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.	Total number of vessels delayed / 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	
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	Force majeure (Weather delays) Surge, under currents External power supply failures
Ship Working Hour	Total volume handled during the total productive working hours for the vessel expressed in tons/hour, Kl/hour, Moves/hour or units/hour.	Total volume for a given period (in tons, Kl, 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	

TRANSNET national ports authority

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, Kl 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, Kl, 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.

TERMINAL OPERATOR AGREEMENT IN TERMS OF SECTION 56 OF THE NATIONAL PORTS ACT NO 12 OF 2005 (AS AMENDED) IN RESPECT OF THE LIQUEFIED NATURAL GAS (LNG) IN THE PORT OF EAST LONDON

Between

TRANSNET NATIONAL PORTS AUTHORITY, a division of TRANSNET SOC LTD

(Registration number 1990/000900/30)

(hereinafter called "TNPA")

and

[Insert the name of the Terminal Operator]

Registration number: ***[insert details]***

(hereinafter called "Terminal Operator")

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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 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 in terms of this Agreement,

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 in terms of this Agreement; 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. **"Affiliate/s"** shall have the corresponding meaning as "Related Party";

1.1.6. "**Agreement**" means this Terminal Operator Agreement and its Schedules, as amended, extended, replaced and varied from time to time;

1.1.7. "**Associated Agreements**" means any agreements entered into by the Terminal Operator in respect of the Project, including agreements entered into with the Subcontractors and any other Project-related agreements that TNPA may designate as falling within this clause 1.1.7;

1.1.8. "**Annual Report**" means the annual report which is required to be prepared and submitted by the Terminal Operator in accordance with clause 30 *(Reporting Requirements)*;

1.1.9. "**Authority Changes**" has the meaning ascribed to it in clause 33 (*Authority Changes*);

1.1.10. "**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;

1.1.11. "**B-BBEE**" means Broad-Based Black Economic Empowerment, a South African legal requirement that requires all entities operating in the South African economy to contribute to empowerment and transformation;

1.1.12. "**B-BBEE Act**" means the Broad-Based Black Economic Empowerment Act 53 of 2003;

1.1.13. "**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;

1.1.14. "**Berths**" means the sea space occupied by a vessel alongside, as indicated in Schedule 2 (*Project Site*), which shall be a common-user berth as provided in clause 4.4.3 *(Operation of the Terminal*);

1.1.15. "**Black People**" means a generic term defined in the B-BBEE Act to mean natural persons who are Africans, Coloureds and Indians –

1.1.15.1. who are citizens of the Republic of South Africa by birth or descent; or

1.1.15.2. who became citizens of the Republic of South Africa by naturalisation

1.1.15.3. before 27 April 1994; or

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

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 East London, 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 3 (*Business Case 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 are to be forecast at a level that will deliver the services in accordance with the output specifications;

1.1.19. "**Cargo**" means Liquiefied Natural Gas authorised by TNPA to be handled at the Terminal;

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. ISO 45001; and

1.1.20.3. ISO 9001;

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 has or is reasonably likely to have a material adverse effect on the basis upon which the Terminal Operator was appointed to be 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 46.2 (*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 46.3 (*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 44 (*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 27.4 (*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 for purposes of undertaking the Project;

1.1.27. **"Concession Fee"** the concession fee payable by the Terminal Operator to TNPA in respect of the grant of the Concession as provided for in Clause 5 (*Concession Fees)*;

1.1.28. "**Concession Period**" means the period from the Signature Date of this Agreement until the Expiry Date or the Termination Date, unless otherwise extended within the context of clause 3.1.1 of this Agreement;

1.1.29. "**Confidential Information**" means any and all:

1.1.29.1. information relating to the design of the Terminal or to any Intellectual Property Rights of the Terminal Operator;

1.1.29.2. information in respect of or relating to the Base Case Financial Model as well as such model and each Updated Financial Model; and

1.1.29.3. 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;

1.1.30. "**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;

1.1.31. "**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 21 *(TNPA Policies, Manuals and Intellectual Property Rights)*;

1.1.32. "**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)*;

1.1.33. "**Construction Completion**" means the execution of the Construction Works that are required for the operation of the Terminal;

1.1.34. "**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;

1.1.35. "**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;

1.1.36. "**Construction Period**" means the period commencing 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 12 *(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 6 (*Construction Agreement*);

1.1.40. "**Contract Period**" means the Planning Period, the Concession Period and if applicable, the Decommissioning Period;

1.1.41. "**Contract Year**" means a period of 12 (twelve) consecutive calendar months, commencing on 1 April, provided that the 1^{st} (first) contract year shall commence on the Effective Date and shall end on the 31^{st} (thirty first) of March following the year in which the Effective Date occurs;

1.1.42. "**Contributor Status Level**" means the B-BBEE Contributor Status Level as determined by the Terminal Operator's compliance with the applicable B-BBEE scorecard in terms of the B-BBEE Codes;

1.1.43. "**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;

1.1.44. "**Corrupt Act**" means any conduct that constitutes an offence under the Prevention and Combating of Corrupt Activities Act 12 of 2004, including but not limited to:

1.1.44.1. 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;

1.1.44.2. 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

1.1.44.3. 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;

1.1.44.4. 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;

1.1.44.5. committing any offence in connection with this Agreement:

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

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

1.1.44.5.3. 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

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

1.1.45. "**CPI**" means the consumer price index published from time to time by Statistics SA in Statistical Release P0141.1, provided that if, after the Signature Date:

1.1.45.1. such index ceases to be published; or

1.1.45.2. the Terminal Operator and TNPA agree or, failing agreement, if it is determined pursuant to clause 55.7 (*fast-track dispute resolution*) that, due to a change in circumstances, the index is no longer representative;

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 55.7 (*fast-track dispute resolution*) as being a fair and reasonable replacement index;

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

1.1.47. "**D&C Specifications**" means the design and construction specifications submitted and approved in terms of clause 27 (*Design and Construction*) and which will be annexed hereto as Schedule 5 (*D&C Specifications)* on approval thereof by the Parties;

1.1.48. **"Debt"** means, at any date, all amounts due and payable by the Terminal Operator that are outstanding under the Financing Agreements at that date, excluding Shareholder Loans or interest thereon and all default interest;

1.1.49. **"Decommission"** means all work as may be required to be done, following upon or in connection with the "closure" of the Terminal Infrastructure as defined in terms of the Environmental Impact Assessment Regulations Listing

Notice 1 of 2014 – GN R983/2014, promulgated in terms of NEMA, to take the Terminal Infrastructure out of active service permanently and to dismantle, uplift and remove the Terminal Infrastructure, in each case to the extent that it cannot be recommissioned, and **"Decommissioning"** shall bear the same meaning;

1.1.50. **"Decommissioning Costs"** means the costs of decommissioning the Terminal Infrastructure;

1.1.51. "**Decommissioning Period**" means the period reasonably required by the Terminal Operator to Decommission the Terminal Infrastructure, and which period shall, to the extent applicable, be subject to, and informed by, any requirements imposed by NERSA and/or TNPA;

1.1.52. "**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:

1.1.52.1. if this Agreement is terminated prior to the Actual 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;

1.1.52.2. any penalties accrued in terms of Schedule 11 *(Penalties)* shall be cancelled; and

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

1.1.53. "**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 27.1 (*Performance of the Detailed Design*);

1.1.54. **"Detailed Design Procedure"** refers to the procedure with respect to the preparation and approval of the Detailed Design that is contained in the D&C Specifications;

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

1.1.55.1. dividend or other distribution of share capital;

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

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

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

1.1.55.5. 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

1.1.55.6. 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;

1.1.56. "**Economic Development Plan**" means the Terminal Operator's Development Plan as set forth in Schedule 10 hereto;

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

1.1.58. "**Economic Development Operation Value Summary**" means the Terminal Operator's Economic Development for the operational phase Value Summary as set forth in Schedule 10;

1.1.59. "**Effective Date**" means the first Business Day after the date on which the Conditions Precedent in Clause 3 of this Agreement have been fulfilled;

1.1.60. "**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;

1.1.61. "**Environment**" means the surroundings within which humans exist and that are made up of:

1.1.61.1. the land, water and atmosphere of the earth;

1.1.61.2. micro-organisms, plant and animal life;

1.1.61.3. any part or combination of clauses 1.1.61.1 and 1.1.61.2 and the interrelationships among and between them; and

1.1.61.4. the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and well-being;

1.1.62. "**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;

1.1.63. "**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:

1.1.63.1. to protect, or prevent pollution of, or to remedy damage to the Environment;

1.1.63.2. to protect or prevent or compensate harm to human health and safety; or

1.1.63.3. to regulate emissions, discharges, or releases of Hazardous Substances into the Environment, or

1.1.63.4. to regulate the use, treatment, storage, burial, disposal, transport or handling of Hazardous Substances,

1.1.63.5. 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;

1.1.64. "**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;

1.1.65. **"Equipment"** means the movable assets in the Terminal, including Cargo handling equipment, the current composition of which is attached as Schedule 25 (*Equipment*);

1.1.66. "**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;

1.1.67. "**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;

1.1.68. "**Estimated Project Value**" means the amount determined in accordance with clause 46.3 (*No Retendering Procedure*) that a third party would pay to TNPA as the market value of the Deemed New Terminal Operator Agreement;

1.1.69. "**Expert**" has the meaning ascribed to it in clause 54 (*Expert Determination*) of this Agreement;

1.1.70. "**Expiry Date**" means the last day of the Concession Period irrespective of whether the Terminal Operator is required to decommission and demolish the Terminal Infrastructure or not;

1.1.71. **"Exclusion Zones"** are the three-dimensional areas, on or beyond the Project Site (that will become the Terminal footprint), defined by the predicted effects of major hazards such as explosions, fires and flammable and/or toxic gas clouds. In these areas, TNPA and/or the Terminal Operator may legally control or restrict access and activities to protect people, the environment, assets and reputation (PEAR). The size and boundaries of the Exclusion Zones must be calculated, provided to TNPA for approval and shown on the Terminal's approved plans.

1.1.72. "**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;

1.1.73. **"Finance Direct Agreement (FDA)"** means the agreement to be entered into between the TNPA, the Terminal Operator and the Lenders (if applicable);

1.1.74. **"Financial Close"** means the date on which the last of the suspensive conditions (if applicable) in the Finance Agreement/s are fulfilled or waived, and the Project funding, made available in accordance with the terms of the FDA, becomes unconditional and available such that the first drawdown under the Finance Agreement/s can be made;

1.1.75. **"Financial Model"** means the financial base case for the Project, as may be amended by the Terminal Operator from time to time, and a copy of the latest version of the Financial Model shall be provided by the Terminal Operator to the TNPA upon Financial Close;

1.1.76. "**Force Majeure**" has the meaning ascribed to it in clause 39 (*Force Majeure*);

1.1.77. "**Force Majeure Event**" means any event of Force Majeure as more fully described in clause 39.2 in this Agreement;

1.1.78. **"Handover Date"** means, following the Termination Date or Expiry Date in this Agreement, the date of transfer of the Terminal Infrastructure from the Terminal Operator to the TNPA, alternatively, to the Substitute Entity, as is applicable as set out in clause 13 of this Agreement;

1.1.79. "**Hazardous Substances**" means:

1.1.79.1. 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

1.1.79.2. 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;

1.1.80. "**HAZOP Studies**" means the Hazard and Operability study comprising a structured and systematic examination of a planned or existing process or operation in order to identify and evaluate problems that may present risks to personnel or equipment, or prevent efficient operation;

1.1.81. "**Highest Compliant Tender Price**" means, as per clause 47.2, the price offered by the Tenderer (if any) with the highest tender price and, if no Tenders are received, zero;

1.1.82. **"IFRS"** means the International Financial Reporting Standards, a set of common accounting rules for gathering and presenting information in financial reports;

1.1.83. "**IMDG Code**" means the International Maritime Dangerous Goods Code, published by the International Maritime Organisation as amended from time to time;

1.1.84. "**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*);

1.1.85. **"Independent Certifier Agreement"** means the agreement entitled the "Independent Certifier Agreement", entered into on or about the Effective Date, between the Terminal Operator and the Independent Certifier;

1.1.86. "**Independent Expert**" shall mean:

1.1.86.1. 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

1.1.86.2. 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

1.1.86.3. 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

1.1.86.4. 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;

1.1.87. "**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 aforegoing, 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, and "Transferable Intellectual Property Rights" and "Non-Transferable Intellectual Property Rights" shall be delineated by the Parties and committed into Schedule 21 (*TNPA Policies, Manuals and Intellectual Property Rights*) of this Agreement;

1.1.88. "**Insurance**" means the project insurance that the Terminal Operator is required to purchase and maintain in terms of clause 16 (*Project Insurance*);

1.1.89. "**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;

1.1.90. "**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;

1.1.91. "**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;

1.1.92. "**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;

1.1.93. **"Legislation"** means all applicable statutes, statutory instruments, by-laws, regulations, orders, rules, executive orders and other secondary, provincial or local legislation, treaties, directives and codes of practice having the force of law in South Africa;

1.1.94. **"Lender/s"** means any funder, other than in its capacity as a Member or Shareholder;

1.1.95. **"LNG Carrier"** means an ocean-going vessel carrying LNG which calls at the Port for the purposes of discharging Cargo at the LNG Terminal;

1.1.96. "**Long Stop Date**" means the date which falls 24 (twenty-four) months after the Scheduled Operations Commencement Date, being the date by which the Services must have commenced, failing which TNPA shall be entitled to terminate this Agreement in accordance with the provisions of clause 41 (*Terminal Operator Default*);

1.1.97. "**Losses**" means losses, damages, liabilities, claims, actions, proceedings, demands, costs, charges or expenses of any nature in respect of the Project;

1.1.98. **"Member"** means, in relation to the Terminal Operator, any legal entity and or natural person which will become a Shareholder (either itself or through an intermediary entity) once the Terminal Operator is incorporated to undertake the Project, and if the Terminal Operator has already been incorporated, then any Shareholder;

1.1.99. "**NEMA**" means the National Environmental Management Act, 107 of 1998;

1.1.100. **"National Energy Regulator Act"** means the National Energy Regulator Act No. 40 of 2004, as amended;

1.1.101. "**NERSA**" means the National Energy Regulator of South Africa;

1.1.102. **"NERSA Construction License"** means the construction licence issued, or to be issued, by NERSA to the Terminal Operator in respect of the construction of the Terminal Infrastructure, as may be amended from time to time;

1.1.103. **"NERSA Licenses"** means collectively, the NERSA Construction Licence and the NERSA Operating Licence;

1.1.104. **"NERSA Operating License"** means the operating licence to be issued by NERSA to the Terminal Operator, in respect of the operation of the Terminal Infrastructure, as may be amended from time to time;

1.1.105. "**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:

1.1.105.1. if this Agreement is terminated prior to the Actual 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;

1.1.105.2. any penalties accrued in terms of Schedule 11 *(Penalties)* and/or warning notices shall be cancelled;

1.1.105.3. the term of such contract shall be a period equal to the period from the Termination Date until the Expiry Date; and

1.1.105.4. any other amendments, which do not adversely affect the Terminal Operator;

1.1.106. "**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 14 *(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;

1.1.107. "**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;

1.1.108. "**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

1.1.109. "**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 7 *(Terminal Operator's Operational Plan);*

1.1.110. **"Operations Agreement"** means the agreement to be entered into between the Terminal Operator and the Operator in respect of the Operation and Maintenance of the Terminal, which agreement shall be attached as Schedule 26;

1.1.111. **“Operations Certificate”** means the certificate to be issued by the Independent Certifier in terms of clause **Error! Reference source not found.** (*inspection*) and the date of issue is the date on which the Operations Period may commence

1.1.112. **“Operations Period”** means the period commencing from the Actual Operations Commencement Date until the Expiry Date or the Termination Date, subject to any extension thereof by the Parties in writing;

1.1.113. **“Operator”** means the person who is appointed as the Operation and Maintenance contractor by the Terminal Operator in the Operations Agreement, and any replacement or successor-in-title of such person;

1.1.114. "**Parties**" means TNPA and the Terminal Operator, and "**Party**" shall mean either of them as the context may require;

1.1.115. "**Performance Guarantees**" means the Construction Performance Guarantee, the Operating Performance Guarantee and the Final Maintenance Guarantee;

1.1.116. “**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 the last performance with reference to Schedule 17 (*Terminal Operator Performance Standards*);

1.1.117. **“PFMA”** means the Public Finance Management Act, 1 of 1999;

1.1.118. “**Planning Period**” means the period commencing on the Signature Date and ending on the commencement of the Construction Period, which period shall not exceed 6 (six) months unless such period is extended in terms of clause 3.1.1 below;

1.1.119. "**Port**" means the Port of East Lodnon, as promulgated in terms of the National Ports Act, 2005 and Port Regulations, 2009, and situated at East London, in the province of Eastern Cape, Republic of South Africa;

1.1.120. "**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;

1.1.121. "**Port Infrastructure**" means the basic common use structures of the Port of Saldanha, 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;

1.1.122. "**Port Regulations**" means the regulations made in terms of section 80(1) of the Act;

1.1.123. "**Port Rules**" means the rules made in terms of section 80(2) of the Act;

1.1.124. "**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;

1.1.125. **"Preliminary Design"** means the preliminary design of the Terminal carried out prior to the Effective Date by the Terminal Operator in accordance with the Preliminary Design Procedure;

1.1.126. **"Preliminary Design Procedure"** means the procedure designated as such in the D&C Specifications;

1.1.127. "**Project**" means the design, development, financing, construction, operation, maintenance and eventual transfer of the Terminal at the Port and the handling of Cargo;

1.1.128. "**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 has been using and which are necessary for the Construction Works and/or continuing Operation and Maintenance;

1.1.129. "**Project Site**" means the land described as depicted in Schedule 2 *(Project Site),* being the site diagram annexed hereto, which is located at the Port of East London and on which the Terminal Operator shall construct the Terminal;

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

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

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

1.1.133. **"Reasonable and Prudent Operator"** means a person seeking, in good faith, to perform its contractual obligations and, in so doing and in the general conduct of its undertaking, exercising that degree of skill, diligence, prudence, responsibility and foresight which would reasonably and ordinarily be expected from a skilled and appropriately experienced developer, contractor, owner or operator internationally, who is complying with all applicable Laws, engaged in the same or a similar type of undertaking, in the same or similar circumstances and conditions, and any references herein to the "standards of a Reasonable and Prudent Operator" shall be construed accordingly;

1.1.134. "**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;

1.1.135. **"Refinancing"** means, at any time after the Signature Date:

1.1.135.1. any material amendment, assignment, novation, replacement or supplementing of any of the FDAs and/or the Constitutional Documents, whether independently or in combination with any connected arrangements;

1.1.135.2. the exercise of any right or grant of any waiver, indulgence or approval under any of the FDAs (other than a Permitted Borrowing) and or the Constitutional Documents;

1.1.135.3. the disposal or encumbering (by whatever means) of any rights under any of the FDAs and or the Constitutional Documents or the creation or granting of any other benefit or interest in any of the FDAs and or the Constitutional Documents or any of the Terminal Operator's other contracts, revenues or the Terminal; and/or

1.1.135.4. any other arrangements having any of the effects in clauses 1.1.135.1 to 1.1.135.3;

1.1.136. **"Rehabilitation Security"** means the financial instrument required to satisfy the financial provision for the costs of the rehabilitation of land upon which the Terminal Infrastructure is built / the Decommissioning Costs, contemplated in Regulation 11 of the Regulations to the Gas Act and/or Regulation 9 of the Regulations to the Petroleum Pipelines Act, and as required by the Environmental Authorisation, such security to be in a form acceptable to the Relevant Authority and/or NERSA;

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

1.1.137.1. directly, or indirectly through one or more intermediaries, controls, or is controlled by, a person who acquires and holds, at least 5% (five per centum) Equity in the Terminal Operator;

1.1.137.2. is under common control with any person who acquires or holds at least 5% (five per centum) Equity in the Terminal Operator; or

1.1.137.3. any person who acquires or holds at least 5% (five per centum) 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;

1.1.138. "**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);

1.1.139. "**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;

1.1.140. **"Relief Event"** means:

a) 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;

b) (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;

c) any accidental loss or damage to the Works and/or the Facilities;

d) any off-site failure or shortage of power, fuel or transport;

e) any blockade or embargo which does not constitute an event of Force Majeure;

f) 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;

g) any delay in obtaining any Consent; or

h) 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,

i) 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 36 (Consequences of a Relief Event);

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

1.1.141. "**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;

1.1.142. "**SAMSA**" means the South African Maritime Safety Authority, duly established in terms of the South African Maritime Authority Act of 1998;

1.1.143. "**Schedules**" means the schedules to this Agreement, as amended, replaced and varied from time to time;

1.1.144. "**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;

1.1.145. **"Services"** means the provision of services at the Terminal in respect of the berthing of Cargo carriers at the designated Port locations, the unloading and receipt of Cargo from Cargo carriers at the Terminal receipt point, storage of Cargo, transportation of Cargo to the delivery point and other activities related to performance by the Terminal Operator of the foregoing, including the maintenance of the Terminal, which services are more fully described in and are to be provided in accordance with the specifications and standards detailed in Schedule 7 (*Terminal Operator's Operational Plan*);

1.1.146. "**Shareholder/s**" means the holders of the Equity, whether directly or indirectly;

1.1.147. "**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;

1.1.148. "**South Africa**" means the Republic of South Africa;

1.1.149. "**Subcontractor/s**" means any subcontractor of the Terminal Operator, who has contracted directly with the Terminal Operator in respect of the Project, including the Contractor/s;

1.1.150. **"Substitute Entity"** means a person duly and properly appointed to be the new terminal operator in the place and stead of the Terminal Operator in terms of the FDA;

1.1.151. "**Suitable 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:

1.1.151.1. has the appropriate technical and financial ability to perform the rights and obligations of the Terminal Operator under this Agreement;

1.1.151.2. employs persons having the appropriate qualifications, experience and technical competence;

1.1.151.3. has sufficient resources available to it (including financial resources and Subcontracts) to perform the obligations of the Terminal Operator under this Agreement; and

1.1.151.4. has the same, or more favourable, policies to ensure that there is no reduction in B-BBEE;

1.1.152. "**Supplier Development Plan**" means the Terminal Operator's supplier development plan to be annexed to this Agreement as Schedule 10 (*Supplier Development Plan and Supplier Development Value Summary Worksheets*) hereto;

1.1.153. "**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;

1.1.154. "**Tax**" means VAT, any tax, levy, impost, duty or other charge or withholding of a similar nature (including any related penalty or interest);

1.1.155. "**Tender**" means any tender submitted by a Tenderer that meets the qualification criteria notified under clause 46.2 (*Retendering Procedure*);

1.1.156. "**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;

1.1.157. "**Tender Costs**" means the reasonable and proper costs of TNPA incurred in carrying out the Tender Process;

1.1.158. "**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 46.2 (*Retendering Procedure*);

1.1.159. "**Tender Process Monitor**" means a third party appointed by the Terminal Operator under clause 46.2 (*Retendering Procedure*);

1.1.160. "**Terminal**" means the land area situated at Westbank precinct with Erf 63584 measuring 8 900m^2, including Terminal Infrastructure and Terminal Equipment, where the Terminal Operator will undertake the Project;

1.1.161. "**Terminal Equipment**" means the movable assets, including cargo handling equipment and machinery (whether affixed to the Project Site or not) that are required in order to operate, handle, store, and transfer Cargo in, around or out of the Terminal as is more fully described in Schedule 25 (*Equipment*) of this Agreement;

1.1.162. "**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;

1.1.163. "**Terminal Operator**" means the Preferred Bidder granted the right to conduct the Project in terms of the Terminal Operator Agreement concluded between the Terminal Operator and the TNPA, pursuant to being selected as the Preferred Bidder under this RFP;

1.1.164. "**Terminal Operator Financial Year**" means the financial year of the Terminal Operator, which runs from ***[insert dates]*** annually;

1.1.165. "**Terminal Operator Performance Standards (TOPS)**" means the minimum performance standards specified in Schedule 17 (*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;

1.1.166. "**Termination Amount**" means the amount payable on termination of this Agreement in terms of Part VII;

1.1.167. "**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: Western Cape, if the matter relates primarily to a financial matter;

1.1.168. "**Termination Date**" means the date on which this Agreement is terminated in accordance with its terms, other than by way of effluxion of time;

1.1.169. "**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;

1.1.170. "**TNPA Policies**" means TNPA policies, operating manuals, operating conditions and rules as set out in Schedule 20 (*TNPA Policies, Manuals and Operating Conditions*);

1.1.171. "**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 3.1.2;

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

1.1.173. **"Transfer Costs"** means all the reasonable costs incurred by the Terminal Operator arising out of the transfer to the TNPA (or its nominee) of the right, title and interest of the Terminal Operator in and to the Terminal, the Consents (if applicable) and the Project upon termination of this Agreement including VAT, but excluding (i) any costs incurred by the Terminal Operator pursuant to clause **Error! Reference source not found.** (*Termination Calculation Expert*) or clause 55.7 (*fast-track dispute resolution*) or clause 55 (*Dispute Resolution*) which are allocated by the Independent Expert or the Payment Expert to the Terminal Operator, (ii) any costs in respect of legal or financial advisory services, and (iii) any tax on income, receipts, sales, transfer, property, capital gain, dividends or other similar taxes;

1.1.174. "**Transnet**" means Transnet SOC Ltd, registration number 1990/000900/30;

1.1.175. "**Unforeseeable Conduct**" means conduct that occurs 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:

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

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

1.1.175.3. 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 Unforeseeable Conduct shall be deemed not to have occurred in circumstances where:

1.1.175.4. 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;

1.1.175.5. 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;

1.1.175.6. 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

1.1.175.7. the principal effect of any action or omission of a Relevant Authority is directly borne by both TNPA and the Terminal Operator;

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

1.1.176.1. the required insurance is no longer available in the worldwide insurance market from reputable insurers; or

1.1.176.2. 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;

1.1.177. "**Updated Financial Model**" means the Base Case Financial Model as amended and updated from time to time;

1.1.178. "**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;

1.1.179. "**Valuer**" means a Property Valuer registered with the South African Council for Property Valuers;

1.1.180. "**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 the 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, and 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 and 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. 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.

3. Commencement and Duration, Conditions Precedent, and Concession Period

3.1. **Commencement and Duration**

3.1.1. Subject to clause 3.2 *(Conditions Precedent)*, this Agreement shall commence on the Signature Date and shall endure until the earlier of the Termination Date or the Expiry Date.

3.1.2. Notwithstanding the provisions of clause 3.1.1. 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.

3.1.3. The "**TNPA Approval Date"** shall be deemed to be thirty (30) days from the date of submission of studies listed in sub-clause 3.2.2 if it does not receive a response from TNPA on a submission in terms of sub-clause 3.2.2.

3.2. **Conditions Precedent**

3.2.1. Save for this clause 3.2 (Conditions Precedent) and clauses 1 (Definitions and Interpretation), 2 (Introduction), 3 (Commencement and Duration, Conditions Precedent and Concession Period), 4 (Appointment of Terminal Operator and Grant Of Rights), 8 (Indemnity), 11 (Contracts), 12 (Environmental Compliance), 14 (Access to Documents, Copyright and Related Matters), 17 (Port Users and Port Rules), 18 (Changes in the Terminal Operator), 19 (TNPA's Assistance and Rights and Limitation on Liability), 21 (Provision of the Port), 22 (Project Site), 24 (Health and Safety), 27 (Design and Construction), 29 (Terminal Operator Operation and Maintenance), 30 (Reporting Requirements), 39 (Force Majeure), Part VI (Termination), 55 (Dispute Resolution), 55.7 (Fast- Track Dispute Resolution), 57 (Confidentiality), 58.1 (Addresses), 58.3 (Entire Agreement), 58.7 (Variation, Cancellation and Waiver), 58.10 (Cession), 58.12 (Applicable Law), 58.14 (Jurisdiction of South African Courts), 58.9 (Invalidity and Severability), 58.15 (*Costs*) and 58.16 (*Counterparts*), which shall not come into force and effect until the conditions precedents set out below are fulfilled or waived as the case may be, within a period of 18 (eighteen) 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 18 (eighteen) months:

3.2.1.1. the Terminal Operator having completed and submitted to the reasonable satisfaction of TNPA the following information, including but not limited to:

3.2.1.1.1. SHE Risk Assessment and Plans;

3.2.1.1.2. Civil and Bulk Services Studies;

3.2.1.1.3. Navigation and Mooring Study;

3.2.1.1.4. HAZOP Studies;

3.2.1.1.5. Environmental Impact Assessment and related environmental authorisation for Operations;

3.2.1.2. 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;

3.2.1.3. the Terminal Operator obtaining all necessary Environmental Consents for the commencement of the Construction Works and the Operation and Maintenance of the Terminal;

3.2.1.4. the Terminal Operator concluding the relevant agreements with the Construction Contractor and such agreements have become unconditional except to the extent that they are conditional on this Agreement becoming unconditional and legally effective;

3.2.1.5. NERSA issuing the Terminal Operator with the NERSA Licences and the Terminal Operator providing written confirmation thereof to TNPA;

3.2.1.6. the Construction Agreement, the Construction Works Programme, the Detailed Design and D&C Specifications have been approved by the Independent Certifier; and

3.2.1.7. the Terminal Operator achieving Financial Close and providing written confirmation thereof to TNPA (as confirmed in writing by the Lender/s);

3.2.2. The Conditions Precedents, or any of them, may be waived by the Parties by agreement to that effect.

3.2.3. The Terminal Operator must disclose in writing to TNPA any event which will or is likely to prevent any of the Conditions Precedents from being satisfied, as soon as it becomes aware of such an event.

3.2.4. The Terminal Operator shall have no claim against TNPA pursuant to the non-fulfilment of any of the Condition

Precedents in clause 3.2, save where TNPA has breached the terms of this clause 3.2 (*Conditions Precedent*) and/or has deliberately frustrated the fulfilment of a condition or intentionally caused that condition not to be fulfilled, in which event TNPA shall be liable to the Terminal Operator for such damages as the Terminal Operator may have suffered.

3.3. **Concession Period**

3.3.1. This Agreement shall, subject to the fulfilment of the Conditions Precedent, subsist for a period of 25 (twenty-five) years from the Effective Date (whichever occurs first) unless terminated earlier in accordance with its terms.

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 the exclusive right to undertake the Project on the Project Site until the Expiry Date or Termination Date.

4.1.3. The Terminal Operator shall be entitled to use the Port Infrastructure that is within the Project Site, on a common user basis Berths, 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 traverses a portion of port land that lies outside the Project Site, the provisions of a separate wayleave agreement shall apply.

4.1.4. The assignment of Berths for the docking of vessels calling at the Berths shall be managed by the Berth Planner in accordance with the prevailing Berthing Guidelines

4.1.5. The Terminal Operator will accordingly in the exercise of its Operating Rights, and to the extent required by Law, be obliged to:

4.1.5.1. 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 Infrastructure and the loading facilities except for objectively justifiable and identifiable differences;

4.1.5.2. afford all Terminal users who require access to uncommitted capacity at the Terminal the right to use the Terminal in accordance with the Terminal Operator's access and allocation mechanism which mechanism must be developed in accordance with applicable Laws; and

4.1.5.3. not engage in any other form of anti-competitive behaviour (which may constitute a breach of applicable Laws including but not limited to the Competition Act No. 89 of 1998) in exercising its Operating Rights.

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 subcontracting, transfer and outsourcing 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 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, it shall not do so unless the prior written consent of TNPA has been obtained, which consent shall be in TNPA's sole and absolute discretion.

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 a portion of the Terminal as sleeping quarters for operational or security purposes.

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 orderly and safe Operation and Maintenance of the Terminal, the Terminal Infrastructure, or the Terminal Equipment.

4.4.1.9. The Terminal Operator shall at its own cost, maintain the Certifications, if applicable, for the duration of the Project Term.

4.4.1.10. 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. The Terminal Operator expressly records and agrees that TNPA does not warrant the suitability or otherwise of the Project Site for purposes of undertaking the construction, Operation and/or Maintenance of the Terminal or for purposes of operating the Terminal. 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 the Terminal**

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 and Equipment required to operate the Terminal;

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 apply for and obtain the required Environmental Authorisation, NERSA licenses and all other 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 Operation and Maintenance of the Terminal (as envisaged above);

4.4.2.2.2. ensure that it secures access to a truck staging facility for all the trucks calling at the Terminal; 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, 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 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's available and uncommitted capacity 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 port services to Port Users;

4.4.3.2.2. receiving Cargo at the Project Site via LNG Carrier;

4.4.3.2.3. storage of Cargo in storage tanks;

4.4.3.2.4. transferring Cargo from the LNG Carrier into the storage tanks for distribution;

4.4.3.2.5. distributing Cargo to inland customers through trucks;

4.4.3.2.6. preparing all necessary documentation associated with the shipment of Cargoes, and their inland transport to/from the Port;

4.4.3.2.7. submitting reports in respect of all cargo exported, landed and shipped to TNPA as prescribed in the TNPA Tariff Book;

4.4.3.2.8. performing maintenance-related activities as the Terminal Operator may be required or deemed necessary;

4.4.3.2.9. obtaining, maintaining and renewing all documents, licenses, certifications, 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 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 Laws, provisions of the Act, the Port Rules, the Regulations and any directives issued in terms of the Act, the Relevant Authority or by NERSA;

4.4.3.2.14. complying with SAMSA, including any applicable Legislation and codes relating to safe working practices on the waterside;

4.4.3.2.15. complying with the ISPS Code in relation to security;

4.4.3.2.16. complying with the IMDG Code in relation to the handling, storage and transportation of dangerous goods;

4.4.3.2.17. complying with the Harbour Master's instructions (verbal or written), directions or requirements for the safety of navigation, movement, operation and mooring of vessels, pilotage and landing of Cargo; and

4.4.3.2.18. 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 4.4.3. 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:

4.4.3.4.1. use the Terminal for residential purposes or as sleeping quarters, save that TNPA may in writing authorise a portion of the Terminal to be used as sleeping quarters for operational or security purposes;

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, Terminal Infrastructure, 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 the 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 Infrastructure and Terminal Equipment and must incorporate the outcome of each such annual inspection in the Annual Report as provided for in clause 30 *(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 clause 30 (*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 and Maintenance of the Terminal, 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 as 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.

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 Terminal. 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 and the Project Site 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 egress 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**

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. Concession Fees

5.1. Pursuant to the right to carry out the Project and to Operate and Maintain the Terminal for the duration of the Concession Period of this Agreement, the Terminal Operator shall pay monthly Rental to TNPA:

5.1.1. during the Construction Period, the sum of ***R [insert amount]*** per square meter, excluding VAT; and

5.1.2. during the Operations Period, the sum of ***R [insert amount]*** per square meter, excluding VAT.

5.2. Thereafter, the monthly Rental payable by the Terminal Operator in terms of clause 5.1 shall be reviewed and/or escalated annually in accordance with the following principles:

5.2.1. For the Construction Period the monthly Rental amount shall be escalated by TNPA on each anniversary of such date at an escalation rate of **[*insert % of escalation*] (*word percent*)**, with the first such escalation being based on the amount that was payable in terms of clause **Error! Reference source not found.** above;

5.2.2. For the period commencing on the Actual Operations Commencement Date, the monthly Rental amount shall be escalated by TNPA on each anniversary of such date at an escalation rate of **[*insert % of escalation*] (*word percent*)**, with the first such escalation being based on the amount that was payable in terms of clause 5.1.2. above;

5.2.3. with effect from the fifth anniversary of the Actual Operations Commencement Date, the monthly Concession Fee payable for the next five (5) year period shall be a market-related Concession Fee and escalation determined in accordance with the provisions of this clause **Error! Reference source not found.**;

5.2.4. for each subsequent five (5) year period thereafter, the Concession Fee payable shall be a market-related Concession Fee and escalation determined in accordance with the remaining provisions of this clause;

5.2.5. no later than six (6) months prior to the expiry of the fifth year of the Operating Term and no later than six (6) months prior to the expiry of each subsequent discrete five (5) year period thereafter, the Parties shall meet in order to endeavour to agree the Concession Fee and the annual escalation that shall apply in respect of the subsequent five (5) year period;

5.2.6. Should the Parties not be able to agree upon the Rental and escalation rate in terms of clause 5.2.4 above, the Rental and escalation rate shall be determined by a registered Transnet-approved Valuer (or such other Valuer as Transnet may appoint) and a Valuer that the Terminal Operator may appoint.

5.2.7. In the event that the two Valuers referred to in clause 5.2.6 fail to reach agreement within a period of 14 (fourteen) days from the date of referral thereto, the Rental and escalation rate shall be determined by an expert Valuer mutually agreed upon by the Parties ("**External Valuer**").

5.2.8. In the event that Parties fail to agree on an Expert Valuer within 10 (ten) days after the expiry of the said 14 (fourteen) day period, the dispute shall be referred to the Chairman of the South African Council for the Property Valuers Profession who shall appoint a Valuer of at least 10 (ten) years standing for the purpose of determining the Rental and escalation rate ("**SACP Valuer**").

5.2.9. Forthwith following the appointment of the External Valuer, or the SACP Valuer, as the case may be, each Party shall submit a written Rental estimate to such Valuer, together with any information supporting such estimate.

5.2.10. The External Valuer or SACP Valuer, as the case may be, will act as an expert (and not as an arbitrator) and, within 30 (thirty) days after being appointed, will determine the Rental and the escalation rate for the Site for the relevant Rental review period, which determination shall be reduced to writing and shall be final and binding on the Parties.

5.2.11. The costs of the External Valuer or the SACP Valuer, as the case may be, shall be borne equally by the Parties.

5.2.12. Notwithstanding anything to the contrary contained in this Agreement, pending the determination of the Rental and the escalation rate applicable during any Rental review period, the Terminal Operator shall continue to pay Rental equal to the Rental, which prevailed in the month immediately prior to the dispute referred to in clause 5.2.6 until such determination is made. Thereafter, if applicable, the Terminal Operator shall on demand pay any additional amount it would have had to pay in respect of the period from the date of the dispute arising to the end of the month during which the determination is made.

5.2.13. The Terminal Operator shall not be entitled to set-off against the deposit referred to in clause 5.2.17 any amount owed to TNPA in terms of or arising out of this Agreement.

5.2.14. Except if TNPA otherwise agrees in writing, all payments shall be made in Rand.

5.2.15. 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: **Standard Bank of Southern Africa, Account name: Transnet National Ports Authority, Type: Business Cheque Account, Account Number: 050281453, branch Code: 040026.**

5.2.16. TNPA shall be entitled in its sole and absolute discretion to appropriate or re-appropriate any amounts received from the Terminal Operator towards the payment of any other amounts owing by the Terminal Operator to it.

5.2.17. The Terminal Operator shall, no later than the Rental Commencement Date, pay to TNPA a rental deposit equal to [***insert period***] months Rental 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. Such rental deposit shall be held in an interest-bearing account for the benefit of the Terminal Operator, which interest shall also be held as security for the payment of any and all amounts payable by the Terminal Operator in terms of this Agreement.

5.2.18. TNPA shall have the right to apply the whole or portion of the rental deposit towards the payment of any amounts owing by the Terminal Operator, when any such amount has not been paid within 15 (fifteen) Business Days of written notice requesting such payment that is due and payable. If any portion or the whole of the rental deposit is so applied, the Terminal Operator undertakes, within 30 (thirty) days of receipt of request from TNPA, to reinstate the amount of the rental deposit to the original amount.

5.2.19. The rights and claims to the rental deposit shall be retained by TNPA until the termination of this Agreement, the vacating of the Terminal by the Terminal Operator and the complete discharge by the Terminal Operator of all its payment obligations under the Agreement, whereafter the rights and claims to such amount (or the remaining balance thereof in the event that a portion thereof has been applied by TNPA in terms of clause 5.2.18) shall then be returned to the Terminal Operator.

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

6.1. 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.

6.2. The Parties agree that ownership of the Terminal Infrastructure shall remain vested in the Terminal Operator, save where expressly stated to the contrary.

6.3. The Terminal Operator hereby grants to TNPA the first option to purchase the Terminal Equipment on the following terms and conditions:

6.3.1. 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;

6.3.2. 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;

6.3.3. 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.

6.4. 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.

6.5. Upon the termination for any reason or expiry of the Operations Period or subject to clause 6.4, (**the "Decommissioning Period"**), the Terminal Operator will be required to:

6.5.1. give free and vacant possession of the Terminal, the Project Site, the Terminal Infrastructure and subject to clause 6.3, the Terminal Equipment to TNPA;

6.5.2. hand over all associated manuals, certificates and documents in respect of the Terminal Infrastructure and the Terminal Equipment, if applicable;

6.5.3. leave the Project Site in a safe, clean and orderly condition in accordance with the terms and conditions contained in the Draft Terminal Operator Agreement.

6.6. Subject to clause 6.3, the Terminal Operator shall not be entitled to payment of any monies in connection with such delivery referred to in clause 6.5.

7. Rehabilitation Security

7.1. Where directed by the Relevant Authority, or as required per the terms of its NERSA Operating Licence, the Terminal Operator shall, in respect of the Decommissioning Costs, and for the duration of the Operating Term:

7.1.1. obtain, and maintain in full force and effect, the Rehabilitation Security; and

7.1.2. upon written request from the TNPA, provide the TNPA with a copy of any Rehabilitation Security in effect.

8. Indemnity

8.1. Subject to clauses 8.2 and 8.4, the Terminal Operator shall fully and effectively indemnify and hold TNPA harmless in respect of all Losses suffered or incurred by TNPA, which arise directly from 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 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; and

8.2.2. Losses to the extent that TNPA 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 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 is 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 that it obtains including any Environmental Authorisation 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 Contract 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 that are required in respect of the Project (including all Environmental Authorisations) and shall comply with all such Consents. TNPA shall use its reasonable endeavours to assist the Terminal Operator to obtain such Environmental Authorisations, heritage related Consents and other 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.

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 NEMAA.

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 Actual 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-compliancy, inefficiency or inadequacy, without any delays, to the reasonable satisfaction of TNPA or provide TNPA with proof that such non-complacency, 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 requirements of NERSA regulations regarding compliance with environmental requirements in the energy sector;

12.9.3. 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;

12.9.4. all the conditions in any authorisations or exemptions from the Relevant Authority in respect of the Project Site or the Terminal;

12.9.5. TNPA's requirements for the regular waste removal, including waste originating from cleaning or loading of vehicles or wagons;

12.9.6. all the conditions in environmental permits, consents, licences, certificates, authorisations, orders and exemptions from the Relevant Authority in respect of the Terminal; and

12.9.7. 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 54 (*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 Commitments (Schedule 12), and the Economic Development Plan (Schedule 10), including the Economic Development Value Summary Worksheets incorporated therein, for the duration of this Agreement.

13.2. The Terminal Operator shall endeavour to maintain its B-BBEE Contributor Status Level or better in terms of the prevailing sector code as published in terms of section 9 of the B-BBEE Act for the duration of the Concession 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 Commitments, which is annexed hereto as Schedule 12 (*B-BBEE Commitments*).

13.5. The actual performance of the Terminal Operator against its targets and commitments in the B-BBEE Commitments 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 each Contract Year by no later than 40 (fourty) Business Days before the end of each Contract Year.

13.6. Subject to the rights of TNPA to terminate this Agreement under clause 46 (*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 Commitments 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 30.1.2 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 30.1.2, 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 Commitments 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 Commitments 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 Commitments 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 Commitments 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 30, 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 0; 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 41 (*Terminal Operator Default*).

13.14. The provisions of clauses 29.5.10 and 29.5.11 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 Guideline Document*) 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 Operations Period, 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 Operations Period 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. Construction Performance Guarantee

15.2.1. 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 27.4 (*Completion of Construction Works*) to secure the performance by the Construction Contractor of its obligations in terms of the Construction Agreement, as at the Effective Date.

15.2.2. The Construction Performance Guarantee shall be substantially in the form of the guarantee annexed to this Agreement as Schedule 15 *(Construction Performance Guarantee)*.

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

15.3. Operating Performance Guarantee

15.3.1. Within the context of the Ports Regulator of South Africa's "Weighted Efficiency Gains from Operations" Record of Decision, the Terminal Operator shall obtain and submit to the TNPA an Operating Performance Guarantee, which shall be an on-demand guarantee in favour of the TNPA as agreed to between the Parties when concluding to the Terminal Operator Performance Standards for the year in which such guarantee is to be furnished. The Operating Performance Guarantee shall be required in order to secure the performance by each Terminal Operator of its obligations in terms this Agreement.

15.3.2. Each Operating Performance Guarantee shall be substantially in the form of the guarantee attached to this Agreement as Schedule 15.

15.3.3. An Operating Performance Guarantee shall be provided by the Terminal Operator in respect of each Contract Year after the issue of the Completion Certificate so that the amount to be guaranteed by such Operating Performance Guarantee for each successive year of the Operations Period takes into account any fluctuations in CPI. The Operation Performance Guarantees for the second and successive Contract Years shall be provided not later than 14 (fourteen) Days before the expiry of the Contract Year in respect of which such guarantee was provided.

15.3.4. Each Operating Performance Guarantee shall be valid from its commencement until 14 (fourteen) Days after the expiry of the Contract Year in respect of which such guarantee was provided and shall be returned to the Terminal Operator within 14 (fourteen) Days after such later date.

15.4. **Final Maintenance Guarantee**

15.4.1. The Terminal Operator shall obtain a Final Maintenance Guarantee in favour of 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 42.2 (*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 obtain and maintain, at its own expense, with a reputable insurance company, insurance cover against:

16.1.1.1. Losses, damages or destruction of the Terminal at the Port. Such insurances shall be:

16.1.1.1.1. for not less than the full replacements value of the Terminal; and

16.1.1.1.2. against any risk or fire, lightning, explosions, storms, floods, earthquake, riots (this includes political riots), strikes (protected and unprotected strikes) and malicious damage to the Terminal, public and third-party liability, business interruption as well as all risks cover against any other risk selected by TNPA which is insurable in the local South African insurance market consequent upon the damage to or destruction of the Terminal.

16.1.1.2. Environmental risks, including sudden and accidental environmental risks and, if so required by TNPA in writing, long-term gradual pollution risks.

16.1.2. The Terminal Operator shall, by no later than the Effective Date, take out and shall thereafter maintain or procure the maintenance of the insurances described in Schedule 16 *(Project Insurance)* and any other insurances as may be required by Law. These insurances must be taken out and become fully effective in each case, not later than the date on which the relevant risk commences.

16.1.3. The Terminal Operator shall, with effect from the Actual Operations Commencement Date (or earlier if the relevant risks commence before that date) take out and maintain or procure the maintenance of the insurances described in Schedule 16 *(Project Insurance)* and any other insurances as may be required by Law.

16.1.4. No Party to this Agreement shall take any action or fail to take any action, or (in so far as it is reasonably within its power) permit anything to occur in relation to it, which would entitle any insurer to refuse to pay any claim under any insurance policy in which that Party is an insured, a co-insured or additional insured person.

16.1.5. The insurances referred to in clauses 16.1.1, 16.1.2 and 16.1.3 shall:

16.1.5.1. name the Terminal Operator as co-insured with any other party maintaining the insurance;

16.1.5.2. provide for non-vitiation protection in respect of any claim made by TNPA as co-insured in respect of the insurances detailed in Schedule 16 *(Project Insurance).* If non-vitiation protection is unavailable when any such insurance policy is first placed, then the Terminal Operator shall procure that an insurance assessor investigates whether any non-vitiation protection subsequently becomes available prior to each renewal of the policy and provides written confirmation promptly upon the renewal thereof as to the unavailability thereof to TNPA. If any non-vitiation protection subsequently becomes available, then TNPA shall be entitled to require the Terminal Operator to procure such protection and the costs thereof shall be borne by the Terminal Operator;

16.1.5.3. contain a clause waiving the insurers' subrogation rights against TNPA, its employees and agents;

16.1.5.4. provide for 90 (ninety) Days prior written notice of their cancellation, non-renewal or amendment to be given to TNPA; and

16.1.5.5. provide for payment of any proceeds to be made by insurers in accordance with clause 16.3 (*Reinstatement*).

16.1.6. The insurances referred to in clauses 16.1.1 and 16.1.3 shall name TNPA as a co-insured for its separate interest in the Project.

16.1.7. All the costs relating to the insurance policies, including the insurance premiums, shall be paid by the Terminal Operator.

16.1.8. The Terminal Operator shall comply with all the terms and conditions embodied in the insurance policies contemplated in this provision.

16.1.9. The Terminal Operator shall, upon request by TNPA and within 30 (thirty) Days or such a shorter period as reasonably directed by TNPA:

16.1.9.1. provide certified copies of all insurance policies referred to in clauses 16.1.2 and 16.1.3 (together with any other information reasonably requested by TNPA relating to such insurance policies) at the property management offices of TNPA and thereafter annually before the anniversary date of the Effective Date. TNPA shall be entitled to inspect the certified copies of all the insurance policies during ordinary business hours; and

16.1.9.2. provide TNPA with satisfactory evidence that all the insurances premiums and amounts due and payable under all insurance policies have been paid and that the insurances covering the Terminal are in full force and effect in accordance with the requirements of this clause 16.1 *(General Obligations)*;

16.1.9.3. shall be responsible for the administration of all claims and payments of the relevant inner deductible in respect of any claim instituted; and

16.1.9.4. provide TNPA with payment of the full insurance claim settlement in respect of any of TNPA 's facilities or assets that have been written off.

16.1.10. Renewal certificates in relation to the insurances referred to in clauses 16.1.1 and 16.1.3 shall be obtained as and when the policies in respect of such insurances have been renewed and copies of the renewal certificates (certified in a manner acceptable to TNPA) shall be forwarded to TNPA as soon as possible but in any event at least 10 (ten) Days before the renewal date.

16.1.11. If the Terminal Operator is in breach of clause 16.1.2 or 16.1.3, TNPA may procure and maintain, at the sole cost and expense of the Terminal Operator, the insurances referred to in this provision to the extent that TNPA deems it necessary. In this event, the Terminal Operator shall be obligated to reimburse TNPA with any or all of the insurance premiums disbursed by TNPA on behalf of the Terminal Operator within a period of 14 (fourteen) Days of receiving a written notice from TNPA to do so.

16.1.12. The Terminal Operator shall give TNPA notification within 5 (five) Days after any claim in excess of R5 000 000.00 (five million Rand) under any of the insurance policies referred to in this clause 16.1 (G*eneral Obligations*) accompanied by full details of the incident giving rise to the claim.

16.1.13. Neither failure to comply nor full compliance with the insurance provisions of this Agreement shall limit or relieve the Terminal Operator of its liabilities and obligations under this Agreement.

16.1.14. The proceeds from the insurance cover referred to in clause 16.1.1 above shall be utilised towards the repairing and/or the re-construction of the Terminal, and the equipment with the end view of having them restored to their condition immediately prior to the event which occasioned the loss or damages.

16.2. **Uninsurable Risks**

16.2.1. If a risk usually covered by the Project Insurances in Schedule 16 *(Project Insurance)* becomes Uninsurable, then the Terminal Operator shall notify TNPA within 3 (three) Days of that risk becoming Uninsurable.

16.2.2. If both Parties agree, or it is determined in accordance with clause 55.7 (*fast-track dispute resolution*), that:

16.2.2.1. such risk is Uninsurable;

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

16.2.2.3. other service providers carrying on businesses similar to the Project would cease to operate their business as a result of such Uninsurability, 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).

16.2.3. The Terminal Operator shall bear the onus of proving the circumstances in clauses 16.2.2.1 and 16.2.2.2.

16.2.4. If the requirements of clauses 16.2.2.1 and 16.2.2.2 are satisfied, then the Agreement shall continue in full force and effect.

16.2.5. 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 55.7 *(fast-track dispute resolution).* TNPA shall, at TNPA 's option, either pay to the Terminal Operator:

16.2.5.1. 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

16.2.5.2. an amount equal to the amount set out in clause 48 (*Termination amount for invalidation in terms of Section 67 of the Act*) and this Agreement will terminate.

16.3. **Reinstatement**

16.3.1. All insurance proceeds received under any policy referred to in Part X or in section I of Part Y of Schedule 16 *(Project Insurance)* shall be applied to repair, reinstate and replace each part or parts of the Terminal in respect of which the proceeds were received.

16.3.2. All insurance proceeds received under any policy referred to in Part X or in section I of Part Y of Schedule 16 ("**Material Damage Policies**") shall be applied to repair, reinstate and replace each part or parts of the Terminal in respect of which the proceeds were received.

16.3.3. All insurance proceeds paid under any Material Damage Policy in respect of a single event (or a series of related events) in the amount in excess of R1 000 000.00 (one million rand) shall be paid into a bank account to be opened in the name of both Parties (the "**Joint Insurance Account**").

16.3.4. Where a claim is made or proceeds of insurance are received or are receivable under any Material Damage Policy in respect of a single event (or a series of related events) (the "**Relevant Incident**") in an amount in excess of R1 500 000.00 (one million five hundred thousand rand):

16.3.4.1. the Terminal Operator shall deliver, as soon as practicable and in any event within 30 (thirty) Days after the making of the claim, a plan prepared by the Terminal Operator for the carrying out of the works necessary (the "**Reinstatement Works**") to repair, reinstate or replace (the "**Reinstatement Plan**") the assets which are the subject of the relevant claim or claims, in accordance with clause 16.3.5 below. The Reinstatement Plan shall set out:

16.3.4.1.1. the detailed design and/or construction specifications as agreed and consented to by the TNPA in writing, which agreement and consent shall not be unreasonably withheld;

16.3.4.1.2. the proposed timetable upon which the Reinstatement Works are to be undertaken (including the date that the Project will become fully operational), which must be agreed and consented to in writing by the TNPA, which agreement and consent shall not be unreasonably withheld,

provided that if the Parties fail to reach any such agreement and the TNPA does not grant it's consent, then the dispute shall be referred for resolution in accordance with clause 55.7 (*fast-track dispute resolution*); and

16.3.5. If TNPA is satisfied that the Reinstatement Plan will enable the Terminal Operator to comply with clause 16.3.6 below within a reasonable timescale:

16.3.5.1. prior to the earlier to occur of the termination of this Agreement, any amount standing to the credit of the Joint Insurance Account (the "**Relevant Proceeds**") (together with any interest accrued) may be withdrawn by the Terminal Operator to the extent required to enable it to make payments in accordance with the terms of the contractual arrangements referred to in clause 16.3.4 above, and to meet any other reasonable costs and expenses incurred by the Terminal Operator for the sole purpose of undertaking the Reinstatement Works. Following the earlier to occur of the termination of this Agreement, TNPA may withdraw amounts standing to the credit of the Joint Insurance Account for the purposes of funding any Reinstatement Works;

16.3.5.2. TNPA agrees and undertakes that, subject to compliance by the Terminal Operator with its obligations under this clause 16.3 (*Reinstatement*), and provided that the Terminal Operator procures that the Reinstatement Works are carried out and completed in accordance with the contractual arrangements referred to in clause 16.3.4 above, it shall not exercise any right which it might otherwise have had to terminate this Agreement by virtue of the event which gave rise to the claim for the Relevant Proceeds; and

16.3.5.3. after the Reinstatement Plan has been implemented to the reasonable satisfaction of TNPA and in accordance with clause 16.3.6 below, TNPA shall permit withdrawal by the Terminal Operator of any Relevant Proceeds then held in the Joint Insurance Account that have not been paid under clause 16.3.3 above, in respect of the Relevant Incident, together with any interest accrued on the Relevant Proceeds.

16.3.6. Where insurance proceeds are to be used, in accordance with this Agreement, to repair, reinstate or replace any Project asset forming part of the Construction Works, the Terminal Operator shall carry out the Reinstatement Works or procure that the work is carried out in accordance with the D&C Specifications so that on completion of the Reinstatement Works, such works meet and fulfil the requirements of this Agreement in respect of the Construction Works.

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 and the Port Rules; and

17.3. TNPA's 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 the this Agreement, 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, provided TNPA shall not unreasonably withhold or delay its consent.

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 Commitments. Any dispute as to whether TNPA is acting unreasonably in refusing its consent to such transfer shall be resolved in accordance with the 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 55 *(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 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 TNPA with such reasonable assistance as TNPA may need in the conduct of such Required Action (such assistance, however, to be at the expense of TNPA to the extent of any incremental costs), TNPA shall pay to the Terminal Operator an amount of monies that is equal to the revenue that the Base Case 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. less any monies that would have been payable to TNPA in terms of this Agreement.

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:

20.5.1. the Terminal Operator shall be relieved of its obligations in respect of such part; and

20.5.2. 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 42.1 (*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 5 (*Rental*) of this Agreement.

22.6. In addition to the payment of Rental in terms of clause 5 (*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 5.1 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 endeavours to ensure that no other Port Users negatively affect the use by the Terminal Operator of the Project Site. The Terminal Operator shall not negatively affect the use of the Port by TNPA and the other Port Users, other than the Project Site and then only to the extent detailed in this Agreement.

22.10. TNPA shall have the right to enter into and inspect the Project Site and the Terminal at reasonable times and on reasonable notice so as to enable it to inspect the Project Site and the Terminal, to fulfil its obligations of maintenance in respect of the Port and to fulfil its obligations as the port authority of South Africa.

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 endeavours to procure that other Port Users maintain the Port, other than the Project Site, in good condition, fair wear and tear excepted, at the cost of TNPA or the relevant Port User. The Parties shall meet and discuss any intended maintenance or repair activities so as to ensure that such activities are conducted in a manner that minimises any interference with the operations of the other Party.

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 way-leaves to the Project Site. The Terminal Operator may, however, apply to TNPA for any necessary modifications or cancellations of such agreements, such application to be made timeously in order to avoid any delay or additional cost. To the extent that TNPA has the right to modify or cancel such agreements, it shall comply timeously with the Terminal Operator's reasonable request to modify and/or cancel any such agreements.

22.17. TNPA shall make available to the Terminal Operator to the extent that it is able to do so, all the 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 on the 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 DOT 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 Planning 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 24 *(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 TNPA and the Terminal Operator in equal proportions except as otherwise provided in the Independent Certifier Agreement or as otherwise agreed between TNPA and 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 55 (*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 55 (*Dispute Resolution*), provided that the Parties shall comply with such decisions by the Independent Certifier until and unless otherwise determined pursuant to clause 55 (*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. Design and Construction

27.1. **Performance of the Detailed Design**

27.1.1. The Terminal Operator shall submit Detailed Design and D&C Specifications, Construction Agreement and Construction Works Programme in respect of the Construction Works for 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 clause 27 (*Design & Construction*) and show evidence of compliance with the requirements set out in Schedule 24.

27.1.2. 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.

27.1.3. 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 27.1.2, specifying those elements of the Detailed Design and with which the Independent Certifier, acting reasonably, is dissatisfied.

27.1.4. Within 5 (five) 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**").

27.1.5. 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 endeavour to reach mutual agreement on the correction of the the areas of concern raised by the Independent Certifier.

27.1.6. 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.

27.1.7. 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.

27.1.8. All reviews undertaken in this clause 27.1 as a result of the Independent Certifier dissatisfaction as contemplated from clause 27.1.4 above shall be undertaken at the Terminal Operator's cost and shall not constitute any form of a variation or change in scope.

27.2. **Execution of Construction Works**

27.2.1. 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.

27.2.2. 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.

27.2.3. 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.

27.2.4. 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.

27.3. **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.

27.4. **Completion of Construction Works**

27.4.1. 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.

27.4.2. 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 28 (twenty-eight) Days before such anticipated date.

27.4.3. 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.

27.4.4. 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.

27.4.5. If the Independent Certifier is not satisfied that completion as set out in clause 27.4.4 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 27.4.3 specifying those elements of the Terminal or other conditions that remain to be satisfied by the Terminal Operator.

27.4.6. 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 27.4.8).

27.4.7. 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 27.4.5 and the satisfaction of any other conditions specified.

27.4.8. 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.

27.4.9. 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 27.4 (*Completion of Construction Works*), such event shall constitute a Relief Event and shall be governed by the provisions of clause **Error! Reference source not found.** (*Consequences of a Relief Event*).

27.5. **Archaeological matters**

27.5.1. 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.

27.5.2. 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 27.5.1 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 **Error! Reference source not found.** (*Consequences of a Relief Event*).

27.6. **Utilities and Utility wayleaves**

27.6.1. 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.

27.6.2. 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.

27.6.3. 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 **Error! Reference source not found.** (*Consequences of a Relief Event*).

27.7. **Information relating to the Project and the Construction Works**

27.7.1. 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.

27.7.2. 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.

27.7.3. 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.

27.8. **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.

28. Operations Commencement for the Project

28.1. The Terminal Operator shall, with effect from the Actual Operations Commencement Date, perform or procure the performance of Operation and Maintenance of the Terminal in accordance with the Operational Plan.

28.2. Within 30 (thirty) Days after the Actual Operations Commencement Date, TNPA shall announce the Terminal open.

28.3. 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.

28.4. **Approval to commence operations**

28.4.1. 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.

28.4.2. Notwithstanding but without prejudice to the provisions of clause 28.2, 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.

29. Operation and Maintenance

29.1. 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.

29.2. Standards of Operation and Maintenance

29.2.1. 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.

29.2.2. 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*).

29.2.3. Any changes to the annual maintenance programme, after such programme has been submitted to TNPA as contemplated in clause 29.2.2. shall require the prior approval of TNPA, which approval shall not be unreasonably withheld.

29.3. Management

29.3.1. 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.

29.3.2. 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.

29.3.3. 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.

29.3.4. The Terminal Operator shall at all times exercise its rights strictly in compliance with the provisions of this Agreement and applicable Law.

29.4. **Marketing**

29.4.1. 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.

29.4.2. Within 30 (thirty) Days of the receipt by TNPA of the information, materials, documents and other data detailed in clause 29.4.1, 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.

29.5. **Terminal Operator Performance and Penalties**

29.5.1. 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.

29.5.2. Without limiting the generality of clause 29.5.1, but subject to clause 29.5.7, the Terminal Operator shall meet the Terminal Operator Performance Standards with the effect from the commencement of the Operations Period.

29.5.3. 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.

29.5.4. 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.

29.5.5. 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.

29.5.6. 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 29.5.5, 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:

29.5.6.1. a plan of action with appropriate timelines shall be implemented by the Terminal Operator without delay; and

29.5.6.2. the results thereof be submitted within the set timelines to TNPA for review and final decision and/or outcome.

29.5.7. 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.

29.5.8. Subject to the rights of TNPA to terminate this Agreement under clause 46 (*Termination for Terminal Operator Default*), if the Terminal Operator fails to achieve the minimum performance standards set out under this clause 29.5 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 16E (*Penalty and Incentive Cascade Formula*), shall be imposed.

29.5.9. If Terminal Operator achieves minimum performance standards set out under this clause 29.5 and Schedule 17C (*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*).

29.5.10. The penalties payable in terms of clause 29.5.11 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 29.5 *(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 29.5.8 or any other cause whatsoever.

29.5.11. Any monies due to TNPA or due by TNPA pursuant to the provisions of clause 29.5.7, clause 29.5.8 and clause 29.5.9 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.

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 AgreementThe 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 29.5 *(Terminal Operator Performance*) as well as Schedule 17 *(Terminal Operator Performance Standards)* and Schedule 11 *(Penalties)*.

29.5.12. 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 30, 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.

29.5.13. 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 29.5.12; and/or (iii) fails to comply with a remedial plan submitted by it in terms of clause 29.5.12, TNPA shall be entitled to exercise its rights in accordance with the provisions of clause 41 (*Terminal Operator Default*).

29.5.14. The Parties agree that in the event that any penalties in incurred in terms of this clause 29.5 *(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.

30. Reporting Requirements

30.1. 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:

30.1.1. 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 29.2.2 and the Performance Standards;

30.1.2. 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;

30.1.3. the quality and level of the services provided by the Terminal Operator at the Terminal during the relevant Review Year;

30.1.4. the Terminal Operator's compliance with the terms of this Agreement, the Act and the Regulations;

30.1.5. the Terminal Operator's compliance in respect of any Occupational, Health and Safety legislation;

30.1.6. steps taken by the Terminal Operator to eliminate anti-competitive and discriminatory practices; and

30.1.7. 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.

30.2. The Annual Report shall be provided in the format set out in Schedule 22 (*Annual Reporting*), and shall address the matters set out above and shall also include detailed information in respect of the following:

30.2.1. 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;

30.2.2. 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

30.2.3. future development and acquisition plans, including any required or proposed new Terminal Equipment, relating to the Terminal or any Service provided at the Terminal.

30.3. 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.

30.4. 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 30.1 above.

30.5. The Terminal Operator must, within 24 (twenty-four) hours of its occurrence or discovery, inform TNPA of:

30.5.1. any industrial dispute between the Terminal Operator and its employees;

30.5.2. any industrial accident or disaster involving any employee or agent of the Terminal Operator or any injury on duty or fatality;

30.5.3. any occurrence of fire within the Project Site;

30.5.4. any theft or pilferage within the Project Site or any theft or pilferage involving any Cargo in the Terminal Operator's possession or control;

30.5.5. 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

30.5.6. any spillage or pollution that may have an impact on the Environment.

31. Financial Accounts, Reports, inspection and reporting of changes

31.1. **Financial accounts and auditors**

31.1.1. 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.

31.1.2. 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.

31.1.3. 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.

31.2. **Right of Inspection**

In accordance with the provisions 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.

31.3. **Periodic Reports**

31.3.1. Together with the Annual Report the Terminal Operator shall furnish TNPA with:

31.3.1.1. 3 (three) copies of the Terminal Operator's complete audited financial statements in respect of the preceding Contract Year r (which are consistent with the books of accounts and prepared in accordance with Generally Accepted Accounting Principles), together with an audit report thereon, all in accordance with the requirements of the Laws and regulations pertaining to accounting;

31.3.1.2. 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;

31.3.1.3. an annual report by the auditors certifying that, based on its said financial, accounting and other systems, management and accounts, the Terminal Operator was in compliance with its financial obligations as contemplated in the Base Case Financial Model as at the end of the relevant financial year or detailing any non-compliance by the Terminal Operator therewith;

31.3.1.4. a reconciliation of the then current Contract Year's profit and loss account and the budget for the then current Contract Year, and an analysis thereof.

31.3.2. 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:

31.3.2.1. a copy 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 Generally Accepted Accounting Principles), 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;

31.3.2.2. 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;

31.3.2.3. a list of each of its creditors to which the Terminal Operator owes a sum in excess of R50 000 000.00 (fifty million Rand) including the amounts due to each of them;

31.3.2.4. a statement describing in detail any Related Party Transaction during the respective period;

31.3.2.5. 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

31.3.2.6. 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.

31.3.3. 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.

31.3.4. 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.

31.3.5. The Terminal Operator shall immediately report to TNPA details of the following events:

31.3.5.1. 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;

31.3.5.2. any transaction in respect of the shares of the Terminal Operator of which the Terminal Operator is aware;

31.3.5.3. any default under any Financing Agreement, the circumstances thereof and possible results as viewed by the Terminal Operator; and

31.3.5.4. 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.

31.3.6. 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.

31.4. **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 31.3 (*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.

31.5. **Reporting of changes**

31.5.1. The Terminal Operator shall notify TNPA in the event that it which consent shall not be unreasonably withheld:

31.5.1.1. makes or allows any change in or to its corporate structure, the Constitutional Documents or its financial year end;

31.5.1.2. 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;

31.5.1.3. save for the Associated Agreements, enter into any agreement or series of agreements in respect of the Terminal, which contemplates or could involve one or more payments by or to the Terminal Operator in the aggregate in excess of the equivalent of R10 000 000.00 (ten million rand);

31.5.1.4. enter into any Related Party Transaction;

31.5.1.5. enter into any agreement or incur any liability which is not in the ordinary course of business of the Terminal Operator; or

31.5.1.6. make any change in the insurance policies contemplated in clause 16 (*Project Insurance*).

31.5.2. 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.

32. Rights of Access

32.1. 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.

32.2. 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.

32.3. 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 32.1 and 32.2, 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.

33. Authority Changes

33.1. 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.

33.2. The Authority Notice of Change shall:

33.2.1. 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 33.3 ("**Estimate**");

33.2.2. 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.

33.3. 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:

33.3.1. any impact on completion of the Construction Works;

33.3.2. 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;

33.3.3. any amendment required to this Agreement and/or any Associated Agreement as a result of the Authority Change;

33.3.4. any estimated revised Project costs that result from the Authority Change;

33.3.5. any capital expenditure that is required or no longer required as a result of the Authority Change; and

33.3.6. 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.

33.4. 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.

33.5. As soon as practicable after the contents of the Estimate have been agreed, TNPA shall:

33.5.1. confirm the Estimate (as modified); or

33.5.2. withdraw the Authority Notice of Change.

33.6. 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 33.4 or determined pursuant to clause 33.5, then the Authority Notice of Change shall be deemed to have been withdrawn.

33.7. 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.

33.8. 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.

33.9. 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.

33.10. If the Estimate has been confirmed by TNPA and TNPA has agreed to meet all or part of the capital expenditure pursuant to clause 33.9, then the Terminal Operator shall be entitled to compensation as set forth in clause **Error! Reference source not found.** (*Consequences of a Relief Event*).

33.11. If the Authority Notice of Change is deemed to be withdrawn in terms of clause 33.6 or if TNPA has confirmed the Estimate and has agreed to meet all or part of the capital expenditure as envisaged in clause 33.10, 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

34. Fees in respect of services

34.1. The Terminal Operator shall have the exclusive right and obligation for its benefit and risk to levy and collect tariffs in respect of the services of the Terminal Operator, with effect from the Actual Operations Commencement Date.

34.2. None of 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.

34.3. 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 Actual Operations Commencement Date.

34.4. The Terminal Operator must submit to TNPA annually from the Actual Operations Commencement Date, any adjustments to tariff rates which the Terminal Operator intends to implement and that are in accordance with the necessary statutory and regulatory approvals.

34.5. All costs and expenses related to and arising from the charging and collection of tariffs shall be borne by the Terminal Operator.

34.6. Tariffs shall be charged and collected in Rand.

35. Refinancing

35.1. The Terminal Operator shall promptly notify TNPA in writing prior to taking any steps to implement any proposed Refinancing (including any Exempt Refinancing). Such notice shall include:

35.1.1. 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;

35.1.2. a copy of the proposed financial model relating to such Refinancing (if any) and the basis for the assumptions used in that financial model;

35.1.3. the reasons for such Refinancing; and

35.1.4. any other information that may be reasonably necessary to enable TNPA to assess such Refinancing having regard to the provisions of this clause 35 (*Refinancing*).

36. 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 in 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.

37. 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

38. CONSEQUENCES OF A RELIEF EVENT

38.1. If and to the extent that a Relief Event:

38.1.1. directly causes a delay in the Actual Operations Commencement Date; and/or

38.1.2. 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 41 (*Terminal Operator Default*) and from its obligations under this Agreement.

38.1.3. To obtain relief, the Terminal Operator must:

38.1.3.1. 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;

38.1.3.2. within 10 (ten) days of receipt by TNPA of the notice referred to in clause 38.1.3.1 above, give full details of the relief claimed; and

38.1.3.3. demonstrate to the reasonable satisfaction of TNPA that:

38.1.3.3.1. 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;

38.1.3.3.2. the Relief Event directly caused the delay to Actual Operations Commencement Date or the need for relief from other obligations under the Agreement;

38.1.3.3.3. 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

38.1.3.3.4. the Terminal Operator is using reasonable endeavours to perform its obligations under the Agreement.

38.1.4. If the Terminal Operator has complied with its obligations under clause 38.1.5 above, then:

38.1.4.1. the Actual 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

38.1.4.2. TNPA shall not be entitled to exercise its rights to terminate this Agreement under clause 41 (*Terminal Operator Default*) and, subject to clause **Error! Reference source not found.** below, shall give such other relief as has been requested by the Terminal Operator.

38.2. If the information required by clause 38.1.3.1. 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.

38.3. 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.

38.4. 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 a prolonged Relief Event.

38.5. The Parties shall resolve the matter in accordance with clause 55.7 (*fast-track dispute resolution*) if:

38.5.1.the Parties cannot agree on the extent of the relief required; or

38.5.2.TNPA disagrees that a Relief Event has occurred; or

38.5.3.the Terminal Operator is entitled to an extension of the relief from other obligations under this Agreement.

39. Force Majeure

39.1. For the purposes of this Agreement, Force Majeure shall mean any act, event or circumstance or any combination of acts, events or circumstances which is beyond the reasonable control of the affected Party, is without fault or negligence on the part of the Affected Party and is not the direct or indirect result of a breach by the affected Party of any of its obligations under any Project Documents, which could not have been avoided or overcome by the affected Party, acting in accordance with the standards of a Reasonable and Prudent Operator; and prevents, hinders or delays the affected Party in its performance of all of its obligations under this Agreement.

39.2. A Force Majeure Event shall refer to any of the following events or circumstances to the extent that they are uninsurable:

39.2.1. lightning, fire, earthquake, tsunami, drought, unusual flood, storm, cyclone, typhoon, tornado or other natural calamity or act of God;

39.2.2. acts of war, whether declared or not, invasion, armed conflict, terrorism, act of a foreign enemy or blockade, in each case occurring within or involving the Republic of South Africa;

39.2.3. strikes, lockouts and other industrial action other than by employees of the affected Party or of any Affiliate or of any contractor of the affected Party or any of its Affiliates;

39.2.4. acts of rebellion, riot, civil commotion, act or campaign of terrorism, or sabotage of a political nature, in each case occurring within the Republic of South Africa and/or directly involving South Africa;

39.2.5. nuclear contamination unless the Terminal Operator and/or any Subcontractor is the source or cause of the contamination; or

39.2.6. 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 39.2.1 above; or

39.2.7. pandemic, epidemic or plague and any instruction, regulation, directive, legislation or the like issued by a Relevant Authority or declared by the World Health Organisation in response to such acts, events or circumstances, which directly causes the affected Party to be unable to comply with all or a material part of its obligations under this Agreement.

39.3. Subject to clause 39.4, 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.

39.4. Where a Party is (or claims to be) affected by an event of Force Majeure:

39.4.1. 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 endeavours to remedy its failure to perform; and

39.4.2. 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 39.4.1.

39.5. 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.

39.6. 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 39.4, 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.

39.7. 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.

39.8. If, following the issue of any notice referred to in clause 39.6, 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.

39.9. The Parties shall endeavour to agree on any modifications to this Agreement which may be equitable, having regard to the nature of an event or events of Force Majeure. Clause 55 (*Dispute Resolution*) shall not apply to a failure of TNPA and the Terminal Operator to reach an agreement pursuant to this clause 39.9, and this Agreement shall terminate in terms of clause 43.4 (*Termination for Force Majeure*) if no such agreement is reached.

40. Unforeseeable Conduct

40.1. 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.

40.2. .

40.3. 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.

40.4. 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 55 *(Dispute Resolution).*

40.5. The Terminal Operator shall use all reasonable endeavours to minimise and mitigate the effects of any Unforeseeable Conduct.

PART VI – TERMINATION

41. Terminal Operator Default

41.1. **Definition**

"**Terminal Operator Default**" means any of the following events or circumstances:

41.1.1. 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;

41.1.2. 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);

41.1.3. the Terminal Operator ceasing to carry on business;

41.1.4. 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);

41.1.5. the Terminal Operator fails to complete the Construction Works on or before the Target Completion Date;

41.1.6. the Terminal Operator fails to commence operations at the Terminal on or before the Scheduled Operations Commencement Date;

41.1.7. the Terminal Operator commits a breach of any of its material obligations under this Agreement;

41.1.8. the Terminal Operator abandons the Construction Works (other than as a consequence of a breach by TNPA of its obligations under this Agreement);

41.1.9. 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);

41.1.10. the Terminal Operator failing to achieve the specific and quantifiable targets detailed in Schedule 11 (*Penalties*) for 3 (three) consecutive years;

41.1.11. the Terminal Operator failing to comply with any provision of clause 18 (*Shareholding in the Terminal Operator*);

41.1.12. 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;

41.1.13. 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;

41.1.14. the Terminal Operator failing to comply with the directives issued by TNPA in terms of section 61 of the Act;

41.1.15. any breach of any provision of this Agreement, other than a breach of any material obligation as envisaged in clause 41.1.7 has occurred more than once and:

41.1.15.1. 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

41.1.15.2. 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

41.1.15.3. such breach re-occurs within the said 90 (ninety) Day period referred to in clause 41.1.15.2.

42. 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.

42.1. **TNPA 's options**

42.1.1. 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 55 (Dispute Resolution):

42.1.1.1. in the case of the Terminal Operator Default referred to in clauses 41.1.1, 41.1.2, 41.1.3, 41.1.4, 41.1.5, 41.1.7, 41.1.8, 41.1.9, 41.1.10, 41.1.12, 41.1.13 and 41.1.15, terminate this Agreement in its entirety by notice in writing having immediate effect; and

42.1.1.2. while the same is subsisting, in the case of any other Terminal Operator Default referred to in clauses 41.1.6 and 41.1.15, serve notice of default on the Terminal Operator, requiring the Terminal Operator, at the Terminal Operator's option either:

42.1.1.2.1. 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

42.1.1.2.2. 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.

42.2. **Remedy Provisions**

42.2.1. 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 55.7 (*fast-track dispute resolution*).

42.2.2. If:

42.2.2.1. 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

42.2.2.2. 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

42.2.2.3. 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 55.7 (*fast-track dispute resolution*).

42.3. **TNPA's Costs**

42.3.1. The Terminal Operator shall reimburse TNPA with all costs incurred by TNPA in exercising any of its rights in terms of this clause 41 (*Terminal Operator Default*) (including, without limitation, any relevant increased administrative expenses).

42.3.2. 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).

43. TNPA Default

43.1. "**TNPA Default**" means any one of the following events:

43.1.1. an expropriation or requisition of a material part of the Terminal 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;

43.1.2. 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.

43.2. For the avoidance of doubt, nothing in clause 43.1 shall preclude, prohibit or hamper the Government from undertaking any restructuring or reorganisation of the affairs, rights, obligations, assets or liabilities of TNPA.

43.3. Termination for TNPA Default

43.3.1. 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.

43.3.2. 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.

43.4. Termination for Force Majeure

If, in the circumstances referred to in clause 39 (*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.

44. 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.

45. Effects of Termination

45.1. Termination

Notwithstanding any provision of this Agreement, on service of a notice of termination, this Agreement shall only terminate in accordance with the provisions of this clause 45 (*Effects of Termination*).

45.2. 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.

45.3. 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 Facility 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 45 (*Effects of Termination*).

45.4. **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:

45.4.1. 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:

45.4.1.1. all plant and all materials on or near the Project Site shall remain available to TNPA for the purposes of completing the Construction Works; and

45.4.1.2. 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;

45.4.1.3. 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 43 (*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.

45.4.2. On service of a notice of termination in accordance with this Agreement for any reason, the Terminal Operator shall:

45.4.2.1. engage TNPA with the view to facilitating the handover of the Terminal 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;

45.4.2.2. 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;

45.4.2.3. procure that any Intellectual Property Rights shall be provided to TNPA and TNPA shall be granted a perpetual, nonexclusive, royalty-free license to use such Intellectual Property Rights;

45.4.2.4. deliver to TNPA (as far as not already delivered to TNPA) one complete set of:

45.4.2.4.1. as-built drawings showing all alterations made to the Terminal and Project Site since the commencement of operation of the Terminal;

45.4.2.4.2. Maintenance, Operation and training manuals for the Terminal; and

45.4.2.4.3. the historical operating data and plans of the Terminal, its furniture, fittings and Equipment in a format acceptable to TNPA;

45.4.2.5. 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;

45.4.2.6. deliver to TNPA the information referred to in clause 31 (*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

45.4.2.7. 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 45.4.1.3.

45.5. **Termination after Transfer of Terminal**

On completion of the transfer required by clause 45.4 (*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 45.7 (C*ontinuing Obligations*), all rights and obligations of TNPA and the Terminal Operator under this Agreement shall cease and be of no further force and effect.

45.6. **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:

45.6.1. 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;

45.6.2. the Terminal Operator shall as soon as practicable remove from the Project Site all property not required by TNPA pursuant to clause 45.4 (*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;

45.6.3. 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:

45.6.3.1. any keys, remote access apparatus and computer access cards to the Terminal; and

45.6.3.2. 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

45.6.3.3. the Terminal Operator shall as soon as practicable, vacate the Project Site and (without prejudice to the rest of this clause 45 (*Effects of Termination*)) shall leave the Project Site and the Terminal in a safe, clean and orderly condition.

45.6.4. 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:

45.6.4.1. 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

45.6.4.2. assisting TNPA by providing all (or any) participants in such tender process with access to the Project Site and the Terminal.

45.7. **Continuing Obligations**

Save as otherwise expressly provided in this Agreement:

45.7.1. termination of this Agreement shall be without prejudice to any accrued rights and obligations under this Agreement as at the date of termination; and

45.7.2. 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*), 45.6 (*Transitional Arrangements*), 45.7 (C*ontinuing Obligations*), 53 (*Corrupt gifts and fraud*), 54 (*Expert Determination*), 55 (*Dispute Resolution*), and 56 (*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.

45.7.3. The continuing obligations referred to in this clause 45.7 shall extinguish on the conclusion of the handover of the Terminal to the satisfaction of both the Terminal Operator and TNPA.

46. Termination Amount on Terminal Operator Default

46.1. Retendering Election

46.1.1. Upon the occurrence of a Terminal Operator Default and subject to clause 46.1.3, TNPA shall be entitled either to:

46.1.1.1. retender the operation of the Terminal in accordance with clause 46.2 (retendering procedure); or

46.1.1.2. exercise its rights as provided for in clause 47.4 and 47.6 and 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 47.3 hereof below.

46.1.2. Subject to clause 46.1.3, TNPA shall notify the Terminal Operator of its election on or before the date falling 60 (sixty) Days after the Termination Date.

46.1.3. 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.

46.2. **Retendering Procedure**

If TNPA elects to retender the operation and maintenance of the Terminal under clause 46.1 (retendering election), the following provisions shall apply:

46.2.1. The Terminal Operator and/or its Members shall be precluded from participating, whether directly or indirectly, in any manner whatsoever in the retendering procedure.

46.2.2. The objective of the retendering procedure, among others, shall be to establish and (subject to clause 46.2.11) 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.

46.2.3. 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.

46.2.4. 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.

46.2.5. 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*).

46.2.6. 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 to 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.

46.2.7. 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 55.7 (*fast-track dispute resolution*).

46.2.8. TNPA shall, with the express written consent of the Terminal Operator, require bidders to bid on either;

46.2.8.1. the acquisition of the Terminal Equipment and any other movable assets only, and/or

46.2.8.2. 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.

46.2.9. 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.

46.2.10. If the Terminal Operator refers a dispute relating to the Highest Compliant Tender Price to dispute resolution in accordance with clause 55 (*Dispute Resolution*), TNPA shall nevertheless be entitled to enter into a New Terminal Operator Agreement.

46.2.11. 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.

46.2.12. The discharge by TNPA of its payment obligation in clause 46.2.11 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.

46.2.13. 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 47.4 and 47.6 above. In these circumstances, 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.

46.2.14. TNPA may elect at any time prior to the receipt of a Tender to follow the no retendering procedure under clause 46.3 (no retendering procedure) by notifying the Terminal Operator that this election has been made.

46.2.15. 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 46.4. and 46.6 and/or 47.3.

46.3. **No Retendering Procedure**

46.3.1. 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:

46.3.1.1. 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**').

46.3.1.2. The TNPA shall exercise its option to purchase the Equipment within 90 (ninety) days of receipt of the Notice referred to in 46.3.1.1, failing which the Terminal Operator shall be entitled to sell the Equipment to any third party and hand back the Terminal in accordance with 45.4. and 45.6.

46.3.1.3. 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 it election not to purchase the Equipment.

46.3.2. Save for payment to the Terminal Operator for the Terminal Equipment, 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.

47. Termination Amount for TNPA Default

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

47.1.1. **"Base Case Equity IRR"** means the nominal post tax internal rate of return on equity over the full period up to the expiry of the term as provided for in the Base Case Financial Model as updated from time to time.

47.1.2. **"Debt"** means, at any date, to the extent reasonably and actually incurred and where applicable for the execution of the Project, including fees, commissions, penalties, breakage costs and expenses payable.

47.1.3. **"Equity Compensation"** means the amount that, when taken together with all amounts already paid by the Terminal Operator in respect of Equity up to the Termination Date relating to the Project (by way of shareholder loans and interest thereon, dividends, other distributions, interest and principal) and taking into account the actual timing of all such payments plus the Equity, provides the Terminal Operator's shareholders with an internal rate of return equal to the Base Case Equity IRR over the period up to the Termination Date; and

47.1.4. **"Subcontractors' and Suppliers' Costs"** means the reasonable costs and/or losses of a Subcontractor or Supplier resulting directly from the termination of this Agreement as a consequence of the TNPA Default, but only to the extent that such costs are incurred under agreements that have been entered into in the ordinary course of business and on an arm's length and otherwise reasonable commercial basis and the Subcontractor's or Supplier's losses of profits included in such costs shall be for a period not exceeding 6 (six) months, provided that each of the Terminal Operator and the relevant Subcontractor or Supplier has used reasonable endeavours to mitigate such costs and/or losses.

47.2. On termination of this Agreement as a result of a TNPA Default, TNPA shall pay the Terminal Operator an amount equivalent to the aggregate of the amounts described in clauses 47.2.1 to 47.2.4 (inclusive) as a consequence of the termination of this Agreement:

47.2.1. the Debt;

47.2.2. the Equity Compensation;

47.2.3. the Subcontractors' and Suppliers' Costs;

47.2.4. an amount equal to the redundancy payments for employees of the Terminal Operator that have been or will reasonably be incurred by the Terminal Operator as a direct result of the termination of this Agreement;

Less:

47.2.5. if at termination of this Agreement, the Terminal is found to have not been maintained in accordance with the provisions of this Agreement, then the amount determined by the Independent Expert as being required to affect the required maintenance as at the Termination Date bring the condition Terminal to the standard expected as at the Termination Date by a Reasonable and Prudent Operato; and

47.2.6. all credit balances on any bank accounts, held by or on behalf of the Terminal Operator on the Termination Date and the value of any right of the Terminal Operator to receive insurance proceeds or any proceeds pursuant to letters of credit and of any such proceeds actually received by the Terminal Operator (save where such credit balances or proceeds are paid to the Institution and/or are to be applied in reinstatement) and sums due and payable from the Subcontractors and any other third parties.

provided that, if the aggregate of the amounts referred to in clauses 47.2.1 to 47.2.4 after the deduction made in clause 47.2.5 and 47.2.6, is negative then no such amount shall be payable by the TNPA to the Terminal Operator.

47.3. Any dispute whatsoever nature arising from the provisions of this clause 41 shall be determined in accordance with the provisions of clause 55.7 (Fast-track dispute Resolution).

48. 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*).

49. Termination Amount for termination for Force Majeure

On termination of this Agreement in accordance with the provisions of clause 43.4 *(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.

50. Termination Amount for Corrupt Gifts and Fraud

50.1. On termination of this Agreement in accordance with clause 53 (*Corrupt Acts and fraud*), TNPA shall pay the Terminal Operator an amount equal to:

50.1.1. 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 arising out of:

50.1.1.1. 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;

50.1.1.2. 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

50.1.1.3. less any amounts that TNPA is entitled to set off and deduct under clause 58.11 (*set-off*).

50.2. If the aggregate of the amounts referred to above is less than zero, then, for the purposes of the calculation in this clause 50.1 the aggregate shall be deemed to be zero.

50.3. 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.

51. Payment of Termination Amount

51.1. "**Notice Date**" means the date when the Termination Amount has been determined in accordance with clause 48 *(Termination amount for invalidation in terms of Section 67 of the Act)* or clause 50 *(Termination Amount for corrupt gifts and fraud);*

51.2. "**Termination Amount**" means any compensation payable by TNPA to the Terminal Operator on an early termination of the Agreement under clause 48 *(Termination amount for invalidation in terms of Section 67 of the Act)* and 50 *(Termination Amount for corrupt gifts and fraud)*.

51.3. **Method of payment**

51.3.1. 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 51.3.2 below.

51.3.2. 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.

51.3.3. 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 37 (*Default Interest*) and be payable on the next occurring Instalment Date.

51.3.4. If TNPA has elected to pay in accordance with clause 51.3.2 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.

51.3.5. If TNPA fails to make a payment to the Terminal Operator in accordance with clause 51.3 (*Method of Payment*) or clauses 51.3.2 and 51.3.3 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.

51.3.6. 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.

52. 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 VII – PROCEDURAL ISSUES

53. Corrupt gifts and fraud

53.1. The Terminal Operator warrants that in entering into this Agreement, it has not committed any Corrupt Act.

53.2. 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 53.2.1 to 53.2.6 below:

53.2.1. 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;

53.2.2. 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;

53.2.3. 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;

53.2.4. 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;

53.2.5. if the Corrupt Act is committed by any other Person not specified in clauses 53.2.1 to 53.2.4 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

53.2.6. any notice of termination under this clause 53.2 shall specify:

53.2.6.1. the nature of the Corrupt Act;

53.2.6.2. the identity of the party or parties that TNPA believes has committed the Corrupt Act; and

53.2.6.3. the date on which this Agreement will terminate in accordance with the applicable provisions of this clause.

53.3. Without prejudice to its other rights or remedies under this clause, TNPA shall be entitled to recover from the Terminal Operator, the greater of:

53.3.1. the amount or value of the gift, consideration or commission which is the subject of the Corrupt Act; and

53.3.2. any direct losses sustained by TNPA in consequence of any breach of this clause by the Terminal Operator.

53.4. 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.

53.5. 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.

54. Expert Determination

54.1. Any dispute arising out of or in connection with this Agreement which is referred to resolution in terms of this clause 54 (*Expert Determination*) shall be determined in accordance with the provisions of this clause 54.1. The dispute resolution provisions contained in this clause 54.1 shall only be used in respect of matters specifically referred to dispute resolution in terms of this clause 54.1 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 for resolution in terms of this clause 54.1 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 55 (*Dispute Resolution*). Clause 54 (*Expert Determination*) shall be held in Johannesburg, 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 54.1 (such Person being the "**Independent Expert**" in this clause 54.1).

54.2. The Parties shall procure that the Independent Expert acts in accordance with the following criteria:

54.2.1. the Independent Expert shall have appropriate expertise in respect of the subject matter of the dispute to be referred to him; and

54.2.2. 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.

54.3. 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:

54.3.1. 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;

54.3.2. 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;

54.3.3. 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;

54.3.4. the Independent Expert shall give his reasons for the award, if so requested by either Party;

54.3.5. 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 substantially 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.

54.4. The Parties shall use their best endeavours to procure that the Independent Expert complies with the provisions of clause 54.2 and that the procedures detailed in clause 54.2 above are followed.

54.5. Nothing in this clause 54 shall prevent a Party from seeking relief, in respect of matters referred to dispute resolution in terms of clause 54.1 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 54.1, 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 55 (*Dispute Resolution*).

55. Dispute Resolution

55.1. Referable disputes

The provisions of this clause 55 (*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.

55.2. Internal referrals

55.2.1. 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:

55.2.1.1. all disputes shall first be referred to a meeting of the liaison officers or other designated executives from each Party who are actively involved in the Project, and have sufficient authority to be able (if necessary, with consultation back to their respective organisations) to resolve it; and

55.2.1.2. if the Parties have been unable to resolve the dispute within 15 (fifteen) Days of referral to the persons specified in clause 55.2.1.1, 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;

55.2.1.3. if the chief executive officers are still unable to resolve the dispute, within 15 (fifteen) Days as specified in 55.2.1.2. either party may refer the dispute for a decision by the respective chairpersons of the board of directors of either party;

55.2.1.4. if the chairpersons are still unable to resolve the dispute, within 15 (fifteen) Days as specified in 55.2.1.3. either party may refer the dispute for a decision to the duly authorised officials in the Department of Transport;

55.2.2. In attempting to resolve the dispute in accordance with the provisions of this clause 55.2 (*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 the necessity for formal proceedings.

55.2.3. Any dispute which has not been resolved by the representatives contemplated in clause 55.2.1 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 55.7 (*fast-track dispute resolution*).

55.3. **Performance to continue**

No reference of any dispute to any resolution process in terms of this clause 55 (*Dispute Resolution*) shall relieve either Party from any liability for the due and punctual performance of its obligations under this Agreement.

55.4. **Litigation**

55.4.1. Save where any dispute has been expressly referred for determination in terms of clause 55.7 (*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.

55.4.2. 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.

55.5. **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.

55.6. **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.

55.7. **Fast-track dispute resolution**

55.7.1. Disputes expressly referred for determination pursuant to this clause 55.7 (*fast-track dispute resolution*) shall be determined by the relevant Independent Expert.

55.7.2. Within 5 (five) Business Days after a dispute has been referred by either Party to the appropriate Independent Expert, the Independent Expert shall require the Parties to submit in writing their respective arguments. The Independent Expert shall, in his or her absolute discretion, consider whether a hearing is necessary in order to resolve the dispute.

55.7.3. 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.

55.7.4. 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.

55.7.5. The Independent Expert shall provide both Parties with his or her written decision on the dispute, within 20 (twenty) Business Days of the referred (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.

55.7.6. 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 arising out of the referral, including its legal costs and the costs and expenses of any witnesses.

55.7.7. 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.

55.7.8. Subject to clause 55.5, 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.

55.7.9. 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.

55.7.10. 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.

55.7.11. 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:

55.7.11.1. 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

55.7.11.2. 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.

55.7.12. 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.

55.8. **Survival of clause 55**

The provisions of this clause 55 (*Dispute Resolution*):

55.8.1. 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;

55.8.2. 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.

56. Information and Audit Access

56.1. 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 endeavours 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.

56.2. Without limiting the generality of the aforegoing, the Terminal Operator shall:

56.2.1. 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

56.2.2. 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.

57. Confidentiality

57.1. 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:

57.1.1. 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;

57.1.2. 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:

57.1.2.1. details of the Disclosing Party's financial structures and operating results;

57.1.2.2. 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.

57.2. If the Recipient is uncertain as to whether any information is to be treated as confidential in terms of this clause 57 (*Confidentiality*), it shall be obliged to treat it as such until written clearance is obtained from the Disclosing Party.

57.3. Each Party undertakes, subject to clause 57.4, not to disclose any information which is to be kept confidential in terms of this clause 57 (*Confidentiality*), nor to use such information for its own or anyone else's benefit.

57.4. Notwithstanding the provisions of clause 57.3, 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.

57.5. The obligation of confidentiality placed on the Parties in terms of this clause 57 (*Confidentiality*) shall cease to apply to the Recipient in respect of any information which:

57.5.1. 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;

57.5.2. the Disclosing Party confirms in writing is disclosed on a non-confidential basis;

57.5.3. 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

57.5.4. 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:

57.5.4.1. the onus shall at all times rest on the Recipient to establish that information falls within the exclusions set out in clauses 57.5.1 to 57.5.4 (both inclusive);

57.5.4.2. 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

57.5.4.3. 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.

57.6. In the event that the Recipient is required to disclose confidential information of the Disclosing Party as contemplated in clause 57.5.4, the Recipient will:

57.6.1. advise the Disclosing Party thereof in writing prior to disclosure, if possible;

57.6.2. 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;

57.6.3. afford the Disclosing Party a reasonable opportunity, if possible, to intervene in the proceedings;

57.6.4. comply with the Disclosing Party's reasonable requests as to the manner and terms of any such disclosure; and

57.6.5. notify the Disclosing Party of the recipient of, and the form and extent of, any such disclosure or announcement immediately after it is made.

58. Miscellaneous Matters

58.1. **Incorporation of TNPA**

The Parties hereby acknowledge that on the incorporation of TNPA as a subsidiary of Transnet as contemplated in section 3(2) of the Act, the incorporated entity shall automatically substitute TNPA as a party to this Agreement. TNPA shall be under no obligation to obtain the Terminal Operator's consent for such substitution nor give the Terminal Operator prior written notice to that effect.

58.2. **Addresses**

58.2.1. 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:

58.2.1.1. in the case of TNPA:

postal address:

physical address : eMendi Building,

Klub road,

Port of Ngqura

email address: Siphiwe Mthembu

attention: Port Manager: East London

58.2.1.2. in the case of the Terminal Operator:

postal address: ***[insert postal address]***

physical address : ***[insert physical address]***

email address: ***[insert email address]***

attention: ***[insert name]***

(being "**Party's addresses**").

58.2.2. Notices given to the above addresses shall be delivered by hand, courier service or email address and shall only be deemed received by the recipient Party once signed for on its behalf or by return of confirmation of receipt.

58.2.3. A Party may change that Party's addresses for this purpose by notice in writing to the other Party, provided that a change in the physical addresses must be a physical address in South Africa.

58.3. **Certificate of indebtedness**

A certificate signed by any officer, manager or employee of TNPA or the Terminal Operator, the appointment of which officer or manager or employee need not be proved, reflecting:

58.3.1. any monies owing by the Terminal Operator to TNPA or vice versa under this Agreement;

58.3.2. any obligations owing by the Terminal Operator to TNPA or vice versa under this Agreement; and

58.3.3. the due date for payment of such monies or performance of such obligations;

shall be *prima facie* proof thereof.

58.4. **Entire Agreement**

58.4.1. 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.

58.4.2. If there is a conflict between the terms of this Agreement and those of any Schedule, the terms of this Agreement shall prevail.

58.4.3. This Agreement, and the rights and obligations of the Parties (save for those subject to suspensive conditions) shall take effect on the Signature Date.

58.5. **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.

58.6. **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.

58.7. **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.

58.8. **Variation, Cancellation and Waiver**

58.8.1. 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.

58.8.2. 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.

58.9. **Indulgences**

58.9.1. 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.

58.9.2. If any Party at any time breaches any of that Party's obligations under this Agreement, the other Party ("**the Aggrieved Party**"):

58.9.2.1. 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

58.9.2.2. 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.

58.10. **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.

58.11. **Cession, Transfer and Subletting**

58.11.1. The Terminal Operator shall not be permitted to cede, assign, transfer or delegate its rights and/or its obligations in terms of this Agreement without the prior written consent of TNPA except to an Affiliate. 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 of its Operating Rights that 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.

58.11.2. The Terminal Operator shall not sublet or place anyone else in occupation of the Terminal or the Project Site or any part thereof, on any conditions whatsoever or for any reason whatsoever, without TNPA’s prior written consent, which consent will be determined by TNPA in its sole discretion.

58.12. **Applicable law**

This Agreement is to be interpreted and implemented in accordance with the Law of South Africa.

58.13. **Language**

All notices or communications under or in connection with the Project shall be in English.

58.14. **Jurisdiction of South African Courts**

Subject to clause 54 (*Expert Determination*) and 55 (*Dispute Resolution)*, the Parties consent to the exclusive jurisdiction of the High Court of South Africa, Western Cape division, for any proceedings arising out of or in connection with the Project and this Agreement.

58.15. **Costs**

The costs of and incidental to the preparation of this Agreement shall be borne by TNPA, provided that each Party shall bear its own costs of negotiating and concluding this Agreement.

58.16. **Counterparts**

This Agreement may be executed in more than one counterpart, each of which together shall constitute one and the same instrument.

Signed at ______________________________ on _________________________ 2025

For: Transnet National Port Authority

Signature:

Name:

Acting Chief Executive, duly authorised and warranting such authority

Date:

Place:

Witness:

Witness:

Signed at ______________________________ on _________________________ 2025

For: Terminal Operator

Signature:

Name:

duly authorised and warranting such authority

Date:

Place:

Witness:

Witness:

Schedule 1 – Project Site

Schedule 2 - Business Case

[*The Terminal Operator shall submit its duly approved and comprehensive Business Case to TNPA on or before the commencement of the Construction Works, at which time it shall be annexed to this Agreement as agreed between the Parties*]

Schedule 3 - Base Case Financial Model

[*The Terminal Operator shall submit its Base Case Financial Model to TNPA on or before the commencement of the Construction Works, at which time it shall be annexed to this Agreement as agreed between the Parties*]

Schedule 4 - D&C Specifications

[*The Terminal Operator shall submit its D&C Specifications to TNPA on or before the commencement of the Construction Works, at which time it shall be annexed to this Agreement as agreed between the Parties*]

Schedule 5 - Construction Agreement

[*The Terminal Operator shall submit the Construction Agreement to TNPA on or before the commencement of the Construction Works, at which time it shall be annexed to this Agreement as agreed between the Parties*]

Schedule 6 - Terminal Operator’s Operational Plan

[*To be submitted by Terminal Operator*].

Schedule 9 - Environmental Management Plan

[to be submitted by Terminal Operator]

Schedule 10 - Terminal Operators B-BBEE's Contributor Level Certificate

[to be submitted by Terminal Operator]

Schedule 11 - Supplier Development Plan and Supplier Development Value Summary Worksheet

[to be submitted by Terminal Operator]

Schedule 12 – Penalties

[To be provided by TNPA to the Terminal Operator prior to Signature Date]

Schedule 13 - B-BBEE Commitments

1. The Terminal Operator undertakes to maintain a minimum B-BBEE Contributor Level 4 for the duration of this Agreement, and acknowledges that the TNPA reserves the right to prescribe higher minimum B-BBEE Contributor Levels in line with any amendments to relevant legislation and B-BBEE Sector Codes.

2 The Terminal Operator acknowledges that a failure to adhere to or achieve the commitments set out in clause 1 of this Schedule 13 shall constitute a breach of the Terminal Operator Agreement.

Schedule 13 - Construction Performance Guarantee

Construction Performance Guarantee

To be provided to the [●] (Registration No. [●]) and its successors-in-title (the "**Terminal Operator**").

WHEREAS:

A. The Terminal Operator has entered into a terminal operator agreement for the finance, design, construction, equipping, Operation and Maintenance of the Terminal at the Port of East London (the "**TOA**") with Transnet National Ports Authority (Registration No. 1990/000900/30) (the "**TNPA**");

B. under the provisions of clause 14.2 of the TOA, [●] (Registration No. [●]) ("**Construction Contractor**") is required to cause this guarantee (the "**Guarantee**") to be issued to the Terminal Operator; and

C. we being [***insert name of bank***] have agreed to provide you such Guarantee.

We, the undersigned

______________________________ and ______________________________

(Name) (Name)

acting herein as

______________________________ and ______________________________

(Position) (Position)

of [***insert name of bank***] (the "**Bank**")

being duly authorised to sign and incur obligations in the name of the Bank hereby irrevocably and unconditionally guarantee and undertake on behalf of the Bank that: -

1. the Bank shall pay amounts not exceeding R[***insert amount***] in aggregate (the "**Maximum Amount**") without delay, objection or argument, to the Terminal Operator on receipt by the Bank of the first written demand of the Terminal Operator being received at the Bank's counter situated at [***insert address***], attention [***insert name***], in a certificate in the form attached hereto as Annexure A (*Form of Certificate*), signed by an authorised representative of the Terminal Operator and the ***[***Independent Engineer***]***, declaring that the amount is due and payable and, certifying that the Terminal Operator is entitled to draw on this Guarantee pursuant to the provisions of clause 14.4 of the TOA (the "**Certificate**");

2. the Terminal Operator may make partial and/or multiple demands under this Guarantee provided that the aggregate amounts paid under this Guarantee shall not exceed the Maximum Amount. The Maximum amount shall not exceed:

   2.1. R[●][1], as at the Effective Date until the issue of the Completion Certificate; and

   2.2. R[●][2] upon completion of the Construction Works until the expiry of the Completion Defects Rectification Period,

   2.3. less the sum of (i) the aggregate of all amounts already paid by the Bank under this Guarantee and (ii) the aggregate of all amounts for which demands have been made under this Guarantee but which have not yet been paid at that time;

3. the demand for payment together with this Guarantee and the Certificate shall constitute *prima facie* proof of the Bank's indebtedness hereunder for the purposes of any proceedings including but not limited to provisional sentence proceedings instituted against the Bank in any court of law having jurisdiction;

4. neither the failure of the Terminal Operator to enforce strict or substantial compliance by the Construction Contractor with its obligations nor any act, conduct, or omission by the Terminal Operator prejudicial to the interests of the Bank including, without limitation, the granting of time or any other indulgence to the Construction Contractor or any other person or by amendment to or variation or waiver of terms of the TOA or any related document (the "**Underlying Documents**") will discharge the Bank from any liability under this Guarantee. For the avoidance of doubt, the Bank's liability under this Guarantee will not be discharged notwithstanding the winding up, dissolution or judicial management of the Construction

[1] The value of ***[●]***% of the aggregate construction price.

[2] ***[●]*** % upon the issue of the Completion Certificate.

Contractor or any other person and the Guarantee shall be honoured regardless of the invalidity, illegality or unenforceability of the TOA;

5. this Guarantee shall: –

5.1. remain in full force and effect from the date hereof, and shall expire automatically, whether or not returned to the Bank or the Construction Contractor, on the earlier of:-

5.1.1. expiry of the Completion Defects Rectification Period; or

5.1.2. upon a substitution thereof by another guarantee to the satisfaction of the Terminal Operator; or

5.1.3. the date when the Bank has paid to the Terminal Operator an amount which is equal to, or amounts which in aggregate equal the Maximum Amount;

5.2. exist independently of the TOA or any amendment, variation or novation thereof;

5.3. not be ceded, assigned or otherwise transferred by the Terminal Operator, or otherwise dealt with in any manner whatsoever by the Terminal Operator (save for the purposes and in the manner referred to above and in the TOA);

5.4. be returned to the Bank on its expiry in accordance with paragraph 4.1 above; and

5.5. be governed by the laws of the Republic of South Africa;

6. the Bank shall make any payment demanded under this Guarantee free of deduction, withholding or set-off of any kind. If the Bank is required by law to make payments subject to the deduction or withholding of tax, it will make such further payments as are necessary to ensure that the amounts paid to the Terminal Operator equal the amounts that would have been paid to the Terminal Operator had no such deduction or withholding been made or been required to be made.

7. **Addresses and Notices**

7.1. The parties hereto choose *domicilium citandi et executandi* for all purposes of and in connection with this Guarantee as follows:

7.1.1. if to the Terminal Operator, at:

Address:

Postal address:

Facsimile number:

Email address:

marked for the attention of ***[insert details]***

7.1.2. if to the Bank, at:

Address:

Postal address:

Facsimile number:

Email address:

marked for the attention of ***[insert details]***

7.2. Either party hereto shall be entitled to change its *domicilium* from time to time, provided that any new *domicilium* selected by it shall be a physical address in the Republic of South Africa, and any such change shall only be effective upon receipt of notice in writing by the other party of such change.

7.3. All notices, demands, communications or payments intended for any party shall be made or given at such party's domicilium for the time being.

7.4. Any notice required or permitted to be given under this Guarantee shall be valid and effective only if in writing.

7.5. A notice sent by one party to the other party shall be deemed to be received: –

7.5.1. on the same day, if delivered by hand; and

7.5.2. on the same day of transmission, if sent by electronic mail or telefax with a receipt confirming completion of transmission and confirmed by post.

7.6. Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

7.7. Words and phrases not defined herein shall have the meanings ascribed to them in the TOA unless the context otherwise requires.

Signed at on 2025.

Witness: for the Terminal Operator

……………………………………… ………………………………………

duly authorised

Signed at on 2025.

Witness: for the Bank

……………………………………… ………………………………………

duly authorised

Schedule 14 - Operating Performance Guarantee

[**To be issued by the Bank on its letterhead**]

To:

[●]

("**TNPA**"); and

1. **This Performance Bank Guarantee is given by**:

    1.1. [●], ("the **Bank**"), (which expression shall include its permitted successors and assigns) a company duly incorporated and registered under the laws of South Africa whose registered office is at [●]; and

    1.2. in favour of the [●] (Registration No. [●]) ("**Terminal Operator**") (which expression shall include its permitted successors and assigns), a company duly incorporated and registered under the laws of South Africa, with its registered address at [●].

2. **Whereas:**

    2.1. the Terminal Operator, which expression shall include any affiliate being a permitted successor and/or assign under the TOA), entered into a contract with the Transnet National Ports Authority (Registration No. 1990/000900/30) ("**TNPA**") for the finance, design, construction, equipping, Operation and Maintenance of the Terminal at the Port of East London ("**the TOA**") on ***[****insert date****]***;

    2.2. [●] (Registration No. [●]) ("**Operator**") is obliged by the terms of the TOA to procure and provide this Performance Bank Guarantee to the Terminal Operator;

    2.3. the Bank has been requested by the Operator to provide, and has agreed to provide, a Performance Bank Guarantee on the terms and conditions set out herein.

3. **Performance Bank Guarantee a Primary Obligation**

    The Bank acknowledges that:

    3.1. any reference in this Performance Bank Guarantee to the TOA is made for the purpose of convenience only and shall not be construed as creating an accessory obligation or a surety ship; and

3.2. its obligations under this Performance Bank Guarantee are restricted to the payment of money.

4. **Maximum Sum**

The Bank irrevocably and unconditionally agrees and undertakes to pay the Terminal Operator any amount up to an aggregate of **[•] [**(enter amount in words)**]** ("**the Maximum Sum**"), on demand by the Terminal Operator in accordance with the terms of this Performance Bank Guarantee, provided that, there shall be no maximum applicable to the amount payable in relation to any rights or remedies which the Terminal Operator may have arising from any breach by the Bank of the terms of this Performance Bank Guarantee.

5. **Procedure for Calling the Performance Bank Guarantee**

5.1. The Terminal Operator, may from time to time make a written demand to the Bank stating that the Operator has failed to perform or observe any of its duties and/or obligations arising under or in connection with the TOA or any related document and/or has committed a breach of any provision and/or has failed to fulfil any warranty or indemnity set out in the TOA and/or has failed to satisfy any of its liabilities under or in connection with the TOA and/or insolvency, or analogous proceedings have been brought in respect of the Operator ("**Demand**").

5.2. The Bank irrevocably and unconditionally agrees and undertakes within 2 (two) business days from receipt of a Demand, to pay the amount demanded in accordance with clause 6 below, provided that the amount demanded together with the amount(s) of any previous payment(s) by the Bank under this Performance Bank Guarantee does not in the aggregate exceed the Maximum Sum.

6. **Payment under the Performance Bank Guarantee**

6.1. Sums payable under this Performance Bank Guarantee shall be paid to the Terminal Operator in full, free of any present or future taxes, levies, duties, charges, fees or withholdings and without any deduction, restriction, conditions, withholding, set-off or counterclaim whatsoever.

6.2. If the Bank is compelled by law to make any deduction or withholding, the Bank will gross up the payment so that the net sum received by the Terminal Operator will be equal to the full amount which the Terminal Operator would have received had no such deduction or withholding been made.

6.3. Any Demand made in accordance with clause 9 shall constitute proof that the sum stated in such Demand is properly due and payable to the Terminal Operator under this Performance Bank Guarantee.

6.4. The Bank shall have no right and shall not be under any duty or responsibility to enquire into the reason or circumstances of any Demand, the respective rights and/or obligations and/or liabilities of any party under the TOA and/or the Security Assignment, the authenticity of any Demand/or the authority of the persons signing any Demand.

6.5. The Bank will make payment of all amounts under this Performance Bank Guarantee into the account named Compensation Proceeds Account held by the Terminal Operator at [●] (as "**Account Bank**") (account number **[●]**), or such other account as may be nominated in writing by the Terminal Operator.

7. **Continuity and Discharge of the Performance Bank Guarantee**

7.1. The Bank confirms that:

7.1.1. its obligations under this Performance Bank Guarantee shall be unconditional and irrevocable;

7.1.2. this Performance Bank Guarantee shall remain in full force and effect until [●] whereupon this Performance Bank Guarantee shall cease to have effect save in connection with any Demand notified to the Bank on or prior to the said date;

7.1.3. any release, discharge or settlement between the Bank and the Terminal Operator shall be conditional upon no security, disposition or payment to the Terminal Operator being void, set aside or ordered to be refunded pursuant to any enactment or law relating to bankruptcy, liquidation, administration or insolvency and, should any of these events occur (i.e. security, disposition or payment is/are void, set aside or ordered to be refunded pursuant to any enactment or law relating to bankruptcy, liquidation, administration or insolvency), the Terminal Operator shall be entitled to enforce this Performance Bank Guarantee (after all payments ordered to be refunded under this Performance Bank Guarantee, if any, are effectively refunded to the Bank) subsequently as if such release, discharge or settlement had not occurred and any payment had not been made.

7.2. For the avoidance of any doubt this Performance Bank Guarantee shall, without any exception, lose any effectiveness and validity at its expiry date as stated in sub-clause 12.1.2.

8. **Costs and Expenses**

All charges of the Bank related to the issuance or performance of this Performance Bank Guarantee (including, but not limited to, the negotiation, payment, extension or transfer hereof) shall be borne by the Operator and under no circumstances shall be charged to the Terminal Operator.

9. **Notices**

Any demand, notice or communication hereunder shall be in writing and shall be made to the Bank at the address set out below (or such other address in [●] as may from time to time be notified in writing by the Bank to the Terminal Operator, such notification to be delivered by courier), for all purposes of and in connection with this Performance Bank Guarantee:

Electronic address : [•] [**insert SWIFT address for purposes of electronic presentation**]

Physical address : [•]

Attention : [•]

The demand or notice shall be delivered by hand, by courier or electronically via SWIFT and shall be deemed to be received upon actual receipt by the Bank.

10. **Governing Law**

The law which shall govern this Performance Bank Guarantee and any other non-contractual obligations connected with it and under which this Performance Bank Guarantee or any other non-contractual obligations connected with it are to be construed is the law of the Republic of South Africa.

11. **Jurisdiction**

11.1. The Bank hereby irrevocably and unconditionally consents to the exclusive jurisdiction of the courts of South Africa (or any successor to that division) in regard to all matters arising from this Performance Bank Guarantee.

11.2. The choice of governing law of this Performance Bank Guarantee will be recognised and enforced against the Bank in its jurisdiction of incorporation.

11.3. Any judgment obtained in South Africa in relation to the Performance Bank Guarantee will be recognised and enforced against the Bank in its jurisdiction of incorporation.

Signed at on 2025.

Witness: **for the Terminal Operator**

…………………………………………

…………………………………………

duly authorised

Signed at on 2025.

Witness: **for the Bank**

…………………………………………

…………………………………………

duly authorised

Schedule 15 - Final Maintenance Guarantee

To be provided to the [●] (Registration No. [●]) and its successors-in-title (the "**Terminal Operator**").

WHEREAS:

A. The Terminal Operator has entered into a terminal operator agreement for the finance, design, construction, equipping, Operation and Maintenance of the Terminal at the Port of East London (the "**TOA**") with Transnet National Ports Authority (Registration No. 1990/000900/30) (the "**TNPA**");

B. under the provisions of clause 14.4 of the TOA, [●] (Registration No. [●]) ("**Operator**") is required to cause this guarantee (the "**Guarantee**") to be issued to the Terminal Operator; and

C. we being [***insert name of bank***] have agreed to provide you such Guarantee.

We, the undersigned

______________________________ and ______________________________

(Name) (Name)

acting herein as

______________________________ and ______________________________

(Position) (Position)

of [***insert name of bank***] (the "**Bank**")

being duly authorised to sign and incur obligations in the name of the Bank hereby irrevocably and unconditionally guarantee and undertake on behalf of the Bank that: -

1. the Bank shall pay amounts not exceeding R[***insert amount***] in aggregate (the "**Maximum Amount**") without delay, objection or argument, to the Terminal Operator on receipt by the Bank of the first written demand of the Terminal Operator being received at the Bank's counter situated at [***insert address***], attention [***insert name***], in a certificate in the form attached hereto as Annexure A (*Form of Certificate*), signed by an authorised representative of the Terminal Operator and the ***[***Maintenance Surveyor***]***, declaring that the amount is due and payable and, certifying that the Terminal Operator is entitled to draw on this Guarantee pursuant to the provisions of clause 14.4 of the TOA (the "**Certificate**"). The Terminal Operator may make partial and/or multiple demands under this Guarantee provided that the aggregate amounts paid under this Guarantee shall not exceed the Maximum Amount;

2. the demand for payment together with this Guarantee and the Certificate shall constitute *prima facie* proof of the Bank's indebtedness hereunder for the purposes of any proceedings including but not limited to provisional sentence proceedings instituted against the Bank in any court of law having jurisdiction;

3. neither the failure of the Terminal Operator to enforce strict or substantial compliance by the Operator with its obligations nor any act, conduct, or omission by the Terminal Operator prejudicial to the interests of the Bank including, without limitation, the granting of time or any other indulgence to the Operator or any other person or by amendment to or variation or waiver of terms of the TOA or any related document (the "**Underlying Documents**") will discharge the Bank from any liability under this Guarantee. For the avoidance of doubt, the Bank's liability under this Guarantee will not be discharged notwithstanding the winding up, dissolution or judicial management of the Operator or any other person and the Guarantee shall be honoured regardless of the invalidity, illegality or unenforceability of the Underlying Documents;

4. this Guarantee shall: –

   4.1. remain in full force and effect from the date hereof, and shall expire automatically, whether or not returned to the Bank or the Operator, on the earlier of: –

   4.2. 15 (fifteen) months from the date of issue; or

   4.3. upon a substitution thereof by another guarantee to the satisfaction of the Terminal Operator; or

   4.4. the date when the Bank has paid to the Terminal Operator an amount which is equal to, or amounts which in aggregate equal the Maximum Amount;

   4.5. exist independently of the TOA or any amendment, variation or novation thereof;

   4.6. not be ceded, assigned or otherwise transferred by the Terminal Operator, or otherwise dealt with in any manner whatsoever by the Terminal Operator (save for the purposes and in the manner referred to above and in the TOA);

   4.7. be returned to the Bank on its expiry in accordance with paragraph 4.1 above; and

   4.8. be governed by the laws of the Republic of South Africa;

5. the Bank shall make any payment demanded under this Guarantee free of deduction, withholding or set-off of any kind. If the Bank is required by law to make payments subject to the deduction or withholding of tax, it will make such further payments as are necessary to ensure that the

amounts paid to the Terminal Operator equal the amounts that would have been paid to the Terminal Operator had no such deduction or withholding been made or been required to be made.

6. Addresses and Notices:

6.1. The parties hereto choose *domicilium citandi et executandi* for all purposes of and in connection with this Guarantee as follows:

6.1.1. if to the Terminal Operator, at:

Address:

Postal address:

Facsimile number:

Email address:

marked for the attention of ***[insert details]***

6.1.2. if to the Bank, at:

Address:

Postal address:

Facsimile number:

Email address:

marked for the attention of ***[insert details]***

6.2. Either party hereto shall be entitled to change its *domicilium* from time to time, provided that any new *domicilium* selected by it shall be a physical address in the Republic of South Africa, and any such change shall only be effective upon receipt of notice in writing by the other party of such change.

6.3. All notices, demands, communications or payments intended for any party shall be made or given at such party's domicilium for the time being.

6.4. Any notice required or permitted to be given under this Guarantee shall be valid and effective only if in writing.

6.5. A notice sent by one party to the other party shall be deemed to be received: –

6.5.1. on the same day, if delivered by hand; and

6.5.2. on the same day of transmission, if sent by electronic mail or telefax with a receipt confirming completion of transmission and confirmed by post.

6.6. Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

7. Words and phrases not defined herein shall have the meanings ascribed to them in the TOA unless the context otherwise requires.

Signed at on 2025.

Witness: **for the Terminal Operator**

…………………………………………

…………………………………………

duly authorised

Signed at on 2025.

Witness: **for the Bank**

…………………………………………

…………………………………………

duly authorised

Schedule 16 - Project Insurance

General

1. The Terminal Operator is required, in terms of clause 16 (*Project Insurance*) of this Agreement to arrange appropriate and adequate insurance policies for the Project. Without prejudice to the generality of that requirement, the Terminal Operator is required to arrange and maintain the Project Insurances listed in this Schedule on the terms and with insurance companies acceptable to TNPA throughout the relevant period under this Agreement. Premiums per class of insurance must be identified.

    1.1. The Terminal Operator shall punctually pay all premiums in respect of all insurance policies required to be effected in terms of this Agreement and shall promptly provide TNPA with copies of all payment receipts if so requested by TNPA.

    1.2. The Terminal Operator shall be at liberty to combine any or all of the Project Insurances referred to in this Schedule respectively into one policy document.

Project Insurances - Part X

List of Insurances Required During the Construction Period

During the period commencing on the Signature Date and ending on the [Service] Commencement Date, the Terminal Operator must maintain the following Project Insurance in respect of the Project Site and Terminal:

2. Construction All-Risk Insurance

Cover:	***[•]***
Insured Parties:	***[•]***
Sum insured:	***[•]***
Maximum Deductible:	***[•]***
Period:	***[•]***
Gross Premium:	***[•]***

Exclusions:	***[•]***
Extensions:	***[•]***

3. Third Party Liability Insurance

Cover:	***[•]***
Insured Parties:	***[•]***
Sum insured:	***[•]***
Maximum Deductible:	***[•]***
Period:	***[•]***
Gross Premium:	***[•]***
Exclusions:	***[•]***
Extensions:	***[•]***

4. Loss of Anticipated Revenue/Project Delay Insurance for Works

Cover:	***[•]***
Insured Parties:	***[•]***
Sum insured:	***[•]***
Maximum Deductible:	***[•]***
Period:	***[•]***
Gross Premium:	***[•]***
Exclusions:	***[•]***
Extensions:	***[•]***

5. Employers Liability Insurance

Cover:	***[•]***

Insured Parties:	***[•]***
Sum insured:	***[•]***
Maximum Deductible:	***[•]***
Period:	***[•]***
Gross Premium:	***[•]***
Exclusions:	***[•]***
Extensions:	***[•]***

6. Motor Vehicle Third Party Liability Insurance

Cover:	***[•]***
Insured Parties:	***[•]***
Sum insured:	***[•]***
Maximum Deductible:	***[•]***
Period:	***[•]***
Gross Premium:	***[•]***
Exclusions:	***[•]***
Extensions:	***[•]***

7. Professional Indemnity Insurance for Works

Cover:	***[•]***
Insured Parties:	***[•]***
Sum insured:	***[•]***
Maximum Deductible:	***[•]***
Period:	***[•]***

Gross Premium:	***[•]***
Exclusions:	***[•]***
Extensions:	***[•]***

8. SASRIA Insurance

Cover:	***[•]***
Insured Parties:	***[•]***
Sum insured:	***[•]***
Maximum Deductible:	***[•]***
Period:	***[•]***
Gross Premium:	***[•]***
Exclusions:	***[•]***
Extensions:	***[•]***

9. Public Liability Insurance

Cover:	***[•]***
Insured Parties:	***[•]***
Sum insured:	***[•]***
Maximum Deductible:	***[•]***
Period:	***[•]***
Gross Premium:	***[•]***
Exclusions:	***[•]***
Extensions:	***[•]***

Project Insurances - Part Y

List of insurances required during the Operation and Maintenance Period

The Project Insurances in Part Y of this Schedule shall be effective from [Service] Commencement Date (but only to the extent that such insurances have not been effected already during the Construction stage by the Terminal Operator) and maintained in force and renewed as required for the duration of the Operation and Maintenance Period:

10. Assets All-Risk Insurance

Cover:	***[•]***
Insured Parties:	***[•]***
Sum insured:	***[•]***
Maximum Deductible:	***[•]***
Period:	***[•]***
Gross Premium:	***[•]***
Exclusions:	***[•]***
Extensions:	***[•]***

11. Business Interruption Consequential Insurance

Cover:	***[•]***
Insured Parties:	***[•]***
Sum insured:	***[•]***
Maximum Deductible:	***[•]***
Period:	***[•]***
Gross Premium:	***[•]***
Exclusions:	***[•]***

Extensions:	***[•]***

12. Third Party Liability Insurance

Cover:	***[•]***
Insured Parties:	***[•]***
Sum insured:	***[•]***
Maximum Deductible:	***[•]***
Period:	***[•]***
Gross Premium:	***[•]***
Exclusions:	***[•]***
Extensions:	***[•]***

13. Employers Liability Insurance

Cover:	***[•]***
Insured Parties:	***[•]***
Sum insured:	***[•]***
Maximum Deductible:	***[•]***
Period:	***[•]***
Gross Premium:	***[•]***
Exclusions:	***[•]***
Extensions:	***[•]***

14. Motor Vehicle Third Party Liability Insurance

Cover:	***[•]***
Insured Parties:	***[•]***

Sum insured:	***[•]***
Maximum Deductible:	***[•]***
Period:	***[•]***
Gross Premium:	***[•]***
Exclusions:	***[•]***
Extensions:	***[•]***

15. Professional Indemnity Insurance for Works

Cover:	***[•]***
Insured Parties:	***[•]***
Sum insured:	***[•]***
Maximum Deductible:	***[•]***
Period:	***[•]***
Gross Premium:	***[•]***
Exclusions:	***[•]***
Extensions:	***[•]***

16. Equipment Insurance

Cover:	***[•]***
Insured Parties:	***[•]***
Sum insured:	***[•]***
Maximum Deductible:	***[•]***

Period:	***[•]***
Gross Premium:	***[•]***
Exclusions:	***[•]***
Extensions:	***[•]***

17. Sasria Insurance

Cover:	***[•]***
Insured Parties:	***[•]***
Sum insured:	***[•]***
Maximum Deductible:	***[•]***
Period:	***[•]***
Gross Premium:	***[•]***
Exclusions:	***[•]***
Extensions:	***[•]***

Project Insurances - Part Z

List of insurances in respect of which non-vitiation cover is required

The Project Insurances in Part Z of this Schedule shall include insurances in respect of which clause 16.2 (*Uninsurable risks*) regime is applicable and shall be effective from [•] Date and maintained in force and renewed as required for the duration of the Project:

[•]

[•]

[•]

Schedule 17 - Terminal Operator Performance Standards

The Parties undertake to negotiate and agree on annual Terminal Operator Performance Standards in accordance with the provisions of clause 29.5 and annex the agreed Terminal Operator Performance Standards and targets to this Agreement.

Schedule 18 - Liquid Bulk Terminal - Mandatory Requirements for SHE, Process Safety, Civil, Structural, Mechanical and Electrical

INTRODUCTION

This standard applies to all Terminals within the boundaries of the various Ports, which are utilised for the reception, storage, handling and distribution of products as referred to in the scope of this document. With the continuous expansion of the Ports (especially the Liquid Bulk Sector), this standard clearly outlines the minimum necessary requirements for existing and new companies to operate liquid bulk facilities on NATIONAL PORTS AUTHORITY property. This stems from current applicable standards, best practices and experience in order to ensure:

- Security and integrity of NATIONAL PORTS AUTHORITY infrastructure
- The health, safety and environment of surrounding communities
- The health, safety and environment of Lessees' facilities/infrastructure and that of its neighbouring companies on NATIONAL PORTS AUTHORITY property
- The health and safety of the Lessee's personnel during operations on NATIONAL PORTS AUTHORITY property

Lessees may operate to their internal best practices while ensuring that all requirements in this standard are adhered to as a minimum.

SCOPE OF DOCUMENT

This standard covers the reception, handling, storage and distribution of chemical, petroleum and non-petroleum products in liquid or gaseous form in the ports controlled by NATIONAL PORTS AUTHORITY, and on land leased from NATIONAL PORTS AUTHORITY specifically designated for such activities. This standard shall also apply to sites leased in terms of agreements entered into prior to the date upon which these instructions came into effect. This standard will not be binding on NATIONAL PORTS AUTHORITY, nor will any liability be attached to NATIONAL PORTS AUTHORITY arising out of compliance with this standard. It should be noted that compliance with this standard does not grant immunity from the relevant national legal requirements, including municipal and other bylaws. Should special circumstances prevail, additional or amended requirements may be stipulated by NATIONAL PORTS AUTHORITY.

CONTENTS

PART A – APPLICABLE STANDARDS

1. INTRODUCTION

It is of critical importance for Liquid Bulk activities in the Port System to be done in a manner that safe, environmentally responsible and sustainable, and in the best interest of port efficiencies. Adherence to globally and locally acceptable standards, legislation and best practice as a minimum ensures that these goals will be attained.

2. SCOPE

Part A covers the applicable standards, legislation and best practices for the reception, handling, storage and distribution of chemical, petroleum and non-petroleum products in liquid or gaseous form in the ports controlled by NATIONAL PORTS AUTHORITY.

3. APPLICABLE STANDARDS, CODES OF PRACTICE AND INSTRUCTIONS

In addition to specific requirements indicated in this standard, the latest version of the following documents shall always apply:

3.1. FOR PETROLEUM BASED PRODUCTS

- **SANS 10089-1**: The petroleum industry Part 1: Storage and distribution of petroleum products in above-ground bulk installations
- **SANS 10089-2:** The petroleum industry Part 2: Electrical and other installations in the distribution and marketing sector
- **API 2610:** Design, Construction, Operation, Maintenance and Inspection of Terminal & Tank Facilities
- **API 2350:** Overfill Protection for Storage Tanks in Petroleum Facilities
- **API 2015:** Requirements for Safe Entry and cleaning of petroleum storage tanks

3.2. FOR HAZARDOUS CHEMICAL PRODUCTS

- **SANS 310:** Storage tank facilities for hazardous chemicals - Above-ground storage tank facilities for flammable, combustible and non-flammable chemicals
- **SANS 10228:** The identification and classification of dangerous goods for transport by road and rail modes

3.3. FOR LIQUEFIED PETROLEUM (LPG) PRODUCTS

- **SANS 10087-3:** The handling, storage, distribution and maintenance of liquefied petroleum gas in domestic, commercial, and industrial installations Part 3: Liquefied petroleum gas installations involving storage vessels of individual water capacity exceeding 500 L
- **SANS 10087-4:** The handling, storage, distribution and maintenance of liquefied petroleum gas in domestic, commercial and industrial installations Part 4: The transportation of LP gas including the design, construction, inspection, fittings, filling, maintenance and repair of LP gas bulk vehicles and rail tank cars
- **API 2510:** Design and Construction of LPG Facilities
- **API 2510A:** Fire-Protection Considerations for the Design and Operation of Liquefied Petroleum Gas (LPG) Storage Facilities
- **NFPA 58:** Storage and Handling of Liquefied Petroleum Gases

3.4. FOR LIQUEFIED NATURAL GAS (LNG) PRODUCTS

- **NFPA 59A:** Standard for the Production, Storage, and Handling of Liquefied Natural Gas (LNG)
- **International Safety Guide for Oil Tankers and Terminals (ISGOTT)**
- **Liquefied Gas Handling Principles on Ships and in Terminals – SIGTTO**
- **LNG Operations in Port Areas – SIGTTO**
- **EN 1473:** Installation and Equipment for LNG - Design of Onshore Installations
- **BS EN 1160: Properties and materials for LNG**
- **BS EN 13645:** Installations and equipment for LNG – Design of onshore installations with a storage capacity between 5t and 200t
- **SANS 252:** Metallic hose assemblies for liquid petroleum gases and liquefied natural gases
- **SANS 1156-2:** Hose for natural gas and liquefied petroleum gas (LPG) Part 2: Hose and tubing for use in natural gas and liquefied petroleum gas vapour phase
- **SANS 15589-1:** Petroleum and natural gas industries - Cathodic protection of pipeline transportation systems Part 1: Onshore pipelines
- **The Selection and Testing of Valves for LNG**

Applications – SIGTTO

- **BS EN 12567:** 2000 Industrial valves- Isolating valves for LNG
- **Liquefied Petroleum Gas Sampling Procedures – SIGTTO**
- **ASME B31.8:** Gas Transmission and Distribution Piping Systems
- **Manifold Recommendations for Liquefied Gas Carriers (SIGTTO)**
- **BS 4089:** Specification for Metallic Hose Assemblies for Liquid Petroleum Gases and Liquefied Natural Gases
- **LNG Transfer Arms and Manifold Draining, Purging and Disconnection Procedure – SIGTTO**
- **ESD Arrangements and Linked Ship/Shore Systems for Liquefied Gas Carriers – SIGTTO**
- **Liquefied Gas Fire Hazard Management – SIGTTO**
- **IMO IMDG Code**
- **LNG Fire Protection and Emergency Response**
- **Accident Prevention:** The Use of Hoses and Hard-Arms at Marine Terminals Handling Liquefied Gas - 2nd Ed – SIGTTO
- **BS EN 60079-Part 29-2:** Explosive Atmospheres Gas detectors – Selection installation, use and maintenance of detectors for flammable gases and oxygen

The latest versions of the following regulations, instructions and standards shall apply to all products mentioned in the scope of Part A:

3.5. OCCUPATIONAL HEALTH & SAFETY ACT:

- **Major Hazard Installation Regulations**
- **Construction Regulations**

3.6. HAZARDOUS AREA CLASSIFICATION & EQUIPMENT SELECTION:

- **SANS 10108:** The classification of hazardous locations and the selection of equipment for use in such locations
- **API RP 505:** Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities Classified as Class I, Zone 0, Zone 1 and Zone 2
- **SANS 60079-0:** Explosive atmospheres

- **SANS 10086-1:** The installation, inspection and maintenance of equipment used in explosive atmospheres Part 1: Installations including surface installations on mines

3.7. FIRE-FIGHTING REQUIREMENTS (ADDITIONAL TO THOSE MENTIONED IN SANS 10089-1):

- **SANS 10105-1:** The use and control of fire-fighting equipment Part 1: Portable and wheeled (mobile) fire extinguishers
- **SANS 10105-2:** The use and control of fire-fighting equipment Part 2: Fire hose reels and above-ground hydrants
- **NFPA 11:** Standard for Low-, Medium-, and High-Expansion Foam
- **NFPA 15:** Standard for Water Spray Fixed Systems for Fire Protection
- **NFPA 16:** Standard for the Installation of Foam-Water Sprinkler and Foam-Water Spray Systems
- **NFPA 20:** Standard for the Installation of Stationary Pumps for Fire Protection (For new installations)
- **NFPA 24:** Standard for the Installation of Private Fire Service Mains and their Appurtenances (For new installations)
- **NFPA 25:** Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems
- **NFPA 30:** Flammable and Combustible Liquids Code
- **NFPA 68:** Standard on Explosion Protection by Deflagration Venting
- **NFPA 307:** Construction and Fire Protection of Marine Terminals, Piers and Wharves
- **Local Authority By-Laws:** "INTERIM CODE RELATING TO FIRE PREVENTION AND FLAMMABLE LIQUIDS AND SUBSTANCES" particularly for the Certificate of Registration (COR) (For Port of East London Only)

3.8. CATHODIC PROTECTION

- **SANS 15589-1:** Petroleum and natural gas industries - Cathodic protection of pipeline transportation systems Part 1: On-land pipelines
- **SANS 10121:** Cathodic protection of buried and submerged structures

3.9. STATIC ELECTRICITY, LIGHTNING AND STRAY CURRENT MITIGATIONS

- **SANS 10123:** The control of undesirable static electricity
- **API RP 2003:** Protection against Ignitions Arising Out of Static, Lightning and Stray Currents
- **SANS 10313:** Protection against lightning - Physical damage to structures and life hazard

3.10. VENTING AND RELIEF VALVE REQUIREMENTS:

- **API 2000:** Venting Atmospheric and Low-pressure Storage Tanks
- **API 520 Part 1 &2:** Sizing, Selection, and Installation of Pressure-relieving Devices
- **API 521:** Pressure-relieving and De-Pressuring Systems
- **API 576:** Inspection of Pressure Relieving Devices
- **API 598:** Valve Inspection and Testing

3.11. TANK INSPECTION (INCL. HYDROSTATIC TESTING), REPAIR, ALTERATION, CONSTRUCTION, RECONSTRUCTION AND TERMINAL DECOMMISSIONING:

- **API 650:** Welded Steel Tanks for Oil Storage
- **API 653:** Tank Inspection, Repair, Alteration, and Reconstruction
- **API 2610:** Design, Construction, Operation, Maintenance and Inspection of Terminal & Tank Facilities
- **API 2015:** Requirements for Safe Entry and cleaning of petroleum storage tanks
- **NEMA:** National Environmental Management Act – Waste Act: Part 8: Contaminated Land; & EIA Regulations: GNR327 Listing Notice
- **NEMA:** National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008) (ICM Act)
- **API 2015:** Requirements for Safe Entry and cleaning of petroleum storage tanks
- **API 575RP:** Inspection of Existing Atmospheric and Low-pressure Storage Tanks

3.12. PROCESS PIPING:

- **ASME 31.3:** Process Piping
- **ASME 31.4:** Pipeline Transportation Systems for Liquids and Slurries

3.13. CENTRIFUGAL PUMPS

- **ANSI/API 610:** Centrifugal Pumps for General Refinery Service
- **DIN EN ISO 5199:** Technical specifications for centrifugal pumps
- **ASME B73.1:** Specification for Horizontal End Suction Centrifugal Pumps for Chemical Process
- **ASME B73.2:** Specifications for Vertical In-Line Centrifugal Pumps for Chemical Process
- **BS 5257:** Specification for horizontal end-suction centrifugal pumps (16 bar)

3.14. POSITIVE DISPLACEMENT PUMPS

- **API 674:** Positive Displacement Pumps – Reciprocating
- **API 675:** Controlled Volume for Petroleum, Chemical, and Gas Industry Services

3.15. COMPRESSORS

- **API 617:** Axial and Centrifugal Compressors and Expander
- **API 618:** Reciprocating Compressors for Petroleum, Chemical, and Gas Industry Services

3.16. BOILERS AND PRESSURE VESSELS

- **ASME V:** Boiler and Pressure Vessel Code
- **ASME VIII Div 1-3:** Boiler and Pressure Vessel Code

3.17. ELECTRICAL INSTALLATIONS AND LIGHTING:

- **SANS 10142-1:** The wiring of premises Part 1: Low-voltage installations

- **SANS 10142-2:** The wiring of premises Part 2: Medium-voltage installations above 1 kV a.c. not exceeding 22 kV a.c. and up to and including 3 MVA installed capacity
- **SANS 10389-1: Exterior lighting Part 1:** Artificial lighting of exterior areas for work and safety
- **SANS 60079:** "All the requirements pertaining to plant and equipment on site"
- **SANS 204:** Energy Efficiency in Buildings
- **SANS 10114-1: I**nterior Lighting Part 1 – Artificial Lighting of Interiors
- **SANS 10114-2: I**nterior Lighting Part 2 – Emergency lighting
- **SANS 60529:** Degrees of Protection lighting provided by enclosures (IP Code)
- **SANS 62305-1:** Protection of Structures against lightning, Part 1- General Principles
- **SANS 62305-1:** Protection against Lightning Part 2
- **SANS 62305-3:** Protection against lighting, Part 4- Electrical and electronic systems with structures

3.18. TRANSPORTATION AND HANDLING OF DANGEROUS GOODS:

- **SANS 10232-3:** Transport of dangerous goods: Emergency information systems Part 3: Emergency response guides
- **SANS 10263 (SABS 0263):** The warehousing of dangerous goods: Enclosed storage areas and covered and uncovered outdoor storage yards

3.19. PERMANENT AND TEMPORARY BUILDING/STRUCTURES REQUIREMENTS

- **API RP 752:** Management of Hazards Associated with Location of Process Plant Buildings
- **SANS 10400:** The application of the National Building Regulations
- **SANS: 0164, PART 1:** The structural use of Masonry
- **SANS 10162:** The structural use of Steel
- **SANS 01100:** Structural use of Concrete
- **SANS 0160:** Basis of structural design and actions for

buildings and industrial structures

- **SANS 10137:** Glazing in Buildings
- **SANS 10162-1:** The Limit states design for hot rolled steel work
- **SANS 10162-2:** The cold formed stainless steel structural members
- **SANS 10163-1:** The structural use of Timber
- **Guidelines for Human Settlement Planning And Design:** The Red Book - Council for Scientific and Industrial Research, CSIR

3.20 ROADS INFRASTRUCTURE REQUIREMENTS

- **TRH 12:** Flexible Pavement Rehabilitation Design
- **UTG2:** Structural Design of Segmental Block Pavements
- **M10 Manual:** Concrete Pavement design and construction

3.21 GEOTECHNICAL REQUIREMENTS

- **SANS 10160 part 5- 2011**: Basis for geotechnical design and actions
- **SANS 207:2011:** Design, construction of reinforced soils and fills
- **SAICE 1989:** Lateral support in surface excavations
- **EN 1997-1:2004**: Geotechnical design - general rules

3.22 MARINE EQUIPMENT & OPERATIONAL REQUIREMENTS

- **OCIMF:** Design and Construction Specification for Marine Loading Arms
- **OCIMF ISGOTT: International Safety Guide for Oil Tankers and Terminals** ISGOTT shall be abided by in full, regardless of the liquid type involved.
- **OCIMF SMOG:** Single Point Mooring Maintenance and Operations Guide
- **OCIMF - Tanker Jetty Safety**: Management of the Ship/Shore Interface
- **OCIMF**: Linked Ship Shore Emergency Shutdown Systems for Oil and Chemical Transfers

- **OCIMF**: Manning at Conventional Marine Terminals
- **OCIMF:** Recommendations for manifolds for LNG carriers
- **OCIMF**: Ship to Ship Transfer Guide for Petroleum, Chemicals and Liquefied Gases
- OCIMF MTOCT: **Marine Terminal Operator Competence and Training Guide**
- **OCIMF:** Guidelines for the Design Operation and Maintenance of Multi Buoy Moorings
- **OCIMF:** The Safe Transfer of Liquefied Gas in an Offshore Environment
- **OCIMF**: Competence Assurance Guidelines for F(P)SOs
- **OCIMF**: Cargo Guidelines for F(P)SOs
- **OCIMF GMPHOM:** Guide to Manufacturing and Purchasing Hoses for Offshore Moorings
- **OCIMF**: Jetty Maintenance and Inspection Guide
- **OCIMF**: Guidelines for the Purchasing and Testing of SPM Hawsers
- **SIGTTO**: Site Selection & Design for LNG Ports & Jetties
- **SIGTTO**: Ship/Shore Interface for LPG/Chemical Gas Carriers and Terminals
- **SIGTTO:** Liquefied Gas Handling Principles on Ships and in Terminals
- **SIGTTO:** Guidelines for the Alleviation of Excessive Surge Pressures on ESD for Liquefied Gas Transfer Systems
- **SIGTTO:** LNG Emergency Release Systems - Recommendations, Guidelines and Best Practices
- **SIGTTO:** LNG Marine Loading Arms and Manifold Draining, Purging and Disconnection Procedure
- **SIGTTO**: Liquefied Gas Handling Principles on Ships and in Terminals
- **SIGTTO:** Support Craft at Liquefied Gas Facilities. Principles of Emergency Response and Protection – Offshore
- **SIGTTO**: A Justification into the Use of Insulation Flanges (and Electricity Discontinuous Hoses) at the Ship/Shore and Ship/Ship Interface
- **SIGTTO**: Liquefied Gas Carriers: Your Personal Safety Guide
- **SIGTTO**: Liquefied Petroleum Gas Sampling Procedures
- **SIGTTO:** ESD Arrangements & Linked Ship/ Shore Systems for Liquefied Gas Carriers
- **SIGTTO**: The Selection and Testing of Valves for LNG Applications

- **SIGTTO**: Liquefied Gas Fire Hazard Management
- **SIGTTO**: LNG Operations in Port Areas
- **SIGTTO**: Guide to Contingency Planning for Marine Terminals Handling Liquefied Gases in Bulk
- **SIGTTO:** Guidelines on the Ship Board Odourisation of LPG

3.23. ALARM SYSTEMS AND SAFETY INTEGRITY SYSTEMS

- **SANS 62682:** Management of alarms systems for the process industries
- **ANSI ISA 84 Part 1:** Functional Safety: Safety Instrumented Systems for the Process Industry Sector - Part 1: Framework, Definitions, System, Hardware and Software Requirements

3.24. PROCESS SAFETY INDICATOR REQUIREMENTS:

- **API 754:** Process Safety Performance Indicators for the Refining and Petrochemical Industries

3.25. SAFETY DATA SHEET REQUIREMENTS

- **SANS 10234:** Globally harmonised system (GHS) of Classification and Labelling of chemicals

3.26. RAILWAY STANDARDS AND REQUIREMENTS:

- **Engineering Instruction GI-049:** Earthing and Bonding Arrangements in Private sidings handling Petro-chemical/Explosive Commodities (Annexure 4)
- **SANS 3000:** Railway safety management
- **SANS 10405:** Transport of Dangerous Goods by Rail – Operational & Design Requirements and Emergency Preparedness
- **Transnet specification governing works under/over Tracks and OHTE (Annexure 6)**

4. DEVELOPMENT OF INFRASTRUCTURE

4.1. APPROVAL OF PLANS

Plans for the development of any infrastructure, be it for new developments or the alteration of existing, within the area designated for bulk liquid storage, shall be submitted to NATIONAL PORTS AUTHORITY in the prescribed manner of approval. This shall apply to works contemplated both within leased areas, and outside of such areas, in open areas, road reserves and on quaysides. The plans shall be accompanied by the following:

- Brief description of the intended development / alteration

- Products to be stored / handled
- Calculations of bund capacities
- Statement of fire-fighting facilities and fire-fighting risk assessment (done by suitably qualified Pr.Eng)
- Identification of all risks and appropriate risk assessments (inclusive of mitigations)
- If alteration to existing facilities, completed appropriate Management of Change documents
- Municipal Approval of Fire Plans
- Pipeline Classification
- Hazardous Area Classification Drawings
- Process and instrumentation diagrams (P&IDs)
- Process flow diagrams (PFDs)
- Statement of fitness
- System turnover
- Plot plan
- Equipment list
- 3D models with multidisciplinary interfaces and constructability reviews (By request from TNPA)

Plans submitted for approval to NATIONAL PORTS AUTHORITY must be signed by a registered Professional Engineer, or Professional Technologist (Engineering) certifying specifically that such plans comply with the provisions of these Instructions, and by implication SANS 10089-1 and SANS 10089-2 as amended, and those codes of practice, regulations, instructions and standards listed in Section 3 above. A scrutiny fee is payable. Approval by NATIONAL PORTS AUTHORITY of development plans in no way abrogates the applicant’s responsibility to, in addition, obtain the approval of the Local Authority, and to comply with any other statutes and bylaws applicable, including the Major Hazard Installation Regulations.

4.2. COMPLIANCE WITH STANDARDS

All existing developments, new developments and alterations to existing developments contemplated shall comply with the letter and spirit of these instructions. With particular reference to products mentioned in 1.1, it is incumbent upon the applicant that best practices and standards mention in 1.1 shall be applied at all times.

4.3. APPROVAL OF PRODUCTS

The approval to handle new products, must be obtained from NATIONAL PORTS AUTHORITY prior to the handling or storage of the product. Each application for handling products must be concluded via the NATIONAL PORTS AUTHORITY'S commodity approval application process, and must include the following details of the product to be handled in full:

- The name of the product, including chemical name and formula, common synonyms or trade names, purity, concentrations, IMO/UN designation
- As per SANS 10234, complete Safety Data Sheet (SDS) inclusive of product conductivity
- Detailed layout, showing tank number and tank location and description of the tank – volume, construction, vapour release mechanisms etc.
- Pipeline routes, construction, berth to be used.
- Approximate shipment quantities, and annual throughput
- Method of reception (road, rail, ship, pipeline) and method of dispatch
- Any special handling or storage requirements such as cooling, lagging, blanketing etc.
- Products stored in tanks sharing the same bund area
- Products stored in adjacent tank farms.
- Special precautions to be taken in event of an incident (spillage, catastrophic release or fire) involving the product.
- Facilities in immediate vicinity of tank farm.
- Facilities, activities on adjacent property.
- Approval of Local Authority

Where the Lessee's installation has been declared a Major Hazard Installation (MHI), the Lessee shall submit the necessary proof that the handling and storage of such product does not significantly increase the risk of the existing installation (full risk assessment).

Where a small quantity of material can act as a catalyst and produce violent reactions such as polymerization, dissociation and condensation, such catalysts should also be listed. Where pyrolysis degradation or reaction products are known to be hazardous, the data shall be furnished in respect of both the parent and the derived products and submitted to the NATIONAL PORTS AUTHORITY on request.

Approval granted for the handling and storage of specific products may be subject to compliance with specific requirements, both for infrastructural and operational aspects.

Such approvals will be reviewed every three years or if circumstances have materially changed, or if information regarding the product has emerged which may have a bearing on the approval requirements, NATIONAL PORTS AUTHORITY may, in consultation with the Lessee, amend such requirements.

5. TANK FARMS

5.1. BUND WALLS

All above-ground tanks, irrespective of the type of tank, which contain Class I, Class II, or Class III products must be completely surrounded by a bund wall.

5.2. DRAINAGE OF BUND AREAS

If the product being stored in tanks in the bund area is lighter than, and not miscible with water, drainage shall be provided in the bund to draw off rain water, fire-fighting and cooling water from below any product floating on the water. The emergency drainage outlets shall be controlled by valves situated at least fifteen metres from the bund. These valves should normally be kept closed, and only be opened under properly controlled circumstances and under competent supervision. The released water may be discharged to storm water drainage, provided such drainage is designed to carry the anticipated flows.

No drainage separation pits/interceptors/sumps shall be located within the confines of a bund.

5.3. SURFACE DRAINAGE

All surface drainage from areas that could be contaminated by product spillage must go through a separator. Water discharging from a separator should be considered to be trade effluent, and be discharged to a foul water sewer only after having been treated or neutralized in terms of Local Authority requirements.

As an alternative to discharging all potentially contaminated water through a separator to the foul water sewer, it is allowable to adopt a “first flush” approach.

In this approach there is a distinction between continuously contaminated areas (CCA) i.e. where product is habitually allowed to collect, and accidentally contaminated areas (ACA) i.e. where product is only released accidentally, and where immediate, comprehensive steps are taken to clean any product from the surface. More than one first flush pit may be needed, depending on the drainage needs of the site (for example, there may be multiple discharge points on the premises).

Rainwater falling on CCA areas, contaminated with product, must pass through a separator. However under the “first flush” approach, the first ten minutes of the peak design rain falling on the specific area shall be collected in holding tanks, for subsequent progressive discharge through a separator. The volume of the collection pit must be large enough to capture the pollutant load expected from the catchment. The volume will be a function of the nature of the catchment surface (pervious or impervious) and the nature of the pollutant(s) expected. A marker should be provided on the wall of the tank to indicate the level to which the collected water needs to be pumped down to ensure the required capacity is available for the next rain event. Additional volume will be required if it is expected that contaminants will accumulate at the bottom of the pit. As a guide, an additional depth of 500 mm or an additional volume of 30% of the required capacity shall be provided.

Any run-off after this time, confirmed and proven to be contaminant-free by means of a lab analysis comparison against legislated guidelines (either local bylaws or national guidelines where applicable), may be discharged into storm water system.

5.4. ABOVE-GROUND TANKS LEVEL INDICATION & OVERFILL PROTECTION

All above-ground tanks shall have electronic level indication with an independent set of level alarms for overfill protections. For petroleum based products, overfill protection shall comply with API 2350 irrespective of whether it is Class I, II or III product.

5.5. POSITIVE DISPLACEMENT PUMPS

All positive displacement pumps shall have a relief valve on the discharge piping at a relief setting below the maximum design discharge piping pressure. This is withstanding the positive displacement pump internal relief valve.

6. FIRE-FIGHTING MEASURES

In addition to the requirements of standards/codes mentioned in 1.1 (the Lessee shall comply with the Fire Fighting Measures of the requirements of SANS 10089-1 Section 7.8 Scale of fire-fighting equipment), the following fire-fighting measures apply:

- A bund area, enclosing storage tanks containing Class I, II or III products, must be protected by fixed foam pourers. Where the provision of fixed foam pourers is impractical, an approved alternative must be provided to the Authority. Refer to requirements of 2.1
- In order to provide greater flexibility of water supplies, valve-controlled pipe cross-connections must be installed to enable one site to boost the water supply of a neighbouring site.
- Hydrants must be spaced not more than 25m apart, and located, if possible, at least 15m from the bund wall. Any hydrant located closer than 1,5m from the bund walls must have “fire-safe” (carbon steel) valves with hand wheels above ground, marked so as to clearly indicate opening and closing directions. The exposed pipeline below the valve and to 300mm below ground must also be carbon steel.

- Foam sealing must be provided to floating roof tanks
- The inspection and maintenance of all fire-fighting equipment must be carried out in accordance with SANS 10105-1 and SANS 10105-2
- Reference must be made to the Municipality By-Laws in conjunction with the Chief fire officer of the municipality
- It is required that roadways to provide access to fire-fighting equipment must have a minimum width of 6m and adequate turning facilities are to be provided, which must have a minimum radius of 11m.

The Lessee shall provide a fire patrol after working hours and arrange for an alarm system to be installed. This alarm shall be connected to the Local Authority and NATIONAL PORTS AUTHORITY's fire stations /risk control centres. An alternative means of communication may be provided between each site and the respective fire stations / risk control centres subject to the satisfaction of both Authorities. The Lessee shall arrange for the site to be served by the Local Authority's fire services. TNPA Fire Services will conduct Fire Prevention Inspections of all sites on a yearly basis.

7. PIPELINES

The following requirements are supplementary to standards mentioned in Section 3 above:

- Plans and sections of all proposed pipelines outside the leased site boundary (i.e. in the commonage) shall be submitted for approval. The sections shall show new lines and existing pipelines.
- NATIONAL PORTS AUTHORITY will decide whether these pipelines are to be buried or laid above ground (exceptional circumstances will dictate the use of buried pipelines). If the pipelines are to be buried, NATIONAL PORTS AUTHORITY will advise the Lessee of the minimum depth to which the pipelines shall be buried, due cognisance being taken of code of practice SANS 10121. The Lessee shall give particular attention to existing cathodic-protected lines that could be affected.
- All discharge piping downstream of pumps shall be evaluated for the "blocked outlet" scenario and as to whether a pressure relief system is needed as per API 521.
- All new pipeline installations shall be tested to a pressure of twice the normal working pressure, with a minimum of a 1 400kPa, before they are commissioned.
- All buried pipelines shall be tested at least annually (or more frequently if circumstances warrant this) with water for a period of half an hour at constant temperature with a pressure 50% in excess of the design working pressure. The permissible drop in pressure over this period shall not exceed 15%.
- All above-ground pipelines shall be verified fit for purpose by an appropriate inspection technique that is signed-off by a competent inspection authority at a frequency determined thereby.
- On request, the Lessee must furnish NATIONAL PORTS AUTHORITY with certificates, which reflect in tabular form the pipeline tested, it's normal

working pressure, the test pressure, the actual drop in pressure and percentage drop, and any change in temperature of the product during a pressure test.

- When pipeline tests are to be conducted, the section of the line to be tested is to be suitably isolated. Any entrapped air shall be removed from the line before the test is conducted.
- When pipeline tests outside the leased site boundary (i.e. in the commonage) are to be conducted, at least two days advance notice in writing is to be given to NATIONAL PORTS AUTHORITY.
- Critical Non-Return Valves need to be identified and incorporated into a maintenance strategy.

Except in some cases where NATIONAL PORTS AUTHORITY, for reasons of the hazardous nature of a particular product, expressly forbids such practice, pipelines within a port area may be kept full of petroleum or other approved chemical products subject to the following conditions :-

- Isolating block valves shall be inserted at strategic positions. The Lessee concerned in collaboration with NATIONAL PORTS AUTHORITY will determine the distance between block valves, subject to the approval of NATIONAL PORTS AUTHORITY
- The distance between the quay face and the first block valve shall, as a general rule, be a minimum of 30m. Where this is not practicable, each case will be considered on its merits by NATIONAL PORTS AUTHORITY
- Where pipelines between a tanker berth and tank farm are above ground level, the Lessee must patrol these during pumping operations
- The number of flanges in pipelines above ground level shall be the minimum consistent with essential maintenance requirements
- The portion of the pipeline in a port, from the ship's hose flange connection to the check valve, shall be cleared of product after pumping without causing any spillage onto the quay, and the end of the pipeline blanked off
- Pipelines left fully charged shall be fitted with safety relief valves in each block section to cope with any rise in temperature

8. BOILERS

Boilers which may be required for the supply of steam shall be erected at a minimum safety distance (specifically derived from a quantitative risk assessment) from any operations involving the storage and handling of flammable liquids, or from any container which may contain the vapour of such liquids.

9. MARINE LOADING ARMS

All marine loading arms installed/to be installed on NATIONAL PORTS AUTHORITY berths shall comply with OCIMF Design Specification for Marine Loading Arms.

All loading arms to be fitted with an emergency release coupling system e.g. PERC system (see ISGOTT in Port Rules).

10. LIGHTING AND ELECTRICAL EQUIPMENT IN HAZARDOUS AREAS

Where necessary, provide adequate artificial lighting to facilitate night operations. Lighting is to comply with as per relevant standards listed in Section 3.

The electrical installation, equipment used, and the maintenance thereof in the hazardous area must comply with the Occupational Health & Safety Act (Act 85 of 1993), and the relevant standards and codes of practice mentioned in Section 3.

NATIONAL PORTS AUTHORITY reserves the right to carry out inspections of all electrical installations and equipment at any time to ensure compliance with the requirements of the above-mentioned acts, standards and codes of practice. All lease holders are to submit valid certificate of compliance (COC) to the TNPA

Real Estate Department.

11. CATHODIC PROTECTION

Cathodic protection, where provided, shall be in accordance with standards mentioned in Section 3. If the Lessee decides to install a cathodic protection system, the design documentation from a qualified specialist (Pr.Eng or Pr.Tech only) must be submitted to the NATIONAL PORTS AUTHORITY for approval. Lessee needs to demonstrate that cathodic protection systems are tested (and recorded) and are fit for purpose.

12. MAINTENANCE

The Lessee must maintain all fixed assets provided by Lessee to the satisfaction of both NATIONAL PORTS AUTHORITY and the local authority. The Lessee to allow NATIONAL PORT AUTHORITY access to the site at any reasonable time (on receipt of identity) to inspect the installations. The Lessee must have documentary proof of required statutory inspections, including frequency of such inspections, for various equipment on the plant. Certificates of Compliance and addendums need to be handed to TNPA Property.

13. PREVENTION OF ELECTRIC SPARKS

The precautions which are to be observed to guard against the dangers of electric sparks due to stray electric currents, static electricity and lightning during the transfer of flammable liquids and or gases to or from tank wagons are as defined in standards given in 1.1 and (Annexure A) and shall apply to the following sites :-

- all new sites
- all sites served by electrified sidings
- all sites within 50km of an electrified traction system
- all sites served by a pipeline
- all sites that are protected by an impressed current cathodic protection system
- all sites where stray currents or voltages can be shown to exist

Where it is intended to use flexible hose connections as an effective means of preventing the flow of electric current pipelines, such must comply with the following:

- a single length of electrically non-conducting flexible hose, not less than two metres in length and without intermediate metallic flanges or the use of an insulated flange when filling or decanting is performed
- such a hose shall be made easily identifiable by painting a white band, one metre wide, at its centre, which colour shall be carefully maintained
- the insulation of the joint shall in all cases be not less than 1 000 ohm and shall be measured with an insulation tester
- the electrically non-conducting flexible hose shall be tested and examined regularly to ensure its non-conducting properties. If chains of flexible hoses

are used, such chains shall include only one non-conducting hose

All products stored or transferred on NATIONAL PORTS AUTHORITY land shall have known conductivities as to assess the need for mitigations for static electricity risks in compliance with SANS 10089-2, SANS 10123 & API 2003. There will be no splash loading allowed for of petroleum, hazardous and non-petroleum (only if toxicity concerns) products via tank, road tanker, rail tanker etc.

14. PERMITS TO WORK

Prior to construction, repair or maintenance work carried out within designated hazardous or restricted area, a “permit to work” must be issued
Within the leased sites the “permit to work” shall be issued by a company employee, and approved by a depot manager, who signs off the work on completion
On land outside of the leased areas, referred to as the commonage, the “permit to work” shall be issued by the NATIONAL PORTS AUTHORITY and approved by the designated NATIONAL PORTS AUTHORITY representative
Such approval by NATIONAL PORTS AUTHORITY does not in any way absolve the company of its responsibility to ensure that a safe operation is undertaken. It does, however, provide NATIONAL PORTS AUTHORITY the ability to coordinate activities to prevent other operations, not under the control of the depot manager, from occurring in the vicinity of the designated work site, and provides the NATIONAL PORTS AUTHORITY with the necessary information to ensure that the operation to be performed is deemed to be safe.
On completion of such work outside of the leased site the designated NATIONAL PORTS AUTHORITY official is to sign off “permit to work” signifying that the danger occasioned by the work is no longer present.
Hereunder are the specified minimum requirements.
Permits to work:

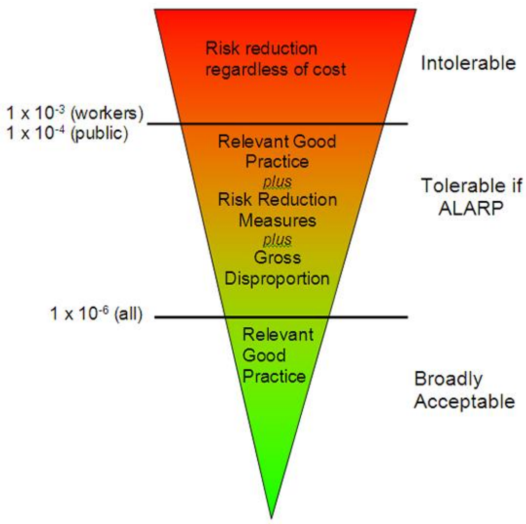
- Shall include the types of work, or areas where permits must be used, should be clearly defined and understood by all concerned.
- Shall contain a clear description of the work to be done, its location and start time.
- Shall provide for the reviewing of the Hazardous Area Classification drawing to identify what equipment precautions must be in certain zoned areas.
- Shall specify precautions to be taken, including safe isolation from the potential risks such as hazardous substances, electricity and other forms of energy.
- Shall determine ways to identify that the work site has been visited, and all precautions specified to be taken before work commences (isolations) have in fact been taken and will remain effective while the permit is open.
- Shall provide for the control of work activities that may interact or affect one another.
- Shall have a determination of when hazards need to be re-assessed.
- Should have a way of ensuring that permit users are properly trained and they understand specific arrangements made for the job.
- Copies of all issued permits shall be displayed at an appropriate location and in a consistent arrangement so that site personnel can readily see and check which equipment is under maintenance and not available for operation.
- Shall have a provision to ensure that any precautions and isolations are withdrawn at the end of the job unless they are cross-referenced to other permit activity.
- Where there are isolations common to more than one permit, there shall be a procedure to prevent the isolation being removed before all the permits have been signed off.

- There shall be a provision on the permit form to cross-reference other relevant certificates and permits
- There shall be a provision for the area owner to acknowledge the return of plant or equipment to their full control.
- Shall clearly specify a time limit for expiry or renewal.
- Shall include a handover mechanism for work which extends beyond a shift or other work period, including work which has been suspended
- Shall include means to identify and monitor tasks which require inhibiting safety devices, eg fire and gas detectors, to ensure that contingency plans and precautions are in place

There shall be a properly documented isolation procedure for use when working on potentially hazardous items of plant, and this should also provide for long-term isolation.

15. MANAGEMENT OF CHANGE

All Terminal Operators to have an appropriate Management of Change system and procedure which identifies MOC triggers, MOC process and relevant signatories (inclusive of Terminal Manager, Engineering Manager and Operations Manager).
There shall be a proper repository of all MOC and attached relevant documentation which must be kept indefinitely. The Close-out of all MOC's shall be signed off by the relevant signatories and shall include updated documentation & drawings e.g. P&IDs (piping and instrumentation diagrams) if necessary.



16. PROCESS SAFETY RISK ASSESSMENTS

All risk assessments where the hazard is either overfill, over-pressure or extreme temperature shall be conducted on a quantitative and not qualitative basis (e.g. LOPA). Risk assessment outcomes shall indicate barrier validity, final residual risk and tolerability. In terms of evaluating tolerability, the basis for the ALARP principle is referenced from the HSE (Health and Safety Executive, UK) guidance document "Reducing Risks, Protecting People" (R2P2), [19.3]. The ALARP principle that is required to be applied by all parties governed by these regulations is as follows (where the numbers on the left are risks of death per year):

17. LIQUID BULK SITE FIRE PREVENTION COMMITTEE

Where sites are leased as per Scope of this Document, representatives of the operating companies concerned shall serve on the Liquid Bulk Sites Fire Prevention Committee.

Where no such committee functions, the representatives must serve on the respective Port's Fire Prevention Committee. The applicable local authority shall also be invited to nominate a representative to serve on the committee. Either committee, whichever will be responsible for ensuring that all the instructions contained herein are observed, shall meet at least once every three months.

PART B – PHYSICAL PIPELINE IDENTIFICATION

1. INTRODUCTION

A primary factor that is essential to the maintenance of health and safety and of a steady flow of work is the elimination of danger to personnel. The use of correct identification as a means of speedy recognition and a warning of danger is obviously a valuable contributing factor in the reduction of incidents. However, in the case of accident prevention, other efficient and established safety measures should not be replaced by, but should be used in conjunction with identification. This section must, therefore, be regarded as supplementary to any regulations laid down for health and safety.

One essential factor of any such form of identification is that there should be uniformity of the scheme used as this promotes greater safety, lessens the chance of error, and warns against hazards. In the past, lack of uniformity has often been responsible for the destruction of property and injury to personnel. It is, however, important to note that the number of identifications in the field of vision of workers should be kept to a minimum. This will avoid confusion and fatigue, and provide greater emphasis on the markings that are finally used.

Education is an essential part of any system for giving information. On the berths and common property where pipeline identification is to be adopted, it is essential that a training program be applied. Training programs should be competently administered, and should be of such a nature that no personnel are allowed to work in any area of the port until they are fully conversant with all relevant identifications.

Finally, it is felt that, by the adoption of the pipeline identification systems given in this section and by its use, personnel and the terminals within the port as a whole will benefit.

Within the Port's, and more specifically, within the petroleum, chemical & non-petroleum Storage facilities, pipelines are used primarily to transport:

- domestic and industrial water supply
- fire-fighting reticulation
- petroleum and Petroleum, Chemical & Non-Petroleum liquids transportation
- sewage and waste water removal
- power line and cable conduits

The key benefits of pipeline Identification are:

- Safety – Pipeline identification has the potential to prevent errors which cause incidents of a serious nature
- Environmental Impact - Pipeline identification has the potential to ensure that where pipes are leaking identification and verification of their contents is done as speedily as possible
- Economic - Accidents often cost companies large amounts of money, in terms of asset damage and loss of near future operation

Therefore the ability to identify pipelines immediately is of significant interest to terminals.

2. PURPOSE AND SCOPE

This section aims to assist Port industry by establishing uniform standards that encourage a consistent approach in the identification of pipelines. The purpose of this section is to provide minimum standards for Terminals and Lessees utilising pipelines as a means of logistics. And also assists with complying with the provisions of the Occupational Health and Safety Act, which requires that employers maintain a working environment that is safe and without risk to health, and eliminate or mitigate any hazard or potential hazard to employees, and ensure the safety and absence of risks with regards to production, processing, use, handling, storage or transport of articles or substances. In addition to the aforementioned employers, and therefore terminals also have a duty to inform in relation to the contents of their pipelines. Piping systems shall be appropriately labelled to make people aware of the materials they carry. A common pipe marking and labelling method is to be utilized. This section will apply to all new buried pipelines, and for above-ground lines, the standard will be applied retroactively.

This section will also not apply within the leased premises of the terminal, nor to domestic and industrial water supply, fire-fighting reticulation, sewage and waste water removal, and power line and cable conduits. This section is applicable to all areas within the commonage and the berths utilised by Petroleum, Chemical & Non-Petroleum Terminals, and where the National Ports Authority deems it applicable, it shall apply to other facilities outside of the confines of any Petroleum, Chemical & Non-Petroleum complex, but within the area of a Port as defined in the National Ports Act (Act no 12 of 2005).

3. ABOVE GROUND FACILITIES

The colour coding system has to be uniformly applied and used throughout the port. The paint needs to be applicable based on the pipeline metallurgy, operational (temperature, pressure, etc.) and to atmospheric conditions.

This is of extreme importance, especially if there is a necessity to introduce ancillary colour coding as the SANS Standards cannot cater for all the chemicals and products in a universal pipeline colour coding system over and above the basic system set out in that part of SANS 10140.

Specific needs will have to be identified within a committee format and published to all terminals in order to ensure a consistent and uniform pipeline identification system across the port.

4. BELOW GROUND FACILITIES

API 1109 (Marking Liquid Petroleum Pipeline Facilities) – Fourth Edition addresses the permanent marking of liquid petroleum pipeline transportation facilities. It covers the design, message, installation, placement, inspection, and maintenance of markers and signs on pipeline facilities located onshore and at inland waterway crossings. Markers and signs indicate the presence of a pipeline facility and warn of the potential hazards associated with its presence and operation. The markers and signs may contain information to be used by port users or members of the public when reporting emergencies and seeking assistance in determining the precise location of a buried pipeline.

The provisions of API 1109 covers the minimum marker and sign requirements for liquid petroleum pipeline facilities. Alternative markers, which are recommended for some locations under certain circumstances, are also discussed. The pipeline operator is responsible for determining the extent of pipeline marking. Consideration shall be given to the consequences of pipeline failure or damage; hazardous characteristics of the commodity being transported; and the pipeline's proximity to industrial, commercial, residential, and environmentally sensitive areas. The pipeline marking programs are also integral parts of the pipeline operator's maintenance and emergency plans.

This recommended practice is not intended to be applied retroactively. Its recommendations are for new construction and for normal marker maintenance programs subsequent to the effective date of issue of the Physical Pipeline Identification Written Instruction.

5. LABEL REQUIREMENTS

Pipe marking labels must effectively communicate the contents of the pipes and give additional detail if special hazards such as high temperatures (>= 60°C) or pressures exist. From a pressure perspective anything 10barg or above shall be marked as high pressure.

The legend shall be short in length and easy to understand. An arrow shall be used in conjunction with the legend to show which direction the material flows. If flow can be in both directions, arrows in both directions shall be displayed.

Labels shall be positioned on the pipes so they can be easily read. Proper label placement is as follows:

- On the lower side of the pipe if the person has to look up to the pipe,
- On the upper side of the pipe if the person has to look down towards the pipe; or
- Directly facing the person if on the same level as the pipe.
- Labels shall be painted on utilising a stencil and shall contrast with the pipe colour in order to ensure high visibility, and should be of UV resistant paint. (For example on a silver pipeline the stencilled label would be black, on a black pipeline the stencilled label would be yellow)

Labels shall be located in the following places:

- Near valves and branches;
- Where a change in direction occurs;
- On entry/re-entry points through walls or floors;
- And on straight segments with spacing between labels that allows for easy identification. Such as between flanges.

Labels shall bear the following legend if the pipeline carries multiple products:

- The Company Name;
- Emergency Telephone Number; and
- Direction of flow;
- Pipeline operating pressure Kilo Pascals
- All other pipeline identification is to be followed in terms of SANS 10140-3:2003 (Edition 3)

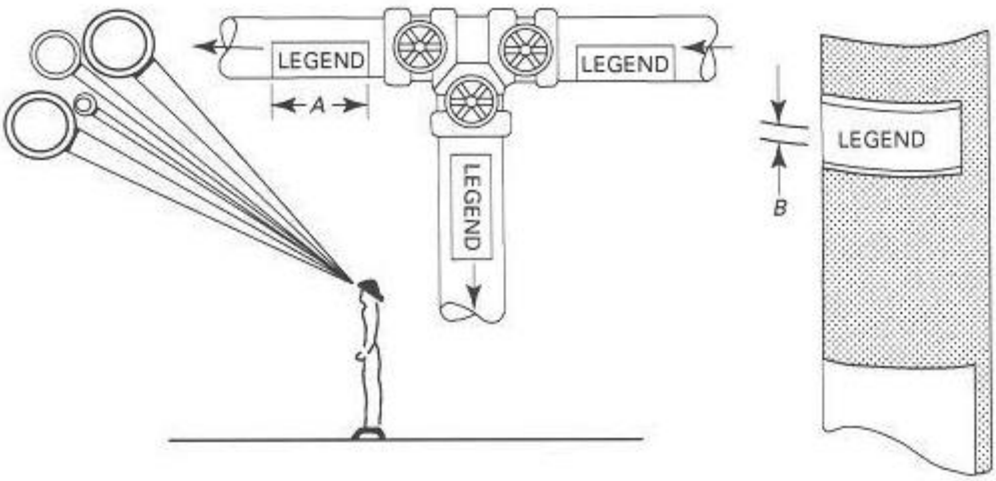
Labels shall bear the following legend if the pipeline carries multiple products:

- The Company Name;
- Emergency Telephone Number;
- Name of product; and
- Direction of flow;
- Pipeline operating pressure Kilo Pascals
- All other pipeline identification is to be followed in terms of SANS 10140-3:2003 (Edition 3)

All other pipeline identification is to be followed in terms of SANS 10140-3:2003 (Edition 3).

For pipes of less than 19 mm in diameter the pipe shall be identified by means of a permanently legible tag.

All labelling shall be maintained on a regular basis to ensure legibility.



Size of Legend Letters	
Outside Diameter of Pipe Covering (mm)	**Size of Letters**
19 to 32 mm	13 mm
38 to 51 mm	19 mm
64 to 150 mm	32 mm
200 to 250 mm	64 mm
Over 250 mm	89 mm

6. PIPE LINE COLOUR CODE REQUIREMENTS

All flanges are to be painted with the specific company colour code as tabled by Transnet National Ports Authority. (Please see Table 1 below). The Transnet National Ports Authority shall display pipeline content colour identification charts or boards relevant to all products in strategic locations on the berths and within the commonage. All colours utilised shall

comply with SANS 1091:2004 (Edition 2)

PORT OF RICHARDS BAY

PHYSICAL PETRO-CHEMICAL PIPELINE IDENTIFICATION CHART

TRANSNET national ports authority

SOUTH32	JBS	BTT
Brilliant Green	Gulf Red	Spectrum Orange
SANS 1091 Ref: H10	SANS 1091 Ref: A04	SANS 1091 Ref: B25
SOUTH32	ENGEN With us you are Number One	Bidvest Tank Terminals

PLEASE NOTE

Colours represented on these charts are only an approximation. SANS 1091 references need to be quoted when ordering the appropriate colour for use

PORT OF PORT ELIZABETH
PHYSICAL PETRO-CHEMICAL PIPELINE IDENTIFICATION CHART

TRANSNET
national ports authority

CHEVRON, ENGEN & TOTAL Lime Green SANS 1091 Ref: H41	SHELL Canary Yellow SANS 1091 Ref: C61	EASIGAS Oxford Blue SANS 1091 Ref: F02	ORION Spectrum Orange SANS 1091 Ref: B25

PLEASE NOTE
Colours represented on these charts are only an approximation. SANS 1091 references need to be quoted when ordering the appropriate colour for use

PORT OF EAST LONDON
PHYSICAL PETRO-CHEMICAL PIPELINE IDENTIFICATION CHART

TRANSNET
national ports authority

TOTAL Dark Violet SANS 1091 Ref: F06	CHEVRON Lime Green SANS 1091 Ref: H41	ENGEN Gulf Red SANS 1091 Ref: A04	BP Mid Brunswick Green SANS 1091 Ref: E04

PLEASE NOTE
Colours represented on these charts are only an approximation. SANS 1091 references need to be quoted when ordering the appropriate colour for use

PORT OF CAPE TOWN

PHYSICAL PETRO-CHEMICAL PIPELINE IDENTIFICATION CHART

TRANSNET
national ports authority

CHEVRON & JBS	FFS & CTBS	OTGC	BURGAN CAPE
Lime Green	Brilliant Green	Oxford Blue	Spectrum Orange
SANS 1091 Ref: H41	SANS 1091 Ref: H10	SANS 1091 Ref: F02	SANS 1091 Ref: B25
Chevron	FFS REFINERS	Oiltanking	BURGAN CAPE TERMINALS (PTY) LTD

PLEASE NOTE
Colours represented on these charts are only an approximation. SANS 1091 references need to be quoted when ordering the appropriate colour for use

PORT OF NGQURA

PHYSICAL PETRO-CHEMICAL PIPELINE INDENTIFICATION CHART

TRANSNET
national ports authority

OTGC
Oxford Blue
SANS 1091 Ref: F02
Oiltanking

PORT OF SALDANHA
PHYSICAL PETRO-CHEMICAL PIPELINE IDENTIFICATION CHART

SUNRISE
Canary Yellow
SANS 1091 Ref: C61

sunrise energy

SFF
Oxford Blue
SANS 1091 Ref: F02

SFF

PLEASE NOTE
Colours represented on these charts are only an approximation. SANS 1091 references need to be quoted when ordering the appropriate colour for use

PORT OF MOSSEL BAY
PHYSICAL PETRO-CHEMICAL PIPELINE INDENTIFICATION CHART

TRANSNET
national ports authority

PETROSA
Oxford Blue
SANS 1091 Ref: F02

PetroSA

PART C – DECOMMISSIONING OF TERMINAL FACILITIES

1. INTRODUCTION

The Liquid Bulk industry has a vital role in the economic and environmental wellbeing of South Africa. This standard is intended to encapsulate the best techniques and methods presently available to mitigate or to eliminate the environmental impact on port activities. Companies using this standard can be sure of achieving the highest standards of protection.

All construction is different and, consequently, it is not possible to set prescriptions on any particular course of action. Rather, there are options for action, which, together, form a 'tool kit'. It is from these tool kits that planners and the construction teams in the field will select the options best suited to their needs.

Decommissioning of requires a careful assessment and balancing of environmental issues and close communication with regulators and other stakeholders. Key considerations include:

- health and safety implications;
- environmental impacts;
- technical options and cost;
- Long Term Port Development Framework Plans

2. PURPOSE AND SCOPE

The tabulated section below aims to assist the Port industry by establishing uniform standards that encourage a consistent approach in the pipeline decommissioning phases. It provides the necessary direction for the application of best practice decommissioning procedures and environmental management that aim to prevent or mitigate potential environmental impacts during decommissioning.

The purpose of the tabulated section is to provide minimum environmental management standards for terminals and lessees utilising pipelines as a means of logistics, encouraging the adoption and integration of appropriate environmental management systems and procedures. Consequently, it forms the basis for the environmental management guidelines required for project approvals, contributing to the improved efficiency of regulatory approvals processes.

If any provisions of the tabulated section below, present a direct or implied conflict with any statutory regulation, the regulation shall govern. However, if requirements in the tabulated section are more stringent than the requirements of the regulation, then the requirements presented herein shall be applied.

3. TERMINAL FACILITY DECOMMISSIONING

A decommissioning plan shall be submitted to TNPA with at minimum all the requirements of Section 14 "Removals and Decommissioning of Facility" contained in API 2610 being abided by. Decommissioning of any sort shall only commence following approval from TNPA.

4. PIPELINE DECOMMISIONING

Supplementary to Section 3 above, the following requirements shall apply for Pipeline Decommissioning.

Decommissioning encompasses all activities where petro-chemical products are no longer flowing through the pipeline, including:

- suspension - pipelines are not depressurised but are physically isolated from the pipeline system
- abandonment in place - pipelines are physically disconnected from the pipe system, purged and cleaned with water or inert material and sealed (capped) at the ends
- removal - pipelines are entirely removed from the pipeline way leave, typically only applicable to above ground pipelines

Decommissioning of onshore pipelines needs to assess both the environmental and commercial costs of the chosen strategy. Part C addresses the issues in determining the best strategy for the decommissioning of pipelines within the Port jurisdiction. In the event that the utility is no longer required, the pipeline will be decommissioned in accordance with Legislative Requirements, and Part C of this standard.

5. LEGISLATIVE REQUIREMENTS

Legislation and/or pipeline licences in South Africa indicate that the regulation of decommissioning of pipelines will be based on the standards of the day and/or as directed by the relevant legislation. There are also international guidelines available for reference. The scope of this Written Instruction is applicable where a Pipeline exists on/within the jurisdiction of the Port as defined in the National Ports Act.

Industry shall refer to the legislation of the day and consult with the Transnet National Ports Authority, and the relevant government agencies for advice when commencing a pipeline decommissioning project.

6. PIPELINE DESIGN LIFE

Pipeline engineering design takes into consideration the planned life of the pipeline. Where it is intended to operate a hydrocarbon pipeline beyond the design life, a detailed investigation shall be made of the design, operating conditions and history of the pipeline in order to determine condition and any limits to continued safe operation of the pipeline.

The pipeline shall be operated under the approved conditions and the limits established from the detailed investigation.

7. DECOMMISSIONING OPTIONS

When a pipeline is no longer required (e.g. exhaustion of supply, reduced market, safety reasons), it is important that the pipeline be decommissioned in an environmentally responsible manner. Whilst it may be possible to consider Suspension as an operations option for the purpose of this report, Suspension shall be included in decommissioning.

A pipeline may be segmented with more than one of the three options (suspension, abandonment, removal) applying to the decommissioning, depending upon environmental considerations, future development potential or Transnet National Ports Authority requirements. International best practice recognises that removing the pipe from the ground may not necessarily be a commercially or environmentally viable option.

7.1. SUSPENSION

The pipelines are not depressurised but are physically isolated from the pipeline system. The pipeline may be purged with inert material, such as nitrogen or allowed to contain non corrosive petroleum fluids and blinded at the ends. The pipelines are maintained as per an operating pipeline including relevant standards, the monitoring of the pressure, maintenance to the cathodic protection system, and maintenance as determined in the safety and operating plan.

7.2. ABANDONMENT IN PLACE

Pipelines abandoned in place are physically disconnected from the pipe system, purged and cleaned with water or inert material and sealed (capped) at the ends. The pipelines are not pressurised and are not maintained, with cathodic protection system disconnected. The pipe would then be left to corrode and biodegrade in situ. All above ground structures are removed (including marker signs), and the way leave rehabilitated. Maintenance of the way leave is discontinued after an agreed monitoring period, and the way leave is relinquished. Abandonment of buried pipelines in situ is environmentally preferable to the disturbance associated with the removal of pipelines, which involves excavation. Buried pipelines should only be removed in the case where damage to the surrounding environment or disturbance to third party facility (resulting from the removal) is low. It is recognised that long term structural deterioration of a pipeline abandoned in place may lead to some measure of ground subsidence. The Canadian Association of Petroleum Producers has examined this issue and determined that subsidence is unlikely to be a critical issue as a structural failure due to corrosion may take many decades and that significant lengths of pipeline would not collapse at any one time due to the localised nature of the pitting process. Even if a total collapse did occur, it was determined that ground subsidence would be negligible for pipelines up to 232.9mm in diameter. Filling with an inert material may be appropriate at critical locations (e.g. infrastructure crossings). This will need to be determined in consultation with the Transnet National Ports Authority and relevant authorities at the time of decommissioning and take into account the long term plans for the pipeline.

Therefore, in situ decommissioning (i.e. Abandonment in Place) for inactive pipelines is usually considered the best option of decommissioning, subject to:

- licence conditions
- stakeholder requirements in terms of future development
- environmental considerations such as pipeline cleanliness, or exposure to subsidence or water conduiting

Buried pipelines should generally be left in situ, particularly those:

- that are adequately buried or trenched and which are not subject to future development and are likely to remain so
- where burial or trenching is undertaken to a sufficient depth and it is likely to be permanent
- that can be adequately cleaned, and do not contain environmentally contaminating materials
- that, due to structural damage or deterioration or other cause, cannot be recovered safely and efficiently

7.3. REMOVAL

This deactivation status applies to pipelines that are physically and entirely removed from the pipeline way leave. The pipeline is depressurised and purged with inert material, such as nitrogen. All above ground and below ground structures are removed and the pipeline way leave rehabilitated. Maintenance of the way leave is discontinued after an agreed monitoring period, and the way leave is relinquished. Above ground pipelines may be decommissioned by removal, but removal will need to be considered on a case by case, risk assessed basis.

8. PLANNING

The decommissioning program shall be supported by a suitable study which addresses any potential effect on the environment and other uses of the way leave. The process of risk assessment shall be carried out. Each pipeline is different, as each is purpose built for a specific function in a specific location. The method of decommissioning for each section of a pipeline shall therefore be based on a case-by-case evaluation.

The following shall be considered:

- the potential reuse options
- age and length of the pipeline
- the nature of the environment in which the pipeline is located
- any other issues relevant to the particular pipeline

It is recognised that commercial considerations, such as whether there is any future use for the pipeline, can be a key determining factor in planning a decommissioning strategy. Early planning for decommissioning is essential in order to determine regulatory requirements for each case. Planning will also involve setting out the strategy, philosophy, goals and objectives for the decommissioning process. Planning aspects essentially comprise four assessment criteria:

- technical feasibility
- environment
- safety
- cost

MINIMUM ENVIRONMENTAL MANAGEMENT STANDARDS - PIPELINES **PLANNING – KEY ENVIRONMENTAL ISSUES**
• Impact on flora & fauna • Impact on soil and water quality • Waste management and disposal • Impact on Landholders and other stakeholder
PLANNING – ENVIRONMENTAL OBJECTIVES
• To undertake pipeline corridor remediation works in a manner that is consistent • To decommission the pipeline corridor in a manner that minimises potential impacts on the environment, land use and third parties • Where the pipeline decommissioning exposes the port users or the environment to high risk, to develop a safety management plan that is documented and implemented for the decommissioning of any pipelines • To assess the environmental, safety and social impacts of all options prior to disposal of product, pipe waste and facility components • To consider all feasible recycling alternatives when disposing of a facility • To ensure that the means of decommissioning shall not cause a significant adverse effect on the environment • To assess the environmental (including social) aspects of decommissioning options • To clarify issues of residual liability before licence relinquishment

PLANNING – ENVIRONMENTAL MANAGEMENT	
Activity	**Management Measures**
Strategy Option	• The decommissioning strategy must be identified. • Planning objectives shall be set. • A planning assessment shall be conducted. • Decommissioning procedures shall be developed. • Social/community implications shall be considered when • decommissioning • The Decommissioning Plan shall have an implementation • strategy
Technical	• Planning shall include a description of the pipeline(s) and associated equipment to be decommissioned, including lengths, diameters and type of construction. • Planning will incorporate technical and engineering aspects of the phase, including reuse and recycling and the impacts associated with cleaning, or removing chemicals from the pipeline. • Planning shall assess the timing of the decommissioning. • Planning shall assess safety considerations associated with capping, removal and disposal of above ground infrastructure. • Planning shall identify critical areas where subsidence of an abandoned pipeline cannot be tolerated (e.g. railway crossing). • Technical consideration shall be given to pipeline structural integrity and structural condition, the state of the way leave, and the establishment of the order of dismantling.
Existing Way leave Condition	• Assessment will be made during planning, on the current condition and status of the pipeline(s) including the extent of burial, trenching and details of any materials used to cover the lines in order to determine potential environmental impacts associated with decommissioning. • Operational and monitoring data and history shall be reviewed.

Environment and Stakeholders	• Impacts on the environment and landholders, including exposure of the environment to pipeline related contaminants, shall be assessed in the development of the decommissioning strategy. • Impacts on other environmental aspects, including emissions to the atmosphere, leaching to groundwater, discharges to surface water and effects on the soil, shall be reviewed. • Consumption of natural resources and energy associated with re-use or recycling shall be reviewed. • Impacts on amenities, the activities of communities and on future uses of the environment shall be assessed.

9. CONSULTATION

An appropriate level of consultation is required to ensure stakeholders have sufficient information and any concerns have been addressed. Potential impact on the activities of port users and on future uses of the environment shall be considered.

CONSULTATION – KEY ENVIRONMENTAL ISSUES	
• Increased safety hazard resulting from temporary increases in traffic volume • Increased noise and nuisance factor associated with temporary works • Provision of sufficient information for public and landholders	
CONSULTATION – ENVIRONMENTAL OBJECTIVES	
• To undertake pipeline remediation works in a manner that is consistent • To ensure stakeholders, landholders and regulators have been consulted and key issues addressed	
CONSULTATION – ENVIRONMENTAL MANAGEMENT	
Activity	**Management Measures**
Planning	• Decommissioning planning shall include consultation with statutory authorities, including the Transnet National Ports Authority and other interested and affected parties. • Consultation with the Transnet National Ports Authority and where applicable regulatory authorities regarding the utilisation of existing road or tracks and infrastructure. • Consultation with the Transnet National Ports Authority and other applicable statutory authorities regarding critical areas where subsidence of pipelines abandoned in situ cannot be tolerated.

	• Consultation with the Transnet National Ports Authority and where applicable, local government regarding temporary road closures and traffic impediments.
Decommissioning	• Impacts on the environment and the port, including exposure of the environment to pipeline related contaminants. • Impacts on facilities, the activities of communities, and tenants and on future uses of the land and environmental functions.
Rehabilitation and Monitoring	• Following completion of decommissioning, landholders shall be provided with a contact number to register complaints.

10. PRODUCT REMOVAL AND PIPE CLEANING

Onsite decommissioning commences with product removal and pipeline cleaning. Hydrocarbon product is purged from the line and the pipe cleaned using the most appropriate method over a series of stages. Likely stages include injecting inert substance such as Nitrogen, flushing with water, and the utilisation of foam or brush pigs to clean the pipeline.

PRODUCT REMOVAL AND PIPE CLEANING – KEY ENVIRONMENTAL ISSUES	
• Potential impact on surface and ground water quality • Potential soil contamination • Potential impact on flora and fauna • Release of air pollutants • Waste management and disposal • Temporary disruption to landholders and third parties	
PRODUCT REMOVAL AND PIPE CLEANING – ENVIRONMENTAL OBJECTIVES	
• To prevent impact on surface and ground water • To prevent soil contamination • To minimise impact on flora and fauna • To minimise waste and dispose appropriately • To minimise disruptions to landholders and third parties	
PRODUCT REMOVAL AND PIPE CLEANING – ENVIRONMENTAL MANAGEMENT	
Activity	**Management Measures**
Planning	• Site preparation and management requirements shall be implemented in accordance with developed and approved Decommissioning Strategy. • The equipment must be made safe by removing or making safe harmful substances.
Depressurising	• Hydrocarbon gases shall typically be disposed to fuel gas or flare systems. • As systems become depressurised the pipeline may then be isolated by valving and subsequent blanking.
Venting	• Where flammable or other harmful materials are to be vented, the point(s) for release shall be located in order to preclude any possibility of vapours encroaching on areas where personnel are working or where there is a likelihood of ignition, under suitable meteorological conditions and away from residential and environmentally sensitive areas. • Prolonged or significant venting activities shall be undertaken in consultation with the appropriate regulatory agencies (e.g. TNPA, NERSA, DEA).

Draining	• Prior to equipment being isolated it is essential that facilities are drained as much as possible via fitted drain points. • Adequately sized drain lines should be installed at the lowest points and sized in accordance with operating engineering practices. • All equipment must be cleaned and purged before connections can be cut ready for disconnection and/or removal. • The extent of the cleaning activity depends upon the state of the equipment and the type of contaminants present.
Purging and Flushing	• Pipe-work can be flushed or purged using steam, water or inert gas. For many applications, water is used as the primary pipe cleaning method. • Pipelines can be cleaned using a process called progressive pigging, where a series of cleaning pigs are pushed through the pipeline with chemical agents and flush water to remove all hydrocarbons. • A project specific Water Source and Disposal Plan shall be developed in consultation with the Transnet National Ports Authority, and the appropriate regulatory agencies • Water supply and disposal will be undertaken in accordance with regulations and managed in accordance with the procedures developed in the Decommissioning Strategy. • No water will be returned directly to watercourses without appropriate approvals. • Water shall be tested for hydrocarbon and chemical residue prior to disposal. • Where contaminant level exceeds national requirements, flushed water shall be disposed of at an approved waste facility. • Discharging water into the environment shall be undertaken in a manner that prevents localised effects, including erosion and sediment transport.

Rehabilitation and Monitoring	• All pipelines which are partially or wholly left in situ shall be inspected and thoroughly cleaned internally to ensure that all contaminants are removed. • Consideration shall be given to filling the pipeline with cement slurry or other appropriate material to prevent water conduiting or subsidence. Alternatively, cathodic protection must be applied in order to prevent the eventual collapse of the pipeline and consequent ground subsidence. • In the event that cathodic protection is maintained, the responsibility for ownership is to remain with the pipeline operator and appropriate records kept.

REMOVAL OF PIPELINES

As discussed above, abandonment of buried pipelines in situ is environmentally preferable to the disturbance associated with the removal of pipeline, which will involve excavation. Buried pipelines should only be removed in the case where damage resulting from the removal to the surrounding environment or disturbance to third party facility is low.

REMOVAL OF PIPELINE – KEY ENVIRONMENTAL ISSUES	
• Potential impact on surface and ground water quality • Potential soil contamination • Potential soil erosion • Potential impact on flora and fauna • Waste management and disposal • Temporary disruption to Port operations, lease holders and third parties	
REMOVAL OF PIPELINE – ENVIRONMENTAL OBJECTIVES	
• To undertake pipeline corridor remediation works in a manner that is consistent • To prevent impact on surface and ground water • To prevent soil contamination • To prevent soil erosion • To minimise impact on flora and fauna • To minimise waste and dispose appropriately • To minimise disruptions to Port operations, lease holders and third parties • To minimise visual impact of the way leave, site locations and access tracks by undertaking appropriate rehabilitation • To decommission the pipeline corridor in a manner that minimises potential impacts on the environment, Port operations, lease holders and third parties	
REMOVAL OF PIPELINE – ENVIRONMENTAL MANAGEMENT	
Activity	**Management Measures**

Excavation	• The width of vegetation clearance shall be minimised to the safest practical width. • Cleared vegetation shall be stockpiled for respreading during rehabilitation. • Topsoil shall be stripped and stockpiled for respreading during rehabilitation. • Trench spoil shall be stockpiled separately from vegetation and topsoil.
Removal of Pipe	• The condition of the pipe shall be assessed and salvaged/dismantled for reuse, recycled, or disposed of as scrap as appropriate (refer to the project Waste Management Plan).

Reinstatement	• Trench spoil shall be replaced as close to soil horizon order as possible and certified clean fill material shall be added to the trench as required. • The way leave shall be reinstated to match surrounding contours in a manner that will not cause erosion. • Topsoil and cleared native vegetation shall be respread, monitored and assessed for any further revegetation needs.

REMOVAL OF ABOVE GROUND INFRASTRUCTURE

The overall objective is to leave the way leave as near as practical to pre-existing environmental conditions and decommission the pipeline in a manner that minimises potential impacts to the environment, Port Operations, lessees and third parties. All aboveground pipe and supports along the pipeline shall be removed (at a minimum depth of 750mm below the natural surface or at pipeline depth), and blinded below the surface. Where applicable all aboveground signs and markers above the pipeline shall be removed. If the cathodic protection system is being abandoned all above ground elements shall be removed, and anode and earthing beds are to be disconnected at 600mm below the natural surface level.

REMOVAL OF ABOVEGROUND INFRASTRUCTURE – KEY ENVIRONMENTAL ISSUES
• Potential impact on surface and ground water quality • Potential soil contamination • Potential impact on flora and fauna • Waste management and disposal

- Temporary disruption to port operations, leaseholders and third parties

REMOVAL OF ABOVEGROUND INFRASTRUCTURE – ENVIRONMENTAL OBJECTIVES

- To undertake pipeline corridor remediation works in a manner that is consistent
- To prevent impact on surface and ground water
- To prevent soil contamination
- To prevent soil erosion
- To minimise impact on flora and fauna
- To minimise waste and dispose appropriately
- To minimise disruptions to leaseholders and third parties
- To minimise visual impact of the way leave, site locations and access tracks by undertaking appropriate rehabilitation

REMOVAL OF ABOVEGROUND INFRASTRUCTURE – ENVIRONMENTAL MANAGEMENT

Activity	Management Measures
Infrastructure	• Where applicable: • Reuse of buildings in good condition shall be considered. • Where buildings are to be demolished this shall be undertaken in accordance with the project's Waste Management Plan. • The condition of the power plants/generators, compressor station equipment, mainline valves and other ancillary infrastructure that is part of the pipeline shall be assessed and salvaged/dismantled for reuse, recycled, or disposed of as scrap as appropriate (refer to project Waste Management Plan).

11. REHABILITATION OF PIPELINE CORRIDOR

The overall objective is to leave the pipeline corridor as near as practical to pre-existing environmental conditions and decommission the pipeline in a manner that minimises potential impacts on the environment, land use and third parties.

REHABILITATION OF PIPELINE CORRIDOR – KEY ENVIRONMENTAL ISSUES

- Potential impact on surface and ground water quality
- Potential soil contamination
- Potential impact on flora and fauna
- Remediation of hydrocarbon contaminated soils

- Waste management and disposal
- Temporary disruption to operations

REHABILITATION OF PIPELINE CORRIDOR – ENVIRONMENTAL OBJECTIVES

- To undertake pipeline corridor remediation works in a manner that is consistent
- To prevent impact on surface and ground water
- To prevent soil contamination
- To remediate any soil contamination present
- To prevent soil erosion and subsidence
- To minimise impact on flora and fauna
- To minimise waste and dispose appropriately
- To minimise disruptions to berth operators, and third parties
- To minimise visual impact of the way leave, site locations and access by undertaking appropriate rehabilitation

REHABILITATION OF PIPELINE CORRIDOR – ENVIRONMENTAL MANAGEMENT	
Activity	**Management Measures**
Earthworks	• Compaction relief shall be undertaken, as required, by ripping or scarifying soils along the contours. • As necessary, the pipeline corridor shall be re-profiled to original or stable contours, re-establishing surface drainage lines and other land features. • Where topsoil has been removed, it shall be respread or clean topsoil imported where there are insufficient stockpiles. • Erosion and sediment control measures shall be installed as necessary.
Revegetation and Monitoring	• Unauthorised access shall be discouraged in order to facilitate natural regeneration of the area. • The pipeline corridor shall be assessed to determine if additional revegetation is required to facilitate natural regeneration. • The pipeline corridor shall be assessed in accordance with 2.10 to ascertain pipeline corridor condition, and repairs undertaken as required e.g. revegetation, subsidence backfill. • Areas of high ecological value may be fenced in order to facilitate regeneration and revegetation.

12. ROADS, ACCESS TRACKS AND HARDSTAND REMEDIATION

Where applicable, roads and access tracks may be left in place for continued use unless otherwise directed by the Port authority. If required, dirt roads and access tracks shall be rehabilitated to existing surrounding conditions or better

ROADS, ACCESS TRACKS AND HARDSTAND REMEDIATION – KEY ENVIRONMENTAL ISSUES	
• Potential impact on surface and ground water quality • Potential soil contamination • Potential impact on flora and fauna • Temporary disruption to operations	
ROADS, ACCESS TRACKS AND HARDSTAND REMEDIATION – ENVIRONMENTAL OBJECTIVES	
• To undertake pipeline corridor remediation works in a manner that is consistent • To decommission the pipeline corridor in a manner that minimises potential impacts on the environment, land use and operations • To prevent impact to surface and ground water • To prevent soil erosion • To minimise visual impact of the way leave by undertaking appropriate rehabilitation	
ROADS, ACCESS TRACKS AND HARDSTAND REMEDIATION – ENVIRONMENTAL MANAGEMENT	
Activity	**Management Measures**
Planning	• Ensure the Port Authority and affected stakeholders have been notified of intended works.
Remediation	• All imported material, signage and infrastructure shall be removed and recycled, where possible, or taken to an approved waste disposal facility. • Compaction relief shall be undertaken, as required, by ripping or scarifying soils along the contours. • As necessary, the pipeline way leave shall be re-profiled to original or stable contours, re-establishing surface drainage lines and other land features. • Where topsoil has been removed it shall be respread or clean topsoil imported where there are insufficient stockpiles • Erosion and sediment control measures shall be installed as necessary.

Rehabilitation and Monitoring	• Unauthorised access shall be discouraged in order to facilitate natural regeneration of the area. • The pipeline corridor shall be assessed to determine if additional revegetation is required to facilitate natural regeneration. • Areas of high ecological value may be fenced in order to facilitate regeneration and revegetation.

13. WASTE MANAGEMENT

A project specific Waste Management Plan shall be developed and shall adopt the "reduce, reuse and recycle" principle. Remediation can be defined as the removal, and appropriate disposal, of an unauthorised or accidental release of a contaminant during operations. The primary goals of remediation are to protect public health, protect groundwater stores and to protect sensitive ecological resources.

WASTE MANAGEMENT – KEY ENVIRONMENTAL ISSUES
• Protection of soil and water quality • Waste management and disposal • Temporary disruption to Terminals/operations • Remediation of hydrocarbon contaminated soils
WASTE MANAGEMENT – ENVIRONMENTAL OBJECTIVES
• To undertake pipeline corridor remediation works in a manner that is consistent • To decommission the pipeline corridor in a manner that minimises potential impacts on the environment, land use and terminal operators • To minimise and manage wastes in accordance with regulatory requirements • To prevent contamination of soil and water • To minimise visual impact of the pipeline corridor by undertaking appropriate rehabilitation

WASTE MANAGEMENT – ENVIRONMENTAL MANAGEMENT	
Activity	**Management Measures**
Planning	• Waste materials will be carefully disposed of at approved waste management facilities in accordance with the applicable regulations, standards and industry best practice. • Impacts on the environment, terminals and the Port, including exposure of the environment to pipeline related contaminants, shall be reviewed and considered in Waste Management Plan. • Consumption of natural resources and energy associated with re-use or recycling shall be reviewed and considered in Waste Management Plan. • Impacts on amenities, operations and on future uses of the environment shall be reviewed and considered in the Waste Management Plan.
Contaminated Soil	• Prior to the decommissioning, a preliminary inventory of existing equipment and hazardous material shall be collected. Historical information can be used to ascertain potential sources and types of contaminants. Historical information is also useful for documentation of previous spills or other incidents. • Initial sampling shall take place on areas suspected of having the greatest probability of subsurface contamination, in particular former treatment, storage and processing areas. • Sampling locations can be determined based on visual inspection and site surveys. • The results of the preliminary investigation shall be used to determine whether significant contamination has occurred. If it has, further assessment may be required in order to define the extent of the contamination and shall consist of more extensive testing including: soil testing, soil vapour testing (if applicable), groundwater testing (if applicable), health risk and ecological risk. • Hydrocarbon contaminated soils (e.g. loading bay drain/pig trap contents, oil/fuel spills), shall be removed and remediated according to their concentration of contaminants, • their leachability and the extent of the area affected, in consultation with the Port Authority and relevant regulatory agencies, and in accordance with National regulations and policies, where applicable

14. WAYLEAVE

Where a pipeline is being abandoned and no further use of the rights under the way leave is intended the rights under the way leave shall be relinquished.

WAYLEAVE – KEY ENVIRONMENTAL ISSUES	
• Temporary disruption to Terminals and operations	
WAYLEAVE – ENVIRONMENTAL OBJECTIVES	
• To undertake pipeline corridor remediation works in a manner that is consistent • To decommission the pipeline corridor in a manner that minimises potential impacts on the environment, land use, the Port and terminal operators	
WAYLEAVE TENEMENT – ENVIRONMENTAL MANAGEMENT	
Activity	**Management Measures**
Relinquishment	• Prior to the way leave being relinquished, consideration must be made of any abandonment conditions applying to the pipeline, including a review of the following documents to ensure that all condition have been met: • NERSA pipeline licence conditions • legislative requirements • SANS Standards • Port Authority agreements. • Way leave relinquishment shall also include obtaining Port Authority approval for the completed abandonment.
Records	• When the process of way leave relinquishment is undertaken, records (i.e. maps and drawings) identifying and locating the abandoned pipelines will need to be prepared and submitted to the Port Authority to allow future identification of infrastructure left in situ. • All pipelines which are partially or wholly left in situ shall be accurately mapped and recorded

15. MONITORING & AUDITING

Pipeline/terminal operators are responsible for decommissioned pipelines however once a pipeline way leave has been relinquished a terminal/operator is normally relinquished of liability and responsibility after a specified period of time. A review shall be undertaken of the following documents in order to determine the extent and period of liability and responsibility for suspended, abandoned in place and removed pipelines:

- NERSA pipeline licence conditions
- legislative requirements
- regulatory commitments
- Port Authority agreements

MONITORING AND AUDITING – KEY ENVIRONMENTAL ISSUES	
• Potential impact on surface and ground water quality • Potential soil erosion • Potential impact on flora and fauna • Potential impact on Port and Terminal operators	
MONITORING AND AUDITING – ENVIRONMENTAL OBJECTIVES	
• To undertake pipeline corridor remediation works in a manner that is consistent • To prevent impact on surface and ground water • To prevent soil erosion and subsidence • To minimise impact on flora and fauna • To minimise visual impact of the pipeline corridor by undertaking appropriate rehabilitation	
MONITORING AND AUDITING – ENVIRONMENTAL MANAGEMENT	
Activity	**Management Measures**
Suspension	• Decommissioned pipelines require continued monitoring and maintenance of cathodic protection, signs and markers, and in some cases maintenance of the way leave or right-of-way. • Monitoring shall be undertaken periodically to ensure prompt remediation of erosion or third party damage to infrastructure.
Abandonment in Place	• Monitoring or auditing of abandoned pipelines shall be undertaken for a specified period following their abandonment or the relinquishment of the way leave • Monitoring or auditing of an abandoned pipeline shall focus on the success of remediation and revegetation activities. • The way leave shall be monitored to check for evidence of soil subsidence and erosion, or ground water contamination.

Removal	• Monitoring or auditing of easements where the pipeline has been removed shall be undertaken for a specified period following their abandonment or the relinquishment of the way leave. • Monitoring or auditing of removed pipeline way leaves shall focus on the success of remediation and revegetation activities. • The way leave shall be monitored to check for evidence of soil subsidence and erosion.

PART D – OVERSIGHT AUDIT METHODOLOGY

1. INTRODUCTION

This section provides a detailed description of the new audit methodology to be implemented as of November 2019.

Audits are critical elements of the Authority's oversight obligations in terms of the National Ports Act, and provide essential feedback to Management that Licensees are fit for purpose. Audits enable the Authority to do the following:

- Provide management assurance of the integrity and implementation of management systems;
- Ensure Licensees comply with all applicable national legislation and relevant industry standards;
- Ensure that Licensees adhere to License and Lease conditions;
- Ensure that significant non-conformances identified during audits are monitored and acted upon in a proactive and timely manner.

Oversight Audits provide the Authority with the assurance of the integrity of Safety, Health, Environmental, Security, Financial, and Planned Maintenance Management Systems. The findings of audits provide an input to the TNPA Risk Register and Oversight Management Framework.

The current methodology utilized by the Authority has allowed for the establishment of an audit baseline. In order to ensure that the Authority maximizes value in terms of its Oversight mandate, the Authority has developed and approved a two-tier audit management system. This will have a significant impact on Licensees and therefore in the interests of good governance and transparency this document outlines the process to be followed.

2. CURRENT AUDIT MODEL: ANNUAL AUDIT METHODOLOGY

The original audit management system involved auditing all Licensees nationally on an annual basis for the purpose of allowing the Authority to establish an audit baseline. As part of the annual audit program, issues presented on site were issued as Minor or Major non-conformances and the Licensee is expected to implement the outcomes of the audit findings. In the following year a further audit would be conducted, and the year thereafter. The result being the establishment of a baseline. As described above the original audit management system did not provide for a mechanism to manage audits following the conclusion of the baseline audit phase. After a significant amount of research and deliberation, it was decided to implement a two tier audit management system.

A two tier audit management approach provides for a logical framework for the Authority to utilise the established baseline and improve on the existing approach, to the advantage of the Authority and the Licensee.

3. AUDIT MODEL DESCRIPTION: TWO TIER AUDIT MANAGEMENT METHODOLOGY

A two-tier audit management system facilitates multiple improvements to the original system such as:

- A holistic approach to terminal and license management;
- Optimization of audit resources;
- *Incentivisation* of licensees to comply;
- Utilisation of leading indicators to diagnose potential issues;
- Scalable – it can be utilized for any number of audits;
- Neutral Methodology – It can be utilized for any type of audit;
- Data-driven – Information can be extracted and analyzed for statistical purposes;
- Quantitative - Progress is driven objectively rather than subjectively;
- Consistency - All audits utilize the same approach and methodology;
- Significant levels of compliance can be measured and incentivized;

At the core of the two-tiered audit methodology or model is a calculation that provides a technically sound mechanism for differentiating between compliant and non-compliant Licensees.

As per the process flow on the next page, a new Licensee (far left) is subjected to Year 1, 2 and 3 onsite audits (i.e. Tier 1). During Tier 1, a foundational analysis of each Licensee's site and operation is performed by means of conducting Oversight audits with management, technical and operational teams present.

The audit scope from site audit 1 to 3 differ in order to ensure that all aspects of a Licensees operation from a HSE (Health, Safety and Environmental) and Process Safety Engineering perspective are interrogated to ensure that an adequate baseline can be established.

The culmination of the three years of onsite auditing results in the analysis of audit and other related data in order to calculate the progression of the License as per the two-tier audit model.

In order to calculate progression, the following parameters are utilised:

N1 **Minor Non-conformances**
Total number for all 3 years

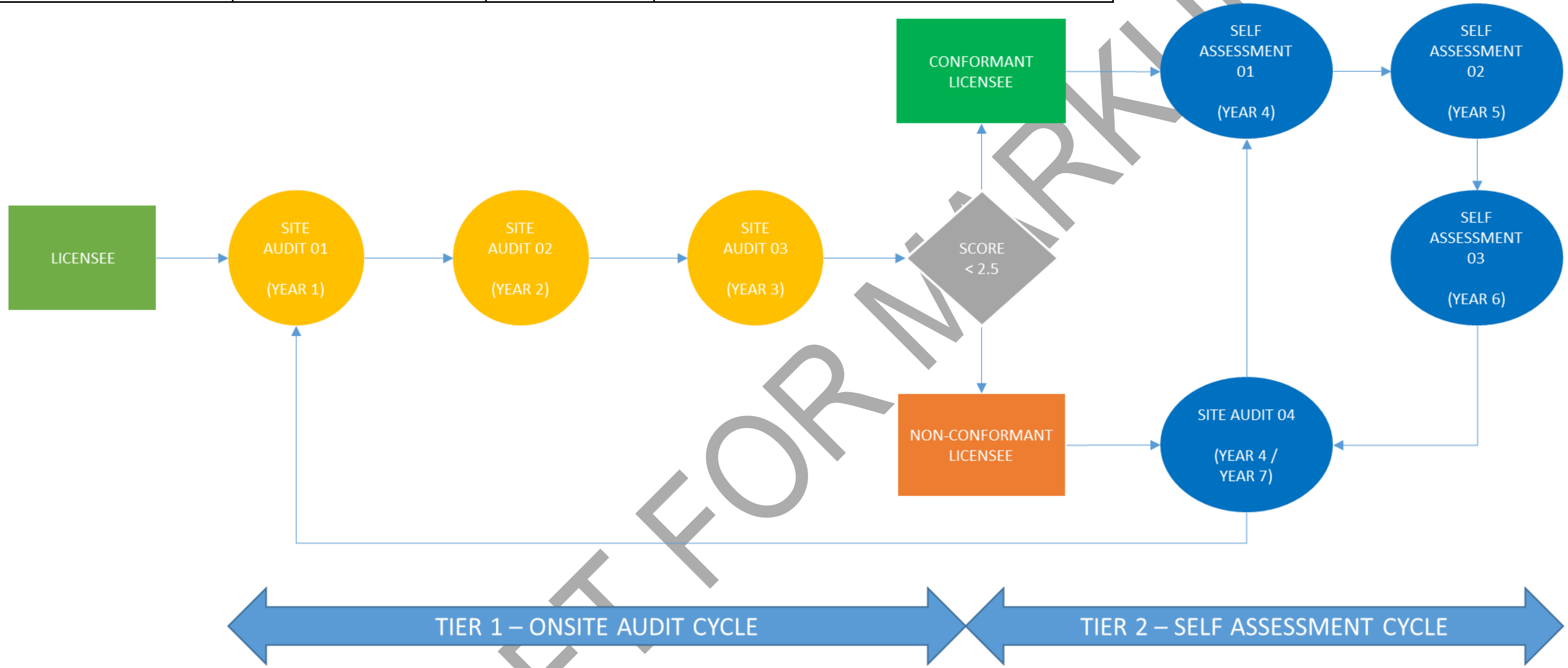
N2 **Major Non-conformances**
Total number for all 3 years

N3 **Volumetric Capacity of Class I chemicals**
Cubic metres (of commissioned tank storage in a Terminal)

N4 **Volumetric Capacity of Class II chemicals**
Cubic metres (of commissioned tank storage in a Terminal)

N5 **Volumetric Capacity of Class III chemicals**
Cubic metres (of commissioned tank storage in a Terminal)

N6 **Major Hazard Installation (MHI) Status**
MHI or Non-MHI



BASIC PROCESS FLOW – LIQUID BULK TERMINALS

Figure – Liquid Bulk Terminals: New Two Tier Audit Methodology (Basic process flow)

There are currently 34 Liquid Bulk Licenses issued within the Ports administered by the Authority. In some cases, the Licensees hold multiple licenses in a single Port with little or no differentiation in chemical storage and handling across the multiple sites. In such cases, relevant multi-sites have been grouped together under the specific company for operational and auditing purposes.

The Minor Non-conformances per Licensee are normalized as a fraction of 1 against the highest number of Minor Non-conformances in the data pool. The nomenclature of N1, N2, etc. next to each constituent above denotes the normalized nature of the final value per constituent category.

Similarly, all other constituents (other than the MHI constituent) are thereby respectively normalized.

For the case of MHI Status, the true condition (i.e. the site is an MHI) carries a value of 1 versus the false condition (i.e. the site is not an MHI) – which carries a value of zero. The six (6) constituents are then added together in a weighted manner as follows:

Rating = N1 + N2 + {(1.00 x N3) + (0.67 x N4) + (0.33 x N5)} + N6

The volumetric capacity constituents are weighted as thirds of 1 since the risk associated with each level of chemical decreases as the flammability Class increases from I to II to III.

In terms of normalized addition: N1, N2, N3 (because it is multiplied by 1) and N6 all carry a maximum value of 1. Hence, adding N1+N2+N3+N6 can only provide a maximum value of 4.

Similarly, the maximum value of (0.67 x N4) is 0.67 and of (0.33 x N5) is 0.33, respectively. Hence, the total value that N4+N5 can provide is 1.

As such, the maximum value that all the normalized values can add up to is 5. Taking the afore-mentioned into consideration, the threshold for conformant and non-conformant Licensees has been set at 2.5 (i.e. 50% pass rate) – with 5 being the highest rating and 0 being the lowest rating.

Therefore, Licensees with a rating of less than 2.5 progress to a Self-Assessment Cycle and therefore postpone Site Audit No.4 from Year 4 to Year 7 in terms of the Licensee's audit program with the Authority.

The Self-Assessment Cycle requires the Licensee to complete a questionnaire during a 30-day period from confirmed receipt following issuance of the questionnaire. The questionnaire is repeated from Self-Assessment 1, 2, 3 to Site Audit 4. The purpose of repeating the questionnaire is to identify risks as a factor of time, for example, annual or 6 monthly maintenance checks on safety critical equipment, etc. The purpose of progressing from Self-Assessment 3 to Site Audit 4 is to allow verification of the Licensee's submissions as per Self-Assessment 1, 2 and 3.

It must be noted that Licensees that attain an accumulative rating above the 2.5 threshold will be subjected to Site Audit 4 in Year 4 of their respective audit cycle with TNPA. In the event that a Licensee has non-compliance issues during Site Audit 4, such Licensee will automatically return to the beginning of the audit cycle i.e. Site Audit 1.

Where the Licensee completes Site Audit 4 successfully, such Licensee will progress to the starting point of the Self-Assessment Cycle if the Licensee's rating is less than 2.5. In the event that the Licensee does not drop below the threshold after Site Audit 4, then the licensee will return to the beginning of the audit cycle as per Site Audit 1, however it is still possible to drop below the threshold after starting the new audit cycle.

If a Licensee does not achieve the threshold required, and as indicated in the above paragraph, the Licensee will then be subject to a Year 1 audit on-site again after the Year 4 audit. The Minor and Major Non-conformances from the new Year 1 audit will be added to the old Year 2, 3 and 4 values when calculating N1 and N2. Ratings are calculated on a running total.

Throughout the revised audit program Licensee's which may have just started with the audit program or those that have already started, will need to submit leading indicators on a quarterly basis. The Authority is entitled to request such information in terms of the National Ports Act, section 62 (2)(b)(i)

A leading indicator is proactive in nature. Measures include initiatives or reported activities, with the goal of preventing unfavourable events before they happen. Leading indicators will help to improve safety through awareness and prevention and will demonstrate to the Authority that Licensees are taking proactive steps to achieve compliant results. A set of questions utilising leading indicators will need to be completed on a quarterly basis by Licensee's on Tier 1 and Tier 2 of the Audit model. Data derived from the Leading Indicator program will be trended on a quarterly basis (including cumulative analysis & insight) and any concerning trends will receive immediate attention.

It must be noted that during the Self-Assessment cycle, any non-compliance will result in the issuance of non-conformance action and potentially the activation of the Legal enforcement protocol in order to ensure compliance.

GLOSSARY OF TERMS AND ABBREVIATIONS

API:

American Petroleum Institute

Aspect

Element of an organisation's activities, products or services that can interact with the environment.

Berths

Structure built alongside the water or perpendicular to the shore where ships berth for loading or discharging goods.

Borrow pit

Surface excavation for the extraction of materials such as sand or clay.

Bund

An earth, rock or concrete wall constructed to prevent the inflow or outflow of liquids.

Cathodic protection system

Application of an electrical current to the pipeline exterior to prevent the electrochemical process of corrosion occurring.

Commonage

Property held in common

EIA

Environmental Impact Assessment

EMP

Environmental Management Plan

EMS

Environmental Management System

ESD

Emergency Shut Down system

Hazard

The potential of something to cause injury or harm

Gabions

Small rocks enclosed within wire mesh, used to stabilise slopes.

Geofabric or geotextile

Fabric for placing on ground surfaces to minimise erosion.

Hazard

The potential of something to cause injury or harm

Health and Safety

Occupational health and safety is a cross-disciplinary area concerned with protecting the safety, health and welfare of people engaged in work or employment. The goal of all occupational health and safety programs is to foster a safe work environment

Hydrocarbon

A class of chemical compounds consisting primarily of the elements hydrogen and carbon. Petroleum hydrocarbons are complex mixtures of hydrocarbons ranging from light gas to heavy oil compounds. Some common petroleum hydrocarbons include methane, ethane, propane, butane, naphtha, condensate, crude oil and asphaltenes.

Hydrostatic testing

A pipeline testing process used to test welds and pipeline integrity in high pressure hydrocarbon pipelines. The process involves filling the newly constructed pipeline with pressurised water enabling the detection of leaks.

Hydrostatic testing (or hydrotesting)

A means to check the pipeline for strength and leaks prior to operation in which the pipeline is filled with water and the pressure increased and monitored under controlled conditions.

Impact

Result of an organisation's aspect actually causing an environmental harm

Landholder

A general term used to refer to the legal owner or manager of a parcel of land. It may be a private landowner, Government or private utility, or a Government Agency responsible for management of a particular parcel of government land (e.g. Port Authority).

Land Lord Port Authority

An institutional structure where the port authority or other relevant public agency retains ownership of the port land and responsibility for safety, and the environment, and port planning and development, as well as the maintenance of basic port infrastructure and aids to navigation.

OCIMF

The Oil Companies International Marine Forum (OCIMF) is a voluntary association of oil companies with an interest in the shipment and terminalling of crude oil, oil products, petrochemicals and gas. OCIMF focuses exclusively on preventing harm to people and the environment by promoting best practice in the design, construction and operation of tankers, barges and offshore vessels and their interfaces with terminals.

PERC

Powered emergency release coupling, connected to the ESD system

Pig

A tool which is inserted into a pipeline and propelled along by hydro-test water or the gas flow, to clean and inspect the pipe internally.

Port Authority

Means, subject to section 3, National Ports Authority Limited, contemplated in section 4 of the National Ports Act 2005 - Is a company, government body or organization that owns or controls the land and activities at a sea port

Purging

Removing all air from the pipeline, using gas.

Radiography

Non-destructive examination of pipeline welds using X-ray to detect defects.

Rehabilitation

Rehabilitation is the process of returning an area to its pre-disturbance construction state including reinstatement, followed by regeneration, revegetation or restoration dependent upon the defined scope or works.

Reinstatement

Reinstatement is the process of bulk earth works and structural replacement of pre-existing conditions of a site (i.e. soil surface topography, watercourses, culverts, fences and gates and other landscape/d features.

Restoration

Restoration is the replacement of structural habitat complexity, ecosystem processes, services and function from a *de novo* or degraded site to that of a pre-determined or analogue state.

Risk

The probability that harm or injury may occur to persons or the environment

SANS

South African National Standard

SIGTTO

The Society of International Gas Tanker and Terminal Operators. It is a not-for-profit organisation. It was formed as an international organisation for industry participants to share experiences, address common problems and derive policy for improvement to maritime operations.

Terminal

A company in the port where specific cargo is handled or contained/stored.

Trench spoil

Soil from the pipeline trench.

Trench water

Water (usually shallow groundwater) in the pipeline trench.

Way leave

A right held by the proponent to make use of the land for the installation and operation of a pipeline, also referred to as a right of way.

REFERENCES

1. National Ports Act (Act no 12 of 2005)
2. Occupational Health and Safety Act (Act no 85 of 1994)
3. National Environmental Management Act (107 0f 1998)
4. SANS 10140 – Parts 2 and 3
5. SANS 1091
6. American Petroleum Institute - API 1109 (Marking Liquid Petroleum Pipeline Facilities) – Fourth Edition 2010
7. Canadian Association of Petroleum Producers (2002) Guidelines for Pipeline Abandonment Applications in Alberta. (Draft)
8. Environment Institute of Australia and New Zealand (2008), Bibliography of Environmental Best Practice Documents
9. ARPEL (Regional Association of Oil & Natural Gas Companies in Latin America & the Caribbean) (1992)
10. Decommissioning and Surface Land Reclamation at Petroleum Production and Refining Facilities. Environmental Guideline No.6.
11. ARPEL (1992) Environmental Management of the Design, Construction, Operation and Maintenance of Hydrocarbon Pipelines. Environmental Guideline No.11.
12. Australian Pipeline Industry Association (APIA) - Code of Environmental Practice
13. National Ports Act (Act no 12 of 2005)
14. National Environmental Management Act (107 0f 1998)

Schedule 19 - Construction Programme

[*The Terminal Operator shall submit the Construction Programme before the commencement of the Construction Works, at which time it shall be annexed to this Agreement as agreed between the Parties*]

Schedule 20 - Constitutional Documents

[to be submitted by Terminal Operator]

Schedule 21- TNPA Policies, Manuals and Intellectual Property Rights

FUNCTIONAL AREA	POLICY NAME
Security	International Ship and Port Security (ISPS) Code
Health and Safety	General Port Standards (See Port Rule 104)
	Occupational Health & Safety Written Instructions to be read in conjunction with the ILO Code of Practice on Safety and Health in Ports
	Standards applicable to Port Petrochemical Facilities
	TNPA - Instructions Governing Lease of Sites for Reception, Storage, Handling & Distribution Of Petroleum & Chemical Products - 2002
	TNPA - Pipeline Decommissioning, Removal, Abandonment & Suspension - Code Of Practice
	TNPA - Physical Pipe Line Identification - Code Of Practice
	OCIMF - Marine Terminals Baseline Criteria and Assessment Questionnaire (I have attached a copy – which is copyrighted, a copy will have to be officially purchased by the Terminal)
	OCIMF - Design And Construction Specification For Marine Loading Arms (I have attached a copy – which is copyrighted, a copy will have to be officially purchased by the Terminal)
	Corporate Social Investment Policy
SHEQ	Safety, Health, Environment and Quality Risk Management Policy Statement (is this a Group or a TNPA specific policy
	SHEQ Policy
	Occupational Health & Safety Management
INFRASTRUCTURE	Infrastructure Maintenance Policy
PROPERTY	Property Leasing and Administration Policy
	Instructions Governing the Agreement of Sites for the Reception, Storage, Handling and Distribution of Petroleum and Chemical Products
	Authority's Occupational Health and Safety Requirements [including the Major Hazard Installations Regulations under the Occupational Health and Safety Act, 1993, as amended

Schedule 22 - Annual Reporting

1. Supplier Development and B-BBEE

1.1. Report on the Empowerment obligations as per clause 12 (*Empowerment Obligations*) for the past Contract Year in line with Schedule 12 (B-BBEE Commitments and Supplier Development Plan including:

1.1.1. The Consortium's updated B-BBEE status and generic scorecard rating;

1.1.2. The Annual Report on outcomes against commitments in the Supplier Development Plan, which is to be independently verified by an agency that has been pre-approved by TNPA.

1.2. Planning for the upcoming Contract Year m+1 and where this differs from the B-BBEE Commitments and Supplier Development Plan;

1.3. Remedial plan in case of under-performance as reported in item [1a] to be submitted and approved by TNPA within [2] (two) weeks (***Note: to be adjusted in line with changes in Section [32] Reporting)***.

2. Operations

2.1. Report for the past Contract Year m on the actual operational performance in view of the Terminal Operator Performance Standards and available in Schedule 17 and as monitored in Section [27.5] (*Terminal Operator Performance*) and with regards all material aspects of the Operational Plan, including but not limited to (***Note: to be adjusted as appropriate by Signature Date)***.

2.1.1. Information per vessel calling at the Terminal:

2.1.1.1. Number of vessels;

2.1.1.2. Name of vessels;

2.1.1.3. Deadweight Tonnage (DWT);

2.1.1.4. Gross Register Tonnage (GRT);

2.1.1.5. Net Register Tonnage (NRT);

2.1.1.6. Gross Tonnage (GT);

2.1.1.7. Net Tonnage (NT);

2.1.1.8. Cargo Volumes Handled;

2.1.1.9. Time at quay;

2.1.1.10. Time handled per cargo of vessel;

2.1.1.11. Home/Destination cargo (Import/Export);

2.2. The Operational Plan for the upcoming Contract Year m+1

2.2.1. Expected number of vessels;

2.2.2. Expected throughput;

2.2.2.1. Type of cargo;

2.2.2.2. Home/Destination cargo (Import/Export).

2.2.3. Anticipated productivity

2.2.3.1. Time handled per cargo of vessel;

2.2.3.2. Average time handled cargo of vessel).

2.2.4. Operating and maintenance programme.

2.3. A remedial plan in case of under-performance as reported in item [2a] to be submitted and approved by TNPA within [2] (two) weeks (***Note: to be adjusted in line with changes in Section [32] Reporting).***

3. Financial

3.1. Report for the past Contract Year on the financial performance of the Terminal with regards to all material aspects of the Business Case (at the exception of the chapters covered in the Operational Plan);

3.2. Planning for the upcoming Contract Year supporting the Minimum Revenue Level for such Contract Year;

3.3. Audited IFRS financial accounts when available;

3.4. Remedial plan in case of under-performance as reported in item [3a] to be submitted and approved by TNPA.

4. Infrastructure Maintenance and Future Development

5. Safety, Health and Environment

6. Any other Reports required by TNPA

Schedule 23 - Independent Certifier Agreement

[*The Terminal Operator shall submit the Independent Certifier Agreement before the commencement of the Construction Works, at which time it shall be annexed to this Agreement as agreed between the Parties*]

Schedule 24: ECONOMIC DEVELOPMENT GUIDELINE DOCUMENT

TABLE OF CONTENTS

Note:

For the purposes of this document, any reference to a/the "**Concessionaires**" shall be construed to mean a reference to a successful Bidder (to whom the concession is to be awarded), as so indicated by the context hereinafter.

WHAT IS ECONOMIC DEVELOPMENT?

The Economic Development (**ED**) Programme is an initiative of the Department of Public Enterprises (**DPE**) supported by Transnet. The aim of ED is to increase the competitiveness, capability and capacity of the South African supply base where there are comparative advantages and potential for local or regional supply. This can be achieved through skills transfer, as well as building new capability and capacity in the South African supply base. In addition, ED has its roots firmly grounded around the transformation of South Africa and the empowerment of previously disadvantaged individuals and enterprises.

1. **BACKGROUND AND GUIDANCE ON THE ECONOMIC DEVELOPMENT OBJECTIVES FOR SOUTH AFRICA**

As a developing economy with inherent structural and social imbalances, South Africa is facing the significant economic challenge of increasing growth in a manner that includes all South Africans. The historical lack of investment in infrastructure in South Africa has negatively impacted on local industry, resulting in a loss of key skills and a decrease in manufacturing industry capabilities. To respond to this, Government policies have been designed to address these imbalances and to act as a catalyst of change for the benefit of South Africa.

One of these Government policies, the National Development Plan (**NDP**) aims to enhance growth, employment creation and equity by reducing the dependencies of South African industries on imports, and promoting the development of skills and capabilities that are in short supply within the country. It identifies strategies that will enable South Africa to grow in a more equitable and inclusive manner and promotes the development of new industry to attain South Africa's developmental agenda.

Transnet's ED effort is closely aligned to the NDP objectives and as a result we are able to fulfil our commitment to sustainability within South Africa whilst at the same time addressing other corporate objectives including increasing productivity and efficiency, volume growth, capital investment, financial stability, funding, human capital, SHEQ regulatory compliance and improving customer service.

The combined objectives of Transnet and Government will be realised through:

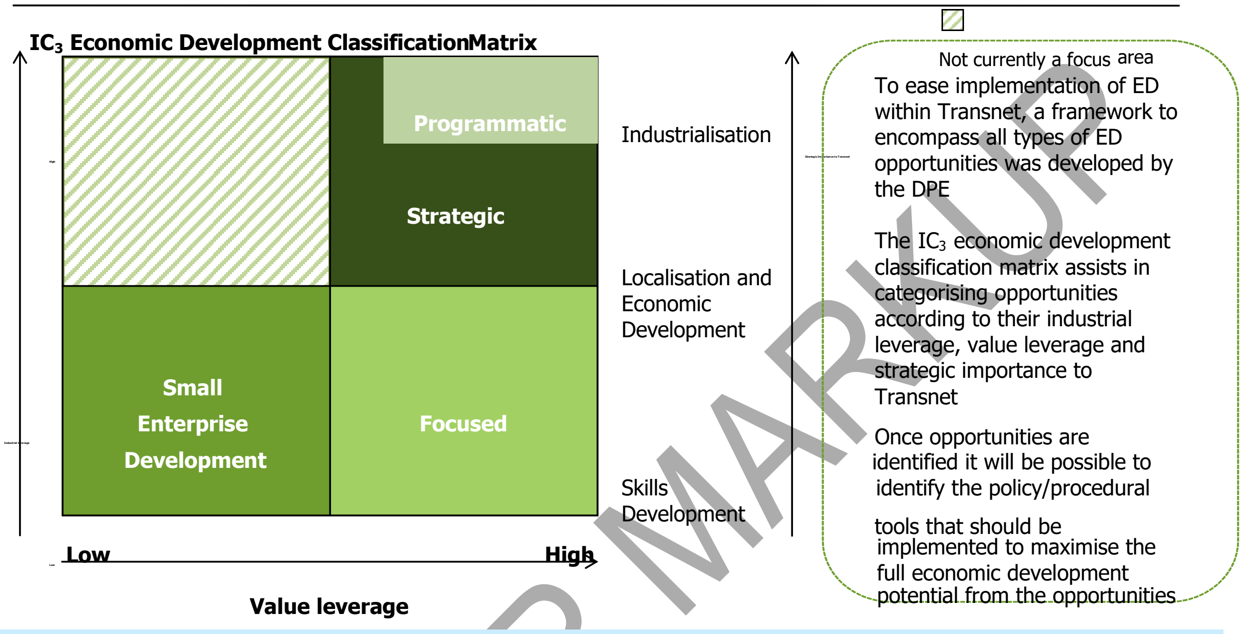
- aggressively implementing capital investment plans which will result in competitive local industries;
- improving operational efficiency;
- using procurement to influence the development of the local supplier industry; and
- ensuring it creates sufficient economic opportunities for the participation of previously disadvantaged groups.

This will lead to Transnet achieving its long-term objective of increasing both shareholder and societal value using its procurement expenditure to ensure local development through the sustainable growth of capability and capacity in South Africa's supply chain and the inclusion of the previously disadvantaged individuals in the economy in a manner that is beneficial to Transnet, South African industry and the people of South Africa. As a result this State Owned Company (**SOC**) is able to fulfil its responsibility as the biggest link in the South African freight logistics chain whilst complementing the objectives of Government.

2. TRANSNET'S ECONOMIC DEVELOPMENT OBJECTIVES AND FRAMEWORK

To aid its implementation of ED, Transnet has adapted an existing framework from the DPE. This framework allows for a basic set of principles to be applied to appropriately target ED initiatives. ED initiatives aim to assist local concessionaires in developing their competitive advantage through increasing their capability and capacity potential. Hence the framework has been termed the Increased Competitiveness, Capability and Capacity (**IC^3**) ED Classification Matrix.

This framework encapsulates the types of ED opportunities which Transnet currently considers effective and allows Transnet to move its ED structure away from a dynamic policy environment towards a framework that is designed around general ED objectives. This enables Transnet to adopt a standard structure but also allows the flexibility to reconsider emphasis on certain aspects as objectives change. The IC^3 Matrix (refer to Figure 1 below) categorises ED opportunities in a matrix based on their value, extent of industrial leverage and strategic importance to Transnet. Further categorisation of opportunities into the relevant quadrants is based on concessionaire-new business development manager power, industrial complexity, risk and the length of procurement period.



Value Leverage: refers to transactions where the financial scale of the transaction allows the new business development manager the opportunity to negotiate economic development.

Industrial Leverage of the procurement is such that the scale of the industrial complexity of the item being purchased allows for local supply chain development around a particular industry.

Strategic Importance to Transnet refers to the extent to which the product to be procured has an impact on Trannet's core business.

Figure 1: The IC^3 ECONOMIC DEVELOPMENT Classification Matrix

In order for Concessionaires to successfully, meet the needs of a particular initiative, a detailed understanding of each quadrant is required.

2.1. Programmatic

Programmatic initiatives follow a longer than normal planning horizon and generally exceed the funding capacity of Transnet's balance sheet. Collaboration between the SOC and Government is achieved through focused task teams whereby infrastructure development and industrialisation is achieved through joint support and in some cases public spending. Investment is focused in plant, technology and skills in both intermediate and advanced capabilities to develop competitive advantage.

2.2. **Strategic**

Strategic initiatives follow a three to five year planning horizon, involving investment in at least plant, technology and/or skills in intermediate capabilities. This enforces the need for multinational corporations and Original Equipment Manufacturers (**OEMs**) to develop a certain percentage of their products locally. Strategic initiatives can therefore be used to achieve Transnet's objectives by increasing the competitiveness, capability and efficiency of local concessionaires. Strategic initiatives can sometimes focus on advanced capabilities but will in most cases require Government support to develop local capability.

2.3. **Focused**

Focused initiatives include all high value transactions with limited industrial leverage and medium to low strategic importance. These initiatives address short to medium-term contracts that can be leveraged to encourage ED, with a focus on investment in technology or skills to enhance existing local capability. Emphasis will largely be placed on benefiting previously disadvantaged individuals. The overall result improves the socio-economic environment by creating competitive local concessionaires and furthers objectives of empowerment, transformation and regional development.

2.4. **Small Enterprise Development**

Small Enterprise Development initiatives are typically of low value and have no industrial leverage as they are characterised by typically low complexity goods and high competition. These initiatives concentrate on increasing the capability of small local concessionaires and are targeted toward historically disadvantaged individuals and communities, providing basic skills development and improving local employment and quality job creation. It includes a wide range of non-financial services that help entrepreneurs start new business and grow existing ones.

3. RESPONSE BASED ON THE IC³ MATRIX QUADRANTS

Based on the concessionaire-new business development manager power, industrial complexity, risk and the length of procurement period, the Concessionaire is expected to formulate an ED Plan to identify the opportunities that it will pursue. Ideally the ED Bid Plan should address factors that are specific to the applicable quadrant of the IC³ matrix.

Transnet has identified a number of opportunities which may aid a Concessionaire in formulating its response based on each quadrant. Each of the opportunities identified by the Concessionaire should have a direct or indirect effect on the value it creates for the country in order to maximise the socio-economic impact.

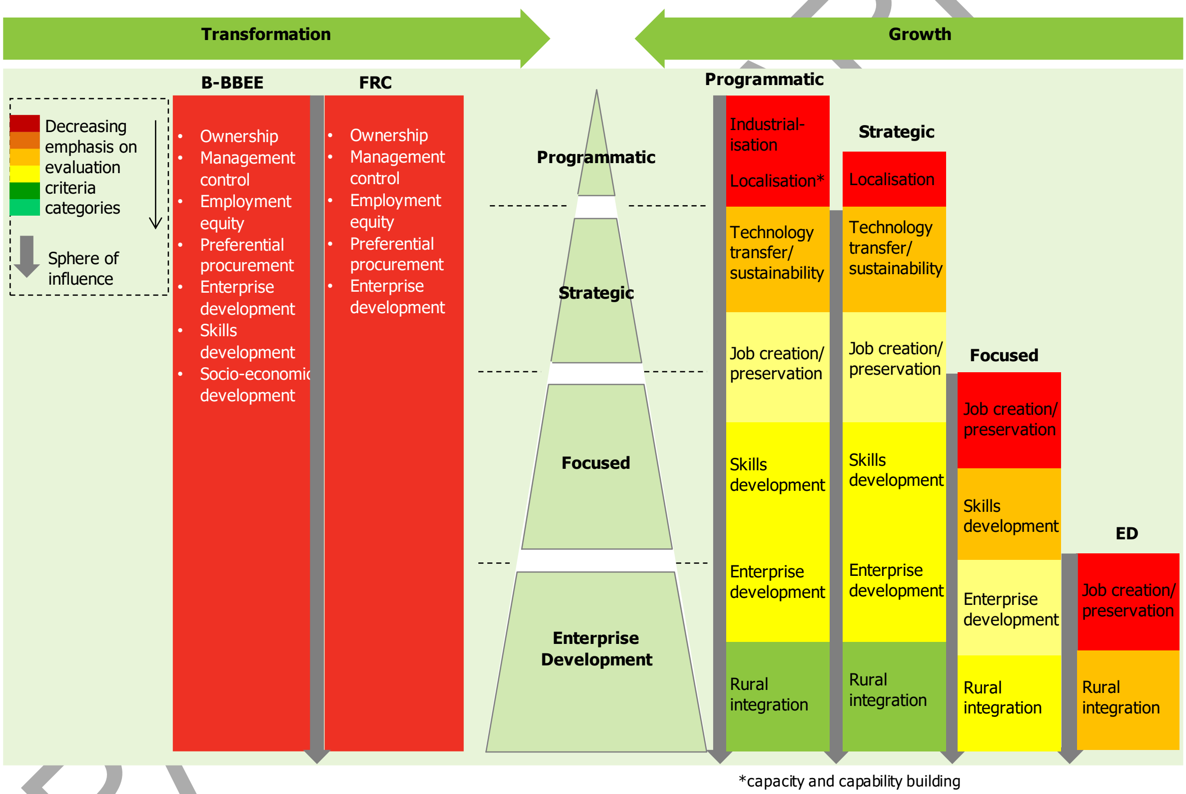


Figure 2: Transnet value capture through supplier influence

3.1. Programmatic

The strategic objective of "Programmatic transactions" is to assist Government to achieve its industrialisation objectives through the development of the local concessionaire base, in order to increase the cost efficiency of SOC procurement, support and maintenance programmes. In order to satisfy this objective a number of focus areas and key outcomes have been identified:

3.1.1. **Programmatic Focus Areas -**

- Industrialisation;
- Capability and capacity building in South Africa;
- Technology transfer;
- Skills development related to the manufacturing process and the industry;
- Development of new technology and innovation;
- Investment in plant;
- Development of local companies aligned to empowerment objectives.

3.1.2. Key Outcomes -

- Industrialisation;
- Manufacturing capability and capacity building;
- Technology transfer;
- Skills development.

3.2. **Strategic**

The main objective of Strategic transactions is to leverage local downstream concessionaires through large-scale SOC procurement in order to develop a competitive local concessionaire base. In response to these objectives the following are the specific focus areas and key outcomes applicable:

3.2.1. **Strategic Focus Areas** -

- Capability and capacity building in South Africa;
- Transfer of technology and innovation to local concessionaires from foreign OEM's;
- Skills development related to the industry;
- Development of local companies aligned to empowerment objectives.

3.2.2. **Key Outcomes** -

- Increased S.A. manufacturing capability and capacity;
- Increased technology transfer;
- Skills development;
- Job creation/preservation.

3.3. **Focused**

Focused initiatives assist local concessionaires to improve their performance, enhance their existing production and skills capabilities with emphasis being placed on benefiting previously disadvantaged individuals and rural development. In order to satisfy these objectives a number of focus areas and key outcomes have been identified:

3.3.1. **Focused Focus Areas -**

- Developing a local concessionaire base that supports preferential procurement outcomes;
- Developing skills within the specific industry;
- Creating opportunity for job preservation;
- Reducing income inequality in specific regions.

3.3.2. **Key Outcomes -**

- Empowerment;
- Skills development;
- Rural development;
- Job creation/preservation.

3.4. **Small Business Development**

Enterprise Development objectives are centred around assisting local concessionaires to improve their skills by placing increased emphasis on benefiting previously disadvantaged individuals and rural development in line with the Broad-Based Black Economic Empowerment (**B-BBEE**) strategy. The following focus areas and key outcomes have been identified:

3.4.1. **Small Business Development Focus Areas -**

- Providing small businesses with opportunities and preferential trading terms, increased focus on Black woman-owned enterprises, focus on the youth, people with disabilities and region-specific initiatives;
- Empowering previously disadvantaged individuals to create their own businesses resulting in quality job creation.

3.4.2. **Key Outcomes -**

- Empowerment;
- Rural development;
- Skills development;
- Job creation/preservation.

Based on these focus areas and key outcomes, a concessionaire would need to actively focus on the quadrant-specific requirements in order to maximise the potential commercial benefit for Transnet, South Africa and themselves. In doing so value can be created across all lines of reporting resulting in continued relations.

4. ECONOMIC DEVELOPMENT CATEGORY DEFINITIONS AND HIGH LEVEL DESCRIPTIONS

4.1. Industrialisation

Industrialisation refers specifically to industrial development that will result in globally leading capabilities within South Africa.

Criteria	Description
Value of investment in plant	Quantification of the monetary value invested in machinery, equipment and/or buildings as a result of this RFP.
Percentage of the investment of plant purchased in South Africa	Percentage value invested in machinery, equipment and/or buildings that are sourced from local companies.
Reduction in import leakage	A percentage indication of the increase in locally supplied products and therefore the resultant

	decrease in imports as a result of the award of a contract.
Potential increase in export content	The percentage increase in exports that will result from increased industrial capability locally in relation to the award of a contract.

4.2. **South African Capability and Capacity Building**

South African capability and capacity building refers specifically to industrial development that focuses on value-added activities for the local industry through manufacturing or service-related functions.

Criteria	Description
Value-added manufacturing activity/activities to be undertaken in South Africa	Description of value-added activities to be performed during the contract period in South Africa.
Service-related functions to be undertaken in South Africa	Description of service-related functions to be performed during the contract period in South Africa.
Number of local suppliers in the supply chain	Number of South African suppliers that are to be utilised in the fulfilment of a contract.

4.3. **Technology transfer/sustainability**

Technology improvements are intangible assets with significant economic value. The concessionaires will be measured on its plan to transfer knowledge and IP to contribute towards capability building of the local supply base, which ultimately leads to improved efficiency and capability. Plans to assist in this by a concessionaire must be assessed to enable the local supply base to potentially export its newly-acquired technological know-how, thereby decreasing capital leakage.

Criteria	Description
Technology transfer including: Methods of manufacturing Introduction of new technologies IP transfer (number and value)	Introduction of a new/improved method of manufacturing Provision of new technologies: For processes ICT The provision of patents, trademarks and copyrights.
Number of local concessionaires to be evaluated for integration into the OEM supply chain	An indication of the number of South African concessionaires that an OEM/Service Provider plans to evaluate for possible inclusion into its supply chain, should it meet the requirements.

4.4. Skills development

Skills development indicates the company's commitment to education and whether that fits in with targeted groups (artisans, technicians, etc.). Consideration needs to be directed towards the adequate quality and value of skills so developed in order to allow for better evaluation in line with Government's objectives.

Criteria	Description
Number of downstream supply chain individuals to be trained including: • Number of artisans trained	Number of individuals that the concessionaires plans to train in the local industry over the contract period; training undertaken in the previous year will be taken into account.

Criteria	Description
• Number of technicians trained • Number of black people trained • Total number of people trained	
Number of company employees to be trained	Number of individuals within the company (in South Africa) that the concessionaires plans to train over the contract period; training undertaken in the previous year will not be taken into account as past employee training appears in the skills development pillar of the B-BBEE scorecard; criteria broken down as for industry training above.
Certified training (yes/ no)	Compliance with local and/or international skills accreditation.
Rand value spent on training	Total planned monetary value spend (as a % of contract value) on skills development /training for the contract period within the industry; money spent in the previous year will be included in year 1 to make allowance for concessionaire who have just completed a training drive within the industry.
Number of bursaries/ scholarships (specify field of study)	The number of higher education bursaries/scholarships provided in the previous year and planned for the length of the contract.

Criteria	Description
Number of apprentices (sector must be specified)	The number of apprentices that the concessionaire plans to enlist during the course of the contract.
Investment in Schools in specific sectors e.g. engineering	The monetary value that the concessionaire is prepared to invest in the development and running of schools to increase technical skills development.

4.5. **Job creation/preservation**

Job creation and/or preservation allows assessment of Government's objectives to increase labour absorption, focusing on unskilled workers and the youth.

Criteria	Description
Number of jobs preserved	Number of jobs which would be preserved through Award of Contract.
Number of jobs created including:	Number of jobs to be created during the period of the contract.
New skilled jobs created	Jobs for people in a specialised field of work requiring a defined training path and / or requisite level of experience in order for them to perform that role. These people could be in possession of a certificate, diploma or degree from a higher education institution.

New unskilled jobs created	Jobs for people where the field of work does not require extensive formal training or from whom no minimum level of education is required.
Number of jobs created for youth	Jobs created for individuals aged 16 – 35 years.
Number of jobs created for Black youth	Jobs created for Black individuals aged 16 – 35 years.

4.6. Enterprise and Economic Development

Small business promotion criteria give an indication of the Supplier/Service Provider's commitment to developing small business in line with NDP and B-BBEE requirements.

Criteria	**Description**
Percentage procurement from: • QSEs • EMEs • Start-ups B-BBEE Facilitators	Refers to the planned procurement from small business as a % of the total planned procurement spend.
Sub-contracting	Refers to sub-contracting to QSEs/EMEs that are preferably Black Owned, Black Women Owned, Black Youth Owned or owned by Black People with disabilities.
Non-financial support provided to small business	Concessionaires will be credited for each non-financial ED support that they are planning to give to small business e.g. Professional support; employee time allocated to assisting small business.

Criteria	Description
Financial support provided to small business	Concessionaires will be credited for each financial ED support initiative that they are planning to undertake during the contract period e.g. Shorter payment terms; interest free loans.
Joint ED initiatives with Transnet	The number of ED initiatives that the Concessionaires will jointly run with Transnet: • That are aligned to Transnet's objectives • That are non-financial in nature.

4.7. **Rural development/integration**

Rural development / integration indicates the Supplier's/Service Provider's planned use of local labour and business which will contribute to Governments NDP objectives and result in supply chain efficiencies. Commitment to rural development will result in the alleviation of poverty and thereby contribute to development objectives. The development must be sustainable in order to have a long-term and meaningful impact.

Criteria	Description
Number of local employees	Number of people employed from within the town/city of operation.
Value spent on local business	Monetary value spent on businesses within the town/city of operation.
Proximity of business to operations	The locality of the business in relation to operations, preference is given for regional (provincial) locality.

Criteria	Description
Number of rural businesses to be developed	The number of rural businesses that the Concessionaire plans to develop as a result of the contract.
Value of development to local community (sustainable)	The monetary value spent on rural community development that will result in long–term social improvements.

5. MARKET INTELLIGENCE ASSISTANCE

Concessionaires with limited knowledge of the local market, supply base and its capabilities may require assistance in identifying local concessionaires and the development needs in order to develop its ED Plan. The United Nations Industrial Development Organisation (UNIDO) supplies a benchmarking service in South Africa which will be able to assist concessionaires in identifying potential local suppliers with which to work. In addition, this service will provide insight as to the type of support that these local suppliers require in order to become more competitive. UNIDO's benchmarking tool gives insight into the performance levels being seen in Suppliers'/Service Providers' businesses and the practices used to deliver the products or services being offered. The benchmarking tool focuses on:

5.1. **Performance data relating to -**

5.1.1. Financial performance;

5.1.2. Customer data;

5.1.3. Processes; and

5.1.4. Learning & growth.

5.2. **Company's current business situation -**

5.2.1. Plans for the business and capabilities to manage their fulfilment;

5.2.2. Ability to generate business;

5.2.3. Employee relationships;

5.2.4. Developing new markets;

5.2.5. Developing products and services;

5.2.6. Managing money.

The UNIDO benchmarking tool provides a basic framework through which an understanding of the South African market can be established. Whilst the list of criteria may not be exhaustive, Concessionaires are free to meet with UNIDO to further understand how they can work together to develop a deeper understanding of the market and the ED opportunities available.

6. GOVERNMENT POLICY DOCUMENTS

NIPP http://www.thedti.gov.za/industrial_development/nipp.jsp

IPAP2 http://www.thedti.gov.za/DownloadFileAction?id=561

CEDP http://www.dpe.gov.za/res/transnetCEDP1.pdf

7. OTHER REFERENCE WEBSITES

References	Website
Department of Public Enterprise (DPE)	www.dpe.gov.za
United Nations Industrial Development Organisation (UNIDO)	www.unido.org/spx

GLOSSARY OF WORDS

Broad-Based Black Economic Empowerment (B-BBEE) A South African legal requirement that require all entities operating in the South African economy to contribute to empowerment and transformation.

Enterprise Development (ED) An element contained within the B-BBEE scorecard whereby a Measured Entity can receive recognition for any Qualifying Enterprise Development Contributions towards Exempted Micro-Enterprises or Qualifying Small Enterprises which are 50% black owned or 30% black woman owned. Enterprise Development Contributions consists of monetary and non-monetary, recoverable and non-recoverable contributions actually initiated in favour of a beneficiary entity by a measured entity with the specific objective of assisting or accelerating the development, sustainability and ultimate financial independence of the beneficiary. This is commonly accomplished though the expansion of a beneficiaries financial and/ or operation capacity.

Industrial Policy Action Plan II (IPAPII) The implementation plan for the National Industrial Policy Framework (NIPF) which details key action plans (KAPs) and timeframes for the implementation of industrial policy actions in line with the NIPF.

Integrated Supply Chain Management (iSCM) Refers to an integrated "one supply chain management" strategy within Transnet which has been developed with Centres of Excellence (COEs) with cross-functional teams comprising divisional and corporate task team members, to deliver value through improved efficiencies and compliance with the regulatory environment.

National Development Plan (NDP) Developed by the National Planning Commission in 2010 and tabled in 2013, the plan frames a new approach to unlocking economic growth by knitting together the IPAP2 as well as policies and programmes in rural development, agriculture and, sciences & technology, education, skills development, labour, mining and beneficiation, tourism and social development with the aim to target limited capital and capacity at activities that maximise the creation of decent work opportunities.

	Key indicators include: Quality job creation, Youth employment, Labour intensive growth, and Equity.
Original Equipment Manufacturer (OEM)	Refers to a manufacturing company that owns the intellectual property rights and patents for the equipment it sells and services.
Socio-economic Development	Refers to development which addresses social and economic aspects such as job creation, poverty reduction and increased national value add and which not only focuses on the business's financial bottom line.
State Owned Company (SOC)	Refers to Government-owned corporations. They are legal entities created, and owned, by Government to undertake commercial activities on behalf of an owner Government, and are usually considered to be an element or part of the state. They are established to operate on a commercial basis.
ECONOMIC DEVELOPMENT (ED)	Improving the socio-economic environment by creating competitive local suppliers via Enterprise Development, CEDP and other initiatives such as Preferential Procurement. This results in a supply base that can eventually be competitive to market its goods on the international market leading to increased exports.
United Nations Industrial Development Organisation (UNIDO)	A specialised agency of the United Nations. Its mandate is to promote and accelerate sustainable industrial development in developing countries and economies in transition, and work towards improving living conditions in the world's poorest countries by drawing on its combined global resources and expertise.

Transnet requires that the Terminal Operator submit an **Economic Development Plan** demonstrating how they will discharge their commitments made in the Development Phase and Operational Phase Value Summary.

The Economic Development Plan is a detailed narrative document explaining the Respondent's Economic Development proposal as summarised in the Development Phase and Operational Phase Value Summary.

The Terminal Operator must compile the Economic Development plan, with an understanding of Economic Development as detailed and described in the Economic Development Guideline Document and further guided by the specific requirements mentioned below.

Important Notes for completion of Economic Development Plan:

(i) The Terminal Operator must pay careful attention to the compilation of the Economic Development Plan since it, together with the Development Phase and Operational Phase Value Summary, represents a binding commitment on the part of the successful Respondent.

(ii) The Terminal Operator is required to address each of the categories under the detailed Economic Development Description as a minimum for submission. This is, however not an exhaustive list, and the Terminal Operator is not limited to these choices when compiling each section.

(iii) The Terminal Operator must ensure that the Development Phase and Operational Phase Value Summary submission and the Economic Development Plan submission are accurately cross-referenced with each other.

(iv) The Terminal Operator is requested to address each of the Economic Development aspects in no more than two (2) pages per category, to avoid lengthy submissions.

(v) Terminal Operator are required to provide an electronic copy [Economic Development] of the completed Development Phase and Operational Phase Value Summary and Economic Development Plan as part of their submissions.

Minimum Economic Development plan requirements

The Economic Development Plan should outline the type of activities you intend to embark upon should you be awarded the contract. This Economic Development Plan should also provide an overview of what you intend to achieve, by when, and the mechanisms to be used to achieve those objectives.

Category	Description

Local Capability and Capacity Building in South Africa (existing industry)	Industrial capability building that focuses on value-added activities of the South African industry through manufacturing or service-related activities
New Skills development	Skills transfer & skills education which will occur as a result of the award of contract
Job Creation/Preservation	Number of jobs created or preserved resulting from the award of contract
Small Business Promotion	Encouragement for growth and the expansion of emerging local firms, through procurement and support mechanisms

ECONOMIC DEVELOPMENT PLAN

1. Economic Development Executive Summary

   ....

   ....

   ....

2. Economic Development plan per category:

   i. Local Capability and capacity building in South Africa (Localisation)
   ii. New Skills development
   iii. Job Creation/preservation
   iv. Small Business Promotion

Conclusion

....

Schedule 25 – Equipment

[to be submitted by Terminal Operator]

Schedule 26 – Operations Agreement

[to be submitted by Terminal Operator]

CONTENTS • INHOUD

GOVERNMENT NOTICE

DEPARTMENT OF TRANSPORT

No. 255 **6 March 2009**

PORTS RULES

I, Jeff Thamsanqa Radebe, Minister of Transport, hereby, in terms of section 80(2) of the National Ports Act no 12 of 2005, approve the rules made by the National Ports Authority for the control, management of ports, the approaches thereto, for the maintenance of safety and security; good order and the protection of the ports environment.

These Port Rules are published for general information and compliance and will come into operation on the date of publication.

J. Radebe
Minister of Transport

TRANSNET
national ports authority

Port Rules

"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,..."

National Ports Act No. 12 of 2005, Section 80 (2)

PORT RULES

Issued in terms of the National Ports Act, No. 12 of 2005, Section (80)(2)

G09-063841—B

CHAPTER 1: INTERPRETATION, APPLICATION AND POWERS OF THE HARBOUR MASTER AND THE *AUTHORITY*

1. Interpretation

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

(a) "***Act***" means the National Ports Act No. 12 of 2005.

(b) "***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*.

(c) "***approaches to a port***" means the *VTS zone* in respect of each *port* excluding the *port* limits, or, where a *port* does not have a *VTS zone*, the port limits.

(d) "***Authority***" means, subject to section 3 of the *Act*, the National Ports Authority of South Africa or the National Ports Authority Limited, as contemplated in section 4 of *the Act*.

(e) "***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, by sea.

(f) "***cargo agent***" includes both a clearing and forwarding *agent*.

(g) "***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.

(h) "***chart***" means the latest valid navigational chart for sea navigation purposes.

(i) "***Chief Fire Officer***" means the Chief Fire Officer of the *Authority* or the Municipal Fire Services.

(j) "***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*.

(k) "***customs***" means the South African Revenue Service.

(l) "***dangerous goods***" includes dangerous *cargo* and —

(i) goods classified in the *IMDG Code*, published by the International Maritime Organisation, as amended from time to time;

(ii) substances listed in chapter 17 of the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (IBC Code), published by the International Maritime Organisation, as amended from time to time;

(iii) substances listed in chapter 19 of the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk (IGC Code), published by the International Maritime Organisation, as amended from time to time;

(iv) oils as defined in Annex I of the International Convention for the Prevention of Pollution from Ships 1973, as modified by the 1978 Protocol, as amended from time to time;

(v) noxious liquid substances as defined in Annex II of the International Convention for the Prevention of Pollution from Ships 1973, as modified by the 1978 Protocol, as amended from time to time;

(vi) harmful substances as defined in Annex III of the International Convention for the Prevention of Pollution from Ships 1973, as modified by the 1978 Protocol, as amended from time to time; and

(vii) radioactive materials specified in the Code for the Safe Carriage of Irradiated Nuclear Fuel, Plutonium and High-level Radioactive Wastes in Flasks on board Ships (INF Code), published by the International Maritime Organisation, as amended from time to time.

(m) "***entering port***" means a *vessel* entering the port's limits.

(n) "***entering the VTS zone***" means a *vessel* entering the *VTS* limits.

(o) "***foreign regulated ship***" means a foreign ship that is —

(i) in South African waters;

(ii) in, or is intending to proceed to, a port in the *Republic*; and

(iii) a *passenger* ship, a *cargo* ship of 500 gross tonnage or more, or a mobile offshore drilling unit (other than a unit that is attached to the seabed).

(p) "***fire protection personnel***" means fire protection personnel complying with the requirements set by the *Authority* in terms of rule 73.

(q) "***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.

(r) "***gangway***" means any access between *vessel* and shore and vice versa.

(s) "***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.

(t) "***Harbour Master***" means the employee of the *Authority* appointed for each port as contemplated in section 74(3) of the *Act*.

(u) "***hot work***" means work involving sources of ignition or temperatures sufficiently high to cause the ignition of a flammable gas mixture or combustibles. This includes any work requiring the use of welding, burning or soldering equipment, blow torches, some power driven tools, portable electrical equipment, which is not intrinsically safe or contained within an approved explosion proof housing or internal combustion engines.

(v) "***hot work permit***" means a document issued by the *Authority* permitting specific *hot work* to be done during a specific time interval in a defined area.

(w) "***IMDG Code***" means the International Maritime Dangerous Goods Code adopted by the Maritime Safety Committee of the International Maritime Organization by resolution MSC.122 (75).

(x) "***in contact***" means the wilful physical contact or interaction occurring between a *vessel* and a *pleasure vessel* that involves the movement of persons or goods or the provision of services to or from the *vessel*.

(y) "***industry guidelines***" includes the industry reference works referred to in rule 1041(2), as amended from time to time.

(z) "***IMO***" means International Maritime Organisation.

(aa) "***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.

(bb) "***manoeuvre***" means any *vessel* movement that may be detrimental to safe navigation, and includes —

- (i) a compass adjustment;
- (ii) the calibration and servicing of navigational aids;
- (iii) a sea trial;
- (iv) a dredging operation; and
- (v) the laying, picking up and servicing of submarine cables.

(cc) "***master***" means any person, other than a pilot, having charge or command of a *vessel or pleasure vessel*.

(dd) "***motor vehicle***" means a vehicle that is registered in terms of the National Road Traffic Act No. 93 of 1996.

(ee) "***ISO container***" means a freight container with the specifications prescribed by the International Organization for Standardisation.

(ff) "***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*.

(gg) "***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.

(hh) "***passenger vessel***" means a *vessel* that carries more than 12 *passengers*.

(ii) "***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*.

(jj) "***port***" means any of the ports as defined in section 1 or determined in terms of section 10 of the *Act*.

(kk) "***Port Security Officer***" means a person appointed by the *Authority* in a *port* to implement and maintain the *Authority's* maritime security plan.

(ll) "***Republic***" means the Republic of South Africa.

(mm) "***revenue office***" means the *Authority's* Revenue Office.

(nn) "***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.

(oo) "***security officer operating within a port***" means a person designated by the *Authority* or operator within a *port* to implement and maintain the relevant maritime security plan.

(pp) "***shift***" means the movement of a *vessel* from one place in the port to another, and "shifting" bears a corresponding meaning.

(qq) "***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, skiboat, sailing boat, yacht or similar vessel, or a hulk of any of the vessels enumerated, but excludes a *pleasure vessel*.

(rr) "***tanker***" means a *vessel* designed to carry liquid *cargo* in bulk, including a combination carrier being used for this purpose.

(ss) "***Tariff Book***" means the Tariff Book contemplated in section 72 of the *Act*.

(tt) "***unseaworthy***", used in relation to a *vessel*, has the same meaning as set out in the Merchant Shipping Act No. 57 of 1951, read with the changes required by the context.[1]

(uu) "***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.

(vv) "***vessel agent***" refers to the *agent* of the owner of the vessel.

(ww) "***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. "***Pleasure vessel in need of assistance***" has a corresponding meaning.

(xx) "***VTS***" means the vessel traffic service of a *port* administered by the *Authority* in respect of a *VTS zone*.

[11] The definition of "*unseaworthy*" in the Merchant Shipping Act 57 of 1951 is:

""***unseaworthy***", used in relation to a vessel, means that she —

(*a*) is not in a fit state as to the condition of her hull, equipment or machinery, the stowage of her *cargo* or ballast, or the number or qualifications of her master or crew, or in any other respect, to encounter the ordinary perils of the voyage upon which she is engaged or is about to enter; or

(*b*) does not comply with the conditions of assignment to the extent set forth in paragraph (*c*) of section *two hundred and seven*; or

(*c*) is loaded beyond the limits allowed—

(i) by a load line certificate issued in the *Republic* under this *Act*; or

(ii) if she is a load line ship, registered in a country in which the Load Line Convention applies, by a recognized non-South African international load line certificate; or

(iii) by a load line certificate to which a notice issued under section *two hundred and eighteen* applies:

Provided that a safety convention ship not registered in the *Republic*, in respect of which a recognized non-South African safety convention certificate is produced, shall not be deemed *unseaworthy*, as regards the condition of her hull, equipment or machinery, unless it appears, on the report of a surveyor, that she cannot proceed to sea without danger to human life owing to the fact that the actual condition of the hull, equipment or machinery does not correspond substantially with the particulars stated in the certificate;"

(yy) ***"vessel traffic services zone"*** or ***"VTS zone"*** means the inshore vessel traffic services zone in respect of a *port* as described in columns 1 and 2 of Annex 1.

(zz) "***writing***" includes electronic communications such as e-mails, facsimiles and telexes.

(2) Unless the context indicates otherwise, and except for the expressions defined in sub-rule (1), any expression used in these rules bears the same meaning assigned to it in the *Act*.

2. Purpose

The purpose of these rules is to ensure the proper control and management of *ports*, the regulation and control of navigation within the approaches to *ports* and the maintenance of safety, security and good order in *ports* and the protection of the environment.

3. Application

These rules apply to the *ports* of Richards Bay, Durban, East London, Ngqura, Port Elizabeth, Mossel Bay, Cape Town, Saldanha Bay and Port Nolloth and to any other *port* that has been determined to be a *port* in terms of section 10(2) of the *Act*.

4. Location of resources

The following documents may either be found on the website of the *Authority* or otherwise obtained from the *Authority*:

(a) Ballast Water Management Plan;

(b) Local Contingency Plan;

(c) National Contingency Plan;

(d) Port Contingency Plan;

(e) *Tariff Book*;

(f) Traffic Separation Scheme;

(g) *VTS charts*; and

(h) Port Waste Management Plan.

5. Powers of the *Harbour Master*

(1) If a matter falls within the *Harbour Master's* functions as specified in section 74(3) of the *Act*[2], then the *Harbour Master* may —

(a) give written or verbal instructions in accordance with the *Harbour Master*'s powers as set out in section 74(3) of the *Act*;

(b) permit a *vessel* to follow a procedure or practice other than that required by these rules, if he or she is satisfied that the other procedure or practice is as safe as that required by the relevant rule and is in the interests of security, good order, protection of the environment and the effective and efficient working of the *port*.

(2) Contravention of a procedure or practice substituted pursuant to sub-rule (1)(b) is deemed to constitute a contravention of the procedure or practice required by the relevant rule.

6. Powers of the *Authority*

(1) The *Authority* may give written or verbal instructions in accordance with the *Authority*'s powers and functions as set out in the *Act*, if the matter does not fall within the *Harbour Master's* functions as specified in rule 5.

(2) The *Authority* may permit a person to follow a procedure or practice other than that required by these rules in respect of matters that do not fall within the *Harbour Master*'s functions as specified in rule 5, if the *Authority* is satisfied that the other procedure or practice is as safe as that required by the relevant rule and 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 procedure or practice required by the relevant rule.

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[2] In terms of section 74(3) of the *Act* —

(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 the purposes of paragraph (2), the *Harbour Master* may give 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; and

(vi) carrying into effect the provisions of the *Act*.

7. Compliance with the *Harbour Master*'s and *Authority*'s instructions

All persons must comply with the instructions of the *Harbour Master* in respect of all matters referred to in rule 5 and the instructions of the *Authority* in respect of all matters referred to in rule 6(1).

8. Co-operation with other authorities

(1) In terms of section 84 of the *Act*, the *Authority* may enter into co-operation agreements with immigration, *customs*, law enforcement and any other authorities required to perform a function within a *port*.

(2) The co-operation agreement —

(a) must afford the authorities referred to in sub-rule (1) every facility reasonably necessary, subject to such compensation as may be agreed between the *Authority* and the other authorities, or failing an agreement, such compensation as the Minister may determine;

(b) must regulate the operational relationship between the *Authority* and the other authorities referred to in sub-rule (1); and

(c) may vary these rules for or exempt the authorities referred to in sub-rule (1) from complying with one or more of these rules, provided that the co-operation agreement puts in place adequate measures that ensure safety and that these measures are in the interests of security, good order, protection of the environment and the effective and efficient working of the *port*.

CHAPTER 2: *VESSEL* MOVEMENTS AND RELATED MATTERS

PART A: APPLICATION

9. Application of this Chapter and Part B

(1) Parts C to G of this chapter apply to *vessels*, but do not apply to *pleasure vessels*.

(2) Subject to sub-rule (3), Part B of this chapter applies to —

(a) the *approaches to a port* where there is a defined *VTS zone*;

(b) *vessels* and *pleasure vessels* of 15 metres or more in *length*;

(c) *vessels* and *pleasure vessels* engaged in towing or pushing any *vessel*, *pleasure vessel* or object, other than fishing gear, where —

(i) the combined *length* of the *vessel* or *pleasure vessel* and any *vessel*, *pleasure vessel* or object towed or pushed by the *vessel* or *pleasure vessel* is 30 metres or more in *length*; or

(ii) the *length* of the *vessel*, *pleasure vessel* or object being towed or pushed is 15 metres or more in *length*;

(d) *passenger vessels*; and

(e) a *vessel* carrying *dangerous goods*.

(3) Part B of this chapter does not apply to —

(a) *vessels* exempted from the provisions of the Marine Traffic Act No. 2 of 1981 by virtue of regulation 2 of the Marine Traffic Regulations, 1981, published by Government Notice No. R. 194 of 1 February 1985[3]; or

(b) *fishing vessels* of less than 24 metres in *length*.

PART B: THE REGULATION AND CONTROL OF NAVIGATION IN THE APPROACHES TO A PORT

10. Functions of the VTS with respect to the *approaches to a port*

With respect to any *vessel* about to enter or within a *VTS zone* and for the purpose of promoting safe and efficient navigation, the *VTS* may —

(a) give a traffic clearance to a *vessel* to enter, leave or proceed within a *VTS zone*;

(b) direct the *master*, pilot or person in charge of the bridge watch of the *vessel* to provide relevant information in respect of that *vessel*;

(c) direct the *vessel* to use specific radio frequencies in communications with coast stations or other *vessels*;

(d) advise the *vessel* of —

(i) the non-availability of a berth required for the *vessel*;

(ii) pollution or reasonable apprehension of pollution in the *VTS zone*;

(iii) the proximity of animals whose well-being could be endangered by the movement of the *vessel*;

(iv) any obstruction or hazard to navigation in the *VTS zone*;

(v) the proximity of a *vessel* in apparent difficulty or presenting a pollution threat or other hazard to life or property;

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[3] In terms of regulation 2 of the Marine Traffic Regulations, 1981, warships, submarines or other underwater vehicles present in the territorial waters and which constitute or form part of a visiting force as defined in section 1 of the Defence Act No. 44 of 1957 are exempted from the provisions of the Marine Traffic Act No. 2 of 1981.

(vi) the proximity of a *vessel* navigating in an unsafe manner or with improperly functioning equipment or radio equipment, or without *charts* or publications required by these rules or any other law; or

(vii) *vessel* traffic congestion that constitutes an unacceptable risk to shipping, the public or the environment; and

(e) in the light of one of more of the conditions referred to in sub-rule (d), direct the *vessel*—

(i) to leave a *VTS zone*;

(ii) to leave or refrain from entering an area within a *VTS zone*; or

(iii) to proceed to or remain at a location within a *VTS zone*.

11. Nautical *charts* and publications relating to the VTS zone

The *master* of a *vessel* must ensure, before the *vessel* enters or proceeds within a *VTS zone*, that it has on board the latest editions of the nautical *charts* relating to that *VTS zone*.

12. Traffic clearance and communication with VTS

(1) Subject to sub-rules (4) and (6), no *vessel* may —

(a) enter, leave or proceed within a *VTS zone* without having previously obtained a traffic clearance as envisaged by rule 10(a); or

(b) proceed within a *VTS zone* unless able to maintain direct communication with the *port's* *VTS* in accordance with sub-rule (2)(b).

(2) The *master* of a *vessel* must ensure that —

(a) before the *vessel* enters a *VTS zone*, its radio equipment is capable of receiving and transmitting radio communications on the channel and radio frequency published by the South African Navy Hydrographic Office or other recognised international hydrographic publications; and

(b) where the *vessel* is in a *VTS zone*, a continuous listening watch is maintained on the channel and radio frequency referred to in sub-rule (2)(a) on the radio equipment located —

(i) at any place on the *vessel*, when the *vessel* is at anchor or moored to a buoy; and

(ii) in the vicinity of the *vessel's* conning position, when the *vessel* is under way.

(3) The listening watch to the port's *VTS* referred to in sub-rule (2) may be suspended if the *VTS* directs the *vessel* to communicate with coast stations and other *vessels* on a different channel and radio frequency.

(4) The *master* of a *vessel* may proceed on his or her route, if the *vessel*, for any reason other than the failure of shipboard radio equipment —

(a) is unable to obtain a clearance required by sub-rule (1)(a) by reason of inability to establish direct communication with the VTS; or

(b) after receiving a clearance, is unable to maintain direct communication with the *VTS*.

(5) The *master* of the *vessel* referred to in sub-rule (4) must take all reasonable measures to communicate with the *VTS* as soon as possible.

(6) The *master* of a *vessel* may not proceed on his or her route, if the *vessel*, due to the failure of shipboard radio equipment —

(a) is unable to obtain a clearance required by sub-rule (1)(a) by reason of inability to establish direct communication with the *VTS*; or

(b) after receiving a clearance, is unable to maintain direct communication with the *VTS*.

(7) The *master* of the *vessel* referred to in sub-rule (6) must take all reasonable measures to repair the radio equipment, broadcast the position of the *vessel* and report the occurrence to the *VTS* as soon as possible.

13. Reporting to the VTS

(1) The *master* of a *vessel* must ensure that a report is made to the *VTS* —

(a) at least 15 minutes before the *vessel* —

(i) enters a *VTS zone*, except where the *vessel* has been given a traffic clearance under rule 12(1)(a); or

(ii) commences a *manoeuvre* in a *VTS zone* that may be detrimental to safe navigation;

(b) as soon as practicable after the *vessel* arrives at an anchorage or mooring buoy in a *VTS zone*;

(c) at least five minutes before commencing a *manoeuvre* in a *VTS zone* during which the *vessel* leaves an anchorage or mooring buoy and gets safely under way;

(d) when the *vessel* arrives at a *VTS* reporting point as described on the *charts*;

(e) as soon as practicable after the *vessel* commences a *manoeuvre* in a *VTS zone* that may be detrimental to safe navigation; and

(f) immediately after the *vessel* gets safely under way after leaving an anchorage or mooring buoy in a *VTS zone*.

(2) The contents of the reports required in sub-rule (1) must specify the issues set out in the third column of the table below:

Item	Nature of the Report	Report to specify
1	Rule 13(1)(a)(i) – At least 15 minutes before the *vessel* enters a *VTS zone*, except where the ship has been given a traffic clearance under rule 12(1)(1)(a).	• The name of the *vessel*; • The radio call sign of the *vessel*; • The position of the *vessel*; • The estimated time that the *vessel* will enter the *VTS zone*; • The destination of the *vessel*; • The estimated time that the *vessel* will arrive at its destination; and • Whether any *dangerous goods* are carried on board the *vessel* or the *vessel* being towed or pushed by the *vessel*.
2	Rule 13(1)(a)(ii) – At least 15 minutes before the *vessel* commences a *manoeuvre* in a *VTS zone* that may be detrimental to safe navigation.	• The name of the *vessel*; • The position of the *vessel*; and • The *manoeuvre* that the *vessel* is about to commence.
3	Rule 13(1)(b) – As soon as practicable after the *vessel* arrives at an anchorage or mooring buoy in a *VTS zone*.	• The name of the *vessel*; and • The position of the *vessel*.
4	Rule 13(1)(c) – At least five minutes before commencing a *manoeuvre* in a *VTS zone* during which the *vessel* leaves an anchorage or mooring buoy and gets safely under way.	• The name of the *vessel*; • The radio call sign of the *vessel*; • The position of the *vessel*; • The estimated time that the *vessel* will depart the anchorage or mooring buoy; • The destination of the *vessel* in the *port*; • The estimated time that the *vessel* will arrive at its destination; and • Whether any harmful substance *cargo* is carried on board the *vessel* or any *vessel* being towed or pushed by the *vessel*.
5	Rule 13(1)(d) – When the *vessel*	• The name of the *vessel*;

Item	Nature of the Report	Report to specify
	arrives at a *VTS* reporting point as described on the *charts*.	• The position of the *vessel* and the number of the reporting point on the *charts*; and
	Rule 13(1)(f) – Immediately after the *vessel* gets safely under way after leaving an anchorage or mooring buoy in a *VTS zone*.	• The estimated time that the *vessel* will arrive at the next location where a report is required by these regulations to be made.
6	Rule 13(1)(e) – As soon as practicable after the *vessel* commences a *manoeuvre* in a *VTS zone* that may be detrimental to safe navigation.	• Description of the *manoeuvre*.

14. Anchoring or sojourning of vessels with nuclear material

No *vessel* propelled by nuclear power or which has on board any radioactive material capable of causing nuclear damage may anchor or sojourn in the *approaches to a port* without a nuclear vessel licence issued by the Chief Executive Officer of the National Nuclear Regulator in terms of section 21(2) of the National Nuclear Regulator Act No. 47 of 1999.[4]

15. Vessels may not be *unseaworthy*

For the purpose of promoting safe and efficient navigation, the provisions of rule 50, read with the changes required by the context, apply to *vessels* within the *approaches to a port*.

PART C: REQUIREMENTS FOR ENTERING A PORT

16. Permission to enter a port

(1) No *vessel* may enter a *port* without the permission of the *Harbour Master*. The *Harbour Master* may grant, refuse, withdraw or amend the permission.

(2) No *vessel* propelled by nuclear power or which has on board any radioactive material capable of causing nuclear damage may enter a *port* without a nuclear vessel licence issued by the

[4]Section 21(2) of the National Nuclear Regulator Act No. 47 of 1999 states the following:

"Any person wishing to—

(*a*) Anchor or sojourn in the territorial waters of the *Republic*, or

(*b*) Enter any port in the *Republic*,

With a vessel which is propelled by nuclear power or which has on board any radioactive material capable of causing nuclear damage may apply to the chief executive officer [of the National Nuclear Regulator] for a nuclear vessel licence and must furnish such information as the board requires."

Chief Executive Officer of the National Nuclear Regulator in terms of section 21(2) of the National Nuclear Regulator Act No. 47 of 1999.[5]

17. Notices in terms of Merchant Shipping (Maritime Security) Regulations, 2004 to be copied to the *Authority*

At least 96 hours before the arrival in a *port* of a *foreign regulated ship*, the *owner*, *master* or *agent* of that vessel must send to the *Authority* a copy of the ship's pre-arrival information that was sent to the South African authorities in terms of regulation 86 of the Merchant Shipping (Maritime Security) Regulations, 2004.[6]

18. Notice of arrival

(1) The *owner*, *master* or *agent* of a *vessel* must give at least 72 hours notice in *writing* of the arrival of a *vessel* at a *port* to the *Harbour Master* of that *port*.

(2) The notice must include –

(a) the expected date and time of arrival of the *vessel*;

(b) the name and type of the *vessel*, call sign, *port* of registration and flag;

(c) the purpose of the call at the *port*;

(d) the *vessel*'s draught (both fore and aft), deadweight, *length* overall, freeboard and gross tonnage;

(e) the name and contact details of the *agent* representing the *vessel*;

(f) whether the *vessel* is compliant with the International Safety Management (ISM) Code;

(g) the *vessel's IMO* number;

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[5] See footnote 4.

[6] Regulation 86 of the Merchant Shipping (Maritime Security) Regulations, 2004 states the following:

"(1) The master of a *foreign regulated ship*, or a ship intending to enter South African waters that would, once it had done so, be a *foreign regulated ship*, must provide pre-arrival information in accordance with the requirements determined in writing by the Director-General.

(2) Without limiting subregulation (1), the Director-General may determine –
(a) The person or persons to whom pre-arrival information must be given;
(b) The circumstances in which pre-arrival information must be given; and
(c) The form and manner in which pre-arrival information must be given.

(3) Pre-arrival information is information that –
(a) Must be provided by the ship before the ship enters one or more of the following:
(i) South African waters;
(ii) A security regulated port;
(iii) A port that is not a security regulated port; and
(b) Is of a kind that can be requested, under X1-2/9 of the Safety Convention, by a port state from a foreign flagged ship.

(4) If the master of a ship contravenes subregulation (1), the master or the ship operator for the ship may be given a control direction under Division 2 of this Part."

(h) the *port* where the *vessel* paid or intends to pay its light dues;

(i) the *vessel*'s last and next ports of call;

(j) conditions that may cause the *vessel* to be *unseaworthy*;

(k) the quantity of bunkers on board, and the *vessel*'s bunker and other requirements;

(l) whether the *vessel* will be bunkering by barge or by pipeline;

(m) any nuclear installations, radio-active or toxic material or waste, explosives, flammable liquids or other *dangerous goods* on board, in accordance with Rule 20;

(n) the nature and quantity of *cargo* to be shipped, landed or transhipped;

(o) any other matter, including stowaways on board, which may affect the safety, security, good order and the protection of the environment in the *port*;

(p) the crew complement on the *vessel*;

(q) whether the *vessel* is engaged in a towage or salvage service; and

(r) whether the *vessel* has one or more *vessels* in tow and the particulars of these *vessels*, as required by rule 19.

19. Procedures to approach and enter a port if there are vessels in tow

(1) If the *vessel* intending to enter a *port* has one or more *vessels* in tow, then the notice of arrival referred to in rule 18 must disclose —

(a) the number of *vessels* being towed and the total length of the tow, which is the distance from the forepart of the towing *vessel* to the after-part of the last *vessel* under tow;

(b) the method of towing;

(c) whether the towing *vessel* or any *vessel* being towed is *unseaworthy*;

(d) whether auxiliary power is available on the *vessel* or *vessels* under tow;

(e) if auxiliary power is available on the *vessel* or *vessels* under tow, the extent of the power available and whether it is sufficient for working the main engine, steering gear, deck machinery and lowering or heaving the anchors of the *vessel* or *vessels* under tow;

(f) the crew complement on board the towing *vessel and the vessel* under tow;

(g) whether any of the *vessels* in tow are *tankers*, and if so, whether the *tankers* are *gas free;*

(h) what quantity of fuel and lubricating oil is on board the towing *vessel*;

(i) what quantity and type of fuel and lubricating oil is on board any *vessel* in tow and where such fuel and oil is located;

(j) what means of radio communication is available to the *master* of the towing *vessel*;

(k) whether the *vessel* or *vessels* in tow can be disconnected and handed over to another tug at sea; and

(l) any other details which may affect the safety, security, good order and the protection of the environment in the *port*.

(2) Unless the *Harbour Master* directs otherwise, the towing *vessel* and the *vessel* or *vessels* in tow must request the *Harbour Master* for permission to enter the *port* at a position no closer than 12 nautical miles to seaward.

(3) Unless the *Harbour Master* directs otherwise, a *vessel* engaged in a towage or a salvage service may not *enter the VTS zone* .

20. Notice of weapons, explosives and other *dangerous goods* on board

(1) The *owner*, *master* or *agent* of a *vessel* having any radio-active or toxic material or waste, weapons, explosives, flammable liquids or other *dangerous goods* on board must give the *Harbour Master* and the terminal operator full written particulars of these items at least 72 hours before the arrival of the *vessel* at the *port*.

(2) The particulars must include —

(a) the items' correct technical name;

(b) the UN number;

(c) the net explosive quantity and mass of the *cargo*;

(d) the class of the *dangerous goods*, as specified by the categories listed in the *IMDG Code*;

(e) the type of packaging used; for example, drums, containers or bulk;

(f) the nature of any weapons on board the *vessel* and the purpose for which they are kept on board;[7]

(g) copies of any permits or licences in respect of the weapons, explosives or *dangerous goods* that were issued in terms of any applicable legislation;

(h) any other information relevant to the maintenance of the safety, security, good order of the *port* and the protection of the environment; and

(i) in the case of a *vessel* propelled by nuclear power or which has on board any radioactive material capable of causing nuclear damage, a nuclear vessel licence in terms of section 21(2) of the National Nuclear Regulator Act No. 47 of 1999.

(3) The *Harbour Master* may shorten the 72-hour period specified in sub-rule (1).

[7] See rule 27.

21. Requirements for *passenger* vessels

(1) A *passenger vessel* calling at any *port* must hold relevant and valid *passenger* vessel safety certificates in accordance with the Safety of Life at Sea Convention 1974, as amended.

(2) The total complement of *passengers* may not exceed the total number of *passengers* allowed to voyage on board a *vessel* according to the certificates described in sub-rule (1).

22. List of *passengers* and crew

(1) At least 24 hours before the arrival of the *vessel* in the *port*, the *vessel*'s *owner*, *master* or *agent* must submit to the *Authority*, and where applicable to the terminal operator, a list of the *passengers* and crew for disembarkation.

(2) The *Authority* may shorten the 24-hour period specified in sub-rule (1).

23. Nautical *charts* and publications relating to the port

The *master* of a *vessel* must ensure, before the *vessel* enters or proceeds within a *port*, that it has on board the latest editions of the nautical *charts* and publications relating to that *port* and the Traffic Separation Scheme applicable to the *port*, where one exists.

24. Vessels to communicate with VTS or Port Control

(1) *Vessels* must comply with all traffic directives issued by the *port's VTS* or, where the *port* does not operate a *VTS*, the Port Control.

(2) A *vessel* must communicate to *VTS* or, where the *port* does not operate a *VTS*, the Port Control, its arrival at the reporting points indicated on the *chart* for that *port*.

25. Signals, flags and lights

When entering a *port* a *vessel* must display —

(a) its national colours;

(b) the flag of the *Republic*;

(c) if applicable, a signal indicating that a pilot is on board (international code flag "H");

(d) if free pratique has not been granted, a quarantine flag (international code flag "Q");

(e) if immigration officials are required (international code flag "I");

(f) if there are *dangerous goods* on board, international code flag "B" by day and a red light by night; and

(g) any other signal the *Harbour Master* requires.

26. Mooring plan

(1) The *Harbour Master* may direct that a mooring plan be furnished to the *Harbour Master* before the entry of a *vessel* into the *port*.

(2) If a plan is not furnished as directed, or the plan is, in the opinion of the *Harbour Master*, inadequate, the *Harbour Master* may refuse permission for the *vessel* to enter the *port*.

(3) If the *Harbour Master* is of the opinion that the plan is inadequate, the *Harbour Master* will provide reasons for that opinion.

27. Weapons and explosives to be locked up and disarmed

(1) Unless the *Harbour Master* directs in writing otherwise, before a *vessel*, other than a South African naval *vessel*, enters a *port*, the *master* of the *vessel* must ensure that all weapons and explosives on board the *vessel*, irrespective of whether or not they are intended for import or transit, are locked up in a secure place such as a gun safe and are disarmed.

(2) If the weapons or explosives are to be imported into or transported through the *Republic*, then the owner or master of the vessel must comply with section 73 of the Firearms Control Act No. 60 of 2000.[8]

PART D: VESSELS WITHIN A PORT

28. Moorings and shore connections

(1) A *vessel* within a *port* must at all times and to the satisfaction of the *Harbour Master* —

- (a) have sufficient hands on board to attend to its moorings, *gangways* and other shore connections; and
- (b) deal with its moorings, *gangways* and other shore connections so as to ensure the safety and security of the *vessel*.

(2) No rope may be made fast except to the dolphins, buoys, mooring posts and bollards that are designated for that purpose.

(3) No wire rope may be used, unless the bollards and the edging of the coping of the wharf or jetty are protected to the satisfaction of the *Harbour Master* from chafe.

(4) Chain cables may not be used for mooring, except with the permission of the *Harbour Master*.

[8] Section 73 of the Firearms Control Act No. 60 of 2000:

"(1) No person may import into or export from South Africa any firearms or ammunition without an import or export permit issued in terms of this Act.

(2) No person may carry in transit through South Africa any firearms or ammunition without an in-transit permit issued in terms of this Act."

29. Vessels to have sound and efficient mooring lines

(1) A *vessel* must have sound and efficient mooring lines when it moors in a *port* so that it moors safely.

(2) If the *vessel* does not have sound and efficient mooring lines on board, then the *vessel*'s *agent* must see to it that mooring lines of this nature are provided to the *vessel* at the time that it moors.

(3) The *Harbour Master* may direct a *vessel* that does not have sound and efficient mooring lines to obtain them before the *vessel* is moored.

(4) No mooring line may be cast off, unless the *Harbour Master* directs or authorises this.

30. Permission to *shift* or to immobilise within a port

(1) No *vessel* may *shift* within a *port* without the permission of the *Harbour Master*. The *Harbour Master* may grant, refuse, withdraw or amend the permission.

(2) While within a *port*, no *vessel* may be immobilised without the prior written permission of the *Harbour Master*. The *Harbour Master* may grant permission for the immobilisation of a *vessel*, subject to whatever conditions he or she prescribes in the interests of safety, security, the efficiency and good order of the *port* and the protection of the environment.

31. Notice of port movements

(1) The terminal operator, *master* or *agent* of a *vessel* must give at least four hours notice to the *Harbour Master* of the time the *vessel* will be ready to *shift* within a *port*.

(2) The terminal operator, *master* or *agent* of the *vessel* must confirm this notice no less than two hours before the movement takes place.

(3) The *Harbour Master* may vary the notice periods set out in sub-rules (1) and (2).

32. Signals, flags and lights

When alongside a quay or jetty or moving within a *port*, a *vessel* must display the signals, flags and lights required by the *Harbour Master*.

33. *Harbour Master* may require the movement of a vessel

The *Harbour Master* may, in the interest of safety, security, good order and the efficient working of the *port*, or the protection of the environment, require a *vessel* to *shift* from a berth to another part of the *port*. The costs of this movement will be for the *master* of the *vessel*, unless otherwise agreed.

34. Explosives and pyrotechnics

(1) No explosives or pyrotechnic signals may be used within a *port*, unless a *vessel* is in distress or the *Harbour Master* permits otherwise.

(2) The *Harbour Master* may impose any conditions upon the use of explosives or pyrotechnic signals in the interests of safety, security, good order and the protection of the environment.

35. VTS or Port Control

While in a *port*, *vessels* must comply with all the traffic directives of the *port's* *VTS* or, where the *port* does not operate a *VTS*, the Port Control.

PART E: DEPARTURE FROM A PORT

36. Permission to leave a port

No *vessel* may leave a *port* without the permission of the *Harbour Master*. The *Harbour Master* may grant, refuse, withdraw or amend the permission.

37. Notice of departure

(1) The terminal operator, *master* or *agent* of a *vessel* must give at least four hours notice to the *Harbour Master* of the time that the *vessel* will be ready to depart from the *port*.

(2) The terminal operator, *master* or *agent* of the *vessel* must confirm this notice no less than two hours before the departure is to take place.

(3) The *Harbour Master* may vary the notice periods set out in sub-rules (1) and (2).

38. List of *passengers* and crew

(1) At least 24 hours before the departure of the *vessel* in the *port*, the *vessel's* *owner*, *master* or *agent* must submit to the *Authority*, and where applicable, the terminal operator, a list of the *passengers* and crew for embarkation.

(2) The *Authority* may shorten the 24-hour period specified in sub-rule (1).

39. Vessels to communicate with VTS

(1) *Vessels* must comply with all traffic directives issued by *VTS* or, where the *port* does not operate a *VTS*, the Port Control.

(2) A *vessel* must communicate to *VTS* or, where the *port* does not operate a *VTS*, the Port Control, its departure at the reporting point indicated on the *chart* for that *port*.

PART F: PILOTS AND PILOTAGE

40. Pilotage is compulsory unless exemption is granted

(1) Pilotage is compulsory for *vessels* entering, departing from or moving within a *port*.

(2) If the *Harbour Master* is satisfied that the *master* of a *vessel* is competent to navigate the *vessel* safely within *port* limits without assistance of a pilot, then the *Harbour Master* may —

(a) grant permission in *writing* to the *master* to navigate the *vessel* without the assistance of a pilot on a specified occasion; or

(b) grant to the *master* standing permission in the form of a pilotage exemption licence to navigate the *vessel* without the assistance of a pilot during the period of validity of the licence.

(3) The *Harbour Master* may suspend or cancel a pilotage exemption licence if it is in the interests of safety, security, good order and the protection of the environment.

41. Pilot's functions

In terms of sections 75(3) to (5) of the *Act* —

(a) 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;

(b) the pilot must determine the number of tugs required for pilotage with the concurrence of the *master* of the *vessel*;

(c) in the event of a disagreement between the pilot and the *master* of the *vessel* regarding the number of tugs to be used, the *Harbour Master* takes the final decision.

42. Licensing of pilots

(1) In terms of section 77(1) of the *Act*, no person may perform the functions of a pilot in a *port* unless —

(a) *SAMSA* has certified the person; and

(b) the *Authority* has issued the person with a licence to perform these functions.

(2) The *Authority* may —

(a) determine the manner in which applications for licences are assessed and decided;

(b) subject to the provisions of the *Act*, the requirements set by the Minister of Transport and these rules, determine the terms and conditions of the licence;

(c) impose conditions upon the issuing of a licence; and

(d) on good cause shown, suspend, withdraw or cancel a licence or registration after it has followed a fair procedure.

43. Master remains in control of a vessel under pilotage

In terms of sections 75(6) and (7) of the *Act* —

(a) the *master* of the *vessel* must at all times remain in command of the *vessel*;

(b) 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; and,

(c) in an emergency, 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.

44. Assistance to the pilot

In terms of section 75(8) of the *Act*, 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.

45. Pilot ladders

(1) The *master* of a *vessel* entering or leaving or moving within a *port* under pilotage must provide a pilot ladder unless the pilot is embarking and disembarking by helicopter.

(2) The pilot ladders must comply with the *IMO's* Recommendation on Pilot Transfer Arrangements and the International Organisation for Standardisation (ISO) standards on pilot ladders.

(3) The *master* in charge of an unmanned *vessel* under tow must, on arrival at the *approaches to a port*, arrange for a safe and suitable way for *port* and other officials to board the *vessel* under tow. In general, this means that the *master* should arrange for a pilot ladder equipped with two man-ropes over-side of the *vessel* under tow.

46. Helicopter vessel-shore operations

(1) The *Harbour Master* may decide to use a helicopter for the pilot to embark and disembark from a *vessel*.

(2) All helicopter operations must be carried out in compliance with Schedule 1 of the South African Civil Aviation Authority Act No. 40 of 1998.

(3) The *master* of a *vessel* must follow the procedures and take the measures indicated in the International Chambers of the Shipping Guide when using a helicopter for the transfer of persons to and from a ship.

PART G: PERMITS FOR SMALL VESSELS - AND RELATED MATTERS

47. *Small vessels*

(1) No *small vessel* may lie in, be used in or operated from a *port* unless —

(a) *SAMSA*, or another authority acceptable to *SAMSA,* has granted the *owner* or *master* of the *small vessel* a certificate of fitness; and

(b) the *Harbour Master* for that *port* has granted the *owner* or *master* of the *small vessel* a permit to do so.

(2) The *Authority* may determine —

(a) the manner in which applications for permits for *small vessels* are to be invited, assessed and decided;

(b) in the *Tariff Book*, the fees payable for application for a *small vessel* permit and the permit itself;

(c) the qualifications and suitable criteria that applicants for a permit must meet in order to obtain a permit; and

(d) subject to the *Act* and these rules, including the powers of the *Harbour Master* in terms of section 74(3), the terms and conditions of the permit.

(3) The *Harbour Master* for the *port* where the *small vessel* has applied for a permit as contemplated in sub-rule (1) may impose conditions or limitations upon the granting of the permit in the interests of safety, security, protection of the environment and the good order and efficient working of the *port*.

(4) The *Authority* may, on good cause shown, refuse, suspend, withdraw or cancel a permit provided it has followed a fair procedure before the decision is taken.

(5) If an *owner* or *master* of a *small vessel* fails to obtain a permit, the *Harbour Master* may remove or *shift* the *small vessel* at the expense of the *owner* or *master* of the *small vessel*.

(6) The *owner* or *master* of a *small vessel* must comply with the *Harbour Master*'s restrictions relating to launching, speed and area of operations or any other restrictions determined by the *Harbour Master* in respect of *small vessels* within port limits.

(7) A *small vessel* in possession of a permit as contemplated in sub-rule (1) must, at all times, keep out of the way of a *vessel* navigating in any channel or other area of the port.

(8) No *owner* or *master* of a *small vessel* may allow the *small vessel* to come into contact with another *vessel* while within *port* limits unless the *Harbour Master* authorises it.

(9) The provisions of rules 129 and 130, read with the changes required by the context, apply to *small vessels* in possession of a permit as contemplated in sub-rule (1).

(10) The *Authority* will set out, in the *Tariff Book,* the fees, dues and fines applicable to *small vessels* in possession of a permit as contemplated in sub-rule (1).

(11) The *Harbour Master* may issue written instructions about the regulation and control of *small vessels* in possession of a permit as contemplated in sub-rule (1).

(12) The *Authority* may exempt *small vessels* in possession of a permit as contemplated in sub-rule (1) from the provisions of one or more of these rules[9].

PART H: GENERAL

48. Compliance with laws, *charts*, schemes and directives with regard to vessel movement

While within the *approaches to a port* or within *port* limits, the *master* of a *vessel* is required to —

(a) comply with all applicable international and South African legislation with respect to *vessel* movement, including the Merchant Shipping (Collision and Distress Signals) Regulations 2005 and the Convention on International Regulations for the Prevention of Collisions at Sea 1972;

(b) move in accordance with the *chart* of the *port* or the Traffic Separation Scheme applicable to the *port;* and

(c) adhere to the instructions of the *VTS* or port control with regard to designated anchorage areas that the *Harbour Master* may have determined.

49. Master's authority not affected

Nothing in this Chapter affects the authority and responsibility of the *master* of a *vessel* for the safe navigation of his or her *vessel*.

50. Vessels may not be *unseaworthy*

(1) A *vessel* entering, leaving, moving or *shifting* within a *port*, or moving to an anchorage, may not be *unseaworthy* for that purpose.

(2) No *vessel* within a port may materially reduce its state of seaworthiness for any purpose without the prior written consent of the *Harbour Master*.

(3) As 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, the *Harbour Master* may direct that measures be adopted to prevent an *unseaworthy vessel* from navigating from, and within, the *port*.

(4) All costs and expenses incurred by the *Authority* or by the *vessel* as a result of having to comply with any of the *Harbour Master*'s measures as contemplated in terms of sub-rule (3) must be paid by the *vessel* before the *vessel* departs from the *port*.

[9] In terms of the current permit conditions, *small vessels* may be exempt from rules 18, 31, 37, 115, 117, 118 and 119.

51. Assignment of berths

(1) The terminal operator will determine the assignment of berths where only one terminal operator operates the berth.

(2) The *Authority* will determine the assignment of berths where a single terminal operator does not operate a berth and it may impose conditions upon the assignment of such a berth.

(3) In making its determination referred to in sub-rule (2), the *Authority* will take into account the contractual and other requirements of any terminal operators operating at that berth and the good order and efficient working of the *port*.

(4) Despite the provisions of this rule, the *Harbour Master* may determine the assignment of any berth if it is in the interests of the safety and security and the protection of the environment.

52. Assignment of marine services

(1) The *Harbour Master* determines the order of provision of marine services, which includes pilotage, tug and berthing services to *vessels* and the movement and mooring of ships in the *port*.

(2) In making the determination, the *Harbour Master* will take into account the interests of safety, security, and good order, the efficient working of the *port* and the protection of the environment.

53. Vessels to rig and stow gear

A *vessel* entering a *port*, berthing, *shifting* or departing from a *port* must have its sides clear, its boats swung inboard and projections of any kind rigged inboard.

54. Lost anchors

(1) The *master* of a *vessel* must, on becoming aware of any anchor, chain or cable that has parted or slipped from the *vessel*, report to the *VTS or port control*.

(2) The *master* must communicate to the *VTS* or port control the position where the anchor, chain or cable parted or slipped and whether the anchor, chain or cable was buoyed when the parting or slipping took place.

(3) The *master* must recover any parted or slipped anchor, chain or cable as soon as possible, if it is reasonably possible to do so, and failing that, the *Authority* will recover it at the expense of the *owner* or *master* of the *vessel*.

55. Making fast to navigational aids

No *vessel* may be made fast to any marking buoy, light buoy, or any navigational aid or mark provided for the safety of *vessels*.

56. Incidents in the approaches and within ports

(1) The *master* of a *vessel* that is within or about to enter the *approaches to a port* or within *port* limits must ensure that a report is made to the *Harbour Master* about any of the following matters as soon as the *master* becomes aware of them:

(a) the occurrence on board the *vessel* of any fire or explosion;

(b) the involvement of the *vessel* in a collision, grounding or striking;

(c) any defect in the *vessel's* hull, main propulsion systems or steering systems, radars, compasses, radio equipment, anchors or cables;

(d) any discharge or threat of discharge of *dangerous goods* or other harmful substances from the *vessel* into the water;

(e) another *vessel* in apparent difficulty;

(f) any obstruction to navigation;

(g) any aid to navigation that is functioning improperly, damaged, off-position or missing;

(h) the presence of any *dangerous goods* or harmful substances in the water;

(i) the presence of a *vessel* that may impede the safe movement of other *vessels*;

(j) any weather conditions that are detrimental to safe navigation;

(k) any matter that may affect the safety and security of the *vessel*, its crew or *passengers* and the port, or any matter that may affect the environment; and

(l) any other navigational or environmental incident.

(2) The *owner* or *master* of a *vessel* that has been involved in any navigational incident within the approaches to or in a *port*, or any environmental incident within a *port*, whether or not damage is done to any property, including underwater property, must —

(a) immediately report the incident to the *Harbour Master* as well as any other applicable regulatory body or government department;

(b) submit to the *Harbour Master* a full written report setting out the circumstances of the incident, within 24 hours after the accident or before the departure of the *vessel* from the *port*, whichever is the sooner; and

(c) furnish any further particulars that the *Harbour Master* may require.

57. Damage to property

The *owner* or *master* of any *vessel* that damages any property within the *port* or the approaches thereto, including fouling or displacing any buoy, navigational aid or navigational channel, must —

(a) immediately report the occurrence to the *Harbour Master* and any other applicable regulatory body or government department;

(b) submit to the *Harbour Master* a full written report setting out the circumstances of the occurrence, within 24 hours of the occurrence or before the departure of the *vessel* from the *port*, whichever is the sooner;

(c) furnish any further particulars that the *Harbour Master* may require.

58. Financial security for damages caused

Before a *vessel* departs from a *port*, the *Authority* may require the *owner* or *master agent* of a *vessel* to lodge financial security with the *Authority* to the satisfaction of the *Authority* if that *vessel* or its staff have caused pollution or damage to the environment or to property within a *port*.

59. Master to produce *vessel's* papers

The *Harbour Master* may require the *master* of a *vessel* arriving in a *port* to produce for inspection the *vessel*'s register, certificates and any other papers relating to the *vessel*.

60. *Vessels* in need of assistance

(1) If a *vessel* is in need of assistance and requests permission to enter into a *port*, the *Harbour Master* may consult with *SAMSA* and any other relevant statutory body.

(2) In considering whether to allow the *vessel* into a *port*, the *Harbour Master* takes into account the following factors —

(a) safeguarding of human life at sea;

(b) the *port*'s industrial and urban environment;

(c) the risk of pollution and damage to the environment;

(d) the evaluation of consequences if a request is refused, including the possible effect to neighbouring states;

(e) the risk of disruption to the *port*'s operations;

(f) the seaworthiness of the *vessel*, in particular its buoyancy, stability, means of propulsion and power generation, and its docking ability;

(g) the nature and condition of the *cargo*, stores and bunkers, especially if there is any hazardous *cargo*;

(h) the preservation of the hull, machinery and *cargo* of the *vessel in need of assistance*;

(i) the distance and estimated transit time to a *SAMSA* allocated place of refuge;

(j) whether the *master* is still on board;

(k) the number of crew, salvors and other persons on board and an assessment of human factors, including fatigue;

(l) whether the *vessel* in question is insured or not insured;

(m) where the *vessel* is insured, identification of the insurer, and the limits of liability available;

(n) provisions of financial security in favour of the *Authority* to guarantee payment of all expenses that may be incurred in connection with its operations;

(o) whether the *owner* and *master* of the *vessel* have agreed to the proposals of the *Authority* and/or salvor to proceed or to be brought to a place of refuge;

(p) commercial salvage contracts already concluded by the *master* or *owner* of the *vessel*;

(q) information on the intention of the *master* and/or salvor;

(r) the designation of a representative of the *owner* of the *vessel* in the *Republic*;

(s) the risk of disruption to the *Authority's* operations taking into account the *IMO* guidelines; and

(t) any other relevant considerations.

61. Arrested *vessels*

(1) The *Harbour Master* may direct that any *vessel* that has been arrested or attached by order of court, or detained by another authority, be moved to another place within *port* limits.

(2) The *Harbour Master* will give notice to the sheriff of the court, or any other official responsible for the upkeep of an arrested *vessel*, that the *vessel* must be moved.

(3) If the sheriff of the court or any other official of another authority contemplated in sub-rule (2) is unable to move the *vessel* within the period stipulated in the notice, the *Harbour Master* may move the *vessel* at the expense of the arresting creditor or creditors after consultation with the sheriff or other authority, as the case may be.

(4) In the event of the vessel's *agent* terminating his or her services, the sheriff of the court, or any other official responsible for the upkeep of an arrested *vessel*, must include any fees charged by the *Authority* in his or her claim against the Preservation Fund as contemplated in the Admirality Jurisdiction Regulation Act No. 105 of 1983 in respect of the arrested, attached or detained *vessel* from the time of its arrest, attachment, or detention until it is freed from the arrest, attachment or detention.

CHAPTER 3: HEALTH AND SAFETY

PART A: VESSEL SAFETY MEASURES

62. The master is responsible for the safety of the vessel

The *master* of a *vessel* within the *port* limits is at all times responsible for the safety of his or her *vessel* and nothing in these rules may be construed as relieving the *master* of this responsibility.

63. Conduct of the crew

The *owner* or *master* of a *vessel* must ensure the orderly conduct and behaviour of the crew of his or her *vessel* and ensure that all persons on board the *vessel* observe the laws of the *Republic* while the *vessel* is within *port* limits.

64. Fires and *hot work* repairs on vessels

(1) No open fires are permitted on board a *vessel* unless the *master* of the *vessel* has obtained the *Authority*'s permission for that fire.

(2) No *hot work* repairs are permitted on board a *vessel* unless the *master* of the *vessel* is authorised in terms of a *hot work permit* issued by the *Authority* in terms of rule 154.

(3) If a fire occurs on board a *vessel* within *port* limits, the *master* must inform port control by VHF radio, telephonically or any other appropriate means possible of the fire and —

(a) immediately give the alarm by sounding one continuous blast on the *vessel*'s siren; or

(b) if it is not possible to use the *vessel*'s siren, by the continuous ringing of the *vessel*'s bell.

(4) The staff of a *vessel* with a fire on board must immediately —

(a) take practicable steps to extinguish the fire and to protect adjoining property; and

(b) provide any further assistance that the *Harbour Master* or the *Chief Fire Officer* requires.

65. Sparks and the lighting of fires

(1) The *master* of a *vessel* in a *port* must take all necessary precautions to avoid the emission of sparks from his or her *vessel*, except where a *hot work permit* is issued in terms of rule 154.

(2) No person may light a fire upon any wharf, jetty, stacking area, quay or at any other place where the lighting of fires is prohibited by notice, except with the permission of the *Authority*.

(3) The *Authority* may impose conditions on any permission granted, to maintain safety, security, good order or to protect the environment.

(4) No person may smoke, ignite a match or lighters, or otherwise create or allow a fire or flame in any hold or at any open hatch of any hold of any *vessel* or within an area adjacent to such hold or open hatch –

(a) while flammable *cargo* is being shipped, discharged or transhipped into or from a hold or open hatch; or

(b) when non-flammable *cargo* is being worked in a hold that contains flammable *cargo*.

(5) Portable radios and cellular phones may not be used in any hold or at any open hatch of any hold of any *vessel* or within an area adjacent to such hold or open hatch, unless the radio or cellular phone is certified to be intrinsically safe.

66. Smoking on board vessels

(1) Notices must be displayed on board *vessels* where smoking is prohibited for safety reasons.

(2) Smoking is prohibited in the holds or on deck of *vessels* with open hatches or in the vicinity of deck *cargo*.

(3) *Vessels* carrying *dangerous goods* must prominently display at the *gangway* or other shore access points notices inscribed with the words: "Dangerous goods on board, smoking strictly prohibited."

(4) The notices must be written in English and accompanied by the international prohibition symbol for no smoking.

67. Persons disembarking or embarking

(1) A competent member of the *vessel*'s crew must be in attendance at the *vessel*'s *gangway* while persons, other than pilots, are disembarking from or embarking upon a *vessel* lying alongside a wharf, jetty or quay, in order to attend to the security of the *gangway* and the safety of persons passing over it.

(2) The same applies when a *vessel* lying at anchor uses a *gangway*, an accommodation ladder or other similar equipment.

(3) No person, other than a pilot in the exercise of his or her duties, may, except after obtaining the *Harbour Master*'s permission, board or leave a *vessel* while that *vessel* is in motion and that person may only leave or board the *vessel* by way of the pilot ladder or a helicopter provided for that purpose.

68. *Gangways*

(1) The *master* of a *vessel* that is alongside a wharf, quay or jetty, lying at buoys or at anchor, or outside another *vessel* must provide a safe and proper *gangway* to allow for free and safe passage to and from the deck of the *vessel*.

(2) The *gangway* must be sufficiently illuminated.

(3) A proper safety net must be rigged and secured below a *gangway* as soon as the *gangway* is in position, to safeguard persons using the *gangway* from falling into the water or onto a wharf, quay or jetty.

(4) The *master* is responsible for the handling of the *gangway* and must ensure that the operations are carried out in a proper and safe manner.

(5) The person in control of the *gangway* must regulate the number of persons allowed on the *gangway* at any one time.

(6) A notice indicating the maximum number of persons to be allowed on the *gangway* at any one time must be clearly displayed at each end of the *gangway*.

(7) A lifebuoy with a line attached to it must be placed near each *gangway* and kept ready for immediate use.

(8) The *master* must ensure that the *gangway* is at all times positioned so that it does not obstruct or foul rail or crane tracks, constitute a hazard to the safe movement of trucks and cranes or interfere with bunkering operations.

(9) The *master* of a *vessel* must take the necessary precautions to prevent damage to quay surfaces by the *vessel*'s *gangways* and loading ramps.

(10) Where the nature or construction of a jetty or wharf is such that it is impossible for the *vessel* to comply with this rule, the *master* of the *vessel* must conform to the *Harbour Master*'s instructions concerning *vessel* to shore access.

69. Engine trials

No *master* may perform engine trials of the *vessel* while it is alongside a wharf, quay or jetty or while it is berthed outside another *vessel* in a *port*, unless the *master* has the permission of the *Harbour Master*.

70. Lowering of boats from vessels

A *master* may cause or permit a boat to be lowered from his or her *vessel* in a *port* only if the *master* has permission from *Customs* and the *Harbour Master*.

71. Vessel's handling material or gear in port

(1) Unless a vessel's handling material or gear is being used for legitimate operational purposes, a *vessel* may not place its handling material or gear upon any wharf, jetty or quay, or elsewhere within *port* limits without the written consent of the terminal operator, in the case of a terminal, or the *Harbour Master*, in the case of any other area.

(2) If it is placed anywhere without the required consent, it may be removed immediately, at the expense of the *owner* or *master* of the *vessel*, to a place determined by the terminal operator or the *Harbour Master*.

72. Vessels may not be moored nor obstacles placed within the water area of a port repair facility

Unless the *Harbour Master* directs otherwise, no *vessel* may anchor or be moored within, and no person may place any chain, anchor or other obstacle in the water area adjacent to a *port* repair facility, which includes a floating dock, synchrolift or slipway.

PART B: GENERAL SAFETY MEASURES

73. Requirements for *fire protection personnel*

(1) The *Authority* may set requirements for *fire protection personnel* who operate within a *port*.

(2) All *fire protection personnel* must comply with the *Authority's* requirements.

74. The *Harbour Master* may instruct that safety measures be taken

Despite the provisions of any other rule, the *Harbour Master* may, in the interests of the safety of the *port*, the persons, *vessels* and other property in it, issue instructions that safety precautions be taken, or take emergency measures that the *Harbour Master* believes are necessary or appropriate.

75. Heating of substances

(1) No person may boil or heat pitch, tar, resin, turpentine, oil or other flammable matter on shore within a *port* on any wharf, jetty, stacking area, quay or at any other place where the lighting of fires is prohibited by notice except —

(a) with the permission of the *Authority*; or

(b) if the person has a valid *Hot Work Permit* issued by the *Authority*.

(2) The *Authority* may impose conditions upon any permission granted to maintain safety, security, good order or to protect the environment.

76. Smoking on the shore

The *Authority* will designate areas on the shore of the *port* where no smoking may take place. No person may smoke in such a designated *no-smoking area*.

77. The use of portable radios or cellular phones on the shore

The *Authority* will designate areas on the shore of the *port* where portable radios and cellular phones may not be used. No person may use portable radios or cellular phones, other than those that are certified to be intrinsically safe, in such a designated area.

78. Occupational health and safety legislation

All persons, including service providers, terminal operators, drivers of transport vehicles, employers, lessees and visitors within *port* limits, must comply with the provisions of any legislation relating to occupational health and safety matters, including the Merchant Shipping Act No. 57 of 1951, the Occupational Health and Safety Act No. 85 of 1993 and its regulations, the Maritime Safety Regulations of 1994, the *IMDG Code* and the National Road Traffic Act No. 93 of 1996.

79. *Authority's* written instructions with regard to occupational health and safety matters

(1) In order to give effect to rule 77, the *Authority* may issue verbal or written instructions relating to occupational health and safety matters within the *port*.

(2) All persons are required to adhere to these instructions.

80. Personal protective equipment

All persons working within an area that is designated as an operational area by the *Authority* must wear the appropriate personal protective equipment, including a hard hat, safety boots and reflective high-visibility vests.

81. Closing of parts of the port

(1) In the interests of maintaining safety, security, good order and the protection of the environment, or if the *Authority* determines that construction work should be carried out in any part of the *port*, the *Authority* may –

(a) close any part of the *port* to the public; or

(b) prohibit the public's use of or restrict the public's access to any part of the *port*.

(2) Despite sub-rule (1), the *Authority* may allow access to parts of the *ports* to which the public has restricted access or which are closed to the public on conditions to be determined by the *Authority*.

82. Incidents or damage to property on the shore within ports

All service providers, employers, lessees or other persons, other than a licensed operator[10], involved in an incident on the shore within a *port*, whether or not damage is done to any property or the environment, or involved in damage to the *Authority's* property on the shore or the environment within the *port*, must –

(a) immediately report the incident to the *Authority* as well as any other applicable regulatory body or government department;

[10] Licensed operators are required to report incidents in terms of s 62(5) of the *Act*.

(b) submit to the *Authority* a full written report setting out the circumstances of the incident or damage to property within 24 hours after the incident; and

(c) furnish any further particulars that the *Authority* may require.

83. Swimming, surfing, fishing, diving and water sports

(1) No person is allowed to dive or perform diving operations within *port* limits without the permission of the *Harbour Master*.

(2) A person may only swim, surf, fish or engage in water sports within *port* limits in areas designated for these purposes by the *Authority* or a person authorised by the *Authority*.

(3) The *Harbour Master* may, in the interests of maintaining safety, security, good order and the protection of the environment, impose conditions upon any swimming, surfing, fishing, diving or water sports that take place within port limits.

84. Animals

(1) For the purposes of this rule, animals include birds.

(2) The *Authority* may confiscate or confine any domesticated, tame or wild animal that is found at large on the *Authority's* premises within *port* limits.

(3) The *master* of a *vessel* must properly secure animals that are on board a *vessel* in a *port*.

(4) The *master* of a *vessel* may not allow an animal to come ashore without the *Authority's* permission.

CHAPTER 4: PROTECTION OF THE ENVIRONMENT

85. Prevention of pollution and protection of the environment

(1) All persons within a *port* must take all reasonable steps to prevent, minimise and mitigate pollution or damage to or degradation of the environment.

(2) Any person who pollutes or causes damage to the environment will bear the costs associated with the combating and cleaning up of that pollution, damage or degradation, and the associated impacts relating thereto.

(3) If the person or persons responsible for the pollution or damage to the environment fail to take the necessary measures to prevent, minimize, mitigate, combat and clean up the pollution or damage to the environment, including its associated impacts, the *Authority* may take the necessary measures. The person or persons who caused the pollution or damage to the environment will be liable for the costs associated with the pollution, damage or degradation to the environment, its associated impacts and any mitigating measures.

86. Deposit of harmful matter, including oil, in a port

(1) No person may throw or deposit within *port* limits any harmful matter or substance of whatsoever nature, including effluent or polluted water or foreign organisms, without the permission of the *Authority*, and, in the case where it is to be thrown or deposited from a *vessel*, without the permission of the *Harbour Master*. The *Authority* or the *Harbour Master*, as the case may be, may impose conditions upon the permission to be granted.

(2) No person may cause or allow pollutants, including paint, or cause or allow substances that can cause pollution or negatively impact on the environment, whether or not the substance or pollutant is of a mineral, animal or plant origin, to be dumped on the property of a *port* or to be discharged or to escape into waters within *port* limits.

(3) No oil of any description or harmful matter or substances of whatever nature, including effluent, polluted water or foreign organisms, may be discharged or dumped from a —

(a) *Vessel*, or be allowed to escape from a *vessel* into any part of the *port*; or

(b) terminal or any other source, or be allowed to escape into *port* waters from a terminal or any other source.

(4) The *master* of a *vessel* that is berthed alongside a quay or jetty must cause all the discharge outlets of the *vessel* facing the quay or jetty to be closed or to be provided with adequate covers to prevent any inadvertent discharge of water or effluent or substances onto the quay or jetty surface, bollards, moorings, telephone cables, fenders or hose connections or into the environment.

(5) The cleanup of pollutants, including oil, which is spilled within port limits, must be dealt with in accordance with the applicable Port Contingency Plan.

(6) If the spill straddles the area within *port* limits and areas falling outside *port* limits, the spill must be dealt with in accordance with the applicable Port Contingency Plan, and in the case of oil pollution management, the National Contingency Plan and any applicable legislation.

(7) A person who drops or deposits any article within *port* limits that might cause a danger, obstruction, pollution, a negative impact upon the environment or a nuisance, or any person who witnesses a person doing this, must report the matter to the *Authority* immediately.

(8) The *owner* or *master* of a *vessel*, terminal operator, lessee or *port* user that contravenes this rule, causing an obstruction in the *port* must immediately cause the obstruction to be removed at their expense, failing which the *Authority* may remove the obstruction at their expense. If any damage arises from the obstruction, the person responsible for it is liable for the costs relating to the damage.

87. Cleanliness of the quayside

(1) This rule applies to quaysides that are not operated by a terminal operator.[11]

(2) The *owner* or *master* of a *vessel* must ensure that the quayside is cleaned after the *vessel* has completed its working operations.

(3) If the *owner* or *master* of the *vessel* fails to affect the cleanup, the *Authority* will affect the cleanup at the cost of the *owner* or *master* of the *vessel*. These costs will include the costs associated with or incidental to the clean up and the removal of materials on the quayside.

88. Ballast water

The *master* of a *vessel* and any other person to whom the Port Ballast Waste Management Plan applies, must comply with that plan.

89. Port waste reception facilities

(1) Every terminal operator and master of a *vessel* must make use of the *port's* facilities for the reception of wastes from *vessels*.

(2) Despite sub-rule (1), the *Authority* may require —

(a) a terminal operator to provide or procure proper and adequate facilities from a licensed waste disposal service provider for the reception of wastes from *vessels* using the *port* terminal; and

(b) the *vessel's owner* or *master* to provide or procure proper and adequate facilities from a licensed waste disposal service provider for the reception of wastes from *vessels*, if the berth is not operated by a terminal operator.

(3) In assessing the adequacy of the waste reception facilities contemplated in sub-rule (2), the terminal operator or *owner* or master of the *vessel*, as the case may be, must have regard to the Port Waste Management Plan.

(4) Despite the provisions of this rule, the *owner*- or *master* of a *vessel* must arrange to dispose galley waste in accordance with the Port Waste Management Plan.

90. Compliance with Port Waste Management Plan

All persons to whom the Port Waste Management Plan applies, including terminal operators and tenants, must comply with that plan.

[11] The cleanliness of a quayside operated by a terminal operator will be regulated by the licence agreement with the terminal operator.

91. Compliance with Vessel Waste Management Plan

The *owner*, *master* or *agent* of a *vessel* must comply with their Vessel Waste Management Plan.

92. Use of port waste reception facilities

Any waste reception facilities provided for a particular purpose by the terminal operator must be open for use for that purpose by all *vessels* using the terminal.

93. Discharge or dumping in a port of sewage or residue water as a result of hatch or tank cleaning

(1) No *vessel* may discharge or dump sewage into *port* waters or any part of the *port* except into a facility dedicated for that purpose.

(2) No *vessel* may discharge or dump residue water into *port* waters as a result of hatch or tank cleaning without the written permission of the *Harbour Master*. The *Harbour Master* may impose conditions upon the granting of his or her permission.

94. Removal of vessels having offensive matter on board

(1) The *Harbour Master* may order the removal of a *vessel* from a *port* if that *vessel* has *cargo* or other matter on board that may be a threat to the environment.

(2) At the expense of the *owner* or *master* of the *vessel*, the *Harbour Master* may order that the *cargo* or other matter be disposed of.

95. The emission of fumes or smoke

(1) The *master* of a *vessel* in a *port* must take all necessary precautions to avoid the emission of excessive fumes or smoke from his or her *vessel*.

(2) No *master* of a *vessel* in a *port* may permit the emission of fumes, smoke or atmospheric pollutants from the *vessel* that violates the National Environment Management: Air Quality Act No. 39 of 2004 or any other applicable law.

(3) The provisions of sub-rule (2) do not apply —

(a) to smoke emanating from a *vessel* within 5 minutes during the start-up period;

(b) while the smoke-producing appliance is being overhauled if the emission cannot reasonably be prevented; or

(c) during the period of any breakdown or disturbance of an appliance.

(4) All persons must comply with the applicable legislation relating to pollution, including the National Environmental Management: Air Quality Act No. 39 of 2004.

96. Protection of animals, birds, fish and plants

Subject to rule 83 and any lease, licence or agreement with the *Authority* regulating pest control, no person may collect, use, remove or relocate any animal, bird, fish or plant that is within the *port* unless the *Authority* has authorised this in *writing*.

97. Burials

No dead persons or carcasses of any kind may be buried within waters of the *port*.

CHAPTER 5: WORKING OF *VESSELS* AND DANGEROUS AND FLAMMABLE GOODS HANDLING

PART A: WORKING OF VESSELS

98. Working of vessels may be refused

The *Harbour Master* may, in the interests of safety, security, good order and the protection of the environment, impose conditions upon the handling of goods, including *dangerous goods*, and may refuse to allow such goods to be landed from a *vessel* until –

(a) a suitable wharf, shed, quay, or other accommodation is available for the goods; or

(b) arrangements to the satisfaction of the *Harbour Master* have been made for the removal and storage of the goods.

99. The master or his or her delegatee to supervise and to protect all persons during the handling of *cargo*

(1) The *master* or his or her delegatee must remain on board the *vessel* whilst it is loading or discharging *cargo*, which includes containers, for the purpose of supervising these operations.

(2) The *master* may only delegate the supervision of the loading or discharge operations to a suitably qualified person.

(3) The *master* must take all reasonable steps to ensure the safety and protection of all persons working aboard the *vessel* during the loading or discharge operations.

100. Prevention of *cargo* and vessel's gear falling into a port

(1) The *master* of a *vessel* that is loading or discharging *cargo* must ensure, in accordance with best practice, that all measures are taken to prevent *cargo* or the vessel's gear from falling into the water.

(2) If measures to the satisfaction of the *Harbour Master* have not been put in place, the *Harbour Master* may suspend the working of the *vessel* until satisfactory measures are put in place.

101. Reporting about *cargo* and vessel's gear that has fallen into the port

(1) The *master* must immediately and fully report to the *Harbour Master* about any *cargo* or *vessel's* gear that is dropped overboard as soon as the master becomes aware of it.

(2) The *master* must provide the *Harbour Master* with any particulars that the *Harbour Master* requires.

102. Recovery of *cargo* or vessel's gear that has fallen overboard

(1) The *master* of the *vessel* must immediately cause the *cargo* or *vessel's gear* that has fallen overboard to be recovered as soon as is reasonably possible.

(2) The *master* of the *vessel* must abide by the *Harbour Master*'s directives regarding the recovery.

(3) If the *vessel* fails to recover the *cargo* or vessel's gear that has fallen overboard, the *Harbour Master* may direct another person to recover it, and the *owner* or *master* of a *vessel* will be liable for the costs associated with the recovery of the *cargo* or vessel's gear that has fallen overboard.

(4) The terminal operator or any *port* service provider must ensure that any *cargo*, *cargo* handling or packing materials or oil-spills that have fallen on the quayside or terminal of any part of the *port* are removed, failing which the *Harbour Master* may arrange for its removal at the expense of the responsible person.

103. Mechanical handling appliances

(1) A *vessel* berthed near or under the mechanical handling appliances must have sufficient crew on board ready to *shift* the *vessel* at any hour, day or night, as or when directed by the *Harbour Master*.

(2) The *Harbour Master* may *shift* the *vessel* at the expense of the *owner* or *master* of the *vessel*, if the *vessel* fails to comply with the *Harbour Master*'s directives.

(3) Operators of mechanical or other *cargo*-handling appliances or installations may not cause the booms, chutes, loading gantries or other appurtenances to be lowered, to protrude or to be so positioned so as to cause an obstruction on a berth or over the water.

(4) The *Harbour Master* may grant an exception to sub-rule (3) and may impose conditions in the interests of safety, security, good order and the protection of the environment.

PART B: HANDLING OF DANGEROUS GOODS

104. Compliance with other legislation and *industry guidelines*

(1) All persons must comply with the applicable legislation relating to dangerous and flammable liquids in bulk and in containers, including the Explosives Act No. 26 of 1956 and any regulations promulgated under that Act.

(2) All persons involved in the handling of *dangerous goods* 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; and

(f) Chemical carriers entered into the CDI Scheme.

(3) The *Harbour Master* may permit a vessel to follow a procedure or practice other than those required by the *industry guidelines*, if he or she is satisfied that the other procedure or practice is as safe as that required by the *industry guideline* and is in the interests of security, good order, the protection of the environment and the effective and efficient working of the port.

(4) Contravention of a procedure or practice substituted pursuant to sub-rule (3) is deemed to constitute a contravention of the practice or procedure required by these rules.

105. *Harbour Master's* directives relating to *dangerous goods*

(1) The *Harbour Master* may, in the interests of safety, security, good order and the protection of the environment and at the expense of the *owner* or *master* of the *vessel* —

(a) approve the discharge and storage of uncontainerised, *dangerous goods* at demarcated areas in the *port* at the expense of the *owner* or *master* of the *vessel* and impose conditions upon the approval, in the interests of safety, security, good order and the protection of the environment;

(b) order that *dangerous goods* be discharged from a *vessel*, removed from the *port* or be otherwise disposed of, at any time of the day or night;

(c) order that landed *dangerous goods* —

(i) be returned on board the vessel from which it was landed;

(ii) be destroyed; or

(iii) be dealt with in a manner that the *Harbour Master* considers necessary and appropriate.

(d) order that vessels having *dangerous goods* on board that are berthed alongside a wharf or jetty have sufficient *fire protection personnel* and equipment in attendance;

(e) order that the *master of a vessel* with *dangerous goods* on board adopt precautionary measures, as the *Harbour Master* considers appropriate.

(2) Miscellaneous class 9 dangerous substances of the *IMDG Code*, which do not need to be labelled, are exempted from the requirements of sub-rules (b) to (e).

106. *Dangerous goods* landed in ISO containers

(1) If *dangerous goods* are landed in *ISO containers*, then the *vessel's agent* must present the terminal operator with a packing declaration before the container is landed.

(2) The packing declaration must reflect —

(a) the correct technical name;

(b) mass;

(c) the UN number;

(d) *IMDG Code* class of each consignment in the container; and

(e) a declaration that —

(i) the container is fit to transport this kind of *dangerous goods*;

(ii) the *cargo* is adequately secured in the container; and

(iii) no other *cargo* known to be incompatible with the *dangerous goods* has been placed in the container.

(3) The packing declaration must accompany the container to its final destination.

(4) If *dangerous goods* are to be shipped in *ISO containers*, the packing station must provide a packing declaration as stipulated in sub-rule (2) with the loaded container. The packing declaration must accompany the container at all times and must be provided to the *owner* or the *master* of the *vessel* when the container is loaded on board.

(5) All *ISO containers* with *IMDG Code* labels attached must be treated as though they contain *dangerous goods*.

(6) The *container operator* and the *agent* of the *vessel* must ensure that old *IMDG Code* labels are defaced or removed.

107. The need for a landing, delivery, forwarding or container terminal order

(1) No *dangerous goods* may be landed, delivered or forwarded without the terminal operator's completed landing, delivery, forwarding or container terminal order.

(2) If any *dangerous goods* are to be landed, delivered or forwarded without the appropriate order, the terminal operator must report this to the *Authority* immediately.

(3) The correct type of landing, delivery, forwarding or container terminal order referred to in sub-rules (2) and (3) is governed by the *cargo's* IMDG hazardous *cargo* classification, or, if the commodity is not listed in the *IMDG Code*, by the definition of *dangerous goods* contained in the Code.

108. Copy of packing certificate to be provided to the *Authority*

(1) A copy of the packing certificate referred to in the Merchant Shipping (Dangerous Goods) Regulations, 1997 must be attached to the order covering the shipment and sent to the *Authority's* offices at the *port* 24 hours before the arrival of the *dangerous goods* within *port* limits. If this is not done, the *Authority* may refuse the shipment and the shipper will be liable for all costs arising from the non-compliance with this requirement, including costs incurred in connection with the return of the *cargo*.

(2) The *Authority* may request the correct Material Safety Data Sheet.

109. Explosive standards

The *Harbour Master* may issue written instructions for the shipment, handling and short-term storage of explosives in *ports*.

PART C: HANDLING OF BULK FLAMMABLE LIQUIDS AND FLAMMABLE LIQUID CONTAINERS

110. Survey certificate for the carriage of flammable liquid

(1) Every *tanker* carrying flammable liquids that enters *port* limits must be in possession of a valid survey certificate issued by the flag state, or an authority recognised by the flag state, for the carriage of any flammable liquid.

(2) The *Harbour Master* may refuse to allow any *tanker* that is not in possession of a valid survey certificate for the carriage of flammable liquid to enter into *port*.

111. Vessels to operate with due regard to safety, security and the protection of the environment

Vessels that convey, discharge or ship flammable liquids in bulk or during bunkering operations, or convey or discharge containers that hold or held flammable liquids, must conduct their operations in a safe and secure manner, and in a way that does not threaten the environment.

112. *Harbour Master*'s instructions

(1) In order to give effect to rule 111, the *Harbour Master* may, in the interests of safety, security and the protection of the environment, issue verbal or written instructions relating to—

(a) the conveyance, discharge or shipping of flammable liquids in bulk or during bunkering operations; and

(b) conveyance, discharge or shipping of containers that hold or held flammable liquids.

(2) All persons to whom the instructions are directed must adhere to them.

(3) For the purpose of any rule or written instruction that requires that a *gas free* certificate be obtained, the certificate is deemed not to have been issued until —

(a) both the *master* and the *Harbour Master* are in possession of duplicate originals signed by the *certified chemist*; and

(b) it is posted in a conspicuous place on board the *vessel* where all persons concerned can easily read it.

(4) The *master* of a *vessel* and the terminal operator must afford every facility to the *Harbour Master* to ascertain whether any of these rules or any instruction, which is intended to give effect to any of these rules, has been and is being observed.

113. Liability for costs

(1) All persons to whom the verbal or written instructions referred to in rule 112 are directed are jointly and severally liable for the costs of implementing those instructions.

(2) Despite sub-rule (1) —

(a) the *owner* or *master* of a *vessel*, pipeline, bulk storage or other installation that discharges or allows flammable liquid or contaminated water to escape into a *port*, is liable for the costs that the *Authority* may incur in removing the flammable liquid or contaminated water;

(b) the *owner* or *master* of a *vessel* is responsible for the costs of *fire protection personnel*, safety measures and supervision as may be provided, taken or exercised in terms of these rules or by the direction of the *Harbour Master*; and

(c) if the *Harbour Master* orders the removal of a *tanker* that has flammable liquids on board from the berth at which it is lying because the *Harbour Master* is of the opinion that this is in the interests of safety or the efficiency of the *port*, the *owner* or *master* is responsible for the costs of the removal, unless otherwise agreed.

PART D: AGENTS, FINANCIAL SECURITY, PORT AND CARGO DUES AND CHARGES, AND PENALTIES

114. Appointment of *vessel agents*

Every *owner* of a *vessel* intending to enter a *port* in the *Republic* must appoint a *vessel agent*, unless the *Authority* grants an exemption to a *vessel*.

115. Security to be furnished to the *Authority*

(1) Before a *vessel* enters a *port* the *owner*, *master* or *agent* of that *vessel* must furnish security to the satisfaction of the *Authority* for the payment of any fees payable to the *Authority*.[12]

(2) Despite sub-rule (1), the *Authority* may, on written application by an *agent*, and subject to conditions that it may impose, open a credit account or credit facility against which will be levied any fees or charges that may become payable by the applicant under these rules or the *Tariff Book*.

116. Termination of vessel *agent*'s mandate

(1) If the vessel *agent's* mandate is terminated, the vessel *agent* —

(a) must give the *Authority* written notice of the termination; and

(b) remains liable for all fees due and payable up to the expiry of the termination notice.

(2) Upon the termination of a vessel *agent*'s mandate, the owner or master of a vessel must appoint forthwith another vessel *agent*.

117. Port dues, fees and fines to be paid before vessel departs from *port*

(1) Before a *vessel* departs from a *port*, the *Authority* may require the *owner*, *master* or *agent* of that *vessel* to pay or provide sufficient security to the satisfaction of the *Authority*, for all *port* dues, fees, fines or any other monies owing to the *Authority* by the *vessel's owner*.

(2) Despite anything to the contrary in these rules, the *vessel*'s *agent* is responsible for all the *vessel*'s debts that remain due to the *Authority* after the *vessel* has departed from the *port*.

118. Manifest of *cargo*

(1) At least one day before the arrival of a *vessel* in the *port* in respect of imported *cargo* and at least 14 days after the *vessel*'s departure in respect of exported *cargo* —

[12] In terms of section 73(4) of the *Act*, the Authority may require any person to furnish such security as it deems fit for the payment of any fee payable to the Authority.

(a) the *owner*, *master* or *agent* of a *vessel* must submit to the *Authority* a certified true copy in English of the manifest of any non-containerised, breakbulk or bulk *cargo* intended for landing or that has been shipped;

(b) the *container operator* must submit to the *Authority* a certified true copy in English of the manifest of any containerised *cargo* intended for landing or that has been shipped.

(2) The manifest referred to in sub-rule (1) must include —

(a) the *vessel*'s details, voyage number, and estimated arrival and departure dates;

(b) its country or origin and destination;

(c) the *port* of loading, discharge, and trans-shipment;

(d) for non-containerised, breakbulk and bulk —

(i) the consignee and consignor names, addresses and contact details, where available;

(ii) the *cargo agent*'s or *cargo agents*' names, addresses and contact details;

(iii) the bill of lading or mates receipt;

(iv) the marks and numbers;

(v) the number and description of packages or goods;

(vi) the commodity description of the *cargo*; and

(vii) the gross mass; and

(e) for containers —

(i) the consignee and consignor names, addresses and contact details, and in the case of a group consignment, all the consignee and consignor names, addresses and contact details, where available;

(ii) the *cargo agent*'s or *cargo agents*' names, addresses and contact details;

(iii) the container number, size, type, status and *container operator*;

(iv) the commodity description of the *cargo*; and

(v) the gross mass.

(3) The *container operator* must submit to the *Revenue Office* within the timeframes stipulated in the *Tariff Book* a list of empty containers intended for landing or shipping at the *port*.

(4) The list referred to in sub-rule (3) must include –

(a) the *vessel*'s details, voyage number, and estimated arrival and departure dates;

(b) the *port* of loading and discharge; and

(c) the container number, sizes, type, status and *container operator*.

119. Outturn reports

(1) After the *vessel* has completed its working the terminal operator must submit to the relevant *Revenue Office* outturn reports in respect of all *cargo* landed, shipped or transhipped at all *port* terminals on a per *vessel* basis and within the timeframes stipulated by the *Authority*.

(2) The outturn report referred to in sub-rule (1) must contain the —

(a) *vessel*'s details and voyage number;

(b) arrival and departure dates;

(c) terminal indicator;

(d) berth indicator;

(e) for containerised *cargo* —

(i) container number, indicator, size, type and status; and

(ii) *container operator*; and

(f) for bulk and breakbulk *cargo*—

(i) bill of lading number or mate receipt's number, together with a commodity description of goods, number of packages and mass; and

(ii) *vessel's agent*.

120. Cancelling *cargo* documentation

(1) The applicable charges for cancelling *cargo* documentation to be submitted to the *Authority* is stipulated in the *Tariff Book*.

(2) The *Authority* may raise a charge in respect of each *cargo* document, cancelling a previously submitted *cargo* document, and the charge is due and payable at the time that the cancelling *cargo* document is delivered to the *Authority*.

(3) The *Authority* may accept cancelling *cargo* documentation only if the *cargo owner* or his or her *agent* has signed an undertaking to pay the additional charges that are stipulated in the *Tariff Book*.

121. *Cargo* dues

The *Authority* may require an exporter or importer of *cargo* and the *cargo agent* appointed to act on behalf of the importer or exporter, if such an *agent* is appointed, to furnish such security as the *Authority* deems fit for the payment of *cargo* dues.

122. Penalties

The *Authority* may levy penalties as stipulated in the *Tariff Book* for late submission, non-submission or cancelling of *cargo* documentation.

CHAPTER 6: ***PLEASURE VESSELS***

123. Application of this chapter

This chapter applies to *pleasure vessels* only.

124. Permission to approach, enter into, *shift* within or leave a port

(1) No *pleasure vessel* may approach, enter into, *shift* within or leave a *port* without the permission of the *Harbour Master*.

(2) The *Harbour Master* may grant, refuse, withdraw or amend the permission.

125. Pleasure vessels to comply with applicable legislation

The *owner* or *master* of a *pleasure vessel* must comply with all applicable legislation, including the Merchant Shipping (Collisions and Distress Signals) Regulations, 2005 and the Merchant Shipping (Small Vessel Safety) Regulations, 2002, which apply also within a *port*.

126. Pleasure vessels to make way

Pleasure vessels must, at all times, keep out of the way of a *vessel* navigating in any channel or other area of the *port*.

127. Pleasure vessels to communicate with VTS

The *Harbour Master* may require a *pleasure vessel* to communicate their arrival and departure to Port Control.

128. The *Harbour Master's* restrictions on pleasure vessels

The *owner* or *master* of any *pleasure vessel* must obey the *Harbour Master's* restrictions relating to launching, speed, and area of operations or any other restrictions determined by the *Harbour Master* in respect of *pleasure vessels* within *port* limits.

129. Mooring only at places assigned by the *Harbour Master*

(1) *Pleasure vessels* may be moored only at positions assigned by the *Harbour Master*.

(2) No *pleasure vessel* may be beached within *port* limits except with the prior permission of the *Harbour Master*.

(3) The *Harbour Master* may issue written instructions about where *pleasure vessels* may be beached.

(4) No *pleasure vessel* may be made fast to a channel marking buoy, light buoy, or other navigational aid or mark provided for the safety of *vessels*.

130. No anchoring or mooring in a channel navigable by a vessel without *Harbour Master's* permission

(1) No *pleasure vessel* may be anchored or moored in any channel of a *port* that is navigable by a *vessel* except with the permission of the *Harbour Master*.

(2) If the *Harbour Master* grants a *pleasure vessel* permission to anchor or moor in a channel that is navigable by *vessels*, then the *pleasure vessel* must, at all times, not interfere with *vessels* navigating in that channel.

(3) If, for reasons beyond the control of the *owner* or *master* of the *pleasure vessel*, a *pleasure vessel* is moored at a berth or position that has not been specifically assigned to it by the *Harbour Master*, then —

(a) the *owner* or *master* of the *pleasure vessel* must immediately notify the *Harbour Master* that the *pleasure vessel* is so moored; and

(b) the *Harbour Master* may, at the expense of the *owner* or *master* of the *pleasure vessel*, take whatever action is necessary for the maintenance of safety, security, good order and the protection of the environment.

131. Pleasure vessels not to be *in contact* with vessels

No *owner* or *master* of a *pleasure vessel* may permit the *pleasure vessel* to come *in contact* with a *vessel* within the *port's* limits unless the *Harbour Master* authorises this.

132. Damage to or displacement of navigational aids

(1) The *owner* or *master* of a *pleasure vessel* that fouls, displaces or damages a buoy or navigational aid or mark, must —

(a) immediately report the incident to the *Harbour Master*;

(b) within 24 hours after the incident took place, submit to the *Harbour Master* a full written report setting out the circumstances of the incident; and

(c) provide in *writing* any particulars that the *Harbour Master* requires.

(2) The *owner* or *master* of a *pleasure vessel* that fouls, displaces or damages a channel marking, buoy, light buoy or other navigational aid or mark is liable for all costs incurred in the replacement or repair of that channel marking, buoy, light buoy or other navigational aid or mark.

133. Pleasure vessels in need of assistance

The provisions of rule 60 apply to *pleasure vessels* with the necessary changes required by the context.

134. Discharge of sewage in a port

No *pleasure vessel* may discharge or dump sewage into *port* waters or any part of the *port* except into a facility dedicated for that purpose.

135. Weapons and explosives to be locked up and disarmed

(1) Before a *pleasure vessel* enters a *port*, the *master* of the *pleasure vessel* must ensure that all weapons and explosives on board the *pleasure vessel* are locked up in a secure place such as a gun safe and are disarmed.

(2) Upon arrival in a *port*, the *master* of a *pleasure vessel* must declare to the *VTS* or Port Control whether any person on board his or her *pleasure vessel* is in possession of a weapon or explosives and, if so, the nature of the weapon or the explosive.

136. Permits for a *pleasure vessel*

(1) No *pleasure vessel* may lie or be used in or operated from a *port* unless —

(a) *SAMSA*, or another authority acceptable to *SAMSA*, has granted the *owner* or *master* of the *pleasure vessel* a certificate of fitness; and

(b) the *Harbour Master* for that *port* has granted the *owner* or *master* of the *pleasure vessel* a permit to do so.

(2) The *Authority* may determine —

(a) the manner in which applications for permits for *pleasure vessels* are to be invited, assessed and decided;

(b) in the *Tariff Book*, the fees payable for application for a pleasure vessel permit and the permit itself;

(c) the qualifications and suitable criteria that applicants for a permit must meet in order to obtain a permit; and

(d) subject to the *Act* and these rules, including the powers of the *Harbour Master* in terms of section 74(3), the terms and conditions of the permit.

(3) The *Authority* may on good cause shown, refuse, suspend, withdraw or cancel a permit, provided it has followed a fair procedure before the decision is taken.

(4) If an *owner* or *master* of a *pleasure vessel* fails to obtain a permit, the *Harbour Master* may remove or *shift* the *pleasure vessel* at the expense of the *owner* or *master* of the *pleasure vessel.*

(5) The *Authority* will set out, in the *Tariff Book*, the fees, dues and fines applicable to *pleasure vessels in possession of a permit as contemplated in sub-rule (1).*

137. Visiting pleasure vessels

Pleasure vessels visiting the *port* must pay port dues as stipulated in the *Tariff Book*.

138. Inspection of pleasure vessels

The *Harbour Master* or any of the *Harbour Master*'s staff may, in the interests of safety, security, the protection of the environment and the good order of the *port* inspect and examine the *pleasure vessel* and its equipment.

CHAPTER 7: SECURITY AND ACCESS

139. The *Authority* is responsible for security

Subject to the provisions of any legislation regulating other state security agencies, the *Authority* is responsible for the regulation and control of security within *port* limits.

140. Security officers operating in the port

(1) *Security officers operating within a port* must have been trained in accordance with the provisions of the ISPS Code and must be conversant with the provisions of the following documents —

(a) the ISPS Code;

(b) the Merchant Shipping (Maritime Security) Regulations, 2004; and

(c) any other relevant security legislation.

(2) The *Port Security Officer* or his or her appointee may stop and interview any *security officer operating within a port* in order to establish whether the security officer —

(a) has been trained in accordance with the provisions of the ISPS Code; and

(b) is conversant with the documents referred to in sub-rule (1) and the standard operating procedures associated with his or her work.

(3) In carrying out the functions contemplated is sub-rule (2), the *Port Security Officer* or his or her appointee must record in the *Authority*'s Occurrence Book —

(a) the name of the person interviewed;

(b) the date when the interview took place;

(c) the *port* facility or the contracted private security firm to which the security personnel belongs; and

(d) his or her findings.

(4) The *Port Security Officer* or his or her appointee must discuss his or her findings with the *port* facility operator or the contracted security firm as soon as possible after the interview.

(5) If, in the opinion of the *Port Security Officer*, it is apparent that the person interviewed is not conversant with the provisions of any or some of the documents referred to in sub-rule (1), the *Port Security Officer* must —

(a) bring this to the attention of the *port* facility operator or the contracted private security company to whom that security officer is associated; and

(b) give written notice that the deficiency be corrected within a period of one month.

(6) If the matter is not remedied within the period specified in the notice, the *Authority* may —

(a) in the case of a port facility operator, report the matter to the Minister of Transport or the Director General of the Department of Transport, as may be required by relevant legislation, for appropriate action; and

(b) in the case of a contracted private security firm, terminate the authorisation to provide that service.

141. Access permits are required for entry into a *port*

(1) Subject to sub-rule (9), no person may enter a *port* without a valid access permit.

(2) The *Authority* will designate an area or areas of the *port* where a person is not required to obtain an access permit.

(3) The *Authority* will determine whether a permit is issued by the *Authority*, the operator of a facility within a *port*, or both.

(4) The *Authority* may, in respect of an access permit issued by the *Authority* —

(a) determine the manner in which a permit is issued;

(b) determine the duration for which it is valid;

(c) set out in the *Tariff Book*, the fees, if any, payable for access permits;

(d) determine the conditions of access; and

(e) suspend, withdraw or cancel the permit.

(5) The operator of a port facility may, with the approval of the *Authority*, in respect of an access permit issued by the operator —

(a) determine the manner in which a permit is issued;

(b) determine the duration for which it is valid;

(c) determine the conditions of access; and

(d) suspend, withdraw or cancel the permit.

(6) The Authority may require the operator that issues an access permit as contemplated in sub-rule **Error! Reference source not found.**, to pay to the *Authority* the fees, if any, set out in the *Tariff Book* for access permits.

(7) A person may be required to produce and show a valid access permit to an officer of the *Authority* or the operator of the relevant facility at any time while he or she is in the port, including at any exit point.

(8) Despite anything to the contrary in these rules, entry into any part of a *port* or port facility within a *port* is subject to the security plans for that *port* and that port facility as provided for by the Merchant Shipping (Maritime Security) Regulations, 2004.

(9) The master of a *vessel* must ensure that all crew members of the *vessel* have an identity document that complies with the Seafarers' Identity Documents Convention, 1958 or the Seafarers' Identity Documents Convention (Revised), 2003. The *Authority* will determine the date when it will no longer accept identity documents that are not in compliance with the Seafarers' Identity Documents Convention (Revised), 2003.

(10) The following categories of persons may enter a *port* without an access permit —

(a) persons authorised in terms of section 12 of the National Key Points Act No. 102 of 1980 to enter any National Key Point that is within *port* limits;

(b) officials who are empowered in terms of any legislation to enter a *port*;

(c) persons attending to emergencies, including doctors, paramedics and ambulance personnel attending to patients, fire fighters from local authorities and veterinary surgeons attending to animals.

(11) The persons referred to in sub-rule (9) must carry a letter or card identifying the institution that they work for or identifying their membership of the relevant professional society, as the case may be.

142. Compliance with the conditions of an access permit

A person in a *port* must comply with the conditions of his or her access permit or permits, unless the person is in an area of the *port* that is designated as not requiring an access permit.

143. Removal of persons and *motor vehicles* from a *port*

The *Authority* may remove or cause to be removed any person who or *motor vehicle* that fails to comply with the provisions of these rules, the *Harbour Master*'s or *Authority's* instructions or the conditions of the access permit or *motor vehicle* access permit.

144. Firearms

(1) No person may carry a firearm within a *port* unless the *Authority* has authorised that person to do so.

(2) The *Authority* may impose conditions upon the manner in which a firearm may be used or carried within a *port*.

(3) Despite sub-rule (1), *vessels* that have firearms on board must comply with rule 27 and *pleasure vessels* that have firearms on board must comply with rule 135.

(4) The provisions of this rule do not apply to members of the following organs of state who are on official business: government law enforcement agencies, including the South African Police Service (SAPS), the South African National Defence Force (SANDF), *customs* and the National Intelligence Agency (NIA).

145. Entry points into a *port*

A person may only enter or leave a *port* through an entrance or exit designated by the *Authority* for that purpose.

146. Motor vehicles in a *port*

(1) A *motor vehicle* may only enter a *port* or be used in a *port* after the *Authority* has issued an access permit for that *motor vehicle*.

(2) Despite sub-rule (1), the *Authority* may designate an area or areas of a *port* where a *motor vehicle* is not required to obtain an access permit.

(3) The *Authority* will determine whether a *motor vehicle* access permit is issued by the *Authority*, the operator of a facility within a *port*, or both.

(4) The *Authority* may, in respect of *motor vehicle* access permits issued by the *Authority* itself—

(a) determine the manner in which a permit is issued;

(b) determine the duration for which it is valid;

(c) require the holder of the permit to display proof of the permit in the *motor vehicle*;

(d) set out in the *Tariff Book*, the fees, if any, payable for *motor vehicle* access permits;

(e) determine the conditions of access; and

(f) suspend, withdraw or cancel the permit.

(5) The operator of a port facility may, with the approval of the *Authority*, in respect of a *motor vehicle* access permit issued by the operator —

(a) determine the manner in which a permit is issued;

(b) determine the duration for which it is valid;

(c) require the holder of the permit to display proof of the permit in the *motor vehicle*;

(d) determine the conditions of access; and

(e) suspend, withdraw or cancel the permit.

(6) The *Authority* may require the operator that issues a *motor vehicle* access permit as contemplated in sub-rule (5), to pay to the *Authority* the fees, if any, set out in the *Tariff Book* for *motor vehicle* access permits.

(7) The categories of persons set out in rule 141(10) are not required to obtain a motor vehicle access permit.

147. Rail traffic within port limits

(1) By virtue of section 3 of the National Railway Safety Regulator Act No. 5 of 2002, that Act applies within the *port*'s limits. These rules do not derogate from that Act.

(2) The *Authority* may, in the interest of safety, security, good order and the protection of environment, give directions to a train driver relating to the movement, stopping or parking of trains within a port.

CHAPTER 8: LICENCES AND REGISTRATION

148. Activities to be licensed or registered

The *Authority* may require persons who carry out activities in the *port*s and at off-shore *cargo*-handling facilities to register or apply for a licence. These activities include —

(a) fire protection and fire equipment installation and maintenance;

(b) bunkering;

(c) pollution control;

(d) diving;

(e) pest control; and

(f) *vessel agents*.

149. Activities requiring licensing or registration may not be carried out without a licence or registration

If a licence or registration is required, no person may carry out an activity in a *port* or at an off-shore *cargo*-handling facility without having a licence or being registered.

150. Determination of licences or registration

The *Authority* may determine—

(a) which activities carried out in the *port*s should be regulated by way of licence or registration;

(b) the manner in which applications for licences or registrations are to be invited, assessed and decided;

(c) set out in the *Tariff Book*, the fees payable for applications for a licence or a registration, and the licence or registration itself;

(d) the qualifications and other suitable criteria, including security clearances, that applicants for licence or registration must meet in order to be licensed or registered;

(e) subject to the *Act* and these rules, including the powers of the *Harbour Master* in terms of section 74(3)(b), the terms and conditions of the licence or registration.

151. Suspension, withdrawal or cancellation

The *Authority* may, on good cause shown, suspend, withdraw or cancel a licence or registration provided that it has followed a fair procedure before the decision is taken.

CHAPTER 9: GENERAL

152. Port repair facilities

(1) In the interests of safety, security, good order and the protection of the environment, the *Harbour Master* may, in respect of any *port* repair facility, direct that priority be given to a *vessel* in a damaged or *unseaworthy* condition.

(2) While in any *port* repair facility, no *vessel* may discharge effluent water, oil or refuse, except with the permission in *writing* of the *Harbour Master* or his or her appointee. The *Harbour Master* or his or her appointee may impose conditions upon the granting of permission in order to maintain safety, security, good order and the protection of the environment.

153. The *Authority's* port repair facilities

(1) The *Harbour Master* determines the order of provision of *port* repair facility services.

(2) In making the determination the *Harbour Master* will take into account the interests of safety, security, good order, the efficient working of the port and the protection of the environment.

(3) The decision of the *Harbour Master* as to the use or turn of use of the *Authority's* *port* repair facility in all cases of dispute is final.

154. Hot work permit

(1) No *hot work* may be performed on a *vessel* or *pleasure vessel* within a *port* without a permit issued by the *Harbour Master*.

(2) No *hot work* may be performed on the shore within a *port* without a permit issued by the *Authority*.

(3) The *Harbour Master* or the *Authority* may inspect the place where the *hot work* will be performed before it issues the permit.

(4) The *Harbour Master* or *Authority* may impose conditions upon the performance of the *hot work*.

155. Repairs or maintenance to a vessel

(1) No external repairs or maintenance to a *vessel* may be carried out in a *port* except with the permission of the *Harbour Master*.

(2) The *Harbour Master* may direct that precautionary measures be implemented or the *Harbour Master* may impose conditions upon the permission granted to ensure safety, security, good order and the protection of the environment.

(3) If the *master* fails to comply with the *Harbour Master's* directives, the *Harbour Master* may withdraw his or her permission and order that work be stopped.

(4) No internal repairs or maintenance to a *vessel* may be carried out in a *port* unless the *master* has —

(a) advised the *Harbour Master* of the nature and extent of the repairs contemplated;

(b) obtained a *hot work permit* from the *Authority*; and

(c) taken adequate precautions to guard against the risk of fire occurring through or in consequence of the carrying out of the work.

(5) If, in the opinion of the *Harbour Master*, the precautions taken are not adequate, the *Harbour Master* may order that the work be stopped until precautions to the satisfaction of the *Harbour Master* have been taken.

156. Inspections and searches

(1) Subject to the provisions of any legislation —

(a) the *Authority's* authorised officials may inspect and search any person, vehicle or trailer within *port* limits, including at the entry and exit points of the *port*; and

(b) no person may board a *vessel* within *port* limits without the permission of the *master* or person authorised by the *master*.

(2) Despite sub-rule (1) and subject to the provisions of any applicable legislation —

(a) the *Harbour Master* or any person authorised by the *Harbour Master* may board a *vessel* for purposes of investigating any matter related to the safety, security and protection of the environment of the *port*; and

(b) the *Authority's* authorised officers may board a *vessel* or enter any premises in the *port* for purposes of investigating any matter related to the safety, security and protection of the environment of the *port*.

157. Fumigation of vessels

(1) No *master* may cause his or her *vessel* to be fumigated in a *port* except with the permission of the *Harbour Master*.

(2) The *Harbour Master* may impose conditions upon any permission granted as contemplated in sub-rule (1), in order to maintain safety, security, good order or to protect the environment.

158. Late or incomplete notices

(1) The acceptance of a late or incomplete notice required in terms of these rules may be granted if there are special circumstances and it is in the interests of safety, security, the protection of the environment, good order and the efficient management and control of the *port*.

(2) Application in respect of the late or incomplete notice must be sought from the *Authority* or the *Harbour Master*, as the case may be.

159. Advertising

(1) No person may, without the permission of the *Authority* —

(a) exhibit or cause to be exhibited any advertisement, placard, notice or sign on any land, building or structure; or

(b) distribute or cause to be distributed any literature within *port* limits.

(2) No person may deface, damage or cause to be defaced or damaged any advertisement, placard, notice, or sign within *port* limits.

160. Prohibited actions

(1) No person within *port* limits may —

(a) for the purposes of avoiding prosecution, give a false name or address to an employee of the *Authority* on duty;

(b) be in a state of intoxication or behave in a threatening or violent manner;

(c) do anything wilfully or negligently that may cause injury to persons or damage to property or the environment;

(d) commit any nuisance or act of indecency or use any defamatory language;

(e) take photographs or film without the *Authority's* permission;

(f) write, draw or affix any defamatory matter upon any premises or property of the *Authority* within *port* limits;

(g) remove or deface the *writing* on a notice board or document set up or posted by order of the *Authority* or deface the *writing* on a board or a notice authorised by the *Authority* to be exhibited;

(h) obstruct or do anything likely to obstruct the authorised use of a *port* facility; and

(i) interfere with or hinder an employee of the *Authority* in the execution of his or her duty.

(2) The *Authority* may exempt categories of persons from the prohibition referred to in sub-rule (1)(e).

161. Dredging

The *Harbour Master* will, as far as it is practicable and reasonably possible, ensure that the depth of the channels and the *port* is kept at a depth not less than the promulgated depths for channels, basins and berths of the *port*.

162. Declaration of a wharf

The *Authority* may at any time declare and define a certain area within the limits of the *port* to be a wharf on which *cargo* may be landed and from which *cargo* may be shipped in *vessels*.

163. Breaking up and removal of wrecks in a port

(1) No person may break up or remove a wreck, hulk or *vessel* within *port* limits without the written permission of the *Harbour Master*.

(2) The *Harbour Master* may impose conditions upon the granting of this permission in order to maintain safety, security, good order and the protection of the environment.

(3) No permission will be granted unless the applicant has provided security to the satisfaction of the *Authority*, in an amount not exceeding the cost that the *Authority* estimates for breaking up and removal of the wreck.

(4) If the applicant fails to remove every part of the wreck, hulk or *vessel* within the period stipulated by the *Authority*, the *Authority* may use the security to remove those parts of the wreck, hulk or *vessel* that have not been removed by the applicant. Any additional costs will be for the account of the applicant who undertook to remove the wreck.

(5) This rule does not apply to historic wrecks.

164. Information to be furnished by port users

Despite the provisions of these rules, the *Authority* may request information from users of the *port* in relation to any of their activities within *port* limits and that information must be furnished to the *Authority* when requested.

165. Manner in which time is to be specified

If a report or notice is made or given in terms of these rules and it requires a time to be specified, then the time must be specified in local time (UTC + 2), using the 24-hour clock system.

166. Changes in information to be reported

A person who provides information to the *Authority* pursuant to these rules must ensure that the *Authority* is provided with any significant change in the information as soon as it is reasonably possible.

167. Liability of the *Authority*

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 these rules.

168. Observance of other laws and conventions

The provisions of these rules do not exempt any person from the due observance of the provisions of any other law or convention that applies within a *port*.

169. Offences

(1) A person is guilty of an offence if he or she contravenes rule 7, 10(e), 34(1), 64(1), 64(2), 65(2), 65(4), 66, 75(1), 76, 79,80, 820,83(1), 83(1), 85(1), 86(1), 86(2), 86(3), 86(7), 86(8), 91, 96, 97, 104, 159, 141(1), 142, 0(1), 145, 0**Error! Reference source not found.**, 0**Error! Reference source not found.** to **Error! Reference source not found.**, 0**Error! Reference source not found.**, 149, 156(1)(1)(b), 157(1), 158 or 163.

(2) The *master* of a *vessel* is guilty of an offence if he or she contravenes rules 16(1), 20(1), 27, 30, 36, 54**Error! Reference source not found.**, 54(1), 55, 56, 69, 70, 72, 84(3), 84(4), 88, 93, 101(1), 154(1), 154(2), 155(1), 155(4),

(3) The *master* of a *pleasure vessel* is guilty of an offence if he or she contravenes rule 124(1),126, 131, 132(1), 133, 135, 136(1) or 154(1).

170. Transitional arrangements

A licence issued by the *Authority* or permission granted, order or direction given by the *Authority* or other action lawfully taken under repealed legislation remains valid until the licence, permission, order ,direction or action expires or is suspended or cancelled in terms of the *Act* or these rules.

ANNEXURE 1 (RULE (1)(YY)) INSHORE *VESSEL* TRAFFIC SERVICES (*VTS*) *ZONES*

Item	Column 1 *Vessel traffic services zones*	Column 2 Description
1	Saldanha Bay and approaches	All South African waters contained within— A. Cape Columbine 32°49'.6 S 017°50'.9 E B. 33°00'.0 S 017°30'.0 E C. 33°25'.0 S 017°45'.0 E D. Yzerfontein Point 33°21'.0 S 018°08'.6 E
2	Table Bay and approaches	All South African waters contained within— A. Bok Point 33°34'.0 S 018°18'.4 E B. 33°45'.0 S 018°02'.5 E C. 34°00'.0 S 018°10'.0 E D. Duiker Point 34°02'.4 S 018°18'.6 E
3	Port Elizabeth and approaches	A1 34°01.7' S 25°47.4' E, a line to St,. Croix Island bearing 330° (T) to the shore high water mark. B1 33°54.3' S 25°50.0' E, a line to Cape Recife bearing 270° (T) to the shore high water mark.
4	Durban and approaches	A radius of 12 nautical miles from 29°50.2' S and 31°05.8' E to the shore high water mark.
5	Richards Bay and approaches	A radius of 15 nautical miles from south breakwater position 28°48.86' S and 32°05.85' E to the shore high water mark.

TRANSNET NATIONAL PORTS AUTHORITY

SECURITY POLICY

PORTFOLIO: LEGAL, RISK & COMPLIANCE

DEPARTMENT: SECURITY

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:T," STATEMENTOFPURPOSE --

1.: Transnet National Port Authority {TNPA) depends o:;ts personnel, iriforrnat1on and other assets to del1vet servtces that ensure the health, safety, security and econom.c. growth and development of our country. TNPA must therefore manage th.ese resources with dve diligence and take appropriate measures to protect them.

L 2 Threats that e-0n cause harm to TNPA, and some economies abroad, include acts -of terror and sabotage, espionage, 1;nauthorized access to buildings and premises, theft, armed robbery, fraud and corrupt on, vendalism, fire, natural disasters. technical failures and accidental damage. Tne threat of cyber' attack and maiicious activity through the internet is prevalent and can cause severe ham'l to electronic services and critical iilfrasuuctur<!. Threats to the nationa1 interests, such as transnatlonal criminal activity, foreign inelligence activities and terrorism, continue to evolve as the result of changes in local, national and international environment.

1,3 The Security Policy or TNPA prescribes the application of security measures to redvce the risk of harm that can be caused to the company If the above threats should materia!ize. It has been designed to ;:,rotect employees, preserve the C0:'10dentia11ty, Integrity, avallao,lltv and value of Information and assets, and assure the continued delivery of services. Since ThPA relies extensively on information and commvnication technology (fCT) to provide its serv!ces, this policy emphasizes the need for acceptable use of 1cr ec.uipment as well as JCT protection measures to be complied with by employees.

1.4 lhe m2.ln obJective of thisPolley therefore is to support thenational interest and TNPA'sbusiness cbjctives by p!'otecting employees, Information and other assets and assuring the conLh,ued delivery of services to South African citizens and themaritime community.

1.5 This Policy ccmplements otherTNPA Pol.cles (e.g. sexual har<1ssment, occupational health and safety, officiallanguages, Informaion management, asset control, real estate and financial resources).

2. SCOPE

'2.1 This Policy applies to the following individuals and entities:

- A:l TNPA employees;
- All contractors and consultants delivering a service to TNPA, including their employees who may tnteri!ct •Nith TNPA;
- Temporary TNPA employees
- All information assets of iNPA;
- AU intellectual property of TNPl<,;
- All fixed pr'operty that is owned or leased out by TNPA;
- All moveable property that ts owned or ieased out by TNPA;
- All Facihtfes operating a TNPA Ports Including their employees;
- All private port users
- .ll.tl State Agencies operating at the Ports:\
- All Port1,.1sers with a temporary light of access

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

- Security organiz Uon
- Security administration
- Jnformation secutity
- Phy$1cal security
- Person,,el security
- Information and Communication Technology (JCT) security
- Business Contim.Jity Pla,,ning (SCP)

j 3. LEGISLATIVE OR REGULATORY REQUIREMENTS

3.1 This Policy is informed by and complies wfth applicable nattonal legislation, International codes, nijtional security pollcies i!nd national security standards. A list of applicable regulatory documents In this regard has beenilttached as AnnexureA.

4. POLICY STATEMENT

4.1 General

- Employees of fNP,o.\ must Ile protected against ldentified threats according to basellr1e security requireme,,ts and continuous security risk managemem;
- Information and assets of 1'NPA must be protected according to baseline security tequirements an(f continuous secunty risk management;
- Continued delivery of services of TNPA must be assured through baseline sec(Jrity requirements; Including business continuity planning, and continuous sec1.;rlty risk management.

4.2 Compliance requirements

4.2.1 Afl indlv,dools anc;!nstitutlons mentioned In par. 2 above mt1s.: comply with the baseline requirements *(refer* 4.3 below) of this Policy and lt's associated Security Directives as contained f:I lhe Port Security Plans of TNPA *(i.e.* Security Plans of the respective Ports). These requirements are/shall be based Qn integrnted security Threat ar:d Risk Assessments (TRA's) to the natlon-0! interest as weJ. as employees, information and assets of TNPA. The rlecessity of security measures above baseline levels wllf elso be determined by the continual 1,.1pdatln9 of the secvrity TAA's.

Port Securitv Plans

4.2.2 Security thrc<'lt and risk assessmt:nts involve:

- Establishing the scope of the assessment and identifying the information, employees arid assets Lo be protected;
- Determining t.he threats to infonnation, employees and assets of TNPA anc: assessing the probabillty and impact of threat occurrence;
- Assessing the secvrity risk based on the adequacy of existing se•currty rneasures ar,d vulnerabilities;
- Implementing any supplementary security measures that wili reduce the secvrity risk to an acceptable level.

4.2.3 Staff accountability and acceptable use of assets

4.2.3.1 The Chief Executive (CE) oflNPA sllall ensure that Informatron and assets of TN?A ore used in accordance with procedures 2$ Stipulated in the Security Directives as conta!ned in the Security Plan of TNPA.

4.2.3.2 All em;>loyees of TNPA shall be accountable for the prop□r utilizatiol'l and protection of such information and assets. Employees that misuse or abuse assets of TNPA shall be held accountable therefore disciplil)ary action shall be taken a-ga!nst any si,ch employee.

SeeDisciplinary Code

4.3 Specific baseline requirements

4.3.1 Security organization

4.3.1.1 The CE of TNPA wilt/has appointed the Head of Security (National Security Manager) to est;.1blish and direct a security program that ensures coordination of all Policy fu1lttions and Implementation of this Polley requirements;

4.3.1.2 Given the importance of this role, a Hea<l *ot* Security with sufficient security experience and training •.vho is strategically positioned within TN?A so as to provide insb'tl:tlon•wide strategtc advice and guidance to senior management, must be appointed.

4.3.1.3 rn'E: CE of iNPA must en□t•r□ thal theHead of Secy::.r"it.Lv-"h"'a"s...a::.nc_ c.eScse.ec_,o"-r"'a"'n=lz□•□cio□n□•□l-er-'°ective support stru<;Cure {secur'iCy componeni:·)•to fulfill Che functions referred to in par. 4.3.2 below.

4.3.1.4 I"ld1v1duols tl1(lt'Ndl be appo'nted ir. !he suppor't structure of the Head of Security must be security ptofessionais with s1..1fficlent secunty expenence and t,..a!nlng to effectively cope with their .:-espectlve Job functions.

4.3.2 Security administration

4.3.2.1 T1'ie functions referred *to* In par. 4.3.1 *eboveare,* but not limited to:

- General security administration (company directives and procedures, training and awareness, security risk management, security aud!ls, sharing of information and assets);
- Setting *of* acces.s limitations;
- Administration of security screening (refer par-. *4.3.5* below);
- Implementing physical security;
- Ensuring the protection cf einployt!es;
- Ensuring the protection of Information;
- Ensuring ICT security;
- Ensuring security In emerger.cy and increased threat situatio;1s;
- Facditating business continuity planning;
- Ensuring security 11, contracting; and
- Facilitating security breach reporting and investigations.

4.3.2.2 Security incident/breaches reporting process

4.3.2.2.I Whenever an employee of TNPA becomes aware of an Incideot that might constitute a security breach or an unauthorized disclosure of Information (whether acc!dentally or intentionally), hejshe shall report that *to* the tiead of Security of TNPA by utillzlng the formal reporting procedure prescribed rn the Security Breach Directive *of* TNPA; wf'lo will then rep-ort to the CE.

4.3.2.2.2 The CE or 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 invest1gat1otis;

4.3.2.2.3 ihe Head of Security of TNPA shall e1'sure that all employees are Informed aboct the procedure for repotting security breaches.

4.3.2.3 Security incidents/breaches response process

4.3.2.3.I The Security Department sha1 1develop and implement security breach resporlse mecllaols,ns for n□PA in order to address all security breaches/alleged breaches which are l'eported;

4.3.2.3.2 The Head of Secu:ity shaJI ensure that the CE of TNPA is advised or such Incidents as.soon as possible;

diagram of the securit component.

See detaded fu"ctions the Security Compone SOP'S in the Security I

See Security Directive Reporting of Security Breaches

4.3TI:3 Jt shall be the fesporisibility of tneNaiional fntefligence Structures (e.g. NIA or SAPS) to conduct 2n investigation on reported secu1ity breaches and provide feedback with: recomrnea□dationsto TNPA;

Sec Security Directive Security BreAches **Response Process**

14.3.2.3.4 Accessprivileges to classified information; assets aod/or to premises may be suspended by the CE of TI'JPA until admin;str't1tive; dlscipfinary and/or criminal processes have been concluded; flowing from investigations into securitybreaches or alleged security breaches;

14.3.2.3.S The end result of these investigations, disciplinary action or criminal prosecu!lons may be taken into consideration by the CE ◊f TNPA in determining whether to restore, or J;m!t, the security access privileges of an individual or whetllel' to revoke or after the security clearance of the individual.

4.3.3 Information Security

4.3.3.1.1 Categorization of information and Information classification system

•I,3.3.1.1 The Head of Security must ensure that a comprehensive information classificationsystem is -developed for and irnpfemented at TNPA. All seositive information produced or processed by TNPA must be identified, categorized and class·fied according to the origin of its source and contents and according to its sensitivity to Joss or disclosure;

4.3.3.1.2 Ailsensitive Information must be categorized Into *one* of the following catego:les:

- State Secret;
- Trade Secret; and
- Pefsonal foformation.

Andsubsequentl•t classified according to its level of .sensitivity by using one of the recognize<Jlevels of dassificatfo11;

- Confidentiaf;
- Secret; and
- Top Secret

See Sea.irlty Directive Information Casslfical

14.J,3.I.2 Employees of TNPA. who generate sensitive information *are* respol)sible for determining loforrnation classlfication levels and the classificatloti thereof, subject □o management review. ihis responsibility includes the labeling of classlfled documents;

4.3.3. t.3 The dassification assigned to documents must be sttlctly adhered to and the prescribed secur1ty measul'eSto protect such documents most tie applied at .tilt times;

4,3.3.LS

Access to cJassifo□d information

wllJ be de::ennined by the following P._rincipfes

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See Security Dir<lctive

I Protection of Informat

S3 5.1.2 *The* level of security clea..ance" given to a persorl;,,, ~~11 be~~ detenn1ned by the content of *or* access to classified information enta led by thepost already occupied or to be occupied In acco.-dance with their respective respo1,sibi!ities end accountaoiliry;

14.3.5.1.3 A se<:urity Clecrance provides access to classlfled informatlOI) subject to the need-to•know principle;

4.3.S.1.4 A oedaratlon of secrecy shall be signed by every individuaJ issued with a security clearance to complement the entire security screening process. This will reinain valid even a□er the Individual has terminated his/her service with TNPA:

See Sect1rity Directive SecurJty Screening

4.3.5.I.S A sec1.mty clearance will be valid for it period of tenyears i,, respect of the Confidential Level and ftve years for Secret and *Top* Secret. Tl1!s <foes not: f)reclude re--screening on a more frequent basis asand when need arises and/or as determined by the CE of 'rNPA, based on information which impact negatively on an Individuaf's security competence;

4.3.S.1.6 Security-clearances in respect of all individuals who have terminated their servl□s with 1'NPA shall be immediately withdrawn.

4.3.S.2 Polygrtiph Examination

4.3.5.2.1 A polygraph examination shall be utilized to provide support to the security screening process. All employees subjenedtoa Top Sec::re.: security clearance will also be subjected to a polygraph examination. The polygraph shall only be used to determine the reliab!llty *of* the Information gathered dvring the security sctcening lnve.stigation and does not imply any suspicion orrisk on the*part* of the □pplicant;

4.J.S.2.2 tn the event of any negative lnformation being obtained with regafd to the applicant during the security screening Investigation (all levels), the applicant sharl be given an opportunity to prove his/her honesty and/or innocence by mak,ng use amongst others of the pofygraph examination. Refusal by the applicant to undergo che examination does not necessarily signify that a security clearance will f\ot be granted.

4.3.S.3 Transferability of Security Clearances

See Security Dkectlve Security Sc;reening

4.3.5.3.1 A secur!ly clearance issued lo respect of an official from other govem'l'"lent institutions shall not be automatically transferablf! to TNPA, Tie responslbllity for deciding whether the official should be re-screened rests with the CE *of* TNPA.

4.3.S.4 Security Awareness and 'rr-aining

•.3.5.4.I A securi:y traln.ng and aw•r□□J99ram m□st be dev.□loped by the Sec:.:rity oePartmert a:id Implemented to effectively-ensure that ad personnel ar.d service providers of TNPA remain security conscious;

4.3.5.4.2 Al! employees shall be subjec:ed to the secur ty awareness and training progr;,irns and 1nt.Jst cert1fy (hat *the* contents of the program ha'/e been understc:oC and will be complied with, The progtam will not only cover tr;;'lining with regard to specific security responsib1lit1esbut also sensitize employees, re'evant contractors and consultants about the security policy, security measures of *TNPA* as well as the need to protect sensitive informaLion agafnst disclosure, loss or destruction

14.3.S.4. 3 Periodic sec Jrlty awareness presentations, briefings and workshops wlll be conducted and In addition to that, posters and pamphlets will be frequently distributed in order to enhance the training and awarenessprogram. Attendance oi the above programs will be compulsory for all employees who shall have been Identified and notified to attend;

See Security Directive Security Training and Awareness

4.3.5.4.4 Regular audits, surveys and wa!kthroi.:gh inspections shall be conducted by the Head of Security andmembers of the security department to monitor the effectlvel\ess of the security aining and awareness program.

4.3.6 Information and Communication Technology (JCT) Security

4.3.6.1 IT Security

4.3.6.1.1 A secJJre network shall be establlshed for TNPAIn order to ensure that Information systems are secured against rapidly evolving threats that have the potential to impact on their conrMentiality, l"tegrity, availability, intended use and value;

4.3.6.1.2 To prevent the compromise *of* n systems, TNPA shall implement baseline security controls and any <'lddi tional control identified through the secvrity TRA. These controls, zind the secudty roles and responsibilities of all personnel, shall be cleady defined, Cfocumentcd and communicated to all employees;

4.3.6,1.3 To ensure policy c:ompllance, the Chief 11,tormation Officer or TNPAshall:

- *Ce(tity* that all its systems are seccre after procure0112f\t, accredit IT systems *prior* to operation and comply with minimum security standards and directives;
- Conduct periodic security eva uatlons of systems, including assessments of configuration changes conducted on a routine b<lSis;
- Periodically request assistance, review and audits from the National Jntell!gence Agency (NfA) in order to get an independent assessment.

See !CT Security Polle and s«urity Directive ICT Security

4.3.6.1.4 Servet rooms and other related security zones where IT eQ1.1ipment ,s kept shall be secured with adequate f)hysical =scse,_cu=r"it,., _m::.:,e rcs ?_nd strict access control hall be enforced

I .s.6.1 s and mon1le>red;

Access to the resources on lhe network of I'NPA shal, be stnct:y co,,trolled to pnvent un;-1uthori2ed access. Access to an computing and information systems and peripherals of TNPA shall be reslricted unless explicitly euthorliec;

<.3.6.1.6 System hardv,are, operating and.application soware, the network aid communication systems of TNPA shall be adequately confi9<.1red and safeguarded against both physical attack and unauthorized network intrusion;

4.3.6.1.7 Alel mployees shall make use of rr systems of TNPA hl an acceptable manner ar,d for business purposes only. All employees shat! comply with the rr Securiy Directives inI his regard at all times;

1 .. 3.6.1.8 The selection of passwords, theiruse and management asa primary rnans to control access to systems is to strtctly adhere to best Practice guidelines as reflected it\ the CT Security O!re<:Cives. In particular, passwords shall not be shared with any other person for any ret1son;

4.3.6.1.9 To ensure the ongoing avail.ibility of critical services, TNPA shall develop rT contilh,1ity plans as part of Its overall Business Ccntinvlty Piann!ng (60) and recovery aCUvities. See SCP

4.3.6.2 Internet Access

14.3.6.2.1 The Chief Informztlon omcer (CI0) of TNPA, having the overall responsibility for setting up !ntemei:-Access for TNPA, shall ensure that thnetwork of TNPA is safeguarded frommallc1ovs external Intrusion by developing. as a minimum, a configured firewall. Human Resour<:es management Shafi ensure that all personnel 'with Internet ac<:ess (including e·maif) are aware of, and 'Nill comply with, an acceptable code of conductin their usage of the Internet; See Security 0irediv& !CTSecurity

4.3.6.2.2 The CIO of TNPA shall be respo1)sible for controlllng user access to the Internet, as well asensudng that user'S are aware of the threats, and are trained in the safeguards, to reduce the risk of Information Se<urlty breaches and Incidents;

4.3.6.2.3 rncoming e--mails must be trea:.ed witll thetmost care dueto its inherent Information Security risks. The opening of mail with file attachments is not permitted unless such attachments have already been scanned for possible computer viruses or other malicious code;

4.3.6.3 Useof laptop Computers

I4.J.6.3.l Usage of laptop computers by eroplotees of TNPA is restricted to busioess purposes onJy, and users shalt be aware of, and accept the terms ancs conditions of use, especially the responsibility for the se<:urity of the information held on such devices;

4.3.6.3.2 The inforrnation stored on a laptop col'nputer of TNPA shallbe suitably prntected at an times, in line with the prote<:tion measures prescnbed in the IT Secur'ity Directive; See Secur'ity 0irectivc !CT Security

4.3.6.3.3 Employees shall also be respo1,sib:e For implementing the op.ic1te security measures for the physlcat.arotection 9f

I!

laptop con-ipuLers at all times, in lfne with the protection me.>si.:res prescribed in the tr Security Okec□ive.

4.3.6.4 Comnrnnlcation Security

4.3.6.4.1 The application of appropriate security measures shalf be instituted ir1order to protect all sensitive and confidential comrr.ur.icat100 of TNPA !rl: all its forms a1)(l at all times;

14.3.6.4.i All s□nsitive electronic communications: by employees or <:ontractors of TNPA must be encrypted in accordance with the Sou!h African Communication Security Agency (SACSA) standards, standards and the Communic.,tionSect11ity Directive of T,"PA. Encrtption devices shall only be putchased from SACSA or COMSEC arid w:11 not be purchased from commercial suppliers;

4.3.6.4.3 Access to communication security equipment of TNPA and the handUn9 of information transmitted and/or received by such equipment, shall be restricted to authorized perso11net only i.e. personnel with a iop Secret Cl□arance who successfully completed th□SACSA Course.

See Security Directive !CT Security

14.3.6.S Technical Surveillance Counter Moasures (TSCM)

14.3.6.S.1 All offices, meeting, conference and boardroom venues of TNPA \,1her-e sensitive nnd classified matters ace discussed on a regular basis shall be identified and shall be subjected to proper and effectfve physical security and access control measures. Periodic electronlc Technical Surveillance Counter Measures (sweeping) \viii be condtJcted by NIA to ensure that these areas are kept sterile and secure;

14.3.6.S.2 The Head of Security of iNPA shall ensure that areas that are utilized for di□usslons of a sensitive nature as well as offices or rooms that house electroo!c communlcat1ons equipment, are physically secured in accordance with the standards laid down by NIA in order to suppo,t the sterility of the environment *aftet a* TSCM examination, before any request for a TSCM examination Js submitted;

4.3.6.S.3 No u11authorized electronic devices shall be allowed ln a1w boar<.lrooms and coflference facilities where sensitive information of TNPA is dlscvssed. Authorlz.:1tio1<m ust be obtained from the Head of Security.

See Security Directive Secure Dis,usston Are

14.3.7 Business Continuity Planntng {BCP)

j4.3 7 1 The Head or Security of TNPA must establish a Bl1Siness Continuity Plan (BCP) to provide ror the continued availability of critical services, Inforanation 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;

4.3.7.2 The BCP shall be perlod!ca/y tested to ensure that the m□!!!9_□ment arid employees of ·rl'!':'Aunderstan□ how It Is to be executed;

4.3.7.3 Ari e:-r.p!oyees *of* TNPA shall be made aware and trained on the content of lhe SCP to ensure u•lderstanding of their' own respective roles in cerms thereof;

4.3.7.4 The lksiness Continuity Plan shall be kept up LO date end re-tes;:ed periodicaily l>y the Head of Secvrity, . See 3CP

5. SPECIFIC RESPONSIBILITIES

5.1 Chief Exe-cutive

s.1.: The *CE* of TNPA bears the overall resp-onsibility for impjement1n9 and enforcmg the security program of TNPA. In executing this resporf5ibillty, the CE shall:

Establish the post of the Head of Security and appoint a well rained nd ccml,etent security ofn'dat in the post;

Establish a Secutlty Committee for thecompany and ensure the ptirticipation of all Senior Management members of all the core busln<>?ss functions of TNPA in the activities of the Committee;

Approve and ensure compliance with this Policy and Its associated Secul'lty Plans and DirectlvE!s,

5.2 Head of Security

5.2.1 The delegated security responslblllty lies with the Head of Security *of* TNPA who will beresponslb!e for the execution of the entire security function and program within TNPA (coordination; planning, implemel'lting, controlling,}. tn executing his/her responsibilities, the Head of Secority shall, a:nongst others:

Chair the Security Committee of TNPA;

Draft the internal Security Policy and Security Plan (containing th specific a:1d detailed Security Directives) of TNPA in conjunction with the Security Committcei

Ensvre that Port Security and *Po(t* Facility Security Plans *are* 1n place and reviewed annually?; for all regulated ports falling under the TNPA jurisdiction

- Review the Security Policy and Secority Piao ar regvlar intervals;
- Conduct a security TRA of TNPA wlth the assistance of the Security Committee;

Advise management on the secority Implic;itions of management aecisions;

Irnplement a seci.:rity risk awareness program;

Conduct Internal compliance audits and Inspecl.ions at TNPA at regular Interva1s;

Conduct preliminary enquiries on security breaches within TNPA;

Establish *a* good working relationshsp with both NIA and SAPS and liaise with these instltulions on a re91lar basis.

5.3 Security Committee

S.3 1 Tre. Secu:-ity Committee referred Lo in par, 5. L.1 above shall consist of senior man.as:er'S of TNPA reiw6ent,ng au ma·:ib:.is,ness un1Ls or TNPA

S.32 Partfcipation ;n the activ1t es of the Sec:unty Com1T1ttce bv the appointed represent itivcs of business units o! TNPA shall be compulSCfV;

5.33 The Security CommJttee or TNPA shaU be responstb4e *for,* ar.iongst others, assisting the Head or Security in lhe execution of au secunty related res;>0nsibthties at Tf\PA, \nciudtng co,ipJetlog tasks such as ctrafttng/rev1cwln9 of the Security Policy and Pla.n; conducting of a security TR.A; conducting cf sco.intv audfts; draftJn9 of SCP; and ossl.Sting with security rllk awareness and training.

5.4 Port Monagers

5,4 1 AU Port Managen have :; defegated respo11s1b,lity and cornm<:!nsu,--0te authority to manage seo.ar,ry ac their respecuve regulated ports 0nd must account on security malters to the Mead *of* security's Office;

s,4,2 Po1t Managers must ensure thal appropriate measure.s are imt,3emented and sttt>S are taken immediately to r ct1fy any ,,on comolianc fssues that may come to their attention. This Indudes ta\ong d1so-phnary action agamst employees *If* warranted

S.S Port security Of-tic:er (PSO}

A Port Secur,ty Off,c;er shall.

S.5.1 Manage, lead, co-ordinate, plan ond organize the total TNPA security function within a specified p,Ort;

S.5.2 Cany out c!utle$ as specified *In* the Maritime Security Regulations 2004.

5.6 Port Facilil1e.s (Terminal Operators)

s.6 I An Terrr·unttl Operators :irerequired to manage their security In accordance with thelr approved Port F&c,hty Secunty Piaf!$.

s.6.2 All iermlnal Operators *are* required to act upon the unty1evets as set by the Director General, National Department of 1ransport.

5.6.3 Air Terminal Operators are requN' d to compty with all app4ab!e legislation and tnternatlonal Legat Jnstruments.

5.7 Line Mnnagemcnt

5.7.1 1\11managers of TNPA shall ttsure that thesr- subordinates comp with this policy aml the Secunly Dlroctivcs as contained n tho Secur•ty Pl.In of T'IPA at all tmes;

5.7.2 Managers must ensure that appropriate measures *arc* i.mplemented . en, l !ely torectify any ,,on-compnance issues that may come to tneir attention. Tl'!!s ,ndu:Jes tak!ng <fsc1;:,,inal'y actroll against emoloyees *if* wa:-ranted. See Disciplinary

S.S Port Fti.cility Security Officer (PFSO)

A Porl Facility Secunty omcer shall:

5.8.1 Ensure that Po11 Facility Security Plans are develo;.}ed in line wtn the respec.tive over-aa Port Security Plan;

5.8.2 Ensure that regular r'eviews 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 inc:dents as provided for in Section 62 (S} of the Nationa Ports Authority Act (Act 12 of 2005)

15.9 Employees, Consultants, Contractors, and Other Service Providers

5.9.1 Every employee, consultant, contractor, various port users and other *service* provfden; of TNPA shall know what their security responsib?llties are, accept it aspart of their normal Job function, and not only coop-eratc, but contribute to improving and maintaining security at TNPA at all times.

16 **AUDIENCE**

6.L lhis Policy is applicable to all members of the management, employees, consultants, contractors, port faclllues & various port users and any other sel'vice providers of TNPA. It Is further applicable to .au visitors and members or the public visiting premises or, or may offlcially 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 Allemployees of TNPA are reQulred to fully comply with this Policy and its assoc;iated Security Directives and Port Facility Security PJans as contained in the Security Plan. Non□coinp.iance with any prescripts shall be addressed in terms of the Disciplinary Code of TNPA;

17.3 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 contracis signed with such indivlduals/instit(Jtions/companies. The consequences of any transgfesston/devlation o,r,on•compl!ance shall be clearly stipulated tn said contracts and shall be strictly enforced. Such conseQuenccs may include the payrnent of prescribed penalties or termination of the tontract, dependu,g on the nature of any non-compliance.

IS EXCEPTIONS

8. Deviations from this Policy od Its associated Security rnrectives will only b perm;tted in the following ctretuns:onces:

When secunty can be breached In 0r'der to save or protecl lhe rves of people;

During unavo.ded ef'r.ergencv circumsta:,ces e.g. natural disasters(

,. On w(itteo permission by the CE of TNPA (reasons for allowir,g non-compliance to one or more aspects of the Policy and directives shall be cleafly stated in s1..1chpermission; no blanket no1\·co.-npliance shall *be* allowed under any circvrnstances).

See Security Directive security training and Awareness

19 OTHER **CONSIDERATIONS**

19.1 The following shall be taken Into consideration whenimple1nenti1\9 this Policy:

9.1.1 Occupationaf Helth andSafety Issues within TNPA operat!oos;

1 9.1.2 Disaster management at TNPA;

19.1.3 Disabled p-ersons shall not be Inconvenle,nc(!d by physical seo..irity measures and must be catered for in such a me.nner that they have access w,thout compromising security *or* the Integrity of thisPolley;

19.1.4 Envircnmental issues asprescdbed and regulated in relevan'; legislatlon (e.g. when implementing physic.a: securtty measures that may i•r"1pact on the environment).

10 COMMUNICATING THE POLICY

10.1 The Head of Security of TNPA shall ensure that the content of this Policy (or applicable aspects thereof) is oommunicated to an emp!oy(!eS, port facilities and various port users,consultants, contractors, other service providers, clients, visitors, members of the public that may officially internet with TNPA. The Head of Security will further ensure that all seC\Jrity policy and directive prescriptions are enforced andcomplied with.

110.2 The Head of Security must ensure that a comprehensive security risk awareness program is developed and implemented within TNPA to facmtate the above said communication. Communication of the Policy by means of thls program shall be cond1JCted as follows:

See secunty O.rective Security A\ldits and losvections

Awareness workshops ar,d briefings to be s;!tter1de:d by all employees, porefacilities and vadous port users;

Distribution of memos and circulars to all emotoyees;

Access ro the p:>licy and applicable drrectlves on the intranet of TNPA.

111 REVIEW AND UPDATE PROCESS

iu.1 The Head of Security, assisted by li)e Security Committee of TNPA, rnust ensure :hat this Policy and its associated Sec.;.:rity Directives is (ev,ewed arld updated or, -0n annual tmsis. Amendments shall be made to the Polley and D.rective?as nee anses.

Ir,

jt2 IMPLEMENTATION

12.1 The Head of Secuflly of TNPA must manage the Implementation process of th!s Polley and its associated Secmity 0I:'ectives (contained in the Secutlty Plan) by means of an action plan {afso to be included in the Security Plan of TNPA).

12.2 fmplementatioo of the Policy and Its associated Security Directives is the responsibility of each a1)d evel"; individual this Polic'f is applicable?to (see par. 2.1 above).

13 MONITORING OF COMPUANCE

13.1 The Heed of Security, with the assistance of the security depar'tmen: and Sewr'it:'V Committee of TNPA must e(IS1,1re compliance with this policy *and* It's associated Security Directives by means of conducting internal security audits and insp-t?ctions ona frequent basis.

113.2 1'he findings of the said i!Udlts and Inspections Shall be reported to the CE *of* TNPA forthwith (ter completion thereof.

114 DISCIPLINARY ACTION

114.1 Non-compliance with this Policy and its associated Security Directives shall result in disciplinary action which may include, but is not limited to:

- Re-training;
- Ve.rbal and written warnings;
- Termination of contracts ;n the case of contractors or consultants delivefln:g a service to iNPA;
- Dismissal;
- Suspension;
- Loss ofiNPA information .and asset resources access privileges;

14.2 Any disciplinary action take:'! in tenns of non compflance with this Policy and its associated directives wlll bein accordance v,•ith the Disciplinar'y Code of TNPA.

15. APPROVAL

AP:ROVED BY)

!(L,._,, I j.._,_,(

Date: 5/11/2005

Mr. K. PHIHLELA (CE TNPA)

Summary of Changes:

Version	Status/Changes	Author	Year of Issue
!!, 1	J1ccond Issue	MJMol□'ti!	2.QJ!.!!/09

Distribution: To all.

ANNEX URE 'A' APPL!C1\13LE I.FGISLATION AND OTHER REGUI.ATOR Y I·Jv\MEWORK OOC\JMENTS

1. Applicable Lcgisliltion

1.1 The Const,twoo Act 108of L996
1.2 TM Nat,or.al Ports Authority Acl 12 or 2005
1.3 Control or Access to P\.ibhc Prerr.tses and Vehlcies Act 53 of 1985 as anH:ndcd
1.4 The Criminal Proccourt Act St of 1977 as amended
1.5 -11e Pro:ect-,n of Information Act Sq of 1982 as amended
1.6 Tile Occupational I;eal:h and Safety Act 85 o/ 199:iosamended
1.7 ...he Promot1cn or Access to Information Act 2 ot 2000
1.8 Firearms Control Act 60 of 2000
1.9 State :,'.OnT'.atlOnTe&nology Act 68 of 1998
1.10 Private Security Industrv Regul,atton Act 56 of 2001
1.11 -,eSl)ass A<t 6 of 1959 as amenOed
1.12 National Ar-chives of South A'ri<a Act. 43 ot t996
1.13 fir-e 8F'gade Serv1ce-s Act, 99 or 1987 as amended
1.14 Public Finance Mnnageme.nt Actt 1 of 1999
1.15 Pubhc seiv:ce R ulaMns, of 2001
1.16 The National StrategJc ?ntelllgesce Act, ,9 of 1994
1.17 Ihe Natonal Key Points Act 102 of 1980
1.18 The Corrupt,on Act, 94 of 1992
1.19 Prevention or Organi2od Cnme Act, 121 of 1998
1.20 Protected Disclosures t. 26 of 2000
1.21 Te1ecommun1cat,ons Act, 2 of 2000
1.22 P:evention of tntereept!on and f'.omtoci:l9 Act, 70 of 2002
1.23 e:ectronic CommunlcatJon Security Act, 68 or 2002
1.24 The (I.;at,o.nal 8uild,ng R ulatjons and Standards Act, 103 of 19S6 as amended
1.25 The Prevention a"d Combating of Corrupt Activities Act 12 of 2004
1.26 Nation.a; Environmental Management Act, 107 of I99S

2. Other Regulatory Framework Documents

2.1 Mhumum Jnrormatlon SecurJty Standards (MrSS). Second Edition Match 1998;
2.2 Minimum Physocal Security Standards (MPSS)
2.3 Internatlonal Ship and Port Fac,l!ty Security Code and SOLAS Amendments 2002;
2.4 Merehant Shipping Act (Maritime Security Regulations) of 200q
2.5 fusk Ha agement Standard GR.8 I .1 Transnet Gemme Secunty Standard;
2.6 While Pope,·on Jntelllgenco (1995)
2.7 SACSA/090/1(4)Commc,Ica on Secunty ,n the RSA
2.8 N!A Gui ance Documents: !CT Polley and St•ndar<!s: Part I I!< 2
2.9 !SO 17799
2.10 National Suildlng Regulat'ons

"accreditation" means the official authorization by management for the operacion of an information Technology (Ii) system, and acceptance by that mt!nagement of the associated residual risk. Accreditation is based on the cert,flc□tion process as well as other management considerations;

"assets" means materlal a1ld immatelial property of *an* institution. Assets Include but *are* not limited to Information In all forms and stored 0;1any media, networks or systems, or material, real J)roperty, financfal resources, employee trust, public confidence and international reputation;

"avcflabi!ity" means the condition of being usable on demand to support operations, programmes and services;

"business continuity planningNlndvdes the development of plans, measures, pr'ocedures andam:ingements to ensure minimal Of no intel'ruption of the availability of Critical services andassets:

"'candidAte" means an applicant, an employee, a contract employee *or* a person acting on behalf of a contfact appointee or iodepel'ldent cortractor;

"'certification.. means the issuing of *a* certificate certifying that a comprehensive ev<l!uation of the technical and non technical sccurltv features of an Jnformatior and Comrr.unication Tec1,nofo9y system {hereinafter referred to as an ICT system} and Its related safeguar'dS has beenundertaken and thatit was established that its design and implementation meets a specific set of secunly requirements;

"COMSECN means the organ of state known as the Electronic Communlcatio1,s Security (Ptv) 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 Corr.munlcatron Seculity Ageflcy will□e in force;

"'cntic-<;! service" means a service ider1tified by an institution as a critical service through a Threat and Risk Assessment and the compromise of which will e1\danger the effective fvnctioning *of* the IMtitution;

"document" means -

- any note or writing, whether produced by hand or by printing, typewriting or any other' shnilar process, in either tangible or electronlc format;
- nny CQpy, plan, picture, sketch *or* photogr□phic or other representation of any place or article;
- any disc, tape, card, perforated ro!l or other device In or on whichsound or *any* signal has been recorded for reproduction;

"information security" includes, but iSnot Ifmited to ;

dc::ument security;
physical security measures for the protection of Informat!o.-i;
information and ccmmunication technology security;
personnel sectirity;
busi-1ess COt'ltinuity planning;
con(ngency planning;
sect.Jritv screening:
techni□11Sl.lrveillancecou1)ter•measures;
dealing with information security breaches;
secu□ity investi□g1tions; and
adn1inistration 21:1d organization of the securiLy function -0t organs of state;

• "r.Jalional Intelligence □tr1..ictures" means th□f"atlor1al Intelllg□oce Str'dct1:!res as

--·-:leflned in section 1 of the National Str2te91c Jnteliigence Act, (Act 39 of 1994};---.

·"reliability check"' means an investigation Imo the cnrnina: rec«d, credit recorC and past performance of an individual or private organ of st.ate to determine his, her Of' \ts reliablllty;

"'dsk" means the likelihood of a threat materializing by exploitation of a vulnerability;

"'screening investigator" means a staff member of *a* National Jntemgence Str.icture <:lesignated by the head of the reteva1'lt Natlcnal intelligence Structure to conduct security c!ea(ar.ce Investigations;

""security breach" means the negligent or intentional transgression of or (ailcre to comply with seo..lfity measures;

"security clearance" meal'ls a certificate issued to a candidate after the successful completion of a se<:urity scteening Investigation, specifying the level of classified information to which the candidate may have access subject to the need-to-know principle;

"site access clearance" mea,,s clearanc□ required for access to installatlons critical to the national interests;

"Technical Surveillance Co1Jntermeasures" (TSCM) means the process involved ,n tl\e detection, localization, identification and ne1..1tralization of technical surveitlc3nce of an individual, an organ of state, facility, or vehicle□

"'technical/electfOnfc surveillance" means tl\e interception or 1nonltorlng of sensitive or propriet,ary information or activities (also referred to as bugghg);

"threat' means any potential event or act, deliberate or accidental, that could cause injury to persons, cornpromise the lf1teg(1ty of information or could cause the: toss or damage of assets:

"Threat and Risk Assessment" (TRA) means, within the context *ot* se<:urity 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 threate:"\ing event;

"'vu!nerabihty" means a deficiency related to sec1,..1rity that could permit a th(eat t,,.o,_m=•eo<es.rccia,ele,iz,sec_

1\NNI□Xt,l!t€.•C•Sl:PPORTf.'.110 DOCUMlt»'TS

Se<::urity Plan containing the following:

- Sectirlty Component Organization Strvcturc
- Security Component SOP's
- Specific Responsibilities of Key Role Players
- Port SeC\lritv Plan$
- Security Olrectlve: Reporting of Seo..irity Breaches
- Security Directive: Security Br"eaches Response Procedures
- Sec1..1rity Directive: Infonnatioo Se-:urity: General flesponsibiliti□s:
- Security Olrective: Classification System
- Securiiy Directive: $e(urilY Screening
- Security orrectlve: Physical Security
- securiLY Okectlve: Access Control
- Security Directive: ICT Security
- Security Directive: Secure Discussions Areas
- Security Directive: TAA

Secur'tY Direct ve· Sec1.:ntv **Audits and** tnsp,ec:t0ns

- JCT Secunrv Pol:cy
- SCP
- OHS POiicy
- :>tSCJpJO□'|'.Code -- 1