operator shall, at its own costs, undertake efficient and effective means of combating, mitigating, cleaning, collecting and/or disposing of all pollutants, or of otherwise addressing the environmental damages or other negative impact with the appropriate remedial and/or rehabilitative measures, to the satisfaction of any Relevant Authority; and
 - 12.14.5. take every reasonable precaution to prevent the spillage of Cargos and/or other material (including fuel and waste) from vessels, vehicles, Cargo handling equipment and Terminal Infrastructure and Terminal Equipment, and take immediate steps to mitigate and remedy any spillage to the satisfaction of SAMSA, TNPA and any other Relevant Authority, at the Terminal Operator's expense.
- 12.15. If the Terminal Operator fails to comply promptly with any of the obligations imposed under this clause, TNPA shall be entitled to immediately take whatever steps necessary to combat, mitigate and remedy any such pollution, environmental degradation or other impact on the environment, and to recover all reasonable costs incurred by TNPA from the Terminal Operator.
- 12.16. Should TNPA, in writing, determine that the Terminal Infrastructure shall be decommissioned upon the earlier of the cancellation or termination of this Agreement or the termination of the Operations Period, the Terminal Operator shall develop and

submit a Decommissioning EMP to TNPA and the Relevant Authority for implementation during the Decommissioning Period in terms of the Decommissioning EMP guidelines, which guidelines shall be provided to the Terminal Operator by TNPA or any requirements that may be stipulated by a Relevant Authority. The Decommissioning EMP shall be required to be approved by TNPA and all applicable Relevant Authorities in order for the duly approved Decommissioning EMP to be submitted to TNPA at least 12 (twelve) months prior to the end of the Operations Period.

- 12.17. Upon the cancellation or termination of this Agreement, the Terminal Operator shall be obliged, at its own cost, to clean-up, remove and rehabilitate any pollution, environmental degradation or environmental impact that may have occurred during its operation of the Terminal in accordance with the provisions of the Law and the Authority's requirements.
- 12.18. The Terminal Operator shall procure that its employees, agents and sub-contractors comply fully at all times with all of the Terminal Operator's obligations as specified in this clause 12 (*Environmental Compliance*) and the Terminal Operator shall be responsible for any breach or non-compliance by its agents or sub-contractors of any such obligations.

13. Empowerment Obligations

- 13.1. The Terminal Operator shall comply with its obligations and commitments as set out in the B-BBEE Commitment Schedule (Schedule 12), and the Economic Development Plan (Schedule 24), including the Economic Development Value Summary Worksheets incorporated therein, for the duration of this Agreement.
- 13.2. The Terminal Operator shall, ensure that it achieves and holds a level 4 B-BBEE Contributor Status Level or its equivalent in terms of the prevailing sector code for the maritime transport and service sector and/or petroleum and liquid fuels sector codes published in terms of section 9 of the B-BBEE Act and shall further maintain such Contributor Status Level for the duration of the Operations Period.
- 13.3. The Terminal Operator shall on an annual basis, before the end of each Financial Year, or on such other date as determined by TNPA, provide TNPA with a certificate of accreditation from an accredited verification agency verifying the Terminal Operator's B-BBEE Contributor Status Level.

13.4. The Terminal Operator further undertakes to:

- 13.4.1. promote job creation, job retention, skills development and undertake such further supplier development initiatives as set out in its Supplier Development Plan, which is to be annexed hereto as in Schedule 10 (*Supplier Development Plan and Supplier Development Value Summary Worksheet*) of this Agreement;
- 13.4.2. improve its Contributor Status Level as set out in its B-BBEE Improvement Plan which is annexed hereto as Schedule 12 (*B-BBEE Improvement Plan*).

13.5. The actual performance of the Terminal Operator against its targets and commitments in the B-BBEE Improvement Plan and the Supplier Development Plan, will be reviewed annually by TNPA, following the completion of each Contract Year. TNPA shall provide the Terminal Operator with a list of all the information which it reasonably requires the Terminal Operator to provide in respect of for each Contract Year by no later than 40 (forty) Business Days before the end of each Contract Year.

13.6. Subject to the rights of TNPA to terminate this Agreement under clause 42 (*Termination for Terminal Operator Default*), following receipt of the Annual Report, TNPA shall review compliance by the Terminal Operator with the targets and commitments in, the B-BBEE Improvement Plan and the Supplier Development Plan in respect of the preceding Contract Year.

13.7. In order to conduct the annual review, the information requested by TNPA in terms of clause 13.5 shall be submitted by the Terminal Operator in writing in terms of clause 31.1.2 and shall form part of the Annual Report.

13.8. TNPA shall communicate its initial comments and any requests for additional information within 15 (fifteen) Business Days after the information has been supplied by the Terminal Operator in terms of clause 13.6 read with clause 31.1.2, and will take into consideration any response by the Terminal Operator to these initial comments, provided that such response is submitted within 10 (ten) Business Days of the initial comments and/or requests envisaged above. If TNPA intends to make a negative finding regarding any aspect of the performance of the Terminal Operator, it shall give reasonable notice of its intention to do so to the Terminal Operator and representatives

of TNPA and the Terminal Operator shall meet to discuss the proposed finding before a final decision is made.

- 13.9. When, in the opinion of the Terminal Operator, events or circumstances occur which may impact negatively on its achievement of its targets and commitments in the B-BBEE Improvement Plan and/or the Supplier Development Plan, the Terminal Operator shall notify TNPA in writing within 10 (ten) Business Days of the occurrence and both the Terminal Operator and TNPA shall document the details of the occurrence of such events or circumstances. The targets and commitments in the B-BBEE Improvement Plan and/or the Supplier Development Plan, as applicable, may be adjusted or reduced in accordance with such terms as the Parties may agree, should the Terminal Operator be prevented or delayed in performing its obligations by reason of a Force Majeure event. Furthermore, the targets and commitments in the B-BBEE Improvement Plan and/or the Supplier Development Plan, as applicable may be reviewed and amended, by agreement between the Parties, in the case of any other event or circumstance demonstrably beyond the reasonable control of the Terminal Operator, which had a material, negative impact on the achievement of the targets or commitments by the Terminal Operator.
- 13.10. If the Terminal Operator fails to achieve compliance with the targets and commitments in the B-BBEE Improvement Plan and the Supplier Development Plan in respect of any Contract Year (the "**Penalty Period**"), as determined in accordance with Schedule 11 (*Penalties*) and such failure is not attributable to any action, inaction or breach by TNPA of its obligations under this Agreement or due to Force Majeure (a "**Failure**") TNPA shall be entitled to impose the penalties envisaged in Schedule 11 (*Penalties*) in respect of such Failure.
- 13.11. Such penalties shall be calculated from the completion of the first Contract Year onwards but shall only be imposed on the Terminal Operator in respect of any Penalty Period, with effect from the completion of the 4th Contract Year onwards.
- 13.12. In relation to any Penalty Period in respect of which a Failure occurs the Terminal Operator shall as part of the Annual Report envisaged in clause 31, submit a written remedial plan to TNPA, which shall detail the remedial steps that the Terminal Operator will take during the Penalty Period immediately following the Penalty Period in respect of which such Failure arose, in order to remedy the Failure and to achieve compliance with the Supplier Development Scoring Target referred to in Schedule 11 (*Penalties*).

- 13.13. If the Terminal Operator: (i) fails to comply with clause 13.2; and/or (ii) incurs a Failure and associated penalties in respect of any Penalty Period following completion of the 4th Contract Year; and/or (iii) fails to submit a remedial plan in terms of clause 13.12; and/or (iv) fails to comply with a remedial plan submitted in terms of clause 13.12 in respect of any Penalty Period following completion of the 4th Contract Year; (v) fails to comply with the targets in the BB-BEE Level Commitment Schedule, TNPA shall be entitled to exercise its rights in accordance with the provisions of clause 42 (*Terminal Operator Default*).
- 13.14. The provisions of clauses 30.5.10 and 30.5.11 shall apply equally to the imposition and recovery of penalties by TNPA in terms of this clause 13 (*Empowerment Obligations*).
- 13.15. The Parties agree that in the event that any penalties incurred in terms of this clause 13 (*Empowerment Obligations*) are determined to be a penalty in terms of the Conventional Penalties Act, 1962, TNPA shall be entitled to claim liquidated damages from the Terminal Operator *in lieu* of the relevant penalty, in an amount equal to such penalty.
- 13.16. The Terminal Operator shall incorporate the "Increased Competitiveness, Capability and Capacity Supplier Development Classification Matrix in Schedule 24 (*Economic Development Plan*) into its supply chain and procurement practices and shall at the request of the TNPA submit such reports as may be requested and required in respect of the extent of the Terminal Operator's compliance thereto from time to time.

14. Access to documents, copyright, and related matters

- 14.1. The Terminal Operator shall, at no cost to TNPA or any other Relevant Authority, at any time make available to TNPA and/or such Relevant Authority, as the case may be, upon request by any of them, all documents which are or were acquired or brought into existence by the Terminal Operator for the purpose of or in connection with the Project or supplied to the Terminal Operator from other parties to the Associated Agreements.
- 14.2. The Terminal Operator shall use its best endeavours to procure that all software, source codes and manuals, programmes and documentation shall be provided to the Terminal Operator by its suppliers upon termination of such a supplier contract. The Terminal Operator shall procure and be granted a perpetual non-exclusive royalty-free licence

to use same for the continued Operation and Maintenance of the Terminal, which licence shall be transferred to a Substitute Entity or to a third party for continuing the Operation, Maintenance and/or upgrade of the Terminal in accordance with the provisions of the Operations Agreement in force at that time.

- 14.3. Copyright owned by the Terminal Operator, Construction Contractor or Operator in all Project Documents shall be transferred free of any cost to TNPA on termination of this Agreement or expiry of the Operating Term, whichever is earlier.
- 14.4. To the extent that the Terminal Operator is the owner of the copyright in the D&C Specifications, the Operating Specifications and other documents issued by TNPA or the Terminal Operator, such copyright shall be the property of TNPA. To the extent necessary, any copyright in terms thereof shall be ceded, assigned and made over to TNPA. The Terminal Operator may at its cost (and shall allow other parties to the Associated Agreements at their cost to), copy, use and communicate any such document for the purposes of the respective Associated Agreements. The Terminal Operator shall not (and shall ensure that other parties to the Associated Agreements shall not), without TNPA's consent, use, copy or communicate to a third party such documents, except as strictly necessary for the purposes of the Associated Agreements. In addition to and without limiting the foregoing, the Terminal Operator shall deliver the Construction Documents and Operating Documents, and to the extent that the Terminal Operator is the owner of the copyright in any such documents, or the Terminal Operator is otherwise lawfully able or entitled to do so, transfer the copyright in such documents to TNPA on the earlier of:
 - 14.4.1. the termination of this Agreement; or
 - 14.4.2. the termination of the Construction Contract; or
 - 14.4.3. the termination of the Operations Agreement; or
 - 14.4.4. the appointment of a Substitute Entity and provided that such documents have, or such copyright has not already been delivered or transferred to TNPA, as the case may be, upon the appointment of such Substitute Entity.
- 14.5. Upon termination of this Agreement due to Terminal Operator Default, the Terminal Operator shall upon request by TNPA provide copies of or access to TNPA in respect of or to any other Relevant Authority designated by TNPA, the Project Documents, which

access and copies shall be at no cost to TNPA or such Relevant Authority, and shall be for their use in relation to the Construction works and/or Operation and Maintenance before the appointment of a Substitute Entity, if any. The Terminal Operator further agrees, upon expiry of the Project Term or termination of this Agreement for whatsoever cause, to ensure the transfer of ownership of the Project Document (to the extent owned by the Terminal Operator, Construction Contractor or Operator) to TNPA. The Terminal Operator shall procure that TNPA is legally entitled to use such Project Documentation and any other information which is not owned by the Terminal Operator, Construction Contractor or Operator and which is necessary for the Construction works and/or continued Operation and Maintenance.

- 14.6. Save in the course of the proper discharge of its duties hereunder, the Terminal Operator shall not and shall ensure that other parties to the Associated Agreements shall not, during the Construction Period and Operating Term or at any time thereafter, disclose to any person or otherwise make use of any information relating to the Project, TNPA or the Terminal Operator (including, but without limitation, information relating to the Construction works, Operation and Maintenance, the contents of any documents, including any legal agreements, prepared by or on behalf of the Terminal Operator or to which the Terminal Operator is a party), save for such information that is or comes into the public domain (other than through the default of the Terminal Operator or other parties to the Associated Agreements), other than with the prior approval of TNPA. Nothing contained in this clause shall preclude the Terminal Operator from using such information in enforcing its rights against TNPA or any other person.
- 14.7. Unless otherwise agreed to by TNPA, and except as provided for in this Agreement or the Associated Agreements, the Terminal Operator and other parties to the Associated Agreements shall have no other interest or benefit in or to receive any other remuneration in connection with the Project or any part thereof. The Terminal Operator shall not (and shall ensure that other parties, to the Associated Agreements shall not) be engaged in any activity which might conflict with the interests of TNPA under this Agreement or the Associated Agreements, unless such activity is carried out pursuant to the enforcement of its rights thereunder. Nothing in this clause shall prevent the Terminal Operator from enforcing their rights under this Agreement and any Associated Agreements.

15. Performance Guarantees

15.1. Delivery of Performance Guarantees

The Terminal Operator shall obtain, at its own cost, the on-demand Performance Guarantees referred to below in this clause 15 (*Performance Guarantees*), in such a form as per the relevant schedules hereto and to the satisfaction of the TNPA.

15.2. Concession Fee Guarantee

15.2.1. The Terminal Operator shall, no later than the commencement of the Construction Period, provide an irrevocable bank guarantee in the sum equal to [] Concession Fee as payable during the first year, excluding VAT thereon, as security for the payment of any and all amounts payable by the Terminal Operator in terms of this Agreement.

15.3. Construction Performance Guarantee

15.3.1. The Terminal Operator shall, no later than 30 (thirty) days before the Effective Date obtain the Construction Performance Guarantee, which shall be an unconditional, irrevocable, on demand guarantee in favour of the Terminal Operator, from the Construction Contractor as at the Effective Date to the value as may be agreed to with the Construction Contractor and which shall remain in place until and upon the issue of the Completion Certificate upon completion of the Construction Works as contemplated in clause 28.4 (*Completion of Construction Works*) to secure the performance by the Construction Contractor of its obligations in terms of the Construction Agreement, as at the Effective Date.

15.3.2. The Construction Performance Guarantee shall be substantially in the form of the guarantee annexed to this Agreement as Schedule 13 (*Construction Performance Guarantee*).

15.3.3. The Construction Performance Guarantee shall be valid from the Effective Date until the expiry of the Completion Defects Rectification Period (as this latter term is defined in the Construction Agreement) and shall be returned to the Terminal Operator within 14 (fourteen) Days after the expiry of the Completion Defects Rectification Period.

15.4. Final Maintenance Guarantee

- 15.4.1. The Terminal Operator shall obtain a Final Maintenance Guarantee in favour of TNPA in an amount equal to 10% (ten per centum) of the value of the Terminal as provided for in the Base Case Financial Model.
- 15.4.2. The Final Maintenance Guarantee shall be an unconditional, irrevocable, on demand bank guarantee which is substantially in the form of the guarantee annexed to this Agreement as per Schedule 15 (*Final Maintenance Guarantee*).
- 15.4.3. The Final Maintenance Guarantee shall be submitted by no later than 12 (twelve) months prior to the expiry of the Operations Period and remain valid until the expiry of the Operations Period. The Final Maintenance Guarantee shall be released to the Terminal Operator once the Terminal Operator has satisfied TNPA that it has attended to the refurbishment of the Terminal, the Terminal Infrastructure and the Terminal Equipment, if applicable, so as to render the Terminal fully operational following the Operations Period and that the Terminal Operator has complied with its maintenance obligations in respect of the Terminal as detailed in the Operational Plan.
- 15.4.4. In the event that TNPA is satisfied that the Terminal Operator is maintaining the Terminal in accordance with its annual maintenance plans and in accordance with TNPA's asset maintenance plans to the extent applicable, it shall be entitled to waive its right to call for the submission of such a Maintenance Guarantee.

15.5. Terminal Operator's Obligations incorporated into Associated Agreements

- 15.5.1. The Terminal Operator shall ensure, where possible, that the Construction Contractor incurs the same obligations to the Terminal Operator under the Construction Agreement, as the Terminal Operator has imposed upon it in terms of this Agreement in respect of the Construction Works and Operation and Maintenance.

- 15.5.2. The Performance Guarantee shall also secure the obligations of the Construction Contractor under the Associated Agreements in favour of the Terminal Operator.

15.6. Enforcement Action

- 15.6.1. The Performance Guarantees shall secure the Terminal Operator's performance of its obligations to TNPA in respect of the Construction Works, Operations and Maintenance, and may be called on by TNPA to the extent of any Losses, costs, damages or expenses suffered or incurred by TNPA as a result of a breach by the Terminal Operator of the aforesaid obligations including, but not limited to, compensation to TNPA for any actions taken by TNPA as a result of such breach by the Terminal Operator of its obligations.
- 15.6.2. Prior to enforcing any such Performance Guarantee as aforesaid, TNPA shall give notice to the Terminal Operator, informing the Terminal Operator of the breach giving rise to the right, on the part of TNPA, to enforce the Performance Guarantee. If such breach is not remedied within the stipulated remedy period as contemplated in clause 43.2 (*Remedy Provisions*), and subject to the terms and conditions contained in the relevant or applicable Performance Guarantee, TNPA may enforce the applicable Performance Guarantee for an amount equal to any cost, Losses, damages or expenses incurred by TNPA in respect of any such breach by the Terminal Operator.

16. Project Insurance

16.1. General obligations

- 16.1.1. The Terminal Operator shall, in accordance with this clause 16 (Project Insurance), obtain and maintain in effect, at its own cost and expense, with a reputable insurance company such insurance coverage as is required by:
- 16.1.1.1. any Laws; and
- 16.1.1.2. the standards of a Reasonable and Prudent Operator.

16.1.2. The Terminal Operator shall take reasonable steps to ensure that its Subcontractors obtain and maintain in effect at all times such insurance cover as is appropriate for a reasonable and prudent contractor.

16.1.3. Application of insurance proceeds

16.1.3.1. Unless the TNPA (acting reasonably) otherwise agrees in writing, the Terminal Operator shall apply all proceeds of any insurance claim made due to loss or damage to the Project or any part of the LNG Terminal (other than claims under any loss of revenue policies) towards reinstatement, reconstruction, replacement, repair or renewal of such loss or damage in the first instance.

16.1.4. **Uninsurable Risks**

16.1.4.1. If a risk usually covered by the Project Insurances becomes Uninsurable, then the Terminal Operator shall notify TNPA within 3 (three) Days of that risk becoming Uninsurable.

16.1.4.2. If both Parties agree, or it is determined in accordance with clause 56.7 (fast-track dispute resolution), that:

16.1.4.3. such risk is Uninsurable;

16.1.4.4. such risk being Uninsurable is not caused by the actions or omissions of the Terminal Operator or a Subcontractor; and

16.1.4.5. other service providers carrying on businesses similar to the Project would cease to operate their business as a result of such event being uninsurable, then the Parties shall meet to discuss the means by which such risk should be managed (including by way of self-insurance by either Party).

- 16.1.5. The Terminal Operator shall bear the onus of proving the circumstances in clauses 16.1.4.3 and 16.1.4.5.
- 16.1.6. If the requirements of clauses 16.1.4.3 and 16.1.4.4 are satisfied, then the Agreement shall continue in full force and effect.
- 16.1.7. On the materialization of such risk, but only if such risk is still Uninsurable, TNPA and the Terminal Operator shall enter into negotiations to reach agreement on the most appropriate remedial action, failing which such dispute shall be determined in accordance with clause 56.7 (fast-track dispute resolution). TNPA shall, at TNPA 's option, either pay to the Terminal Operator:
 - 16.1.8. an amount equal to the insurance proceeds that would have been payable had the relevant risk continued to be insurable and this Agreement will continue; or
 - 16.1.9. an amount equal to the amount set out in clause 49 (Termination amount for invalidation in terms of Section 67 of the Act) and this Agreement will terminate.

17. Port Users and Port Rules

The Terminal Operator shall fulfil its obligations, duties and responsibilities under this Agreement and in particular (without limitation) its duties in respect of the provision of the Construction Works, the Operation and Maintenance and the services:

- 17.1. so as not to interfere with the use of the Port, its facilities and the Port Infrastructure by other Port Users;
- 17.2. in compliance at all times with the Act, all other applicable legislation and the Port Rules; and
- 17.3. the TNPA's the Liquid Bulk Terminals Mandatory Requirements for Safety Health, Environment, process safety, civil, structural, mechanical and electrical marked Schedule 19.

18. Changes in the Terminal Operator

- 18.1. The Terminal Operator shall notify TNPA forthwith on becoming aware of any change in the legal or beneficial ownership from time to time of the Terminal Operator. In the event that such change constitutes a Change in Control as defined in clause 1.1.21 and entails the transfer, cession or assignment of the Terminal Operator's rights granted in terms of this Agreement, the Terminal Operator shall provide TNPA with any information which TNPA may reasonably require (and which the Terminal Operator is reasonably able to provide) relating thereto and the Terminal Operator shall be obliged to obtain, TNPA's written consent prior to effecting such a Change in Control.
- 18.2. The Terminal Operator shall obtain TNPA's written consent (which consent shall not be unreasonably withheld or delayed) prior to any Change in Control. TNPA shall notify the Terminal Operator whether it consents to the Terminal Operator within 20 (twenty) Business Days, or such extended time as may be agreed to in writing by the parties.
- 18.3. TNPA shall not unreasonably refuse its consent to any change in control of the Terminal Operator which is intended to produce compliance with the B-BBEE Improvement Plan. Any dispute as to whether TNPA is acting unreasonably in refusing its consent to such transfer shall be resolved in accordance with the fast-track dispute resolution procedure.

19. TNPA's Assistance and Rights and Limitations on Liability

- 19.1. Except as otherwise provided in this Agreement, TNPA shall:
 - 19.1.1. assist the Terminal Operator in its dealings with any Relevant Authority in connection with implementing the Project in accordance with the terms and conditions set forth herein; and
 - 19.1.2. make every reasonable effort to assist the Terminal Operator to obtain those Consents necessary for the Construction Works and Operation and Maintenance of the Terminal, provided that TNPA shall not be liable or responsible for any failure of the Terminal Operator to obtain any such Consents. If the Terminal Operator fails to obtain any such Consents, the Terminal Operator and TNPA shall agree, in good faith, on a mutually acceptable solution within a reasonable time period of the Terminal

Operator failing to obtain such Consents, failing which the matter shall be dealt with in accordance with clause 56 (*Dispute Resolution*).

- 19.2. Nothing in this Agreement shall preclude or in any manner limit the rights of TNPA or any other Relevant Authority from granting such further or other concessions as it in its sole discretion deems fit, nor shall the Terminal Operator have any claim against TNPA or any other Relevant Authority arising from the grant of such further or other concessions, in any other port in South Africa.
- 19.3. TNPA shall not be liable to the Terminal Operator for the volume of demand for the services of the Terminal Operator and it shall be the responsibility of the Terminal Operator to adequately market the Terminal and the services of the Terminal Operator.
- 19.4. No warranties, representations or undertakings are given as to the accuracy or completeness of any information provided by TNPA and/or its advisors. None of TNPA nor its advisors shall be liable for any error, misrepresentation or omission in any such information.
- 19.5. Notwithstanding anything else contained in this Agreement, the Terminal Operator shall not in any way be relieved from any obligation under this Agreement nor shall it be entitled to claim against TNPA or any other Relevant Authority and/or their respective officers, employees, agents and/or representatives on grounds that any information, whether obtained from or made available by TNPA or any such other Relevant Authority and/or their respective officers, employees, agents and/or representatives or otherwise is incorrect or insufficient and shall make its own enquiries as to the accuracy and adequacy of that information.
- 19.6. Where in this Agreement any power, duty, function or discretion is given or is to be carried out or exercised by TNPA, such power, duty, function or discretion may be carried out or exercised by any Person nominated by TNPA.

20. TNPA Step-in

- 20.1. TNPA may be authorised by the Minister of Transport, with the concurrence with the shareholding Minister to take any action in connection with the Operation and Maintenance and Construction Works, and/or the operation or the Terminal in the Port because a serious and urgent risk arises to the health or safety of persons or property,

or to the environment, or to national and public safety and/or to discharge a statutory duty, then TNPA shall be entitled to take action in accordance with the provisions of this clause.

20.2. If pursuant to this clause 20 (*TNPA Step-in*), TNPA wishes to take action, it shall as soon as possible after reaching its determination to do so notify the Terminal Operator in writing of:

20.2.1. the action it wishes to take;

20.2.2. its reasons for taking such actions;

20.2.3. the date when it wishes to commence such action;

20.2.4. the time period (the "**TNPA Step-in Period**") which it reasonably believes will be necessary for such action and which must be a fixed period; and

20.2.5. to the extent practicable, the effect of such action on the Terminal Operator on its obligations to perform the Operation and Maintenance and Construction Works, and/or services of the Terminal Operator during TNPA Step-in Period.

20.3. Following the service of such notice, TNPA shall take such action as notified under clause 20.2 and any ancillary action as it reasonably believes is necessary (the "**Required Action**") and the Terminal Operator shall give all reasonable assistance to TNPA in the conduct of such Required Action.

20.4. If the Terminal Operator is not in breach of its obligations in terms of this Agreement in respect of which the Required Action is proposed to be taken, then for so long as and to the extent that the Required Action is taken, and this prevents the Terminal Operator from providing any part of the Project:

20.4.1. the Terminal Operator shall be relieved from such obligations; and

20.4.2. in respect of the time period over which such Required Action is conducted, and provided that the Terminal Operator provides the TNPA with such reasonable assistance as the TNPA may need in the conduct of such Required Action (such assistance, however, to be at the expense of the TNPA to the extent of any incremental costs):

- 20.4.3. the TNPA shall pay to the Terminal Operator an amount of monies that is equal to the revenue that the Financial Model projects to have been earned by the Terminal Operator at the time of and during the period of the Required Action if the Terminal Operator was fulfilling all its obligations in respect of the Project that are affected by the Required Action over such period; and
- 20.4.4. the Term of the Operating Period, alternatively the Construction Period, as applicable, shall be extended for the length of the time over which such Required Action is conducted.

20.5 If the Required Action is taken as a result of a breach by the Terminal Operator of any of its obligations under this Agreement, then for so long as and to the extent that such Required Action is taken, and this prevents the Terminal Operator from providing any part of the Project:

- 20.4.5. the Terminal Operator shall be relieved of its obligations in respect of such;
- 20.4.6. the Terminal Operator shall owe TNPA an amount equal to TNPA's costs of taking such Required Action,

provided that, if by the expiry of the Step-in Period, the breach still subsists and if it constitutes a Terminal Operator Default, then TNPA will be entitled to serve a notice in terms of clause 43.1 (*TNPA's option*) requiring the Terminal Operator to remedy the Terminal Operator Default or to put forward a remedial programme.

PART II – PROVISION OF THE PROJECT SITE AND THE PORT

21. Provision of the Port

TNPA shall provide, manage, and maintain the Port, in accordance with the Act and any other Laws that are applicable to such provision, management and maintenance from time to time and in accordance with the Act and other applicable Laws.

22. The Project Site

- 22.1. As provided for in clause 6.1 TNPA, shall remain the owner of the Project Site for the duration of this Agreement. The Terminal Operator acknowledges the ownership rights of TNPA in respect of the Project Site on which the Port is constructed and shall not in any way challenge or procure that any Person challenges or assists any other Person to challenge, such ownership rights and title of TNPA.
- 22.2. The Terminal Operator acknowledges that it does not have and shall not have any rights of title, ownership, lien, leasehold or any other rights in respect of the Project Site, other than the rights of occupation and use as detailed in this Agreement.
- 22.3. The Terminal Operator shall bear all risks and costs with regard to the physical conditions or obstructions on the Project Site (both above ground and subsurface and whether artificial or not) whether foreseen or unforeseen which are encountered during Construction Works or otherwise. The Terminal Operator shall be deemed as at the date of this Agreement to have satisfied itself in all respects as to the properties, nature, condition and extent of the Project Site.
- 22.4. The Terminal Operator shall, for the duration of this Agreement, have the right to use and occupy the Project Site, commencing on the Effective Date.
- 22.5. The Terminal Operator shall, in respect of its rights of use of the Project Site, pay to the TNPA the Rental amount in accordance with the provisions of clause **Error! Reference source not found.** (*Rental*) of this Agreement.
- 22.6. In addition to the payment of Rental in terms of clause **Error! Reference source not found.** (*Rental*), the Terminal Operator accepts responsibility for the payment of all municipal services and Utilities provided in respect of the Project Site, Rates, Taxes, charges, levies, assessments or any equivalent taxation which may at any time be levied by a Relevant Authority upon or in connection with the Project Site, in respect of the period covered by this Agreement, other than any Taxes imposed in relation to the receipt by TNPA of the payment detailed in clause 6.1 or in connection with its disposal of its interest in the Project Site used by the Terminal Operator or in relation to any other amounts received by or accrued to TNPA as a result of or in connection with this Agreement or the Project Site used by the Terminal Operator. All amounts

payable by the Terminal Operator in terms of this clause 22.6, shall be paid monthly within 30 (thirty) days of been issued with an invoice from TNPA.

- 22.7. The Terminal Operator may object to any rates valuation made by any Relevant Authority of the Project Site used by the Terminal Operator or the Project Site of which they form part. The Terminal Operator shall be liable for all costs in prosecuting any such objection and the Terminal Operator shall be entitled to any benefit accruing as a result of a successful objection.
- 22.8. If TNPA is obliged by the Relevant Authority to make payments referred to in clause 22.6, as a result of which TNPA makes such payments on behalf of the Terminal Operator, TNPA shall notify the Terminal Operator in writing about such payments and following such notice the Terminal Operator shall, within 30 (thirty) Days after being called upon to do so, refund to TNPA such payments as TNPA may have made in respect of the rates, Taxes, charges, levies, assessments or equivalent Taxes levied.
- 22.9. TNPA shall use its reasonable endeavors to ensure that no other Port Users negatively affect the use by the Terminal Operator of the Project Site. The Terminal Operator shall not negatively affect the use of the Port by TNPA and the other Port Users, other than the Project Site and then only to the extent detailed in this Agreement.
- 22.10. TNPA shall have the right to enter and inspect the Project Site and the Terminal at reasonable times and on reasonable notice so as to enable it to inspect the Project Site and the Terminal, to fulfil its obligations of maintenance in respect of the Port and to fulfil its obligations as the port authority of South Africa.
- 22.11. The Terminal Operator shall use the Project Site solely for the uses and purposes contemplated in this Agreement in respect of the Project.
- 22.12. The Terminal Operator shall be responsible for maintaining the Project Site in good condition, fair wear and tear excepted, at no cost to TNPA or any other Port User. TNPA shall maintain or shall use its reasonable endeavors to procure that other Port Users maintain the Port, other than the Project Site, in good condition, fair wear and tear excepted, at the cost of TNPA or the relevant Port User. The Parties shall meet and discuss any intended maintenance or repair activities so as to ensure that such

activities are conducted in a manner that minimises any interference with the operations of the other Party.

- 22.13. The Terminal Operator shall not be able to transfer any of its rights in respect of the Project Site or the use thereof to any other Person without the prior written consent of TNPA.
- 22.14. The Terminal Operator shall, subject to TNPA 's approval, provide for:
 - 22.14.1. the clearance of the Project Site;
 - 22.14.2. any diversions to and re-routing of roads not forming part of the Project Site; and
 - 22.14.3. the clearance, relocation and diversion of all Utilities on the Project Site, from the date the Project Site is delivered to the Terminal Operator and which are necessary for the execution of the Project.
- 22.15. The Terminal Operator shall, at its cost, apply for all Consents required for the clearance of the Project Site.
- 22.16. The Terminal Operator shall continue to be bound by and shall honour any existing agreements between TNPA and any person, which grant access or wayleaves to the Project Site. The Terminal Operator may, however, apply to TNPA for any necessary modifications or cancellations of such agreements, such application to be made timeously in order to avoid any delay or additional cost. To the extent that TNPA has the right to modify or cancel such agreements, it shall comply timeously with the Terminal Operator's reasonable request to modify and/or cancel any such agreements.
- 22.17. TNPA shall make available to the Terminal Operator to the extent that it is able to do so, all of agreements referred to in clause 22.16.

23. Key Personnel and Removal of Personnel

- 23.1. The Terminal Operator shall at all times ensure that it and its Subcontractors have sufficient suitable and appropriately qualified and experienced personnel to undertake the Project and that such personnel shall be located in South Africa. Without limiting the generality of the foregoing, the Terminal Operator shall ensure that the key personnel positions are always filled as soon as reasonably possible.
- 23.2. The Terminal Operator shall implement all measures as are required by Law and/or as may be reasonably necessary to ensure the safety of its employees or Subcontractors and shall provide them or ensure that they are provided, free of charge, with any necessary personal protective clothing and equipment.
- 23.3. The Terminal Operator accepts full responsibility for the training of staff and shall ensure that all its employees and Subcontractors are properly trained for the work they are undertaking and are familiar with safety and security requirements that apply to the Terminal.
- 23.4. TNPA may require the Terminal Operator to remove any employee or other personnel of the Terminal Operator or any Subcontractor from the Project Site and the Terminal Operator shall do so (subject to applicable Law) if in the reasonable opinion of TNPA such employee or personnel engages in any conduct which might reasonably result in a breach of any provision of this Agreement or threaten public health, safety or security, and the Terminal Operator shall immediately comply and replace such employee or personnel with suitable appropriately qualified and experienced replacements, subject to applicable Law.

24. Health and Safety

- 24.1. Within 30 (thirty) Days of the Commencement Date, the Terminal Operator shall, at its cost, complete a comprehensive risk assessment of its business, in respect of all areas of the Project Site, and the services or processes it intends to undertake, in accordance with the requirements of the Occupational Health and Safety Act No 85 of 1993, and shall provide TNPA with a full report on its risk assessment so undertaken within 1 (one) month of completing the assessment.
- 24.2. The Terminal Operator shall be responsible for:

- 24.2.1. the implementation of and adherence to the IMDG Code and its regulations;
 - 24.2.2. compliance with the Occupational Health and Safety Act No 85 of 1993 and regulations promulgated in terms of that Act;
 - 24.2.3. procuring and implementing systems and services for the prevention, monitoring, detection and extinguishment of fires or explosions; and
 - 24.2.4. maintaining a working environment which is safe and designed to minimise the risk of injury or illness to any Person present on the Project Site and to minimise the risk of Loss or damage to cargoes, vessels or other moveable and immoveable property in accordance with Law and the further written requirements of TNPA.
- 24.3. The Terminal Operator may not keep or store any hazardous or flammable substances unless:
- 24.3.1. it reasonably requires such hazardous or flammable substances to be kept or stored to enable it to conduct its business on the Project Site;
 - 24.3.2. it has obtained the prior written approval of TNPA; and
 - 24.3.3. it complies with the applicable Law in respect of hazardous substances in general and that specific hazardous substance, in particular.
- 24.4. In addition to the general Port water network provided by TNPA, the Terminal Operator shall provide, at its own cost, such fire water network, facilities or equipment, or other protective measures, that are, in TNPA 's reasonable opinion, necessary in order to provide effective fire protection installations and water supply to the Project Site.
- 24.5. TNPA may, from time to time, require the Terminal Operator, by notice in writing, to provide and install, at the Terminal Operator's cost, such further devices, appliances and installations as TNPA may reasonably consider necessary to minimise the risk of any fire occurring or to prevent the spread of any fire which may occur. The Terminal Operator shall, when so required, comply with the requirements set forth in such notice within the time period specified in the notice.

- 24.6. The Terminal Operator shall be required to ensure that it avails and/or procures appropriate and suitably qualified emergency response personnel to manage emergencies in the Terminal and shall submit, at the request of TNPA, all and any emergency response plans it has prepared in respect of the Terminal.
- 24.7. The Terminal Operator shall be obliged to submit a written report to TNPA in respect of any incident which occurs in the Terminal where any employee of the Terminal Operator or its Subcontractors has been injured, within 24 hours of the occurrence of such incident.

25. Security

- 25.1. The Terminal Operator must ensure that the perimeter of the Project Site is fenced with security fencing of the standard set by the Department Of Transport and required to ensure compliance with the ISPS Code, and that such fencing is maintained at that standard (and repaired as necessary) during the term of this Agreement.
- 25.2. The Terminal Operator shall comply in all material respects with the provisions of the International Maritime Organisation Convention of Safety and Security at Sea, the ISPS Code, and the Terminal Operator shall be responsible for the security of the Project Site and for all persons and movables therein, including cargoes, and for the implementation of and adherence to the ISPS Code.
- 25.3. The Terminal Operator shall submit to TNPA, within 1 (one) month of the Commencement Date, a Project Site security assessment and develop a Project Site security plan for security levels 1, 2 and 3, corresponding with normal, medium and high threat situations. The plan shall indicate the operational and physical security measures the Terminal Operator will take to ensure that it normally operates at security level 1. The plan shall also indicate the additional, or intensified, security measures the Terminal Operator will take when instructed to do so by TNPA, to move to and operate at security level 2 (two), and to operate at security level 3 (three). The Terminal Operator will nominate a Port Terminal Security Officer, organise regular security drills and at all times provide the necessary security equipment on the Project Site.

- 25.4. As part of the Project Site security plan the Terminal Operator shall monitor and control all Cargo, vehicles and people entering and leaving the Project Site and ensure that security communications are always readily available.

PART III – DESIGN AND CONSTRUCTION, OPERATION AND MAINTENANCE

26. Independent Certifier

26.1. Appointment of Independent Certifier

- 26.1.1. TNPA and the Terminal Operator, acting jointly, shall appoint the Independent Certifier for a period which shall include the Development and Construction Period as may be agreed to between the Parties and notified to the Independent Certifiers in terms of the Independent Certifier Agreement. In this regard, it is recorded that TNPA, the Terminal Operator and the Independent Certifier shall enter into the Independent Certifier Agreement as soon as reasonably practicable after the Signature Date, but not later than the Effective Date. The Independent Certifier Agreement shall be substantially in the form of the agreement attached to this Agreement as Schedule 23 (*Independent Certifier Agreement*).
- 26.1.2. TNPA shall propose a person for appointment as the Independent Certifier, for approval by the Terminal Operator.
- 26.1.3. If TNPA and the Terminal Operator are unable to agree on the person to be appointed as the Independent Certifier:
- 26.1.3.1. TNPA and the Terminal Operator shall each nominate 2 (two) persons ("**Nominees**") for the position of Independent Certifier;
- 26.1.3.2. TNPA shall submit the names of the Nominees together with their resumes to the chairperson for the time being of the Consulting Engineers South Africa ("**CESA**") or its successors in title;
- 26.1.3.3. the said chairperson of the CESA shall appoint the Independent Certifier from amongst the Nominees; and

26.1.3.4. such decision of the chairperson of the CESA shall be final and binding on the Parties.

26.1.4. The Independent Certifier will report directly to TNPA and the Terminal Operator, and the fees and disbursements of the Independent Certifier incurred in connection with the Project shall be paid by the Terminal Operator.

26.1.5. In appointing a person to act as the Independent Certifier in the future, the Parties shall comply with TNPA's B-BBEE Policy and requirements in respect hereof.

26.2. Performance of duties of Independent Certifier

26.2.1. The Terminal Operator shall provide the Independent Certifier with a copy of this Agreement and shall, to the extent available to the Terminal Operator, provide the Independent Certifier with the requisite information and documentation in order to enable the Independent Certifier to discharge its duties and/or obligations. Such information and documentation includes, but is not limited to, the following:

26.2.1.1. copies of working drawings, schedules and specifications prepared by the Terminal Operator and its Contractors and/or other Subcontractors (as applicable), sufficient to demonstrate compliance of the Terminal Operator and its Contractors and/or other Subcontractors (as applicable) with the requirements of this Agreement;

26.2.1.2. copies of the Terminal Operator's correspondence relating to the Terminal or building control matters;

26.2.1.3. copies of the Terminal Operator's commissioning reports;

26.2.1.4. if applicable, copies of the Annual Reports submitted by the Terminal Operator in terms of this Agreement;

- 26.2.1.5. copies of the Construction Agreement, the Construction Works Programme, the draft Detailed Design and the D&C Specifications;
 - 26.2.1.6. copies of the Terminal Operator's operating and maintenance manuals as well as the Operational Plan;
 - 26.2.1.7. a copy of the health and safety plan of the Terminal Operator; and
 - 26.2.1.8. any other information that the Independent Certifier reasonably requires in order to fulfil its duties and responsibilities.
- 26.2.2. The Independent Certifier shall be required to perform the duties set forth in this Agreement and as may be specified in the Independent Certifier Agreement.
- 26.2.3. TNPA and the Terminal Operator shall be entitled to consult with the Independent Certifier on any matter relating to the Project, the Construction Agreement, the Construction Works Programme, the Detailed Design and the D&C Specifications. TNPA and/or the Terminal Operator may request the Independent Certifier to deliver and issue an opinion, instruction, certificate or valuation, or other determination as applicable with respect to all technical matters relating to the Project, the Construction Agreement, the Construction Works Programme, the draft Detailed Design and/or the D&C Specifications, in accordance with the provisions of and as contemplated in this Agreement. The Parties agree to comply with such decisions of the Independent Certifier until and unless otherwise determined pursuant to clause 56 (*Dispute Resolution*).
- 26.2.4. The Independent Certifier's duties shall include, but shall not be limited to, the review, inspection, testing, accepting and recommending certification of the Construction Contractor's work to ensure proper performance and completion of the Construction works in accordance with this Agreement, the Construction Agreement and the Independent Certifier Agreement. The Independent Certifier's duties may also include the review, analysis, audit, inspection and testing of the Operator's work to ensure proper Operation

and Maintenance in accordance with the terms of this Agreement, the Operations Agreement and the Independent Certifier Agreement. Nothing in this clause 26 shall alter the rights and obligations of the Parties under this Agreement nor, unless otherwise provided in this Agreement, prevent the Parties from challenging any opinion, instruction, determination, certification or valuation of the Independent Certifier in accordance with clause 56 (*Dispute Resolution*), provided that the Parties shall comply with such decisions by the Independent Certifier until and unless otherwise determined pursuant to clause 56 (*Dispute Resolution*).

- 26.2.5. If any determination which the Independent Certifier is required to make in terms of this Agreement or the Independent Certifier Agreement involves an evaluation or assessment of any matter outside the Independent Certifier's field of expertise as Independent Certifier, the Independent Certifier shall with, the express written approval of the Terminal Operator and TNPA, appoint and rely on an independent expert advice in making such evaluation or assessment.

27. Demolish Existing Buildings

The Terminal Operator shall be entitled to demolish at its own cost all of the Existing Buildings , if any, situated on the Project Site but shall not commence such demolition until it has received prior written approval from TNPA and the Relevant Authority to do so.

28. Design and Construction

28.1. Performance of the Detailed Design

- 28.1.1. The Terminal Operator shall submit Detailed Design and D&C Specifications, Construction Agreement and Construction Works Programme in respect of the Construction Works for the Terminal to the TNPA and the Independent Certifier within 5 (five) months of the Signature Date. The Detailed Design Specifications in respect of the Terminal must comprise all the aspects as detailed in this clause 28 (*Design & Construction*) and show evidence of compliance with the requirements set out in Schedule 24.

- 28.1.2. The Detailed Design and D&C Specification, Construction Agreement and Construction Works Programme shall be reviewed prior to commencement of Construction Works, by the Independent Certifier in accordance with the Rules of Conduct for Registered Persons: Engineering Profession Act, 2000 (Act No. 46 of 2000). If the Independent Certifier, acting reasonably, is of the opinion that the Detailed Designs and the D&C Specifications Construction Agreement and Construction Works Programme comply with the requirements of this Agreement and industry norms and standards, the Independent Certifier shall accept the Detailed Design and D & C Specifications, Construction Agreement and Construction Works Programme in writing.
- 28.1.3. If the Independent Certifier, acting reasonably, is not satisfied with the Detailed Designs and D&C Specifications, Construction Agreement and Construction Works Programme, the Independent Certifier shall notify the Terminal Operator and TNPA of the reasons for its dissatisfaction within 5 (five) Business Days after the review referred to in clause 28.1.2, specifying those elements of the Detailed Design and with which the Independent Certifier, acting reasonably, is dissatisfied.
- 28.1.4. Within 14 (fourteen) Business Days of the Independent Certifier having expressed dissatisfaction with the Detailed Design, D&C Specifications, Construction Agreement and Construction Works Programme, TNPA and Terminal Operator shall attend to such areas of concern raised by the Independent Certifier and re-submit the amended Detailed Design, D&C Specifications, Construction Agreement and Construction Works Programme, as applicable for review by the Independent Certifier (the "**Second Review**").
- 28.1.5. If, after the Second Review, the Independent Certifier, acting reasonably, is still not satisfied with the Detailed Design, D&C Specifications, Construction Agreement and Construction Works Programme, the Independent Certifier shall notify the Terminal Operator and TNPA of the reasons for its dissatisfaction within 5 (five) Business Days after the Second Review, specifying those elements of Detailed Design, D&C Specifications, Construction Agreement and Construction

Works Programme, as applicable, with which the Independent Certifier, acting reasonably, is still dissatisfied. The Independent Certifier and the Parties shall arrange a meeting that includes the Designer and endeavor to reach mutual agreement on the correction of the the areas of concern raised by the Independent Certifier.

28.1.6. Once the Detailed Design, D&C Specifications, Construction Agreement and Construction Works Programme have been accepted in writing by the Independent Certifier, they shall be deemed to have been approved by TNPA.

28.1.7. The Terminal Operator shall perform or procure the performance of the Construction Works in accordance with Detailed Design, D&C Specifications, Construction Agreement and Construction Works Programme the Construction Agreement, the Construction Works Programme, accepted in writing by the Independent Certifier.

28.1.8. All reviews undertaken in this clause 28.1 as a result of the Independent Certifier dissatisfaction as contemplated from clause 28.1.4 above shall be undertaken at the Terminal Operator's cost and shall not constitute any form of a variation or change in scope.

28.2. **Execution of Construction Works**

28.2.1. The Terminal Operator remains accountable for and shall perform or procure the performance of the Construction Works in accordance with the provisions of this Agreement, Construction Agreement, the Construction Works Programme, the D&C Specifications and the Detailed Design.

28.2.2. The Terminal Operator shall bear sole responsibility for the procurement of all construction materials in accordance with the approved Detailed Design, the adequacy of the design and compliance with the D&C Specifications and the Detailed Design.

28.2.3. The Terminal Operator may submit to the Independent Certifier for review, acceptance and recording of proposals for modifications by the Terminal Operator to the design, which, in the Terminal Operator's

opinion, would improve the quality or safety of the Terminal provided that any such modifications and any related amendments to the Construction Agreement, the Construction Works Programme, the Detailed Design and/or the D&C Specifications, shall only be effected if approved in writing by the Independent Certifier and TNPA.

- 28.2.4. The location, design and construction of any points of access to and/or egress from the Project Site both during construction and afterwards shall be in accordance with the D&C Specifications and the Detailed Design or otherwise be subject to the prior consent of TNPA and the Terminal Operator.

28.3. Commencement of Construction Works

The Terminal Operator shall be obliged to commence construction of the Construction Works on the date as specified in Construction Works Programme and/or by no later than 90 days after the Effective Date or any such date as may be agreed between the Parties in writing.

28.4. Completion of Construction Works

- 28.4.1. Completion of the Construction Works shall be effected not later than the Target Completion Date, unless such date is extended in terms of this Agreement.
- 28.4.2. Upon the Construction Contractor giving notice to the Terminal Operator in terms of the relevant Construction Agreement of the anticipated date of completion of the Construction Works, the Terminal Operator shall promptly and, in any event within 7 (seven) Days after receipt of such notice, notify TNPA and the Independent Certifier of such anticipated date, provided that such notice shall be given not less than 14 (fourteen) Days before such anticipated date.
- 28.4.3. TNPA and the Independent Certifier shall inspect the Construction Works on such anticipated date of Construction Completion or as soon as reasonably practicable thereafter, but in any event within 7 (seven) Days after such anticipated date.

- 28.4.4. If the Independent Certifier is reasonably of the opinion that completion of the Construction Works has taken place, the Independent Certifier shall forthwith issue the Completion Certificate.
- 28.4.5. If the Independent Certifier is not satisfied that completion as set out in clause 28.4.4 has occurred, the Independent Certifier shall notify the Terminal Operator and TNPA of such failure to attain completion of the Construction Works within 5 (five) Business Days after the inspection referred to in clause 28.4.3 specifying those elements of the Terminal or other conditions that remain to be satisfied by the Terminal Operator.
- 28.4.6. The issuing of a Completion Certificate shall not be withheld or delayed notwithstanding that minor items have yet to be completed and/or attended to and such outstanding items shall be reflected in a Snagging List (as defined in clause 28.4.8).
- 28.4.7. The Independent Certifier shall issue a Completion Certificate within 5 (five) Business Days after the completion, to the Independent Certifier's satisfaction, of the Construction Works specified in the notice contemplated in clause 28.4.5 and the satisfaction of any other conditions specified.
- 28.4.8. The Independent Certifier shall identify in a list ("**Snagging List**") appended to the Completion Certificate any unfulfilled obligations of the Terminal Operator ("**Unfulfilled Obligations**"), which the Terminal Operator has undertaken to complete in respect of the Construction Works and the time within such Unfulfilled Obligations are to be completed or certify that there are no Unfulfilled Obligations in respect of the Construction Works. The Terminal Operator shall attend to such Unfulfilled Obligations within the time specified in the Snagging List.
- 28.4.9. If the Terminal Operator has suffered delay in the execution of its rights or obligations in terms of this Agreement as a result of the Independent Certifier's failure to act in accordance with this clause 28.4 (*Completion of Construction Works*), such event shall constitute a Relief Event and shall be governed by the provisions of clause 39 (*Consequences of a Relief Event*).

28.5. **Archaeological matters**

- 28.5.1. All fossils, coins, articles of value or antiquity, structures and other remains or things of geological or archaeological interest or burial sites discovered on the Site ("**Archaeological Articles**") shall (as between the Parties) be the property of TNPA. The Terminal Operator shall take all reasonable precautions to prevent its agents, representatives and employees, labour or other persons from removing or damaging any such Archaeological Articles. The Terminal Operator shall, immediately upon discovery of such Archaeological Articles, advise TNPA, who shall issue instructions for dealing with it, accordingly.
- 28.5.2. If the Terminal Operator has suffered delay in the execution of its rights or obligations in terms of this Agreement as a result of having followed TNPA's instructions as contemplated in clause 28.5.1 or any obtaining the Consents required in respect of such Archaeological Articles and their removal or preservation, such event shall constitute a Relief Event and shall be dealt with in accordance with clause 39 (*Consequences of a Relief Event*).

28.6. **Utilities and Utility wayleaves**

- 28.6.1. TNPA shall arrange for Utilities between the port boundary and the Project Site provided that, for the avoidance of doubt, TNPA shall not be liable or responsible for any Utilities at the Terminal, including the removal and disposal of waste.
- 28.6.2. TNPA shall have the right to approve the establishment on or over and/or relocation from the Project Site, at the request of any public or private Utility, of Utility wayleaves including, but not limited to, power pylons or lines, water or gas pipes and telecommunication lines or pylons.
- 28.6.3. If such establishment and/or relocation has delayed the Construction Works or the Scheduled Operations Commencement Date or adversely affected the normal course of Operation and Maintenance, such event shall constitute a Relief Event and shall be dealt with in accordance with clause 39 (*Consequences of a Relief Event*).

28.7. Information relating to the Project and the Construction Works

- 28.7.1. The Terminal Operator shall furnish to TNPA, or any of its duly authorised representatives, all such reports and other such information in relation to the Project and the Construction Works as TNPA may reasonably request from time to time.
- 28.7.2. The Terminal Operator shall cause the Construction Contractor to provide directly to TNPA copies of the reports of the Construction Contractor as set forth in this Agreement and the relevant Construction Agreement.
- 28.7.3. Upon completion of any part of the Construction Works, the Terminal Operator shall supply TNPA with the Construction Documents, copies of all "as-built" drawings and such other technical and design information and completion records relating to the finished Construction Works as TNPA may reasonably request.

28.8. Disruption to Port and Port Users

The Terminal Operator shall ensure that none of the Construction Works cause any disruption to existing Port Users nor to activities on adjoining land except to the extent that such disruption cannot reasonably be avoided as a result of any Construction Works being carried out. Where disruption cannot reasonably be avoided, the Terminal Operator shall ensure that appropriate traffic and other appropriate management measures are implemented to minimise the effect of any such disruption on Port Users.

29. Operations Commencement for the Project

- 29.1. The Terminal Operator shall with effect from the Operations Commencement Date, perform or procure the performance of Operation and Maintenance of the Terminal in accordance with the Operational Plan.
- 29.2. Within 30 (thirty) Days after the Operations Commencement Date, TNPA shall announce the Terminal open.

29.3. The Terminal Operator shall not operate the Terminal, provide services or charge or collect fees in respect of the services until the Independent Certifier has issued the Completion Certificate.

29.4. Approval to commence operations

29.4.1. TNPA shall, subject to any IMDG Code related permissions being obtained, authorise the commencement of operations and in accordance with the provisions of the Act, grant approval to the Terminal Operator to commence operations at the Terminal and shall at the same time announce the Terminal open and that the Terminal Operator is authorised to charge and collect fees in respect of the services, with effect from the date that the Independent Certifier issues the Operations Certificate. The date specified by TNPA in the relevant notice issued in respect of such approval, as the date upon which the aforesaid approval and authorisation comes into operation or takes effect shall be the Actual Operations Commencement Date.

29.4.2. Notwithstanding but without prejudice to the provisions of clause 29.2, the Terminal Operator shall not operate the Terminal or charge or collect fees in respect of the Service until the Independent Certifier has issued the Operations Certificate in terms of clause 28.4.

30. Operation and Maintenance

30.1. Obligation to Operate and Maintain

During the Operations Period, the Terminal Operator shall be obliged to undertake Operation and Maintenance activities of the Terminal subject to, and in accordance with the terms of the Operational Plan and this Agreement.

30.2. Standards of Operation and Maintenance

30.2.1. Generally, the Operation and Maintenance of the Terminal shall be carried out in accordance with the Law and in conformity with the standard of care and workmanship prescribed in the Operational Plan, original equipment manufacture's standard and TNPA's Asset Maintenance Manual to the extent applicable to the Terminal, using equipment and materials which are of suitable

quality for the purposes and uses intended and free of defects and deficiencies, and in accordance with the specifications of such equipment.

30.2.2. The Terminal Operator shall submit an annual maintenance programme for the Terminal in respect of Terminal Infrastructure and Terminal Equipment in accordance with the Schedule 22 (*Annual Reporting*).

30.2.3. Any changes to the annual maintenance programme, after such programme has been submitted to TNPA as contemplated in clause 30.2.2. shall require the prior approval of TNPA, which approval shall not be unreasonably withheld.

30.3. **Management**

30.3.1. The Terminal Operator shall ensure that, subject to the other provisions of this Agreement, the Terminal is open to operate the Terminal and that the use of the Terminal and operation of the Terminal are convenient and safe at all times and (for the avoidance of doubt) 24 (twenty-four) hours of each Day.

30.3.2. The Terminal Operator shall take all reasonable steps in the performance of its obligations hereunder in such a way so as to prevent the occurrence of any environmental or health and safety hazards.

30.3.3. The Terminal Operator shall otherwise manage the Terminal and all vessels using the Terminal in accordance with the Act, the Port Rules, the Operation and Maintenance Manuals and the Operational Plan.

30.3.4. The Terminal Operator shall at all times exercise its rights strictly in compliance with the provisions of this Agreement and applicable Law.

30.4. **Marketing**

30.4.1. The Terminal Operator shall actively market the Terminal and the services of the Terminal Operator internationally. In the event that the marketing materials contains information of the Port, which is not in the public domain, the Terminal Operator shall submit all information, materials, documents and any other data that it intends to use in respect of its marketing campaign in

respect of the marketing of the Terminal and the services of the Terminal Operator to TNPA for approval prior to its use thereof.

- 30.4.2. Within 30 (thirty) Days of the receipt by TNPA of the information, materials, documents and other data detailed in clause 30.4.1, TNPA shall either grant or withhold its consent in respect of the use thereof in the marketing of the Terminal and the services of the Terminal Operator, provided that TNPA shall not unreasonably withhold its consent. If TNPA withholds its consent, it will provide its written reasons for such withholding at the time that it notifies the Terminal Operator that it is withholding its consent. If TNPA has withheld its consent in respect of any such information, materials, documents or other data, the Terminal Operator shall not be entitled to use it in the marketing of the Terminal and the services of the Terminal Operator.

30.5. Terminal Operator Performance and Penalties

- 30.5.1. The Terminal Operator shall use its best efforts to promote and develop the Terminal and the services of the Terminal Operator, in order to achieve optimum utilisation of the Terminal and Port Infrastructure and in a manner, which is consistent with sound business practices, the Business Case and International Best Practice.
- 30.5.2. Without limiting the generality of clause 30.5.1, but subject to clause 30.5.7, the Terminal Operator shall meet the Terminal Operator Performance Standards with the effect from the commencement of the Operations Period.
- 30.5.3. At the end of each period of 5 (five) Contract Years during the Operations Period the Parties shall meet to review and where necessary adjust the Terminal Operator Performance Standards.
- 30.5.4. The actual performance of the Terminal Operator will be reviewed quarterly by TNPA against the Terminal Operator Performance Standards. TNPA will provide the Terminal Operator with a list of all of the information which it reasonably requires the Terminal Operator to provide for each Quarter no later than 10 (ten) Business Days before the beginning of that Quarter.
- 30.5.5. In order to conduct the Quarterly review, the Terminal Operator shall provide TNPA, within 10 (ten) Business Days after the end of each Quarter, with all

information that TNPA requires to assess the Terminal Operator's performance in that Quarter.

30.5.6. TNPA shall communicate its initial comments and any requests for additional information within 10 (ten) Business Days after the information has been supplied by the Terminal Operator in terms of clause 30.5.5, and will take into consideration any response by the Terminal Operator to these initial comments, provided that this response is submitted within 10 (ten) Business Days of the initial comments. Where TNPA makes a negative finding regarding any aspect of the performance of the Terminal Operator, it shall give reasonable notice to that effect to the Terminal Operator and representatives of TNPA and the Terminal Operator shall meet to discuss and develop a performance improvement plan or a performance remediation strategy, in terms of which:

30.5.6.1. a plan of action with appropriate timelines shall be implemented by the Terminal Operator without delay; and

30.5.6.2. the results thereof be submitted within the set timelines to TNPA for review and final decision and/or outcome.

30.5.7. When, in the opinion of the Terminal Operator, circumstances occur which may impact negatively on its achievement of its Terminal Operator Performance Standards, the Terminal Operator shall notify TNPA in writing within 10 (ten) Business Days of the occurrence and both the Terminal Operator and TNPA shall document the details of the occurrence. The Terminal Operator Performance Standards may be relaxed in accordance with such terms as the Parties may agree, should the Terminal Operator be prevented or delayed in performing its obligations by reason of a Force Majeure event. The Terminal Operator Performance Standards may be reviewed and amended, by agreement between the Parties, in the case of any other event or circumstance demonstrably beyond the control of the Terminal Operator, which had a material, negative impact on the achievement of the targets by the Terminal Operator.

30.5.8. Subject to the rights of TNPA to terminate this Agreement under clause 47 (*Termination for Terminal Operator Default*), if the Terminal Operator fails to

achieve the minimum performance standards set out under this clause 30.5 and Schedule 16C (*Key Performance Areas*) at the conclusion of the year under assessment (the "**Assessment Period**"), and such failure is not attributable to any action, inaction or breach by TNPA of its obligations under this Agreement ("**Failure**"), TNPA will notify the Terminal Operator of such Failure and the manner in which the Penalty, as shall be determined in accordance with the cascade formula in Schedule 17E (*Penalty and Incentive Cascade Formula*), shall be imposed.

- 30.5.9. If Terminal Operator achieves minimum performance standards set out under this clause 30.5 and Schedule 16C (*Key Performance Areas*) and does so better than in the previous Assessment Period, TNPA will notify the Terminal Operator of their entitlement to an Incentive applicable to it, as shall be determined in accordance with the cascade formula contained in Schedule 17E (*Penalty and Incentive Cascade Formula*).
- 30.5.10. The penalties payable in terms of clause 30.5.11 shall be in addition to any other amounts payable in respect of the Penalty Period. TNPA shall not be entitled to seek damages for any failure of the Terminal Operator to comply with the Terminal Operator Performance Standards and in respect of which there is a specified penalty in Schedule 11 (*Penalties*) or elsewhere in this Agreement. The provisions of this clause 30.5 (*Terminal Operator Performance and Penalties*) are, however, without prejudice to TNPA's rights to claim damages for any other breach or default, not related to Performance, of this Agreement or to exercise any other rights available to it at Law or under this Agreement arising as a result of any failure of the Terminal Operator as referred to in clause 30.5.8 or any other cause whatsoever.
- 30.5.11. Any monies due to TNPA or due by TNPA pursuant to the provisions of this clause 30.5 shall be payable within 30 (thirty) Days after certification by the TNPA (as the case may be) that the Terminal Operator is liable or is entitled (as the case may be) to such payment.
- 30.5.12. TNPA shall be entitled to set-off any amounts payable as aforesaid against any monies due or which may become due to the Terminal Operator under this Agreement or against any Performance Guarantee provided that, should the Terminal Operator notify TNPA with appropriate supporting information that

the Terminal Operator has not committed the breach complained of and that no such right to set-off or deduct penalties has arisen. In the instance that a dispute arises under this clause, either Party shall approach an “**Independent Expert**” (a person with appropriate expertise in respect to) to determine whether TNPA shall be entitled to the aforesaid penalties, the costs of whom shall be borne by the Party that refers the dispute and who’s determination shall be final and binding. The payment or set-off of such penalties shall not relieve the Terminal Operator from any liability or from any of its obligations under this Agreement. The payment, set-off of or claim in respect of such penalties shall not relieve the Terminal Operator from any liability or from any of its obligations under this Agreement. For the avoidance of doubt, the Operating Performance Guarantee shall also be given in respect of and cover the Terminal Operator's obligations in terms of this clause 30.5 (*Terminal Operator Performance*) as well as Schedule 17 (*Terminal Operator Performance Standards*) and Schedule 11 (*Penalties*).

30.5.13. In relation to any Penalty Period in respect of which a Failure occurs the Terminal Operator shall as part of the Annual Report envisaged in clause 31, submit a written remedial plan to TNPA, which shall detail the remedial steps that the Terminal Operator will take during the Penalty Period immediately following the Penalty Period in respect of which such Failure arose, in order to remedy the Failure and to achieve compliance with the relevant Performance Standards.

30.5.14. If the Terminal Operator: (i) incurs a Failure and associated penalties in respect of any Penalty; and/or (ii) fails to submit a remedial plan in terms of clause 30.5.13; and/or (iii) fails to comply with a remedial plan submitted by it in terms of clause 30.5.13, TNPA shall be entitled to exercise its rights in accordance with the provisions of clause 42 (*Terminal Operator Default*).

30.5.15. The Parties agree that in the event that any penalties incurred in terms of this clause 30.5 (*Terminal Operator Performance and Penalties*) are determined to be a penalty in terms of the Conventional Penalties Act, 1962, TNPA shall be entitled to claim liquidated damages from the Terminal Operator *in lieu* of the relevant penalty, in an amount equal to such penalty.

31. Reporting Requirements

- 31.1. The Terminal Operator shall, annually, within 1 (one) Month after the approval of its Annual Report by its Relevant Authority, submit to TNPA such annual report (the "**Annual Report**") which shall set out a detailed written account of the following matters:
- 31.1.1. the Operation and Maintenance of the Terminal in respect of the relevant Review Year including the Terminal Operator's compliance with the Operational Plan, the maintenance plan envisaged in clause 30.2.2 and the Performance Standards;
 - 31.1.2. the extent to which the Terminal Operator's undertakings contained in clause 13 (*Empowerment Obligations*) have been met, as well as documenting any other achievements in promoting empowerment initiatives;
 - 31.1.3. the quality and level of the services provided by the Terminal Operator at the Terminal during the relevant Review Year;
 - 31.1.4. the Terminal Operator's compliance with the terms of this Agreement, the Act and the Regulations;
 - 31.1.5. the Terminal Operator's compliance in respect of any Occupational, Health and Safety legislation;
 - 31.1.6. steps taken by the Terminal Operator to eliminate anti-competitive and discriminatory practices; and
 - 31.1.7. the quality and level of performance with regard to such environmental criteria and social responsibility requirements as may have been set by TNPA during or prior to the relevant Review Year or required by other national legislation.
- 31.2. The Annual Report shall be provided in the format set out in Schedule [] (*Annual Reporting*), and shall address the matters set out above and shall also include detailed information in respect of the following:
- 31.2.1. such statistical information relating to its operations as may reasonably be required by TNPA; statistics on the number, type and size of vessels serviced

at the Project Site; and statistics on the number of trucks handled at the Project Site interface with land transport and cargo dwell time statistics;

- 31.2.2. its Cargo forecast for the remainder of the Concession Period, or such shorter period as may be specified, in a form determined by TNPA from time to time; and
 - 31.2.3. future development and acquisition plans, including any required or proposed new Terminal Equipment, relating to the Terminal or any Service provided at the Terminal.
- 31.3. The Terminal Operator shall, if requested by TNPA in writing, submit to TNPA an executive summary of the Annual Report, excluding any Confidential Information and/or any information not required to be provided by the Terminal Operator, which summary may be disclosed to members of the public.
- 31.4. TNPA may require the Terminal Operator, at the Terminal Operator's cost, to submit such additional information as may be reasonably necessary to explain or amplify any Annual Report or other report or information submitted by the Terminal Operator in terms of clause 31.1 above.
- 31.5. The Terminal Operator must, within 24 (twenty-four) hours of its occurrence or discovery, inform TNPA of:
- 31.5.1. any industrial dispute between the Terminal Operator and its employees;
 - 31.5.2. any industrial accident or disaster involving any employee or agent of the Terminal Operator or any injury on duty or fatality;
 - 31.5.3. any occurrence of fire within the Project Site;
 - 31.5.4. any theft or pilferage within the Project Site or any theft or pilferage involving any Cargo in the Terminal Operator's possession or control;
 - 31.5.5. any proceedings or claim instituted or made against the Terminal Operator which could materially affect its ability to perform any obligation or to comply with any term or condition of this Agreement; and
 - 31.5.6. any spillage or pollution that may have an impact on the Environment.

32. Financial Accounts, Reports, inspection and reporting of changes

32.1. Financial accounts and auditors

- 32.1.1. The Terminal Operator shall arrange at its own expense and cost for an accounting and cost control system consistent with Generally Accepted Accounting Principles and for the appointment as auditors of a firm of independent accountants, for the Terminal.
- 32.1.2. The Terminal Operator shall keep all its financial books and records, for the Terminal at all times within South Africa. The accounts of the Terminal Operator will be kept in Rand. Such accounts and the reports of such accountants shall be provided to TNPA.
- 32.1.3. TNPA may meet with the Terminal Operator's auditors regarding the Terminal Operator's accounts and operations, for the Terminal twice in a Contract Year. TNPA may also, at its own cost, require that officers of TNPA or a firm of independent accountants conduct additional audits of the Terminal Operator after 10 (ten) Days prior notice to the Terminal Operator in respect of the Terminal.

32.2. Right of Inspection

In accordance with the provision of Section 63 of the Act, the Terminal Operator shall furnish to TNPA any information that TNPA may reasonably request and shall permit representatives of TNPA to visit the Construction Works, the Terminal and the Project Site and Terminal, and any of the other offices where the business of the Terminal Operator is conducted, and to have access to the Terminal Operator's books of accounts and records, designs, drawings and generally to all information that is customarily available to any shareholder of the Terminal Operator and in connection with the Project, and shall make such information, books of accounts and records, drawings and other data relating to Operation and Maintenance in respect of the Terminal, available to TNPA. The Terminal Operator shall provide TNPA with full read only access to the Terminal Operator's computer for the review and monitoring of revenue collection at the Terminal.

32.3. Periodic Reports

- 32.3.1. Together with the Annual Report the Terminal Operator shall furnish TNPA with:
- 32.3.1.1. 3 (three) copies of the Terminal Operator's complete audited financial statements in respect of the preceding Contract Year (which are consistent with the books of accounts and prepared in accordance with International Financial Reporting Standards), together with an audit report thereon, all in accordance with the requirements of the Laws and regulations pertaining to accounting;
 - 32.3.1.2. a copy of any management letter or other communication sent by the auditors to the Terminal Operator or to its management in relation to the Terminal Operator's financial, accounting and other systems, management and accounts.
- 32.3.2. The Terminal Operator shall furnish TNPA, as soon as practicable but in any event no later than 45 (forty-five) Days after the end of each Quarterly period of each Contract Year (except for the last Quarterly period of each financial year), with:
- 32.3.2.1. 3 (three) copies of the Terminal Operator's complete financial statements for such Quarterly period (which are consistent with its books of account and prepared in accordance with International Financial Reporting Standards, including in each such report a balance sheet, a statement of income and a statement of cash flows as of the end of and for such period, and for the period from the beginning of such year to the close of such Quarterly period, certified by an officer of the Terminal Operator, all in accordance with the requirements of the Laws and regulations pertaining to accounting;
 - 32.3.2.2. a report on any factors materially and adversely affecting or which might materially and adversely affect the Terminal Operator's business and operation or its financial condition;

- 32.3.2.3. a list of creditors that individually and when aggregated make up in excess of 10% of the total value of liabilities i.e. all individual creditors that makes up more than 10 % of total liabilities (financial obligations;
- 32.3.2.4. a statement describing in detail any Related Party Transaction during the respective period;
- 32.3.2.5. a report on the implementation and progress of the Project, containing such information as TNPA may reasonably require and disclosing any factors of which the Terminal Operator is aware materially and adversely affecting or which would be otherwise likely, materially and adversely to affect, the carrying out of the Project; and
- 32.3.2.6. a statement identifying separately the capital costs, construction costs and Operation and Maintenance costs, during the respective period, for the Terminal and the operation of the Terminal separately.
- 32.3.3. The Terminal Operator shall furnish to TNPA as soon as practicable, but in any event no later than 35 (thirty-five) Days prior to the end of each Contract Year, the projected profit and loss account and the budget for the following Contract Year, together with an analysis thereof.
- 32.3.4. The Terminal Operator shall furnish to TNPA as soon as practicable, but in any event no later than the end of each Quarterly period of each Contract Year, projected cash flow for the following Quarterly period, together with an analysis thereof.
- 32.3.5. The Terminal Operator shall immediately report to TNPA details of the following events:
 - 32.3.5.1. any charge, lien or attachment imposed on the Terminal Infrastructure, the Terminal Equipment and/or any of the Terminal Operator's property and any seizure thereof which charge, lien, attachment or seizure will have a material adverse effect on the

ability of the Terminal Operator to Operate and Maintain the Terminal and/or to perform its obligations under this Agreement;

32.3.5.2. any transaction in respect of the shares of the Terminal Operator of which the Terminal Operator is aware;

32.3.5.3. any default under any Financing Agreement, the circumstances thereof and possible results as viewed by the Terminal Operator; and

32.3.5.4. any matter the Terminal Operator is aware of, which might influence the validity of this Agreement or any matter that constitutes a material breach, including without limitation, any possible Termination Event, the circumstances thereof, and possible results as viewed by the Terminal Operator.

32.3.6. The Terminal Operator shall provide a monthly written report to TNPA with respect to the matters specified in the Detailed Design, D & C Specifications and Operational Plan to be reported relating to provision of the Operation and Maintenance of the Terminal.

32.4. Delivery of records

For a period of not more than 12 (twelve) months following the termination of this Agreement for whatever reason, the Terminal Operator shall retain in safe custody and storage all such records as are referred to in clause 32.3 (*Periodic Reports*) which were in existence at the date of termination. Upon expiry of such period or such earlier date as may be agreed by TNPA and the Terminal Operator, the Terminal Operator shall deliver all such records (or where such records are required by legislation to remain with the Terminal Operator or the Terminal Operator's shareholders, copies thereof) to TNPA or to its duly authorised representative, in such manner and at such location as TNPA shall determine. TNPA shall make such records available for inspection by the Terminal Operator at any reasonable time.

32.5. Reporting of changes

32.5.1. The Terminal Operator shall notify TNPA in the event that it:

- 32.5.1.1. makes or allows any change in or to its corporate structure, the Constitutional Documents or its financial year end;
- 32.5.1.2. makes or allows any material change in the Terminal Operator's organisational structure, or any other material change which might materially adversely affect the performance of the Terminal Operator's obligations under this Agreement;
- 32.5.1.3. save for the Associated Agreements, enter into any agreement or series of agreements in respect of the Terminal, which contemplates or could involve revenue or contractual obligation that is in excess of 10 % of the asset base and/or annual turnover and/or annual Operating expenditure;
- 32.5.1.4. enter into any Related Party Transaction;
- 32.5.1.5. enter into any agreement or incur any liability which is not in the ordinary course of business of the Terminal Operator; or
- 32.5.1.6. make any change in the insurance policies contemplated in clause 16 (*Project Insurance*).
- 32.5.2. The Terminal Operator shall notify TNPA of any claim brought or threatened which is reasonably likely to have a material effect on the Terminal Operator or on its ability to perform its obligations under this Agreement.

33. Rights of Access

- 33.1. Subject to the reasonable safety requirements of the Terminal Operator, TNPA, and/or their representatives may, at their own risk, enter upon the Terminal (or any other site or property used by the Terminal Operator for the purposes of the Project) to inspect the Construction Works, the Terminal and Operation and Maintenance, and to monitor compliance by the Terminal Operator with its obligations under this Agreement.
- 33.2. TNPA and/or their representatives may at all times, but subject to the reasonable security and safety requirements of the Terminal Operator, enter upon any property used by the Terminal Operator as training or workshop facilities and places where work is being prepared or materials being obtained for the Project.

33.3. The Terminal Operator shall procure that adequate facilities are made available to TNPA, and/or their representatives and that reasonable assistance is given for the purposes of clauses 33.1 and 33.2, subject to the Terminal Operator's construction or operational requirements not being adversely affected and to reimbursement of any reasonable costs or expenses of the Terminal Operator.

34. Authority Changes

34.1. TNPA shall have the right to require changes to be made to the D&C Specifications and the Operational Plan in accordance with this clause ("**Authority Changes**"), in which event TNPA shall serve notice thereof ("**Authority Notice of Change**") on the Terminal Operator. Such Authority Changes shall always provide for any variation of the Terminal Operator's obligations under this Agreement and the Associated Agreements and be technically feasible.

34.2. The Authority Notice of Change shall:

34.2.1. set out the Authority Change required in sufficient detail to enable the Terminal Operator to calculate and provide the estimated revised costs of the Project in accordance with clause 34.3 ("**Estimate**");

34.2.2. require the Terminal Operator to provide TNPA, within such period as determined by TNPA, (which period shall not be less than 28 (twenty-eight) Days after receipt by the Terminal Operator of the Authority Notice of Change), with the Estimate.

34.3. As soon as practicable and in any event within the period specified in the Authority Notice of Change, the Terminal Operator shall deliver the Estimate to TNPA. The Estimate shall include the opinion of the Terminal Operator on:

34.3.1. any impact on completion of the Construction Works;

34.3.2. any impact on the performance of the Terminal Operator's rights or obligations under this Agreement and any impact on the Terminal Operator's obligations to third parties;

34.3.3. any amendment required to this Agreement and/or any Associated Agreement as a result of the Authority Change;

- 34.3.4. any estimated revised Project costs that result from the Authority Change;
 - 34.3.5. any capital expenditure that is required or no longer required as a result of the Authority Change; and
 - 34.3.6. the proposed method of certification of any construction or operational aspects of the Terminal Operator's obligations under this Agreement required by the Authority Change if not covered by the procedures set forth in the D&C Specifications, and Operation and Maintenance.
- 34.4. As soon as practicable after TNPA receives the Estimate. TNPA shall assess the Estimate and where necessary the Parties shall discuss and agree the issues set out in the Estimate. In such discussions TNPA may modify the Authority Notice of Change, in which case the Terminal Operator shall, as soon as practicable and in any event within such period as determined by TNPA (which period shall not be less than 28 (twenty-eight) Days after receipt by the Terminal Operator of such modification), notify TNPA of any consequential changes to the Estimate.
- 34.5. As soon as practicable after the contents of the Estimate have been agreed, TNPA shall:
- 34.5.1. confirm the Estimate (as modified); or
 - 34.5.2. withdraw the Authority Notice of Change.
- 34.6. If TNPA does not confirm the Estimate (as modified) within 30 (thirty) Days after the contents of the Estimate having been notified to it in accordance with clause 34.4 or determined pursuant to clause 34.5, then the Authority Notice of Change shall be deemed to have been withdrawn.
- 34.7. If the Estimate (as modified) involves estimated capital expenditure, then the Terminal Operator shall use its reasonable endeavours to obtain funding for the whole of the estimated capital expenditure, on terms satisfactory to the Terminal Operator.

- 34.8. If the Terminal Operator has used its reasonable endeavours to obtain funding for the whole of the estimated capital expenditure but has been unable to do so within 60 (sixty) Days after the date that TNPA confirmed the Estimate, then the Terminal Operator shall have no obligation to carry out the Authority Change, unless TNPA agrees to pay the cost involved.
- 34.9. TNPA may, at any time following the date on which the Estimate is confirmed, agree to meet all or, to the extent the Terminal Operator has obtained funding for part of the capital expenditure, the remaining part of the estimated capital expenditure.
- 34.10. If the Estimate has been confirmed by TNPA and TNPA has agreed to meet all or part of the capital expenditure pursuant to clause 34.9, then the Terminal Operator shall be entitled to compensation as set forth in clause 39 (*Consequences of a Relief Event*).
- 34.11. If the Authority Notice of Change is deemed to be withdrawn in terms of clause 34.6 or if TNPA has confirmed the Estimate and has agreed to meet all or part of the capital expenditure as envisaged in clause 34.10, but TNPA thereafter withdraws the Authority Notice of Change, TNPA shall pay to the Terminal Operator the reasonable costs of providing the Estimate.

PART IV – FINANCIAL PROVISIONS

35. Fees in respect of services

- 35.1. The Terminal Operator shall have the exclusive right and obligation for its benefit and risk to levy and collect tariffs in respect of the services of the Terminal Operator, with effect from the Operations Commencement Date.
- 35.2. Neither TNPA or any other Relevant Authority shall incur or assume any liability for or in connection with the tariffs charged in respect of the services of the Terminal Operator, any system used in respect of such fees or any defect or deficiency therein.
- 35.3. No later than 3 (three) months before the Scheduled Operations Commencement Date, the Terminal Operator shall submit to TNPA the initial tariff rates which it intends to charge in respect of the services of the Terminal Operator with effect from the Operations Commencement Date.

- 35.4. The Terminal Operator must submit to TNPA annually from the Operations Commencement Date, any adjustments to tariff rates which the Terminal Operator intends on implementing and that are in accordance with the necessary statutory and regulatory approvals.
- 35.5. All costs and expenses related to and arising from the charging and collection of tariffs shall be borne by the Terminal Operator.
- 35.6. Tariffs shall be charged and collected in Rands.

36. Refinancing

- 36.1. The Terminal Operator shall promptly notify TNPA in writing prior to taking any steps to implement any proposed Refinancing. Such notice shall include:
 - 36.1.1. full details of any proposed amendments to be made to or waivers granted under any of the Project Documents to give effect to such Refinancing;
 - 36.1.2. a copy of the proposed financial model relating to such Refinancing (if any) and the basis for the assumptions used in that financial model;
 - 36.1.3. the reasons for such Refinancing; and
 - 36.1.4. any other information that may be reasonably necessary to enable TNPA to assess such Refinancing having regard to the provisions of this clause 36 (*Refinancing*).

37. Foreign exchange risk

To the extent that the Terminal Operator at any time enters into any agreement in any currency whereby the risk of currency fluctuations is hedged, TNPA shall not in any circumstances be liable for such hedging arrangements and the Terminal Operator shall not enter into any such arrangements whereby TNPA is or may become so liable. The costs and Losses arising out of such hedging arrangements shall not be included in or form part of any amounts payable by TNPA to the Terminal Operator on the Termination of this Agreement.

38. Default Interest

Interests shall accrue on all overdue amounts payable in terms of this Agreement at the prime overdraft interest rate charged by First National Bank, a division of First Rand Bank Limited (or should First National Bank or First Rand Bank Limited cease to exist, any other major commercial bank in South Africa) plus 2% (two percent).

PART V – RELIEF, AND FORCE MAJEURE EVENTS, CHANGE OF LAW

39. Consequences of a Relief Event

39.1. If and to the extent that a Relief Event:

39.1.1. directly causes a delay in the Operations Commencement Date; and/or

39.1.2. materially adversely affects the ability of the Terminal Operator to perform any of its obligations under this Agreement, then the Terminal Operator shall be entitled to apply for relief from any rights of TNPA arising under clause 42 (*Terminal Operator Default*) and from its obligations under this Agreement.

39.2. To obtain relief, the Terminal Operator must:

39.2.1. as soon as practicable, and in any event within 14 (fourteen) Days after it became aware that the Relief Event has caused or is likely to cause delay and/or materially adversely affect the ability of the Terminal Operator to perform its other obligations, give to TNPA a notice of its claim for relief from its obligations under the Agreement, including full details of the nature of the Relief Event, the date of occurrence and its likely duration;

39.2.2. within 10 (ten) Days of receipt by TNPA of the notice referred to in clause 39.2.1 above, give full details of the relief claimed; and

39.2.3. demonstrate to the reasonable satisfaction of TNPA that:

39.2.3.1. the Terminal Operator and its Subcontractors could not have avoided such occurrence or consequences by steps which they

might reasonably be expected to have taken, without incurring material expenditure;

39.2.3.2. the Relief Event directly caused the delay to the Target Completion Date or the Scheduled Operations Commencement Date or the need for relief from other obligations under the Agreement;

39.2.3.3. the time lost and/or relief from the obligations under the Agreement claimed could not reasonably be expected to be mitigated or recovered by the Terminal Operator acting in accordance with International Best Practice, without incurring material expenditure; and

39.2.3.4. the Terminal Operator is using reasonable endeavors to perform its obligations under the Agreement;

39.2.4. If the Terminal Operator has complied with its obligations under clause 39.2.3 above, then:

39.2.4.1. the Target Completion Date and/or the Scheduled Operations Commencement Date shall be postponed by such time as shall be reasonable for such a Relief Event, taking into account the likely effect of delay; and/or

39.2.4.2. TNPA shall not be entitled to exercise its rights to terminate the Agreement under clause 42 (*Terminal Operator Default*) and, subject to clause 39.3 below, shall give such other relief as may be deemed reasonable for the Relief Event.

39.3. If the information required by clause 39.2 above is provided after the dates referred to in that clause, then the Terminal Operator shall not be entitled to any relief during the period for which the information is delayed.

39.4. The Terminal Operator shall notify TNPA if at any time it receives or becomes aware of any further information relating to the Relief Event, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading.

- 39.5. If a Relief Event continues for a period in excess of 180 (one hundred and eighty) Days, the Parties shall meet in order to find a mutually satisfactory solution for dealing with such prolonged Relief Event.
- 39.6. If the Parties cannot agree the extent of the relief required, or TNPA disagrees that a Relief Event has occurred or that the Terminal Operator is entitled to any extension of the Target Completion Date and/or the Scheduled Operations Commencement Date and/or relief from other obligations under this Agreement, the Parties shall resolve the matter in accordance with clause 56.7 (*fast-track dispute resolution*).

39.6.1.1.

40. Force Majeure

- 40.1. For the purposes of this Agreement, "**Force Majeure**" means any of the following events or circumstances to the extent that they are uninsurable:
- 40.1.1. war, civil war, armed conflicts, or terrorism; or
 - 40.1.2. nuclear contamination unless the Terminal Operator and/or any Subcontractor is the source or cause of the contamination; or
 - 40.1.3. chemical or biological contamination of the Construction Works and/or the Facilities and/or the Project Site from any of the events referred to in clause 40.1.1 above; or
 - 40.1.4. the outbreak of communicable diseases classified and declared as a pandemic by the World Health Organisation, which directly causes either Party to be unable to comply with all or a material part of its obligations under this Agreement.
- 40.2. Subject to clause 40.3, the Party claiming relief shall be relieved from liability under this Agreement to the extent that, by reason of the Force Majeure Event, it is not able to perform all or a material part of its obligations under this Agreement.
- 40.3. Where a Party is (or claims to be) affected by an event of Force Majeure:
- 40.3.1. it shall take all reasonable steps to mitigate the consequences of such an event upon the performance of its obligations under this Agreement,

resume performance of its obligations affected by the event of Force Majeure as soon as practicable and use all reasonable endeavors to remedy its failure to perform; and

- 40.3.2. it shall not be relieved from liability under this Agreement to the extent that it is not able to perform, or has not in fact performed, its obligations under this Agreement due to its failure to comply with its obligations under clause 40.3.1.
- 40.4. The Party claiming relief shall serve written notice on the other Party within 5 (five) Business Days of it becoming aware of the relevant Force Majeure Event. Such initial notice shall give sufficient details to identify the particular event claimed to be an event of Force Majeure.
- 40.5. A subsequent written notice shall be served by the Party claiming relief on the other Party within a further 10 (ten) Business Days, which notice shall contain such relevant information relating to the failure to perform (or delay in performing) as is available, including (without limitation) the effect of the Force Majeure Event on the ability of the Party to perform, the action being taken in accordance with clause 40.3, the date of the occurrence of the Force Majeure Event and an estimate of the period of time required to overcome it and/or its effects.
- 40.6. The Party claiming relief shall notify the other as soon as the consequences of the Force Majeure Event have ceased and when performance of its affected obligations can be resumed.
- 40.7. If, following the issue of any notice referred to in clause 40.5, the Party claiming relief receives or becomes aware of any further information relating to the Force Majeure Event and/or any failure to perform, it shall submit such further information to the other Party as soon as reasonably possible.
- 40.8. The Parties shall endeavor to agree any modifications to this Agreement which may be equitable having regard to the nature of an event or events of Force Majeure. Clause 56 (*Dispute Resolution*) shall not apply to a failure of TNPA and the Terminal Operator to reach agreement pursuant to this clause 40.8, and this Agreement shall terminate in terms of clause 44.4 (*Termination for Force Majeure*) if no such agreement is reached.

41. Unforeseeable Conduct

- 41.1. Should any Unforeseeable Conduct occur which materially and adversely affects the general economic position of the Terminal Operator, the Terminal Operator shall be entitled to such relief from TNPA as shall place the Terminal Operator in the same overall economic position as the Terminal Operator would have been in but for such Unforeseeable Conduct.
- 41.2. The Terminal Operator claiming the occurrence of the Unforeseeable Conduct shall give written notice to TNPA or the Relevant Authority containing reasonable particulars of such conduct and its likely economic consequences to the Terminal Operator.
- 41.3. The TNPA or the Relevant Authority shall have 60 (sixty) Days from the date of receipt of such notice to effect a remedy for the Unforeseeable Conduct which restores the general economic position of the Terminal Operator to that which it would have been in if such Unforeseeable Conduct had not occurred. If the TNPA or the Receiving Authority does not, effect such a remedy within such period, the Parties shall consult within 10 (ten) Business Days after the expiration of such period with a view to reaching a mutually satisfactory resolution of the situation. If a mutually satisfactory resolution has not been reached within such 10 (ten) Business Day consultation period, the matter shall be dealt with in accordance with clause 56 (*Dispute Resolution*).
- 41.4. The Terminal Operator shall use all reasonable endeavours to minimise and mitigate the effects of any Unforeseeable Conduct.

PART VI – TERMINATION

42. Terminal Operator Default

42.1. Definition

"Terminal Operator Default" means any of the following events or circumstances:

- 42.1.1. any arrangement, composition or compromise with or for the benefit of creditors (including any voluntary arrangement as defined in the Insolvency

Act, 1936 or the Companies Act) being entered into by or in relation to the Terminal Operator;

- 42.1.2. a liquidator, business rescue practitioner or the like taking possession of or being appointed over, or any business rescue, winding-up, execution or other process being levied or enforced (and not being discharged within 20 (twenty) Business Days) upon, the whole or any material part of the assets of the Terminal Operator (in any of these cases, where applicable, whether provisional or final, and whether voluntary or compulsory);
- 42.1.3. the Terminal Operator ceasing to carry on business;
- 42.1.4. a resolution being passed, or an order being made for the administration or the commencement of business rescue proceedings, winding-up, liquidation or dissolution of the Terminal Operator (in any of these cases, where applicable, whether provisional or final and whether voluntary or compulsory);
- 42.1.5. the Terminal Operator fails to complete the Construction Works on or before the Target Completion Date;
- 42.1.6. the Terminal Operator fails to commence operations at the Terminal on or before the Scheduled Operations Commencement Date;
- 42.1.7. the Terminal Operator commits a breach of any of its material obligations under this Agreement;
- 42.1.8. the Terminal Operator abandons the Construction Works (other than as a consequence of a breach by TNPA of its obligations under this Agreement);
- 42.1.9. the Terminal Operator, in operating the Terminal, ceases to provide all or a substantial part of the services in accordance with this Agreement (other than as a consequence of a breach by TNPA of its obligations under this Agreement);
- 42.1.10. the Terminal Operator failing to achieve the specific and quantifiable targets detailed in Schedule [] (*Penalties*) for 3 (three) consecutive years;

- 42.1.11. the Terminal Operator failing to comply with any provision of clause 18 (*Changes in the Terminal Operator*);
- 42.1.12. the Terminal Operator fails to pay any sum or sums due to TNPA under this Agreement (which sums are not bona fide in dispute) which, either individually or in aggregate, exceeds R 10 000 000.00 (ten million rand) over a period of 12 months and such failure continues for 20 (twenty) Business Days from receipt by the Terminal Operator of a notice of non-payment from TNPA;
- 42.1.13. the Terminal Operator failing to maintain any required insurance in terms of Clause 16 (*Project Insurance*) and failing to remedy such breach within 14 (fourteen) Days of receiving a written notice from TNPA requiring it to do so or such time reasonably required to reinstate the insurance;
- 42.1.14. any breach of any provision of this Agreement, other than a breach of any material obligation as envisaged in Clause 42.1.7 has occurred more than once and:
 - 42.1.14.1. TNPA has given an initial warning notice to the Terminal Operator describing that breach in reasonable detail and stating that if that breach persists or recurs then TNPA may take further steps to terminate the Agreement; and
 - 42.1.14.2. TNPA has issued a second and final warning notice following the persistence or re-occurrence of that breach in the period of 90 (ninety) Days after the initial warning notice, stating that if that breach persists or re-occurs within the period of 90 (ninety) Days after the final warning notice then TNPA may terminate the Agreement on 30 (thirty) Days' notice to the Terminal Operator; and
 - 42.1.14.3. such breach re-occurs within the said 90 (ninety) Day period referred to in clause 42.1.14.2.

43. Notification

The Terminal Operator shall notify TNPA of the occurrence, and provide details, of any Terminal Operator Default and of any event or circumstance which is likely, with the passage of time or otherwise, to constitute or give rise to a Terminal Operator Default, in either case promptly upon the Terminal Operator becoming aware of its occurrence.

43.1. TNPA 's options

43.1.1. On the occurrence of a Terminal Operator Default, or within a reasonable time after TNPA becomes aware of the same, TNPA may, subject to the provisions of Clause 56 (Dispute Resolution):

43.1.1.1. in the case of the Terminal Operator Default referred to in clauses 42.1.1, 42.1.2, 42.1.3, 42.1.4, 42.1.5, 42.1.7, 42.1.8, 42.1.9, 42.1.10, 42.1.12, 42.1.13 and 42.1.14, terminate this Agreement in its entirety by notice in writing having immediate effect; and

43.1.1.2. while the same is subsisting, in the case of any other Terminal Operator Default referred in clauses 42.1.6 and 42.1.14, serve notice of default on the Terminal Operator requiring the Terminal Operator at the Terminal Operator's option either:

43.1.1.2.1. to remedy the Terminal Operator Default referred to in such notice of default (if the same is continuing) within 30 (thirty) Business Days of such notice of default; or

43.1.1.2.2. to put forward within 20 (twenty) Business Days of such notice of default a reasonable programme for remedying the Terminal Operator Default. The programme shall specify in reasonable detail the manner in, and the latest date by, which such Terminal Operator Default is proposed to be remedied. The Terminal Operator shall only have the option of putting forward a programme in

accordance with this clause if it first notifies TNPA within 15 (fifteen) Business Days of such notice of default that it proposes to do so.

43.2. Remedy Provisions

43.2.1. Where the Terminal Operator puts forward a programme TNPA shall have 30 (thirty) Business Days from receipt of the same within which to notify the Terminal Operator that it does not accept the programme, failing which TNPA shall be deemed to have accepted the programme. TNPA shall act reasonably in rejecting the programme. Where TNPA notifies the Terminal Operator that it does not accept the programme, the Parties shall endeavour within the following 20 (twenty) Business Days to agree on any necessary amendments to the programme put forward. If, following the necessary discussions and amendments, the programme is still not acceptable to TNPA then either party may refer the programme for resolution in accordance with clause 56.7 (*fast-track dispute resolution*).

43.2.2. If:

43.2.2.1. the Terminal Operator Default notified in a notice of default is not remedied before the expiry of the period referred to in the notice; or

43.2.2.2. where the Terminal Operator puts forward a programme which has been accepted by TNPA or has been determined to be reasonable and the Terminal Operator fails to achieve any element of the programme or to complete the programme by the specified end date for the programme (as the case may be); or

43.2.2.3. if any programme put forward by the Terminal Operator is rejected by TNPA as not being reasonable, and the dispute resolution procedure does not find against that rejection, then TNPA may terminate this Agreement in its entirety by written notice to the Terminal Operator with immediate effect, provided that if the Terminal Operator's execution of the programme is adversely affected by the occurrence of a Force Majeure Event or a Relief

Event then, subject to the Terminal Operator complying with the mitigation and other requirements in this Agreement concerning Force Majeure Events or Relief Events (as the case may be), the time for execution of the programme or any relevant element of it shall be deemed to be extended by a period equal to the delay caused by the Force Majeure Event or Relief Event (as the case may be) which is agreed by the Parties or determined in accordance with clause 56.7 (*fast-track dispute resolution*).

43.3. **TNPA's Costs**

- 43.3.1. The Terminal Operator shall reimburse TNPA with all costs incurred by TNPA in exercising any of its rights in terms of Clause 42 (*Terminal Operator Default*) (including, without limitation, any relevant increased administrative expenses).
- 43.3.2. TNPA shall not exercise, or purport to exercise, any right to terminate this Agreement except as expressly set out in this Agreement. The rights of TNPA (to terminate or otherwise) under this clause are in addition (and without prejudice) to any other right which TNPA may have in law to claim the amount of loss or damages suffered by TNPA on account of the acts or omissions of the Terminal Operator (or to take any action other than termination of this Agreement).

44. **TNPA Default**

44.1. Definition "**TNPA Default**" means any one of the following events:

- 44.1.1. an expropriation or requisition of a material part of the Terminal and/or shares of the Terminal Operator, or a material part of the Terminal being removed from the possession of the Terminal Operator by TNPA, other than in terms of this Agreement;
- 44.1.2. a failure by TNPA to make payment of any amount or amounts that are due and payable by TNPA under this Agreement (which amounts are not bona fide in dispute) which, either singly or in aggregate exceeds the sum of R10, 000, 000 (ten million rand) over a period of 12 months and such failure

continued for 20 (twenty) Business Days from receipt by TNPA of a notice of non-payment from the Terminal Operator; and

- 44.1.3. a breach by TNPA of its obligations under this Agreement which substantially frustrates or renders it impossible for the Terminal Operator to perform its obligations under this Agreement for a continuous period of 90 (ninety) Days.

44.2. For the avoidance of doubt, nothing in clause 44.1 shall preclude, prohibit or hamper the Government from undertaking any restructuring or reorganisation of the affairs, rights, obligations, assets or liabilities of TNPA.

44.3. Termination for TNPA Default

44.3.1. On the occurrence of TNPA Default, or within 60 (sixty) Days after the Terminal Operator becomes aware of same, the Terminal Operator may serve notice on TNPA of the occurrence (and specifying details) of such TNPA Default. If the relevant matter or circumstance has not been remedied or rectified within 30 (thirty) Business Days of such notice, the Terminal Operator may serve a further notice on TNPA terminating this Agreement with immediate effect.

44.3.2. The Terminal Operator shall not exercise or purport to exercise any rights to terminate this Agreement (or accept any repudiation of this Agreement) except as expressly provided for herein.

44.4. Termination for Force Majeure

If, in the circumstances referred to in clause 40 (*Force Majeure*), the Parties have failed to reach agreement on any modification to this Agreement pursuant to that Clause within 180 (one hundred and eighty) Days of the date on which the Party affected serves notice on the other Party in accordance with that clause, either Party may at any time afterwards terminate this Agreement by written notice to the other Party having immediate effect, provided always that the effects of the relevant events

of Force Majeure continue to prevent either Party from performing any material obligation under this Agreement.

45. Invalidation in terms of Section 67 of the Act

In the event that it is necessary to change the use to which the Terminal is put in order to improve the safety, security, efficiency and effectiveness of the operations of the Port in accordance with section 67(1)(a) and section 67(1)(b) of the Act, and the new use is incompatible with this Agreement, TNPA may issue a directive, subject to the provisions of section 67(2) (b) of the Act, stipulating that this Terminal Operator Agreement is invalid from the date stipulated in that directive.

46. Effects of Termination

46.1. Notice of Termination

Notwithstanding any provision of this Agreement, on service of a notice of termination, this Agreement shall only terminate in accordance with the provisions of this clause 46 (*Effects of Termination*).

46.2. Continued effect - no waiver

Notwithstanding any breach of this Agreement by either Party, and without prejudice to any other rights which the other Party may have in relation to it, the other Party may elect to continue to treat this Agreement as being in full force and effect and to enforce its rights under this Agreement. The failure of either Party to exercise any right under this Agreement, including any right to terminate this Agreement and any right to claim damages, shall not be deemed a waiver of such right for any continuing or subsequent breach.

46.3. Continued performance

Subject to any exercise by TNPA of its rights to perform, or to procure a third party to perform, the obligations of the Terminal Operator, the Parties shall continue to perform their obligations under this Agreement, notwithstanding the giving of any notice of default or notice of termination, until the termination of the Agreement

becomes effective in accordance with the provisions of this clause 46 (*Effects of Termination*).

46.4. Transfer to TNPA of the Terminal, Associated Agreements and other assets.

On the expiry or termination of this Agreement or, where applicable, the service of a notice of termination in accordance with this Agreement for any reason:

46.4.1. if that occurs prior to the Target Completion Date, in so far as any transfer shall be necessary fully and effectively to transfer property to TNPA, the Terminal Operator shall transfer to, and there shall vest in, TNPA such part of the Construction Works and/or the Facilities as shall have been constructed and such items of the plant and equipment as shall have been procured by the Terminal Operator, and if TNPA so elects:

46.4.1.1. all plant and all materials on or near to the Project Site shall remain available to TNPA for the purposes of completing the Construction Works;

46.4.1.2. the construction plant shall remain available to TNPA for the purposes of completing the Construction Works, subject to payment of the Terminal Operator's reasonable costs; and

46.4.1.3. if TNPA so elects, the Terminal Operator shall procure that any of the Associated Agreements specified by TNPA are assigned to TNPA or any third party nominated by it, provided that where termination occurs under clause 44 (*TNPA Default*), the consent of the relevant Subcontractors shall be required. Where TNPA does not so elect, or any Subcontractor whose consent is required refuses that consent, the Terminal Operator shall procure that all relevant Associated Agreements automatically terminate when this Agreement terminates.

46.4.2. If it occurs after the Completion Date, on service of a notice of termination in accordance with this Agreement for any reason, the Terminal Operator shall:

- 46.4.2.1. engage TNPA with the view to facilitating the "hand over and use" of the Terminal, Terminal Infrastructure and Terminal Equipment for the TNPA to fulfill its statutory obligations as an operator of last resort, on such further terms and conditions as may be agreed to in writing between the Parties, failing which the Terminal Operator shall "hand over" the Terminal to TNPA on payment of appropriate Compensation as provided for in Part VII of this Agreement;
- 46.4.2.2. where possible, procure that any Subcontractor shall (as the case may be), transfer to TNPA, free from any security interest full and unencumbered title in and to all or any part of the Terminal required by TNPA in connection with the Project;
- 46.4.2.3. procure that any Intellectual Property Rights shall be provided to TNPA and TNPA shall be granted a perpetual non-exclusive, royalty-free license to use such Intellectual Property Rights;
- 46.4.2.4. deliver to TNPA (as far as not already delivered to TNPA) one complete set of:
 - 46.4.2.4.1. "as built drawings" showing all alterations made to the Facilities since the commencement of operation of the Terminal;
 - 46.4.2.4.2. Maintenance, Operation and training manuals for the Terminal; and
 - 46.4.2.4.3. the historical operating data and plans of the Terminal, its furniture, fittings and Equipment in a format acceptable to TNPA;
- 46.4.2.5. use all reasonable endeavours to procure that the benefit of all manufacturer's warranties in respect of mechanical and electrical plant and equipment used or made available by Terminal Operator under this Agreement and included in the Terminal are assigned, or otherwise transferred, to TNPA;

46.4.2.6. deliver to TNPA the information referred to in clause 32 (*Financial Accounts, Reports, inspection and reporting of changes*), except where such documents are required by Law to be retained by the Terminal Operator or any Subcontractor concerned, in which case complete copies shall be delivered to TNPA ; and

46.4.2.7. ensure that provision is made in all contracts relating to the Operation and Maintenance of the Terminal, excluding commercial contracts concluded between the Terminal Operator and its customers that TNPA will be in a position to exercise its rights, and the Terminal Operator will be in a position to comply with its obligations, under this clause 46.4.1.3.

46.5. **Termination**

On completion of the transfer required by clause 46.4 (*transfer to TNPA of Terminal, Associated Agreements and other assets*) (except in so far as any of the requirements of that clause may be waived by TNPA), this Agreement shall terminate and, save as provided in clause 46.7 (*Continuing Obligations*), all rights and obligations of TNPA and the Terminal Operator under this Agreement shall cease and be of no further force and effect.

46.6. **Transitional arrangements**

On the termination of this Agreement for any reason, for a period of 3 (three) months both before and after that expiry or any earlier termination, Terminal Operator shall have the following duties:

46.6.1. the Terminal Operator shall co-operate fully with TNPA and any Person who is providing services in the nature of any of the services of the Terminal Operator or any part of thereof , in order to achieve a smooth transfer of the manner in which TNPA obtains services in the nature of the services of the Terminal Operator and to avoid or mitigate in so far as reasonably practicable any inconvenience or any risk to the health and safety of the employees of TNPA, the Port Users and members of the public;

- 46.6.2. the Terminal Operator shall as soon as practicable remove from the Project Site all property not required by TNPA pursuant to clause 46.4 (*transfer to TNPA of the Terminal, Associated Agreements and other assets*) and if it has not done so within 20 (twenty) Business Days after any notice from TNPA requiring it to do so, TNPA may (without being responsible for any loss, damage, costs or expenses) remove and sell any such property and shall hold any proceeds less all costs incurred for the credit of the Terminal Operator;
- 46.6.3. the Terminal Operator shall, by no later than the expiry or the date of any earlier termination of this Agreement becoming effective, deliver to TNPA:
- 46.6.3.1. any keys, remote access apparatus and computer access cards to the Terminal;
 - 46.6.3.2. without prejudice to Clause 14 (*Access to documents, copyright and related matters*), any copyright licenses for any computer programmes (or licenses to use the same) necessary for the operation of the Terminal (but excluding computer programmes which have been developed or acquired by the Terminal Operator for its own use and not solely for the purposes of provision of any of the services at the Terminal or the assignment or transfer of which is otherwise restricted); and
 - 46.6.3.3. the Terminal Operator shall as soon as practicable vacate the Project Site and (without prejudice to the rest of this Clause 46 (*Effects of Termination*)) shall leave the Project Site and the Terminal in a safe, clean and orderly condition;
- 46.6.4. If TNPA wishes to conduct a tender process with a view to entering into a contract for the provision of services provided by the Terminal Operator (which may or may not be the same as, or similar to, such services or any of them) following earlier termination of this Agreement, the Terminal Operator shall co-operate with TNPA fully in such tender process including (without limitation) by:

- 46.6.4.1. providing any information which TNPA may reasonably require to conduct such tender excluding any information which is commercially sensitive to the Terminal Operator (and, for the purpose of this sub-clause, commercially sensitive shall mean information which would if disclosed to a competitor of the Terminal Operator give that competitor a competitive advantage over the Terminal Operator and thereby prejudice the business of the Terminal Operator, but shall exclude any information dealing with employment matters); and
- 46.6.4.2. assisting TNPA, by providing all (or any) participants in such tender process with access to the Project Site and the Terminal.

46.7. **Continuing Obligations**

Save as otherwise expressly provided in this Agreement:

- 46.7.1. termination of this Agreement shall be without prejudice to any accrued rights and obligations under this Agreement as at the date of termination;
- 46.7.2. termination of this Agreement shall not affect the continuing rights and obligations of the Terminal Operator and TNPA under clauses 1 (*Definitions and Interpretation*), 8 (*Indemnity*), 9 (*Terminal Operator's warranties and undertakings*), 12 (*Environmental Compliance*), 14 (*Access to documents, copyright and related matters*), 15.1 (*Delivery of Performance Guarantees*), 19 (*TNPA's Assistance and Rights and Limitations on Liability*), 46.6 (*Transitional Arrangements*), 46.7 (*Continuing Obligations*), 54 (*Corrupt gifts and fraud*), 55 (*Expert Determination*), 56 (*Dispute Resolution*), and 57 (*Information and Audit Access*) or under any other provision of this Agreement which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination; and
- 46.7.3. The continuing obligations referred to in this clause 46.7 shall extinguish on the conclusion of the "hand over" of the Terminal to the satisfaction of both the Terminal Operator and TNPA.

47. Termination Amount on Terminal Operator Default

47.1. Retendering Election

47.1.1. Upon the occurrence of a Terminal Operator Default and subject to clause 47.1.3, TNPA shall be entitled either to:

47.1.1.1. retender the operation of the Terminal in accordance with clause 47.2 (retendering procedure); or

47.1.1.2. exercise its rights as provided for in clause 46.4 and 46.6 request the Terminal Operator to vacate and hand back the Terminal and/or exercise its option to purchase the Terminal Equipment from the Terminal Operator in accordance with clause 47.1.3 hereof below.

47.1.2. Subject to clause 47.1.3, TNPA shall notify the Terminal Operator of its election on or before the date falling 60 (sixty) Days after the Termination Date.

47.1.3. TNPA shall not be entitled to elect to retender the operation of the Terminal for the remaining portion of the Project Term if the Lenders have stepped-in and the Agent has demonstrated to TNPA that there are less than 3 (three) parties (each meeting the criteria in the definition of "Substitute Entity" in the FDA) who have pre-qualified pursuant to an RFQ issued by the Lenders for the operation of the Terminal for the remaining portion of the Project Term.

47.2. Retendering Procedure

If TNPA elects to retender the operation and maintenance of the Terminal under clause 47.1 (retendering election), the following provisions shall apply:

47.2.1. The Terminal Operator and/or its Members shall be precluded from participating, whether directly or indirectly in any manner, whatsoever in the retendering procedure.

- 47.2.2. The objective of the retendering procedure, among others, shall be to establish and (subject to clause 47.2.11) pay to the Terminal Operator and/or Lender, as the case may be the Highest Compliant Tender Price, as a result of the Tender Process.
- 47.2.3. TNPA shall (subject to any legal requirements preventing it from doing so) use its reasonable endeavours to complete the Tender Process as soon as practicable.
- 47.2.4. TNPA shall notify the Terminal Operator of the qualification criteria and the other requirements and terms of the Tender Process, including the timing of the Tender Process, and shall act reasonably in setting such requirements and terms.
- 47.2.5. The Terminal Operator authorises the release of any information that is reasonably required as part of the Tender Process by TNPA, which TNPA would otherwise be prevented from releasing under clause 14 (Access to documents, copyright and related matters).
- 47.2.6. The Terminal Operator may, at its own cost, appoint a Tender Process Monitor for the purposes of observing and reporting to the Terminal Operator on TNPA's compliance with the Tender Process and making representations the TNPA in respect thereof. The Tender Process Monitor will not disclose any Confidential Information to the Terminal Operator, the Lenders or any other person (and shall provide an undertaking to TNPA to such effect as a condition of its appointment) but shall be entitled to advise the Terminal Operator and/or the Lenders as to whether it considers that TNPA has acted in accordance with the Tender Process.
- 47.2.7. The Tender Process Monitor shall be required to enter into a confidentiality agreement with TNPA in a form acceptable to TNPA and shall be entitled to attend all meetings relating to the Tender Process. In addition, the Tender Process Monitor shall be entitled to inspect copies of the tender documentation and bids and shall make written representations to TNPA regarding compliance with the Tender Process. The Tender Process Monitor shall be required to make all representations in a timely manner as the Tender Process proceeds. TNPA shall not be

bound to consider or act upon such representations but acknowledges that such representations may be referred to by the Terminal Operator in the event that the Terminal Operator refers a dispute relating to the Tender Process to dispute resolution in accordance with clause 56.7 (fast-track dispute resolution).

- 47.2.8. TNPA shall, with the express written consent of the Terminal Operator, require bidders to bid on either;
 - 47.2.8.1. the acquisition of the Terminal Equipment and any other movable assets only, and/or
 - 47.2.8.2. the acquisition of the entire business of the terminal as a going concern and, on the basis that they will receive the benefit of any insurance proceeds or outstanding claims under any, material damage insurance policies on the date the New Terminal Operator Agreement is entered into.
- 47.2.9. As soon as practicable after tenders have been received TNPA shall (acting reasonably) evaluate the Tenders and shall notify the Terminal Operator of the Highest Compliant Tender Price.
- 47.2.10. If the Terminal Operator refers a dispute relating to the Highest Compliant Tender Price to dispute resolution in accordance with clause 56 (Dispute Resolution), TNPA shall nevertheless be entitled to enter into a New Terminal Operator Agreement.
- 47.2.11. Upon receipt of the Highest Compliant Tender Price and within 180 (one hundred and eighty) Days after the Adjusted Highest Compliant Tender Price has been determined, TNPA shall pay to the Terminal Operator the Adjusted Highest Compliant Tender Price after TNPA has set off all amounts due and owing to it by the Terminal Operator.
- 47.2.12. The discharge by TNPA of its payment obligation in clause 47.2.11 above shall be in full and final settlement of any and all claims and rights of the Parties as against each other for breaches and/or termination of this Agreement and the Project Documents whether under contract, delict or otherwise.

- 47.2.13. If the Adjusted Highest Compliant Tender Price is not accepted by the Terminal Operator, TNPA shall have no obligation to make any payment to the Terminal Operator, in which event the Terminal Operator shall remain obliged to comply with the provisions of clause 46.4 and 46.6 above. In these circumstances the TNPA shall be released from all liability to the Terminal Operator for breaches and/or termination of this Agreement and any other Project Document whether under contract, delict or otherwise.
- 47.2.14. TNPA may elect at any time prior to the receipt of a Tender to follow the no retendering procedure under Clause 47.3 (no retendering procedure) by notifying the Terminal Operator that this election has been made.
- 47.2.15. If TNPA receives a Tender but decides not to complete the Tender Process, it shall notify the Terminal Operator of this decision and exercise its rights as per the provisions of clause 46.3 and 46.4 and/or 46.5.

47.3. **No Retendering Procedure**

- 47.3.1. If either TNPA is not entitled to or elects not to retender pursuant to clause 47.1 (retendering election) then the following procedure shall apply:
 - 47.3.1.1. The Terminal Operator shall afford the TNPA the first option, by way of written notice, to purchase the Equipment at a value and price determined by an Independent Expert, whose valuation shall be provided to the TNPA by written notice ('Notice').
 - 47.3.1.2. The TNPA shall exercise its option to purchase the Equipment within 90 (ninety) days of receipt of the Notice referred to in 47.3.1.1, failing which the Terminal Operator shall be entitled to sell the Equipment to any third party and hand back the Terminal in accordance with 46.4 and 46.6.
 - 47.3.1.3. In the event of TNPA electing not to purchase the Equipment, the Terminal Operator shall be obliged to remove such Equipment from Project Site within 90 (ninety) days of TNPA

notifying the Terminal Operator of its election not to purchase the Equipment.

- 47.3.2. Save for payment to the Terminal Operator for the Terminal Equipment the, TNPA shall have no obligation to make any payment to the Terminal Operator and shall be released from all liability to the Terminal Operator for breaches and/or termination of this Agreement and any other Project Documents whether under contract, delict or otherwise.

48. Termination Amount for TNPA Default

- 48.1. On termination of this Agreement as a result of a TNPA Default, the TNPA shall pay the Terminal Operator an amount equal to the direct actual costs incurred or sustained by the Terminal Operator as a consequence of the termination of the Agreement (such costs to be calculated by the Terminal Operator, and confirmed by the Payment Expert, and delivered by way of notice to the TNPA). The direct actual costs will be limited to the following:

- 48.1.1. the value of the Terminal Infrastructure which compensation shall be determined with reference to:
- 48.1.2. the fair value of the Equity of the Terminal Operator; alternatively
- 48.1.3. the discounted cash flow (DCF) of all future proceeds in respect of the LNG Terminal for the remainder of the Operating Term,

whichever is higher as at the date of termination; plus

- 48.1.4. the Debt; plus
- 48.1.5. the Subcontractors and Suppliers Costs; plus
- 48.1.6. an amount equal to the redundancy payments for employees of the Terminal Operator not transferring to the TNPA or its nominee that have been or will reasonably be incurred by the Terminal Operator as a direct result of the termination of this Agreement; plus

- 48.1.7. the transfer costs (being all costs incurred by the Terminal Operator in connection with the TNPA taking over the Construction Works (where applicable), the LNG Terminal, the Project Sites, the Consents / Approvals and the Project or to nominate a third party to do so),

provided that the Terminal Operator shall use reasonable endeavours to mitigate its liability in respect of all such amounts;

(such total amount payable by the TNPA to the Terminal Operator shall constitute the "Termination Amount").

48.2. Payment Expert Calculations

- 48.2.1. If any calculation or valuation is required to be made for the purposes of determining an amount payable by the TNPA to the Terminal Operator pursuant to clause 48.1, the same shall be made by the Payment Expert.
- 48.2.2. The Terminal Operator and the TNPA shall ensure that the Payment Expert is appointed within fifteen (15) Business Days of delivery by the Terminal Operator of the notice in terms of clause 44.3.1 alternatively the notice in terms of clause 48.1. The Payment Expert shall have fifteen (15) Business Days to calculate the amount payable by the TNPA to the Terminal Operator pursuant to this clause 48 (Compensation on Termination for TNPA Default).
- 48.2.3. Upon determination of the amount payable by the TNPA to the Terminal Operator pursuant to this clause 48 (Compensation on Termination for TNPA Default), the Terminal Operator shall be entitled to issue a written demand to the TNPA for payment of such amount (which amount shall be payable within 90 (ninety) days of demand).

- 48.3. In making any determination pursuant to this clause 48.2 (Payment Expert Calculations), the Payment Expert shall act as an expert and not an arbitrator.

49. Termination Amount for Invalidation in terms of section 67 of the Act

On termination of this Agreement in terms of section 67 of the Act, TNPA shall pay to the Terminal Operator the compensation as determined in accordance with the provisions of clause 48 (Termination Amount for TNPA Default).

50. Termination Amount for termination for Force Majeure

On termination of this Agreement in accordance with the provisions of clause 44.4 (*Termination for Force Majeure*), no payments and/or compensation will be payable by TNPA to the Terminal Operator and the Terminal Operator will have no claim against TNPA for any payments and/or compensation upon such termination.

51. Termination Amount for corrupt gifts and fraud

51.1. On termination of this Agreement in accordance with clause 51 (*Corrupt Acts and fraud*), TNPA shall pay the Terminal Operator, an amount equal to the market value of any other assets and rights of the Terminal Operator (other than those transferred to TNPA pursuant to this Agreement) less the liabilities of the Terminal Operator properly incurred in connection with this Agreement, provided that no account shall be taken of any liabilities and obligations of the Terminal Operator out of:

- 51.1.1. agreements or arrangements entered into by the Terminal Operator to the extent that such agreements or arrangements were not entered into in connection with the Terminal Operator's obligations in relation to the Project;
- 51.1.2. agreements or arrangements entered into by the Terminal Operator to the extent that such agreements or arrangements were not entered into in the ordinary course of business and on commercial arm's length terms; and
- 51.1.3. less any amounts that TNPA is entitled to set off and deduct under clause 59.11 (*set-off*).

51.2. If the aggregate of the amounts referred to above is less than zero, then, for the purposes of the calculation in this clause 51 the aggregate shall be deemed to be zero.

51.3. If the termination is because of a Corrupt Act on the part of the Terminal Operator,

then the amount payable to the Terminal Operator, inclusive of shares and the like, will be zero.

52. Payment of Termination Amount

- 52.1. **"Notice Date"** means the date when the Termination Amount has been determined in accordance with clause 49 (*Termination amount for invalidation in terms of Section 67 of the Act*) or clause 51 (*Termination Amount for corrupt gifts and fraud*).
- 52.2. **"Termination Amount"** means any compensation payable by TNPA to the Terminal Operator on an early termination of the Agreement under clause 49 (*Termination amount for invalidation in terms of Section 67 of the Act*) and 51 (*Termination Amount for corrupt gifts and fraud*).
- 52.3. **Method of payment**
 - 52.3.1. TNPA shall pay to the Terminal Operator the Termination Amount no later than 60 (sixty) Days after the Notice Date unless it elects to pay in accordance with clause 52.3.2 below.
 - 52.3.2. TNPA may elect to pay the Termination Amount in not more than 3 instalments, on the dates (the **"Instalment Dates"**) as the Parties may otherwise agree.
 - 52.3.3. From the Notice Date until the date of payment, interest shall accrue on any unpaid element of the Termination Amount at the default rate detailed in clause 38 (*Default Interest*) and be payable on the next occurring Instalment Date.
 - 52.3.4. If TNPA has elected to pay in accordance with clause 52.3.2 above, it may (on 30 (thirty) Days prior written notice to the Terminal Operator) elect to pay any outstanding element of the Termination Amount in full on any Instalment Date.
 - 52.3.5. If TNPA fails to make a payment to the Terminal Operator in accordance with clause 52.3 (*Method of Payment*) or clauses 52.3.2 and 52.3.3 above, the Terminal Operator may issue a notice to TNPA declaring any unpaid and

outstanding element of the Termination Amount to be immediately due and payable.

- 52.3.6. TNPA shall be entitled to set off against any Termination Amount, any monies owed and due to it by the Terminal Operator at the time for payment of the Termination Amount.

53. Liability for Indirect and Consequential Losses and Damages

Notwithstanding any other provision of this Agreement, neither Party shall be liable to the other for any indirect, consequential or special damages, including loss of profit or anticipated savings, except as specifically set out in this Agreement.

PART VIII – PROCEDURAL ISSUES

54. Corrupt gifts and fraud

- 54.1. The Terminal Operator warrants that in entering into this Agreement it has not committed any Corrupt Act.
- 54.2. If the Terminal Operator, any Shareholder, any Subcontractor or any Affiliate of any of them (or anyone employed by or acting on behalf of any of them) commits or is reasonably suspected by TNPA of having committed any Corrupt Act, then TNPA shall be entitled to act in accordance with clauses 54.2.1 to 54.2.6 below:
- 54.2.1. if the Corrupt Act is committed by the Terminal Operator, any Shareholder, any director of the Terminal Operator, any director of any Shareholder, or any employee of the Terminal Operator or of any Shareholder acting under the authority of or with the knowledge of a director of the Terminal Operator or such Shareholder, as the case may be, then in any such case, TNPA may terminate this Agreement with immediate effect by giving written notice to the Terminal Operator;
- 54.2.2. if the Corrupt Act is committed by an employee of the Terminal Operator or of any Shareholder acting of his or her own accord, then in any such case, TNPA may give written notice to the Terminal Operator of termination and this Agreement will terminate, unless within 10 (ten) Business Days of the Terminal Operator's receipt of such notice that employee's involvement

in the Project is terminated and (if necessary) the performance of any part of the Project Deliverables previously performed by him or her is performed by another Person;

- 54.2.3. if the Corrupt Act is committed by a Subcontractor, director of a Subcontractor or an employee of a Subcontractor acting under the authority or with the knowledge of a director of that Subcontractor, then in any such case, TNPA may give written notice to the Terminal Operator of termination and this Agreement will terminate, unless within 60 (sixty) Business Days of its receipt of such notice the Terminal Operator terminates the relevant Subcontract and procures the performance of the relevant part of the Project Deliverables by another Person, where relevant;
- 54.2.4. if the Corrupt Act is committed by an employee of a Subcontractor acting of his or her own accord, then TNPA may give notice to the Terminal Operator of termination and this Agreement will terminate, unless within 10 (ten) Business Days of its receipt of such notice the Terminal Operator procures the termination of that employee's involvement in the Project and (if necessary) procures the performance of that part of the Project Deliverables previously performed by that employee to be performed by another Person;
- 54.2.5. if the Corrupt Act is committed by any other Person not specified in clauses 54.2.1 to 54.2.4 above but involved in the Project as a Subcontractor or supplier to any Subcontractor or to the Terminal Operator, then TNPA may give notice to the Terminal Operator of termination and this Agreement will terminate unless within 40 (forty) Business Days the Terminal Operator procures the termination of such Person's involvement in the Project and (if necessary) procures the performance of the relevant part of the Project by another Person; and
- 54.2.6. any notice of termination under this clause 54.2 shall specify:
 - 54.2.6.1. the nature of the Corrupt Act;
 - 54.2.6.2. the identity of the party or parties who TNPA believes has committed the Corrupt Act; and

54.2.6.3. the date on which this Agreement will terminate in accordance with the applicable provisions of this clause.

54.3. Without prejudice to its other rights or remedies under this clause, TNPA shall be entitled to recover from the Terminal Operator, the greater of:

54.3.1. the amount or value of the gift, consideration or commission which is the subject of the Corrupt Act; and

54.3.2. any direct losses sustained by TNPA in consequence of any breach of this clause by the Terminal Operator.

54.4. Nothing contained in this clause shall prevent the Terminal Operator from paying any proper commission or bonus to its employees within the agreed terms of their employment.

54.5. The Terminal Operator shall notify TNPA of the occurrence (and details) of any Corrupt Act promptly on the Terminal Operator becoming aware of its occurrence.

55. Expert Determination

55.1. Any dispute arising out of or in connection with this Agreement which is referred to resolution in terms of this clause 55 (*Expert Determination*) shall be determined in accordance with the provisions of this clause 55.1. The dispute resolution provisions contained in this clause 55.1 shall only be used in respect of matters specifically referred to dispute resolution in terms of this clause 55.1 by this Agreement, and all other disputes arising out of or in connection with this Agreement, or the subject matter of this Agreement shall not be referred to resolution in terms of this clause 55.1 but shall be dealt with in accordance with the Law applicable to such disputes and may be the subject of dispute resolution in terms of clause 56 (*Dispute Resolution*). Clause 55 (*Expert Determination*) shall be held in Gqeberha and the Parties shall endeavour to ensure that it is completed within 90 (ninety) Days after appointment of the Person designated in the clause of this Agreement that refers the relevant matter to determination under this clause 55.1 (such Person being the "**Independent Expert**" in this clause 55.1).

55.2. The Parties shall procure that the Independent Expert acts in accordance with the following criteria:

- 55.2.1. the Independent Expert shall have appropriate expertise in respect of the subject matter of the dispute to be referred to him; and
 - 55.2.2. the Independent Expert shall be disinterested in the matter which is the subject of the dispute and shall have no interest in the outcome of the dispute.
- 55.3. The procedure to be followed in a dispute resolution shall be determined by the Independent Expert at the request of either Party, with due regard to the following principles:
- 55.3.1. the Independent Expert shall have full and unrestricted powers in relation to the dispute resolution. In particular, but without limitation, the Independent Expert shall have the power of a single arbitrator appointed in terms of the Arbitration Act, 1965 and need not strictly observe the rules of evidence;
 - 55.3.2. the Independent Expert may not have regard to his personal knowledge of the facts, and any expert knowledge he may have, relating to the issues in dispute, but is to afford the Parties an opportunity of challenging the knowledge which he claims to have;
 - 55.3.3. the Independent Expert may make such award, whether interim, provisional or final, as he considers appropriate, including without limitation ex parte awards, declaratory orders, interdicts and awards for specific performance, restitution, damages, penalties, security for costs or restitution;
 - 55.3.4. the Independent Expert shall give his reasons for the award, if so, requested by either Party; and
 - 55.3.5. subject to any relevant provisions of this Agreement, the Independent Expert shall make such award as to costs as he deems appropriate. If the Independent Expert's charges and any other costs have to be paid before the Independent Expert has made his award in respect of costs, the Parties shall pay the costs in equal amounts, and if a Party fails to pay its share, the Independent Expert may make his award in respect of the claim and costs in the absence of that Party. It is recorded that the Parties intend

that the successful Party shall be awarded a full indemnity for all costs reasonably incurred by that Party and not merely the costs on the High Court or other scale.

- 55.4. The Parties shall use their best endeavours to procure that the Independent Expert complies with the provisions of clause 55.2 and that the procedures detailed in clause 55.3 above are followed.
- 55.5. Nothing in this clause 55 shall prevent a Party from seeking relief, in respect of matters referred to dispute resolution in terms of clause 55.1 of this Agreement, on an urgent or interlocutory basis with a court of appropriate jurisdiction. Subject to the provisions of the clause of this Agreement that refers a dispute to determination in terms of this clause 55.1, if either Party is dissatisfied with or otherwise wishes to challenge the Expert's decision, recourse may be had to dispute resolution in terms of clause 56 (*Dispute Resolution*).

56. Dispute Resolution

56.1. Referable disputes

The provisions of this clause 56 (*Dispute Resolution*) shall, save where expressly provided otherwise, apply to any dispute arising in relation to or in connection with any aspect of this Agreement between the Parties.

56.2. Internal referrals

- 56.2.1. If a dispute arises in relation to any aspect of this Agreement, the Parties shall attempt in good faith to come to an agreement in relation to the disputed matter, in accordance with the following informal process:

56.2.1.1. all disputes shall first be referred to a meeting of the liaison officers or other designated executives from each Party who are actively involved in the Project, and have sufficient authority to be able (if necessary, with consultation back to their respective organisations) to resolve it;

56.2.1.2. if the Parties have been unable to resolve the dispute within 15 (fifteen) Days of referral to the persons specified in clause 56.2.1.1, either Party may refer the dispute for a decision by the chief executive officer of TNPA and the chief executive officer or equivalent officer of the Terminal Operator;

56.2.1.3. if the chief executive officers are still unable to resolve the dispute, within 15 (fifteen) Days as specified in 56.2.1.2 either party may refer the dispute for a decision by the respective chairpersons of the board of directors of either party; and

56.2.2. In attempting to resolve the dispute in accordance with the provisions of this clause 56.2 (*Internal Referral*), the Parties shall (and shall procure that their employees and representatives shall) use reasonable endeavours to resolve such dispute without delay by negotiations or any other informal procedure which the relevant representatives may adopt. Those attempts shall be conducted in good faith in an effort to resolve the dispute without necessity for formal proceedings; and

56.2.3. Any dispute which has not been resolved by the representatives contemplated in clause 56.2.1 within 15 (fifteen) Days of the dispute being referred to them (or any longer period agreed between the Parties) shall be treated as a dispute in respect of which informal resolution has failed and shall be referred for determination in terms of clause 56.7 (*Fast-track dispute resolution*).

56.3. **Performance to continue**

No reference of any dispute to any resolution process in terms of this clause 56 (*Dispute Resolution*) shall relieve either Party from any liability for the due and punctual performance of its obligations under this Agreement.

56.4. **Litigation**

56.4.1. Save where any dispute has been expressly referred for determination in terms of clause 56.7 (*fast-track dispute resolution*), if informal resolution of any dispute has failed, then the dispute may be referred to litigation in the High Courts by either Party; and

- 56.4.2. Neither Party is limited in any proceedings before the High Court to the information, evidence or arguments used in the informal attempts to resolve the dispute.

56.5. Interlocutory proceedings

Notwithstanding the previous provisions of this clause either Party shall have the right to seek appropriate interdictory relief or an order of specific performance against the other in an appropriate court having jurisdiction in South Africa.

56.6. Suspension of prescription

The Parties agree that, for the purposes of the Prescription Act, 1969, time shall cease to run in respect of any dispute on the date of service of the relevant notice referring that dispute for mediation, and if any other subsequent proceedings are instituted in respect of that dispute, time shall continue to cease to run from the date of service of the relevant summons or notice of motion.

56.7. Fast-track dispute resolution

- 56.7.1. Disputes expressly referred for determination pursuant to this clause 56.7 (*fast-track dispute resolution*) shall be determined by the relevant Independent Expert;
- 56.7.2. Within 5 (five) Business Days after a dispute has been referred by Party to the appropriate Independent Expert, the Independent Expert shall require the Parties to submit in writing their respective arguments. The Independent Expert shall, in his or her absolute discretion, consider whether a hearing is necessary in order to resolve the dispute;
- 56.7.3. It shall be entirely within the power and competence of the Independent Expert to decide upon any matters related to the proper preparation of the dispute for hearing and in that regard the Independent Expert shall direct the Parties accordingly;
- 56.7.4. The Independent Expert shall set the date for the hearing, choose the venue (which must be a venue in South Africa) for the hearing and determine all matters regarding any aspect of the hearing. Moreover, the Independent

Expert can decide whether at the hearing the Parties are to give oral evidence or confine themselves to presenting their cases in writing or by some other appropriate procedure. In this regard, the Independent Expert must be guided by considerations of fairness, the cost-effective resolution of the dispute, and the need to resolve the dispute quickly;

- 56.7.5. The Independent Expert shall provide both Parties with his or her written decision on the dispute, within 20 (twenty) Business Days of the referral (or such other period as the Parties may agree after the referral). The Independent Expert shall give his or her reasons for the award, if so, requested by either Party;
- 56.7.6. The Independent Expert's costs of any referral shall be borne as the Independent Expert shall specify or, if not specified, equally by the Parties. Each Party shall bear its own costs arising out of the referral, including its legal costs and the costs and expenses of any witnesses;
- 56.7.7. The Independent Expert shall act impartially and may take the initiative in ascertaining the facts and the Law. The Independent Expert need not strictly observe the principles of Law and may decide the matter submitted to him or her in accordance with what he or she considers equitable in the circumstances;
- 56.7.8. Subject to clause 56.5, should the need arise for either Party to seek interim or temporary relief before the adjudication is finalised, that Party may apply to the Independent Expert to grant such interlocutory order or give the required temporary relief and the Independent Expert shall have the same power to do so as if the matter were heard by a Judge in the High Court of South Africa, save that if by Law such power or order cannot be exercised or given by an Independent Expert then, and then only, should the Parties refer such matter to such High Court;
- 56.7.9. The proceedings shall be confidential, and all information, data or documentation disclosed or delivered by either Party to the Independent Expert in consequence of or in connection with his or her appointment as Independent Expert shall be treated as confidential. Neither the Parties nor the Independent Expert shall, save as permitted by the confidentiality

provisions of this Agreement, disclose to any Person any such information, data or documentation unless the Parties otherwise agree in writing, and all such information, data or documentation shall remain the property of the Party disclosing or delivering the same and all copies shall be returned to such Party on completion of the Independent Expert's work;

56.7.10. The Independent Expert is not liable for anything done or omitted in the discharge or purported discharge of his or her functions as Independent Expert, unless the act or omission is negligent or in bad faith. Any employee or agent of the Independent Expert is similarly protected from liability;

56.7.11. Should any Party fail to co-operate with the Independent Expert with the result that in the view of the Independent Expert such default or omission prejudices the adjudication process, then the Independent Expert can either:

56.7.11.1. give that Party written notice that unless it remedies the default or omission within a given time, it will forfeit the right to continue to participate in the adjudication; or

56.7.11.2. warn the Party in writing that its default or omission may make it liable to a punitive order of costs irrespective of whether it succeeds in the adjudication or not and such punitive award of costs may include an order of attorney and client costs or attorney and own client costs as those expressions are understood in the Uniform Rules of Court; and

56.7.12. The Independent Expert shall be deemed not to be an arbitrator but shall render his or her decision as an expert and the provisions of the Arbitration Act, 1965 and any other law relating to arbitration shall not apply to the Independent Expert or his or her determination or the procedure by which he or she reaches his or her determination. The Independent Expert's decision shall be final and binding on the Parties.

56.8. Survival of clause 57

The provisions of this clause 56 (*Dispute Resolution*):

- 56.8.1. constitute an irrevocable consent by the Parties to any proceedings in terms hereof and no Party shall be entitled to withdraw therefrom or claim at any such proceedings that it is not bound by such provisions; and
- 56.8.2. are severable from the rest of this Agreement and shall remain in effect despite the termination of or invalidity for any reason of this Agreement.

57. Information and Audit Access

- 57.1. The Terminal Operator shall, in respect of the Project provide to TNPA all information, documents, records and the like in the possession of, or available to, the Terminal Operator (and to this end the Terminal Operator shall use all reasonable endeavors to ensure that all such information in the possession of any counter-party to any Project Document shall be available to it and the Terminal Operator has included, or shall include, relevant terms in all Project Documents to this effect) as may reasonably be requested by TNPA for the purpose of complying with any of its statutory reporting obligations including where pursuant to the Public Finance Management Act, 1999 or the Auditor-General Act, 1995.
- 57.2. Without limiting the generality of the foregoing, the Terminal Operator shall:
 - 57.2.1. provide and shall procure that its Subcontractors shall provide all such information as TNPA may reasonably require from time to time to enable TNPA to provide reports and returns as required by any Relevant Authority, including reports and returns regarding the physical condition of any building occupied by TNPA, health and safety, national security, and environmental safety; and
 - 57.2.2. note and facilitate TNPA's compliance with the Promotion of Access to Information Act, 2000 if TNPA is required to provide information to any Person pursuant to that Act.

58. Confidentiality and Non-Circumvention

- 58.1. The Parties undertake that during the operation of, and after the expiration, termination or cancellation of, this Agreement for any reason, they will keep confidential:
- 58.1.1. any information which a Party ("**Disclosing Party**") communicates to the other Party ("**Recipient**"), and which is stated to be or by its nature is intended to be confidential;
 - 58.1.2. all other information of the same confidential nature concerning the business of the Disclosing Party which comes to the knowledge of the Recipient whilst it is engaged in negotiating the terms of this Agreement, the services Agreement or after conclusion thereof, including:
 - 58.1.2.1. details of the Disclosing Party's financial structures and operating results;
 - 58.1.2.2. details of the Disclosing Party's strategic objectives and planning;
other than instances where any information is disclosed to equity funders and/or such other persons in the process of obtaining other forms of capital.
- 58.2. If the Recipient is uncertain as to whether any information is to be treated as confidential in terms of this clause 58 (*Confidentiality*), it shall be obliged to treat it as such until written clearance is obtained from the Disclosing Party.
- 58.3. Each Party undertakes, subject to clause 58.4, not to disclose any information which is to be kept confidential in terms of this clause 58 (*Confidentiality*), nor to use such information for its own or anyone else's benefit.
- 58.4. Notwithstanding the provisions of clause 58.3, the Recipient shall be entitled to disclose any information to be kept confidential if and to the extent only that the disclosure is *bona fide* and necessary for the purposes of carrying out its duties in terms of this Agreement.

- 58.5. The obligation of confidentiality placed on the Parties in terms of this clause 58 (*Confidentiality*) shall cease to apply to the Recipient in respect of any information which:
- 58.5.1. is or becomes generally available to the public other than by the negligence or default of the Recipient or by the breach of this Agreement by the Recipient;
 - 58.5.2. the Disclosing Party confirms in writing is disclosed on a non-confidential basis;
 - 58.5.3. has lawfully become known by or come into the possession of the Recipient on a non-confidential basis from a source other than the Disclosing Party having the legal right to disclose same, provided that such knowledge or possession is evidenced by the written records of the Recipient existing at the Signature Date; or
 - 58.5.4. is disclosed pursuant to a requirement or request by operation of law, regulation or court order, to the extent of compliance with such requirement or request only and not for any other purpose, provided that:
 - 58.5.4.1. the onus shall at all times rest on the Recipient to establish that information falls within the exclusions set out in clauses 58.5.1 to 58.5.4 (both inclusive);
 - 58.5.4.2. information will not be deemed to be within the foregoing exclusions merely because such information is embraced by more general information in the public domain or in the Recipient's possession; and
 - 58.5.4.3. any combination of features will not be deemed to be within the foregoing exclusions merely because individual features are in the public domain or in the Recipient's possession, but only if the combination itself and its principle of operation are in the public domain or in the Recipient's possession.
- 58.6. In the event that the Recipient is required to disclose confidential information of the Disclosing Party as contemplated in clause 58.5.4, the Recipient will:

- 58.6.1. advise the Disclosing Party thereof in writing prior to disclosure, if possible;
- 58.6.2. take such steps to limit the disclosure to the minimum extent required to satisfy such requirement and to the extent that it lawfully and reasonably can;
- 58.6.3. afford the Disclosing Party a reasonable opportunity, if possible, to intervene in the proceedings;
- 58.6.4. comply with the Disclosing Party's reasonable requests as to the manner and terms of any such disclosure; and
- 58.6.5. notify the Disclosing Party of the recipient of, and the form and extent of, any such disclosure or announcement immediately after it is made.

59. Miscellaneous Matters

59.1. Addresses

- 59.1.1. The Parties choose the following addresses to which notices may be given, and at which documents in legal proceedings may be served (i.e., their *domicilia citandi et executandi*), in connection with this Agreement:

- 59.1.1.1. in the case of TNPA:

- postal address : P.O.Box 612054 Bluewater Bay, 6212.

- physical address : e-Mendi Building

- N2 Neptune Road

- Off Klub Road

- Gqeberha

- 6001.

- email address :

- attention :

59.1.1.2. in the case of the Terminal Operator:

postal address :

physical address :

email address :

attention :

(being "**Party's addresses**").

59.1.2. Notices given to the above addresses shall be delivered by hand or courier service and shall only be deemed received by the recipient Party once signed for on its behalf.

59.1.3. A Party may change that Party's addresses for this purpose, by notice in writing to the other Party, provided that the new addresses include a physical address in South Africa.

59.2. **Certificate of indebtedness**

A certificate signed by any officer, manager or employee of TNPA or {PREFERRED BIDDER}, the appointment of which officer or manager or employee need not be proved, reflecting:

59.2.1. any monies owing by the Terminal Operator to TNPA or vice versa under this Agreement;

59.2.2. any obligations owing by the Terminal Operator to TNPA or vice versa under this Agreement; and

59.2.3. the due date for payment of such monies or for performance of such obligations;

shall be *prima facie* proof thereof.

59.3. **Entire Agreement**

- 59.3.1. This Agreement contains all the express provisions agreed on by the Parties with regard to the subject matter of this Agreement and the Project, and the Parties waive the right to rely on any alleged express provision not contained in this Agreement;
- 59.3.2. If there is a conflict between the terms of this Agreement and those of any Schedule, the terms of this Agreement shall prevail; and
- 59.3.3. This Agreement, and the rights and obligations of the Parties (save for those subjects to suspensive conditions) shall take effect on the Signature Date.

59.4. **Rights and remedies**

The rights and remedies of the Parties under this Agreement are cumulative, may be exercised as often as the Parties require and are in addition to any other rights and remedies, which the Parties may have under the Law.

59.5. **Further undertakings**

TNPA and the Terminal Operator shall perform, or procure the performance, of all further things, and execute and deliver (or procure the execution and delivery) of all further documents, as may be required by the Law or as may be desirable or necessary to implement or give effect to the Project, this Agreement and the transactions contemplated therein.

59.6. **No Representations**

A Party may not rely on any representation which allegedly induced that Party to enter into this Agreement unless the representation is recorded in this Agreement.

59.7. **Variation, Cancellation and Waiver**

- 59.7.1. No contract varying, adding to, deleting from or cancelling this Agreement, and no waiver of any right under this Agreement, shall be effective unless reduced to writing and signed by or on behalf of the Parties; and
- 59.7.2. The termination of this Agreement shall not prejudice the rights of any Party in respect of any antecedent breach or non-performance of or in terms of this Agreement.

59.8. **Indulgences**

- 59.8.1. The grant of any indulgence by a Party under this Agreement shall not constitute a waiver of any right by the grantor or prevent or adversely affect the exercise by the grantor of any existing or future right of the grantor.
- 59.8.2. If any Party at any time breaches any of that Party's obligations under this Agreement, the other Party ("**the Aggrieved Party**"):
 - 59.8.2.1. may, at any time after that breach, exercise any right that became exercisable directly or indirectly as a result of the breach, unless the Aggrieved Party has expressly elected in writing not to exercise the right. If the Aggrieved Part is willing to relinquish that right the Aggrieved Party will on request do so in writing. In particular, acceptance of late performance shall, for a reasonable period after performance, be provisional only, and the Aggrieved Party may still exercise that right during that period; and
 - 59.8.2.2. shall not be estopped (i.e. prevented) from exercising the Aggrieved Party's rights arising out of that breach, despite the fact that the Aggrieved Party may have elected or agreed on one or more previous occasions not to exercise the rights arising out of any similar breach or breaches.

59.9. **Invalidity and Severability**

If any of the provisions of this Agreement becomes invalid, illegal or unenforceable for any reason, the validity, legality and enforceability of the remaining provisions of this Agreement shall not be impaired or affected in any way by such invalidity, illegality or unenforceability.

59.10. **Cession**

The Terminal Operator shall not be permitted to cede, assign or delegate its rights and/or its obligations in terms of this Agreement without the prior written consent of TNPA. Any assignment, delegation or cession without such consent shall be of no force and effect. For the avoidance of doubt, the Terminal Operator shall not be entitled to cede or transfer any rights it has under this Agreement to any third party and/ or dilute any of its black shareholding and/or black ownership as defined in the B-BBEE Codes as amended from time.

59.11. **Set-off**

The Parties shall not be entitled to set-off, withhold or deduct any monies, which one Party owes to the other against any monies that are owed by one Party to the other in terms of this Agreement.

59.12. **Applicable law**

This Agreement is to be interpreted and implemented in accordance with the Law of South Africa.

59.13. **Language**

All notices or communications under or in connection with the Project shall be in English.

59.14. **Jurisdiction of South African Courts**

Subject to clause 55 (*Expert Determination*) and 56 (*Dispute Resolution*), the Parties consent to the exclusive jurisdiction of the Gqeberha High Court of South Africa, for any proceedings arising out of or in connection with the Project and this Agreement.

59.15. Costs

Each Party shall bear its own costs of negotiating and concluding this Agreement.

59.16. Counterparts

This Agreement may be executed in more than one counterpart, each of which together shall constitute one and the same instrument.

DRAFT

Signed at _____ on _____ 2024.

For: Transnet National Port Authority

Signature:

Name :

Chief Executive, duly authorised and warranting such authority

Date :

Place :

Witness :

Witness :

Signed at _____ on _____ 2024.

For: Terminal Operator

Signature:

Name :

duly authorised and warranting such authority

Date :

Place :

Witness :

Witness :

SCHEDULES	
Schedule	Appointment Letter
Schedule	Project Site
Schedule	Business Case
Schedule	Base Case Financial Model
Schedule	D & C Specifications
Schedule	Construction Agreement
Schedule	Terminal Operators Operational Plan
Schedule	Terminal Equipment
Schedule	Environmental Management Plan
Schedule	Terminal Operators B-BBEE's Contributor Level Certificate
Schedule	Supplier Development Plan and Supplier Development Value Summary Worksheet
Schedule	Penalties
Schedule	B-BBEE Contributor Level Commitment
Schedule	Construction Performance Guarantee
Schedule	Operating Performance Guarantee
Schedule	Final Maintenance Guarantee
Schedule	Project Insurance
Schedule	Terminal Operator's Operating Specifications
Schedule	Key Performance Areas

Schedule	Terminal Operator Performance Standards
Schedule	Penalty and Incentive Cascade Formula
Schedule	Liquid Bulk Terminal - Mandatory Requirements for SHE, Process Safety, Civil, Structural, Mechanical and Electrical
Schedule	Construction Programme
Schedule	Constitutional Documents
Schedule	TNPA Policies, Manuals and Operating Conditions
Schedule	Annual Reporting
Schedule	Independent Certifier Agreement
Schedule	Economic development guideline document

NON-DISCLOSURE AGREEMENT

BETWEEN

(Reg No.)

AND

**TRANSNET SOC LIMITED,
acting through its operating division**

TRANSNET NATIONAL PORTS AUTHORITY

(Reg No. 1990/000900/30)

This agreement entered into between

_____ located at..... and

Transnet SOC Limited, 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.
3. 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:

- 3.1. Was at the time of receipt otherwise known to the Receiving Party
 - 3.2. 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
 - 3.3. Subsequently is developed independently in good faith by employees of the Receiving Party who did not have access to the Proprietary Information
 - 3.4. 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
 - 3.5. Becomes part of the public domain without breach of the Agreement by the recipient
 - 3.6. Is so disclosed or used with the written approval of the Disclosing Party
4. Unless extended in writing by mutual agreement and unless earlier terminated as hereafter, this Agreement shall terminate upon the expiration of 5 (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.
5. 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.

6. 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.
7. 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.
8. This Agreement shall be governed by and interpreted in accordance with the laws of the Republic of South Africa
9. 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.
10. 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.
11. 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.
12. 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.

13. 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.
14. 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.
15. 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.
16. 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

17. As regard the individuals identified in Paragraph 16 above 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.
18. 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: _____

Witness1: (Name, Address, Signature, Date).....
.....
.....

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

Terminal Operator

Date:

Place: _____

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

.....
.....

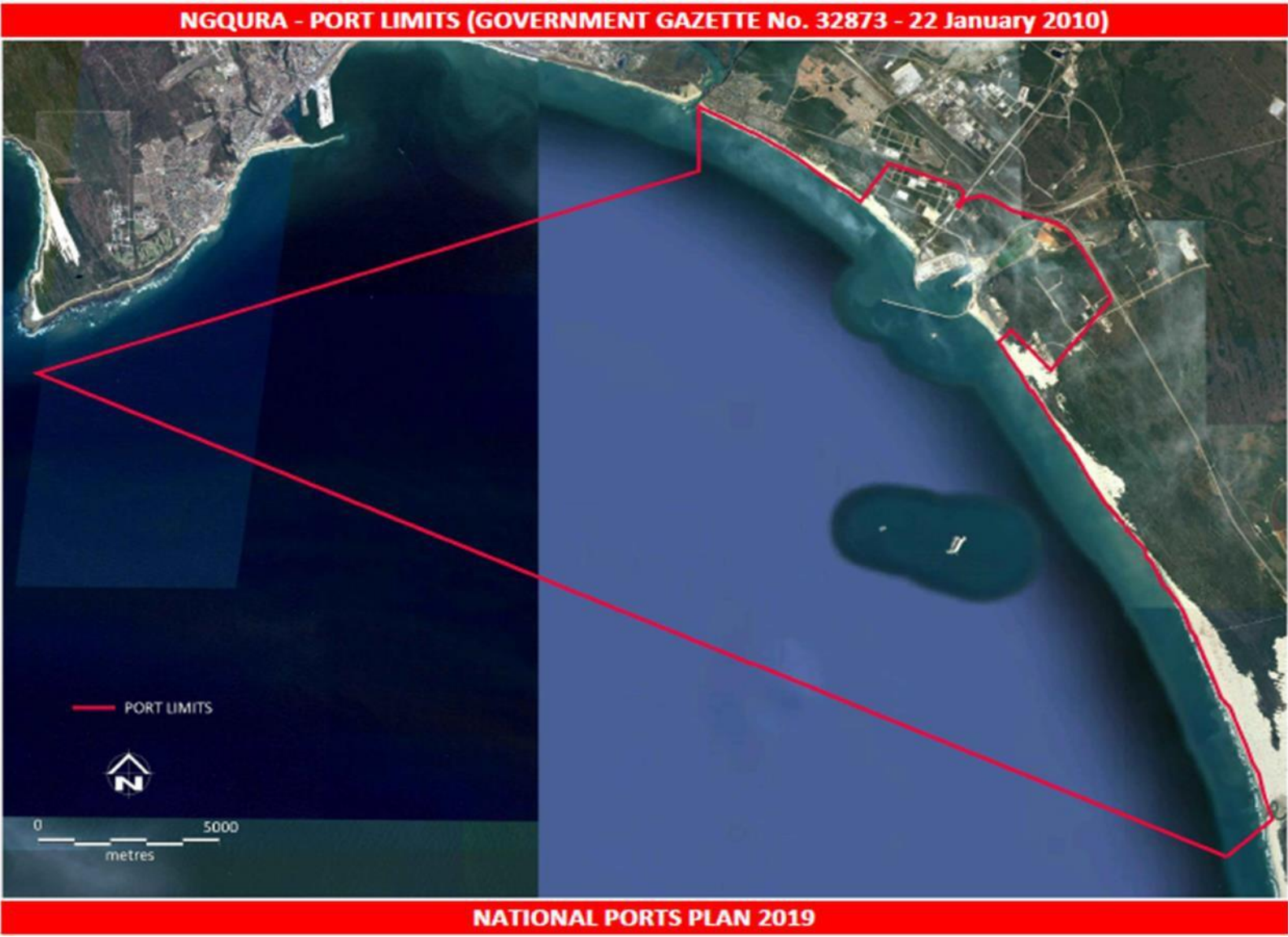
Witness 2: (Name, Address, Signature, Date).....

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.....

PDFP :PORT OF NGQURA 2019



NGQURA: PORT LIMITS

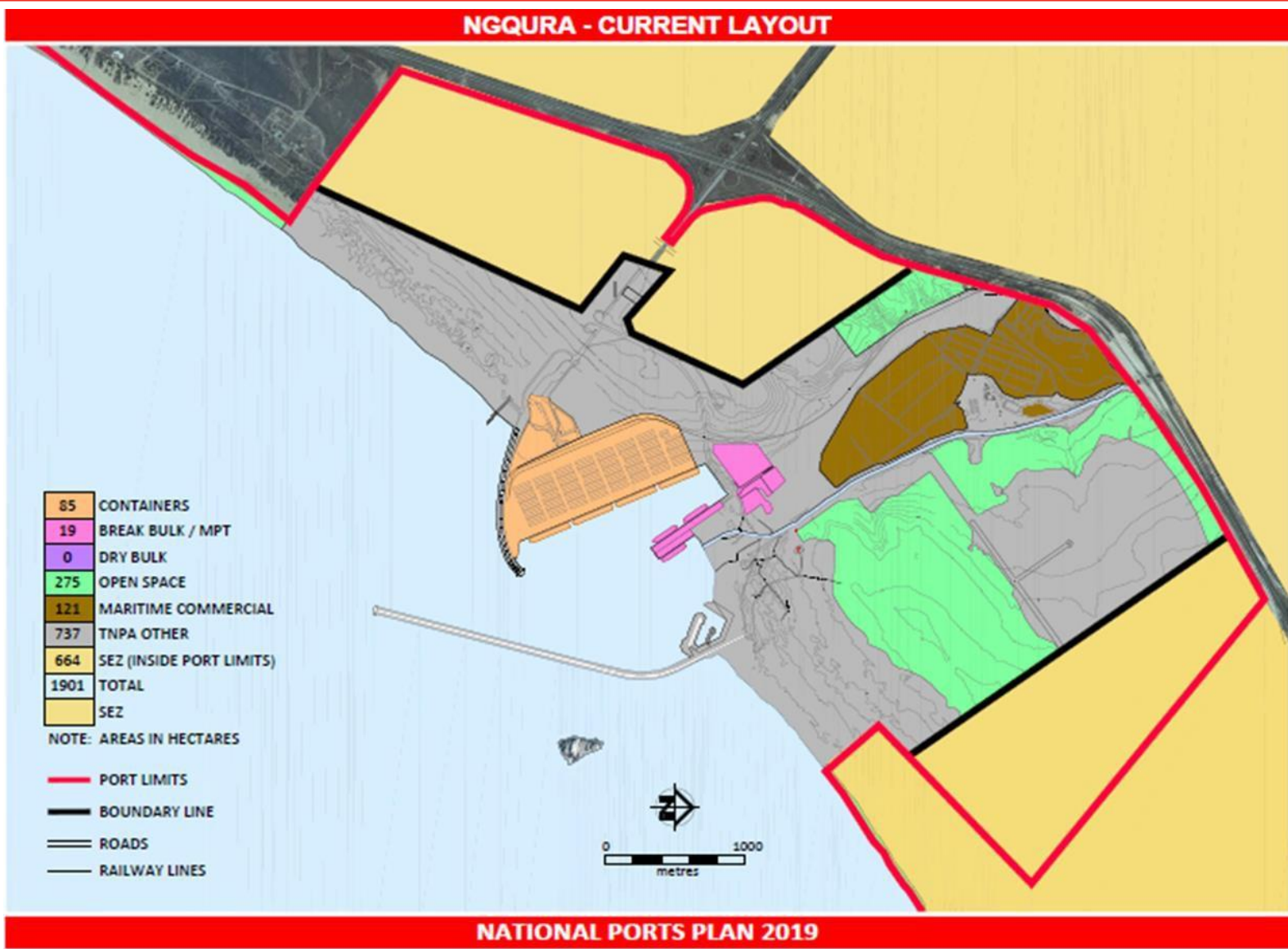




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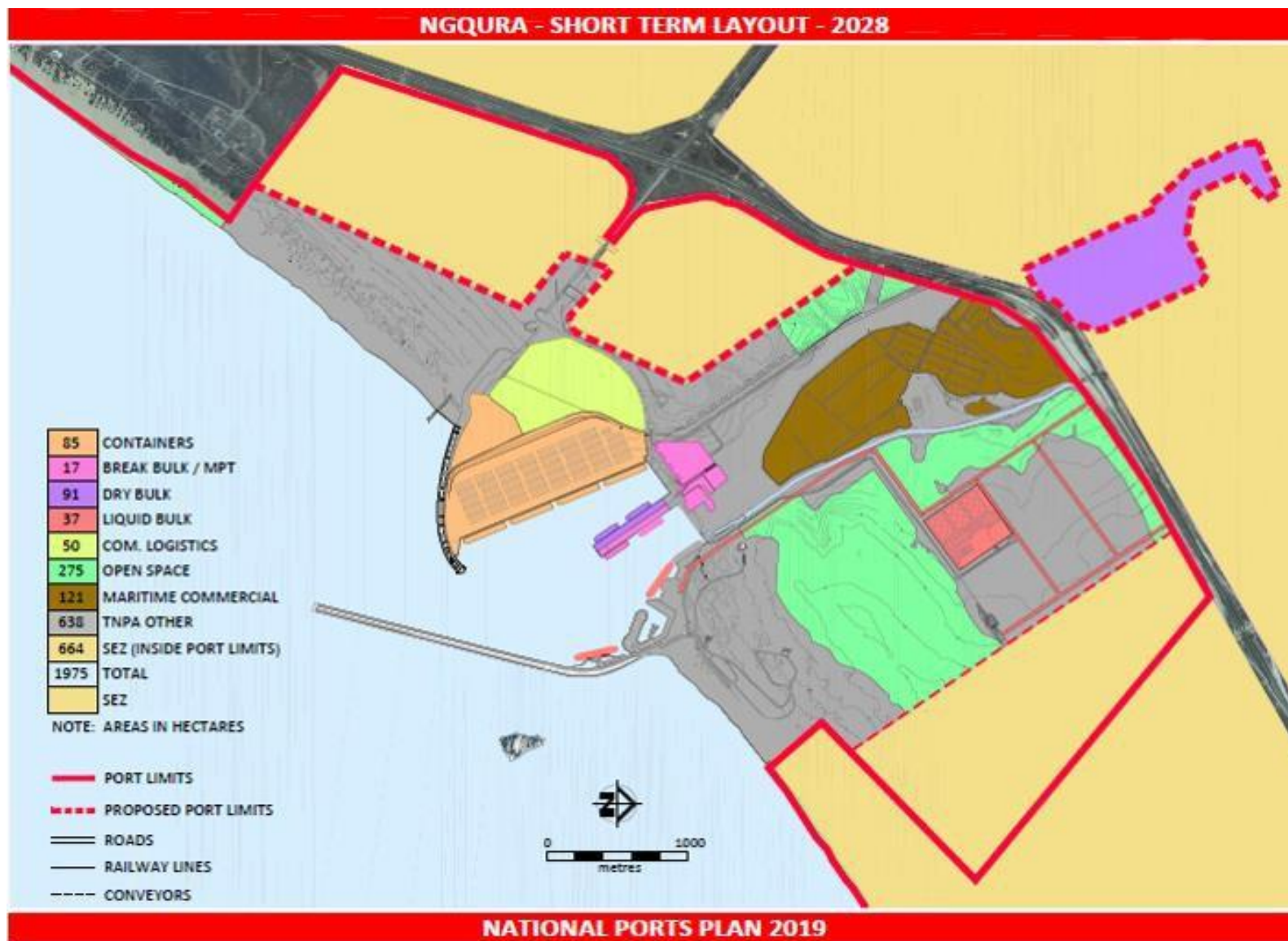


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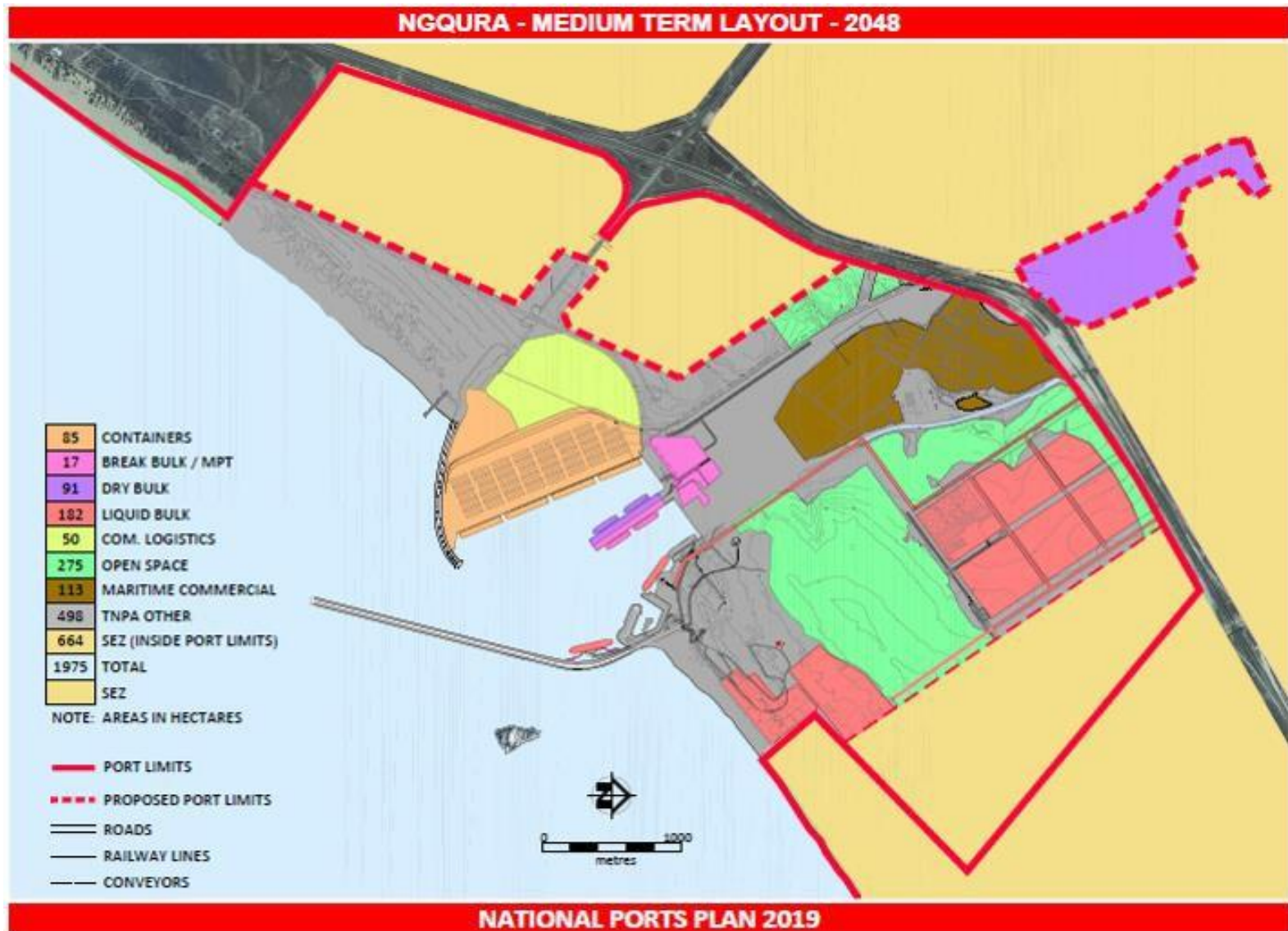


NGQURA:SHORT TERM LAYOUT 2028



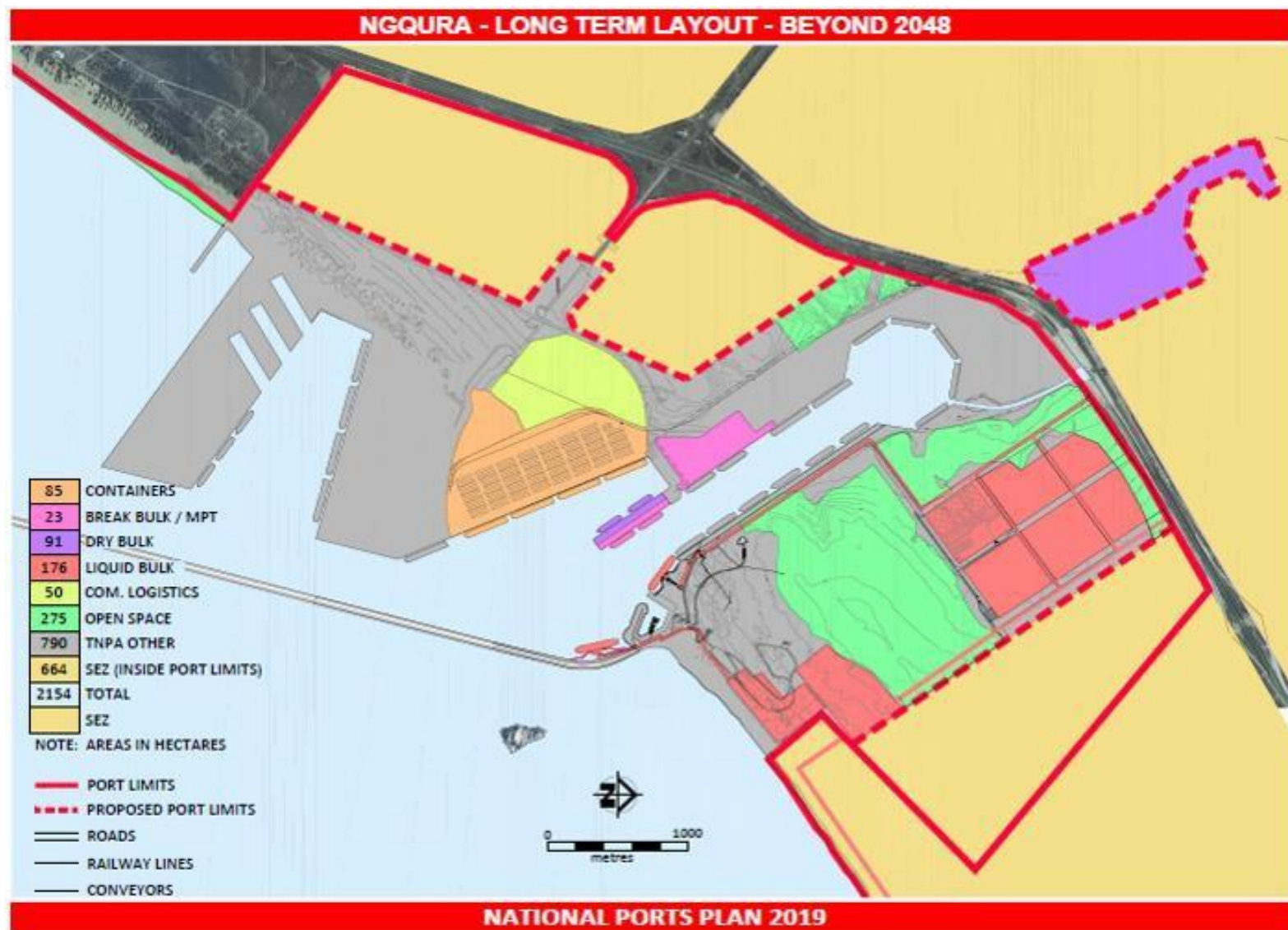


NGQURA: MEDUIM TERM LAYOUT 2048



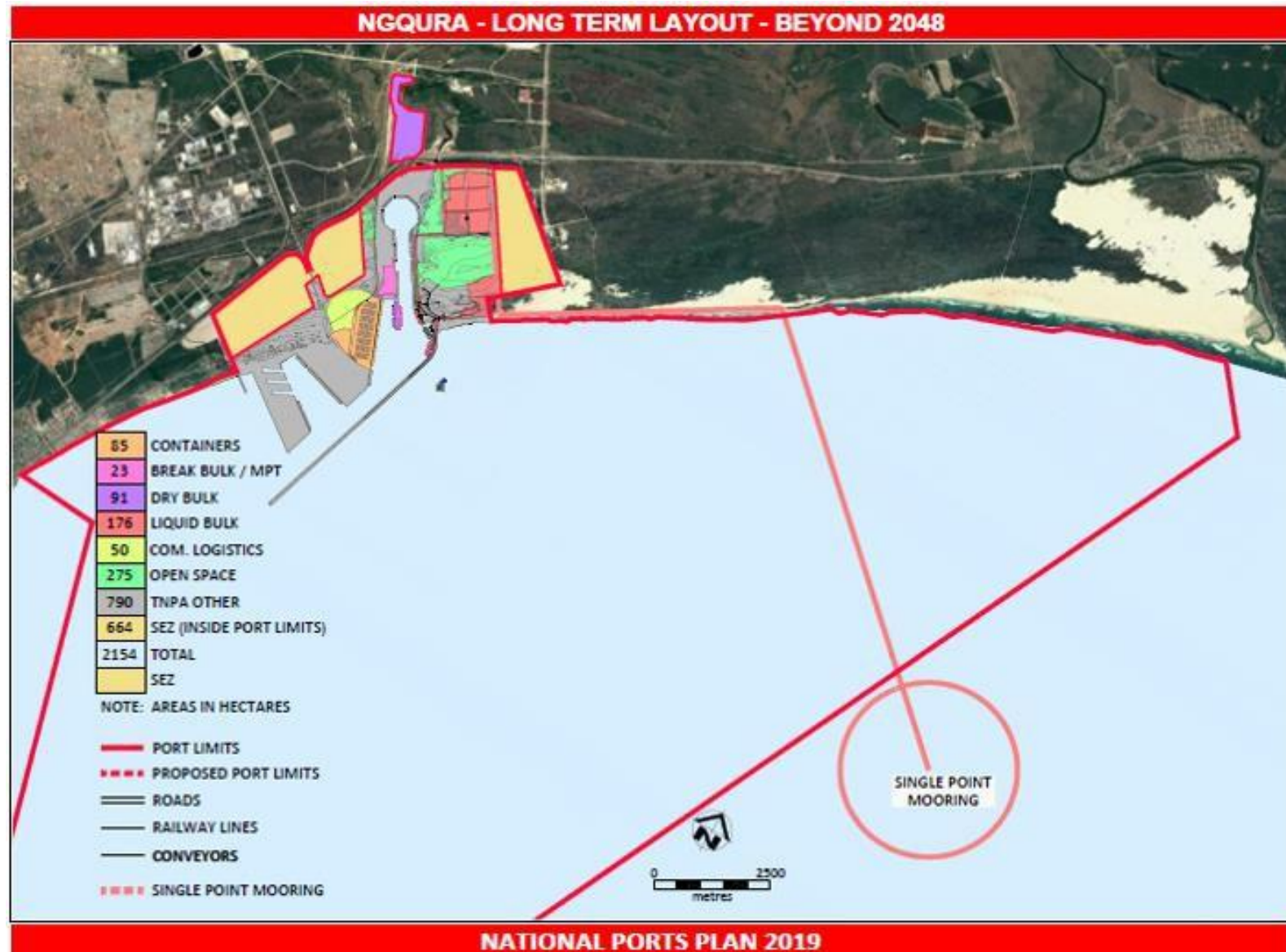


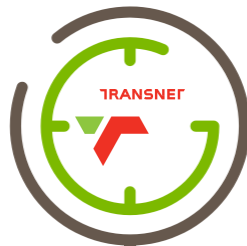
NGQURA: LONG TERM LAYOUT BEYOND 2048





NGQURA: LONG TERM LAYOUT BEYOND 2048 WITH SPM





THANK YOU

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 CC (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: (Limited Liability Company or Joint Venture or Consortium)	
Date of Legal Formation of Bidder	

HEAD OFFICE	
Physical Address	
Postal Address	
E-Mail Address	
Telephone Address	
Telefax Address	

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 Address:	
Telefax Address:	

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:	
CONTACT INFORMATION PERSON	
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.

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

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

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:

- 2.4.2. Brief details of any contracts awarded to the Member by other governments during the last 3 (three) years, highlighting any Terminal and/or port related Construction, operation and maintenance of the Liquid Bulk projects:

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

- 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 DD

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



Government Gazette

REPUBLIC OF SOUTH AFRICA

Vol. 482 Cape Town 4 August 2005 No. 27863

THE PRESIDENCY

No. 792

4 August 2005

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

No. 12 of 2005: National Ports Act, 2005



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

Act No. 12, 2005 NATIONAL PORTS ACT, 2005

GENERAL EXPLANATORY NOTE:

[**3** 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 company in terms of section 4; 20
 - “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” must be interpreted accordingly; 25
 - “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 contemplated in section 3(2); 30
 - “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 section 82; 35
 - “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 the port limits used for the transfer of cargo from a vessel to the land and vice versa; 40
 - “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, Ngqura, 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); 25

“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;

“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;
 - (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.

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

Act No. 12,2005**NATIONAL PORTS ACT, 2005**

(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;
 - (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;
 - (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;
 - (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;
 - (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;
 - (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;
 - (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;
 - (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;
 - (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;
 - (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;
 - (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 —

(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—

(a) ensure the effective management of all ports;

(b) ensure the effective oversight of ports; and

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

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

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

CHAPTER 4

40

BOARD, STAFF AND ASSETS OF AUTHORITY

Composition of Board

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

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

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

Nomination and appointment of members of Board

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

Functions of Board

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

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

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

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

Persons disqualified from membership of Board

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

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

Terms of office of members of Board

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

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

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

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

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

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

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

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

Disclosure of interest by members of Board 45

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

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

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

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

Meetings of Board

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

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

(2) The chairperson—

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

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

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

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

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

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

Delegation and assignment of functions by Board

25

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

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

(b) amend or revoke such delegation or assignment.

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

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

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

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

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

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

Appointment of chief executive officer

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

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

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

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

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

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

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

(5) A chief executive officer—

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

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

Functions of chief executive officer

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

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

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

Vacating of and removal from office of chief executive officer

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

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

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

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

Acting chief executive officer

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

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

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

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

Appointment and transfer of staff of Authority

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

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

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

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

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

Transfer of ports, land and other rights and obligations

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

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

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

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

(3) Upon the vesting contemplated in subsection (2), the Board of National Ports Authority (Pty) Ltd must inform the National Treasury in the manner contemplated in section 54(2) of the PFMA. 30

(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, 40 and investigate complaints contemplated in section 48;
- (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.

(2) A member of the Regulator may not— 15

- (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

46 (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

47 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

48 (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

49 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

50. 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

51 (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
 - (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
 - (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
 - (e) the period within which such applications must be lodged. **50**

(5) The Authority may require an applicant for a licence, at the applicant's expense, to furnish the Authority, within the period specified by it, with such further information as may be necessary in order to consider the application.

(6) Within six weeks after receiving an application in accordance with subsection (2), the Authority must— 5

- (a) issue a licence subject to specified terms and conditions; or
- (b) refuse to issue a licence and give written reasons for such refusal.

(7) (a) The Authority may exempt a person from having to obtain a licence in terms of this Act if—

- (i) an agreement contemplated in section 11(3) has been concluded; and 10
- (ii) the Authority is satisfied that the activities of the person concerned are, for purposes of this Act, sufficiently regulated by the other statutory body or organ of state contemplated in that section.

(b) An exemption contemplated in paragraph (a) may be made subject to such conditions, authorised by this Act, as the Authority may deem fit. 15

Conditions of licence

58. (1) A licence issued under section 57 must set out—

- (a) the duration of the licence;
- (b) the types of services or facilities to be provided by the licensed operator;
- (c) the annual licence fee payable by the licensed operator; 20
- (d) the duties and obligations of the licensed operator in respect of the services or facilities provided by it; and
- (e) such other terms and conditions as may be necessary.

(2) The terms and conditions of a licence may—

- (a) control and restrict, directly or indirectly, the creation, holding or disposal of shares in the licensed operator or its shareholders or interests in the undertaking of the licensed operator; 25
- (b) restrict the carrying on by the licensed operator of any trade or business which is not related to the activity authorised in the licence;
- (c) provide for the modification of the licence; 30
- (d) provide for the determination of performance standards; and
- (e) provide for the control and, if necessary, the reasonable fixing of prices to be charged by a licensed operator.

Restriction on transfer of licence

59. (1) A licence may not be transferred to any third party without the prior written consent of the Authority. 35

(2) Any transfer of a licence in contravention of subsection (1) is of no force or effect.

Suspension or cancellation of licence

60. (1) Subject to this section, the Authority may cancel or for a reasonable period suspend a licence, if— 40

- (a) the licensed operator contravenes or breaches any condition of its licence, any provision of this Act or the regulations, or any directive issued by the Authority in terms of this Act;
- (b) the licensed operator is sequestered, liquidated or placed under judicial management; 45
- (c) the licensed operator has made any assignment to, or composition with, its creditors; or
- (d) the safety of vessels and persons within ports or the national security of the Republic so requires.

(2) The Authority may direct a licensed operator to take specified measures to remedy any contravention or breach contemplated in subsection (1) (a). 50

- (3) Prior to acting under subsection (1) or (2), the Authority must give written notice to the licensed operator-
- (a) indicating the intention to cancel or suspend the licence or the intention to issue a direction;
 - (b) setting out the reasons why it is considering cancelling or suspending the licence or issuing the direction; and 5
 - (c) affording the licensed operator a reasonable opportunity to make representations as to why the licence should not be cancelled or suspended or the direction should not be issued.
- (4) Where a licence is cancelled or suspended under subsection (1), the Authority 10 may, if it considers that such cancellation or suspension would materially affect the movement of cargo or passengers in a port-
- (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 operation 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

COMMERCIALASPECTS

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.

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;

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- (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 FF

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.

The National Energy Regulator approved/set tariffs: Storage, Loading and Pipelines Information as at 31 March 2024

NO	Licensee Name	Licence / Reference Number	Area/Town/City (Location)	Physical Address (Facility)	(Latest tariff approved/set)As published on NERSA website	Date approved /set	Product	Licence Capacity/Flow Rate/Length
EASTERN CAPE STORAGE FACILITIES:								
1	BP Southern Africa (Pty) Ltd	PPL.sf.F3/14/2/2006	East London	6 Military Road, Westbank, East London, Eastern Cape	49.30 c/l	30-Mar-17	Diesel/Petrol; Jet A1/IP	60867 m³
2	BP Southern Africa (Pty) Ltd	PPL.sf.F3/14/37/2006	Port Alfred	Port Alfred Airport, 43 Air School Port Alfred, Port Alfred, Eastern Cape	94.92 c/l	12-Dec-13	Avgas	60 m³
3	BP Southern Africa (Pty) Ltd	PPL.sf.F3/14/45/2006	East London	East London Airport, 8 Military Rd, East London, Eastern Cape	44.17 c/l	13-Dec-13	Avgas; Jet A-1	355 m³
4	Astron Energy (Pty) Ltd	PPL.sf.F3/31/20/2006	East London	Military Road, Westbank, East London, Eastern Cape	20.34 c/l	11-Nov-21	Petrol; Diesel	775 m³
5	Astron Energy (Pty) Ltd, Engen Petroleum Ltd & TotalEnergies Marketing South Africa	PPL.sf.F3/34/2006	Port Elizabeth	Oil Site Complex, Port Elizabeth Harbour, Eastern Cape	12.02 c/l	20-Nov-14	Petrol; Diesel	74954 m³
6	EasiGas (Pty) Ltd	PPL.sf.F3/11/1/2006	Port Elizabeth	Everyready Road, Sidwell, Port Elizabeth, Eastern Cape	12.17 c/l	02-Jun-14	LPG	180 m³
7	EasiGas (Pty) Ltd	PPL.sf.F3/13/1/2013	Dom Pedro	Dom Pedro Terminal, Port Elizabeth Harbour, Eastern Cape	50.73 c/l	16-Feb-15	LPG	2016 m³
8	Engen Petroleum Limited	PPL.sf.F3/13/11/2006	Port Elizabeth	Port Elizabeth Terminal, Dom Pedro Jetty, Port Elizabeth Harbour.	5.03 c/l	09-Mar-22	HFO; Empty	22459 m³
9	Engen Petroleum Limited	PPL.sf.F3/13/25/2006	Cedarville	Maartens Road, Cedarville, Eastern Cape	24.91 c/l	09-Mar-22	ADO 50; ULP 95; IK; Empty	1500 m³
10	Engen Petroleum Limited	PPL.sf.F3/13/30/2006	Elliot	Diamied Farm, Industrial Sites, Elliot, Eastern Cape	25.24 c/l	09-Mar-22	ADO50; ADO; IK	907 m³
11	Engen Petroleum Limited	PPL.sf.F3/13/52/2006	Queenstown	3 Dickerson Street, Queenstown, Eastern Cape	24.65 c/l	09-Mar-22	ADO50; IK	1465 m³
12	Engen Petroleum Limited	PPL.sf.F3/13/1/2006	East London	Military Road, Westbank East London, Eastern Cape	10.04 c/l	09-Mar-22	ULP 95; ADO 50; IK; Empty	40317 m³
13	FFS Refiners (Pty) Ltd	PPL.sf.F3/80/1/2008	Port Elizabeth	Patterson Depot, 61 Patterson Road Port Elizabeth, Eastern Cape	R1 449.21/m³/month	10-Sep-20	Used Lube oil	318 m³
14	Shell Downstream SA (Pty) Ltd	PPL.sf.F3/246/2/2016	Port Elizabeth	Dom Pedro Jetty, Port Elizabeth Harbour, Port Elizabeth, Eastern Cape	25.33 c/l	19-Jun-17	Jet A1; Diesel(LSD), ULSD; ULP95; IP	21189 m³
15	TotalEnergies Marketing South Africa	PPL.sf.F3/11/11/2006	East London	16 Mako Dr, Military Rd, Westbank, East London, E/Cape	27.33 c/l	05-Jul-22	Diesel; ULP95	21146 m³
16	Wasaa Terminals (RF) (Pty) Ltd	PPL.sf.F3/34/1/2021	East London	East London, Eastern Cape	20.74 c/l	06-Jul-22		
								248508 m³
FREE STATE STORAGE FACILITIES:								
1	BP North West	PPL.sf.F3/1/1/2006	Bethlehem	9 Witteberg Road, Bethlehem, Free State	47.00 c/l	02-Apr-12	Diesel and Illuminating kerosene	175 m³
2	Astron Energy (Pty) Ltd & Total SA	PPL.sf.F3/30/1/2006/AM2	Kroonstad	3 Orpen Street, Kroonstad, Free State	34.80 c/l	05-Mar-20	Petrol, Diesel and Illuminating Kerosene	24 597 m³
3	Engen Petroleum Limited	PPL.sf.F3/13/3/2006	Kroonstad (Terminal)	Kroonstad Pipeline Terminal, C/o First & Second Roads, Gun Hill, K'Stad, F'State.	30.02 c/l	09-Mar-22	Petrol, Diesel and Illuminating Kerosene	17970 m³
4	Engen Petroleum Limited	PPL.sf.F3/13/6/2006	Bloemfontein	274 Church Street, Hamilton, Bloemfontein, Free State	27.88 c/l	09-Mar-22	Petrol, Diesel and Illuminating Kerosene	512 m³
5	Engen Petroleum Limited	PPL.sf.F3/13/20/2006	Bethlehem	Bethlehem Terminal, C/o Muller & Baxter Street, Bethlehem, Free State	34.60 c/l	09-Mar-22	Petrol, Diesel and Illuminating Kerosene	3036 m³
6	Engen Petroleum Limited	PPL.sf.F3/13/22/2006	Bothaville	Bothaville Agency, 3 Industria Road Bothaville, Free State	27.70 c/l	09-Mar-22	Diesel and Illuminating kerosene	432 m³
7	Engen Petroleum Limited	PPL.sf.F3/13/23/2006	Bultfontein	Bultfontein Agency, 12 Produce Street, Bultfontein, Free State	32.17 c/l	09-Mar-22	Diesel and Illuminating kerosene	299 m³
8	Engen Petroleum Limited	PPL.sf.F3/13/33/2006	Frankfort	Barret Street, Frankfort, Free State	39.68 c/l	09-Mar-22	Diesel and Illuminating kerosene	324 m³
9	Engen Petroleum Limited	PPL.sf.F3/13/49/2006	Petrus Steyn	Potgieter Street, Petrus Steyn, Free State	26.00 c/l	09-Mar-22	Diesel and Illuminating kerosene	218 m³
10	Engen Petroleum Limited	PPL.sf.F3/13/54/2006	Senekal	Johan Du Plessis Street, Senekal, Free State	26.46 c/l	09-Mar-22	Diesel and Illuminating kerosene	156 m³
11	Engen Petroleum Limited	PPL.sf.F3/13/57/2006	Viljoenskroon	Rendevouz Street, Industrial Area, Viljoenskroon, Free State	33.36 c/l	09-Mar-22	Diesel and Illuminating kerosene	324 m³
12	Engen Petroleum Limited	PPL.sf.F3/13/58/2006	Vrede	84 Bothastreet, Vrede, Free State	24.12 c/l	09-Mar-22	Diesel	324 m³

NO	Licensee Name	Licence / Reference Number	Area/Town/City (Location)	Physical Address (Facility)	(Latest tariff approved/set)As published on NERSA website	Date approved /set	Product	Licence Capacity/Flow Rate/Length
13	Engen Petroleum Limited	PPL.sf.F3/13/62/2006	Welkom	137 Jan Hofmeyer Road , Welkom, Free State	26.59 c/l	09-Mar-22	Diesel and Illuminating kerosene	1135 m³
14	Engen Petroleum Limited	PPL.sf.F3/13/69/2006	Bloemfontein Airport	Bloemfontein Airport, Bloemfontein ,Free State	61.16 c/l	09-Mar-22	Jet-A1 and Avgas	512 m³
15	EasiGas (Pty) Ltd	PPL.sf.F3/203/2015	Bloemfontein	119 Fritz Stockantrohn Street, New East Rand, Bloemfontein, Free State	19.97 c/l	05-Oct-22	LPG	90 m³
16	Konet Diesel	PPL.sf.F3/145/2013	Wesselsbron	Farm Magdalena, Wesselsbron, Free State	56.21 c/l	08-Feb-23	Diesel	411 m³
17	PetroSA SOC Ltd	PPL.sf.F3/119/2012	Bloemfontein	2 Mill street, Hamilton, Bloemfontein, Free State	36.34 c/l	05-Oct-22	Diesel; Petrol; IP; LPG	7569 m³
18	Paul Eliz Distributors	PPL.sf.F3/49/2006	Bethlehem	3676 Tsoella Street,Bohlokong,Bethlehem, Free State	0.46 c/l	14-Oct-13	Diesel and Illuminating kerosene	51 m³
19	Shell Downstream SA (Pty) Ltd	PPL.sf.F3/223/2015	Kroonstad	1st Avenue , Gunhill ,Kroonstad, Free State	62.90 c/l	07-Feb-24	Petrol and Diesel	15388 m³
20	TotalEnergies Marketing South Africa	PPL.sf.F3/11/7/2006	Bethlehem	4 Robertson Sreet ,Industrial Sites,Bethlehem,Free State	33.74 c/l	05-Jul-23	Petrol, Diesel and Illuminating paraffin	4660 m³
GAUTENG STORAGE FACILITIES:								
1	Airports Company South Africa	PPL.sf.F3/100/2/2011	Johannesburg	OR Tambo International Airport, Johannesburg, Gauteng	4.92 c/l	09-Sep-13	Jet Fuel	59960 m³
2	Auto Commodities	PPL.sf.F3/56/2006	Krugersdorp	C/o Barrat & Write Street, Krugersdorp, Gauteng	21.56 c/l	17-Feb-14	Diesel; IP	3231 m³
3	Automotive Gas Oil	PPL.sf.F3/181/2014	Krugersdorp	Cnr Coppinger and Renswick, Factoria, Krugersdorp	37.94 c/l	04-Aug-21	Petroleum products, mainly Diesel	8750 m³
4	Bidvest Tank Terminals	PPL.sf.F3/22/1/2006	Isando Storage Facility	18 Anvil Road, Isando, Johannesburg,Gauteng	R401.16/m³/month	08-Jul-20	Lubricant	960 m³
5	BP Southern Africa (Pty) Ltd	PPL.sf.F3/112/2011	Germiston	Airport , Rand Airport, Germiston, Gauteng	72.85 c/l	12-Dec-13	Avgas; Jet A-1	120 m³
6	BP Southern Africa (Pty) Ltd & Sasol Oil (Pty) Lt	PPL.sf.F3/129/2013	Waltloo	Conner Petroleum and Haak Street, Waltloo, Pretoria, Gauteng	16.90 c/l	15-Mar-17	Diesel/Petrol	51425 m³
7	Astron Energy (Pty) Ltd	PPL.sf.F3/31/10/2006	Waltloo	790 Alwyn Street, Waltloo, Pretoria, Gauteng	11.03 c/l	20-Jan-22	LRP; DGO; IK; ULP	12494 m³
8	Ltd	PPL.sf.F3/33/2006-AM1	Alrode	Alrode Joint Terminal, 20 Garfiel Street, Alrode, Gauteng	9.05 c/l	05-Mar-20	Diesel; Petrol	66 903 m³
9	EasiGas (Pty) Ltd	PPL.sf.F3/202/2015	Alberton	Gate 5, Hibuscis Road, Alrode, Alberton, Gauteng	32.69 c/l	05-Oct-22	LPG	500 m³
10	Engen Petroleum Limited	PPL.sf.F3/13/9/2006	Johannesburg, Langlaagte	Johannesburg Terminal, 9 Link Road ,Laanglagte,Johannesburg, Gauteng	9.11 c/l	09-Mar-22	ADO50,500; ULP93,95; IK	34543 m³
11	Engen Petroleum Limited	PPL.sf.F3/13/12/2006	Pretoria (Waltloo)	Pretoria Pipeline Terminal, 282 Alwyn Street , Waltloo ,Pretoria, Gauteng	11.29 c/l	09-Mar-22	Diesel; Petrol; IK	19730 m³
12	Engen Petroleum Limited	PPL.sf.F3/13/19/2006	Benoni	Benoni Sales Agency, Bradford Road , Industial Sites ,Benoni,Gauteng	31.14 c/l	09-Mar-22	ADO50; IK	1628 m³
13	Engen Petroleum Limited	PPL.sf.F3/13/65/2006	Johannesburg (Distr.C.Isando)	JHB Distribution Centre,Brewery road ,Isando ,Johannesburg, Gauteng	123.46 c/l	09-Mar-22	D/L 700, 530; Trans Fluid sae 50; TQH 20/68; Bevan BM 150	519 m³
14	Oryx Energies (Pty) Ltd	PPL.sf.F3/160/20213	Chamdor	30 Fransen Street, Chamdor, Gauteng	2.15 R/kg	05-Apr-23	LPG	380 m³
15	Power Petroleum Distributors	PPL.sf.F3/7/2006	Mabopane	23 Unit N, Tyre Road , Mabopane, Gauteng	9.40 c/l	12-Dec-13	Diesel; Petrol; Kerosene	384 m³
16	Royale Energy Terminals ((Pty) Ltd	PPL.sf.F3/3212/2017	Langlaagte	Corner Maraisburg and Kelvin Roads, Industria, Langlaagte, Gauteng	24.05 c/l	06-Mar-18	Diesel/Petrol	15703 m³
17	Sasol Oil (Pty) Ltd & BP Southern Africa (Pty) Ltd	PPL.sf.F3/17/2/2006	Alrode	Conner Garfield Road and Clark St North, Alrode, Gauteng	28.41 c/l	05-Jul-23	Diesel; Petrol	64925 m³
18	Shell Downstream SA (Pty) Ltd	PPL.sf.F3/246/1/2016	Alberton	Gate 6,Hibuscis,Road, Alrode,Alberton, Gauteng	23.50 c/l	07-Feb-24	Diesel; Petrol; IP; Empty	76831 m³
19	Stormcrow Ten CC	PPL.sf.F3/148/2013	Jet Park	5 Hargan Street, Jet Park, Johannesburg, Gauteng	21.98 c/l	04-Oct-23	Diesel 500	332 m³
20	TotalEnergies Marketing South Africa	PPL.sf.F3/11/3/2006	Alrode	25-27 Potgieter Street, Alrode, Alberton, Gauteng	20.59 c/l	05-Jul-23	Diesel50; Unleaded93/95	21824 m³
21	TotalEnergies Marketing South Africa	PPL.sf.F3/11/2/2006	Waltloo	Erf 114, Cnr Petroleum & Alywyn Str, Wwatloo, Pretoria, Gauteng	10.14 c/l	05-Jul-23	Diesel50; Unleaded93/95	14971 m³
22	Wilprops 35 (Pty) Ltd	PPL.sf.F3/107/2011	Germiston	Erf 1678 Forsdicks Road, Roodekop, Germiston, 1400	28 c/l	19-Aug-13	Diesel/Lubes/HFO/Glycerol /Methylesters	10582 m³
23	Texan Petroleum	PPL.sf.F3/170/2014	Waltloo	297 Mundt Street Waltloo, Gauteng	18.37 c/l	05-Apr-23	Diesel 500; ULP 95	267m³
24	Transnet SOC Ltd	PPL.sf.F3/19/2006	Tariton	C/o Rustenburg & Ventersdorp Road, Tariton, Krugersdorp, Gauteng	27.50 c/l	06-Dec-23	Diesel; Petrol	28600 m³
25	Ltd	PPL.SF.p.F3/334/2020	Jameson Park	Poortjie Road, Jameson Park, Gauteng	R413.92/m³/month	13-Mar-24	Diesel; Petrol	100000 m³
KWAZULU NATAL STORAGE FACILITIES								
1	Airports Company South Africa	PPL.sf.F3/100/1/2011	La Mercy (Durban)	King Shaka International Airport, La Mercy, Durban, KwaZulu-Natal	62.88 c/l	09-Sep-13	Jet Fuel	6000 m³
2	Astron Energy (Pty) Ltd	PPL.sf.F3/322/2017	Island View	Portion 63-70 of Erf 689, Bluff, Island View, Durban	68.53 c/l	11-Nov-21	Lubricants	
3	Bidvest Tank Terminals	PPL.sf.F3/22/2/2006	Durban Storage Facility	142 Wharfside Road, Bay 2,3,4,5,6 & Quarry 1 & 2, Durban Harbour,Durban	R 134,12	18-May-15	LPG;	32379 m³
4	Bidvest Tank Terminals- Fuels	PPL.sf./F3/323/2017	Richards Bay	Lots 2 & 4, South Dunes, Richards Bay, KwaZulu-Natal	R210.85/m³/month	02-Jun-23	ULP/Diesel/Kerosene/JetA 1	48312 m³
5	Bidvest Tank Terminals - Old Tanks LPG	PPL.sf./F3/323/2017	Richards Bay	Lots 2 & 4, South Dunes, Richards Bay, KwaZulu-Natal	R935.81/m³/month	02-Jun-23	LPG; ULP/Diesel/Kerosene/JetA 1	6000 m³

NO	Licensee Name	Licence / Reference Number	Area/Town/City (Location)	Physical Address (Facility)	(Latest tariff approved/set)As published on NERSA website	Date approved /set	Product	Licence Capacity/Flow Rate/Length
6	Bidvest Tank Terminals - New Tanks LPG	PPL.sf.F3/323/2017	Richards Bay	Lots 2 & 4, South Dunes, Richards Bay, KwaZulu-Natal	R538.02/m³/month	02-Jun-23	LPG; ULP/Diesel/Kerosene/JetA 1	4 8848 m³
7	Chemoleo (Pty) Ltd	PPL.sf.if.F3/335/2020	Island View	Cutler Complex, Island View, Durban, KwaZulu-Natal	94.53 c/l	03-Aug-22	Base Oil	7125 m³
8	Engen Petroleum Limited	PPL.sf.F3/13/28/2006	Creighton	Main Street , Creighton,KwaZulu Natal	28.24 c/l	09-Mar-22	ADO 50; ULP 95; IK; LRP 95	819 m³
9	EasiGas (Pty) Ltd	PPL.sf.F3/204/2015	Prospecton	Sapref Refinery Road, Prospecton, Durban, KwaZulu-Natal	72.02 c/l	05-Oct-22	LPG	2180 m³
10	Engen Petroleum Limited	PPL.sf.F3/13/31/2006	Empangeni	3 second Street, Kuleka, Empangeni,KwaZulu-Natal	25.02 c/l	09-Mar-22	LRP 95; ADO50; ULP95; IK	1524 m³
11	Engen Petroleum Limited	PPL.sf.F3/13/8/2006	Durban	Durban Terminal Wentworth, Military Road ,Wentworth, Durban, KwaZulu-Natal	4.78 c/l	09-Mar-22	ULP95,93; ADO50; IK	3437 m³
12	Engen Petroleum Ltd (Refinery)	PPL.p.F3/41-43/2006	Durban	Island View Site B, Island View Road, Island View,Bluff, Durban,KwaZulu- Natal	3.7 c/l	02-Dec-11	Diesel; Petrol; Kerosene; Crude oil; Avgas; Fuel oil; Marine diesel oil; HOBS; LOGBS	131337 m³
13	Engen Petroleum Limited	PPL.sf.p.F3/342/2022	Prospecton	Prospection STF Tank, Durban, KwaZulu-Natal	3.42 c/l	05-Oct-22	Diesel, Crude Oil	
14	Hammerstone Fuels	PPL.sf.F3/6/2006	Durban	102 Marseilles Crescent , Briardene Industrial Park, Durban, KwaZulu-Natal	79.26 c/l	03-Jun-22	Diesel; Illuminating kerosene	52 m³
15	P Trimborn Agency	PPL.sf.F3/195/2014	Pietermaritzburg	1 Edison Place, Mokondeli, Pietermaritzburg< KwaZulu-Natal	45.55 c/l	06-Dec-23	ULP/Diesel/IP	295 m³
16	P Trimborn Agency	PPL.sf.F3/196/2014	Pietermaritzburg	4 Edison Place, Mokondeli, Pietermaritzburg< KwaZulu-Natal	46.58 c/l	06-Dec-23	ULP/Diesel/IP	332 m³
17	Sasol Oil (Pty) Ltd & TotalEnergies Marketing South Africa	PPL.sf.F3/18/2006/AM1	Durban (Crude Oil)	Natcos, Prospection Road , Durban Harbour, Durban , KwaZulu-Natal	12.31 c/l	06-Jul-22	Diesel; Petrol; Crude oil	130275.3 m³
18	Sasol Oil (Pty) Ltd & TotalEnergies Marketing South Africa	PPL.sf.F3/18/2006/AM1	Durban (White product)	Natcos, Prospection Road , Durban Harbour, Durban , KwaZulu-Natal	6.67 c/l	06-Jul-22	Diesel; Petrol; Crude oil	128743.1 m³
19	Shell Downstream SA (Pty) Ltd	PPL.sf.F3/23/3/2006	Ladysmith	53 Diamana Road,Ladysmith, KwaZulu-Natal	18.09 c/l	15-Jul-15	ULP95; Diesel 500,50	7530 m³
20	TotalEnergies Marketing South Africa	PPL.sf.F3/11/2/2006	Island View	Island View LMP Site 2, Lot No 103 Formosa, Road, Island View, Bluff, Durban,	9.03 c/l	05-Jul-23	Petrol; Diesel, IP	26 371 m³
21	TotalEnergies Marketing South Africa	PPL.sf.F3/11/1/2006	Island View	Island View LMP Site 3, Lot No 103 Formosa, Road, Island View, Bluff, Durban,	9.13 c/l	05-Jul-23	Petrol; Diesel, IP	44 904 m³
22	TotalEnergies Marketing South Africa and Engen SA (Pty) Ltd	PPL.sf.F3/11/6/2006	Ladysmith	1 Mill Street,Ladysmith,KwaZulu-Natal	26.20 c/l	02-Aug-23	ULP95; Diesel 500, 50	8995 m³
23	Vopak Terminal Durban (Pty) Ltd	PPL.sf.F3/81/1/2008	Durban	Farewell & King Site, 105 Taiwan Road, Island View, Durban, KwaZulu-Natal	R267.59/m³/month	28-Mar-24	ULP/Diesel; Diesel	56653 m³
24	Vopak Terminal Durban (Pty) Ltd	PPL.sf.F3/81/2/2008	Durban	170 Wharfside Road, Fynnsite, Island View, Durban, KwaZulu-Natal	R267.59/m³/month	28-Mar-24	Diesel; Diesel/Petrol	17837 m³
LIMPOPO STORAGE FACILITIES:								969 018.8 m³
1	BF Distributors	PPL.sf.F3/127/2013	Louis Trichardt	3 Unika Street, Louis Trichart	7.41 c/l	27-Jul-15	Diesel; Petrol; IP	655 m³
2	BF Distributors	PPL.sf.F3/126/2013	Mokopane	Corner 3rd Avenue and 1st Avenue,Industrial Area, Mokopane	12.71 c/l	27-Jul-15	Diesel; Petrol; IP	870 m³
3	BF Distributors	PPL.sf.F3/125/2013	Polokwane	124 Blaauwberg Street, Ladine, Polokwane	9.83 c/l	27-Jul-15	Diesel; Petrol; IP	551 m³
4	BF Distributors	PPL.sf.F3/128/2013	Tzaneen	457 Kudu Street,Industrial Site, Tzaneen	3.49 c/l	27-Jul-15	Diesel; Petrol	1341 m³
5	Engen Petroleum Limited	PPL.sf.F3/13/42/2006	Mokopane	Mokopane Depot, 19, 2nd Avenue,Old Industrial Site , Mokopane, Limpopo	25.94 c/l	09-Mar-22	ULP 93&95; ADO50; IK	5892 m³
6	Engen Petroleum Limited	PPL.sf.F3/13/10/2006	Makhado Depot	5 Unika Street , Industrial Area, Makhado, Limpopo	28.46 c/l	09-Mar-22	ULP 93&95; ADO50	2513 m³
7	Engen Petroleum Limited	PPL.sf.F3/13/10/2006	Makhado Agency	5 Unika Street , Industrial Area, Makhado, Limpopo	30.86 c/l	09-Mar-22	ULP 93&95; ADO50	2513 m³
8	Engen Petroleum Limited	PPL.sf.F3/13/34/2006	Hoedspruit	180 Panther Street,Hoedspruit, Limpopo	51.77 c/l	09-Mar-22	ULP 95; ADO 50; IK	766 m³
9	Engen Petroleum Limited	PPL.sf.F3/13/48/2006	Musina	8 Pat Harrison Street, Musina,Limpopo	24.12 c/l	09-Mar-22	Petrol; Diesel; IK	1027 m³
10	Engen Petroleum Limited	PPL.sf.F3/13/56/2006	Thabazimbi	Bethanie Sentum, Warmbad Rd, Thabazimbi, Limpopo	26.37 c/l	09-Mar-22	ULP 93&95; ADO; IK	456 m³
11	PetroSA SOC Limited	PPL.sf.F3/120/2012	Tzaneen	9 Kudu Street, Industrial Sites, Tzaneen, Limpopo	61.59 c/l	05-Oct-22	Diesel	5204.72 m³
12	Shell Downstream SA (Pty) Ltd	PPL.sf.F3/222/2015	Polokwane	19th Industria Street ,Pietersburg, Limpopo	25.23 c/l	07-Feb-24	Diesel; ULP 93&95	2574 m³
13	TotalEnergies Marketing South Africa	PPL.sf.F3/11/8/2006	Polokwane	57 Goud Street ,Laboria,Polokwane	39.16 c/l	27-Feb-18	Diesel 50; ULP 93&95	3042 m³
MPUMALANGA STORAGE FACILITIES								27 404.72 m³
1	Engen Petroleum Limited	PPL.sf.F3/13/38/2006	Leslie	Stasiestraat, Leslie, Mpumalanga	43.09 c/l	09-Mar-22	Diesel and Illuminating Kerosene	492 m³
2	Engen Petroleum Limited	PPL.sf.F3/13/45/2006	Middelburg	Market Street, Middleburg, Mpumalanga	26.51 c/l	09-Mar-22	Diesel and Illuminating Kerosene	338 m³
3	Engen Petroleum Limited, Astron Energy & TotalEnergies Marketing South Africa (Pty) Ltd	PPL.sf.F3/13/15/2006	Witbank	Witbank Terminal, Erf 17 & 18 Schonland Drive, Ferrobank,Witbank,Mpumalanga	9.50 c/l	04-May-22	Petrol, Diesel and Illuminating kerosene	17837 m³
4	EasiGas (Pty) Ltd	PPL.sf.F3/206/2015	Nelspruit	331 Basson Street, Rockys Drift, Nelspruit, Mpumalanga	18.92 c/l	05-Oct-22	LPG	234.998 m³
5	Q4 Depot (Pty) Ltd	PPL.sf.F3/333/2019	Delmas	95 Kiepersol Street, Delmas, Mpumalanga	15.88 c/l	02-Jun-20	Petrol and Diesel	5527 m³

NO	Licensee Name	Licence / Reference Number	Area/Town/City (Location)	Physical Address (Facility)	(Latest tariff approved/set)As published on NERSA website	Date approved /set	Product	Licence Capacity/Flow Rate/Length
6	Sasol Oil (Pty) Ltd	PPL.sf.F3/17/3/2006	Secunda	Synfuels Road ,Secunda,Mpumalanga	135.83 c/l	05-Jul-23	Lube Oil	117 m³
7	Shell Downstream SA (Pty) Ltd	PPL.sf.F3/246/4/2016	Rocky's Drift	Basson Street, Rocky Drift,White River,Mpumalanga	59.70 c/l	07-Feb-24	Petrol and Diesel	4565 m³
8	Shell Downstream SA (Pty) Ltd	PPL.sf.F3/217/2015	Witbank	14 Scholand Drive Ferrobank,Witbank, Mpumalanga	51.14 c/l	07-Feb-24	Petrol and Diesel	30820 m³
9	Shell Downstream SA (Pty) Ltd	PPL.sf.F3/212/2015	Standerton	R23 Road, Azalea, Standerton, Mpumalanga	16.76 c/l	12-Nov-20	Diesel	664 m³
10	TotalEnergies Marketing South Africa	PPL.sf.F3/11/10/2006	Origstad	6 Carl Trichardts Sreet,Origstad,Mpumalanga	25.17 c/l	10-Mar-14	Petrol, Diesel and kerosene	2842 m³
11	Twin Fuels (Pty) Ltd	PPL.sf.F3/216/2015	Piet Retief	15 Salinga Str, Piet Retief	70.93 c/l	07-Sep-22	Petrol, Diesel and kerosene	152.215 m³
12	TotalEnergies Marketing South Africa	PPL.sf.F3/11/3/2006	Nelspruit	3 Wolfaardt Str, Nelspruit, Mpumalanga	29.68 c/l	05-Jul-23	Petrol, Diesel and Illuminating Paraffin	6762 m³
13	Porta Verspreiders (Pty) Ltd	PPL.sf.F3/346/2023	Middelburg	Portion 30-72 Zuid Street, Middelburg, Mpumalanga	17.48 c/l	08-Nov-23	Petrol and Diesel	1 493 m³
14	Porta Verspreiders (Pty) Ltd	PPL.sf.F3/347/2023	Middelburg	Portion 15-Mnotho Street, Middelburg, Mpumalanga	20.78 c/l	08-Nov-23	Petrol and Diesel	4 167 m³
15	Porta Verspreiders (Pty) Ltd	PPL.sf.F3/348/2023	Belfast	Portion 45-Station Street, Belfast, Mpumalanga	66.10 c/l	08-Nov-23	Petrol and Diesel	1 522 m³
16	Wozani Berg Gasoline (Pty) Ltd	PPL.sf.F3/29/2006	Ermelo	13-33 Saratoga Road at Ermelo	43.96 c/l	27-Feb-18	Diesel	189 m³
NORTHERN CAPE STORAGE FACILITIES:								95 676.21 m³
1	Engen Petroleum Limited	PPL.sf.F3/13/13/2006	Upington Depot	Upington Depot, 15 Industria Road ,Upington, Northern Cape	30.31 c/l	09-Mar-22	ULP95; ADO50; IK	864 m³
2	Engen Petroleum Limited	PPL.sf.F3/13/35/2006	Hopetown	Industrial Street ,Hopetown, Northern Cape	43.50 c/l	09-Mar-22	Diesel	164 m³
3	Engen Petroleum Limited	PPL.sf.F3/13/70/2006	Kimberley Airport	Kimberley Airport, Kimberley, Northern Cape	69.41 c/l	09-Mar-22	Jet A-1; Avgas	287 m³
4	Engen Petroleum Limited	PPL.sf.F3/13/71/2006	Upington Airport	Upington Airport, Northern Cape	100.87 c/l	09-Mar-22	Jet A-1; Avgas	3112 m³
5	EasiGas (Pty) Ltd	PPL.sf.F3/205/2015	Kimberley	6 Study Street, Beaconsfield, Fabricia, Kimberley, Northern Cape	14.39 c/l	05-Oct-22	LPG	90 m³
6	Shell Downstream SA (Pty) Ltd	PPL.sf.F3/23/2/2006	Kimberley	72 Study Street,Beaconfield,Kimberley , Northern Cape	15.58 c/l	15-Jul-15		4550 m³
NORTH WEST STORAGE FACILITIES:								9 067 m³
1	BP North West	PPL.sf.F3/1/2/2006	Schweizer-Reneke	2 Strydom Street,Scheizer-Reneke Industria, Schweizer-reneke,North West	32c/l	02-Apr-12	Diesel; IK	272 m³
2	BP North West	PPL.sf.F3/1/3/2006	Klerksdorp	13 Railway Road, Klerkindustria,Klerksdorp,North West	43 c/l	02-Apr-12	ULP 93; DGO 500; D50; IP	18 m³
3	BP North West	PPL.sf.F3/1/4/2006	Ottosdal	2 Station Street, Ottosdal Industria ,Ottosdal, North West	25 c/l	02-Apr-12	Diesel; Petrol	97 m³
4	Astron Energy (Pty) Ltd & TotalEnergies Marketing South Africa	PPL.sf.F3/30/2/2006	Klerksdorp	Erf No. 1416-1418 ,22 Fabrik Street,Industrial Sites, Klerksdorp, North West	18.03 c/l	05-Mar-20	ULP 93; DGO 500; D50; IP	13991 m³
5	Engen Petroleum, Astron Energy & BP SA	PPL.sf.F3/209/2015	Rustenburg	8 Coetzter Street, Rustenburg, North West	24.84 c/l	23-Jan-20	Petrol; Diesel; Paraffin	20348 m³
6	Engen Petroleum Limited	PPL.sf.F3/13/2/2006	Klerksdorp	C/oFabrik & Railway Street,Klerksdorp, North West	11.41 c/l	09-Mar-22	ADO 50; ULP 93&95	12996 m³
7	Engen Petroleum Limited	PPL.sf.F3/13/27/2006	Coligny	140 Voortrekker Street , Coligny , North West	21.94 c/l	09-Mar-22	ADO50	360 m³
8	Engen Petroleum Limited	PPL.sf.F3/13/29/2006	Delareyville	3 Atoonbaam, Delareyville, NorthWest	25.22 c/l	09-Mar-22	Diesel	164 m³
9	Engen Petroleum Limited	PPL.sf.F3/13/41/2006	Matikeng	8 Second Street , Matikeng, North West	27.64 c/l	09-Mar-22	ULP93; ADO50; IK	648 m³
10	Engen Petroleum Limited	PPL.sf.F3/13/53/2006	Schweizer- Reneke	Kuschke Street, Schweizer- Reneke, North West	26.07 c/l	09-Mar-22	ULP 93; ADO 50	703 m³
11	Engen Petroleum Limited	PPL.sf.F3/13/60/2006	Vryburg	12 Faktoria Road, Vryburg, North West	25.10 c/l	09-Mar-22	ULP95; ADO50; IK	1317 m³
12	Engen Petroleum Limited	PPL.sf.F3/13/63/2006	Wolmaranstad	Gazelle Road ,Wolmaranstad, North West	29.37 c/l	09-Mar-22	ULP 93&95; ADO50	1014 m³
13	Engen Petroleum Limited	PPL.sf.F3/13/39/2006	Lichtenburg	Lichtenburg Agency, North West	47.90 c/l	09-Mar-22	ADO 50; ULP; IK	1616 m³
14	Engen Petroleum Limited	PPL.sf.F3/13/21/2006	Bloemhof	Bloemhof Agency, 15 Resident Street, Bloemhof,North West	24.71 c/l	09-Mar-22	ADO 50	759 m³
15	Royale Energy ((Pty) Ltd	PPL.sf.F3/321/1/2017	Klerksdorp	4 Mahogany Avenue, Industria, Klerksdorp, North West	18.10 c/l	06-Mar-18	Diesel/Petrol	8216 m³
WESTERN CAPE STORAGE FACILITIES:								34381 m³
1	Airports Company South Africa	PPL.sf.F3/100/3/2011	Cape Town	Cape Town International Airport, Cape Town, Western Cape	5.31 c/l	09-Sep-13	Jet fuel	9680 m³
2	Avedia Energy (Pty) Ltd	PPL.sf.F3/250/2016	Saldanha Bay	Portion 13 of Farm Yzervarkensrug, Saladanha Bay, Western Cape	677.07 R/ton	26-Jan-18	LPG	8000 m³
3	BP Atlantic	PPL.sf.F3/3/2/2006	Ceres	Erf 2376, Vos Street,Ceres, Western Cape	3.71 c/l	07-May-12	Petrol; Diesel, Paraffin	235 m³
4	BP Atlantic	PPL.sf.F3/3/3/2006	Rawsonville	Rawsonville Bulk Fuel Depot, Portion 3 of Farm, Bokkekraal no 378,Rawsonville,Western C	5.59 c/l	07-May-12	Diesel	80 m³
5	BP Atlantic	PPL.sf.F3/3/4/2006	Moorreesburg	Moorreesburg Bulk Fuel Depot,Erf 1055,70 River Street, Moorreesburg,Western Cape	4.13 c/l	07-May-12	rol, Diesel, illuminating keros	110 m³
6	BP Atlantic	PPL.sf.F3/3/5/2006	Vredendal	Vredendal Bulk Fuel Depot, 12 Sirkel Road,Vredendal,Western Cape	8.46 c/l	07-May-12	Diesel	235 m³
7	BP Atlantic	PPL.sf.F3/3/6/2006	Caledon	1 Industrial Street,Caledon, Western Cape	4.84 c/l	07-May-12	rol, Diesel, illuminating keros	236 m³
8	BP Atlantic	PPL.sf.F3/3/7/2006	Malmesbury	Malmesbury Bulk Fuel depot,Erf 5723, 3 Schoonspruit Road ,Malmesbury,Western Cape	7.85 c/l	07-May-12	Diesel	102 m³
9	BP Southern Africa (Pty) Ltd	PPL.sf.F3/14/35/2006	Cape Town	Cape Town Aviation, Beech Craft Road,Cape Town International Airport,Western Cape	41.87 c/l	13-Dec-13	Jet-A1; Avgas	129 m³
10	BP Southern Africa (Pty) Ltd	PPL.sf.F3/14/1/2006	Cape Town	BP Road, Montague Gardens,Milnerton, Cape Town, Western Cape	17.2 c/l	30-Mar-17	Petrol/Diesel; Petrol/Diesel/Jet A1/IP	80253 m³
11	BP Southern Africa (Pty) Ltd	PPL.sf.F3/14/10/2006	George	liverpool Street, Benoni,Western Cape	44.07 c/l	13-Dec-13	Jet A1; Avgas	378 m³
12	Burgan Cape Terminals (Pty) Ltd	PPL.sf.if.F3/174/2014	Cape Town	Erf 174306, Eastern Mole Berth 2, Cape Town, Western Cape	31.40 c/l	03-Mar-23	Petrol/Diesel; Ethanol, Bio Fame	122040 m³
13	EasiGas (Pty) Ltd	PPL.sf.F3/167/2014	Cape Town	16 Spin Street, Sacks Circle, Bellville South, Western Cape	32.46 c/l	05-Oct-22	LPG	280 m³
14	DJ Erasmus Vervoer (Pty) Ltd	PPL.sf.F3/133/2006	Ceres	Erf 5, Boerneef Straat, Ceres, Western Cape	10.31 c/l	02-Mar-15	Diesel/IP	189 m³
15	DJ Erasmus Vervoer (Pty) Ltd	PPL.sf.F3/105/2011	Bredasdorp	Plot 1404, 8 Fabrik Road, Western Cape	86.89 c/l	05-Jul-23	Diesel/IP	498 m³
16	Engen Petroleum Limited	PPL.sf.F3/13/7/2006	Cape Town	Esso Road, Montague Gardens, Cape Town, Western Cape	17.09 c/l	09-Mar-22	95; ADO 50; IK; Surge, 1 e	49 476 m³
17	Engen Petroleum Limited	PPL.sf.F3/13/26/2006	Citrusdal	93 Loopsraat ,Citrusdal,Western Cape	24.69 c/l	09-Mar-22	ADO 50	83 m³
18	Engen Petroleum Limited	PPL.sf.F3/13/40/2006	Lutzville	Stasie Weg,Lutzville, Western Cape	24.12 c/l	09-Mar-22	Diesel/IK	138 m³
19	Engen Petroleum Limited	PPL.sf.F3/13/43/2006	Malmesbury	Klipfontein Farm ,Malmesbery,Western Cape	24.27 c/l	09-Mar-22	Diesel	23 m³
20	Engen Petroleum Limited	PPL.sf.F3/13/46/2006	Moorreesburg	River Street,Moorreesburg,Western Cape	24.15 c/l	09-Mar-22	ADO; IK; ULP 95	656 m³

NO	Licensee Name	Licence / Reference Number	Area/Town/City (Location)	Physical Address (Facility)	(Latest tariff approved/set)As published on NERSA website	Date approved /set	Product	Licence Capacity/Flow Rate/Length
21	Engen Petroleum Limited	PPL.sf.F3/13/59/2006	Vredenburg	81 Main Road ,Vredenburg,Western Cape	24.17 c/l	09-Mar-22	Diesel	164 m³
22	Engen Petroleum Limited	PPL.sf.F3/13/64/2006	Worcester	2 High Street , Worcester, Western Cape	29.91 c/l	09-Mar-22		588 m³
23	FFS Refiners (Pty) Ltd	PPL.sf.F3/80/6/2008	Cape Town Harbour	Brackenfell Depot, 36 Viben Str, Cape Town, Western Cape	R1 569.64/m³/month	10-Sep-20		361 m³
24	FFS Refiners (Pty) Ltd	PPL.sf.F3/80/9/2008	Cape Town Harbour	Cape Town Harbour Tank Farm, Eastern Mill, Duncan Docks, Cape Town, Western Cape	R441/m³/month	10-Sep-20	Heavy fuel oil; Light waste oil, gas oil, slops, diesel	14250 m³
25	Oilfanking Mogs Saldanha	PPL.sf.p.F3/218/2015	Saldanha Bay	Saldanha Bay in the Western Cape	6.42 ZAR/bbl/month	29-Mar-16		2098536 m³
26	PetroSA	PPL.sf.F3/71/2007	Mossel Bay	Voorbaai Tankfarm, Mossel Bay, Western Cape	0.47 c/l	04-Feb-14	ULP 95; LRP 95; ADO; kerosene, slop oil; condensate; HOBS; Mosspar H; Mosspar M; Mostanol L; Mostanol P; Mostanol 120	165612 m³
27	Shell Downstream SA (Pty) Ltd	PPL.sf.F3/224/2015	Mossel Bay	Mossel Bay Depot, Depot Road,Voorbaai Industrial Area,Westen Cape	18.33 c/l	07-Feb-24		19692 m³
28	Sunrise Energy (Pty) Ltd	PPL.sf.if.F3/201/2015	Saldanha Bay	Saldanha Bay in the Western Cape	994 R/ton	03-Feb-16	LPG	12445 m³
29	TotalEnergies Marketing South Africa	PPL.sf.F3/11/12/2006	Cape Town/ Paarden Eiland	97 Auckland Street ,Paarden Eiland, Cape Town,Western Cape	30.83 c/l	27-Feb-18		18600 m³
30	TotalEnergies Marketing South Africa	PPL.sf.F3/11/17/2006	Klipdale	Erf 10, Hoofweg Road,Klipdale, Western Cape	39.14 c/l	13-Jan-14		366 m³
31	Moov Fuel (Pty) Ltd	PPL.sf.F3/187/2014	Swellendam	Buffelsjagrivier, Swellendam, Western Cape	63.86 c/l	19-Jan-23	Diesel; Illuminating paraffin	86.8 m³
								2 676 085.8 m³
LOADING FACILITIES:								
1	Avedia Energy (Pty) Ltd	PPL.sf.F3/260/2016	Saldanha Bay (Mobile)	GMQ, Port of Saldanha Bay, Western Cape	97.62 R/ton	26-Jan-18		8000 m³
2	Burgan Cape Terminals (Pty) Ltd	PPL.sf.if.F3/174/2014	Cape Town	Cape Town Harbour	1.75 c/l	03-Mar-23		
3	Chemoleo (Pty) Ltd	PPL.sf.if.F3/335/2020	Island View	Cutler Complex, Island View, Durban, KwaZulu-Natal	25.81 c/l	03-Aug-22	Base Oil	7125 m³
4	Engen Petroleum (JV)	PPL.LI.F3/21/2006	East London	Tanker Berth, West Bank East Landon Habour, Eastern Cape	0.78 c/l	27-Oct-14		1300 m³/hr
5	Engen, TotalEnergies Marketing South Africa and Shell Downstream	PPL.if.F3/247/1/2016	Port Elizabeth #Arm3	Dom Petro Jetty, Port Elizabeth Habour, Eastern Cape	4.40 c/l	02-Oct-19		600 m³/hr
6	Engen, TotalEnergies Marketing South Africa and Shell Downstream	PPL.if.F3/247/2/2016	Port Elizabeth #Arm4	Dom Petro Jetty, Port Elizabeth Habour, Eastern Cape	4.40 c/l	02-Oct-19		600 m³/hr
7	Shell & BPSA Petri Refineries (SAPREF)	PPL.if.F3/10/2006	Durban - SBM	2Km outside Durban Habour	29.86 R/ton	21-Jan-21		1300 m³/hr
8	Shell & BPSA Petri Refineries (SAPREF)	PPL.if.F3/90/2010	Durban - Berth 6	Island View, Port of Durban, Kwazulu Natal	R 14,68	22-Sep-14		800 m³/hr
9	Shell & BPSA Petri Refineries (SAPREF)	PPL.if.F3/9/2/2006	Durban - Berth 7	Island View, Port of Durban, Kwazulu Natal	R 16,96	12-Mar-12		2730 m³/hr
10	Shell & BPSA Petri Refineries (SAPREF)	PPL.if.F3/9/3/2006	Durban - Berth 8	Island View, Port of Durban, Kwazulu Natal	R 16,96	12-Mar-12		2580 m³/hr
11	Bidvest Tank Terminals- Fuels	PPL.sf./F3/323/2017	Richards Bay	Lots 2 & 4, South Dunes, Richards Bay, KwaZulu-Natal	R43.97/m³/month	02-Jun-23		48312 m³
12	Bidvest Tank Terminals -Old Tanks LPG	PPL.sf./F3/323/2017	Richards Bay	Lots 2 & 4, South Dunes, Richards Bay, KwaZulu-Natal	R127.65/m³/month	02-Jun-23		6000 m³
13	Bidvest Tank Terminals -New Tanks LPG	PPL.sf./F3/323/2017	Richards Bay	Lots 2 & 4, South Dunes, Richards Bay, KwaZulu-Natal	R52.23/m³/month	02-Jun-23		6000 m³
14	Sunrise Energy (Pty) Ltd	PPL.sf.if.F3/201/2015	Saldanha Bay	Saldanha Bay in the Western Cape	994 R/ton	03-Feb-16		
15	Transnet National Ports Authority (TNPA) (SPM)	PPL.if.F3/213/2015	Mossel Bay	Western Cape	2.50 c/l	21-Jan-21		
16	Transnet National Ports Authority (TNPA) (CBM)	PPL.if.F3/213/2015	Mossel Bay	Western Cape	2.50 c/l	21-Jan-21		
17	Vopak Terminal Durban (Pty) Ltd	PPL.sf.F3/81/2/2008	Durban	170 Wharfside Road in Island View	R50.04/m³/month	13-Mar-24		17837 m³
17	Sasol Oil (Pty) Ltd & TotalEnergies Marketing South Africa	PPL.sf.F3/18/2006/AM1	Durban	Natcos, Prospection Road , Durban Habour, Durban , KwaZulu-Natal	0.19 c/l	06-Jul-22	Diesel; Petrol; Crude oil	130275.3 m³
PIPELINES:								
1	Burgan Cape Terminals (Pty) Ltd	PPL.sf.if.F3/174/2014	Cape Town	Erf 174306, Eastern Mole Berth 2, Cape Town, Western Cape	1.51 c/l	03-Mar-23		
2	Astron Energy (Pty) Ltd	PPL.p.F3/35/5/2006	Milnerton	Milnerton, Cape Town	1.57 c/l	17-Feb-14		16 inch / 108.1 km
3	Astron Energy (Pty) Ltd	PPL.p.F3/35/4/2006	Milnerton	Milnerton, Cape Town	2.01 c/l	17-Feb-14		26 inch / 13.03 km
4	Astron Energy (Pty) Ltd	PPL.p.F3/35/7/2006	Milnerton	Milnerton to the Cape Town Docks	2.62 c/l	17-Feb-14		10 inch / 13.07 km
5	Astron Energy (Pty) Ltd	PPL.p.F3/35/8/2006	Milnerton	Milnerton to the Cape Town Docks	0.34 c/l	17-Feb-14		12 inch / 13.07 km
6	Engen Petroleum Ltd (Refinery)	PPL.p.F3/41.42,43/2006	Durban	South Tank Farm (crude)	0.90 c/l	02-Dec-11		279312 m³
7	Sasol Oil (Pty) Ltd	PPL.p.F3/97/2010	Secunda to Natref	Secunda to Natref	45.26 c/l	05-Jul-23		10 inch / 145 km
8	Oilfanking Mogs Saldanha	PPL.p.F3/164/2013/AM2	Saldanha	Saldanha Bay in the Western Cape	1.28 ZAR/bbl/month	06-Jul-22		
9	Vopak	PPL.sf.p.F3/334/2020	Jameson Park	Gauteng	R43.69/m³/month	13-Mar-24		

NO	Licensee Name	Licence / Reference Number	Area/Town/City (Location)	Physical Address (Facility)	(Latest tariff approved/set)As published on NERSA website	Date approved /set	Product	Licence Capacity/Flow Rate/Length
Transnet Pipelines System Tariffs set for the 2024/25								
		2024/25						
	Sasolburg/Jameson Park to:							
	Alrode	5.619						
	Airport (Avtur)	8.761						
	Klerksdorp	18.866						
	Kroonstad	17.661						
	Langlaagte	8.396						
	Jameson Park	8.140						
	Rustenburg	19.714						
	Tartlon	12.910						
	Waltloo	16.479						
	Witbank	15.756						
	Secunda to:							
	Alrode	13.117						
	Coalbrook	15.789						
	Langlaagte	15.603						
	Jameson Park	8.156						
	Rustenburg	26.921						
	Tartlon	20.118						
	Waltloo	17.544						
	Witbank	11.024						
	DJP (Durban) to:							
	Coalbrook (Crude)	62.381						
	Coalbrook (DIC)	62.381						
	NMPP (Durban) to:							
	Airport (Avtur)	71.142						
	Alrode	68.000						
	Kroonstad	80.042						
	Klerksdorp	81.247						
	Langlaagte	70.777						
	Rustenburg	82.095						
	Tartlon	75.291						
	Waltloo	78.860						
	Witbank	78.137						
	Coalbrook	62.381						
	Jameson Park	62.381						

Annexure HH

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 M 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



TNPA PORT OF NGQURA BERTHING GUIDELINES


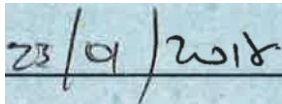


	Effective Date: 2017
	Originating Department: Harbour Master
	Master File Reference : HM/NGQBG/01/09/2017
	Review Period: 2 Years or significant change in operations or legislation
	Approved:  Port Manager
	 Date
	Approved :  Ratbeur Master
	 ate

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1. OBJECTIVES

1.1 The objective of the guidelines is to ensure safe, efficient & orderly berthing of vessels such that the waiting time of vessels for a berth is minimized whilst optimizing the use of Port Infrastructure and improving vessel loading and unloading productivity.

1.2 To ensure that all port stakeholders have a common understanding of the operations in *the* port. **Where reference is made to the Ports Act, the Port Rules, Security regulations, IMDG or other local & national legislations compliance to these sections are mandatory.**

1.3 Ensure safety, the interests of security, good order, protection of the environment and the effective and efficient working of the port as per the Port Rules

1.4 To provide the South African port system with a guiding document to develop berthing guidelines for each port.

2. DEFINITIONS

Definitions related the Berthing Guidelines document as listed below;

Act - National Ports Act, {Act No. 12 of 2005}

Arrival - For port purposes & key performance measurement - time a vessel crosses the port limits or VTS limits

Berth - any area in the port designated by the port where a vessel can safely dock

TNPA Berth Planner - An employee of TNPA responsible for safe planning of vessels at designated berths

COO - Chief Operations Officer

CHM - Chief Harbour Master

Departure - time when a vessel crosses the breakwater leaving the port

Terminal Operator - a licensed terminal Operator operating a cargo working terminal within the port.

Terminal Berth Planner - An employee of a terminal operator responsible for safe and efficient berthing of vessels at the designated terminal

Port Manager -TNPA employee responsible for the overall management of the port.

PSO - Port Security Officer

Harbour Master - A TNPA employee employed as the Harbour Master and mandated by the Ports Act of 2005 to ensure safety of navigation, in the interest of safety, security, good order, protection of the environment and effective and efficient working of the port.

Senior Operations Manager - A senior TNPA employee responsible for operations in a port

ISPS - International Ship and Port Security

IPMS - Integrated Port Management System

Mooring - method of securing a vessel to a berth - limiting movement

Shift - when a vessel moves from berth to another within the same port

Wind Bound - when the wind conditions are not conducive to either docking or sailing a vessel.

Weather Bound - when the weather conditions are not conducive for vessel movements.

UKC - Under Keel Clearance

Liner vessels - Vessels with regular calls at almost regular times.

Red Liners - vessel which require special permission and or times for entry due to size or type of cargo

SAMSA - South African Maritime Safety Authority

Key Commodities - Cargo that contributes significantly to the ports revenue.

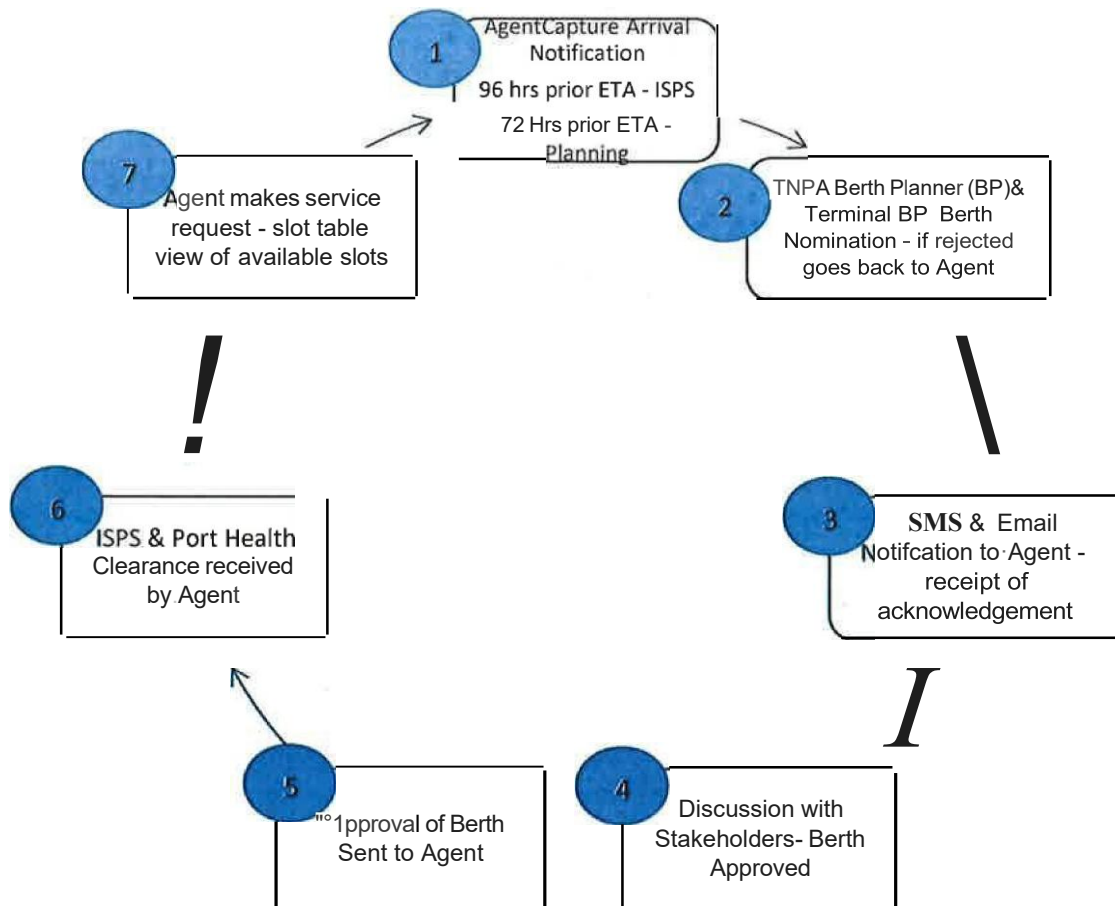
Resource allocation - deployment of Pilots, Tugs, Berthing Staff

Precinct - a cluster of terminals in designated areas of the port

Tidal Vessel - Vessels which have a draft greater than the depth of the berth and require additional water which can be obtained by high tides

Vessel Agents - A registered representative of the vessel owners

3. PROCESS FLOW ON IPMS



TNPA IPMS Process Flow

Note that terminal notifications as required by the relevant terminal must be complied with in terms of terminal operating guidelines or systems.

4.-ISPS CLEARANCE

All security regulated vessels must be ISPS cleared as per Maritime Security Regulations of 2004 prior to making a request for marine services on IPMS. The Security PSO office will also be required to clear coastal vessels to ensure no vessels enter the port without ISPS clearance. This serves as a check for coastal vessels, where they cannot escape clearance due to omission by first port of call.

In relation to off port limits vessels, all vessels arriving off port limits for any services or interaction with any crafts will require ISPS clearance.

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5. INTERNATIONAL MARITIME DANGEROUS GOODS(IMDG)

All shippers, vessel agents and terminal operators will ensure compliance with the IMDG code and the South African Maritime Dangerous Goods Standards and Handling & Transport of Dangerous Cargoes - Procedures Manual.

Special attention shall be paid to the importing and exporting of **Class 1 Explosives**, which poses a significant risk to the port and port users. Class 1 Explosives will only be handled in designated areas in the identified ports and under strict conditions as specified by the SAPS Explosives inspector, SAMSA & the Harbour Master of the Port.

Class 7 refers to radioactive substances and also- requires approval from the National Nuclear Regulator and will require special conditions for handling this class of cargo.

All persons handling dangerous goods or involved in the administration, planning or movement of dangerous goods must be appropriately trained as specified in the SAMSA Marine Notice no 28 of 2009 or any updated notices & amendments thereto.

6. RESOURCE ALLOCATION & ORDER OF WORKING

TNPA implemented Marine Operator Performance Standards (MOPS) in an effort to improve performance within the Marine Services Operations environment. In conjunction with stakeholders the following measures were agreed to be MOPS key performance indicators.

- ▶ Slot Utilization
- ▶ Slot Efficiency
- ▶ Adherence to Requested time in relation to Marine Services, Terminal Operator, Shipping Lines and Weather delays.

6.1 In line with Marine Operator Performance Standards (MOPS) which aims to offer an equitable, efficient, reliable and predictable Marine Services to all Shipping Lines, the port declared a number of available slots per day. These slots are based on available resources and port configuration.

	1	2	3	4	5	6	7	8	9	10	11	12
Slot	06h00	08h00	10h00	12h00	14h00	16h00	18h00	20h00	22h00	00h00	02h00	04h00
	08h00	10h00	12h00	14h00	16h00	18h00	20h00	22h00	24h00	02h00	04h00	06h00
Stream 1												

Port of Ngqura Slot Table -1 move every 2 hours

6.2 As a general principle all vessels will be serviced based on bookings made on Integrated Port Management System (IPMS) slot booking system and subject to the provisions of these guidelines, and in compliance with the Ports Act and Port Rules.

6.3 A vessel, shall forfeit its booked slot, if it has not complied with all the requirements for its berthing as prescribed by the Port Rules and the terminal operating guidelines or system.

6.4 The Harbour Master will consider inter alia the following factors in the interest of safety, security, good order, protection of the environment and orderly working of the port in the allocation of resources:

- 6.4.1 Vessels with emergencies
- 6.4.2 Shipping Back log Recovery
- 6.4.3 Tidal vessels
- 6.4.4 Liner type vessels - time sensitive
- 6.4.5 Key Commodities
- 6.4.6 Cargo Sensitive vessels - e.g. Passengers
- 6.4.7 Weather conditions

6.5 Harbour Masters also reserves the right to prioritize the vessels according to key commodities provided there are no competition issues. The order of priority will be as follows;

- 6.5.1 Passengers
- 6.5.2 Foreign Navy
- 6.5.3 Jobs of Special Nature (including Tug and Tow)
- 6.5.4 Draft Restricted Vessels (As per sailing window indicated by the **DMAX**)
- 6.5.5 Container Vessels (Not applicable to Richards Bay)
- 6.5.6 Bulk Carriers - Manganese
- 6.5.7 General Cargo vessels
- 6.5.8 Other - non cargo working vessels

6.6 The following key commodities have been identified in the ports:

- 6.6.1 Containers - Port of Ngqura

6.7 The movement must only be booked at the start of a slot. The IPMS will only provide agent with selected start times of slot as per port designated slot table. This is to ensure efficiency in managing vessel bookings.

6.8 Thirty minutes will be allowed for marine services resources to be at the vessel and for the vessel to be ready. All marine delay calculation will only commence after thirty minutes from the requested time. The TNPA Tariff book is to be consulted for additional charges and application thereof.

6.9 After the 46th minute resources are to be redeployed to next vessel awaiting service in which event the vessel will need to rebook services, alternatively resources to be kept at vessel subject to movement not impacting other shipping movements.

6.10 The Vessel Traffic Controller (VTC) /Senior Vessel Traffic Controller (SVTC) will be able to drag a vessel back if a move can be accommodated and there is spare time and this will not impact _negatively or cause misalignment for future slots.

6.11 Start & End of Cargo times & Cargo volumes will be required at the completion of every vessel to complete vessel visit on IPMS.

7. ORDER OF PRIORITY BY BERTHS

Berths operated by Licensed Terminal Operators will have rights to prioritize cargo working vessel calls to these berths. Any substitution must be approved by the TNPA Berth Planner or Deputy Harbour Master. Cargo working vessels will take priority over other vessels - e.g. lay bye, bunkers, repairs etc.

In the interest of safety, security, good order, protection of the environment and orderly working of the port the Harbour Master may berth another vessel at the berth allocated to a Licensed Terminal Operator in consultation with the terminal operator. Conditions of lease agreements and terminal licence must be consulted to ensure that the terminal operator's rights are maintained.

7.1 Vessels will be berthed in order of their seniority subject to;

7.1.1 The vessel being ready to; , commence cargo handling operations

7.1.2 Sufficient cargo and / or cargo storage space being available to permit efficient cargo handling operations to take place. For cargo exports the required amount of cargo must be on the ground and the remainder of the cargo must be enroute such that the productivity of the berth is not affected as per the Lease agreement & terminal operating guidelines.

8. WEATHER OPERATIONAL LIMITS

	Port Area		Maximum Limits	
Wind Direction	Port Entrance		Approx. 35 knots	
Wind Speed	Port Entranee		Approx. 35 knots	
Swell Height	Port Entranee		Approx. 3 meters	
Visibility	Greater than 1 mile		Pilot's discretion	
Vessel Type	Length	Breadth	Wind Speed	Swell Height
Containers	300	50 m	Approx. 35 Knots	2.5 metres
Bulk Carriers	250	45 m	Approx. 35Knots	2.5 metres
Project Cargo	250	32.m	Approx. 35 Knots	2.5 metres

Safe weather operating parameters for vessel types are approximate guidelines due to the variables in the maritime environment and subjected to the prevailing weather conditions and pilot's discretion.

9. PORT AND BERTH DRAFT LIMITATIONS

9.1 The list of all the berth depths and the maximum permissible draft of the berths - channels and basins are only good for the time at which the soundings were taken. The Harbour Master's office must be contacted for verification of berth depths & maximum permissible drafts for vessels close to the maximum permissible.

BERTH	TYPE	LENGTH	DEPTH	MAX PERM DRAFT	BOLLARDS
Container terminal					
D100	Container terminal	340	16.0m	15.5	1-18
D101	Container terminal	320	16.0m	15.5	19 - 35
D102	Container terminal	320	16.0m	15.5	36 - 51
D103	Container terminal	320	16.0m	15.5	52 - 67
MPT FINGER JETTY					
C100	Manganese Terminal	300	16.0m	15.5m	1 - 16
C101	Manganese Terminal	300	16.0m	15.5m	17 - 32

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B100	Liquid Bulk Terminal	300	18.0m	17.5m	1 - 15
MPTSOUTH					
mptSouth	Multipurpose	100.0 m	16		32 - 37
	DESIGNED DEPTH	Length			
Entrance Channel	18M	18M			
Turning Basin	18M				

Bertfl	Min. Distance between vessels	Remarks
Tankers, High risk & end of quay	30m	PIANC recommends 0.15 x LOA
Other vessels	20m	PIANC recommends 0.1 x LOA

Minimum distances between vessels

9.2 Daylight Only Movements

- 9.2.1 Vessels with exceeding a particular length or breadth as per port limitations.
- 9.2.2 Fishing vessels presenting language and or forward visibility problems
- 9.2.3 Double banking/de-coupling
- 9.2.4 No-main-engine movements.
- 9.2.5 Towing immobilized vessels entering the port
- 9.2.6 Buoy Mooring- docking/undocking - as per port requirements
- 9.2.7 Dry dock, Floating dock & synchro-lift movements
- 9.2.8 Any vessel over 370m and beam greater than 50m
- 9.2.9 Red liners, Tankers with a flash point of less than 61degrees.

9.3 Tidal Vessel Guidelines

There is increasing commercial pressure on the port to accommodate bigger vessels with deeper drafts.

The operating limits for the port gives the limit of these vessels at chart datum and an allowance given for tide, vessels wishing to berth shift or sail at a draft above the maximum permissible draft of the berth are allowed to do so under inter alia the following conditions;

- 9.3.1 Vessel movement to be carried out at rising tide
- 9.3.2 The vessel owner or designated representative to sign a letter of indemnity
- 9.3.3 Submission of a tidal calculation to the Harbour Master's office for approval
- 9.3.4 The under keel clearance at all states of tide must be not less than the Ports prescribed UKC

9.4 Factors to include in the passage planning of such vessels to include but Not be limited to:

- 9.4.1 Type of vessel/ maneuvering characteristics
- 9.4.2 Size of vessel
- 9.4.3 Wind conditions
- 9.4.4 Current at the bar
- 9.4.5 Visibility
- 9.4.6 Speed
- 9.4.7 Squat
- 9.4.8 Increased draft due to list/rolling/heave
- 9.4.9 Type of bottom - sand, clay, mud or rock
- 9.4.10 Available tug assistance and bollard pull

10. MOORINGS

Mooring requirements will depend inter alia the following; type of vessel, LOA, breadth, freeboard prevailing weather conditions, berth, bollard configuration - distance between bollards, bollard SWL. The minimum mooring lines to secure a vessel over 200m is 4 headlines & 2 spring lines forward. 4 stern line & 2 spring lines aft. Additional mooring lines will be required to secure a vessel under special conditions - eg. Surge, High Swell, Strong Winds, etc. Larger vessels over 300m will require 6 Headlines Stern lines & 3 Spring lines. The number of mooring lines could remain the same if the diameter of the lines are increased to withstand the holding forces.

Storm surge lines may be used only if safe to do so.

Special mooring arrangements need to be made with the Harbour Master for the Port of Ngqura for unconventional vessels. A mooring plan with wind calculations needs to be submitted to the Harbour Master for formal approval. Ports will indicate minimum mooring requirements - especially for high risk berths and request for mooring plan for approval by Harbour Master for high risk vessels - prone to wind or swell, surge conditions and also passing vessel traffic.

It is the master's responsibility to ensure that his vessel is secured & safe for cargo operations and the mooring lines are tended to during loading, discharge operations and adverse weather conditions.

The Harbour Master in consultation with the Master of the vessel will determine if a vessel needs to be evacuated from the port due to adverse weather conditions - all related costs are for the vessel's account. The following to be considered.

- ❖ Safety of Port
- ❖ Safety of the vessel & other vessels in port
- ❖ Availability & operating limits of resources
- ❖ Ensure cargo secured
- ❖ Prevailing weather conditions
- ❖ Letter of indemnity

11. PILOTS BOARDING ARRANGEMENTS

All Pilot boarding arrangements must comply with IMO and local port legislations taking into account marine notices issued by SAMSA. Each port will indicate Pilot boarding arrangements and requirements for boarding by Pilot boat & where available helicopter, Should the port guidelines be in conflict with local & international legislative requirements the latter shall take precedence over the port guidelines.

Limitations	It is subject to HM/pilot discretion
Wind Speed	Approx. 30- 35 knots wind
Swell Height	Approx. 2.5 to 3 metres

These guidelines are subjected to prevailing weather conditions and Pilots discretion

Include visibility- need to be consistent in all ports- Pilot's discretion

12. ASSOCIATED COSTS FOR VACATING BERTH

Should a vessel make use of a berth to which another vessel has preference, such vessel shall vacate that berth, when required, at its own cost.

Should a non-working or unproductive vessel be required to vacate a berth due to circumstances beyond the control of TNPA, the costs associated therewith will be for the vessel's account.

Any surcharge applicable to the movement of such a vessel will be for the account of terminal or vessel requesting that service.

If the Harbour Master, for safety reasons, deems a shift to be necessary, the cost thereof will be for that vessel's account - this is subject to consultation with the relevant parties.

13. DISPUTE RESOLUTION

Should a dispute arise in the order of the berthing of a vessel, the involved parties will submit their concerns, in writing, to the Harbour Master. The Harbour Master will then consider the matter and provide his/her decision.

14. AVAILABLE RESOURCES

Port	Tuws	Work Boats	Pliot boats
Ngqura	3	0	1
Tiotal	3	0	1.

Port of Ngqura Resources

The tugs in the Port of Ngqura have 70 ton bollard pull

OPERATIONAL RESOURCES

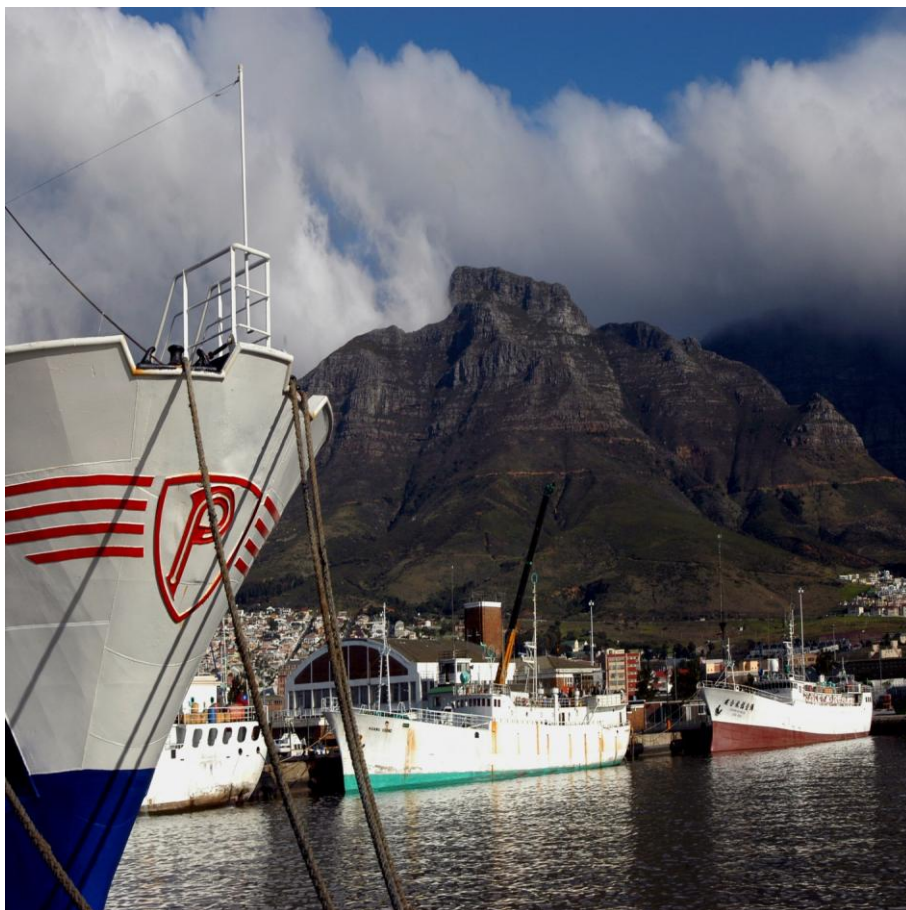
Port	Tugs	Work Boats	Pilot boat
Ngqura	2	0	1
Total		0	1

15. PRECINCTS

PRECINCT	BERTH	COMMODITIES	COMMENTS
NGQURA			
Container	D100	Container	Moor master units
	D101	Container	
	D102	Container	
	D103	Container	
Manganese	C100	Manganese	Proposed
	C101	Manqanese	Proposed
Lay bye berth	MPTSOUTH	Lay bye berth	
Liquid	B100.	Liquid berth (proposed)	proposed

Tariff Book

April 2024 to March 2025



Picture: Port of Cape Town

TRANSNET NATIONAL PORTS AUTHORITY

PORT TARIFFS

Twenty Third Edition

1 April 2024

Issued by:

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www.transnetnationalportsauthority.net

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Transnet National Ports Authority can not assure that the Tariff Book is free of errors and will therefore not be liable for any loss or damages arising from such errors.

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LIST OF TRANSNET NATIONAL PORTS AUTHORITY FEES AT THE SOUTH AFRICAN PORTS OF TRANSNET SOC (Ltd)

Definitions

“Act” means the National Ports Act No. 12 of 2005.

“Agent” refers to all representatives having commercial dealings with a vessel or its cargo, unless the context indicates that it refers to a particular kind of agent, and includes a vessel’s agent and a cargo agent.

“Authority” means Transnet National Ports Authority, a division of Transnet SOC Ltd.

“Cargo” means any cargo, goods, wares, merchandise, and articles of every kind whatsoever, including animals, birds, fish, plants and containers, carried, or intended to be carried, over the port infrastructure by sea.

Claims for adjustment or refund of port fees

All claims related to fees raised by the Authority in terms of the Authority’s Tariff Book will, for prescription purposes, be dealt with strictly in terms of the Prescription Act, Act No. 68 of 1969

“Coaster” refers to vessels carrying cargo exclusively between SA ports, on a regular schedule. To qualify as a bonafide coaster, an application must be lodged and approved by the Authority.

“Coastwise cargo” means cargo moving by sea between SA ports.

“Container operator” means any person providing international transportation of containerised goods, and approved by the Commissioner for the South African Revenue Service under section 96A of the Customs and Excise Act 91 of 1964, as amended, for operating containers in the Republic.

“Entering port” means a vessel entering the port’s limits.

“passenger vessel” means a vessel that carries more than 12 passengers.

“pleasure vessel” means a vessel, however propelled, that is used, or intended to be used, solely for sports and recreation and that does not carry more than 12 passengers.

“fees” means all fees, charges and dues contemplated in Section 73 of the Act. (The fees in the Tariff Book are for the basic services only and other fees may be levied in the event of a departure from or addition to basic services.) Fees will be raised at the time the service is performed excluding, where tariffs are adjusted annually where the actual time of vessel arrival will be used for cargo dues purposes.

“fishing vessel” means a vessel that is used for the purpose of catching fish or other living resources of the sea for financial gain or reward.

“Harbour Master” means the employee of the Authority appointed for each port as contemplated in section 74(3) of the Act.

“length” refers to the length overall (LOA) and means —

- i) in the case of a registered vessel, the length shown in the certificate of registry; and
- ii) in the case of a vessel licensed in terms of section 68 of the Merchant Shipping Act, 1951 (Act No. 57 of 1951), the length shown in the licence.

“master” means any person, other than a pilot, having charge or command of a vessel or pleasure vessel.

“ISO container” means a freight container with the specifications prescribed by the International Organization for Standardisation.

“owner” means any person to whom a vessel or pleasure vessel or a share in a vessel or pleasure vessel belongs or any other organisation or person, such as the manager or charterer, who has assumed the responsibility for the operation of the vessel or pleasure vessel from the owner of the vessel or pleasure vessel.

“passenger” means any person carried in a vessel, except:

- i) a person employed or engaged in any capacity on board a vessel on the business of the vessel;
- ii) a person on board the vessel either in pursuance of the obligation laid upon the master to carry shipwrecked, distressed or other persons or by reason of any circumstance that neither the master nor the owner nor the charterer (if any) could have prevented; and
- iii) a child under one year of age.

“area of jurisdiction” means the area within which Transnet has jurisdiction at the respective ports as appearing in the Port Regulations.

“Port Regulations” means the Regulations that the Minister of Transport promulgated in the Government Gazette, 23 November 2007.

“Port Rules” are the rules that the Authority may, with the approval of the Minister of Transport, adopt in terms of Section 80(2) of the Act.

“Republic” means the Republic of South Africa.

“Revenue Office” means the Authority’s Revenue Office.

“SAMSA” means the South African Maritime Safety Authority, established as a juristic person by virtue of section 2(1) of the South African Maritime Safety Authority Act No. 5 of 1998.

“shift” means the movement of a vessel from one place in the port to another, and **“shifting”** bears a corresponding meaning.

“small vessel” means a commercial small vessel that:

- i) is registered in the Republic;
- ii) lies in, is used in or operates from a port; and
- iii) includes a tug, fishing vessel, launch, barge, lighter, rowing boat, ski boat, sailing boat, yacht or similar vessel, or a hulk of any of the vessels enumerated, but excludes a pleasure vessel.

“tanker” means a vessel designed to carry liquid cargo in bulk, including a combination carrier being used for this purpose.

“Tariff Book” means the Tariff Book contemplated in section 72 of the Act.

“Transshipment” means an act of off-loading cargo from one ship (generally at the hub port) and loading it onto another ship to be further carried to the final port of discharge outside SA ports.

“Transnet” means Transnet SOC(Ltd) registration No. 1990/00900/30.

“Unit of tonnage” means

1 metric ton (1 000 kg), subject to a minimum of 1 ton, except for the following:

- A vehicle is a purposely built mobile machine on wheels/tracks that is capable of being steered/driven/towed (Including wagons, bicycles, motor vehicles, motorcycles, cars, trucks, buses, railed vehicles, locomotives, tamping machines), Watercraft (ships, boats), Aircraft (helicopters and spacecraft).
- Bulk liquids = 1 kilolitre
- The metric tonnage for tariffing purposes of cargo dues shall include all packaging i.e. mass of cargo, cases, pallets, bags etc.

“vessel” means any water-navigable vessel or structure and includes a passenger vessel, ship, seaplane, small vessel and a non-displacement vessel, but excludes a pleasure vessel, to which Part B of Chapter 2 applies.

“vessel agent” means the agent or owner of the vessel.

“vessel in need of assistance” means a vessel in a situation, apart from one requiring rescue of persons on board, that could give rise to the loss of the vessel or an environmental or navigational hazard.

“vessel’s tonnage” (excluding Section 6) means the tonnage for port tariff purposes is the gross tonnage of a vessel as per the tonnage certificate issued in terms of the Tonnage Convention 1969. (NOT converted to cubic metres.)

Where the vessel’s tonnage is not available, the highest tonnage reflected in Lloyds Register of Shipping, is acceptable.

“VTS” means the vessel traffic service of a port administered by the Authority in respect of a VTS zone.

Importer/Exporter – the responsible party at the time of ship to shore / shore to ship transfer of cargo.

- Importer = the buyer or nominated representative
- Exporter = the seller or nominated representative

SECTION 1

1.1 LIGHT DUES ON VESSELS

Light dues in accordance with the vessels tonnage definition as follows:

The tonnage of a vessel for port tariff purposes is the gross tonnage of a vessel as per the tonnage certificate issued in terms of the Tonnage Convention 1969. (NOT converted to cubic metres).

Where the vessel's tonnage certificate is not available, the highest tonnage reflected in Lloyds Register of Shipping, is acceptable.

The sea within a distance of twelve (12) nautical miles from the baselines shall be the territorial waters of the Republic. When vessels go beyond twelve (12) nautical miles it would be deemed as being outside the ports territorial waters.

1.1.1 LIGHT DUES

Payable by:

Self-propelled vessels, vessels licensed by the Department of Environmental Affairs and Tourism, at their registered port:

Per metre or part thereof of the length overall per financial year or part thereof24.64

All other vessels

Light dues raised at the first South African port of call and remains valid until the vessel departs from the last South African port of call, subject to the following conditions:

1. Vessel does not proceed beyond the borders of the South African coastline as defined.
2. Time spent in South African waters does not exceed 60 days.
 - After 60 days the vessel will be deemed coastal for Light Dues purposes only and will be liable for Light Dues raised on a per calendar month basis.
 - It would still be the vessel's prerogative to request for coastal status within the 60 day window.
3. Vessels remaining within a specific port for extended periods will only be charged once and would not be affected by the length of stay:

Per 100 tons or part thereof..... 117.08

Light dues in respect of coasters are payable in terms of a special agreement.

Coaster Light Dues will be raised on a monthly basis to vessels granted "Bonafide Coasters" status. In the event where bonafide coasters enter a South African port following a visit or call from a foreign port, full Light Dues is payable at the first South African port of call.

Exemptions

A reduction of 100% would be allowed in the following instances:

- South African Police Services (SAPS) and South African National Defence Force (SANDF) vessels;
- SAMSA vessels;
- SA Medical & Research vessels;
- Non-selfpropelled small and pleasure vessels not used for gain;
- Vessels that remain at the anchorage outside the port except in the following instances:
 - When moored at a single buoy mooring or any similar facility.

1.2 SAMSA LEVY

SAMSA levies as prescribed in the SAMSA Levy Determination Regulations in force are payable by the vessel's owner, charterer, operator or agent.

Exemptions

- Foreign naval / war vessels.

SECTION 2

VESSEL TRAFFIC SERVICES (VTS)

2.1 VTS CHARGES ON VESSELS

VTS charges have been introduced in the interest of safe navigation, pollution and conservancy of the ports based on the gross tonnage of a vessel.

The tonnage of a vessel for port tariff purposes is the gross tonnage of a vessel as per the tonnage certificate issued in terms of the Tonnage Convention 1969. (NOT converted to cubic metres.)

Where the vessel's tonnage certificate is not available, the highest tonnage reflected in Lloyds Register of Shipping, is acceptable.

2.1.1 VTS CHARGES

Payable by:

- Vessels calling all Ports under the control of the Authority, and vessels performing port related services within port limits and approaches to port limits, as follows:

Payable per GT per port call at all ports excluding Durban and Saldanha Bay 0.54

Payable per GT per port call at the ports of Durban and Saldanha Bay..... 0.65

Minimum fee..... 235.52

Exemptions

- Vessels belonging to the SAPS and the SANDF;
- Vessels belonging to SAMSA;
- SA Medical & Research vessels;
- Vessels returning from anchorage at the order of the Harbour Master; and
- Vessels resorting under Section 4 , Clause 4.2 (small vessels and pleasure vessels).

SECTION 3

MARINE SERVICES

3.1 GENERAL TERMS AND CONDITIONS

“Ordinary Working Hours”

Port of Mossel Bay

Mondays to Fridays, other than public holidays: 06:00 to 18:00.

Surcharges may apply at the Port of Mossel Bay for marine services provided outside ordinary working hours.

Port of East London

Mondays to Fridays, other than public holidays: 06:00 to 22:00.

Saturdays, other than public holidays: 06:00 to 12:00.

Surcharges may apply at the Port of East London for marine services provided outside ordinary working hours.

Ports of Richards Bay, Durban, Ngqura, Port Elizabeth, Cape Town and Saldanha

00:01 to 24:00 (24 hours service)

Marine Operations available on special request on public holidays i.e. Workers Day, Christmas, New Year's Day, etc.

“Special Services”

Fees are not raised for services performed for the convenience of the port.

Fees for the use of appliances/equipment and for services not provided for herein are quoted on application.

Helicopter Services for Jobs of a Special Nature will be quoted on application.

“Tonnage of Vessels for Port Tariff Purposes”

- The gross tonnage of a vessel as per the tonnage certificate issued in terms of the Tonnage Convention 1969. (NOT converted to cubic metres):

Where the vessel's tonnage certificate is not available, the highest tonnage as reflected in Lloyds Register of Shipping is accepted.

3.2 MARINE SERVICES INCENTIVE

The following incentive applies to the service charges of pilotage, craft assistance and berthing services.

Vessel/Cargo Type	Threshold No. of Vessel Calls	Discount Applicable	Maximum No. of Vessel Calls for Discount
CONTAINER	500	1% (or proportionate) for every 50 calls above Threshold	1500
AUTO CARRIERS	100	1% (or proportionate) for every 10 calls above Threshold	300
BREAK BULK	100	1% (or proportionate) for every 10 calls above Threshold	300
DRY BULK	100	1% (or proportionate) for every 10 calls above Threshold	300
LIQUID BULK	100	1% (or proportionate) for every 10 calls above Threshold	300

These incentives apply per shipping line on a national basis (all port calls) to cargo working vessels only.

3.3 PILOTAGE SERVICES

Pilotage is compulsory at the Ports of Richards Bay, Durban, East London, Ngqura, Port Elizabeth, Mossel Bay, Cape Town and Saldanha with the service being performed by the Authority (Marine Services).

Tonnage of a vessel for Pilotage services purposes:

Ports	Richards Bay	Durban	Port Elizabeth / Ngqura	Cape Town	Saldanha	Other
Per Service (normal entering or leaving the port)	30 960.46	18 608.61	8 970.00	6 342.39	9 673.57	6 547.45
Basic Fee						
Per 100 tons or part thereof	10.93	9.72	14.33	10.20	13.66	10.49

Pilotage dues for services other than normal entering or leaving the port such as towage, standing by, etc. are available on application.

Any movement of vessels without the consent of the Authority will be subject to full pilotage charges as if the service was performed.

A surcharge of 50% is payable at all ports in the following instances:

- If the pilotage service terminates or commences outside ordinary working hours;
- If the vessel is not ready to be moved 30 minutes after the notified time or 30 minutes after the pilot has boarded, whichever is the later;
- If the request for a pilotage service is cancelled at any time within 30 minutes prior to the notified time and the pilot has not boarded.

A surcharge of 50% is only applicable at the Port of Durban in the following instance:

- If the request for a pilotage service is cancelled at any time within 60 minutes prior to the notified time and the pilot has not boarded.

At the Port of Saldanha:

PLO duties for pilots on board tanker vessels during stay - charge per hour 886.20

Exemptions

- Vessels belonging to the SAPS and SANDF except if pilotage services are performed on request.

3.4 SURVEY/EXAMINATION OF SMALL VESSELS AND LIFE SAVING APPLIANCES

Fees for surveying/examination of small vessels, Per service 1 410.80

Fees for surveying/examination of life saving appliances, Per service 615.66

3.5 PILOTAGE EXEMPTION CERTIFICATE

Vessels up to and including 30 metres in length overall

Per metre or part thereof..... 138.77

Minimum..... 1 387.74

Vessels over 30 metres up to 50 metres in length overall 4 163.85

plus

per metre or part thereof over 30 metres 208.23

Vessels over 50 metres up to 70 metres in length overall 8 327.68

plus

per metre or part thereof over 50 metres 277.62

Vessels belonging to the SAPS and SANDF are exempted.

Pilotage exemption certificates are valid per financial year.

Pilotage exemptions and ferryman or coxswain licences may be endorsed to cover all vessels belonging to the same company, provided all vessels are licenced and fall within the category covered by the licence. If a licence is extended to incorporate a larger vessel, the applicable fees must be adjusted accordingly.

Note: A pilotage exemption endorsement cannot be applied to vessels that do not have an exemption license.

3.6 TUGS/VESSEL ASSISTANCE AND/OR ATTENDANCE

The table hereunder shows the craft assistance allocation for the varied vessel size ranges.

VESSEL TONNAGE	MAXIMUM NUMBER OF CRAFT
Up to 2 000	0.50
2 000—10 000	1
10 001—50 000	2
50 001—100 000	3
100 000 plus	4

0.50 Represents workboat

The undermentioned fees are payable for tugs/vessels assisting and/or attending vessels, within the confines of the port and are as follows:

- The craft type and number thereof to be allocated for a service will be decided by the port.
- Per service based on vessel's tonnage:

	Richards Bay	Durban	East London	Port Elizabeth / Ngqura	Mossel Bay	Cape Town	Saldanha
Up to 2 000	7 001.67	8 140.00	5 622.16	7 206.98	6 316.53	5 411.47	9 038.42
2 001 to 10 000	13 020.67	12 633.99	8 152.14	11 168.45	8 152.14	7 898.57	15 378.78
Plus							
Per 100 tons or part thereof above 2 000	275.32	268.99	200.97	237.53	173.37	194.63	327.43
10 000 to 50 000	39 999.88	38 494.51	27 956.91	32 257.98	25 806.37	27 741.85	47 311.70
Plus							
Per 100 tons or part thereof above 10 000	101.08	84.95	66.67	73.10	60.21	64.52	103.23
50 001 to 100 000	79 999.76	73 118.07	55 913.82	64 515.95	n/a	53 978.33	90 322.33
Plus							
Per 100 tons or part thereof above 50 000	30.11	32.24	25.80	21.50	n/a	47.32	27.97
Above 100 000	103 999.70	93 548.13	n/a	82 542.46	n/a	79 569.67	111 827.63
Plus	21.50						
Per 100 tons or part thereof above 100 000		23.65	n/a	21.50	n/a	38.71	47.32

Incremental charge "Plus" is per additional 100 ton/part thereof

- A surcharge of 25% is payable for a service either commencing or terminating outside ordinary working hours on weekdays and Saturdays or on Sundays and public holidays;
- A surcharge of 50% is payable per tug when an additional tug/vessel is provided on the request of the master of the vessel or if deemed necessary in the interest of safety by the Harbour Master; (in addition to the maximum allocation as per craft allocation table)
- A surcharge of 50% is payable where a vessel without it's own power is serviced. Should an additional tug/vessel be provided on the request of the master to service such a vessel, a 100% surcharge is payable; (in addition to the maximum allocation as per craft allocation table)
- Should the request for a tug/vessel to remain/come on duty outside ordinary working hours be cancelled at any time after standby has commenced, the fees as if the service had been performed, are payable, i.e. normal fees enhanced by 25%.
- Should a vessel arrive or depart 30 minutes or more after the notified time the fee per tug per half hour or part thereof is (all ports excluding the Port of Saldanha).....8 050.76
- Port of Saldanha 10152.19

3.7 MISCELLANEOUS TUG/VESSEL SERVICES

Tanker fire watch, fire fighting and standby services

For remaining/coming on duty outside ordinary working hours for purposes of tanker fire watch and/or fire fighting during or outside ordinary working hours for any other standby services, such as bad weather, for long uninterrupted periods:

When foam is used to combat a fire and/or oil spills all costs incurred will be recovered from the vessel.

Fees available on application.

All ports excluding the port of Saldanha

First 12 hours, per tug per hour or part thereof..... 16 098.29

Maximum128 786.47

Following 12 hours up to 24 hours per tug per hour or part thereof 10 735.34

Maximum for 24 hours..... 225 442.89

Thereafter, per tug per hour or part thereof 8 050.76

At the Port of Saldanha

First 12 hours, per tug per hour or part thereof	20 304.33
Maximum	162 444.27
Following 12 hours up to 24 hours per hour or part thereof.....	13 537.32
Maximum for 24 hours	284 308.38
Thereafter, per tug per hour or part thereof.....	10 152.19

Mobilisation and demobilisation charge for floating cranes

Minimum fee per service at the Port of Durban.....	44 374.14
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The mobilisation and demobilisation of the floating crane constitutes one service.
The fee is applicable to each vessel serviced.

Floating cranes

For handling loads, per hour or part thereof: At the Port of Durban	19 017.50
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The hire period will be subject to a minimum of 2 hours calculated from the time the crane is placed in position to undertake the service, until it is released. The fee is applicable to each vessel serviced.

Other vessel services:

Fees for Large Tug per hour or part thereof.	
All Ports, except the Port of Ngqura, Port Elizabeth and Saldanha.....	16 095.12
Port of Ngqura/Port Elizabeth	22 050.30
At the Port of Saldanha for services of a special nature	20 301.18

Fees for Small Tug/ Workboat per hour or part thereof

All Ports, except the Port of East London, Ngqura and Port Elizabeth.....	5 955.53
Port of East London	9 851.06
Port of Ngqura/Port Elizabeth	8 159.07

Fees for launch per hour or part thereof

All Ports, Large Launch	2 370.85
All Ports, Small Launch	1 659.57
Port of Ngqura/Port Elizabeth, Large Launch	3 248.01
Port of Ngqura/Port Elizabeth, Small Launch	2 273.62

Tugs/vessels involved in salvage: Special conditions apply when services rendered constitute salvage. The Authority reserves the right to claim reward for salvage if the service rendered to a vessel in distress constitutes salvage.

3.8 BERTHING SERVICES

The following fees are payable per service, including conveyance of staff, for vessels entering or leaving a port, shifting berth (including warping along the line of a wharf and shifting to or from a drydock or slipway) undergoing engine trials, remooring and crewing, berthing gang standing by or detained at a vessel's request for similar purposes, with or without tug/vessel assisting or in attendance (unmooring and mooring of a vessel when shifting berth or warping alongside the berth.) Berthing services provided when a vessel shifts berth alongside the berth and will be charged on a per service basis and berthing and unberthing will be charged as two separate services.

	Richards Bay	Port Elizabeth / Ngqura	Cape Town	Saldanha	Other Ports
Basic fee	3 175.89	3 838.62	3 052.33	4 006.34	2 801.91
Plus					
Per 100 tons or part thereof	13.46	18.72	14.92	16.97	13.68

A surcharge of 50% will be payable in the following instances:

- If the service either terminates or commences outside ordinary working hours;
- Should the request for the berthing staff to remain/come on duty outside ordinary working hours be cancelled at any time after standby has commenced;
- If the vessel arrives or departs 30 minutes or more after the notified time.

For berthing staff in attendance during or outside ordinary working hours on board tanker vessels, discharging crude and petroleum products (including Liquefied Petroleum Gas vessels) at the Port of Mossel Bay and Port of Saldanha Bay, per hour or part thereof

3.9 RUNNING OF VESSEL LINES

Running of vessels' lines is where a launch/mooring boat is used to run the vessels' lines (steel wire lines/mooring ropes) from the ship to the bollard. Running of the vessels' lines or standing by to run lines for vessels entering, leaving or shifting; per service during or outside ordinary working hours:

	Port Elizabeth / Ngqura	Cape Town	Saldanha	Other Ports
Per service	2 266.73	2 370.84	2 085.59	1 654.56
If the service terminates or commences outside ordinary working hours, minimum	4 533.42	3 309.05	4 171.18	3 309.05

If the vessel arrives or departs 30 minutes or more after the notified time, the following charges apply per hour or part thereof, calculated from the notified time until service is completed:

	Port Elizabeth / Ngqura	Cape Town	Saldanha	Other Ports
Per service	2 266.73	2 370.84	2 085.59	1 654.56
If the service terminates or commences outside ordinary working hours, minimum	4 533.42	4 741.69	4 171.18	3 309.05

If the request for a tug/vessel to remain on duty outside ordinary working hours is cancelled at any time after standby has commenced, the following fee per hour or part thereof, will be maintained for the actual period that the tug/vessel remained on duty, subject to a minimum of 2 hours 1 654.56

At the Port of Saldanha when remooring without tug/pilots occurs, the following fee per service is applicable 4 739.14

3.10 HIRE OF MARINE EQUIPMENT/MARINE SERVICES

Each per day of 24 hours or part thereof, if available

Passenger gangways.....	320.10
Mooring ropes at the Port of Saldanha	1 511.85

Each per hour or part thereof, if available

Punt hire per hour	146.27
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Forklifts at the Port of Mossel Bay per hour

3 ton Forklift	534.39
4 ton Forklift	595.25

Electric Power: Fees quoted on application

Compressed Air: Fees quoted on application

Any other equipment: Fees quoted on application.

Divers Services (where available): Fees quoted on application

Note: Any rope, mooring spring or strap damaged or destroyed by chafing or cutting shall be paid for by the owner of the vessel responsible. All other equipment damaged through other than by normal wear and tear may be repaired/replaced at the hirer's expense. Fees quoted on application.

SECTION 4

PORT FEES ON VESSELS, MISCELLANEOUS FEES AND SERVICES

4.1 PORT FEES ON VESSELS

The tonnage of vessels for port tariff purposes is the gross tonnage of a vessel as per the tonnage certificate issued in terms of the Tonnage Convention 1969. (NOT converted to cubic metres)

Where the vessel's tonnage certificate is not available the highest tonnage as reflected in Lloyds Register of Shipping is accepted.

4.1.1 PORT DUES

Payable by:

- Vessels entering the port from the time of passing the entrance inwards until the time of passing the entrance outwards;
- Vessels taking in bunkers at the designated anchorage;
- Vessels at offshore moorings or similar facilities, as follows:

Basic fee per 100 tons or part thereof.....	192.73
plus	
per 100 tons or part thereof per 24 hour period, a part of a 24 hour	
period being applied pro rata	57.79

Small vessels and pleasure vessels resorting under Section 4 when visiting a port other than at their registered port will be subject to a minimum fee470.98

A reduction of 35% will be allowed in the following instances:

- Vessels not engaged in cargo working for the first 30 days only;
- Bona fide coasters;
- Passenger vessels;
- Small vessels resorting under Section 4, Clause 4.2 when visiting a port other than their registered port.

Vessels in port for longer than 30 days not engaged in cargo working or undergoing repairs will be liable for a 20% surcharge on the incremental fee of port dues.

A reduction of 60% will be allowed to vessels calling for the sole purpose of taking on bunkers and/or stores and /or water or a combination of all three, provided the vessel's entire stay does not exceed 48 hours. This reduction will not be enjoyed in addition to the 35% reduction granted for vessels not engaged in cargo working for the first 30 days only, bona fide coasters, passenger vessels and small vessels resorting under Section 4, Clause 4.2

A reduction of 10% will be allowed to certified double hulled liquid bulk tankers, liquid bulk tankers equipped with segregated ballast tanks and liquid bulk tankers in possession of a "Green Award." The reduction is applied for any one certification or a combination thereof with a maximum of 10%. Proof of aforementioned needs to be submitted to the Authority prior to Vessel sailing.

A vessel remaining in port for less than 12 hours will be allowed a reduction of 15% in addition to other reductions that may be enjoyed.

Exemptions

- Vessels belonging to the SAPS and SANDF;
- Vessels belonging to SAMSA;
- SA Medical & Research vessels;
- The time a vessel occupied a drydock, floating dock, syncrolift or slipway;
- Vessels resorting under Section 4, Clause 4.2 but only at their registered port;
- Fishing vessels licensed by the Department of Environmental Affairs and Tourism, but only within the fishing port declared under the Sea Fisheries Act, 1973 (Act No. 58 of 1973) at Saldanha.
- Vessels calling for the second time, returning from anchorage at the order of the port.

In the event of a coastal vessel entering from a foreign port full port dues would be payable at the first South African port of call.

4.1.2 BERTH DUES

Payable by any vessel occupying a repair quay or any other berth and not handling cargo, in addition to port dues, for each 24 hour period or part thereof as follows:

Per 100 tons or part thereof

Up to 17 700 tons 50.56

The following 17 600 tons (up to 35 300 tons.) 33.45

The following 17 700 tons (up to 53 000 tons.) 16.82

Over 53 000 tons: No additional fee.

A vessel paying the fees for the use of a drydock, floating dock, syncrolift or slipway can lie alongside a quay for repairs without paying berth dues for the same number of days as it did inside the drydock, floating dock, or on the syncrolift or slipway.

Vessels calling for the sole purpose of landing/shipping/transshipping cargo are allowed a free period of six cargo working hours before cargo working commences and six cargo working hours after cessation of cargo working per call, at berths other than container handling berths in respect of which the free period is two cargo working hours.

Berth dues are calculated by obtaining the following source documents from the Terminal Operators:

- Bulk and break bulk vessels: the source document is the Crane allocation sheet from the planning department at Multi Purpose Terminal (MPT)/ Transnet Port Terminal (TPT)
- Container vessels: the source is the Terminal Performance Report from the Management Information Systems (MIS) department at TPT
- Other vessels: the source is the Statement of Facts from the vessels agents.

Berth dues are calculated by deducting the number of hours worked as per the source document from the period the vessel is in port, taking into account the free periods before and after cargo working hours.

Exemptions

- SAPS and SANDF vessels;
- Vessels lying alongside a berth for the sole purpose of taking in vessel's stores and/or coal and liquid fuel for own consumption are exempted for only 48 hours whereafter the fees specified are payable;
- Vessels resorting under Section 4, Clause 4.2 but only at their registered port;
- Vessels calling for the sole purpose of landing survivors;
- Vessels calling for the sole purpose of obtaining medical assistance;
- SA Medical & Research vessels;
- Passenger vessels on normal business;
- Vessels being fumigated prior to taking in cargo;
- Vessels performing a humanitarian service to South Africans.

Berth dues payable by vessels shipping ore at the ore loading jetty at the Port of Saldanha

Any vessel shipping ore which, after berthing alongside the ore loading jetty and, through no fault of the port, is unable to commence loading within two hours, or which is unable to continue loading for a period exceeding two hours per occurrence, or which occupies the berth after completion of loading and/or a draught survey for a period exceeding two hours, will be subject to berth dues per hour or part thereof based on the vessel's summer dead-mass tonnage (metric tons) and calculated separately for the time exceeding each period of two hours1.15

Statement of Facts for each voyage must be submitted to the Authority within 24 hours after vessel departs.

Fee for non submission of Statement of facts1 926.96

4.2 PORT DUES FOR SMALL VESSELS, HULKS AND PLEASURE VESSELS

Small vessels, hulks and pleasure vessels will be allowed access to the port at the discretion of the port.

Small vessels

Per financial year or part thereof, per metre of length overall, or part thereof:

Non-mechanically propelled boats47.00

Self-propelled boats 78.41

Fishing vessels (however propelled) operating from the fishing harbour at the Port of Saldanha 137.66

Fishing vessels (however propelled), with non-steel constructed hulls

- For the first 10 metres 189.37
- Thereafter 378.68

Fishing vessels (however propelled), with steel constructed hulls

- For the first 10 metres 382.31
- Thereafter 764.52

Hulks

Hulks: per metre, per day calculated on the length9.19

An application to the Authority must be lodged prior to the event after which written approval will be granted if favourably considered.

If broken up at a commercial wharf import cargo dues is also payable in addition to the hulk fee.

Pleasure vessels

Each per financial year or part thereof:

Rowing boats 111.93

Other vessels of up to and including 6 metres in length overall223.88

Other vessels of over 6 metres in length overall447.71

Visiting Vessels (not engaged in trade) Foreign/Local yachts (port dues)

Visiting vessels that are not engaged in trade and do not moor at a commercial berth are allowed a free stay of 30 days in port.

Fees per metre or part thereof of length overall, per day or part thereof.

The following rates must be applied after the 30 day free period.

For the next 90 days, per metre or part thereof of length overall, per day..... 2.82

The following 90 days, per metre or part thereof of length overall, per day..... 5.56

Thereafter, for the remaining period up to 12 months, per metre or part thereof of length overall, per day11.14

If visiting yachts and other visiting pleasure vessels remaining in port for a period in excess of 12 months, per metre or part thereof of length overall, per day33.45

4.3 MISCELLANEOUS SERVICES

Fees applicable at ports where these services or equipment are available.

“A” Whether the fire has been extinguished or not on the arrival of the Fire and Emergency Services on the scene.

“B” Whether the “Hazmat” incident has been resolved or not on the arrival of the Fire and Emergency Services on the scene.

“C” Whether the rescue and/or salvage operation has been completed or not on the arrival of the Fire and Emergency Services.

Refer to A, B and C for the following emergency or incidents below

Fees:

4.3.1 FIRE AND EMERGENCY SERVICES

4.3.1.1 Fire tender turn-out fee — Heavy duty (7 000 kg)..... 3 762.19

4.3.1.2 Fire tender turn-out fee — Light duty..... 2 664.16

4.3.1.3 Hazmat (Chemical) vehicle turn-out — Heavy duty (7 000 kg) 3 762.19

4.3.1.4 Hazmat (Chemical) vehicle turn-out — Light duty2 664.16

4.3.1.5 Use of the fire tender, equipment and crew.
The fee is per half hour or part thereof1 881.06

(Crew=1 x fire officer, 4 x fire fighters for any incident mentioned under A,B,C).
The fee is per half hour or part thereof

4.3.1.6 Use of Hazmat vehicle, equipment and crew..... 1 881.06

4.3.1.7 Additional fire fighting staff fee per half hour or part thereof—each additional member of the fire service assisting in any incident mentioned under A, B and C.314.98

4.3.1.8 Fire fighter on standby duty at the incident including equipment —per half hour or part thereof 314.98

4.3.1.9 Use of a portable fire pump, chemical transfer pump, generator, “veld fire” pump, bobcat including the fire fighter to operate the pump per half hour or part thereof. 500.44

4.3.1.10 Use of additional breathing apparatus. Per set — this is in addition to the breathing apparatus sets carried on the fire tender or hazmat vehicle..... 470.98

4.3.1.11 Use of additional chemical protection suits. Per suit — this is in addition to the chemical suit carried on the hazmat vehicle..... 1 881.06

4.3.1.12 Use of fire extinguishers foam per litre 94.24

4.3.1.13 Use of fire extinguishers. This is in addition to those carried on the fire tender or hazmat vehicle

The fees below include the cost of material, labour and supervision involved in the re-charging of the equipment.

A: 9 Lt water fire extinguisher..... 156.06

B: 9 Lt foam fire extinguisher..... 188.37

C: 9 kg Dry powder fire extinguisher..... 235.52

D: 5-7 kg Carbon Dioxide fire extinguisher.....376.80

4.3.1.14 Emergency support vehicle — R/km..... 8.81

4.3.1.15 Tanker Fire Watch at the Port of Saldanha

12-36 Hours Tanker Fire Watch - Tug 8 573.08

(Maximum fee) 384 692.90

12-48 Hours Tanker Fire Watch - Tug 6 802.58

(Maximum fee) 464 270.97

4.3.2 FIRE PROTECTION

4.3.2.1 Vessel fire protection duties — fire fighter per hour or part thereof.350.30

4.3.2.1.1 At the port of Durban — fire fighter (including security) per hour..... 594.46

4.3.2.2 Cargo fire protection duties — fire fighter per hour..... 350.30

4.3.2.2.1 At the port of Durban — fire fighter (including security) per hour.....594.46

4.3.2.3 “Hotwork” fire safety inspection service 376.80

4.3.3 FIRE AWARENESS TRAINING (MEALS EXCLUDED)

4.3.3.1 Fire induction course per person per day (1 day)..... 1 174.57

4.3.3.2 Hazmat awareness course per person (2 days) 2 352.07

4.3.3.3 Fire marshal course per person (1 day).....1 174.57

4.3.3.4 Fire team course per person (2 days) 2 352.07

4.3.3.5 Fire co-ordination course per person (3 days) 3 526.67

4.3.3.6 On site evacuation drills / simulations and feedback.....6 270.26

4.3.3.7 Hazmat training for drivers (2 days)..... 2 352.07

4.3.3.8 Fire risk assessment per day 3 135.14

4.3.4 FIRE EQUIPMENT MAINTENANCE

4.3.4.1 Labour cost per hour	344.43
4.3.4.2 Service of CO2 fire extinguisher	173.68
4.3.4.3 Pressure test and recharge of CO2 fire extinguisher	376.80
4.3.4.4 Recharge of CO2 fire extinguisher	376.80
4.3.4.5 Service of 9 kg powder fire extinguisher	173.68
4.3.4.6 Pressure test and recharge of 9 kg powder fire extinguisher	406.28
4.3.4.7 Recharge of 9 kg powder fire extinguisher	376.80
4.3.4.8 Service of 9 Lt water fire extinguisher.....	173.68
4.3.4.9 Pressure test and recharge of 9 Lt water fire extinguisher	203.11
4.3.4.10 Recharge of 9 Lt water fire extinguisher	173.68
4.3.4.11 Service of 9 Lt foam fire extinguisher.....	173.68
4.3.4.12 Pressure test and recharge of 9 Lt foam fire extinguisher	220.76
4.3.4.13 Recharge of 9 Lt foam fire extinguisher	188.37
4.3.4.14 Service fire hose reel.....	108.92
4.3.4.15 Service and pressure test hose	173.68
4.3.4.16 Service mobile foam fire unit (>9 Lts capacity)	173.68
4.3.4.17 Pressure test and recharge mobile foam fire unit	877.27
4.3.4.18 Recharge mobile foam fire unit (>9 Lts capacity).....	659.41
4.3.4.19 Service mobile powder fire unit.....	173.68
4.3.4.20 Pressure test and recharge mobile powder fire unit (>9 kg capacity).....	877.27
4.3.4.21 Recharge mobile powder fire unit (>9 kg capacity)	659.41

4.3.5 FIRE EQUIPMENT HIRE

4.3.5.1 Training Facilities Hire per day (excluding fire equipment)	5 487.25
4.3.5.2 Fire pump hire (per half hour).....	500.47
4.3.5.3 Ejector pump hire (per half hour)	188.37
4.3.5.4 Fire hose hire (per half hour)	47.11
4.3.5.5 Branch pipe and nozzle hire (per 8 hr day)	47.11
4.3.5.6 Fire extinguisher hire (per 8 hr day).....	156.06
4.3.5.7 Fire tender and driver — social functions (per hour).....	3 762.19

4.4 SECURITY SERVICES

4.4.1 Crew Transportation

Port of Durban:

Vehicle provided by the Authority's security to crew members for vessels at Island View berths 1-8 to transport crew members from vessel to Check Point

Crew Transportation per day

4.4.2 Fees for other security services are available on application.

4.5 FRESH WATER

Fees for the supply of fresh water are available on application.

4.6 ELECTRICITY

Fees for electricity are available on application.

4.7 REMOVAL OF REFUSE

Fees for the removal of refuse from the port are compulsory (where applicable) and available on application.

4.8 COMBATING OF OIL POLLUTION

The following fees must be raised for the combating of oil pollution in the port area.

- Utilization of oil boom per hour or part thereof.....1 030.12
- Oil spill emulsifier will be charged per litre on applicationOn application
- Fees for any tugs used in the combating operation will be raised separately.

4.9 PASSENGER BAGGAGE: ALL PORTS

Where the Authority is involved in the handling of passenger's baggage, other than manifested baggage, the following fees shall be collected from owners/agents of passenger-carrying vessels for all passengers on embarkation or on disembarkation.

Per passenger 90.19

4.10 PASSENGERS' LEVY: ALL PORTS

The levy charge will be in addition to the abovementioned baggage charge for all passengers on embarkation or on disembarkation.

Embarkation per passenger 95.07
 Disembarkation per passenger 95.07
 Visiting passenger in transit per call 95.07

The passenger levy is raised at all ports where passengers embark, disembark or visit the ports. The levy is raised on a per call basis.

4.11 ADMINISTRATIVE FEES

4.11.1 Amending Fees

Amending fees will be applicable for all changes to marine order post invoicing which arise from customer initiated requests

Amending Fee per request 459.37

4.11.2 Split Account Fees

PRIOR to vessel sailing per party 470.98
 AFTER vessel sailing will result in the split account fee being levied twice per party.

Credit & Re-debit of marine invoice as per client's request after vessel sailing will result in a fee being levied twice.

SECTION 5

PORT SERVICE LICENCE, PORT RULE LICENCE, PORT RULE REGISTRATION AND PORT RULE PERMIT FEES

5.1 FEES PAYABLE FOR PORT SERVICE LICENCE TO BE ISSUED BY THE AUTHORITY IN TERMS OF SECTION 57 OF THE NATIONAL PORTS ACT, No. 12 of 2005

Licence fees are payable in equal installments, on an annual basis, over the period of the licence.

Fee for duration of licence per port

Floating crane services licence fee 22 576.31
 Stevedore services licence fee 22 576.31
 Waste disposal services licence fee 22 576.31

5.2 FEES PAYABLE FOR LICENCES, REGISTRATION AND PERMITS TO BE ISSUED BY THE AUTHORITY IN TERMS OF PORT RULES MADE BY THE AUTHORITY IN TERMS OF SECTION 80(2) OF THE NATIONAL PORTS ACT, No. 12 of 2005:

2.1 Port Rule Licences (Fee for duration of licence) per port

Bunkering licence fee 22 576.31
 Diving licence fee 22 576.31
 Fire protection and fire equipment installation and maintenance licence fee 22 576.31
 Pest control licence fee 22 576.31
 Pollution control licence fee 22 576.31

2.2 Port Rule Registration (Fee for duration of registration) per port

Vessel agent registration fee 742.65

2.3 Port Rule access permit for persons and vehicles

Persons ad hoc access permit fee free
 Persons longer-term access permit fee free
 Motor vehicle access permit fee per financial year 328.69

2.4 Port Rule permits for small vessels and pleasure vessels

Small vessel permit fee free
 Pleasure vessel permit fee free

2.5 Replacement of permits

Permit replacement fee 418.76

5.3. FEES PAYABLE FOR LICENCES FOR ENVIRONMENTAL COMPLIANCE

Hull Cleaning Permit Fee per annum18 959.00

SECTION 6

DRYDOCKS, FLOATING DOCKS, SYNCROLIFTS AND SLIPWAYS

6.1 GENERAL TERMS AND CONDITIONS

“Ordinary working hours”

Ports of Cape Town and East London

According to the custom of the facility.

Port of Durban

07h00 - 17h00 Weekdays

“Week-ends and Public Holidays”

Special permission must be obtained for work to be undertaken on Saturdays, Sundays and public holidays. Special arrangements must also be made for the provision of salt water, compressed air, cranes etc. outside normal working hours.

“Tonnage of vessels for tariff purposes”

The gross tonnage of a vessel in cubic metres (conversion factor 2,83) of a vessel as per the tonnage certificate issued in terms of the Tonnage Convention 1969,

Plus

The tonnage is mass, of all cargo on board.

Where the vessel's tonnage certificate is not available the highest tonnage as reflected in Lloyds Register of Shipping converted (x2,83) to cubic metres is accepted.

6.2 BOOKING FEES

6.2.1 Bookings at the Ports of Cape Town and East London

The following deposits are required for the use of a drydock, floating dock or syncrolift when a firm booking has been made:

Drydock	56 222.56
Syncrolift.....	14 055.64

Tariffs subject to VAT at 15%: Tariffs in South African Rand

6.2.2 Bookings at the Port of Durban

The following deposits are required for the use of a drydock or floating dock when a firm booking has been made:

Drydock.....56 222.56

6.2.3 Bookings for Slipways at the port of Mossel Bay and Port Elizabeth

The following deposits are required for the use of slipway when a firm booking has been made:

Slipways 1 686.68

6.3 PENALTIES

1. Should the booking not be taken up or cancelled within 60 consecutive days prior to the booked date, the deposit will be forfeited. If the booking is cancelled greater than 60 days, a full refund will be given
2. Vessels that exceed their allocated scheduled booking dates for the dry-dock, floating dock and syncrolift occupancy period will incur a 40% penalty on dry-dock, floating dock and syncrolift dues for each subsequent 12-hour period of the vessel's overstay on the ship repair facility.

6.4 PREPARATION

6.4.1 Preparation at the Ports of Cape Town and East London

Note: Should the booking of a drydock be cancelled after the preparatory work has begun, preparation fees are payable.

Tons shall mean gross tonnage in cubic metres

Vessels up to 1 000 tons 2 158.96

Vessels from 1 001 up to 10 000 tons.....4 317.91

Vessels from 10 001 up to 20 000 tons.....8 635.78

Vessels from 20 001 up to 50 000 tons.....12 953.72

Vessels above 50 000 tons.....17 271.56

6.4.2 Preparation at the Port of Durban

The following fees for the preparation of a drydock and floating dock per vessel, are payable:

Drydock 17 282.81

Tariffs subject to VAT at 15%: Tariffs in South African Rand

6.5 DOCKING AND UNDOCKING OF VESSELS

6.5.1 Docking and undocking of vessels at the Ports of Cape Town and East London

The following fees are payable, per service, for the docking and undocking of vessels (the docking and undocking are regarded as separate services):

Drydock 13 083.00

Syncrolift5 771.23

In the event of a request for services outside ordinary working hours being cancelled after the staff have been brought on duty, fees are payable as if the service was rendered.

6.5.2 Docking and undocking of vessels at the Port of Durban

The following fees are payable, per service, for the docking and undocking of vessels (the docking and undocking are regarded as separate services):

Drydock. 13 083.00

In the event of a request for services outside ordinary working hours being cancelled after the staff have been brought on duty, fees are payable as if the service was rendered.

6.6 DRYDOCK, FLOATING DOCK AND SYNCROLIFT DUES

All charges under clause 6.6 below are subject to the overstay penalties as specified in Clause 6.3 on page 35.

6.6.1 Drydock: Ports of Cape Town and East London

The following fees which include cranage and salt water during ordinary working hours are payable for the use of a repair facility:

Tons shall mean gross tonnage in cubic metres.

Tariffs subject to VAT at 15%: Tariffs in South African Rand

Drydock	First period of 24 hours or part thereof	Each subsequent 12 hour period or part thereof
Vessels up to 3 000 tons Plus per ton	8 585.20 2.52	4 292.57 0.84
3 001 to 6 000 tons Plus per ton	11 300.73 2.88	5 650.38 0.94
6 001 up to 10 000 tons Plus per ton	19 846.56 3.53	9 923.28 1.39
10 001 to 30 000 tons Plus per ton	20 779.85 3.53	10 389.93 1.39
30 001 to 60 000 tons Plus per ton	43 308.22 3.53	21 654.14 1.20
60 001 to 80 000 Plus per ton	51 494.21 3.53	25 747.12 0.94

Above 80 000 tons, fees are available on application.

6.6.2 Drydock: Port of Durban

The following fees which include crange and salt water during ordinary working hours are payable for the use of a repair facility:

Tons shall mean gross tonnage in cubic metres.

Drydock	First period of 24 hours or part thereof	Each subsequent 12 hour period or part thereof
0 to 30 000 tons Plus per ton	20 796.71 3.53	10 398.34 1.37
30 001 to 60 000 tons Plus per ton	43 308.22 3.53	21 654.14 1.20
60 001 up to 80 000 tons Plus per ton	51 494.21 3.53	25 747.12 0.93

Above 80 000 tons, fees are available on application.

Tariffs subject to VAT at 15%: Tariffs in South African Rand

6.6.3 Syncrolift at the Port of Cape Town

Syncrolift	First 24 hour period or part thereof:	Each subsequent 12 hour period or part thereof
Vessels up to 2 000 tons Plus per ton	1 602.33 3.53	801.19 1.46
Vessel above 2 000 tons Plus per ton	2 108.35 3.53	1 054.16 1.46

6.6.4 Minimum fees

Minimum fees	First 24 hour period or part thereof:	Each subsequent 12 hour period or part thereof
Sturrock and Prince Edward drydocks	48 570.64	20 389.12
Princess Elizabeth and Robinson drydocks	18 634.97	8 329.37
Floating docks	20 408.81	10 204.40
Syncrolift	6 625.83	2 206.74

Note:

Shifting of docking blocks are obtainable on application.

The damage occurred by bar/box keel vessels at any vessel repair facility will be recovered as per damage incurred and at the Authority's discretion.

Special conditions may be applied to Medical, Research vessels or where four and more vessels of a company are drydocked at any of the Authority's drydocks (excluding syncrolift, floating docks and slipways) during a 12 month period.

Details are available on application.

6.7 SLIPWAY

Slipway preparation costs

Note: Should the booking of a slipway be cancelled after the preparatory work has begun, the above mentioned fees are payable:

Vessels up to 1 000 tons.....2 156.13

Docking and Undocking of vessels at a slipway

The following fee is payable, per service for the docking and undocking of vessels (the docking and undocking are regarded as separate services).

Slipway..... 1 130.09

Docking and Undocking of vessels at a slipway	First 24 hour period or part thereof:	Each subsequent 12 hour period or part thereof
Vessels up to 2 000 tons	1 602.33	801.19
Plus per ton	3.53	1.46
Vessels above 2 000 tons	2 108.35	878.49
Plus per ton	3.53	1.46
Minimum fees	4 329.12	1 588.29

6.8 WHARF CRANES

6.8.1 Wharf cranes at the Ports of Cape Town and East London

Outside ordinary working hours only:

One crane will be provided per vessel if required, inclusive of the dues.

Irrespective of the crane lifting capacity, per hour 1 265.00

6.8.2 Wharf cranes at the Port of Durban

Outside ordinary working hours only1 265.00

One crane will be provided per vessel if required, inclusive of the dues.

Additional cranes, irrespective of the crane lifting capacity, will be charged as follows:

Per hour..... 1 265.00

6.9 MISCELLANEOUS

Fresh water

Fees for the supply of water are available on application.

Electricity

Fees for the supply of electricity are available on application.

Compressed air

Fees for the supply of compressed air are available on application.

SECTION 7**CARGO DUES ON IMPORTS, EXPORTS, TRANSHIPMENTS AND COASTWISE**

Cargo dues on all commodities, articles, things or containers (full or empty) is levied at all ports. Cargo dues are charged to recover the cargo contribution towards port infrastructure.

UNIT OF TONNAGE

1 metric ton (1 000 kg), subject to a minimum of 1 ton, except for the following:

A vehicle is a purposely built mobile machine on wheels/tracks that is capable of being steered/driven/towed (Including wagons, bicycles, motor vehicles, motorcycles, cars, trucks, buses, railed vehicles, locomotives, tamping machines), Watercraft (ships, boats), Aircraft (helicopters and spacecraft)

Bulk liquids: 1 kilolitre

The metric tonnage for tariffing purposes of cargo dues shall include all packaging i.e. mass of cages, cases, pallets, bags, etc.

- Cargo dues on all commodities, articles, things or containers (full or empty) is levied at all ports.
- The tonnage must be substantiated by presentation of a bill of lading, manifest, packing declaration or supplier's invoices, as the case may be.
- In instances where the tonnage for cargo dues purposes has been incorrectly declared, whether wilful or not, a late order fee will be charged.
- The minimum fee for cargo dues on breakbulk cargo will be based on 1 ton.
- The minimum fee for cargo dues on containers will be based on 1 TEU.
- The following base rates are applicable for commodities not listed in the Tariff Book. The commodity rate remains applicable for products linked to a commodity (e.g., ferro alloys). The fees are applicable as follows:

	Imports	Exports
Breakbulk per ton	30.56	30.56
Liquid bulk per kilolitre	22.83	22.83
Dry bulk per metric ton	6.84	6.84
Breakbulk empty returns per metric ton	4.55	4.55
Motor vehicles on own wheels per metre	163.87	64.65

7.1 BREAKBULK

Commodity	Imports	Exports
1. Alumina	30.56	27.33
2. Articles of cement / sand / stone	27.33	27.33
3. Bait	30.56	27.33
4. Bricks	30.56	27.33
5. Cement & clinker	27.33	5.46
6. Chrome ore	18.85	15.47
7. Citrus fruit	25.14	25.14
8. Clay	27.33	27.33
9. Coal	10.55	4.53
10. Fertilizers	26.76	19.13
11. Fish meal & products thereof	30.56	30.56
12. Fluorspar	27.33	27.33
13. Glass & glassware	30.56	17.17
14. Granite & products thereof	30.56	10.56
15. Gypsum & products thereof	27.33	27.33
16. Iron ore	27.33	27.33
17. Lead & products thereof	27.33	21.84
18. Lime & products thereof	27.33	27.33
19. Logs	30.56	7.31
20. Maize & products thereof	30.08	30.08
21. Manganese ore	19.13	19.13
22. Ores & minerals: Olivine	27.33	30.56
23. Ores & minerals: Other	27.33	27.33
24. Pig iron	27.33	14.55
25. Pitch pencil	27.33	25.53
26. Potash & products thereof	26.76	19.13
27. Salt	27.33	27.33
28. Scrap steel	9.08	9.08
29. Stainless steel (excluding pipes & tubes)	30.56	27.82
30. Steel pellets	10.02	10.02
31. Steel rebars / sheets / plates / angles	27.82	27.82
32. Steel: Cold rolled coils, galvanised, aluzinc coils	27.82	27.82
33. Steel: Hot rolled coils, slabs, billets	27.82	27.82
34. Timber & products thereof (excluding furniture)	30.56	20.01
35. Zinc & products thereof	27.33	27.33
36. Zircon	30.56	27.33

7.2 DRY BULK

Commodity	Imports	Exports
1. Agricultural products / seaweed	18.49	18.49
2. Alumina	18.49	18.49
3. Andalusite	18.49	13.51
4. Barley & products thereof	18.49	18.49
5. Cement & clinker	18.49	5.78
6. Chrome ore	18.49	6.95
7. Coal	11.70	5.96
8. Copper concentrates	18.49	18.49
9. Cotton seed & products thereof	18.49	18.49
10. Ferro alloys	18.49	18.49
11. Fertilizer & products thereof	18.49	18.49
12. Fluorspar & products thereof	18.49	18.49
13. Grain & products thereof	18.49	18.49
14. Gypsum & products thereof	18.49	18.49
15. Iron Ore	18.49	10.65
16. Iron Oxide (Hematite)	18.49	9.82
17. Lead & products thereof	18.49	18.49
18. Maize & products thereof	18.49	15.41
19. Malt & products thereof	18.49	18.49
20. Manganese ore	18.49	10.05
21. Ores & minerals: Magnetite	18.49	5.22
22. Ores & minerals: Silico Manganese	18.49	18.49
23. Petroleum Coke	18.49	18.49
24. Pig iron	18.49	15.41
25. Potash & products thereof	18.49	18.49
26. Rice & products thereof	18.49	18.49
27. Rockphosphate	11.00	11.00
28. Rutile	18.49	18.49
29. Salt	6.76	18.49
30. Soda ash	18.49	18.49
31. Steel: Steel pellets	10.61	7.74
32. Sugar	18.49	18.49
33. Sulphur	7.34	7.34
34. Timber products: Wood shavings, sawdust	18.49	8.09
35. Titanium slag	18.49	18.49
36. Vermiculite	18.49	18.49
37. Wheat & products thereof	18.49	18.49
38. Woodchips	18.49	8.09

7.3 LIQUID BULK

Commodity	Imports	Exports
1. Ammonium & products thereof	27.98	27.98
2. Anhydrous ammonia	27.98	27.98
3. Animal / vegetable oils / fats & products thereof	35.89	35.89
4. Caustic soda	35.89	35.89
5. Crude & petroleum products	31.47	17.49
6. Molasses & products thereof	6.85	3.49
7. Phosphoric acid	35.89	35.89
8. Pitch pencil	14.69	35.89
9. Sunflower seed oil	35.89	35.89

7.4 CONTAINERS

The following fees will apply per container as specified:

	Imports	Exports
6m / 20' containers	1 817.91	399.79
12m / 40' , 13,7m/45' containers	3 635.80	799.57
Empty containers, all sizes	73.17	73.17

- ISO containers filled with MT returns of whatever nature being returned for filling, provided a certificate is given to the effect that they are being returned to the original sender for refilling as well as new MT ISO containers will be regarded as an empty container. Transhipments are excluded from this ruling.
- All containers up to the size of a 6m / 20' container will be charged at 6m / 20' container rate.

7.5 COASTWISE CARGO**Breakbulk/Bulk**

All cargo per leg inwards or outwards , per ton	16.79
Breakbulk empty returns, per ton	4.55

Containerised

All cargo per leg inwards or outwards irrespective of contents, per container:	
6m / 20' containers	74.64
12m / 40' , 13,7m / 45' containers	149.26

39. Zinc & products thereof	18.49	18.49
40. Zircon	18.49	18.49

Empty containers, all sizes	74.64
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7.6 EXEMPTIONS

- Bunkers and/or water for the vessel’s own consumption at a commercial berth, jetty or mooring;
- Cargo landed in error and reshipped onto the same vessel;
- Fish landed for local consumption at a leased berth from locally registered fishing vessels licensed by the Department of Environmental Affairs & Tourism;
- Clip-on units for ISO reefer containers and the cribs in which they are conveyed when returned to the original port of shipment;
- Cargo restowed by utilizing the wharf.

Vessel’s spares / stores for own consumption

- Vessel’s stores including bait and packaging materials, vessel’s spares all for the vessel’s own consumption at any commercial berth, jetty or mooring;
- Bona fide transshipments will qualify for the above exemption only if the import and export documents have been suitably endorsed.

Notes:

i. Vessel's spares/stores imported and moved to a bonded warehouse pending placing on board another vessel are liable for cargo dues on the incoming leg. After placing on board as vessel for own use, import cargo dues will be refunded whilst the outgoing transaction is exonerated from payment of cargo dues provided that both transactions are done within 30 day period. Failing which normal import / export cargo dues will be maintained. (Both import and export cargo dues documentation) must be suitably endorsed, certified and cross-referenced)

ii. Vessel's spares/stores transshipped from one vessel to another are exempted from cargo dues. Documents must be certified to the effect that the cargo is vessel spares/stores for the receiving vessel's own use and consumption

iii. Vessel's spares/stores emanating from local suppliers or being airfreighted are exempted from cargo dues. In these instances, documents must also be certified

iv. Vessel's spares/stores or duty free vessel's stores/spares imported and moved to a private warehouse (not bonded) as a normal import transaction will attract normal import cargo dues and if placed on board a vessel at a later stage as vessel's spare/stores for own use, the outgoing transaction is exonerated from payment of cargo dues

v. Notes (i) and (iv) only apply where vessel's spares/stores transaction take place at a commercial berth, jetty or mooring of Transnet

7.7 TRANSHIPPED CARGO

The fees for:

- Cargo/Empty containers manifested to the port of discharge for transshipment to another port; or
- Cargo/Empty containers for which transshipping orders have been accepted prior to, or within 3 days of the discharging vessel having commenced discharge; or
- Cargo/Empty containers transshipped from one vessel to another without touching a wharf or jetty; or
- Cargo/Empty containers landed in error or over carried and reshipped onto a different vessel; or
- Bunker fuel oil supplied to vessels direct from tankers (excluding bunkers barges);
- Cargo loaded at a South African port and then discharged from the same vessel due to container malfunction/damage/unpack/repack;
- Cargo not manifested.
- Cargo not manifested for SA that is discharged due to damage/malfunction and then shipped/ airfreighted to the country of final destination within 90 days of cargo being discharged. Unpack and repack must be done at a Customs bonded warehouse/ Custom’s supervision. Documentary proof must be available to the Authority.

Are as follows:

Containerised cargo, **per container per leg inwards or outwards**;

6m / 20’ containers	74.64
12m / 40’ , 13,7m / 45’ containers.....	149.26
Empty containers, all sizes	73.16
Other cargo, per ton per leg inwards or outwards	4.31

Fees payable on bulk liquids transshipped direct from one vessel to another or on bulk liquids pumped into private storage installations awaiting the on carrying vessel are, per ton (kilolitre)

Bulk liquids not transshipped within 90 days of discharging vessel completes cargo working, shall for cargo dues purposes be regarded as cargo imported and exported.

First 100 000 tons (kilolitres), per ton (kilolitre), per consignment, **per leg inwards or outwards**

Thereafter, per ton (kilolitre), per consignment, per leg inwards or outwards.....

Perishable cargo and in bond cargo not transshipped within 30 days after the date that the discharging vessel commenced cargo working, shall for cargo dues purposes be regarded as cargo imported and exported.

7.8 LATE ORDER AND RELATED FEES

Late order fee is applicable for cancellations and late submission of cargo documentation are as follows:

Cargo dues order amendment fee per order	336.53
Late, incomplete and non-submission of manifests and outturn reports per manifest/ outturn report. per manifest and outturn report.....	1 682.72
Cargo dues order framing fee per order	336.53

All amended orders to be accompanied by the original order (upon request from the Authority).

7.9.CARGO CONVEYED BY VESSEL PERMITTED TO SERVICE VESSELS WITHIN AND OUTSIDE THE PORT

Per trip	398.96
----------------	--------

Administrative fees

for photocopies per page.....	10.54
-------------------------------	-------

SECTION 8

BUSINESS PROCESSES AND DOCUMENTATION

8.1 CARGO DUES ORDER

Cargo Dues Orders must be presented at the port where the consignment will be landed/ shipped/transhipped.

A cargo dues order is valid upon invoicing. Therefore, cargo dues orders submitted online but is in a pending status for reasons of "Credit not Available" or "Awaiting Payment" will not be considered valid. Upon invoicing, late cargo dues order fees will be charged, applicable from the invoicing date. The original order will be cancelled and replaced with a new cargo dues order with the applicable late cargo dues order fees.

Cargo dues is payable by the importer/exporter of cargo who may appoint a clearing and forwarding agent to undertake transactions on their behalf. The account number appearing on the cargo dues order will be debited accordingly.

In instances where cargo dues orders have not been received, such charges will be billed to the container operator for container traffic and the vessel agent for bulk and breakbulk traffic.

ISO containers filled with MT returns of whatever nature being returned for filling, provided a certificate is given to the effect that they are being returned to the original sender for refilling, as well as new MT ISO containers will be regarded as an empty container. Transhipments are excluded from this ruling.

Cargo Dues Orders can be grouped and submitted as a list, i.e. one order supported by a list containing the relevant container numbers, to the relevant Port Revenue Offices, as follows (Imports and Exports separately):

- **Containers: On a per vessel, per container operator basis, separated between deepsea, coastwise and transshipment movements.**
- **Breakbulk and Bulk: On a per vessel, per agent basis, separated between deepsea, coastwise and transshipment movements.**

A single Cargo Dues Order can also be submitted for multiple containers provided that the container numbers are indicated on the order and import and export orders are submitted separately. Orders should further be separated between deepsea, coastwise and transshipments.

Any cancellations and amendments on this order will be applicable per cargo dues order. Any applicable fees will be levied per cargo dues order.

INCORRECT OR INCOMPLETE DECLARATIONS

An incorrect or incomplete declaration of cargo dues order will result in that cargo dues order being null and void. A new cargo dues order will be processed with late cargo dues order fees and penalties applicable at the date of the new cargo dues order together with a cancellation fee of the original order.

Upon following due process, submissions or declarations deemed fraudulent will attract a penalty of 100% of cargo dues, plus interest and any legal action deemed necessary.

8.1.1 TYPES OF DOCUMENTATION

The following documentation must be provided to the Authority:

Container Import and Exports:

- Cargo Dues Order
- Vessel Manifest
- Empty Container List

Bulk and Breakbulk Exports:

- Cargo Dues Order
- Mates Receipt
- Vessel Manifest
- Draft survey for bulk exports

Bulk and Breakbulk Imports:

- Cargo Dues Order
- Bill of Lading / Delivery Order
- Vessel Manifest
- Landing Order

Coastal Cargo:

- Cargo Dues Order per inward and outwards movement, supported by an inwards or outwards list, differentiated between full, empty, 6m (20'), 12m (40') or 13,75m (45').

Transshipment Cargo:

- Cargo Dues Order per inward and outwards movement, supported by an inwards or outwards list, differentiated between full, empty, 6m (20'), 12m (40') or 13,75m (45').

At the request of the Authority, including relevant Customs documentation must be provided to substantiate cargo declarations.

Supporting documentation: Vehicles

In addition to the types of documentation listed in Section 8, Clause 1.1 above please include any of the following documentation below specifying the length/s of the vehicle/s when passing Cargo Dues Orders for vehicles:

- Post load / Delivery Report
- Certificate and list of Measurement and Weight
- Export Certificate
- Packing Specification
- Suppliers Invoice
- Affidavit — (**only applicable** to instances where owners are relocating and vehicle/s form part of “personal/household effects”)

Where such documentation cannot be provided the following average length will be applied for tariffing purposes:

- Passenger vehicle..... 5.00 metres
- Light commercial vehicles/tractors8.00 metres
- Heavy commercial vehicles (trucks, tractors, etc.).....10.00 metres
- Cranes/excavators/bulldozers, etc..... 12.00 metres
- Trailers 14.00 metres

8.1.1.1 Order-to-Cash

Registered customers must submit electronic cargo dues and/ manifest or Electronic Data Interchange (EDI) data (cargo dues, outturns, manifest) via Order-to- Cash (EDI or Hybris).

For additional information visit our website www.transnetnationalportsauthority.net or contact our call centre on 086 010 9333.

8.1.2 TIMING OF DOCUMENTATION IMPORT DOCUMENTATION

1. Cargo Dues Orders must be submitted within five (5) days after vessel departure for bulk (dry and liquid) cargo and within three (3) days after vessel departure for all other cargo types. The only exception to this rule being fresh fish imports where cargo dues orders must be submitted within seven (7) days after vessel arrival.

2. Manifests must be submitted within one (1) day before vessel arrival.

2.1 Manifest in respect of empties must be submitted within three (3) days after vessel departure.

3. Breakbulk and Bulk Cargo Dues Orders must be supported by the Bill of Lading or Delivery Order or survey reports for bulk vessels.

4. The supporting documents are required for empty returns and a Customs approved Bill of Entry for vessel stores / spares for vessels own consumption.

EXPORT DOCUMENTATION

1. Cargo Dues Orders must be submitted within three (3) days after vessel departure for all other cargo types.
2. Manifests must be submitted within seven (7) days after vessel departure.
 - 2.1 Manifests in respect of empties must be submitted within seven (7) days after vessel departure.
3. Breakbulk and Bulk Cargo Dues Orders must be supported by the mate's receipt or draft survey.
4. The supporting documents are required for empty returns and a Customs approved Bill of Entry for vessel stores / spares for vessels own consumption.

INBOUND TRANSSHIPMENT AND COASTWISE DOCUMENTATION

1. Cargo Dues Orders must be submitted within three (3) days after vessel departure.
2. Inbound transshipment manifests must be submitted within three (3) days after vessel departure.
3. Coastal manifests must be submitted within three (3) days after vessel departure for inward moves. Manifests in respect of empties must be submitted within three (3) days after vessel departure.
4. Manifests in respect of empties must be submitted within three (3) days after vessel departure

OUTBOUND TRANSSHIPMENT AND COASTWISE DOCUMENTATION

1. Cargo Dues Orders must be submitted within three (3) days after vessel departure.
2. Outbound transshipment manifests must be submitted within three (3) days after vessel departure.
3. Coastal manifests must be submitted within three (3) days after vessel departure for outward moves.
4. Manifests in respects of empties must be submitted within three (3) days after vessel departure.

The above time frames excludes the first weekend and public holiday.

8.2 RESPONSIBLE PARTY

Cargo dues is payable by the importer/exporter of cargo who may appoint a clearing and forwarding agent to undertake transactions on their behalf. The account number appearing on the cargo dues order will be debited accordingly.

In instances where cargo dues orders have not been received, such charges will be billed to the container operator per TEU for container traffic and the vessel agent for bulk and break-bulk traffic.

Cargo Dues and all related charges for uncleared containers will be billed to the container operator per TEU for containerised cargo.

Cargo Dues Orders submitted for individual LCL consignments will be invoiced at the full cargo dues tariff per TEU as published in the Tariff Book. In all cases, a Cargo Dues Order must be presented, indicating all the container numbers on the order, or alternatively the Cargo Dues Order can be presented, with an attached list containing the relevant container numbers.

8.3 LATE ORDER FEES

8.3.1 Late order fees for late submission of Cargo Dues Orders

Cargo Dues Orders will be considered late when submitted to the Authority after the stipulated timeframes. The Authority will charge interest on the normal cargo dues payable, calculated at the prevailing prime rate plus one percent of the value of the Cargo Dues Order. The following **example** illustrates this calculation:

Prime Rate: 9.0%

Prime Rate plus 1% = 10.0%

Value of Order R10 000

Number of days late: 14

Interest Calculation $(10.0\% \times (14/365)) = R38.37$

Total Cargo Dues Payable R10 038.37

The first public holiday and first weekend will be excluded if it falls within the number of days that the Order has been submitted late for purposes of interest calculation.

8.3.2 Non-submission of Cargo Dues Orders

The Authority will apply an incremental late order fee based on the cargo dues payable and dependent on how late documentation is submitted or when a non-submission is discovered by the Authority's internal verification process. Refer below for late order application:

Number of days late

Penalty application

31-60 days	(10% Value of Cargo dues order)
61-90 days	(30% Value of Cargo dues order)
91-120 days	(50% Value of Cargo dues order)
>120 days	(100% Value of Cargo dues order)

Where an amendment of a cargo dues order is submitted, late order fee charges, if applicable, will be levied from the date of the new order on the under declared quantum, in addition to the amendment fee of **R336.53** per order

8.3.3 Late and incomplete or non-submission of Manifests/Outturn reports

The late order fee for late and incomplete or non-submission of manifests/outturns will be **R1 682.72** per manifest/outturn.

8.3.4 The responsible parties for the late order fee is stipulated in Section 8.1 Cargo Dues Orders (Page 48) and Responsible Party (Page 52).

8.4 AMENDING ORDERS

1. Cargo dues orders amended within seven (7) days from the date of submission (inclusive of public holidays) will not attract an amending fee for any changes to container/engine numbers/country of origin or country of destination/Bill of lading or Mates receipt/Port of loading and discharge/Terminal/Container Operator or Shipping Agent. (Note that the same order number and invoice number will be retained and an updated confirmation will be issued).
2. Regarding amendments within the timeframe: Transshipment to import orders where originally correctly passed but nature of order changed or prescription of time frame of transshipment is met, amendment fee is charged and late order fees are applicable when the amendment to import is made after the 90 days, applicable to the change in value of the nature of the order, if the amendment is made within the 90 days no late order fees will be applicable.
3. The first amendment made to a cargo dues order within 7 days of initial submission, including weekends and public holidays, and which does not impact on the value of the initial invoice, will not attract an amending/cancelling fee.
4. After seven (7) days, an amending fee of **R 336.53** will be charged per order.

8.5 TERMINAL OUTTURN REPORT

Outturn reports are required on a per vessel basis, per container operator, per sales office and sales group from all terminals at the respective ports, within 5 days after the vessel departure.

All terminals to submit outturn reports via the electronic platforms.

8.6. PORT REVENUE OFFICES

The Authority's Port Revenue Office at the various ports, are located as follows:

Port of Port Elizabeth/ Ngqura Ground Floor Customer Service Centre Port Admin Building Port of Port Elizabeth	Port of Durban 1st Floor 45 Bay Terrace Point Port of Durban	Port of Richards Bay Ground Floor Venture Road Bayvue Centre Port of Richards Bay
Port of Cape Town 1st Floor Corporate Services Building Port of Cape Town	Port of East London Port Admin Building Hely Hutchinson Road Quigney Port of East London	Port of Saldanha Bayvue Centre Marine Drive Port of Saldanha
Port of Mossel Bay Port Admin Building 55 Bland Street Port of Mossel Bay		

Annexure KK

Certificate of Attendance of RFP Briefing

It is hereby certified that –

1. _____
2. _____
3. _____
4. _____

Representative(s) of _____[name of entity]

attended the RFP briefing session in respect of the advertised Liquid Bulk Terminal in the Port of Ngqura.

Name: _____

Entity Details: _____

Annexure NN

Letter of Support Template from Lender

Dear Sirs,

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

Follow the steps in this document to view and respond to advertised Transnet Tenders



Topics

- **Tender Requirements**
- **Advertised Tenders**
- Register
- Sign in
- Registered user navigation
- View Tender Details
- Submit Intent to Bid
- My Intent Submissions
- Ask for Clarity / Submit query
- Submit Tender Bid documents

To access the Transnet E-Tenders Portal, enter the following URL in your browser: **transnetetenders.azurewebsites.net**

Tender Requirements

To become a Transnet supplier, please respond to the tender requirements as stipulated.

Ensure that all information is completed before submission with the requested documentation. Transnet will assess whether your business complies with certain preset standards which are required in order to supply certain items or services.

Publication of tender

When Transnet needs to procure goods, services or works, it does so through one of its procurement mechanisms, usually either an open tender process or a call for quotes. In addition to this website (Transnet SOC Ltd Tenders, Transnet Port Terminals RFQ/Tenders, Transnet Freight Rail Tenders), you can access National Treasury's eTender Publication portal:

www.etenders.gov.za or

<https://registers.cidb.org.za/PublicTenders/TenderSearch> for construction tenders.

Regarding quotations, Transnet will normally approach at least 3 suppliers to quote for requirements or publish the requirement on this website and the eTender Publication portal.

Transnet does not have its own database of prospective suppliers. It makes use of National Treasury's Central Supplier Database (CSD). In order to be eligible to participate in Transnet's procurement processes, your company must be registered on the CSD. The CSD can be accessed on <https://secure.csd.gov.za/>.

Tender submission

Tenders must be placed in the prescribed tender box, or submitted electronically where instructed, at or before the closing time on the closing date. Late tenders will not be accepted.

Tender documents need to indicate contact details of person(s) who can be contacted regarding any clarification required.

Fake and fraudulent tenders (RFPs) and requests for quotation (RFQs) scams

Prospective suppliers are warned that fraudulent Requests for Proposals and Quotations are sent to suppliers using the Transnet name and logo from time to time. Suppliers are advised to verify the authenticity of suspicious RFQs and orders by calling the respective Transnet Operating Division using the contact details listed below or on Transnet's website prior to responding to any RFQs or orders. Transnet will not be held liable for any fraudulent tenders or RFQs.

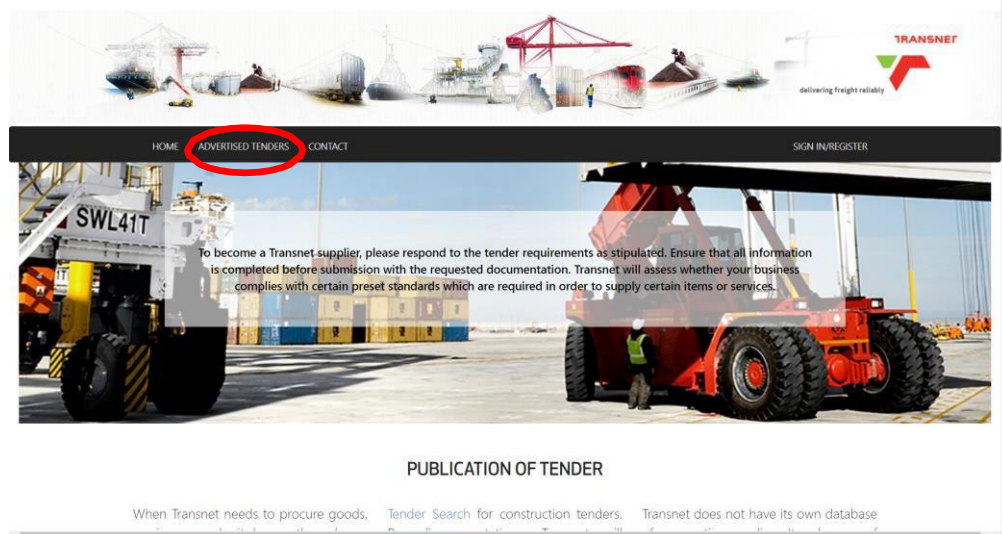
Division	Name	Email Id	Telephone No
TPT	Sindile Mxunyelwa	sindile.mxunyelwa@transnet.net	031 308 8389
TFR	Prudence Nkabinde	prudence.nkabinde@transnet.net	011 584 0821
TE	Nompilo Dlamini	tendercomplaints.transnetengineering@transnet.net	012 391 1374

eTender Links

- Transnet SOC Ltd Tenders
- Transnet Port Terminals RFQ/Tenders
- Transnet Freight Rail Tenders

Advertised Tenders

1. Click on the **ADVERTISED TENDERS** link to view all published tenders



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



- Tender Requirements
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2. On the list of advertised tenders, click on the **View Details** button to view tender information

Open Tenders

Other Tenders

Show

entries

Search:

Reference Number	Tender Name	Description	Briefing Session	Closing Date	Tender Status	
TE/2022/01/0012/RFQ	QA Public RFQ	APPOINTMENT OF PROFESSIONAL CONSULTANTS CORRIDOR 9 (REDAN TO UNION) SOUTH GAUTENG REGION FOR A PERIOD OF THREE (3) YEARS (FIXED TERM)		1/26/2022 12:00:00 AM	Open	View Details
TP/2022/01/0014/RFS	QA Public RFS	Tender for the repair and maintenance of swimming pools, and the supply, delivery, installation and commissioning of accessories: three-year period, as and when required		1/26/2022 8:00:00 AM	Open	View Details
TFR/2022/01/0012/RFI	QA Public RFI	SUPPLY AND DELIVERY OF RESEARCH / LABORATORY CONSUMABLES	1/26/2022 8:00:00 AM	1/26/2022 10:00:00 AM	Open	View Details
TCC/2022/01/0011/RFQ	QA RFQ for Performance Testing	QA RFQ for Performance Testing		12/31/2022 12:00:00 AM	Open	View Details
TPT/2022/01/17/RFQ	QA RFQ for Performance Testing 2	QA RFQ for Performance Testing 2		12/31/2022 12:00:00 AM	Open	View Details

Showing 1 to 5 of 9 entries

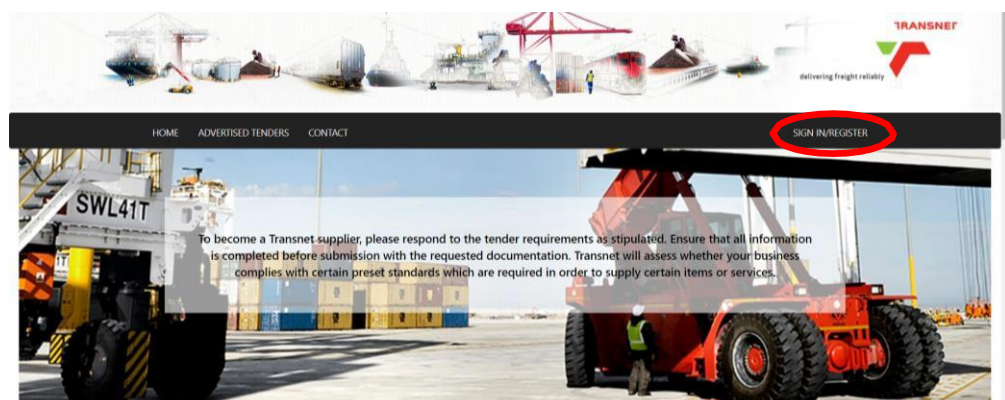
First
Previous
1
2
Next
Last

3. Click on the **Attachment** link to view documents attached to the tender

TRANSNET E-TENDERS	
Tender Reference Number	T/89
Description	Cabling Tender
Tender Type	RFP
Contact Person	Kgotso Lesiba
Contact Person Email Address	KgotsoL@globalcomputing.co.za
Date Published	1/1/0001 12:00:00 AM
Closing Date	1/1/0001 12:00:00 AM
Briefing Date And Time	1/1/0001 12:00:00 AM
Briefing Details	TBA
Location Of Service	Transnet
Name Of Institution	TNPA
Tender Category	Services
Tender Status	Active
Tender Type	RFP
Attachments	test.pdf

Register

1. Click on the **SIGN IN/REGISTER** link on the Transnet E-Tenders landing page




Topics

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2. Enter your email address and click on the **Send Verification Code** button.

< Cancel



Email Address

Send verification code

New Password

Confirm New Password

Given Name

Surname

Organization Name

Organization Type

Organization Type

4. Verification notification is displayed. Complete all other fields.

E-mail address verified. You can now continue.

dmkwilliams@gmail.com

Change e-mail

New Password

Confirm New Password

Given Name

Organization Name

Surname

Central Supplier Database Number

Company Registration Number

Country/Region

Country/Region

Secondary Email Address

3. Enter the verification code received via the email address provided then click on the **Verify Code** button

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

dmkwilliams@gmail.com

731564

Verify code Send new code

New Password

Confirm New Password

Given Name

Organization Name

Surname

5. Click on the Create button

Test info

Country/Region

South Africa

Test info

Test info

Test info

Test info

Test info

Test info

Create

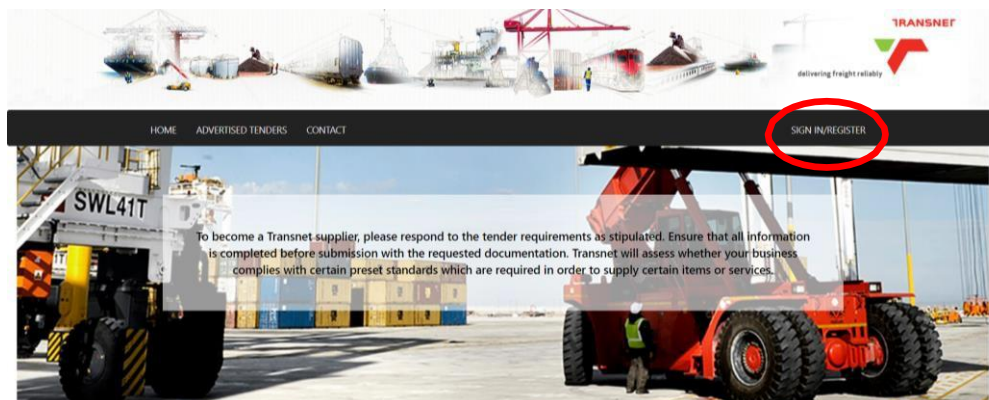


Topics

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Sign In

1. Click on the **SIGN IN/REGISTER** link on the Transnet E-Tenders landing page



2. Type the email address you entered and the password you created during registration and click on the **Sign In** button

Sign in with your email address

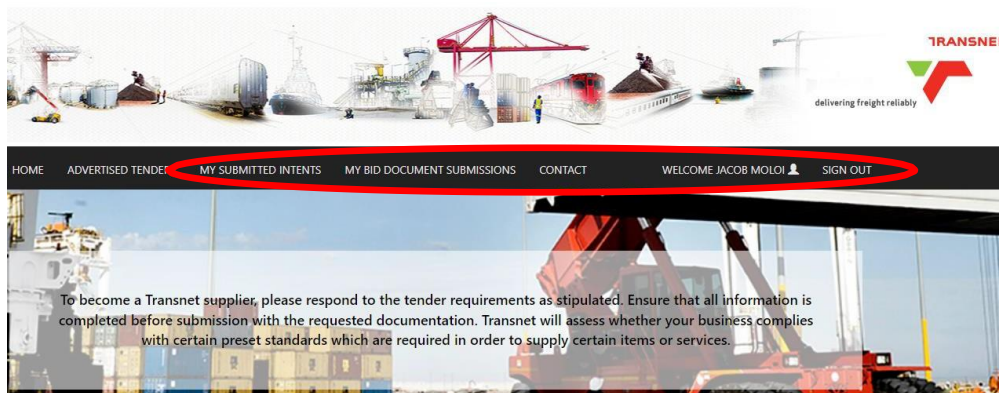
[Forgot your password?](#)

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

Restricted tenders can only be accessed if you SIGN IN using the same email address that you were invited to. The tender will not be visible if you are using a different email address

Registered user navigation

1. Take note of the additional menu options available once you've registered. You are now able to Submit and intent by clicking on the **Advertised Tenders** menu option to view published tenders.



Topics

- Tender Requirements
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View Tender Details

1. Click on the **View Details** button to view tender information

Open TendersOther Tenders

Show▼ entriesSearch:

Reference Number	Tender Name	Description	Briefing Session	Closing Date	Tender Status	
TE/2022/01/0012/RFQ	QA Public RFQ	APPOINTMENT OF PROFESSIONAL CONSULTANTS CORRIDOR 9 (REDAN TO UNION) SOUTH GAUTENG REGION FOR A PERIOD OF THREE (3) YEARS (FIXED TERM)		1/26/2022 12:00:00 AM	Open	<div>View Details</div>
TP/2022/01/0014/RFS	QA Public RFS	Tender for the repair and maintenance of swimming pools, and the supply, delivery, installation and commissioning of accessories: three-year period, as and when required		1/26/2022 8:00:00 AM	Open	<div>View Details</div>
TFR/2022/01/0012/RFI	QA Public RFI	SUPPLY AND DELIVERY OF RESEARCH / LABORATORY CONSUMABLES	1/26/2022 8:00:00 AM	1/26/2022 10:00:00 AM	Open	<div>View Details</div>
TCC/2022/01/0011/RFQ	QA RFQ for Performance	QA RFQ for Performance Testing		12/31/2022 12:00:00 AM	Open	<div>View Details</div>

Submit Intent to Bid

1. As a registered user, more details about the tender will be available. From this page you are able to view all the attachments and **Log An Intent To Bid** by clicking on the slider button.

Tender Details

Tender Reference Number

TE/2022/01/0012/RFQ

Name Of Tender

QA Public RFQ

Description

APPOINTMENT OF PROFESSIONAL CONSULTANTS CORRIDOR 9 (REDAN TO UNION) SOUTH GAUTENG REGION FOR A PERIOD OF THREE (3) YEARS (FIXED TERM)

Tender Type

RFQ

Contact Person

Sonwabile Mtatyana Transnet Corporate Johannesburg

Contact Person Email Address

Sonwabile.Mtatyana@transnet.net

Date Published

1/19/2022 1:51:25 PM

Closing Date

1/26/2022 12:00:00 AM

Briefing Date And Time

Briefing Details

Location Of Service

Carlton Centre

Name Of Institution

TE

Tender Category

Goods

Briefing Session

Closing Date

1/26/2022 12:00:00 AM

Attachments

Excel File.xlsx

JPEG File.jpg

PDF File.pdf

PNG File.PNG

PowerPoint File.pptx

Text File.txt

Log An Intent To Bid

Activate VGo to Setting

2. A notification will be displayed informing you that your **intent has been successfully submitted**.

Intent to Bid

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

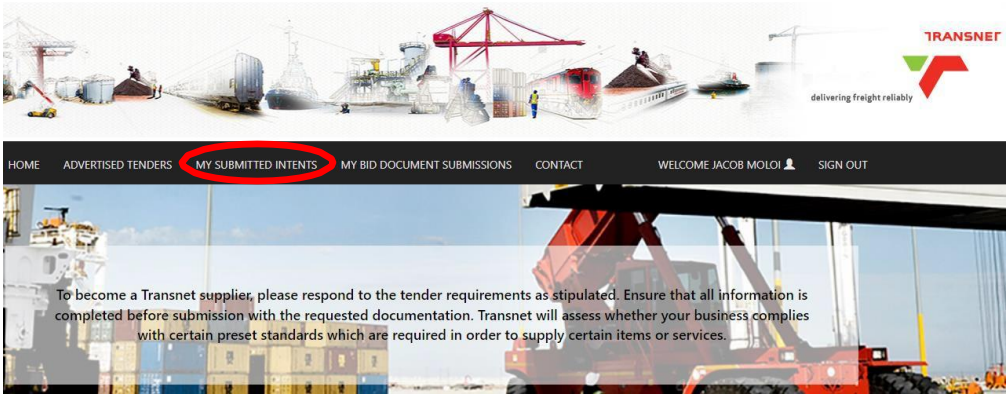
Close

Topics

- Tender Requirements
- Advertised Tenders
- Register
- Sign in
- Registered user navigation
- View Tender Details
- Submit Intent to Bid
- My Intent Submissions
- Ask for Clarity / Submit query
- Submit Tender Bid documents

View Intent Submissions

1. On the landing page, click on the **My Submitted Intents** menu option.



2. From the list of submitted intents, click on the **View Details** button to view details about the item.

MY SUBMISSION INTENTS

Show 10 entries

Search:

Tender Reference Number	Name	Description Of Tender	Briefing Session Date	Closing Date	View Details
TCC/2021/12/0003/RFQ Non-Technical	Test Non Tech Tender QA At 12	Test Non Tech Tender QA At 12		12/23/2021 1:00:00 AM	View Details
TE/2021/12/0003/RFQ	test creation from app	tet		12/31/2021 12:00:00 PM	View Details
TE/2021/12/0004/RFQ	Test Approval Thulani	Test		12/10/2021 12:00:00 AM	View Details
TE/2022/01/0012/RFQ	QA Public RFQ	APPOINTMENT OF PROFESSIONAL CONSULTANTS CORRIDOR 9 (REDAN TO UNION) SOUTH GAUTENG REGION FOR A PERIOD OF THREE (3) YEARS (FIXED TERM)		1/26/2022 12:00:00 AM	View Details
TNPA/2021/12/0003/RFQ	Test Tender For Jacob	Test Tender For Jacob	12/6/2021 2:00:00 AM	12/8/2021 12:00:00 PM	View Details
TP/2021/12/0002/RFQ	QA Tender 10 - to be cancelled after it has been published	QA Tender 10 - to be cancelled after it has been published	12/7/2021 9:00:00 AM	12/28/2021 9:00:00 AM	View Details
TP/2021/12/0006/RFQ Non-Technical	App-Register new Non-Technical RFQ Tender with no briefing details-Mod	App-Register new Non-Technical RFQ Tender with no briefing details-Mod		1/20/2022 8:00:00 AM	View Details

3. Details and attachments can be viewed on this page. You can also **Ask for Clarity** (submit a query) from this page.

SUBMISSION INTENT DETAILS

Tender Summary

Ask For Clarity

Submit Tender Documents

QA Public RFQ

TE/2022/01/0012/RFQ

APPOINTMENT OF PROFESSIONAL CONSULTANTS CORRIDOR 9 (REDAN TO UNION) SOUTH GAUTENG REGION FOR A PERIOD OF THREE (3) YEARS (FIXED TERM)

Briefing Session

Closing Date

1/26/2022 12:00:00 AM

Attachments

Excel File.xlsx

JPEG File.jpg

PDF File.pdf

Topics

- Tender Requirements
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- Ask for Clarity / Submit query**
- Submit Tender Bid documents

Ask for Clarity (Submit Query)

1. On the Submission Intent Details pate, click on the **Ask for Clarity** tab.

SUBMISSION INTENT DETAILS

Tender Summary

Ask For Clarity

 Submit Tender Documents

QA Public RFQ
TE/2022/01/0012/RFQ

APPOINTMENT OF PROFESSIONAL CONSULTANTS CORRIDOR 9 (REDAN TO UNION) SOUTH GAUTENG REGION FOR A PERIOD OF THREE (3) YEARS (FIXED TERM)

Briefing Session

Closing Date
1/26/2022 12:00:00 AM

Attachments

 Excel File.xlsx


Under 'Submit Queries Below' type your questions in the fields.

- Click on the **Delete (trash can)** button to delete a field (row)
- Click on the blue **Add (+)** button to add another field (row)
- Click on the **Submit All Questions** button.

SUBMISSION INTENT DETAILS


Tender Summary

Ask For Clarity


 Submit Tender Documents

Submit queries below


Q1




Q2



Q3






Submit All Questions


Cancel


Briefing Session


Closing Date
1/26/2022 12:00:00 AM


Attachments

 Excel File.xlsx

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 PNG File.PNG

 PowerPoint File.pptx

5. Under the 'Ask for Clarity' tab, you will also be able to view responses from Transnet.

Tender Summary

Ask For Clarity

 Submit Tender Documents

Q3

No Response From Transnet


Q1


No Response From Transnet

Briefing Session

Closing Date
1/26/2022 12:00:00 AM


Attachments


 Excel File.xlsx

 JPEG File.jpg

6. At the bottom of the screen you can **add additional questions**

Submit queries below





Submit All Questions

Cancel

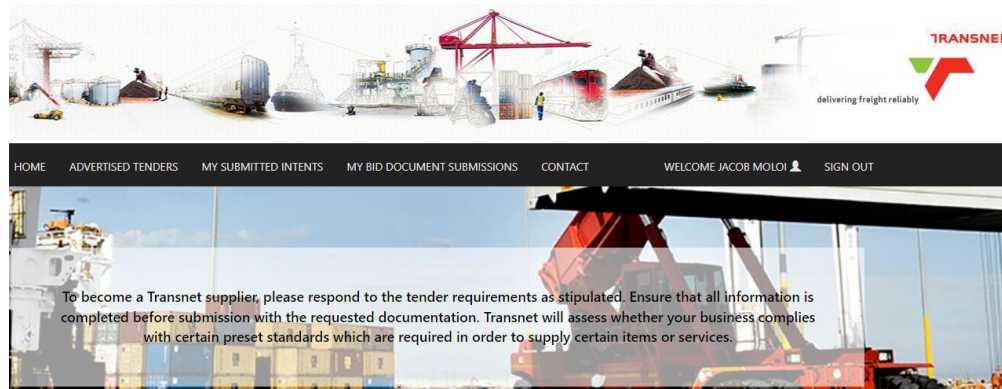


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- Ask for Clarity / Submit query
- **Submit Tender Bid documents**

Submit Tender Bid Documents

1. Click the **My Submitted Intents** menu option.



2. From the list of submitted intents, click on the **View Details** button to view details about the item.

Show entries

Search:

Tender Reference Number	Name	Description Of Tender	Briefing Session Date	Closing Date	View Details
TCC/2021/12/0003/RFQ Non-Technical	Test Non Tech Tender QA At 12	Test Non Tech Tender QA At 12		12/23/2021 1:00:00 AM	View Details

3. Details and attachments can be viewed on this page. Click on the **Submit Tender Documents** link.



4. Click the **Choose Files** button and select the files to upload.
5. Click on **Submit Bid**

QA Public RFQ

Closing Date: 1/26/2022 12:00:00 AM

TE/2022/01/0012/RFQ

APPOINTMENT OF PROFESSIONAL CONSULTANTS CORRIDOR 9 (REDAN TO UNION) SOUTH GAUTENG REGION FOR A PERIOD OF THREE (3) YEARS (FIXED TERM)

⚠ Duplicate documents are not permitted

Mandatory Essential Non Essential Other

Uploaded Documents

No files uploaded.

Drag & drop mandatory documents here

File Browser Select File

Choose Files No file chosen

Upload Mandatory Documents

The system allows you to upload 30MB per file, you can upload multiple files. Ensure that your internet connection and speed is stable

Terms of Use

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