



# MULTI-PURPOSE TERMINAL OPERATOR LICENCE

[Issued in terms of section 57(1) read with section 65 of the  
National Ports Act 12 of 2005]

**Terminal Operator:** .....

**Licence Number:** .....

**Commencement Date:**.....

**Expiry Date:**.....

.....  
(hereinafter referred to as the "Terminal Operator")

**Registered Address:** .....

.....

.....

**Physical Address:** .....

.....

.....

**Registration Number:**.....

**V.A.T. Registration Number:** .....

is hereby granted a licence by the Authority in accordance with section 57(1) read with section 65 of the National Ports Act No. 12 of 2005 ("the Act") to operate the multi-purpose terminal, and provide related port services, as specified in this Licence, in the Port of \_\_\_\_\_.

This Licence is granted subject to the terms and conditions that appear in this Licence and any other legal requirements and/or conditions that currently or may in future regulate the provision of port services and/or the operation of port facilities.

Issued by:

.....  
**AUTHORISED REPRESENTATIVE OF THE AUTHORITY**

**Date:** .....

## CONDITIONS OF MULTI-PURPOSE TERMINAL OPERATOR LICENCE (FOR EXISTING TERMINALS)

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## 1. Interpretation

In this Licence -

- 1.1. The headings to the clauses are for reference purposes only and shall not be taken into consideration in the construction or interpretation of this Licence.
- 1.2. Unless the context indicates the contrary –
  - 1.2.1. reference to the singular shall include the plural and *vice versa*;
  - 1.2.2. reference to a statute, regulation, rule, instruction, directive, guideline or policy shall be construed as a reference to such a statute, regulation, rule, instruction, directive, guideline or policy as amended or re-enacted from time to time; any word or expression grammatically related to a word or expression defined in this Licence, shall bear a corresponding meaning, and cognate expressions shall bear corresponding meanings;
  - 1.2.3. any word or expression grammatically related to a word or expression defined in this Licence, shall bear a corresponding meaning, and cognate expressions shall bear corresponding meanings;
  - 1.2.4. the annexures to this Licence shall form an integral part of this Licence and references to them shall include amendments to and updates of those annexures from time to time;
  - 1.2.5. in this Licence the word "including" shall mean "including without limitation", and the word "include" and its derivatives shall be construed accordingly; and
  - 1.2.6. when any number of days is prescribed in this Licence, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which case the last day shall be the next succeeding Business Day.

## 2. Definitions

In this Licence, unless the context indicates the contrary, the following words, phrases and expressions shall have the meanings assigned to them hereunder:

- 2.1. "Act" means the National Ports Act No 12 of 2005;
- 2.2. "Authority" means the National Ports Authority as contemplated in section 3 of the Act;
- 2.3. "Break Bulk Cargoes" means *[insert the relevant break bulk cargoes for the Terminal]*;
- 2.4. "Business Day" means any day other than a Saturday, Sunday or a statutory public holiday;
- 2.5. "Cargoes" means Break Bulk Cargoes and Dry Bulk Cargoes;
- 2.6. "Commencement Date" means *[insert commencement date]*;
- 2.7. "Competent Authority" means any organ of state, or any regulatory or public body, authority (local, provincial or national) or person, having jurisdiction and/or responsible for fulfilling the relevant function referred to in Law, and shall include SAMSA;
- 2.8. "Day" means a calendar day including Saturdays, Sundays and statutory public holidays, and includes a Business Day;
- 2.9. "Dry Bulk Cargoes" *[insert the relevant break bulk cargoes for the Terminal]*;
- 2.10. "Equipment" means the moveable assets in the Terminal, including cargo handling equipment, the current composition of which is attached as Annexure B;
- 2.11. "Environment" means the environment as defined in NEMA and "environmental" bears a corresponding meaning;
- 2.12. "Expiry Date" means *[insert the date of the last day of the Licence, corresponding to the date of the last day of the Existing Lease Agreement]*;
- 2.13. "Existing Lease Agreement" means the lease agreement between the Authority and *[insert details of Existing Lease Agreement] [If there is more than one lease in respect of the Terminal, this definition should refer to each of those leases]*;

- 2.14. "Existing Sub-lease Agreement" means the sub-letting agreement between the Terminal Operator and the Lessee [*insert details of Existing Sub-lease Agreement*]; [*delete if the Terminal Operator is the Lessee*]
- 2.15. "Force Majeure" shall include vis major, casus fortuitus, act of God, perils of the sea, sabotage, terrorist acts, wars or other armed conflicts, blockades, embargoes, insurrections, invasion, hostile acts of foreign enemy, industrial disputes, lightning, earthquakes, fires, storms, floods, radiation or chemical or nuclear contamination, ionising radiation, arrests and restraints by any governmental authorities, and any other cause or circumstance beyond the reasonable control of the Terminal Operator and which has not arisen as a result of negligence or wilful act of the Terminal Operator or any person for whose acts the Terminal Operator is responsible in law;
- 2.16. "Good Industry Practice" means the standards, practices, methods and procedures that would reasonably and ordinarily be expected from a skilled and experienced person engaged in the operation of a multi-purpose terminal;
- 2.17. "IMDG Code" means the International Maritime Dangerous Goods Code published by the International Maritime organisation;
- 2.18. "ISPS Code" means the International Ship and Port Facility Security Code published by the International Maritime organisation;
- 2.19. "Law" means all legislative enactments (including the Constitution of the Republic of South Africa Act, 1996, existing at the Commencement Date and new legislation or amendments to legislation which comes into force during the term of this Licence, and including regulations, directives, rulings, notices and orders promulgated, published or issued under such legislative enactments), the common law (including changes to such law as a result of decisions of the courts during the term of this Licence) and international conventions which have been incorporated into South African law as at the Commencement Date or are so incorporated during the term of this Licence;
- 2.20. "Lessee" means the party with whom the Authority has concluded the Existing Lease Agreement; [*delete if the Terminal Operator is the Lessee*]
- 2.21. "Licence" means this document and all its Annexures;
- 2.22. "Month" means a calendar month and, in the context of a number of months from a specified date, the period commencing on the specified date and ending on the same date in the last of the number of months;
- 2.23. "NEMA" means the National Environmental Management Act No 107 of 1998;
- 2.24. "organ of state" shall mean an organ of state as defined in section 239 of the Constitution of the Republic of South Africa, 1996;
- 2.25. "Port" means the Port of [*insert name of port where Terminal is situated*];
- 2.26. "Port Rules" means the Ports Rules published under Government Notice 255 in Government Gazette 31986 of 6 March 2009 and any further rules that the Authority may adopt in terms of section 80(2) of the Act;
- 2.27. "Private Siding" means a railway line in private use which is connected to the Authority's railway lines by means of an agreed turnout as well as any associated shunting yard, marshalling yard, the siding and siding extension or any section of railway line which provides access between the Authority's railway lines and the Terminal, as described in the plan which forms part of Annexure A; [*Delete if no private siding in respect of the Terminal*]
- 2.28. "Quarter" means the three-month period commencing on the Commencement Date and every consecutive three-month period thereafter, and "quarterly" bears a corresponding meaning;
- 2.29. "Regulations" means any regulations that the Minister of Transport has made or makes in terms of section 80(1) of the Act;
- 2.30. "SAMSA" means the South African Maritime Safety Authority established in terms of section 2 of the South African Maritime Safety Authority Act 5 of 1998;
- 2.31. "Terminal" means the land area within the Terminal boundaries demarcated in Annexure A;
- 2.32. "Terminal Infrastructure" means the land-based structures, including the storage facilities, terminal buildings, sheds, workshops, substations, surfacing and the internal network for the

provision of water, lights, power, sewerage and similar services within the Terminal boundaries demarcated in Annexure A;

- 2.33. "Terminal Operator's Financial Year" means 12 (twelve) calendar Months commencing on the first of [insert month] in any year and terminating at the end of the twelfth succeeding Month;
- 2.34. "Vehicle" means a motor-vehicle such as a car or truck, or tracked or wheeled equipment.

### **3. General Rights and Obligations of the Terminal Operator**

- 3.1. The Terminal shall be used solely for the services and activities described in this clause 3, for purposes incidental to the provision of those services and activities, and for the exercise of the rights and the fulfillment of the obligations set out in this Licence, and for no other purpose whatsoever unless the prior written consent of the Authority has been obtained, in terms of this clause 3.1, for such other purpose.
- 3.2. The Terminal shall be used, managed and operated on a common-user basis, meaning that the Terminal Operator shall provide reasonable equality of access to the Terminal to cargo exporters, importers or shippers wishing to utilise the services of the Terminal and shall not unreasonably discriminate, in its tariff structure or in its trading conditions, between various users or potential users of the Terminal Operator's services at the Terminal.
- 3.3. The Terminal Operator may manage and operate the Terminal, as a break bulk and dry bulk terminal, for the purpose of:
- 3.3.1. loading and stowage of Break Bulk Cargoes on to vessels and off-loading and breaking out of Break Bulk Cargoes from vessels;
  - 3.3.2. loading and trimming of Dry Bulk Cargoes on to vessels and breaking out and off-loading of Dry Bulk Cargoes from vessels and the taking of any measures necessary to ensure the ship's stability and cleanliness;
  - 3.3.3. the transfer of Dry Bulk Cargoes to a storage area or directly onto a truck or wagon and the transport of Dry Bulk Cargoes within the Terminal, including transport by way of pipeline, conveyor, vehicles or mechanical equipment;
  - 3.3.4. transhipment/re-shipment of Cargoes either via the quay or directly from ship-to-ship, provided that one of the ships is contiguous with the quay;
  - 3.3.5. the stacking and or un-stacking onto/from open or covered stockpiles or the storage in vertical or horizontal silos of Cargoes;
  - 3.3.6. the temporary storage of Cargoes on open or covered stockpiles or in silos or in transit sheds or open storage yards, provided that appropriate steps, agreed with the Authority, are taken to reduce dust nuisance, contamination, and other forms of damage to port infrastructure, other cargoes, and the environment;
  - 3.3.7. organisation of the collection and delivery of Cargoes, including the loading and discharge of trucks and rail wagons, and other arrangements necessary for the receipt for shipment and the delivery to, and the unloading and loading of, Vehicles, barges and railway wagons;
  - 3.3.8. the transfer of Break Bulk Cargoes within the Terminal area and or their transfer between terminals if requested, including cargo transfers for customs inspection purposes.
  - 3.3.9. working of Cargoes in the holds or on the deck of a vessel when such vessel is being loaded or unloaded; and
  - 3.3.10. anything reasonably necessary or incidental thereto.
- 3.4. The provision of services and the performance of activities contemplated in clause 3.3 may include engaging in the following activities:
- 3.4.1. tallying and sorting of Break Bulk Cargoes;
  - 3.4.2. sampling, inspection and testing of Cargoes for quality control purposes, on behalf of both shippers / consignees and any Competent Authority, including checking on the condition of Cargoes on discharge and before loading as well as on receipt for shipment and before delivery on inland transport means;

- 3.4.3. palletisation and other forms of unitisation of Break Bulk Cargoes;
  - 3.4.4. checking the condition of the ship's holds before loading;
  - 3.4.5. lighterage services for general cargo vessels;
  - 3.4.6. lashing, tomming and securing of the Cargo;
  - 3.4.7. sweeping of the vessel's holds after discharge;
  - 3.4.8. spill collection and disposal;
  - 3.4.9. strapping of the Dry Bulk Cargo after loading;
  - 3.4.10. opening and closing of hatches;
  - 3.4.11. shifting and re-stowing of Break Bulk Cargoes in conventional, unitised and neo-bulk form;
  - 3.4.12. checking the silo bins before new Dry Bulk Cargoes are received;
  - 3.4.13. weighing, grading, sampling, sorting and repacking of Cargoes;
  - 3.4.14. monitoring and control of stockpiles, including measures to protect stored Cargoes from weather, combustion, explosion and other forms of damage;
  - 3.4.15. compaction, blending, crushing and screening of Dry Bulk Cargoes;
  - 3.4.16. cargo fumigation, washing and drying and sorting and grading services;
  - 3.4.17. weighing of trucks and wagons;
  - 3.4.18. dust extraction and control;
  - 3.4.19. ship and yard planning, including ship stowage planning;
  - 3.4.20. preparing ship turnout reports;
  - 3.4.21. preparation of all necessary documentation associated with the shipment of Cargoes and their inland transport to and from the Terminal;
  - 3.4.22. inventory control of equipment and other assets on the Terminal;
  - 3.4.23. communication with and reporting to the Authority, shipping lines, agents and other users including transport providers and cargo interests;
  - 3.4.24. transit storage of Break Bulk Cargoes in conventional, unitised and neo-bulk form;
  - 3.4.25. storage of empty units (pallets, bins, chassis, containers);
  - 3.4.26. all other transit shed, yard and activities internal to the Terminal; and
  - 3.4.27. any other activities associated with Cargoes which are approved in writing by the Authority.
- 3.5. Without limiting the other obligations of the Terminal Operator as specified in this Licence or imposed by Law, the Terminal Operator shall be obliged to:
- 3.5.1. provide reliable, secure and efficient services and facilities to port users;
  - 3.5.2. obtain, maintain and renew all licences, permits or other authorisations necessary to operate the Terminal and render the services and perform the activities referred to in clauses 3.3 and 3.4;
  - 3.5.3. ensure that if any sub-contractors, agents and service providers used by it require a licence in terms of the Act, such persons are duly licensed;
  - 3.5.4. provide, maintain or replace, according to Good Industry Practice, all operating and other equipment necessary for the efficient operation of the Terminal;
  - 3.5.5. procure, install and operate communication, control and administrative systems necessary for the efficient operation of the Terminal;
  - 3.5.6. promote customer relations and market the Terminal to potential customers;

- 3.5.7. to the extent that the relevant service at the Terminal is not provided by the Authority, be responsible for the disposal of garbage and waste, including garbage and waste generated by vessels visiting the Terminal;
  - 3.5.8. keep the Terminal in a clean, orderly and sanitary condition;
  - 3.5.9. comply with all applicable provisions of the Act, the Port Rules, the Regulations and any directives issued in terms of the Act;
  - 3.5.10. comply with the requirements of SAMSA, including any applicable legislation and codes relating to safe working practices;
  - 3.5.11. comply with the ISPS Code and the IMDG Code in relation to security and dangerous goods, respectively; and
  - 3.5.12. comply with all other applicable legislation and generally conduct its activities and operations in accordance with the Law.
- 3.6. The Terminal Operator may not:
- 3.6.1. use the Terminal for residential purposes or as sleeping quarters, save that the Authority may in writing authorise a portion of the Terminal to be used as sleeping quarters for operational or security purposes;
  - 3.6.2. permit the growth upon the Terminal of noxious weeds;
  - 3.6.3. do or cause anything to be done that may cause a nuisance to the Authority or to any other port service provider or the occupants of adjoining properties;
  - 3.6.4. do anything that materially detracts from the appearance of the Terminal; or
  - 3.6.5. load Vehicles in any area within the Port, other than in the Terminal, unless with the Authority's prior written consent or with permission from another person legally in control of the area.
- 3.7. The Terminal Operator shall take all reasonable steps to prevent the spilling or dropping of cargo, any lashing materials and/or any other matter into the Port's water. The Terminal Operator shall:
- 3.7.1. immediately notify the Authority if any cargo, lashing materials 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, sub-contractors or persons responsible for the vessels calling at the Terminal; and
  - 3.7.2. immediately take steps to recover such cargo, lashing materials or any other matter.
- 3.8. If the Terminal Operator fails to recover any spilled cargo, lashing materials or any other matter as envisaged in clause 3.7.2, the Authority may take whatever steps are necessary to recover the cargo, lashing materials or any other matter and to claim the reasonable costs of taking such steps from the Terminal Operator.

#### **4. Duration of Licence**

This Licence comes into operation on the Commencement Date and shall continue until:

- 4.1.1. the Expiry Date;
- 4.1.2. its cancellation in terms of clause 20;
- 4.1.3. the cancellation or termination of the Existing Lease Agreement or the Existing Sub-lease Agreement; or [*Delete the reference to the Existing Sub-lease Agreement if the Terminal Operator is the Lessee*] [*If there is more than one Lease in respect of the Terminal, the phrase "the Existing Lease Agreement" should read "any Existing Lease Agreement"*]
- 4.1.4. the Existing Lease Agreement becomes invalid pursuant to a directive or written notice contemplated in section 67 of the Act. [*If there is more than one Lease in respect of the Terminal, the phrase "the Existing Lease Agreement" should read "any Existing Lease Agreement"*]

## **5. Erection of Improvements and Extensions of Terminal Infrastructure and Private Siding**

- 5.1. The Terminal Operator may make, or cause to be made in the Terminal or in respect of the Terminal Infrastructure or Private Siding, such improvements, alterations and extensions as may be necessary or appropriate for the carrying on of the business of a multi-purpose terminal operator; provided that no material improvements, alterations or extensions shall be undertaken in the Terminal without the Terminal Operator first having submitted the plans and specifications thereof to the Authority and obtaining the written approval of the Authority. *[Delete reference to Private Siding if it does not apply to the Terminal]*
- 5.2. Unless otherwise agreed in writing, improvements or alterations or extensions to the Terminal, Terminal Infrastructure or Private Siding, shall have no effect on the payments made by the Terminal Operator to the Authority. *[Delete reference to Private Siding if it does not apply to the Terminal]*

## **6. Terminal Operator's Replacement, Repair and Maintenance Obligations**

- 6.1. The Terminal Operator shall be responsible for maintaining the Terminal Infrastructure, Private Siding and Equipment and shall at its own cost undertake all maintenance and make all repairs, renewals and replacements necessary to maintain the Terminal and for the efficient operation of the Terminal, as follows:
  - 6.1.1. The Terminal Infrastructure (including the surface of the quay, if applicable) shall be maintained and kept in good order and condition, in accordance with Good Industry Practice and the international standards for a terminal comparable to the Terminal. The Terminal Operator shall be responsible for repairs, renewals and replacement of the Terminal Infrastructure necessary for the efficient operation of the Terminal.
  - 6.1.2. The Private Siding shall be maintained and if necessary repaired in order to ensure that it is in a good and safe operating condition and that it is operated in accordance with clause 8. The Terminal Operator shall ensure that the shunting yards, marshalling yards, tracks and other infrastructure in the Private Siding are sufficient for the safe, effective and efficient handling of traffic. *[Delete if no Private Siding]*
  - 6.1.3. The Terminal Operator shall provide additional equipment or replace equipment in order to ensure the efficient operation of the Terminal in accordance with Good Industry Practice and the international standards for a terminal comparable to the Terminal.
- 6.2. The Terminal Operator shall conduct annual inspections of the Terminal Infrastructure and Equipment and must prepare annual reports on those inspections, which reports must be submitted to the Authority at least 2 (two) Months prior to the start of each of the Terminal Operator's Financial Years.
- 6.3. The Terminal Operator shall provide the Authority 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.

## **7. Roadways, Surfaces and Access to the Terminal**

- 7.1. The Terminal Operator shall, at its own cost, construct or maintain in good order and condition such roadways and surfaces as may be required within the Terminal for the provision of the services and the performance of the activities contemplated in this Licence. The roadways shall be constructed and maintained at a standard complying with the permissible axle loads for the type and volume of traffic which will use the roads, and otherwise at such standard as is stipulated by the Authority and communicated to the Terminal Operator in writing.
- 7.2. 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. The Terminal Operator must check the weight of Vehicles entering and exiting the Terminal in accordance with the standards of applicable Law.
- 7.3. The Authority's duly authorised agents, employees and contractors shall have the right of access to the Terminal for purposes of performing the Authority's functions, provided that the

Authority ensures that its agents, employees and contractors comply with all reasonable safety and security stipulations of the Terminal Operator whilst in the Terminal.

- 7.4. 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 of the Terminal Operator.
- 7.5. The Terminal Operator may not impose any fee for admission to the Terminal.

## **8. Private Siding**

*[This clause will be deleted where there is no private siding]*

- 8.1. The Terminal Operator shall obtain and maintain, for the duration of this Licence, a valid safety permit issued in terms of the National Railway Safety Regulator Act 16 of 2002.
- 8.2. Such railway permit shall be annexed to this licence as Annexure C.
- 8.3. The Terminal Operator shall comply in all material respects with the Private Siding Agreement dated *[insert date]* concluded between the Terminal Operator and Transnet Freight Rail, a division of Transnet SOC Limited, as amended or substituted from time to time.

## **9. Labour and Personnel-related Obligations**

- 9.1. The Terminal Operator shall comply with all relevant provisions of labour Law.
- 9.2. The Terminal Operator shall at all times employ or engage sufficient and suitably qualified and competent personnel to enable it to efficiently provide the services envisaged by this Licence.
- 9.3. 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 sub-contractors, and shall provide them, free of charge, with any necessary personal protective clothing and equipment.
- 9.4. The Terminal Operator accepts full responsibility for the training of staff and shall ensure that all its employees and sub-contractors are properly trained for the work they are undertaking, and are familiar with safety and security requirements that apply to the Terminal.
- 9.5. The Authority may require the Terminal Operator to remove any employee or sub-contractor of the Terminal Operator from the Terminal or to prevent such a person from entering the Terminal, if such an employee or sub-contractor engages in any conduct which might threaten public health, or the safety or security of ports.

## **10. Health and Safety**

- 10.1. Within 3 (three) Months 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 Terminal, and the services or processes it intends to undertake, in accordance with the requirements of the Occupational Health and Safety Act No 85 of 1993, and shall provide the Authority with a full report on its risk assessment so undertaken within 1 (one) Month of completing the assessment.
- 10.2. The Terminal Operator shall be responsible for:
  - 10.2.1. the implementation of and adherence to the IMDG Code and its regulations;
  - 10.2.2. compliance with the Occupational Health and Safety Act No 85 of 1993 and regulations promulgated in terms of that Act;
  - 10.2.3. procuring and implementing systems and services for the prevention, monitoring, detection and extinguishment of fires or explosions; and

- 10.2.4. maintaining a working environment which is safe and designed to minimise the risk of injury or illness to any person present on the Terminal 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 the Authority.
- 10.3. Save for the storage of Break Bulk Cargoes and Dry Bulk Cargoes, the Terminal Operator may not keep or store on the Terminal any hazardous or flammable substances unless:
  - 10.3.1. it reasonably requires such hazardous or flammable substances to be kept or stored to enable it to conduct its business on the Terminal;
  - 10.3.2. it has obtained the prior written approval of the Authority; and
  - 10.3.3. it complies with the applicable Law in respect of hazardous substances in general and that specific hazardous substance in particular.
- 10.4. In addition to the general Port water network provided by the Authority, the Terminal Operator shall provide, at its own cost, such fire water network, facilities or equipment, or other protective measures, that are, in the Authority's reasonable opinion, necessary in order to provide effective fire protection installations and water supply to the Terminal.
- 10.5. The Authority may, from time to time, require the Terminal Operator, by notice in writing, to provide and install, at the Terminal Operator's cost, such further devices, appliances and installations as the Authority 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.

## **11. Broad-based Black Economic Empowerment**

- 11.1. The Terminal Operator must, by no later than the first anniversary of the Commencement Date, attain the Broad-based Black Economic Empowerment status of at least a Level Four Contributor as referred to in regulation 3 of the National ports Regulations, 2007, published under Government Notice R1091 in *Government Gazette* 30486 of 23 November 2007.
- 11.2. The Terminal Operator must maintain its compliance with clause 11.1 for the duration of this Licence.
- 11.3. The Terminal Operator shall, on an annual basis and by the date determined by the Authority, provide the Authority with a certificate of accreditation from an accredited verification agency verifying the Terminal Operator's Broad-based Black Economic Empowerment status.

## **12. Security**

- 12.1. The Terminal Operator must ensure that the perimeter of the Terminal is fenced with security fencing of a standard reasonably acceptable to the Authority 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 Licence.
- 12.2. 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 Maritime Security Regulations 2004, adopted under the Merchant Shipping Act No 57 of 1951, and the Terminal Operator shall be responsible for the security of the Terminal and for all persons and movables therein, including cargoes, and for the implementation of and adherence to the ISPS Code. The Terminal Operator shall submit to the Authority, within 1 (one) Month of the Commencement Date, a Terminal security plan for security levels 1, 2 and 3, corresponding with normal, medium and high threat situations. The plan shall indicate the operational and physical security measures the Terminal Operator will take to ensure that it normally operates at security level 1. The plan shall also indicate the additional, or intensified, security measures the Terminal Operator will take when instructed to do so by the Authority, to move to and operate at security level 2, and to operate at security level 3. The Terminal Operator will nominate a Port Facility Security Officer, organise regular security drills and at all times provide the necessary security equipment on the Terminal.

- 12.3. As part of the Terminal security plan the Terminal Operator shall monitor and control all cargo, Vehicles and people entering and leaving the Terminal and ensure that security communications are always readily available.

### **13. Environmental Protection**

- 13.1. If required by the Authority in writing, an environmental site assessment shall be conducted by the Terminal Operator, at its cost and within the period specified by the Authority, in respect of the activities engaged in at the Terminal. Such an assessment shall:
  - 13.1.1. include a systematic identification and evaluation of any potential impacts of any current or proposed activity on the Environment, including bio-physical, biological, social, cultural, economic, aesthetic and technological aspects, to the extent that those aspects are relevant to the activity;
  - 13.1.2. be conducted by an independent environmental assessment practitioner;
  - 13.1.3. form part of the Terminal Operator's environmental management plan (EMP) and inform the Terminal Operator's environmental management system (EMS); and
  - 13.1.4. comply with any other reasonable requirements stipulated for such an assessment by the Authority.
- 13.2. Within 3 (three) Months of the Commencement Date, the Terminal Operator shall submit, for approval by the Authority, an EMP which shall comply with NEMA and the Authority's requirements (which requirements will be provided to the Terminal Operator in writing). An EMP and EMS shall be developed and implemented by the Terminal Operator for the duration of this Licence. The EMP and the EMS shall be binding upon the Terminal Operator.
- 13.3. The Authority shall have the right at all times to conduct audits of the Terminal Operator's compliance with the EMP and EMS. If, in the reasonable opinion of the Authority, there is any non-compliance, inefficiency or inadequacy, the Authority may require the Terminal Operator to rectify such non-compliance, inefficiency or inadequacy, without delay, to the reasonable satisfaction of the Authority.
- 13.4. Without limiting the obligations of the Terminal Operator as specified in this Licence or imposed by Law, the Terminal Operator shall comply with:
  - 13.4.1. all the requirements of SAMSA in relation to the Environment;
  - 13.4.2. all the conditions laid down in respect of the area in which the Terminal is situated, if such area is declared as a protected natural environment or a special nature reserve;
  - 13.4.3. the Authority's requirements for the regular removal of waste, including waste originating from the cleaning or loading of Vehicles or wagons;
  - 13.4.4. all the conditions in environmental permits, licences, certificates, authorisations, orders, approvals and exemptions from Competent Authorities in respect of the Terminal; and
  - 13.4.5. all applicable statutory requirements relating 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 Commencement Date.
- 13.5. The Terminal Operator shall, on request by the Authority and within a reasonable period of such request, provide the Authority with copies of:
  - 13.5.1. all environmental permissions obtained regarding its business activities and the services it provides at the Terminal, and, where the permissions are renewable, in each instance a copy of the new or updated permission; and
  - 13.5.2. any measurements undertaken of emissions, effluent, stormwater quality and material safety data sheets for hazardous substances, which it is obliged to submit to a Competent Authority.
- 13.6. Without limiting the obligations of the Terminal Operator as specified in this Licence or imposed by Law, the Terminal Operator may not by any means cause significant pollution or degradation of the Environment and the Terminal Operator shall:

- 13.6.1. provide the Authority within a reasonable period with copies of any notices and directives issued by a Competent Authority to the Terminal Operator to take steps to address pollution or negative impacts on the Environment;
- 13.6.2. provide the Authority with copies of any report, including an emergency report, submitted by the Terminal Operator to a Competent Authority regarding pollution or negative impacts on the Environment;
- 13.6.3. take all reasonable measures as envisaged by applicable environmental Law, 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 Terminal and on the water resources on or below the Terminal;
- 13.6.4. in the event that the Terminal Operator's activities directly or indirectly cause any significant pollution, environmental degradation or negative impact on the Environment, which is not authorised by the Authority or a Competent Authority, the Terminal Operator shall, at its own cost, undertake an efficient and effective means of combating, mitigating, cleaning, collecting and/or disposing of all pollutants, or of otherwise addressing the environmental damage or other negative impact with appropriate remedial and/or rehabilitative measures, to the satisfaction of the Authority and any Competent Authority;
- 13.6.5. take every reasonable precaution to prevent the spillage of cargoes and/or other materials (including fuel and waste) from vessels, Vehicles, cargo handling facilities and Terminal Infrastructure, and take immediate steps to mitigate and remedy any spillage to the satisfaction of SAMSA and the Authority, at the Terminal Operator's cost.
- 13.7. If the Terminal Operator fails to comply promptly with any of the obligations imposed by this clause 13, the Authority shall be entitled, but not obliged, to immediately take whatever steps are 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 it from the Terminal Operator.
- 13.8. If the Authority determines that the Terminal shall be decommissioned upon expiry, cancellation or termination of this Licence, the Terminal Operator shall develop and submit a Decommissioning-EMP (DEMP) to the Authority and the Competent Authority for implementation during the decommissioning phase in terms of the DEMP guidelines, which guidelines will be provided to the Terminal Operator by the Authority. The DEMP shall be required to be approved by the Authority and all applicable Competent Authorities in order that the duly approved DEMP is submitted to the Authority:
  - 13.8.1. in the event of expiry of the Licence by effluxion of time, no later than 6 (six) Months prior to expiry of the Licence; or
  - 13.8.2. in the event of the earlier termination or cancellation of this Licence prior to expiry by effluxion of time, within 3 (three) Months after termination.
- 13.9. Upon the expiry, cancellation or termination of this Licence, 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.
- 13.10. 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 13, and the Terminal Operator shall be responsible for any breach or non-compliance by its agents or sub-contractors of any such obligations.
- 13.11. The Authority's requirements in terms of clauses 13.1, 13.3, 13.4.3 and 13.9 shall be communicated to the Terminal Operator in writing.

#### **14. Performance Measures**

- 14.1. The Terminal Operator will use its best efforts to promote and develop the dry bulk and the break bulk throughput and dry bulk and break bulk-related business of the Terminal, in order to achieve optimum utilisation and in a way which is consistent with sound business practices.
- 14.2. Without limiting the generality of clause 14.1, but subject to clause 14.8 below, the Terminal Operator shall, from the first anniversary of the Commencement Date, meet the minimum performance standards to be determined by the Authority, after consultation with the Terminal Operator, and notified to the Terminal Operator in writing at least 3 (three) Months prior to such anniversary.
- 14.3. Pending the determination of minimum performance standards by the Authority in terms of clause 14.2, any provisions of the Existing Lease Agreement pertaining to the performance standards applicable to the Terminal continue to bind the Terminal Operator.
- 14.4. The minimum performance standards determined in terms of clause 14.2 shall be reviewed by the Authority on an annual basis after consultation with the Terminal Operator, and new minimum performance standards shall be determined by the Authority and notified in writing to the Terminal Operator prior to expiry of the year in which such review is conducted.
- 14.5. The performance of the Terminal Operator will be reviewed quarterly by the Authority.
- 14.6. In order to conduct the quarterly review, the Terminal Operator shall provide the Authority, within 10 (ten) Business Days after the end of each Quarter, with all information that is, in the reasonable opinion of the Authority, necessary to conduct the review.
- 14.7. The Authority 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 14.6, 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. If the Authority 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 the Authority and the Terminal Operator shall meet to discuss the proposed finding before a final decision is made.
- 14.8. When, in the opinion of the Terminal Operator, circumstances occur which may impact negatively on its achievement of its performance targets, the Terminal Operator shall notify the Authority in writing within 10 (ten) Business Days of the occurrence and both the Terminal Operator and the Authority shall document the details of the occurrence. Every performance standard shall be relaxed should the Terminal Operator be prevented or delayed in performing its obligations by reason of a Force Majeure event.
- 14.9. Subject to the provisions of clause 21, if the Terminal Operator fails to achieve the minimum performance standards for any 2 (two) consecutive years (i.e. for 2 (two) years in a row), the Terminal Operator shall pay to the Authority a penalty. The formula for the calculation of such penalty shall be determined by the Authority, after consultation with the Terminal Operator, and notified in writing to the Terminal Operator at least 3 (three) Months prior to the first anniversary of the Commencement Date.
- 14.10. Any penalty amount payable in terms of this Licence shall be due and payable within the period specified by the Authority in writing.

#### **15. Licence Fee**

- 15.1. No licence fee is payable.

#### **16. Insurance**

- 16.1. The Terminal Operator shall have and maintain, at its expense, with a reputable insurance company, insurance cover against –
  - 16.1.1. Loss, damage or destruction of the Terminal, including the Terminal Infrastructure and the Private Siding. Such insurance shall be:

- 16.1.1.1. for not less than the full replacement value of the Terminal; and
- 16.1.1.2. against the risk of fire, lightning, explosion, storm, flood, earthquake, riots (including political riot), strikes and malicious damage, public liability, business interruption as well as all risks cover and against any other risk selected by the Authority which is insurable in the local South African insurance market consequent upon the damage to or destruction of the Terminal.
- 16.1.2. Environmental risks, including sudden and accidental environmental risks and, if so required by the Authority in writing, long-term gradual pollution risks.
- 16.2. All costs relating to the insurance policies, including premiums, shall be paid by the Terminal Operator.
- 16.3. The Terminal Operator shall comply with all the terms and conditions embodied in the insurance policies contemplated in this clause.
- 16.4. The Terminal Operator must, upon request from the Authority and within 30 (thirty) Days or such shorter period as reasonably directed by the Authority:
  - 16.4.1. file certified copies of the certificates of insurance at the property management offices of the Authority in the Port and thereafter annually before the anniversary date of the Commencement Date . Such certificates and policies shall reflect all insurance coverage stipulated in this clause 16;
  - 16.4.2. furnish the Authority with satisfactory evidence that all amounts due and payable under any such policies have been paid and that the insurances covering the Terminal are in full force;
  - 16.4.3. be responsible for the administration of all claims and payment of the relevant inner-deductible in respect of any claim instituted; and
  - 16.4.4. pay to the Authority the full insurance claim settlement in respect of any of the Authority's assets that are written off.
- 16.5. Should the Terminal Operator be in breach of the provisions of this clause, the Authority may procure and maintain, at the sole cost and expense of the Terminal Operator, the insurances referred to in this clause to the extent that the Authority deems this necessary. In this event, the Terminal Operator shall be obliged to refund to the Authority all premiums disbursed by the Authority on behalf of the Terminal Operator within a period of 14 (fourteen) Days of receiving written notice from the Authority to do so.
- 16.6. The proceeds from the insurance cover referred to in clause 16.1.1 above shall be utilized to repair or reconstruct Terminal Infrastructure, the Private Siding and the Equipment with the end view of having them restored to their condition immediately prior to the event which occasioned the loss or damage.

## **17. Reporting Requirements**

- 17.1. The Terminal Operator shall within 3 (three) Months after the end of the Terminal Operator's Financial Year, submit to the Authority a report of its licensed operations during that financial year, including –
  - 17.1.1. the quality and level of service in the financial year under review; –
  - 17.1.2. its compliance with the terms of this Licence, the Act and the Regulations;
  - 17.1.3. steps taken to eliminate anti-competitive and discriminatory practices;
  - 17.1.4. its audited annual financial statements; and
  - 17.1.5. the quality and level of performance with regard to such environmental criteria and social responsibility requirements as may be set by the Authority or required by national legislation.
- 17.2. On an annual basis the Terminal Operator shall submit to the Authority-

- 17.2.1. such statistical information relating to its operations as may reasonably be required by the Authority, including but not limited to statistics on the quantity, type and status of Cargoes handled at the Terminal; statistics on the number, type and size of vessels serviced at the Terminal; and statistics on the number of wagons and trucks handled at the Terminal interface with land transport;
  - 17.2.2. its cargo forecast for the remainder of the Licence period, or such other period as specified, in the form determined by the Authority; and
  - 17.2.3. future development plans, including equipment replacement and acquisition plans, relating to the Terminal or any service provided at, or to be provided at, the Terminal.
- 17.3. The Terminal Operator shall, if requested by the Authority in writing, submit to the Authority an information summary regarding the information in clauses 17.1 and 17.2, excluding any confidential information, which summary may be disclosed to members of the public.
- 17.4. Outturn reports in respect of all cargo landed, shipped or transhipped, deep-sea and coastal, must be provided to the Authority by the Terminal Operator on a per vessel basis, 72 hours subsequent to the vessel having completed working.
- 17.5. The Authority may require the Terminal Operator, at the Terminal Operator's cost, to submit such additional information as may be necessary to explain or amplify any report or information submitted by the Terminal Operator in terms of clauses 17.1 and 17.2 above.
- 17.6. Any information required by the Authority must be lodged by the Terminal Operator within the period and in the manner determined by the Authority.
- 17.7. The Terminal Operator must, within 24 hours of its occurrence or discovery, inform the Authority of-
- 17.7.1. any industrial dispute between the Terminal Operator and its employees;
  - 17.7.2. any industrial accident or disaster involving any employee or agent of the Terminal Operator or any injury on duty or fatality;
  - 17.7.3. any occurrence of fire within the Terminal;
  - 17.7.4. any theft or pilferage within the Terminal or any theft or pilferage involving any cargo in the Terminal Operator's possession or control;
  - 17.7.5. any proceedings or claim instituted or made against the Terminal Operator which could materially affect its ability to perform any obligation or to comply with any term or condition of this Licence; and
  - 17.7.6. any spillage or pollution that may have an impact on the Environment.

## **18. Powers of Inspection**

- 18.1. In order to determine whether the Terminal Operator is complying with the conditions of this Licence, any person duly authorised by the Authority in writing may, during office hours, enter the Terminal or any premises occupied by the Terminal Operator to inspect any activity, process, building or facility therein.
- 18.2. A person contemplated in clause 18.1 may, when conducting an inspection, require the Terminal Operator to produce any book, record, statement or other document relating to matters dealt with in this Licence or the Act for inspection, or for the purpose of obtaining copies thereof or extracts therefrom.

## **19. Assignment, Sub-contracting and changes in Shareholding and Control**

- 19.1. This Licence may not be transferred by the Terminal Operator to a third party without the prior written consent of the Authority. Any transfer of this Licence in contravention of this clause is of no force and effect.
- 19.2. The Terminal Operator shall not be permitted to cede, assign or delegate its rights and/or obligations in terms of this Licence or allow the use, sub-licence, mortgage or pledge of, or

assign, the Terminal, without the prior written consent of the Authority. Any assignment, delegation or cession without such consent shall be of no force and effect.

- 19.3. The right to operate the Terminal or engage in the services or the activities described in clauses 3.3 and 3.4 may, in particular, not be ceded or assigned without the prior written consent of the Authority. The Terminal Operator shall at all times remain responsible for the management and supervision of dry bulk and break bulk handling activities within the Terminal.
- 19.4. The Terminal Operator shall be permitted, without the prior written consent of the Authority, to sub-contract support services including licensed stevedoring services, repair and maintenance work, transport of its personnel to and from the Terminal, and the provision of canteen services.
- 19.5. Notwithstanding any sub-contracting by the Terminal Operator, the Terminal Operator shall always remain fully and primarily responsible for compliance with the terms and conditions of this Licence, and any non-compliance by a sub-contractor shall be deemed to be a non-compliance by the Terminal Operator.
- 19.6. There may be no change in control in the Terminal Operator without the prior written consent of the Authority. Control means:
  - 19.6.1. the ability, directly or indirectly, to change the direction of the votes attaching to the majority of issued shares or interests carrying voting rights;
  - 19.6.2. the ability, directly or indirectly, to appoint or remove or cause the appointment or removal of those of the directors (or equivalent officials) holding the majority of the voting rights on the board of directors (or equivalent body); or
  - 19.6.3. beneficial ownership of more than one half of the issued share capital of the Terminal Operator.

## **20. Suspension and Cancellation of the Licence**

- 20.1. The Terminal Operator shall notify the Authority of any contravention or breach by the Terminal Operator of the conditions of this Licence, any provision of the Act, the Regulations, the Port Rules or any directive issued by the Authority in terms of the Act or of any event or circumstance which is likely, with the passage of time or otherwise, to constitute or give rise to such a contravention or breach, promptly on the Terminal Operator becoming aware of the event or circumstance.
- 20.2. In the event that the Terminal Operator commits any breach or otherwise contravenes any of the terms or conditions of this Licence, the Authority may issue a written direction requiring the Terminal Operator either to:
  - 20.2.1. remedy the contravention or breach within a specific period of time; or
  - 20.2.2. put forward a programme for remedying the contravention or breach, provided that, prior to the issuance of the direction, the Authority shall give written notice to the Terminal Operator:
  - 20.2.3. indicating the intention to issue a direction;
  - 20.2.4. setting out the reasons why it is considering issuing the direction; and
  - 20.2.5. affording the Terminal Operator a reasonable opportunity to make representations as to why the direction should not be issued.
- 20.3. In the case of a Terminal Operator contravention or breach referred to in clause 20.2, the Authority may, notwithstanding clause 20.2, cancel this Licence or suspend this Licence by notice in writing, provided that, prior to a cancellation or suspension, the Authority shall give written notice to the Terminal Operator:
  - 20.3.1. indicating the intention to cancel or suspend the Licence;
  - 20.3.2. setting out the reasons why it is considering cancelling or suspending the Licence; and
  - 20.3.3. affording the Terminal Operator a reasonable opportunity to make representations as to why the Licence should not be cancelled or suspended.
- 20.4. If the Authority elects to issue a direction envisaged in clause 20.2.1, the Authority -

- 20.4.1. shall indicate in such direction, the time period in which the contravention or breach must be remedied;
  - 20.4.2. may if the Terminal Operator does not remedy the contravention or breach before the expiry of the stated period, invite the Terminal Operator to make representations as to why the Licence should not be suspended or cancelled in its entirety; and
  - 20.4.3. having considered the Terminal Operator's representations, may suspend or cancel this Licence by written notice to the Terminal Operator.
- 20.5. If the Authority elects to issue a direction envisaged in clause 20.2.2, it shall –
- 20.5.1. Require the Terminal Operator to put forward within 20 (twenty) Business Days of such direction a reasonable programme for remedying the contravention or breach. The programme shall specify in reasonable detail the manner in which, and the latest date by which, the Terminal Operator contravention or breach 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 notifies the Authority within 5 (five) Business Days of such direction that it proposes to do so.
  - 20.5.2. If the Terminal Operator puts forward a programme in accordance with clause 20.2.2, the Authority shall within 15 (fifteen) Business Days after receipt of the programme, or such longer period as may be agreed between the Terminal Operator and the Authority in writing, notify the Terminal Operator that it accepts the programme, failing which the Authority shall be deemed to have rejected the programme. If the Authority does not accept the programme, the Authority and the Terminal Operator shall endeavour within the following 15 (fifteen) Business Days to agree any necessary amendments to the programme put forward. If no agreement can be reached, then the Authority may, after affording the Terminal Operator a reasonable opportunity to make representations as to why the Licence should not be suspended or cancelled and on written notice to the Terminal Operator, suspend or cancel this Licence.
  - 20.5.3. If a programme has been accepted by the Authority 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, then the Authority may, after affording the Terminal Operator a reasonable opportunity to make representations as to why the Licence should not be cancelled or suspended and on written notice to the Terminal Operator, suspend or cancel this Licence.
- 20.6. The Authority may invoke the provisions of clause 20.3, if --
- 20.6.1. The Terminal Operator fails to pay any amount in terms of this Licence on due date, and further fails to effect such payment within 30 (thirty) Business Days of receipt of written notice from the Authority calling upon the Terminal Operator to pay the amount.
  - 20.6.2. The Terminal Operator commits a material breach of any of its other obligations under the Licence and fails to remedy such breach within 30 (thirty) Business Days of receipt of written notice from the Authority notifying the Terminal Operator of the breach.
  - 20.6.3. The Terminal Operator uses the Terminal for a purpose that is unrelated to the services and activities described in clause 3 and does not form part of its rights and responsibilities set out in clause 3.
  - 20.6.4. The Terminal Operator is sequestrated or liquidated.
  - 20.6.5. The Terminal Operator has made any assignment to, or compromise with, its creditors.
  - 20.6.6. The Terminal Operator repeatedly fails to comply with the Act (including regulations, rules, instructions and directives adopted in terms thereof), any condition of this Licence, the Authority's policies or any applicable Law including the ISPS Code, the IMDG Code, the Customs and Excise Act 91 of 1964 or section 28 of NEMA.
  - 20.6.7. The Terminal Operator purports to cede, delegate or assign its rights and/or obligations under this Licence contrary to clause 19.
  - 20.6.8. The safety of vessels and persons within ports or the national security of the Republic so requires.

- 20.7. Within 7 (seven) Days of receipt of notice of the Authority's cancellation or suspension of this Licence, the Terminal Operator shall provide the Authority with an up-to-date copy of its asset register, copies of all of its outstanding contracts, and any other documents necessary to effect a smooth take-over of the operation of the Terminal.
- 20.8. Upon cancellation or suspension of this Licence by the Authority, the Authority may, if it considers that the cancellation or suspension would materially affect the movement of cargo or passengers in a port, immediately enter upon and take possession of the Terminal and eject the Terminal Operator and any other person therefrom and provide any service envisaged by this Licence and operate the Terminal and engage any person to carry out functions as directed by the Authority.
- 20.9. After cancellation or suspension of this Licence, the Terminal Operator shall remain liable for any outstanding payments relating to the use of the Terminal prior to the cancellation date in terms of this Licence.
- 20.10. If the Authority cancels or suspends the Licence and the Terminal Operator disputes the right to cancel or suspend and remains in occupation of the Terminal, the Terminal Operator shall, pending settlement of any dispute, continue to provide the services and to make payments in terms of this Licence and shall continue to be bound by all the provisions of this Licence.
- 20.11. Nothing in this clause 20 shall be construed as derogating from the Authority's right, in the event of a breach of the Terminal Operator's obligations in terms of this Licence, to institute legal proceedings to compel the Terminal Operator to comply with those obligations. .

## **21. Force Majeure**

- 21.1. If the Terminal Operator is prevented or restricted from performing or carrying out all or any of its obligations in terms of this Licence by reason of Force Majeure, the Terminal Operator:
  - 21.1.1. shall be excused and/or relieved from the performance of its obligations under this Licence during the period that such event of Force Majeure and its consequences continue, but only to the extent that it is prevented from performing and/or is unable to perform its obligations; and
  - 21.1.2. shall, forthwith upon the occurrence constituting Force Majeure, give written notice to the Authority of the circumstances giving rise to such Force Majeure, specifying the nature and date of commencement thereof and the expected duration thereof and the extent of the Terminal Operator's inability to perform, provided that the obligation to give such notice shall be suspended to the extent prevented by such Force Majeure.
- 21.2. The Terminal Operator shall use its reasonable endeavours, and shall take all reasonable steps, to the extent possible in the circumstances prevailing, to terminate the circumstances giving rise to Force Majeure and to prevent, limit and minimise the effect of an event of Force Majeure on the performance of its obligations under this Licence, and upon termination of the circumstances giving rise thereto, shall forthwith give written notice thereof to the Authority.
- 21.3. If the event of Force Majeure occurs as contemplated in this clause 21, the time period for performance of an obligation delayed by such event of Force Majeure shall be extended by the period for which such Force Majeure event delays such performance.
- 21.4. The provisions of this clause 21 shall not excuse or release the Terminal Operator from obligations and liabilities accruing or arising prior to the occurrence of such event of Force Majeure.
- 21.5. If the Terminal Operator invokes Force Majeure, it shall take all reasonable action to overcome any failure or delay in the performance of its obligations, including claiming under relevant insurance policies.
- 21.6. If the Terminal Operator alleges that a Force Majeure event or circumstance has continued for more than 5 (five) Days, the Terminal Operator and the Authority shall meet to discuss what action, if any, shall be taken. If the Terminal Operator and the Authority agree that a Force Majeure event or circumstance has taken place, they shall endeavour to reach agreement to deal with the Force Majeure event including, if necessary, to reach agreement on any modification of this Licence.

## **22. Emergency Situations**

- 22.1. The Authority may be authorised by the Minister of Public Enterprises, with the concurrence of the Minister of Transport, on the occurrence of any event which gives rise to an emergency which creates a real and imminent threat to the national interest of the Republic of South Africa or public safety, for as long as such a threat exists, to:
- 22.1.1. suspend this Licence, take temporary possession (either itself or through an authorised agent) of the Terminal and operate it in such a manner as it deems fit; or
  - 22.1.2. withdraw either partially or totally the use of the Terminal from any person or class of persons or from the public in general.
- 22.2. Where the Authority takes possession of the Terminal in terms of this clause adequate compensation will be paid, in the amount agreed between the Authority and the Terminal Operator, and failing that in the amount determined by the Minister of Public Enterprises, whose decision is binding upon the Terminal Operator and the Authority but may be reviewed by a court of law.

## **23. Amendments**

- 23.1. The Authority may amend this Licence either:
- 23.1.1. on application from the Terminal Operator;
  - 23.1.2. with the written permission of the Terminal Operator; or
  - 23.1.3. where the amendment is necessary to safeguard efficient port operations or safety, security or the protection of the Environment within the Port.
- 23.2. The Authority shall not amend the Licence without giving the Terminal Operator a reasonable opportunity to make representations on the proposed amendment.

## **24. Conflicts with Other Instruments**

- 24.1. In the event of any conflict between this Licence and the Existing Lease Agreement or between this Licence and any other agreement governing the relationship between the Authority and the Terminal Operator, the provisions of this Licence will prevail.
- 24.2. The Act, as well as the Regulations, Port Rules and directives issued in terms of the Act, will in all circumstances prevail over any conflicting provision in this Licence.

**ANNEXURE "A"**

**DESCRIPTION OF THE TERMINAL AND PRIVATE SIDING**

**[To be included]**

**ANNEXURE "B"**

**DESCRIPTION OF EQUIPMENT**

**[To be included]**

**ANNEXURE "C"**

**RAILWAY SAFETY REGULATOR PERMIT**

**[To be included]**

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