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TO [unclear]

# COMMERCIAL AGREEMENT FOR THE LEASE OF LAND

FOR

# MANUFACTURING AND DISTRIBUTION FACILITIES

Fair Market Value R 35070 00

Duty R 245 490, 00  
Per 28yrs

2003/05/03

**MEMORANDUM OF AN AGREEMENT  
MADE AND ENTERED INTO BY AND BETWEEN**

<b>SARS</b>	
I hereby certify that R. 245 490, 00 may be accepted as representing the Fair Value of this property for Duty purposes.	
<i>[Signature]</i>	
TAXPAYER SERVICE CENTRE DURBAN	

**TRANSNET LIMITED, trading as NATIONAL PORTS AUTHORITY**

**SIYABANGA INNOCENT GAMA**

**CHIEF EXECUTIVE OFFICER**

Represented herein by ..... in his capacity as ..... being duly authorised thereto.

(Here after referred to as the "NPA")

AND

**LEVER POND'S (PTY) LIMITED**

**CHARLES BRIAN WILKINS**

**SUPPLY CHAIN DIRECTOR**

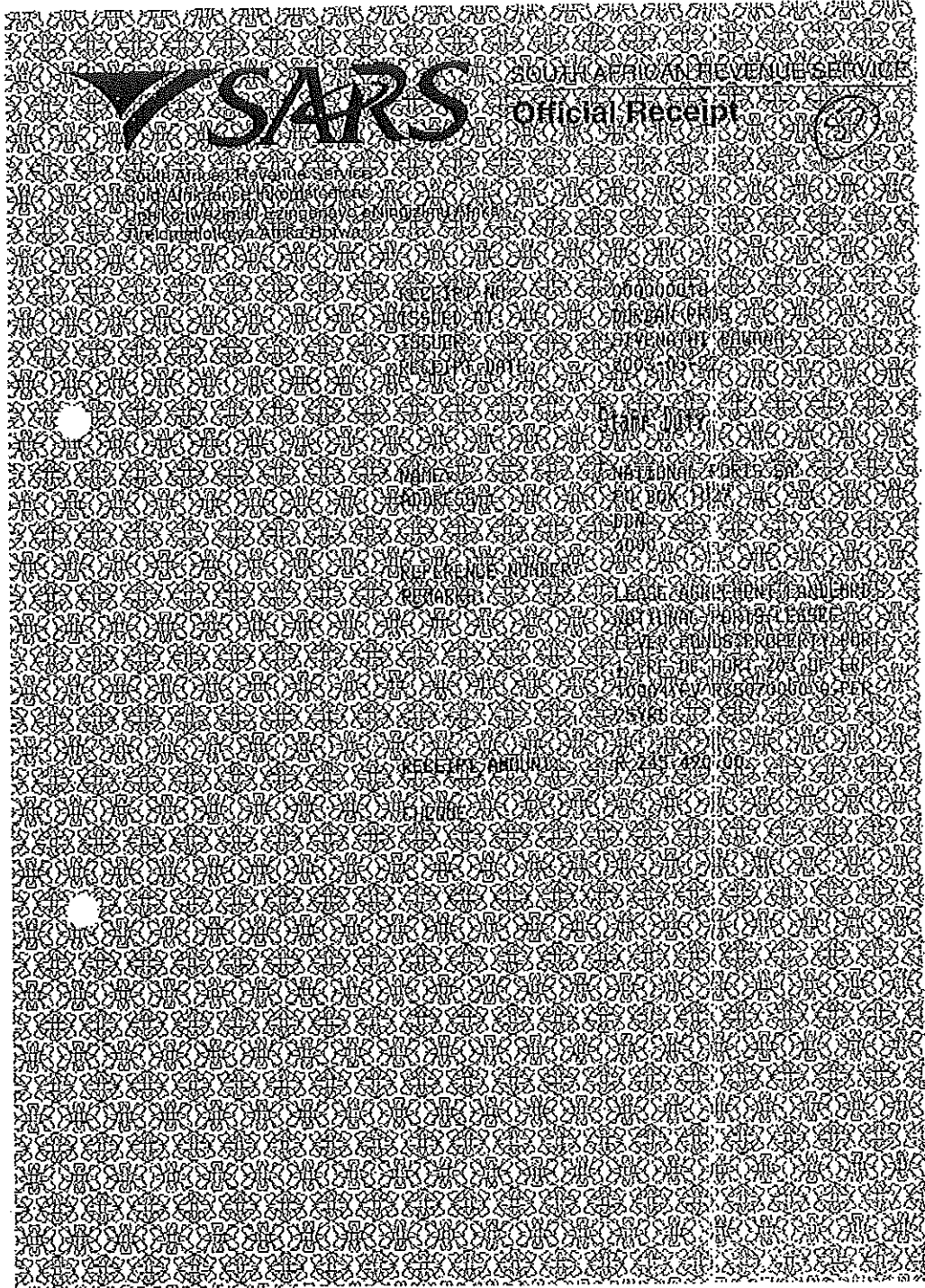
Represented herein by ..... in his capacity as ..... being duly authorised thereto by a Resolution of the Board of Directors dated 29/4/2003 a certified copy of which is annexed hereto.

(Here after referred to as the "LESSEE")

("The Parties")

<b>SARS</b>	
<b>STAMP DUTY</b>	
CERTIFICATE IN TERMS OF SUBSECTION (4) OF SECTION 5 OF ACT 77 OF 1968.	
I certify that R. 245 490, 00 in respect of Stamp Duty on this instrument has been paid, per	
Receipt No. 184	Dated 2003/05/22
Date 2003 05 22	
<i>[Signature]</i>	
TAXPAYER SERVICE CENTRE DURBAN	

*[Handwritten signature]* CBW  
*[Handwritten signature]* HW  
*[Handwritten signature]* JAD



**SARS**

SOUTH AFRICAN REVENUE SERVICE

Official Receipt



**MEMORANDUM OF AN AGREEMENT  
MADE AND ENTERED INTO BY AND BETWEEN**

**TRANSNET LIMITED, trading as NATIONAL PORTS AUTHORITY**

*SMABONGA INNOCENT GAMA  
CHIEF EXECUTIVE OFFICER*

Represented herein by ..... in his capacity as ..... being duly authorised thereto.

(Here after referred to as the "NPA")

AND

**LEVER POND'S (PTY) LIMITED**

*CHARLES BRIAN WILKINS      SUPPLY CHAIN DIRECTOR*


Represented herein by ..... in his capacity as ..... being duly authorised thereto by a Resolution of the Board of Directors dated *29/4/2003* a certified copy of which is annexed hereto.

(Here after referred to as the "LESSEE")

("The Parties")

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D:	NPA BEE POLICY

  
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## INTRODUCTION

1. An associated company of the LESSEE has, by virtue of certain existing leases ("the existing leases"), been in occupation of the PREMISES since 1909.
2. The associated company of the LESSEE has constructed on the PREMISES a manufacturing plant from which it has been conducting its business.
3. The parties have agreed to consolidate the existing leases into a written document which sets out the terms and conditions on which the LESSEE shall occupy the said PREMISES.
4. The LESSEE shall be obliged to submit to the NPA details of any capital additions in the form of buildings, that it wishes to construct on the PREMISES from time to time as contemplated in clause 7.4, as well as its Black Economic Empowerment Plan.
5. It is recorded that a portion of the PREMISES is occupied by GARDINER SMITH AFRICA (PTY) LIMITED, ISLAND VIEW STORAGE (PROPRIETARY) LIMITED and E B STEAM UTILITY COMPANY MAYDON (PTY) LIMITED which provide an outsourced service to the LESSEE. By its signature to THIS LEASE, the NPA hereby consents to the outsourcing of these services and the occupation by the aforesaid companies of portion of the PREMISES.

## WHEREBY THE PARTIES AGREE AS FOLLOWS:

### 1. DEFINITIONS AND INTERPRETATION

1.1 In this agreement -

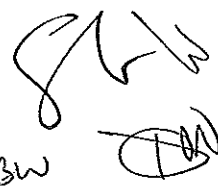
- 1.1.1 clause headings are for convenience only and are not to be used in the interpretation of the clause to which they relate.



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- 1.1.2 unless the context clearly indicates a contrary intention an expression which denotes -
- 1.1.2.1 any gender includes the other gender;
- 1.1.2.2 a natural person includes a juristic person and *vice versa*;
- 1.1.2.3 a singular includes the plural and *vice versa*.
- 1.1.3 any reference to an enactment is to that enactment as at the date of signature hereof and as amended or re-enacted from time to time.
- 1.2 In this agreement the following expressions bear the meanings assigned to them below
- 1.2.1 "**ANNUAL RATE OF ESCALATION**" means the rate at which the monthly rental shall increase at the beginning of the anniversary of the commencement date of THIS LEASE being 1 May 2003.
- 1.2.2 "**ANNUAL TONNAGE**" means that metric tonnes of cargo shipped and /or received by the LESSEE in any financial year of the NPA i.e. 1 April to 31 March.
- 1.2.3 "**BERTH**" means that portion of the quay as indicated on the plan annexed hereto, marked **Schedule "A"**.
- 1.2.4 "**COMMON USER BASIS**" means a basis of using the TERMINAL whereby that use is determined by inter alia commercial considerations and is not restricted to use only by the LESSEE, its shareholders and/or investors.
- 1.2.5 "**COMPETENT AUTHORITY**" means any local authority, City Council, Local or Provincial Government, their successors in title and/or third parties to such bodies, to whom such bodies may have outsourced or delegated their powers and responsibilities.

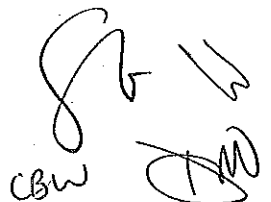
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- 1.2.6 **"FORCE MAJEURE"** shall mean any event beyond the reasonable control of the Party claiming the occurrence of *Force Majeure*; the occurrence of which could not have been reasonably foreseen or contemplated at the date of execution of THIS LEASE. It includes but is not limited to war, whether declared or not, revolution, riot strikes or other protestor action (except strikes or protestor action by or affecting employees of the Parties to THIS LEASE or their subcontractors) which strike(s) or protestor action are not part or directly related to any more widespread or general strike or other industrial action, insurrection, civil commotion, invasion, armed conflict, hostile act of foreign enemy, act of terrorism, sabotage, radiation, act of God, fire, explosion (not due to the negligence of the LESSEE).
- 1.2.7 **"LESSEE"** means Lever Pond's (Pty) Limited, a company with limited liability registered and incorporated in terms of the Company Laws of the Republic of South Africa, with its head office and registered office at 15 Nollsworth Crescent, Nollsworth Park, La Lucia Ridge Office Estate, La Lucia Ridge, KwaZulu-Natal.
- 1.2.8 **"NPA"** means Transnet Limited, Registration No. 1990/000900/06, a public company with limited liability registered and properly incorporated in terms of the Company laws of the Republic of South Africa, with its registered address at Room 621, 101 De Korte Street, Braamfontein, Johannesburg, and includes its successor-in-title, trading as the National Ports Authority of South Africa.
- 1.2.9 **"PREMISES"** means certain property of the NPA hereby let to the LESSEE and as more fully described in Clause 2 hereof.
- 1.2.10 **"REVIEW PERIOD"** means every fifth anniversary of THIS LEASE;
- 1.2.11 **"TERMINAL"** means the LESSEE'S export/import facility that may be used to export/import cargo through the Port of Durban, if the LESSEE decides in the future to undertake such activities, and includes the WORKS.

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- 1.2.12 "THIS LEASE" means the entire agreement entered into between the parties including the annexures, which have been signed and initialled by the parties as being relevant thereto.
- 1.2.13 "WORKS" means any buildings, fixtures, improvements and structures as well as additions and alterations thereto erected and to be erected on the PREMISES by and at the sole cost of the LESSEE, excluding those items dealt with in the electronic data referred to in clause 23.5.
- 1.3 Words and expressions defined in any clause shall, for the purposes of that clause, bear the meaning assigned to such words and expressions in such clause.

## 2. LEASE OF THE PREMISES

2.1 It is recorded that an associated company of the LESSEE is currently leasing from NPA certain property described as Portion of Portion of Portion 1 of Erf 10019 and Portion of Portion 203 of Erf 1004, Durban, in extent 12 289 square metres, as indicated by yellow shading and the letters XMNZY on **Schedule "AA"** annexed to THIS LEASE ("the excised portion").

2.2 The LESSEE operates an effluent plant, 1600 square metres in extent ("the effluent plant") on that portion of the excised portion as indicated by the letters \_\_\_\_\_ on the plan attached marked "AA" ("the effluent plant portion").

2.3 The LESSEE undertakes that it shall, at its cost, remove the effluent plant from the excised portion within 12 months from the date of commencement of THIS LEASE.

2.4 The LESSEE's obligation to pay rental for the effluent plant portion comprising part of the PREMISES as defined in clause 2.5 shall cease as soon as the effluent plant is removed from the excised portion. The LESSEE shall not be required to pay any rental for that part of the

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excised portion, excluding the effluent plant portion as it is not included in the PREMISES.

2.5 Subject to clauses 2.1 to 2.4 and 2.7, the NPA hereby lets to the LESSEE and the LESSEE hereby leases from the NPA the following two properties of the NPA, being:

2.5.1 Portion of Portion of Portion 1 of Erf 10019 and Portion of Portion 203 of Erf 1004, Durban, in extent 79 029 square metres, as indicated with shading on **Schedule "A"** annexed to THIS LEASE; and

2.5.2 the effluent plant portion referred to in clause 2.2 as reflected on Schedule "AA"

and signed by the parties hereto (both portions in clauses 2.5.1 and 2.5.2 hereinafter referred to as the "PREMISES"), subject to the following terms and conditions.

2.6 The effluent plant portion referred to in clause 2.5.2 shall be excluded from the PREMISES and the terms of THIS LEASE as soon as the effluent plant has been removed by the LESSEE as contemplated in clause 2.3.

2.7 It is recorded that the NPA is in the process of having Lever Road in extent <sup>2693</sup>~~3240~~ square metres, a public road which currently traverses the PREMISES ("Lever Road"), deproclaimed as a road, and that on formal deproclamation, the rental under THIS LEASE will be increased by an amount equal to then rate per square metre multiplied by the area of Lever Road as referred to in this clause 2.7.

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### 3. TENURE AND REVIEW

#### 3.1 TENURE

3.1.1 Notwithstanding the date of signature hereof, THIS LEASE shall, subject to clause 3.1.3, commence on 1<sup>st</sup> May 2003 and shall continue for a fixed period of twenty-five (25) years terminating on 30 April 2028, unless terminated earlier in terms of the provisions of THIS LEASE.

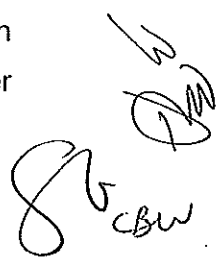
3.1.2 THE LESSEE may during 2018 request the NPA to consider renewing THIS LEASE for a further period of ten (10) years on the same terms and conditions of THIS LEASE, save for the rental, rate of escalation and period, on further conditions to be negotiated at the time. Any extension of the lease period in terms of this clause shall be at the discretion of the NPA who shall however act reasonably in assessing the LESSEE'S renewal request.

3.1.3 Notwithstanding the provisions of this clause 3.1, the LESSEE may in its sole discretion terminate THIS LEASE, at any time after 1 May 2013, subject to it giving the NPA thirty six (36) months prior written notice of the date of such intended termination, without any compensation payable by it to the NPA, or any compensation payable by NPA to the LESSEE.

#### 3.2 REVIEW OF RENTAL

3.2.1 The NPA shall review its business performance every five (5) years starting on 2008 for purposes of ascertaining whether the rental and rate of escalation payable by the LESSEE in respect of the PREMISES is market related.

3.2.2 It is recorded that the commencing 12 month rental of R4,30 per square metre for the PREMISES as referred to in Schedule "B" in clause 4.1.1 is a compromise rental agreed by the Parties after



various factors were considered, including the circumstances surrounding the existing leases, and that such commencement rental represents a 28% discount ("the rental discount") below current market rental.

- 3.2.3 Arising out of the review of rental referred to in clause 3.2.1, the NPA will approach the LESSEE to renegotiate the rental and rate of escalation under THIS LEASE. In this event, the NPA and the LESSEE shall try to agree on the proposed rental adjustments, always taking into account that any review of current market rental during the initial 25 year period of THIS LEASE must always be discounted by the rental discount referred to in clause 3.2.2.
- 3.2.4 Should the Parties fail to reach agreement on any rental increase proposed by the NPA in terms of Clause 3.2.3, this issue shall be submitted to an independent valuer mutually agreed upon by the Parties for his determination of a reasonable market related rental for the PREMISES, which market rental must then be discounted by the rental discount referred to in clause 3.2.2. The cost of the valuer contemplated in clauses 3.2.4 and 3.2.5 shall be for the account of the NPA.
- 3.2.5 Should the Parties fail to mutually agree on the appointment of an independent valuer, in terms of clause 3.2.4, the Parties agree to submit that decision to the President of the South African Institute of Valuers or its successor in title who shall nominate and appoint an independent valuer for this purpose and whose decision shall be final and binding on both Parties.

#### 4. RENTAL AND CHARGES

##### 4.1 RENTAL

- 4.1.1 Subject to clause 4.1.5, the monthly rental for the period 1 May 2003 to 30 April 2004, exclusive of rates, taxes and levies, and exclusive of

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VAT shall be as more fully stated in **Schedule "B"** annexed to THIS LEASE as R4,30 per square metre. The said amount shall thereafter increase in accordance with the annual rate of escalation as set out in Schedule "B", by 10% per annum on each anniversary of 1 May 2003, until 30 April 2008. In respect of the first four months of THIS LEASE, the LESSEE shall pay an additional amount ("the rental surcharge") to the NPA equivalent to one quarter of the stamp duty payable on THIS LEASE in terms of clause 41.

4.1.2 The LESSEE shall pay the rental and other charges in advance, free of deduction or set off and without the addition of bank commission, on the first day of each month ("due date").

4.1.3 The monthly rental shall be paid by means of a direct transfer from the banking account of the LESSEE to that of NPA.

4.1.4 For purposes of effecting the direct transfer, NPA shall furnish its banking details to the LESSEE and

4.1.4.1 details of any changes that may take place in relation to such account, and

4.1.4.2 such documentation as the LESSEE's bank and/or the NPA may require for the due implementation of the direct transfer.

4.1.5 The rental referred to in clause 4.1.1 will at the commencement date of THIS LEASE, be based on a leased area of <sup>77936</sup>~~77389~~ square metres (79 029 square metres plus 1600 square metres, less <sup>2693</sup>~~3240~~ square metres) and shall be subject to the following adjustments:

4.1.5.1 on formal deproclamation of Lever Road, the rental will be increased by an amount equal to the rate of R4,30 per square metre (escalated, if applicable by 10% ) multiplied by <sup>2693</sup>~~3240~~ square metres being the agreed area of Lever Road as referred to in clause 2.7; and

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4.1.5.2 on removal of the effluent plant from the excised portion, the rental will be reduced by an amount equal to the rate of R4,30 per square metre (escalated, if applicable by 10%) multiplied by 1600 square metres being the agreed area of the effluent plant as referred to in clause 2.2.

#### 4.2 DEPOSIT / BANK GUARANTEE

4.2.1 Notwithstanding the provisions of Clause 4.1 of THIS LEASE, the LESSEE shall, on payment of the first amount of rental, deposit or provide a bank or insurance company guarantee with the NPA an amount which is equal to one (1) month's rental, including VAT, which shall bear no interest in favour of the LESSEE, and be held by the NPA as security for the due performance of the terms of THIS LEASE.

4.2.1.1 Should the LESSEE at any time fail to promptly make payment of any amount due under THIS LEASE, or should the LESSEE cause damage to the NPA's property and fail to pay, or repair such damages within 60 days after date of notification, provided that the damage is reasonably capable of repair in such period, such deposit or bank or insurance company guarantee may be appropriated by the NPA towards the costs of such repair and any such unpaid amount thereof and/or as compensation for such damage.

4.2.2 The quantum of rental deposit or bank or insurance company guarantee in terms of Clause 4.2.1 shall at no time be less than an amount equal to one (1) months rental.

4.2.3 Provided that the rental deposit or bank or insurance company guarantee filed by the LESSEE shall at all times be maintained in the amount as stipulated in clause 4.2.1, should any amount be utilised by NPA as envisaged in terms of THIS LEASE then the LESSEE shall within 14 days thereafter top up the amount to cover the shortfall;

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provided further that the amount of the deposit shall be adjusted annually in keeping with the rate of escalation.

4.2.4 As soon as all obligations of the LESSEE to the NPA have been discharged following the termination of this LEASE, the NPA shall refund the LESSEE free of interest so much of the deposit or cancel such guarantee as the case may be, as has not been applied in terms of the above provisions.

4.3 **RATES, TAXES, SERVICE CHARGES, LEVIES OR OTHER ASSESSMENTS**

4.3.1 It is recorded that the PREMISES are separately metered and the LESSEE shall pay all charges imposed on the PREMISES for the supply of water, electricity, sewage and disposal services.

4.3.2 The LESSEE accepts responsibility for the payment of rates, taxes, charges, levies, assessments or any other form of taxation which may at any time be levied by a COMPETENT AUTHORITY upon or in connection with the PREMISES, in respect of the period covered by THIS LEASE, other than any taxes imposed in relation to the receipt by the NPA of the rental or in connection with its disposal of its interest in the PREMISES or in relation to any other amounts received by or accrued to the NPA as a result of or in connection with THIS LEASE or the PREMISES.

4.3.3 In the event that the NPA renders payments to the COMPETENT AUTHORITY on behalf of the LESSEE, the NPA shall notify the LESSEE in writing about such payments and shall provide the LESSEE with all documentation that it reasonably requires regarding the said charges and following receipt of such documentation (if requested), the LESSEE shall, within fifteen (15) days after being called upon to do so, refund to the NPA such payments as the NPA may have made in respect of the rates levied.

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- 4.3.4 Notwithstanding the foregoing provisions, the NPA may, in its discretion, at any time require the LESSEE to deposit with it on or before a date determined by the NPA the amount estimated to be due in respect of all rates, taxes, charges, levies, assessments or any other form of taxation for the ensuing rating year, in which event any difference between the amount so deposited and the amount actually due shall be adjusted when the last mentioned amount is known, provided that the LESSEE shall not be required to make payment of such amount more than thirty (30) days prior to the due date for payment thereof to the COMPETENT AUTHORITY.
- 4.3.5 The LESSEE shall not be entitled to a refund of any portion of the sum paid in respect of such rates, taxes, charges, levies, assessments or any other form of taxation by virtue of the earlier termination of THIS LEASE before the expiry of the rating period in respect of which they were paid, except where such termination is due to effluxion of time or a breach of the agreement by the NPA or termination by the LESSEE in terms of clause 3.1.3, in which event the LESSEE shall be entitled to a proportionate refund that is in the same ratio as the unexpired portion of the period, in respect of which such rates, taxes, charges, levies, assessments or any other form of taxation were paid, stands to the lease period.
- 4.3.6 No interest will be payable by the NPA on the refund referred to in clause 4.3.5.
- 4.3.7 The LESSEE may object to any rates valuation made by any COMPETENT AUTHORITY on the PREMISES or the land of which they form part and the NPA shall give the LESSEE whatever assistance it reasonably requires in making such objection including lodging an objection in the NPA's name as owner of the PREMISES. The LESSEE shall be liable for all costs in prosecuting any such objection and the LESSEE shall be entitled to any benefit accruing as a result of a successful objection.



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**5. PAYMENT OF CARGO DUES**

5.1 The NPA shall levy cargo dues on any cargo exported from or imported to the PREMISES through the TERMINAL and over the BERTH, monthly at the prevailing tariff in force in any NPA financial year.

5.2 Such cargo dues shall be payable by the LESSEE to the NPA at its Harbour Revenue Office at Durban. For such purposes the LESSEE undertakes to keep accurate and proper records of all throughput and such record shall be submitted on a monthly basis to NPA, if any throughput occurs during the preceding month.

**6. PORT PLANNING**

6.1 The Parties acknowledge that the NPA has the obligation of re-planning and restructuring the port usage in order to cater for import and export demand which might result in the PREMISES being required for purposes of such planning.


6.2 Notwithstanding the provisions of clause 6.1 and any legislation that may be promulgated in the future granting the NPA certain powers in regard to termination, relocation or variation of leases on Maydon Wharf in any form, the NPA acknowledges and agrees that until termination of THIS LEASE, it shall not exercise any rights granted by such legislation to seek the removal or relocation in any form of the LESSEE from the PREMISES.

**7. USE OF THE PREMISES, CONSTRUCTION AND ERECTION OF IMPROVEMENTS AND OPERATION OF THE TERMINAL**

7.1 The NPA grants the LESSEE the right to use the PREMISES for the purposes of manufacturing, production, packing, storage, warehousing and administration incidental to such usage of any goods produced by the LESSEE and any of its associated companies, agents or sub-contractors.

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- 7.1.1 Should the LESSEE wish to utilise the PREMISES for any other purpose other than those stated in clause 7.1 then the LESSEE shall apply to the NPA within 30 days before the anticipated date of such additional use.
- 7.1.2 The NPA shall have the right to either decline or accept such additional use within 30 days of receiving such notice.
- 7.1.3 In granting such additional use the NPA reserves the right to add new terms and conditions under which such additional use shall be exercised and should the LESSEE wish to proceed with such additional use on these terms and conditions, the LESSEE shall then be obliged to adhere to such new terms and conditions.
- 7.2 The NPA does not warrant that the PREMISES are fit for the purpose for which they are leased.
- 7.3 There shall be no liability on the NPA to do any work or make any alterations or repairs to the PREMISES to comply with the requirements of any licensing or other authority or to render the PREMISES suitable for the purpose for which they are leased.
- 7.4 The LESSEE shall be entitled to erect and install on the PREMISES any buildings and/or improvements and to effect any alterations or modifications, as may be required by the LESSEE in order to render the PREMISES suitable for the purposes for which it is leased to the LESSEE as recorded in terms of clause 7.1 hereof. The LESSEE shall, in respect of buildings and/or improvements which have a cost to it of more than R500 000.00 (which shall escalate annually at a rate of 10% per annum) each, obtain the prior written consent of the NPA, which consent shall not be unreasonably withheld, and provided further that the plans and specifications relating to such construction, erection, installation, repair or alteration is approved in writing by the NPA and by the requisite COMPETENT AUTHORITY, which approval shall likewise not unreasonably be withheld.

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- 7.5 The provisions of clauses 7.4 and 22 hereof shall apply to any such work, save for any repairs and alterations to buildings and improvements which are in existence as at the commencement of THIS LEASE.
- 7.6 The LESSEE shall be responsible for obtaining consent from the COMPETENT AUTHORITY in terms of the relevant Town Planning Scheme for the use of the PREMISES as contemplated in clause 7.1 hereof.
- 7.6.1 The NPA undertakes to render reasonable assistance as may be required in terms of the Town Planning Scheme, provided that any costs incurred by the NPA in the rendering of such assistance shall be for the account of the LESSEE.
- 7.7 Subject to clauses 7.2 and 7.4, the LESSEE undertakes at its sole cost to construct, erect and install, any future WORKS on the PREMISES, only after plans and specifications have been approved in writing by the NPA and any COMPETENT AUTHORITY.
- 7.8 The LESSEE shall pay to the NPA the necessary fees provided that such fee is reasonable in regard to similar charges raised by equivalent local authority departments in respect of any scrutiny of the plans and inspection of the WORKS, and any reasonable costs in respect of precautionary measures deemed necessary, but the NPA accepts no responsibility for the WORKS merely by reason of the fact that the WORKS have been inspected in the course of construction and approved by the NPA.
- 7.9 The WORKS shall be erected strictly in accordance with the approved plans and specifications. The NPA reserves the right to inspect such WORKS periodically to ensure strict adherence to the approved plans and specifications; the LESSEE also agrees to abide by any directions of the NPA relating to reasonable precautionary measures to protect the NPA's existing assets, services and rail tracks on or near the PREMISES during the construction of the WORKS.

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- 7.9.1 Notwithstanding the fact that the WORKS of an unquestionably immovable nature shall become the property of the NPA, upon construction, without the payment of any compensation by the NPA, the LESSEE shall not be entitled to claim that the NPA should maintain, renew or in any way alter or protect such WORKS and/or services.
- 7.10 The LESSEE shall ensure, by and at its own cost, that the buildings and improvements thereon including the WORKS are maintained, renewed or protected in a proper and workmanlike manner, and that they shall at no time become dangerous or unsightly or contravene any of the conditions imposed by any COMPETENT AUTHORITY as more fully specified in clause 14. The LESSEE's attention is directed to clause 23.4 hereof.
- 7.11 Should consent be given by the NPA in terms of clause 7.4 hereof, such buildings and improvements, once erected, shall not be removed or altered by the LESSEE during the currency of THIS LEASE, without the written permission of the NPA which approval shall not be unreasonably withheld.
- 7.11.1 In the event of any alterations or additions being done by or on behalf of the LESSEE without the prior written approval of the NPA as well as any other COMPETENT AUTHORITY, the NPA shall have the right to require the LESSEE by written notice, to remove the said WORKS and to reinstate the PREMISES, at the sole cost of the LESSEE, to its prior condition within such period specified in the notice, failing which, the NPA shall have the right to remove the said WORKS and to reinstate the PREMISES at the cost of the LESSEE.
- 7.11.2 Should the LESSEE be obliged by the NPA to remove any WORKS and reinstate the PREMISES and the LESSEE remains in occupation of the PREMISES after expiry of THIS LEASE while attending to the removal of the WORKS and the reinstatement of the PREMISES, the LESSEE shall be liable for the payment of rental and rates in terms of THIS LEASE in respect of such period of occupation and for any other loss or damage suffered by the NPA as a result of such occupation.

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- 7.11.3 The duration of such occupation shall be the time reasonably required for the removal of the WORKS and reinstatement of the PREMISES but shall not exceed six (6) months.
- 7.12 The LESSEE undertakes that it shall in the design, siting and operating of all unloading, storage and loading appliances, subject to the provisions of clause 7.4 hereof, take all such precautions as are necessary to ensure that safety standards are met in terms of applicable legislation and shall submit plans for any loading appliances located inside the PREMISES to NPA for approval
- 7.12.1 The LESSEE shall not, save in so far it may reasonably be necessary for the LESSEE to conduct its business on the PREMISES, keep or store on the PREMISES explosives, flammable goods, substances or liquids and shall comply with the obligations imposed in terms of the Hazardous Substance Act, 1973 (Act 15 of 1973) as amended.
- 7.13 In the event that the LESSEE wishes to store such goods, it shall notify the NPA in writing of such requirements.
- 7.14 The LESSEE shall not allow the PREMISES or portion thereof to remain unused without the prior written consent of the NPA, which consent shall not be unreasonably withheld.
- 7.15 The PREMISES shall not be used for residential purposes nor sleeping quarters.

## 8. WAYLEAVES

- 8.1 It is recorded that certain of the products used by the LESSEE in its business is transferred from the BERTH to the PREMISES by an underground conveyor system over property owned by the NPA.
- 8.2 The NPA shall at all times act reasonably towards the LESSEE in regard to the LESSEE's requirements regarding the transfer and conveyance of

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its product to and from the PREMISES over the property owned by the NPA.

- 8.3 The NPA shall not be responsible for preparing the wayleave area to make it suitable for the placing or construction of the LESSEE's structures or appliances.

## 9. ANNUAL TONNAGES

- 9.1 Should THE LESSEE so elect, it may submit to the NPA within thirty (30) days after the termination of each financial year of the NPA for the duration of THIS LEASE, a certificate issued by an independent auditor registered by the S.A. Institute of Chartered Accountants, setting out the ANNUAL TONNAGE of cargo, permitted in terms of THIS LEASE landed or shipped over the BERTH, and emanating from or destined to the PREMISES.
- 9.2 The LESSEE shall advise the NPA in writing of the ANNUAL TONNAGE forecast of the facility for each new financial year of the NPA at least two (2) months before the commencement of that financial year.
- 9.3 "THROUGHPUT CAPACITY" shall mean the calculated capacity of the TERMINAL as determined by the Terminal Management at the beginning of each succeeding year and agreed to by the NPA. In the absence of agreement between the parties, the THROUGHPUT CAPACITY shall be determined by an independent consulting engineer nominated by the NPA from a panel of five (5) consulting engineers selected by the LESSEE.
- 9.3.1 The consulting engineer shall act as an expert and not as an arbitrator and his determination shall, in the absence of manifested error in calculation, be final and binding on the parties.

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10. **DREDGING AND MAINTENANCE OF QUAY APRONS AND THE BERTH**

10.1 The NPA shall be responsible for the dredging of the BERTH in order to maintain the advertised berth depth in **Schedule "A"**, as at the date of commencement of THIS LEASE and shall use its best endeavours to maintain such depth. The parties agree that the NPA shall prior to undertaking any dredging activities consult with the LESSEE in order to ensure that the dredging activities do not unreasonably interfere with the operations of the LESSEE on the PREMISES

10.1.1 The NPA shall also dredge and maintain the quay aprons identified in **Schedule "A"** in a suitable condition for loading and off-loading operations.

10.1.2 The NPA shall bear the costs associated with the aforementioned dredging and maintenance as a result of fair wear and tear only.

10.1.3 Where repairs to quay aprons are the result of damage and/or negligence and/or wilful misconduct caused by the LESSEE or any third party contracted by the LESSEE, the costs involved shall be for the account of the LESSEE.

10.1.4 The LESSEE shall permit the NPA to do such dredging and maintenance and shall render whatever assistance is necessary in order for the NPA to fulfil its obligations in terms of this clause.

10.2 The LESSEE shall be responsible for maintenance of the operational area described in **Schedule "A"**.

10.2.1 The LESSEE shall be responsible for all the necessary repairs and maintenance to the improvements either provided by the LESSEE or the NPA on the PREMISES.

10.2.2 Such repairs and maintenance shall be carried out on regular intervals to ensure the quality, integrity usefulness and availability of the facility for the duration of the leased period or the extension thereof as may be agreed upon

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- 10.2.3 The PREMISES shall be inspected by the NPA's port engineering department at intervals to be agreed upon and dictated by the condition of the assets. It is agreed that in the absence of an agreement the assets shall be maintained at least when necessary.
- 10.2.4 Where in the reasonable opinion of the Port Engineer the improvements are not adequately maintained, he shall instruct the LESSEE to execute such repairs and maintenance he deems necessary within a mutually agreed upon period of time. Should the LESSEE fail to arrange to have those necessary repairs and maintenance to be executed, the Port Engineer shall carry out such repairs and maintenance for the account of the LESSEE.
- 10.3 Costs involved in removing from the BERTH, both on land and in the water, cargo spillages emanating from the TERMINAL as a result of the LESSEE's activities thereon shall be for the account of the LESSEE.

#### 11. TRACKWORK/SIDING

- 11.1 The LESSEE shall at its own cost and to the satisfaction of the NPA provide and/ or maintain and/ or replace the necessary private siding tracks leading immediately to and on the PREMISES, utilised by the LESSEE.
- 11.1.1 Provision and/ or maintenance and/ or replacement of an existing private siding to serve the PREMISES, subject to approval of the NPA shall form the subject of a separate agreement between the LESSEE and the NPA.
- 11.1.2 The LESSEE shall ensure that the existing railway lines comply with applicable standards. Any further rail lines to be laid by the LESSEE shall be subject to the approval of the NPA and shall comply with such standards.
- 11.1.3 The NPA may, if required, make land available for rail access to the TERMINAL and/or ensure access rights where appropriate.

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- 11.1.4 The LESSEE agrees and undertakes to conclude a separate Lease Agreement with the NPA for the NPA's land forming part of any portion of the private siding outside the boundaries of the PREMISES.
- 11.2 The LESSEE shall be responsible for all the necessary repairs and maintenance to any railway line or track either provided by the LESSEE or the NPA on the PREMISES or any other area leased to it. The repairs and maintenance costs of such shall be for the account of the LESSEE.
- 11.2.1.1 In the event that the railway line and/or track is utilised by a third party, the LESSEE's exclusive liability shall be shared equally between the third party and the LESSEE.
- 11.2.1.2 In the event that the LESSEE does not utilise the railway line and/or track at all, the LESSEE shall be exempt from all liability and/or any costs and expenses under clauses 11.1 and 11.2.

## 12. ROADWAYS AND ACCESS

- 12.1 The LESSEE shall be obliged to provide at its own cost within the boundaries of the PREMISES such roadways as may be required for or in connection with the activities contemplated herein, and shall maintain such roads in good order and condition.
- 12.1.1 Such roadways shall be of a standard complying with the permissible axle loads for the type and volume of traffic which will use such roads.
- 12.1.2 All vehicles to and from the PREMISES should be scheduled to not cause traffic congestion, parking and queuing outside the PREMISES.
- 12.2 Subject to clause 13.2, the NPA shall have reasonable access over any and all roadways on the PREMISES and subject to the NPA complying with all security requirements of the LESSEE, the NPA shall have the use of any and all roadways so provided on and over the PREMISES to enable it efficiently to perform and to carry out all its duties and functions on the land or on adjoining areas, provided that in the use of such

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roadways the NPA shall not unnecessarily interfere with or impede the activities of the LESSEE.

- 12.3 The NPA shall at all times provide the LESSEE with adequate access by road to and from the PREMISES.

### 13. SECURITY

- 13.1 Subject to clause 13.2, any other party who may be permitted to enter upon the PREMISES for the legitimate purposes of rendering a service upon the PREMISES, shall be allowed the use of the roadways in existence upon the PREMISES.

- 13.2 Every person seeking access to or leaving the PREMISES for any purpose whatsoever, shall be subject to such reasonable security control and safety measures as the LESSEE may impose from time to time.

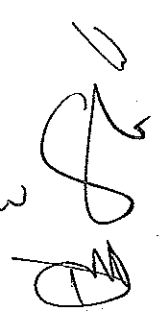
- 13.3 The LESSEE shall be responsible at its own cost for operating and maintaining security measures on the PREMISES, which shall accord to those issued from time to time by the NPA, which is referred to as the NPA Security Guidelines.

- 13.4 Security services provided by the LESSEE shall comply with the relevant legislation.

### 14. SERVICES BY COMPETENT AUTHORITY

- 14.1 The LESSEE shall, where such services are not provided by the NPA, arrange at its own cost with the COMPETENT AUTHORITY, for the supply of services such as water, electricity and sewerage from the nearest available connection point to the PREMISES and for disposal services in respect of garbage, industrial waste and sanitary waste.

- 14.2 The LESSEE shall also arrange with the COMPETENT AUTHORITY for rendering of all other services not rendered by the NPA but which may be

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required in respect of all or any of the activities which are to be carried out on the PREMISES.

- 14.3 Separate agreements shall, if necessary, be concluded between the NPA and the LESSEE in respect of any services rendered to the LESSEE by the NPA on the PREMISES simultaneously with the conclusion of THIS LEASE or within a reasonable time thereafter. The LESSEE shall, however, be obliged to commence payment of the rental in terms of THIS LEASE irrespective of the date of the conclusion of such separate agreements.
- 14.4 The LESSEE shall also arrange for sufficient receptacles for the disposal of refuse and undertakes at all times during the currency of THIS LEASE to use such receptacles exclusively for the disposal of refuse and not to deposit any refuse in or on any part of the PREMISES and/or property of which the PREMISES forms part.
- 14.5 The NPA reserves the right to lay and use and to allow third parties to lay and use services such as cables and pipes which are on or across the PREMISES as will not interfere with or diminish the LESSEE's own use rights to the PREMISES, in terms of clause 7 hereof without becoming liable to pay any compensation to the LESSEE or to grant any reduction in rent.
- 14.5.1 The LESSEE shall not do or allow anything to be done that would render the laying and use of such services impracticable.
- 14.5.2 The NPA and third parties shall at all reasonable times and subject to clause 13.2 have reasonable and free access to the PREMISES for the purpose of the construction, maintenance, repairs, monitoring and replacement or removal of such services.
- 14.5.3 Every person enjoying access in terms of this clause shall be bound to comply with safety and environmental regulations as the LESSEE may in writing lay down.

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14.6 In the event that the exercise by the NPA of its rights in terms of clause 14.5 results in damage to such buildings, structures and ancillary equipment erected or installed by the LESSEE on the PREMISES as allowed in terms of clause 7.4 hereof and/or interferes with the LESSEE's own use rights in terms of clause 7.1 of THIS LEASE then the NPA undertakes to compensate the LESSEE at the reasonable costs of repairing such damage and/or to grant a reduction in rental that is prorated to the extent of infringement upon the LESSEE's right of beneficial occupation.

## 15. INDEMNITY

15.1 The LESSEE, its employees, agents, representatives, subcontractors or suppliers shall and hereby do indemnify the NPA and hold it harmless against:

- 15.1.1 any loss of or damage to the NPA's own property, whether movable or immovable on the PREMISES;
- 15.1.2 liability in respect of any loss of or damage to the property, including environmental degradation; whether movable or immovable, of third parties or persons;
- 15.1.3 liability in respect of the death of or injury to any employee of the NPA or any third party or person on the PREMISES;
- 15.1.4 any legal costs or any other expenses reasonably incurred by the NPA in connection with claims or actions arising out of any of the foregoing;
- 15.1.5 any penalties imposed on the NPA by any COMPETENT AUTHORITY arising from the LESSEE's failure to comply with applicable law.

whenever the loss, damage, injury or death referred to in clauses 15.1.1, 15.1.2 and/or 15.1.3 above, is due to or arises out of THIS LEASE, occupancy and/or use of the PREMISES by the LESSEE; provided that the LESSEE shall incur no liability for any loss, damage, injury or death which is

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due to the wilful misconduct of the NPA or any of its employees, agents, subcontractors and representatives whilst acting within the course and scope of their employment with the NPA.

- 15.2 The NPA shall notify the LESSEE forthwith upon receipt of information of the occurrence of any damage or the receipt of any claim or demand for or against which the LESSEE is *prima facie* liable to indemnify the NPA in terms of clause 15.1 hereof.
- 15.2.1 The NPA shall in respect of such claim or demand abide by the directions of the LESSEE as to whether and on what terms it shall be settled, compromised or contested.
- 15.2.2 The parties agree that whatever action may be taken by the NPA pursuant to such directions of the LESSEE or by the NPA on the advice of its legal advisors, where the LESSEE fails to give directions, shall be at the LESSEE's risk and expense.
- 15.3 In the event of a dispute between the Parties as to whether the occurrence of any event, causing loss or damage or the receipt of any claim or demand, relates to an event in terms of which the LESSEE is liable to indemnify the NPA ("the indemnity dispute"), the Parties agree that:
- 15.3.1 the NPA shall contest, settle or compromise the claim;
- 15.3.2 the indemnity dispute shall be referred for resolution in accordance with clause 33;
- 15.3.3 if the indemnity dispute is decided in favour of the NPA, the LESSEE shall refund to the NPA the amount of the claim as ordered and/or settled, together with interest from date of the payment by the NPA of the claim as ordered or settled, to date of payment by the LESSEE;
- 15.3.4 the interest shall be as determined by the arbitrator in terms of clause 33 or failing the arbitrator's decision, the prime rate of the Standard

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Bank of South Africa or any other competent Bank that the NPA may elect to use from time to time.

## 16. RISK MANAGEMENT

16.1 In the event that, as a result of the LESSEE's operations on the PREMISES, the NPA discovers that the plans and specifications of the WORKS may not, when approved by the NPA, or any other COMPETENT AUTHORITY, make adequate provision for protective measures against fire, then

16.2 The NPA reserves the right, if at any time during the currency of THIS LEASE it is of the opinion that the absence or inadequacy of such protective measures in the WORKS is or may become a hazard to its own buildings or property or the buildings or property of third parties:

16.2.1 call upon the LESSEE by giving a forty five (45) days notice in writing to provide and install in such WORKS or on the PREMISES any or all such devices, appliances and installations as the NPA may consider necessary to minimise the risk of any fire therein or thereon or to extinguish or prevent the spread of any fire which may occur;

16.2.2 the LESSEE shall, when so called upon, comply to the reasonable satisfaction of the NPA with the requirements set forth in such notice, within the time specified in the notice. In the event of a fire occurring on the PREMISES, the NPA shall not be responsible for any costs, loss or damage incurred as a result of such fire, unless such fire is caused by the NPA, its employees, agents, representatives or subcontractors.

## 17. SERVICES LAYOUT

The LESSEE shall plan the future services within the PREMISES to meet the requirements of the site and to tie in with the NPA's planned or existing services for the area within which the PREMISES are located.

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**18. CESSION AND SUBLETTING**

- 18.1 The LESSEE shall not have the right to cede, sublet or assign, mortgage or otherwise dispose of or in any way hypothecate THIS LEASE or the PREMISES or any portion thereof without the prior written consent of the NPA which consent shall not be unreasonably withheld.
- 18.2 Assignment includes the transfer of any of the LESSEE's present issued shares, unissued share capital or any future increased share capital, or sale of business which results in a change in the effective control of the LESSEE, and/or its business.

**19. COMPLIANCE WITH APPLICABLE LAW**

- 19.1 The Parties recognise and agree that they shall not, in the performance and execution of their respective rights and obligations in terms of THIS LEASE, be exempt from compliance with any statute, regulation, by-law, ordinances orders, judgements or conditions imposed by a competent authority, environmental requirements, provincial legislation, local government legislation ("law") imposing obligations on either or both Parties, their agents or subcontractors from time to time, as a result of THIS LEASE as specified.
- 19.2 Any change in law that occurs after the commencement date of THIS LEASE that materially affects any aspects of THIS LEASE that establishes requirements that increase materially the costs of either Party's compliance with the terms and conditions of THIS LEASE shall be dealt with in accordance with Clause 33, provided, however that, such change in the law is not required as a result of any of the Parties' acts and/or omissions or a failure to comply with any of the applicable laws.
- 19.3 The Parties hereby undertake, to comply with all statutes and regulations promulgated in terms of such statutes, including by-laws or ordinances and conditions imposed by applicable authorities, environmental

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requirements, provincial legislation and local Government legislation, together with amendments or replacements promulgated or ordered from time to time.

## 20. ENVIRONMENTAL MANAGEMENT

20.1 It is recorded that an associated company of the LESSEE is currently in occupation of the PREMISES and has an ISO 14001 Environmental Management Plan in place. The LESSEE undertakes that it shall at all times comply with the provisions of the said ISO 14001 Environmental Management Plan or any other Plan which shall replace it. In the event of the PREMISES being situated within an area declared to be a protected natural environment and/or special nature reserve, in terms of the National Environmental Management Act, (Act 107 of 1998) including any other relevant legislation, the LESSEE undertakes to comply with all the conditions laid down in respect of such declaration of the area.

20.1.1 Should the LESSEE fail to comply with any of such conditions and penalties are imposed on the NPA as a result thereof, the LESSEE undertakes to refund the full amount of such penalties to the NPA within seven (7) days after written notice to that effect has been made or given by the NPA to the LESSEE.

20.2 The LESSEE shall within 6 months from the commencement date, of THIS LEASE, submit to the NPA its ISO 14001 Environmental Management Plan and an undertaking signed by the Managing Director of the LESSEE which confirms the LESSEE's commitment to environmental protection.

20.2.1 The LESSEE shall comply with the provisions of the NPA's environmental policy as amended from time to time. The policy is annexed to this agreement and marked **Schedule "C"**

20.3 Should it be deemed necessary by the COMPETENT AUTHORITY, an environmental site assessment shall be carried out at the cost of the

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LESSEE and could include an assessment of bio-physical, social, cultural, economic, aesthetic, technological and political exposures.

- 20.3.1 These assessments shall be conducted by professional expertise in the respective fields and be certified by such expertise.
- 20.3.2 In areas where a particular exposure is judged not to be relevant, a motivation in support of this view shall be submitted by the LESSEE.
- 20.3.3 The findings of the environmental site assessment shall be binding between the LESSEE and the NPA.
- 20.4 The findings of the environmental site assessment shall be included in an appropriate environmental management system. This management system shall apply for the duration of THIS LEASE between the LESSEE and the NPA.
- 20.5 The LESSEE shall not permit the growth upon the PREMISES of noxious weeds and shall comply with the provisions of any law relating to the eradication of such weeds.
- 20.6 The LESSEE shall develop and implement an environmental management system (EMS).
- 20.7 NPA shall from time to time on written notice conduct an audit of the system for efficiency and adequacy.
- 20.8 Pollution of the sea, air, or the PREMISES, or any property adjoining in the vicinity of the PREMISES, by any means whatsoever is strictly prohibited, but in the event of any pollution which is within the acceptable norm occasioned by the operations of the LESSEE, the LESSEE shall provide at its own cost efficient means of collecting and disposing of all pollutants including any appliances required for this purpose as may be deemed necessary by the NPA or any COMPETENT AUTHORITY to prevent pollution.

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20.8.1 Should the LESSEE fail to timeously address the pollution problem as detailed in clause 20.8 hereof, then the NPA shall take the necessary steps to address the problem and the LESSEE shall bear the reasonable costs incurred pursuant to such exercise.

20.9 The LESSEE shall at its own cost rehabilitate and cleanup, in accordance with the provisions of the National Environmental Management Act, prior to termination of THIS LEASE or at such time as the NPA or a COMPETENT AUTHORITY may request the LESSEE to do so.

## 21. GENERAL OBLIGATIONS

21.1 The PREMISES shall at all times be kept in a clean, orderly and sanitary condition by and at the cost of the LESSEE, to the satisfaction of the NPA.

21.2 The LESSEE acknowledges and agrees, in relation to the areas of common use between the parties (common areas) that:

21.2.1 the common areas shall at all times be subject to the exclusive control and management of the NPA which shall have the right generally to exercise such control and perform such acts in or on the common areas as it in its discretion shall deem advisable and necessary;

21.2.2 without in any way limiting the generality of the foregoing, the NPA shall be responsible for designating common areas and to police the same from time to time, to change the location and arrangement of common areas, to close temporarily or permanently all or any portion of the common areas and to do or perform such other acts in and to the common areas as it shall determine;

21.2.3 it shall not be entitled to the exclusive use at any time of the common areas or the passage, parking areas, entrances, exits, loading docks, ramps or toilets provided by the NPA but that the LESSEE shall be allowed use of the same, having regard to the rights of the NPA and other tenants;

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- 21.2.4 the LESSEE shall ensure that its employees or agents do not misuse the common areas and facilities. The LESSEE may in no way obstruct, whether by storage or otherwise and whether temporarily or permanently, any part of the common areas;
- 21.2.5 in particular the LESSEE shall not leave or permit to be left any packages, furniture, bicycles, handcarts, boxes, bags, paper, rubbish or any other goods or articles upon or in the common areas, other than at specific areas allocated by the NPA for purposes thereof.
- 21.3 The LESSEE shall not install, erect or place any machine or apparatus outside the PREMISES without the NPA's prior written approval.
- 21.3.1 Cleaning and maintenance on any of the LESSEE's vehicles or mobile machinery or equipment shall not be carried out on the PREMISES unless the necessary surface drainage and oil trap have been installed in compliance with specifications acceptable to any COMPETENT AUTHORITY and the NPA and operating procedures for the oil trap have been submitted to and approved by the NPA.
- 21.4 No staging or waiting of road vehicles outside the boundaries of the PREMISES shall be allowed other than within the area specified on the plans in **Schedule "A"** hereof, and all rail operations outside the TERMINAL shall be undertaken by a duly appointed rail operator.
- 21.5 All activities i.e. delivery and loading off cargo destined to or from the PREMISES shall be undertaken on the PREMISES.
- 21.6 Service/delivery vehicles shall be parked on the PREMISES.

## 22. INSPECTION OF PREMISES

- 22.1 Any competent officer or officers authorised by the NPA shall on reasonable written notice and subject to clause 13.2 above complying with the security requirements of the LESSEE, enter upon and inspect the PREMISES in order to satisfy the NPA that the conditions of THIS LEASE

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and/or plans submitted by the LESSEE in terms hereof, are being properly observed and carried out and that there has been no environmental damage arising from the operations of the LESSEE.

- 22.1.1 The LESSEE's attention is directed to clause 20.9 hereof. The LESSEE undertakes to afford such officer all reasonable access and facilities for such inspection and shall not hinder or interfere with the inspection by the NPA of the PREMISES.
- 22.2 The report of the competent officer shall be made available to the LESSEE after each such inspection, together with the NPA's requirements, if any.

**23. PROCEDURE ON TERMINATION OF LEASE.**

- 23.1 Any competent officer or officers authorised by the NPA shall, prior to the termination of THIS LEASE for whatever reason and subject to clause 13.2 above complying with the security requirements of the LESSEE, enter upon and inspect the PREMISES for the purpose of satisfying the NPA that the PREMISES and the surrounding areas are in the same condition as they were when the LESSEE took occupation of the PREMISES at the commencement of THIS LEASE, normal wear and tear excepted, and taking into account the reports referred to in clause 22.2 as the basis of determining the condition of the PREMISES.
- 23.2 Subject to the provisions of clause 23.4.1, the NPA may, depending on the result of such inspection, by way of written notice, require the LESSEE to reinstate the PREMISES which shall be limited to demolition of the WORKS and the clearing of the PREMISES at the sole cost of the LESSEE.
- 23.2.1 In the event of the LESSEE's failure to adhere to this requirement promptly, the NPA shall have the right to demolish and clear the PREMISES at the cost of the LESSEE.

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- 23.3 Upon termination of THIS LEASE for whatever reason, and subject to clause 23.2 to the LESSEE shall immediately vacate the PREMISES.
- 23.4 The PREMISES shall revert to the NPA with all buildings, permanent fixtures and improvements and other structures of an immovable nature erected thereon by the LESSEE during its tenancy without any compensation whatsoever payable by the NPA to the LESSEE for such buildings and structures; Provided that:
- 23.4.1 The NPA shall have the right either to retain or, where it was a condition at the time the plans were approved by the NPA, that the improvements or buildings in question would be removed by the LESSEE, to order the LESSEE to remove from the PREMISES such building fixtures, improvements and other structures of an immovable nature, as well as all other movable property.
- 23.4.2 The LESSEE shall however be entitled, subject to any claim by the NPA to rental or otherwise, to remove any machinery, plant, equipment or other movable items installed or stored on the PREMISES.
- 23.5 Within 30 days from the commencement of THIS LEASE, the LESSEE shall provide the NPA with an electronic version containing a list of all items which the LESSEE considers to be of a movable nature ("the movables schedule") on the PREMISES and notwithstanding the provisions of clause 7.9.1 hereof or anything contained to the contrary in THIS LEASE, it is hereby expressly recorded that the parties have agreed that these movable items may be removed by the LESSEE upon termination of THIS LEASE or vacation of the PREMISES for whatever reason. The LESSEE shall be entitled to update the movables list from time to time by providing the NPA with an updated schedule containing additional movable items on the PREMISES.

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**24. FAILURE TO REMOVE MACHINERY AND PLANT**

24.1 Should the LESSEE fail to remove or to complete the removal of the machinery or plant and ancillary equipment referred to in clause 23.4.2 hereof within six (6) months after termination of THIS LEASE or such extended period as may be reasonably necessary to complete such removal but which period shall not exceed two (2) months, the LESSEE shall forfeit the right to undertake such removal and shall have no right to claim any payment or compensation in respect of such machinery or plant and ancillary equipment.

24.2 Should the LESSEE fail to remove or complete the removal within the specified period in terms of clause 24.1, The NPA may undertake the removal itself and may dispose of all machinery, plant and ancillary equipment so removed and recover the costs of such removal and disposal from the LESSEE save in case of termination of THIS LEASE by NPA's default.

**25. RELETTING OF PREMISES**

The NPA shall have the right during the last six (6) months of THIS LEASE to exhibit on the PREMISES such notices as it may deem desirable for the purpose of letting or otherwise dealing with the PREMISES. The LESSEE shall, during this period, afford the NPA, its authorised representatives, agents or any prospective lessee, a reasonable opportunity of inspecting the PREMISES.

**26. BREACH**

26.1 Should the LESSEE fail to pay the rental and/or charges in full on the due date thereof, and should the LESSEE fail to remedy such breach within a period of ten (10) days after having received written notice from the NPA to such effect, the NPA shall be entitled to cancel THIS LEASE forthwith without further notice; provided that the NPA shall be entitled to cancel

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THIS LEASE forthwith on written notice in the event of the LESSEE failing to pay the rental in full on the due date, on more than three (3) occasions in any one (1) calendar year in terms of this clause.

- 26.2 Should either Party commit an act of insolvency the other Party shall, without prejudice to its right to claim damages or to any other right whatsoever that the other Party may have against the insolvent Party as a result thereof, be entitled to terminate THIS LEASE.
- 26.3 Should either Party commit any other breach of THIS LEASE, the aggrieved Party shall be entitled to forthwith terminate THIS LEASE if the defaulting Party fails to remedy such breach within thirty (30) days after written notice to that effect has been given by the aggrieved Party to the defaulting Party, or within such further period as may have been agreed upon.
- 26.4 Should the LESSEE neglect to make any payment due in terms of THIS LEASE before or on the due date, the LESSEE shall be liable for the payment of interest on the outstanding amount, compounded monthly, calculated from the due date, at 1% above the prime rate of the Standard Bank of South Africa Limited ("Standard Bank") or any other Bank as may be elected by the NPA from time to time.
- 26.4.1 A certificate containing details of the appropriate prime lending rate(s) for any appropriate period signed by a person professing to be a manager of any branch of Standard Bank, submitted by the NPA during any legal proceedings, shall be accepted as prima facie proof as to the correctness of the contents thereof by the LESSEE.
- 26.4.2 The LESSEE agrees to the admissibility of such certificate during any legal proceedings, including arbitration that may arise in connection with THIS LEASE.
- 26.5 In the event of the LESSEE failing to pay any amount due to the NPA, and the NPA being obliged as a result thereof to instruct its legal advisers or attorneys to collect any such amount, the LESSEE does hereby accept

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liability for and undertakes to pay on demand to the NPA all the legal costs of the NPA, including collection commission, calculated on the High Court scale on an attorney and client scale.

26.6 While the LESSEE remains in occupation of the PREMISES and irrespective of any dispute between the Parties including, but not limited to a dispute as to the NPA's right to terminate THIS LEASE:

26.6.1 the LESSEE shall continue to pay amounts due to the NPA in terms of THIS LEASE on the due dates;

26.6.2 the NPA shall be entitled to recover and accept such payments; and

26.6.3 the acceptance by the NPA of such payments shall be without prejudice to and shall not in any manner whatsoever affect the NPA's right to termination of THIS LEASE or to any damages whatsoever.

26.6.4 Should the dispute between the NPA and the LESSEE be determined in favour of the NPA, the payments made to the NPA in terms of this clause shall be regarded a pre-estimate of liquidated damages as paid by the LESSEE in respect of any loss and/or damages sustained by the NPA as a result of the LESSEE's occupation of the PREMISES.

## 27. LIMITATION

27.1 The LESSEE shall not have any claim of any nature against the NPA unless such claim arises from the breach of THIS LEASE by the NPA

27.1.1 whether for damages, remission of rent or otherwise, by reason of any failure of or interruption in the amenities and services provided by the NPA and/or any statutory authority to the PREMISES and/or the WORKS other than a cause referred to in clause 26.1 hereof;

27.1.2 subject to clause 14.5 by reason of any nuisance or inconvenience occasioned to or suffered by the LESSEE on account of maintenance work, repair work, the effecting of alterations, additions or removals,

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any construction or development activity on the PREMISES or adjoining the PREMISES or premises in the vicinity, any restriction or access to the PREMISES and/or the TERMINAL occasioned by any of the foregoing, any noise, dust or any other nuisance accompanying such activity, whether caused by the NPA, the NPA's contractors, employees or servants or caused by any other tenants or the local or any other COMPETENT AUTHORITY;

27.1.3 for loss or damage of the LESSEE's movable property upon the PREMISES or for consequential loss; unless caused by negligence on the part of the NPA, its contractors, employees, representatives or agents.

27.2 The LESSEE shall not be entitled to withhold or defer payment of any amounts due in terms of THIS LEASE, or apply set off in respect thereof, for any reason whatsoever.

## 28. FORCE MAJEURE

28.1 If either Party is prevented directly or indirectly from carrying out all or any of its obligations under THIS LEASE i.e. by reason of a *Force Majeure* event, the Party so affected shall be relieved of its obligations hereunder during the period that such event and its consequences continue, but only to the extent so prevented.

28.1.1 The Party who is prevented or restricted by an event of *Force Majeure* from carrying out its obligations, shall not be liable for any delay or failure in the performance of any obligations hereunder or loss of damages either general, special or consequential which the other Party may suffer due to or resulting from such delay or failure.

28.2 The affected Party shall give notice in writing to the other Party within thirty (30) days of the occurrence of any event which constitute a *Force Majeure* and causes or is likely to cause any failure or delay to perform its obligation hereunder.

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- 28.2.1 The Party invoking *Force Majeure* shall use its best endeavours and take such steps as may be reasonably practicable to remove or limit duration of the event which constitute the *Force Majeure*.
- 28.3 The Parties agree that, in the event that *Force Majeure* occurs as contemplated herein and prevents any of the Parties from performing their obligations in terms of THIS LEASE for an uninterrupted period of more than six (6) months then the Parties shall meet to discuss the future conduct of THIS LEASE which may include the revision of tariffs, and the extension of the duration of THIS LEASE by the same period as the period of the occurrence of the event of *Force Majeure* and any other process that shall be deemed necessary by the Parties.
- 28.3.1 In the event that the Parties cannot agree on the future conduct, the Party who has not claimed *Force Majeure* may terminate THIS LEASE.
- 28.4 In the event that THIS LEASE is terminated in accordance with clause 28.3 above, the Party whose performance is prevented by the event of *Force Majeure* shall be exempted from its obligations in terms of THIS LEASE and neither Party shall be entitled to claim any damages or loss arising from such termination; provided that the affected Party shall have complied with the provisions of clause 28.2 hereof.

## 29. INSURANCE

- 29.1 The LESSEE shall during the term of THIS LEASE provide, maintain and pay for the insurance coverage designated in this clause, specifically reserved for claims arising out of the LESSEE's obligations under THIS LEASE from a reputable insurance company.
- 29.2 The LESSEE's failure to fully comply with any provision of this clause shall be considered as a breach of THIS LEASE.
- 29.3 Prior to the commencement of any operations and throughout the term of THIS LEASE, the LESSEE, to the extent that such insurance is required

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by the operations, shall obtain and maintain public liability and business interruption insurance cover as well as assets all risks insurance cover.

29.4 A written statement from the brokers acting on behalf of the LESSEE to the effect that the LESSEE carries global insurance cover in respect of assets and liabilities risk shall be provided to NPA Port of Durban on request. The NPA shall be provided with prior written notice of any material change, cancellation, or non-renewal of such cover.

29.5 The amount of the insurance cover referred to in clause 29.4 shall be equal to the replacement value of the PREMISES.

### 30. **BLACK ECONOMIC EMPOWERMENT**

30.1 The LESSEE undertakes to further Black Economic Empowerment (BEE) activities with respect to its business conducted on the PREMISES according to the criteria in the NPA BEE policy as fully outlined in **Schedule "D"** of THIS LEASE.

30.2 The LESSEE shall use its best endeavours to seek to establish successful and mutual beneficial contractual relationships with Black Economic Empowerment (BEE) service providers. The LESSEE will, where financially and commercially viable, appoint BEE companies to provide necessary services to the LESSEE or secure undertakings from its representatives or managing agents to appoint BEE companies to provide such services to the LESSEE, in respect of business conducted on the PREMISES.

30.3 BEE companies shall mean South African companies or business entities that are wholly owned and controlled by, or partly owned and controlled by South African citizens from any previously disadvantaged group in South Africa.

30.4 Within six (6) months of signature of THIS LEASE, or within any other period as may be agreed upon between the parties, the LESSEE will submit a detailed plan to the NPA setting out its BEE policy and how it

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intends to comply therewith. This plan shall contain targets which shall be set by the LESSEE in terms of involvement of BEE companies in the provision of services to the LESSEE in respect of business conducted from the PREMISES as well as realistic deadlines by which such targets should be met. The LESSEE undertakes to review the plan on a regular basis as and when circumstances require such a revision, whereafter the LESSEE will resubmit such revised plan to the NPA.

30.5 In terms of its policy referred to in clause 30.4, the LESSEE shall set itself procurement targets and shall use its best endeavours to achieve such targets. In the event that these targets are not substantially achieved then the NPA shall be obliged to give the LESSEE written notice calling upon it to achieve these targets within a period of not less than 3 months, failing which the NPA may impose a penalty on the LESSEE in an amount not exceeding the value of 12 months rental under THIS LEASE. For clarity purposes, the penalty shall be based on the rental applicable at the time that the aforesaid notice is received by the LESSEE. The NPA shall ensure that the size of the penalty imposed on the LESSEE under this clause is commensurate with the degree of non compliance by the LESSEE in respect of its targets. Prior to imposing any penalty as contemplated above, the NPA shall be obliged to have measured the LESSEE'S performance on a points allocation system to establish whether the LESSEE is meeting its targets from time to time. Should there be any dispute as to whether the LESSEE is meeting its targets, or a dispute regarding the degree to which the LESSEE, according to the NPA is failing to meet its targets, such dispute shall be referred by the Parties to arbitration in accordance with the provisions of clause 33.

30.6 Within sixty (60) days from the date of commencement of THIS LEASE, or within any other period as may be agreed upon by the parties in writing, the LESSEE undertakes to submit its Employment Equity plan to the NPA that is in substantial compliance with the provisions of the Employment Equity Act and details exactly how in the LESSEE's operations within the PREMISES, it intends to execute the policy.

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30.7 Nothing contained in THIS LEASE shall prohibit the LESSEE from entering into special contractual agreements with users or potential users of the TERMINAL, provided that such agreements do not make provision for arrangements that are prohibited by the Competition Act No. 89 of 1998 and do make provision for advancement of Black Economic Empowerment in terms of THIS LEASE.

30.8 The LESSEE must commence implementation of the plan referred to in clause 30.4 within sixty (60) days after submission of the plan, and should the LESSEE fail to have commenced implementation of the plan within the sixty (60) day period, the NPA shall be entitled to give the LESSEE the notice provided for in clause 30.5, and should the LESSEE not comply timeously therewith, to impose an appropriate financial penalty as contemplated in that clause.

31. **ROLE OF THE NPA**

31.1 The LESSEE acknowledges that the NPA is entitled to monitor the performance of the LESSEE to ensure the optimal utilisation of land, assets and infrastructure.

31.2 The LESSEE undertakes to furnish the NPA with information that will reasonably enable the NPA to monitor the performance of the LESSEE as stated in clause 31.1

31.2.1 It is agreed that information submitted to the NPA is likely to contain confidential information, which if divulged to third parties shall be harmful to the proprietary interests of the LESSEE, the NPA undertakes not to divulge such information to third parties without the written consent of the LESSEE.

31.3 The TERMINAL shall be used, managed and operated by the LESSEE on a COMMON USER BASIS.

31.3.1 The LESSEE undertakes that for the duration of THIS LEASE, the LESSEE shall provide access to the TERMINAL to all CARGO

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exporters and/or their agents on commercial terms, provided there is capacity to handle the CARGO. The LESSEE undertakes to charge such persons reasonable market related tariffs which shall not discriminate unfairly between them and provided further that such persons' activities at the TERMINAL do not interfere with the LESSEE's ordinary commercial business activity and/or his obligations in terms of this LEASE.

31.3.2 The LESSEE or its agents shall be entitled to give the NPA or any other lawful authority in charge of the berthing rights at Maydon Wharf seventy two (72) hours' notice that it requires the berth, then the NPA or any other lawful authority, as the case may be, shall not allocate that berth to any vessel other than the vessel containing cargo to be delivered to the LESSEE.

31.3.3 The LESSEE or its agents shall provide access to any ship or vessel, where required to do so by the NPA Berth Planner. Should the NPA require the LESSEE to provide such access, the NPA Berth Planner shall give the LESSEE's terminal manager twenty-four (24) hour notice in respect of such required use of the berth and provided always that such berth usage afforded to the shipping vessel or any other user shall not cause a disruption in the operation of the terminal or the business of the LESSEE and provided further that if the cargo were to be handled by the LESSEE which shall be compatible with the business of the LESSEE.

31.3.3.1 The NPA shall at all times exercise its power and control over any third party gaining access to the berth in terms of clause 31.3.3 .

## 32. PAYMENTS AND APPROPRIATION

The NPA shall be entitled in its sole and absolute discretion to appropriate and/or re-appropriate any amounts received from the LESSEE in respect of THIS LEASE towards the payment of any rent or any other amounts owing by the LESSEE to the NPA in respect of THIS LEASE.

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### 33. DISPUTE RESOLUTION

- 33.1 Any dispute, question or difference arising at any time between the Parties out of or in regard to any matter arising out of THIS LEASE which the Parties cannot resolve amicably shall be submitted to and decided by arbitration on notice given by either Party to the other in terms of this clause. The arbitration shall be held under the administration of and in accordance with the rules of the Arbitration Association of South Africa.
- 33.2 There will be one arbitrator who will be, if the matter in question is:
- 33.2.1 primarily an accounting matter, an independent chartered accountant;
- 33.2.2 primarily a legal matter, a practising member of the Durban Bar of not less than fifteen (15) years standing;
- 33.2.3 primarily a technical matter, a suitable qualified person; and
- 33.2.4 any other matter, a suitably qualified person.
- 33.3 The appointment of the arbitrator will be agreed upon between the parties to the dispute, but failing agreement between them within a period of fourteen (14) days after the arbitration has been demanded, any of the parties to the dispute shall be entitled to request the Chairman for the time being of the Durban Bar Council to make the appointment and who, in making his appointment, will have regard to the nature of the dispute.
- 33.4 Each of the Parties hereby irrevocably agrees that the decision of the Arbitrator in the arbitration proceedings -
- 33.4.1 shall be final and binding on each of them; and
- 33.4.2 shall be carried into effect; and
- 33.4.3 can be made an Order of any Court to whose jurisdiction the Parties are subject; and
- 33.4.4 shall include an award as to the costs of the arbitration proceedings.

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33.5 Clauses 33.1 to 33.3 hereof shall be severable from the remaining provisions of THIS LEASE and shall continue to be of application, notwithstanding the cancellation or purported cancellation of THIS LEASE.

33.6 The provision of this Clause 33 shall not preclude either of the Parties from seeking urgent interdict or mandatory relief in a court of competent jurisdiction in circumstances where such relief is appropriate.

34. **JURISDICTION**

The Parties hereby consent to the jurisdiction of the Magistrate's Court that has territorial jurisdiction notwithstanding that the amount of the claim may exceed the limit of the Magistrate's Court, in those matters where arbitration is limited by law.

35. **DOMICILIA**



35.1 All notices, legal process and communications intended for either Party shall be made or given at the domicilium citandi et executandi as hereinafter stated, provided that either Party may change its domicilium by written notice to the other Party with effect from the date of receipt or deemed receipt of such notice.

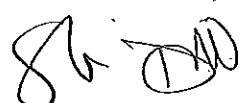
LESSEE

C/o The Company Secretary  
15 Nollsworth Crescent  
Nollsworth Park  
La Lucia Ridge Office Estate  
KwaZulu-Natal  
Telefax No: 031-5702644

NPA

The Executive Manager Property  
101 De Korte Street  
Braamfontein  
2017

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- 35.2 Any notice given by or to either party in terms of this agreement shall be given in writing and shall be delivered by hand to a responsible person at or sent by telefax transmission or pre-paid registered post to the domicilium chosen by the addressee in terms of this agreement and whereupon it shall be deemed to have been delivered when so delivered or faxed or on the fourth business day following the date of posting, if sent by pre-paid registered post.
- 35.3 All legal processes shall be regarded as validly served if served at a Party's domicilium citandi et executandi.

36. **ENTIRE AGREEMENT**

THIS LEASE incorporates the entire agreement between the NPA and the LESSEE and no amendment or variation of the terms and conditions of THIS LEASE in any form or manner whatsoever shall be recognised by or be binding upon the Parties, unless and until such amendment or variation has been embodied in a written agreement, duly executed by the NPA and the LESSEE, who hereby acknowledge that no representations or warranties have been made by either the NPA or the LESSEE nor are there any understanding or terms of lease other than those set out herein.

37. **INDULGENCES**

No act of relaxation, indulgence or grace on the part of either of the Parties shall in any way operate as, or be deemed to be a waiver by the Parties, of any of their rights under THIS LEASE or a novation of THIS LEASE. In particular, no acceptance by the NPA of rental after the due date (whether on one or more occasions) nor any other act or omission by the NPA including,

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without limitation, the rendering of accounts after the due date, shall preclude or estop the NPA from exercising any of its rights in terms of THIS LEASE. Unless otherwise notified in writing by the NPA, receipt of any rental or other payment by the NPA shall in no way whatsoever prejudice or operate as a waiver, rescission or abandonment of any termination or right of termination effected or acquired prior to such receipt.

**38. SEVERABILITY**

If any provision of THIS LEASE is held to be unenforceable, such provision shall if severable, be severed from the remaining provisions of THIS LEASE and the remaining provisions shall not be affected and shall remain in full force and effect. The Parties however agree to negotiate in good faith to amend THIS LEASE to eliminate the intent of any unenforceable provision.

**39. NOTARIAL REGISTRATION**

The LESSEE shall, at its cost at any time be entitled, should it so desire to do so, to have THIS LEASE embodied in notarial form so as to obtain registration thereof against the title deeds of the land comprising the PREMISES, and the NPA undertakes when called upon by the LESSEE to sign all necessary documents and assist the LESSEE in obtaining all such consents as may be necessary to effect the said registration.

**40. FEES**

The fee for the preparation, drafting and finalisation of THIS LEASE shall be one thousand seven hundred rand (R1 700.00), excluding vat, which shall be payable by the LESSEE upon signature of THIS LEASE.

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41. STAMP DUTY

The costs incurred by the NPA incidental to stamping of THIS LEASE and other ancillary documents and all stamp duties relevant hereto shall be borne by the NPA.

SIGNED at DURBAN this 1st day of MAY 2003

As Witness

1. R. Jacob - Bow

2. [Signature]

[Signature]

For and on behalf of the **LESSEE**  
who hereby warrants that (s)he is duly  
authorised to sign this agreement on its  
behalf

Full names CHARLES BRIAN WILKINS

Designation SUPPLY CHAIN DIRECTOR

SIGNED at Durban this 24<sup>th</sup> day of April 2003

As Witness

1. [Signature]

CBW  
[Signature]

2.....



For **TRANSNET LIMITED** trading as  
**NATIONAL PORTS AUTHORITY OF  
SOUTH AFRICA**

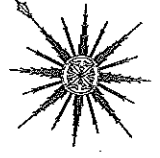
who hereby warrants that (s)he is duly  
authorised to sign this agreement on its  
behalf

Full names ..... **Siyabonga INNOCENT GAM**

Designation ..... **CHIEF EXECUTIVE OFFICER**

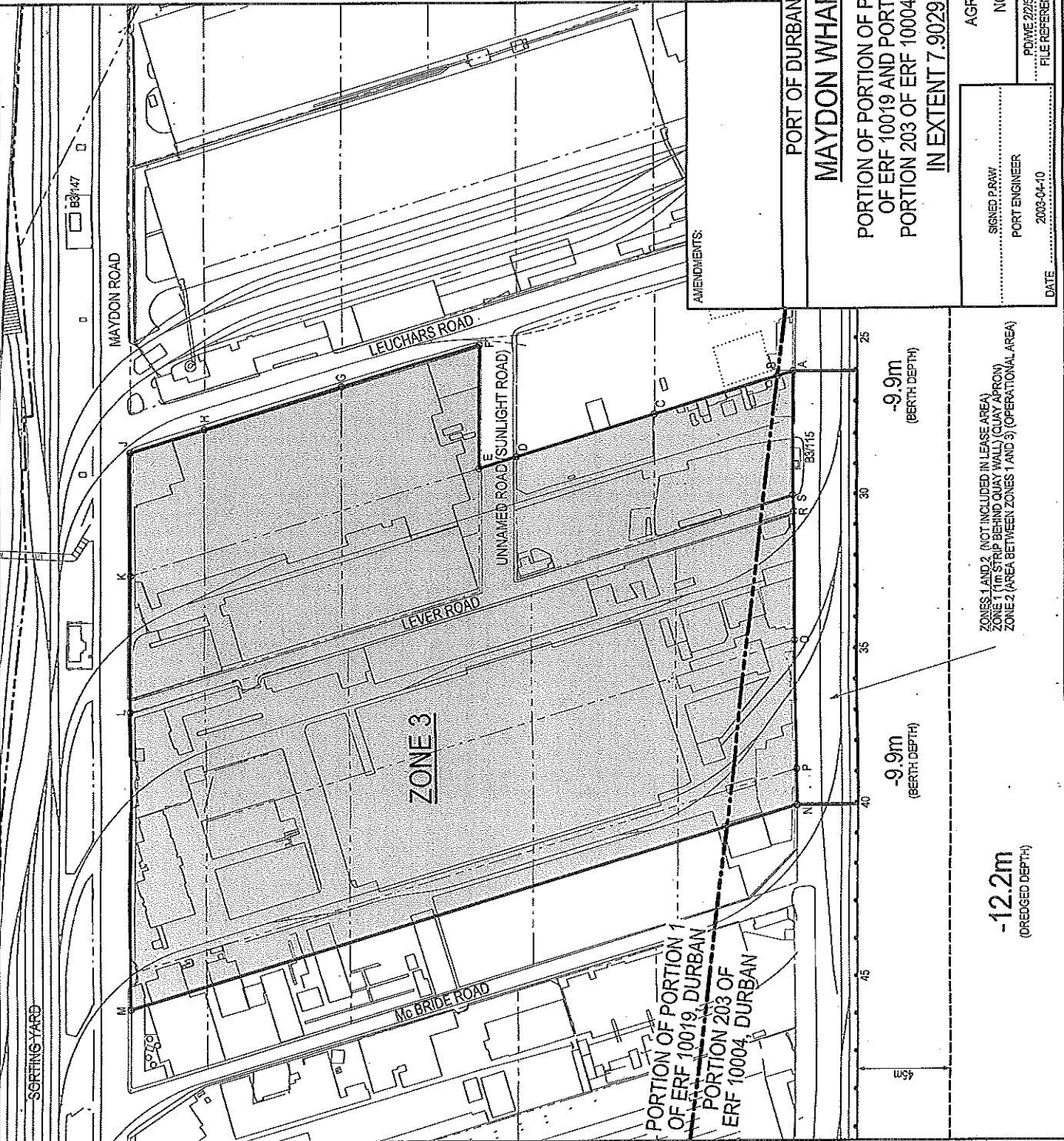
CBW  


**SCHEDULE A**



**CO-ORDINATE TABLE**

POINT CONSTANTS	Y-VALUE	X-VALUE	SIDE	BEARING	DISTANCE
0	330.000				
A	-1045.823	5448.844	AB	113°04'58"	7.864m
B	-1038.589	5445.761	BC	113°05'01"	62.318m
C	-981.261	5421.328	CD	113°09'08"	70.157m
D	-916.754	5393.744	DE	112°56'04"	19.139m
E	-869.128	5386.286	EF	220°00'21"	60.369m
F	-837.937	5340.045	FG	113°01'15"	70.076m
G	-873.442	5312.641	GH	113°01'09"	70.073m
H	-808.947	5285.239	HJ	113°01'09"	38.216m
J	-773.774	5270.295	JK	40°05'10"	60.360m
K	-784.906	5316.475	KL	40°05'09"	66.594m
L	-692.024	5367.425	LM	40°03'07"	145.375m
M	-588.478	5478.704	MN	283°07'22"	389.360m
N	-910.576	5611.972	NP	219°41'35"	17.520m
P	-921.766	5598.491	PO	219°41'35"	62.962m
Q	-861.978	5550.044	QR	219°41'39"	62.962m
R	-1002.192	5501.597	RS	216°28'48"	7.996m
S	-1006.910	5465.216	SA	220°00'05"	60.536m



**AMENDMENTS:**

DATE: .....  
 LESSEE: .....  
 DATE: 24.04.03  
 TRANSCENT LIMITED  
 CB Ref No. 90/00920/06

**PORT OF DURBAN**  
**MAYDON WHARF**  
 PORTION OF PORTION 1  
 OF ERF 10019 AND PORTION OF  
 PORTION 203 OF ERF 10004, DURBAN  
 IN EXTENT 7.9029ha

**PORT ENGINEER DURBAN**  
 SUITE 233  
 OCEAN TERMINAL  
 DURBAN  
 TEL: (031) 361-8730  
 FAX: (031) 361-8664

**AGREEMENT PLAN**  
 NOT TO SCALE

SIGNED P/RAW .....  
 PORT ENGINEER  
 DATE: 2003-04-10

FILE REFERENCE: POWE 22/57  
 DATE: 2003-04-10

AMENDMENT: No DH 63  
 A 6046

ZONES 1 AND 2 (NOT INCLUDED IN LEASE AREA)  
 ZONE 1 (TRIP STRIP BEHIND QUAY WALL) (QUAY APPROX)  
 ZONE 2 (AREA BETWEEN ZONES 1 AND 3) (OPERATIONAL AREA)

-12.2m  
 (DREDGED DEPTH)

-9.9m  
 (BERTH DEPTH)

-9.9m  
 (BERTH DEPTH)

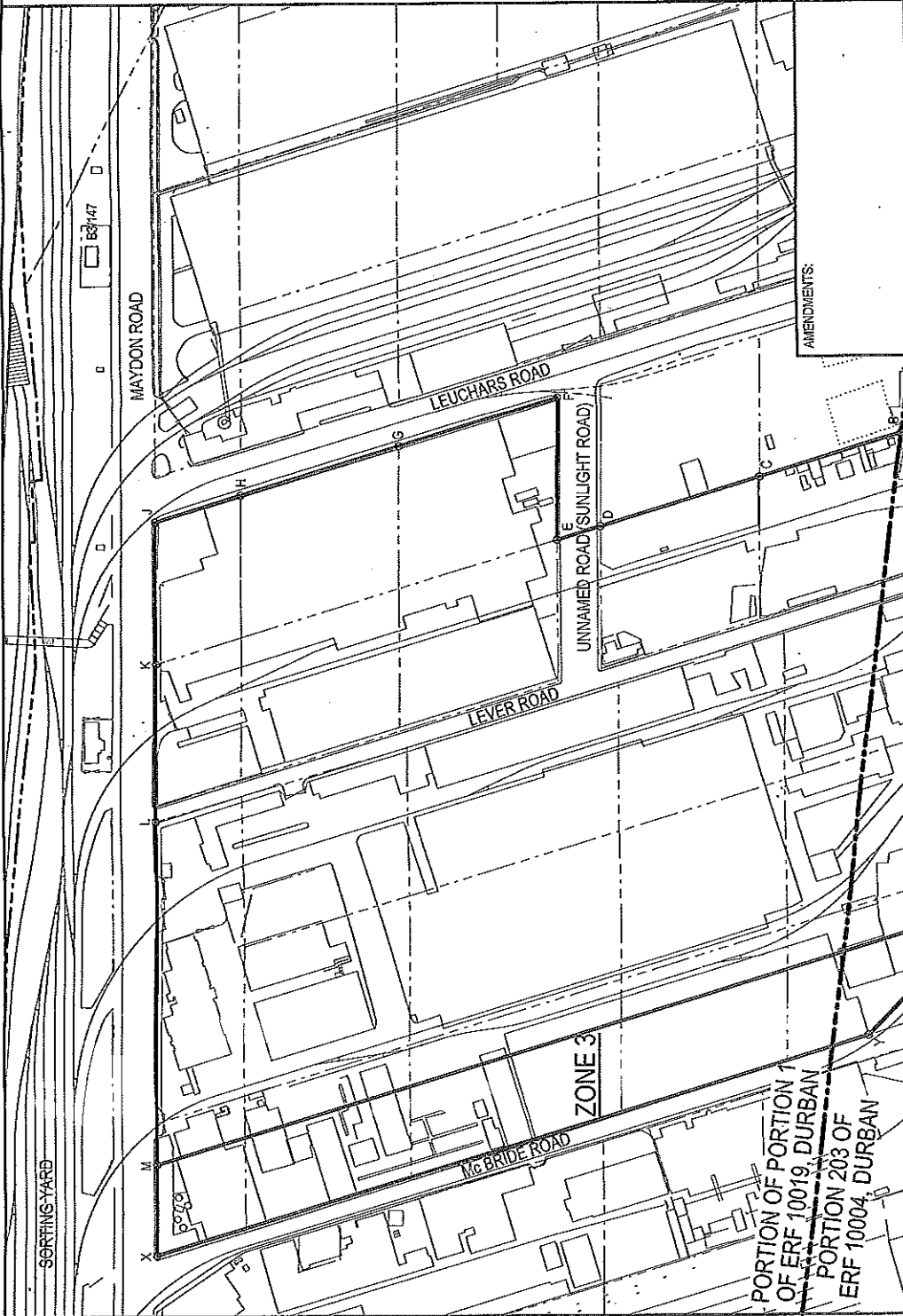
*Handwritten initials/signature*



COORDINATE TABLE

POINT CONSTANTS	Y-VALUE	X-VALUE	SIDE	BEARING	DISTANCE
A	0	3 399 000	AB	113°04'53"	7.864m
B	-1045.823	5448.844	BC	113°05'01"	62.316m
C	-1038.589	5445.781	CD	113°05'08"	70.157m
D	-981.261	5421.328	DE	112°56'04"	19.439m
E	-916.754	5393.744	EF	220°00'21"	60.369m
F	-899.128	5366.286	FG	113°01'15"	70.075m
G	-837.937	5340.045	GH	113°01'09"	70.075m
H	-873.442	5312.641	HJ	113°01'09"	38.216m
I	-808.347	5285.239	JK	40°05'10"	60.350m
J	-773.774	5270.295	KL	40°05'09"	66.584m
K	-734.906	5216.475	LM	40°03'07"	145.375m
L	-692.024	5397.425	MN	293°07'22"	339.360m
M	-538.478	5476.704	NP	218°41'39"	17.520m
N	-910.576	5611.972	PQ	219°41'39"	62.952m
O	-921.766	5598.491	QR	219°41'39"	62.952m
P	-861.979	5550.044	RS	216°28'48"	7.939m
Q	-1002.192	5501.997	SA	220°00'06"	60.538m
R	-1006.910	5495.216			
S					
T					
U					
V					
W					
X	-598.478	5478.704	MX	40°03'07"	38.952m
Y	-573.644	5508.245	XY	283°04'49"	315.028m
Z	-863.455	5631.742	YZ	284°03'27"	33.797m
AA	-887.070	5628.243	ZN	219°41'33"	21.146m
AB	-910.576	5611.972	NM	143°07'22"	339.360m

AMENDMENTS:  
 DATE: 28.04.2003  
 TRANSMITTED BY: [Signature]  
 CO-REG. NO. 90/000006



LESSEE

DATE

PORT OF DURBAN

**MAYDON WHARF**

PORTION OF PORTION 1 OF ERF 10019 AND PORTION OF PORTION 203 OF ERF 10004, DURBAN IN EXTENT 1,2289ha

AGREEMENT PLAN NOT TO SCALE

PORT ENGINEER

DATE

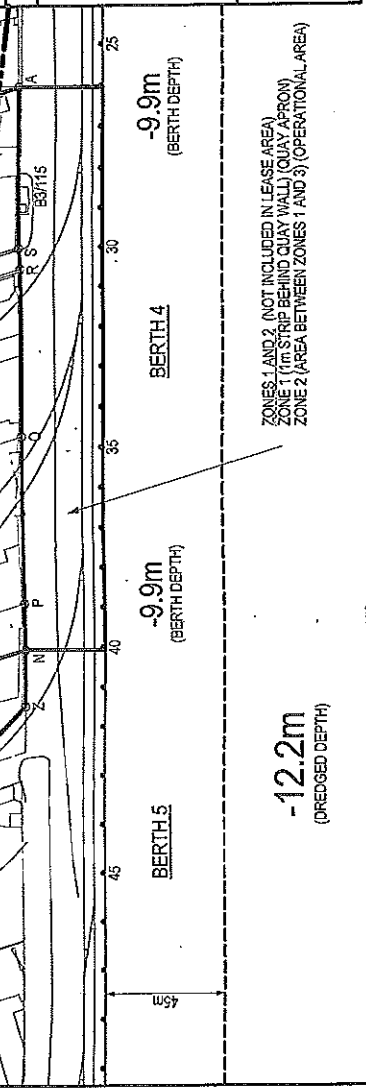
FILE REFERENCE

AMENDMENT:

PORT ENGINEER DURBAN  
 SUITE 233  
 OCEAN TERMINAL  
 DURBAN  
 TEL: (031) 361-8730  
 FAX: (031) 361-8854

No A 6XXX

DH 63



RENTAL SCHEDULE B  
 LEVER POND'S (PTY) LTD  
 PORT OF DURBAN  
 MAYDON WHARF

Land Description	Square metres	Rate R/Sqm	ANNUAL RENTAL FOR YEAR 1 R	ANNUAL RENTAL FOR YEAR 2 R	ANNUAL RENTAL FOR YEAR 3 R	ANNUAL RENTAL FOR YEAR 4 R	ANNUAL RENTAL FOR YEAR 5 R
Lease of Portion of Portion 1 of Erf 10019 and Portion of Portion 203 of Erf 10004, Durban, Maydon Wharf, Port of Durban	77.996	R 4,30 per square metre per month  10% escalations	R 4,021,497.60	R 4,423,647.36	R 4,866,012.09	R 5,352,613.30	R 5,887,874.63
<b>TOTAL</b>			R 4,021,497.60	R 4,423,647.36	R 4,866,012.09	R 5,352,613.30	R 5,887,874.63

Notes

1. Rental excludes rates assessments +VAT;
2. The rental of R4,30 per square metre per month represents a discount of 28% below current market value as provided in clause 3.2.2;
3. The square metre area of the PREMISES will increase by R4,30 per square metre (escalated, if applicable by 10%) multiplied by 2693 square metres once Lever Road is formally deproclaimed as provided in clause 4.1.5.1;
4. The square metre area of the PREMISES will decrease by R4,30 per square metre (escalated, if applicable by 10%) multiplied by 1600 square metres once the effluent plant is removed from the excised portion as provided in clause 4.1.5.2;
5. The square metre area of the PREMISES for rental purposes will be 79029 square metres after deproclamation of Lever Road and removal of the effluent plant

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RENTAL SCHEDULE B  
 LEVER POND'S (PTY) LTD  
 PORT OF DURBAN  
 MAYDON WHARF

Land Description	Square metres	Rate R/Sqm	ANNUAL RENTAL FOR YEAR 1 R	ANNUAL RENTAL FOR YEAR 2 R	ANNUAL RENTAL FOR YEAR 3 R	ANNUAL RENTAL FOR YEAR 4 R	ANNUAL RENTAL FOR YEAR 5 R
Lease of Portion of Portion 1 of Erf 10019 and Portion of Portion 203 of Erf 10004, Durban, Maydon Wharf, Port of Durban	79,029	R 4,30 per square metre per month	R 4077896,40	R 4485686,04	R 4934254,64	R 5427680,11	R 5970448,12
		10% escalations					
<b>TOTAL</b>			R 4077896,40	R 4485686,04	R 4934254,64	R 5427680,11	R 5970448,12

Note  
 Rental excludes rates assessments +VAT

**ANNEXURE C**

**National Ports  
Authority** of South Africa



**ENVIRONMENTAL POLICY**

September 2001


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# ENVIRONMENTAL POLICY STATEMENT

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In line with our vision to be a transformed, self-sufficient National Ports Authority of South Africa that facilitates and enables competitiveness in a world-class port system, and

In line with our Mission to facilitate economic growth in South Africa by providing and sustaining port systems that are amongst the best in the world, and

In line with our objective and commitment to environmental responsibility and good corporate governance, we at National Ports Authority of South Africa commit ourselves to:

- Complying, as a minimum, with all relevant environmental legislation, as well as all other industry requirements to which we subscribe;
- Implementing measures to conserve natural resources, reduce waste and prevent pollution;
- Influencing the implementation of acceptable environmental practices by our suppliers, clients, tenants and surrounding landowners;
- Promoting environmental awareness and responsibility among employees.

In order to do this, the National Ports Authority will develop and implement environmental management systems at each of our ports that::

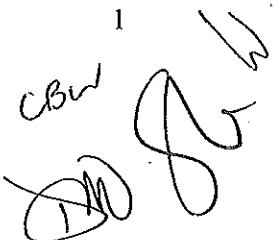
- comply with the requirements of the ISO 14001 international standard;
- are based on the principle of continual improvement of our environmental performance achieved through setting and achieving objectives and targets that address the significant environmental aspects and impacts of our operations, and
- is integrated into our core business activities.

Signed by:

Mr Siyabonga Gama

11 October 2001

Chief Executive Officer: National Ports Authority

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# Environmental Policy Guidelines

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## 1. INTRODUCTION

### 1.1 PURPOSE OF THE DOCUMENT

The purpose of this document is to define the corporate requirements that the National Ports Authority of South Africa (NPA) places on all the ports under its control. The contents of this guideline document are based on both input from workshops held at several ports during the policy formulation process, as well as environmental policy related literature representing best practice internationally.

It is recognized that each port is, to a greater lesser degree, unique. These guidelines should therefore be incorporated into the procedures comprising the individual environmental management systems at the different ports, in the manner and to the degree that is appropriate to each port.

## 2 CORPORATE ORGANIZATION

### 2.1 ENVIRONMENTAL STEERING COMMITTEE



An environmental steering committee will be developed, consisting of the port environmental officers and head office environmental staff, plus such other co-opted individuals as may be necessary, to facilitate inter-port benchmarking and exchange of information.

This steering committee will meet at intervals that it will determine. An important aspect of its role will be to provide input for the NPA's top management to evaluate the ongoing suitability of this policy, and to make such changes as may be necessary from time to time.

Environmental officers from one port may conduct internal system audits at other ports, in order to ensure that systems remain at optimum efficiency.

### 2.2 ROLES AND RESPONSIBILITIES

The management representative responsible for overall environmental management is the NPA's General Manager, Landlord Services. Functionally, the responsibility lies with the NPA's Environmental Manager.

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At each port, the management representative responsible overall for the environmental management system is the Port Manager. Functionally, the responsibility lies with the Port Environmental Manager.

### **3. ENVIRONMENTAL REPORTING**

In line with the NPA's commitment to incorporate environmental management into its corporate governance initiatives, the NPA will disclose its environmental performance publicly in an annual Environmental Report. The report will be compiled in line with internationally recognised reporting guidelines such as that of the Global Reporting Initiative. The Environmental Report will be verified by an independent third party.

### **4. ISSUES FOR INCLUSION IN PORT EMSs**

#### **4.1 WASTE**

Ports will develop holistic and integrated procedures for waste management, to manage waste in a manner that complies with national legislation and with the principles of good governance. NPA will take such steps as are reasonably within their control or influence to ensure that waste management in ports, whether by shipping, terminal operators, tenants or any other persons or organisations using the ports, manage their waste in accordance with this policy. Waste management procedures will address the following specific aspects:

##### **4.1.1 IDENTIFICATION OF SIGNIFICANT ISSUES CONCERNING WASTE**

Ports will conduct an inventory to determine who is producing waste, and the nature of waste being produced. Particular care will be taken to identify sources, types and quantities of hazardous waste, and to ensure that such waste is disposed of in accordance with this policy.

Tenants and operators will be required to cooperate with the NPA in this exercise, by providing the data required for the inventory. As a minimum, the information that they will be required to disclose is as follows:

- Nature of wastes generated;
- Amounts of each different types of waste generated within a specific period and
- Method of disposal.

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As appropriate from port to port, the following sources of waste will be specifically considered:

*Waste from shipping, including Quayside Maintenance*



- Spent oil and lubricants
- Paint, solvents and waste detergents
- Waste from ship maintenance activities
- Sewage
- Galley waste
- Sweepings from hatches and engine rooms
- Slops from holds and tanks
- Spilt cargo
- Ballast water
- General domestic waste
- Medicinal waste
- Spent Batteries

*Waste from the Dry and Floating Docks*

- Paint and shot grit
- Waste metal and wood
- Oil contaminated mechanical parts

*Waste from Terminal Operators and Tenants*

- Spilt and wasted cargo
- Leaking storage tanks

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#### 4.1.2 WASTE CONTRACTORS

The NPA shall approve the contractors used by those under their control, or their reasonable influence, responsible for waste management within port areas. Tenants and operators shall provide the following information to the relevant ports management for their approval, before a waste contractor is licensed to operate inside the port:

- Name of contractor
- Copy of valid license or proof of registration
- Nature of waste that the contractor will be handling
- Procedures for disposal of kinds of waste that the contractor will be handling
- Location of waste disposal facility that the contractor will use

Once approved, the contractor will be issued a license to operate within the port. This license will not constitute endorsement of the contractor by the NPA in any way, nor will it limit the rights of the NPA in any way to take action against the contractor should it contravene the legislation pertaining to waste disposal.

#### 4.1.3 WASTE COLLECTION AREAS FOR SHIP WASTE

Clearly designated areas will be located in each port, and equipped with skips or other appropriate containers, to acceptance of general, domestic waste. The location of these areas will be indicated by large yellow signs with words "WASTE RECEPTION POINT FOR SHIP GENERATED WASTE" in English and appropriate foreign languages. Signs should be of the same size and design in all ports.

#### 4.1.4 BALLAST WATER

The issue of ballast water discharge is generally regarded internationally as a significant environmental issue. The primary concern revolves around the potential for the introduction of alien marine organisms into the harbour ecosystem. No specific legislation governs this issue in South Africa, although it could be regarded as an issue controlled indirectly under the National Environmental Management Act (NEMA). A pilot project investigating ballast water is currently under way in the Port of Saldanha. Following the outcome of this study, NPA will determine an appropriate policy with regard to management of ballast water in other ports.

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#### **4.1.5 WASTE EMANATING FROM URBAN STORMWATER**

Each port will enter into discussion with its relevant local authority and other relevant role players, to agree on a strategy to control the pollution of the harbour waters by litter and other waste carried into the harbour by stormwater from the surrounding areas.

#### **4.2 AIR QUALITY**

The most important issues impacting on air quality are dust, atmospheric emissions from tenant factories, and ship emissions. Ships are prohibited from producing smoke within the port confines, although reasonable amounts are tolerated during start-up of engines and while getting under way.

Ports where dust producing cargoes are handled must include dust management procedures in their environmental management systems. These procedures could include some or all of the following:

- Covering of dust-producing materials during transport;
- Covering dust sources being stored within the port confines;
- Dust suppression by watering down;
- Paving of loading areas;
- Avoidance of loading or off-loading of dust producing cargoes during windy conditions.

#### **4.3 DOCKSIDE MAINTENANCE AND REPAIRS**

##### **4.3.1 DOCKSIDE MAINTENANCE AND REPAIRS**

Environmental impacts that can result from ship maintenance, especially at the quayside, include wind blowing of spray paint, plates and other ship parts falling into the harbour, other undesirable materials or substances falling into the harbour water, and noise nuisance.

Each port authority shall appoint a designated person, for controlling quayside ship repairs. A ship's master shall obtain a permit from this designated person, prior to commencement of such maintenance. This permit will be generated by the environmental steering committee, in order to

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ensure uniformity between ports. As a minimum, the permit must detail the following information:

- The nature of the maintenance or repairs to be carried out;
- The nature of the berth occupied by the ship;
- Waste expected to be generated by the maintenance or repair;
- Particular measures to be adopted in the case of hazardous wastes;
- Responsible person on the ship;
- An undertaking to comply with the port's environmental requirements.

In general, only internal maintenance activities shall be allowed at commercial berths. Painting and paint removal operations by grit blasting will only be allowed in the dry dock.

#### **4.3.2 DRY AND WET DOCKS**

The main concern with the dry docks and the floating docks, revolves around the release of pollutants into the harbour. Internationally, such docks may be covered, and dry docks are very carefully swept before being flooded.

Ports will institute appropriate procedures to ensure that undesirable materials or substances from the dry or floating docks do not pollute the harbour water.

#### **4.4 STORAGE TANKS**

##### **4.4.1 INVENTORY AND MAPPING OF STORAGE TANKS**

With the cooperation of tenants and terminal operators, data on all storage tanks in each port will be collected and mapped, above ground and below ground. Data to be collected on each tank includes the following:

- Owner of the tank, and details of the lessor if leased;
- Capacity of the tank and surrounding containment area;
- Nature of chemicals or substances stored and compliance with permits in relation to which chemicals for which storage is authorized;

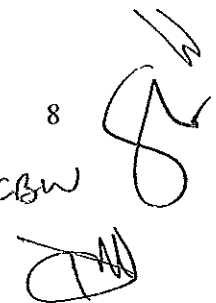
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- Details of the construction of the tank, e.g. materials used, whether double or single sided, etc;
- Age and physical condition of the tank;
- Maintenance schedule and records;
- Party responsible for maintenance;
- In the case of underground storage tanks, location of monitoring borehole/s, if any;
- In the case of flammable substances being stored, the nature of adjoining premises;
- In cases where tanks fall under the Hazardous Installations Regulations, evidence of compliance or otherwise with the regulations.

#### 4.4.2 PROCEDURES FOR MAINTENANCE OF STORAGE TANKS

Procedures will be compiled at each port, following consultation with the owners of the storage tanks, to ensure compliance with national, provincial and local legislation. These procedures would include some or all of the following, as appropriate:

- Installation and monitoring of boreholes to monitor groundwater pollution;
- Remediation measures where groundwater pollution is found to have taken place;
- Award of permit for storage of different chemicals or substances to those originally authorized;
- Scheduling of maintenance and leak checks, for instance pressure testing;
- Leak detection and monitoring devices;
- Inspection of tanks and containment walls;
- Emergency response procedures in place on the part of the tank owners (or responsible parties, if different) and adequacy of training of responsible staff.

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#### 4.4.3 MANAGEMENT OF FEEDER PIPELINES

In some cases, the state of repair of feeder and other pipelines is a matter of concern. Owners of pipelines are to be required to investigate the conditions of their pipelines, and report their findings to the NPA. The owners must be required to consult an independent person or company to carry out the investigation. The results will be sent by the consultant to NPA and to the owner of the pipeline at the same time. In cases where these pipelines are associated with facilities governed by the Hazardous Installations Regulations, this aspect is specifically required by law.

Where pipelines are found to be damaged, or likely to be damaged due to poor condition, then the owner must be required to take appropriate remedial action.

#### 4.5 EMERGENCY PREPAREDNESS AND RESPONSE

Each port shall have comprehensive emergency response plans, to deal with all foreseeable environmental emergencies. These plans will be compiled following a careful consideration of the environmental implications of emergencies that could occur, and would include the following:

- A requirement for the port captain to consider the environmental implications when taking a decision under the "port of safe haven" principle, especially when the ship in distress is carrying a hazardous cargo.
- Conduct a risk assessment on areas that have a high potential for oil and/or chemical contamination to occur and map the areas.
- Maintaining adequately trained and equipped emergency response teams to deal with accidental spills into the harbour or on land.
- Application of the "polluter pays principle" whereby those responsible for the spill are held liable for the clean-up costs.
- Particular care to be taken to remediate the environmental impacts caused by the spill, especially if natural ecosystems are affected.
- A requirement to report environmental accidents and emergencies immediately they occur, to the port captain. The report to include the name and contact details of the observer/reporter, a description of the accident or emergency, and details of the source (if discernable).

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- Prohibition on mixing chemicals or allowing contact between incompatible chemicals, for instance during loading or unloading.
- Requirement for tenants and others in possession of hazardous chemicals to be in compliance with the International Safety Guide for Oil Tankers and Terminals (ISGOTT) standards, including maintenance of material safety data sheets (MSDSs) incorporating environmental data as well as safety data.
- Training of emergency response teams to deal with environmental implications of an emergency in addition to the safety implications.

#### **4.6 DREDGING**

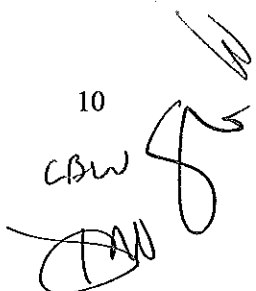
Dredging must be undertaken in accordance with each port's dredging plan and permit. Sediment quality is to be evaluated on an ongoing basis during dredging, and dredged material disposed of in accordance with the requirements of the London Convention (1972).

#### **4.7 MANAGING BIODIVERSITY**

Because of harbour security, ports often have areas of salt marsh, mangrove forest, wetlands, dune fields or other important intertidal or marine ecosystem, that are locally, regionally or even nationally important.

Each port will compile procedures and management plans for the management of the important natural ecosystems within its area of responsibility. These procedures and management plans will include the following, as appropriate:

- Ecological inventories of plants, animals, other biota and habitats, especially "Red Data" species and ecologically important natural systems such as fish spawning grounds or waterbird nesting areas;
- Liaison with the local nature conservation authorities and local environmental interest groups;
- Management actions required, e.g. fire management (burning programmes, firebreakers, culling, harvesting or restocking, monitoring, management of invasive alien biota);
- Opportunities for environmental education and appropriate environmental education programmes and facilities;

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- Prevention of encroachment by human activities, including illegal informal settlement, poaching, etc;
- Features of archaeological or cultural importance, and their preservation;
- A policy and procedure on angling and/or commercial fishing in the harbour, for instance a system of licenses with “no-go” areas demarcated to keep anglers away from the commercial areas;
- Advising shipping, tenants and terminal operators of the protected areas;
- Prohibition of hunting or disturbance of marine mammals in the port.

## **4.8 PORT DEVELOPMENT**

### **4.8.1 STRATEGIC ENVIRONMENTAL PLANNING**

Each port will conduct a Strategic Environmental Assessment (SEA), as part of its integrated port planning process, to determine the optimum approach to environmental management at the strategic level. The SEAs shall be carried out in accordance with the guidance document for SEAs, published by the Department of Environmental Affairs and Tourism, and their findings shall be used to inform the Strategic Integrated Port Plan.

### **4.8.2 ENVIRONMENTAL IMPACT ASSESSMENTS**

The NPA will ensure that all activities scheduled in the EIA Regulations, are properly evaluated and not commenced before the proper authorisation has been issued, within its area of responsibility.

Tenants and terminal operators intending to carry out a scheduled activity will be required in terms of their lease agreements, an operating license or other contractual instrument, to inform the port authority of that intention at the outset of the application process to the relevant environmental authority and automatically register the port authority as an interested/affected party in the study.

Ports will compile a procedure detailing how they will ensure that they are able to carry out their obligation in terms of the regulations to ensure the competence, independence and capacity of the consultants carrying out applications in terms of the EIA regulations, on their behalf.

### **4.8.3 APPROVAL OF PLANS BY THE NPA**

Any plans for infrastructural development of any nature, whether scheduled or not, must be submitted to the relevant port authority for approval first.

In cases where buildings and other structures within the confines of the port are to be demolished, whether by the NPA or by any other body or organisation, a management plan is to be compiled to address issues such as disposal of the derelict building material, prevention of pollution and site rehabilitation.

No clearance of any site occupied by natural vegetation is allowed except in accordance with an approved plan, following ecological and archaeological investigation of the site.

## **4.9 PORT OPERATIONS**

### **4.9.1 BUNKERING AND FUELING**

The NPA is directly responsible for bunkering of its floating craft. However, it will require of the Port Operations Division that procedures be compiled and implemented to ensure that bunkering in general is carried out in such a way as to minimize the likelihood of spills and leaks.

On-land fuelling facilities will be paved with a small bund wall surrounding the facility, to contain spills during fuelling and prevent soil and groundwater contamination.

### **4.9.2 BUILDINGS AND GROUNDS MAINTENANCE**

An inventory shall be conducted of buildings that contain asbestos, in order to ensure that the asbestos is not released during maintenance or demolition.

The NPA shall, after obtaining specialist advice, compile a list of approved herbicides, insecticides and other pesticides for use in ports and the use of such chemicals not on the approved list shall be allowed only after a formal approval is granted. Non-chemical means of controlling pests, such as use of raptors or "bat-hotels" shall be encouraged.

Landscaping in ports shall be planted with predominantly indigenous plants, and care shall be taken to prevent the use of plants that are prohibited or restricted in terms of the South African legislation.



### **4.9.3 CARGO HANDLING**

The relevant port authorities shall require terminal operators and others handling cargo to compile procedures for approval by the NPA, for the prevention of spillages of cargo, especially cargo that would be a pollutant if it were to fall into the harbour. Procedures will also be required to prevent spilled cargo from entering the harbour water.

The relevant port authorities will monitor terminal operators and others to ensure that they adhere to the procedures with regards to the above.

### **4.9.4 PUBLIC ACCESS TO HARBOURS**

Each individual port authority will review the situation with regard to public access to its port and, where it is deemed to be an issue of concern, will review and alter as necessary the access control procedures and measures.

It is however recognised that ports are interesting places for the general public, and that opportunities exist for the public to benefit from awareness programs, which will allow them to visit the ports under controlled circumstances thus promoting the NPA's public image.

## **4.10 ENVIRONMENTAL MANAGEMENT**

### **4.10.1 ENVIRONMENTAL POLICIES**

Each port is free to either adopt the overall NPA's environmental policy verbatim, or to integrate the NPA policy statement into a policy specific to the port in question, to better reflect local circumstances.

### **4.10.2 DETERMINATION OF SIGNIFICANT ASPECTS**

In addition to the significant aspects noted in this policy guideline document, individual ports should examine their own particular circumstances to determine whether there are significant aspects because of specific local conditions, that also need to be incorporated into their Environmental Management Systems (EMSs).

#### **4.10.3 DETERMINATION OF LEGAL AND OTHER REQUIREMENTS**

This will be dealt with centrally by the NPA's head office so far as national and provincial legislation is concerned, by subscription to a reputable legal update service. Individual ports will be updated by the NPA's head office when such legislation is amended. The NPA's head office will also deal with overall "other aspects" such as requirements imposed generally by Transnet and other stakeholders. It is the responsibility of each individual port to remain abreast of local legislation and to advise NPA head office of any changes that may occur, as well requirements that may be imposed on the individual environment management systems, for instance as a result of agreement with local authorities, local environment interest groups, and other stakeholders.

#### **4.10.4 OBJECTIVES AND TARGETS AND ENVIRONMENTAL MANAGEMENT PROGRAMME**

Each port authority will set its own objectives and targets, with due regard for the requirements of ISO 14001, and will devise an appropriate environmental management programme in order to achieve them. Both the objectives and targets, and the accompanying environmental management programme, are to be ratified by the EXCO of the individual ports.

#### **4.10.5 IMPLEMENTATION AND OPERATION OF THE EMS**

The actual implementation of the EMS is the responsibility of the individual port authorities.

This is essential in the following way:

- Determination of the roles and responsibilities within the EMS.
- The structure of the EMS, within the existing port authority management structure, including lines of reporting.
- The environmental characteristics of key positions in the EMS, and the competencies required for such position, and the undertaking of a training needs analysis to determine which competencies need to be developed.
- A general employee environmental awareness programme, to develop awareness amongst employee and stakeholders of the generic environmental issues associated with ports, the specific environmental issues in the port in question, the benefit of responsible environmental management system requirements.

- Implementation of the agreed environmental management programme, incorporating all of the above, including monitoring of progress, especially achievement of key milestones.
- Communication within the organization with regards to the EMS, as well as with outside organizations. The procedures regarding communications with outside instances should be uniform between ports, in order to prevent confusion with external agencies communicating with more than one port.
- The format and content of the EMS documentation should, so far, as is sensible, be uniform between ports, for ease for mutual auditing. So far as is reasonable, the EMS documentation should be integrated with existing Quality Management and Health & Safety systems.
- Document control procedures can easily be standardized between ports as with Quality Management Systems.

#### **4.10.6 OPERATIONAL CONTROL**

Operational control procedures should be based closely on the issues in this policy guideline document, together with unique operational issues that may exist at individual ports. Stipulations on tenants and terminal operations should be incorporated into lease and operating agreements, which should be uniform, so far as is appropriate, between ports. Specific requirements should be imposed on tenants and operators to pass on the requirements of their lease or operating agreements, to subcontractors and other suppliers of goods and services.

#### **4.10.7 MONITORING AND MEASUREMENT**

Each port will develop a comprehensive system of key environmental performance indicators and appropriate monitoring strategies to monitor and measure them. Such key environmental performance indicators may include:

- Harbour water quality
- Number of environmental incidents or accidents

- Achievement of specific milestones, for instance the storage tank inventory, followed by achievement of milestones regarding ‘legalization’ of illegal tanks (e.g. leaking tanks)
- Census figures for key plant or animal populations in protected areas
- Legal compliance (periodic monitoring of legal compliance is a specific requirement of ISO 14001).

Key environmental performance indicators will be discussed at the environmental steering committee meetings, to ensure uniformity of approach between the ports and the exchange of knowledge between port authority personnel.

#### **4.10.8 CHECKING AND CORRECTIVE ACTION**

A uniform methodology for addressing EMS non-conformities and for the undertaking of audits will be agreed by the environmental steering committee, for implementation in all ports. This will ensure that if environmental staff from one port are utilized to conduct an audit on another, they will be familiar with the audit system and the expected actions in case of non-conformities.

#### **4.10.9 RECORD KEEPING**

Every port develops its own system for the safe retention of appropriate environmental records, in accordance with clause 4.5.3 of the ISO 14001 standard.

#### **4.10.10 ENVIRONMENTAL MANAGEMENT SYSTEM AUDITS**

EMS audit methodologies and protocols should be common, so far as is appropriate, between ports, to facilitate inter-port benchmarking. (As a general principle, persons conducting an audit should be independent of the system being audited. Hence, port environmental managers should not audit their own systems).

#### **4.10.11 MANAGEMENT REVIEWS**

Management reviews at port levels will take place as determined by port authority management, but in accordance with the requirements of clause 4.6 of the ISO 14001 standard. The findings of the management review will be forwarded to the EXO of the NPA, for review at corporate level, as will any unusual incidents or audit findings that may have a corporate implication.

**NPA CORPORATE DIRECTIVE**

**Annexure D  
REFERENCE BEEPROC REV1**

**TITLE: PROCUREMENT BY NPA FROM  
BLACK SUPPLIERS**

**DATE: SEPTEMBER 2001  
REVISION DATE: 17 SEPTEMBER, 2001**

**FUNCTIONAL RESPONSIBILITY**

**APPROVED BY**

**B S TSHABALALA  
GM(CORPORATE SERVICES)**

**S I GAMA  
CHIEF EXECUTIVE OFFICER**

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## **1 SCOPE**

This policy covers procurement of all goods and services, including rental of properties by all NPA business units. The purpose of this policy is to promote entrepreneurship in Black communities. This directive describes NPA's policy to maximise purchases from Black Suppliers, whether large or small.

NPA's BEE programme is commercially oriented. The primary task of the procurement function in NPA is unchanged, i.e. to find reliable, cost effective suppliers for the enterprise.

This policy will, from time to time, be expanded in procedures or handbooks published by the Corporate Procurement Department.

## **2 VISION**

The vision of NPA is to maximise Black Economic Empowerment through procurement activities including the rental of properties.

## **3 MISSION**

It is NPA's mission to source more than 50% of all goods and services from Black Suppliers every year.

## **4 DEFINITIONS AND EXPLANATORY NOTES**

The following definitions and explanatory notes will apply in this policy document and in the NPA Black Supplier Procurement Programme Manual.

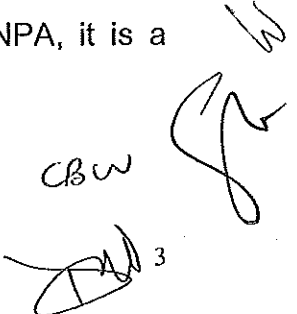
- A "Black company" is one that is at least 51% owned and managed by Black people. Ownership refers to economic interest. Management refers to executive directors.
- A "Black empowered company" is one that is at least 26% owned and managed by Black people. Ownership refers to economic interest. Management refers to executive directors.

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- A "Black influenced company" is one that is at least 10% – 25% owned and managed by Black people.
- "Project specific sub-contracting" refers to a percentage of NPA tender that may be subcontracted to Black and women suppliers.
- "General sub-contracting" is the extent of sub-contracting or outsourcing of suppliers of non-core activities to Black suppliers.
- "Affirmative procurement" is the total value spent by the supplier on procuring goods and services from Black suppliers.
- "Skills transfer" refers to the number of black people trained in a specialised field.
- "Joint venture" is a business arrangement, between one or more Black companies and one or more established suppliers , whereby the same business objectives are pursued without any loss of identity by either of the parties.
- "Black" signifies persons who are South African Blacks, Indians or Coloureds.
- "Black Supplier" means
  - (a) Small enterprise which is at least 51% owned by Black individuals, or in the case of a Close Corporation, a Small enterprise where at least 51% of the working capital and resources are provided by Black individuals, and the risk to the venture is shared by the Black members, or
  - (b) a Large Supplier which attains and maintains a rating of 7 or higher on the points system set out in Appendix B.
- "Enterprise" means any business entity organised for profit (even if its ownership is in the hands of a non-profit entity) with a place of business located in the South Africa and which makes a contribution to the South African economy through payment of taxes and/or use of South African products, material and/or labour, etc. "Enterprise" includes but is not limited to an individual, close corporation, partnership, corporation, joint venture, association, or co-operative. When an enterprise is listed as a supplier by NPA, or tenders to supply to NPA, it is a supplier.

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- "Fair market price" means a price based on reasonable costs under normal competitive conditions and not on lowest possible cost. This will be established where price matching will be applied.
- "First tier supplier" is a supplier who provides goods, services or works directly to NPA.
- "Second tier supplier" is a supplier who provides goods, services or works as a subcontractor to NPA.
- "Front Organisation" is an organisation that presents itself as a Black Supplier but does not in fact qualify according to the parameters set out in this document.

## **5 MANAGEMENT COMMITMENT**

NPA 's Divisional Board and its senior managers as individuals are deeply committed to the direction given by them in this policy. The responsibility for implementation of this policy lies with the General Manager: Corporate Services.

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## 6 OBJECTIVES

To show its unconditional commitment to Black Economic Empowerment (BEE), NPA has embarked on a deliberate and systematic process to redress the economic imbalances of the past by creating opportunities for South African Blacks to participate meaningfully in the mainstream of the NPA business.

The primary objectives of the BEE policy are:

- to facilitate access by Black suppliers to NPA procurement activities.
- to ensure that an increasing proportion of contracts are awarded to Black suppliers and to suppliers with a clear demonstrable commitment to Black economic empowerment.
- to facilitate entry of Black suppliers into port related industries.
- to create awareness, understanding and support for Black Economic Empowerment among all key stakeholders.

## 7 MECHANISMS TO SUPPORT OBJECTIVES

To achieve the BEE objectives set above, NPA will:

- proactively create a bias in the process of adjudicating tenders, thereby increasing the proportion of business awarded to Black suppliers.
- implement price-matching principle whereby Black suppliers are afforded the opportunity to match the budgeted amount or the most preferred price.
- provide early payments and assistance in acquiring materials.
- settle accounts early, within a period of 15 working days, after receipt of duly completed invoices.
- relax guarantee/performance requirements on contracts.
- relax procurement terms and commercial conditions as well as procedures to improve business opportunities for Black suppliers.
- split contracts, where appropriate into smaller components in order to spread opportunities to Blacks suppliers who wish to do business with NPA
- set aside tenders, in part or as a whole, to enable Black suppliers to compete among themselves
- give preference to traditional suppliers who implement BEE programmes that seek to encourage broader participation of Black business.

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## 8 SUPPLIER EVALUATION

When applying for registration as suppliers and when tendering to NPA, suppliers will provide a statement of their ownership/control and internal Black Empowerment Programme, which will be used in supplier assessment and in assessing tenders along with technical and commercial offerings.

Any changes to the make-up of the tenderer or to their Black Empowerment Programme which occur after the tender closing date and time will not be taken into consideration, even if these were under consideration at the time of tendering.

Whereas the BEE initiatives stated in paragraph 10, which deals with Second Tier Procurement relate to the specific procurement order or contract being considered for award at the time, the BEE initiatives stated in this paragraph relate to the Supplier's Black economic Empowerment policy and programme as implemented by the supplier in the day to day running of its enterprise. Areas that will receive specific attention are:

- Black Ownership: This may be reflected by equity ownership, board membership, source of venture capital, risk, etc. as set out in the Handbook.
- Black Management: This may be reflected by the proportion of Black board members and executive and middle operating/core management, i.e. decision makers and risk takers.
- Skills Transferred: This reflects the proportion of skilled non-management Black workers, i.e. artisans, technicians, technologists, draftsmen, etc., employed by the supplier.
- Purchasing from Black Suppliers. This may include joint ventures or partnerships with Black groups (not specifically related to the procurement under consideration) leading to transfer of technology and skills
- Other BEE Initiatives. This may include Black equity ownership schemes, assistance to start-up Black businesses, bursary schemes assisting Black students, and many other initiatives.

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To establish whether a Large Supplier qualifies as a Black Supplier, a points rating system will be used. All suppliers will be rated and the ratings will be recorded in the supplier management system. Large Suppliers with a rating of 7 or more will be deemed to be Black Suppliers. Small suppliers may request that NPA measure them according to the points system rather than by the 50% ownership requirement, but this will be at NPA's discretion. The points system is set out in Appendix B.

This rating will be updated with every tender received, and used in evaluating the tenders, taking economic value to NPA and the economy at large into consideration. This rating will also be used in formal supplier performance appraisal meetings.

## **9 TREATMENT OF BLACK SUPPLIERS**

### **9.1 Procurement requirements**

Black Suppliers will not be treated differently than the norm with regard to quality, price, expected service level or delivery, or any other commercial or technical requirements.

### **9.2 Registration**

Databases containing sourcing directories or registers of Black Suppliers will be further developed and maintained by the Corporate BEE Manager and Procurement Managers at the ports, preferably as part of or linked to NPA's procurement IT system. These will be used for sourcing and also for internal marketing of NPA's Black Supplier Procurement Programme. The records on the database for each supplier will indicate:

- whether the supplier is certified as a Black according to the criteria as set out from time to time for Large or Small Black Suppliers.
- the categories of goods or services for which the supplier has undergone a qualification process, if any.
- whether the supplier is classified as Small or Large.

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### 9.3 Reporting

Purchases from Black Suppliers will be recorded as such and reported monthly to the Executive Manager: Procurement.

## 10 Second Tier Black Supplier Procurement

Prime contractors/suppliers (whether Black Suppliers or not) will be required to "unpack" or "break out" contracts and procure a stated percentage of the contract value from Black Suppliers by, among other:

- subcontracting portions of the contract
- procuring manufactured components/subassemblies
- procuring consumables/MRO materials
- procuring insurance
- procuring services, e.g. transport
- procuring professional services, e.g. engineering, design, project management
- using local Black labour where on-site labour away from normal premises is required.

Joint ventures conforming to the following requirements may be formed with Black Suppliers:

- an approved contractual relationship is established; the Black Supplier does work with its own resources and management
- the Black Supplier executes work proportional to the Black Supplier participation in the joint venture
- the Black Supplier shares in the potential benefits and the potential risks inherent in the contract proportional to the Black Supplier participation in the joint venture.

The enquiry and tender documentation sent out by NPA will specify the percentage of the contract value that must be spent in line with the above criteria.

The percentage will vary from industry to industry and contract to contract according to the characteristics of the item or service procured. Suppliers who are not willing to comply with this requirement will be eliminated from NPA tender lists.

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Non-compliance with the contractual Black Supplier support requirements will lead to penalties or cancellation of the contract or both. The percentage of contract value which is specified will be reported as Black Supplier purchases.

**11 PENALTIES FOR ABUSE OF NPA'S BLACK SUPPLIER PROCUREMENT PROGRAMME**

Any supplier or potential supplier that misrepresents the facts in order to gain some advantage using NPA's Black Supplier Procurement Programme will be penalised by deregistration as a supplier to NPA. NPA will retain a percentage of the contract value should a supplier fail to comply with all agreed BEE targets. The percentage will be specified in the tender document.

Directors or owners of businesses, which have been so deregistered, will be listed and NPA may refuse to register any new companies formed by them as suppliers.

**Appendix A**

**Turnover parameters for supplier classification**

TURNOVER PARAMETERS FOR SUPPLIER CLASSIFICATION		
R 000 000		
Sector	Small	Large
Agriculture, forestry and fishing, transport, storage, communication, financing, insurance, real estate, business services, community, social and personnel services	25	>25
Mining and quarrying, electricity, gas, water, construction, manufacturing, wholesale and retail trade, catering and accommodation services	40	>40

Handwritten signatures and initials: CBW, DM, and a large stylized signature.

## Black Supplier Rating Criteria for Supplier and Tender Evaluation

CRITERIA	1 Point	2 Points	3 Points
Ownership	10% - 25%	26% - 50%	> 50%
Management	10% - 19,9%	20% - 50%	> 50%
Skills Transferred	10% - 19,9%	20% - 50%	> 50%
Black Supplier Procurement	5,0% - 9,9%	10% - 20%	> 20%
Women/Disabled	5%- 19.9%	20% - 50%	50%
Other BEE Initiatives		NPA's Discretion	

When a Large Supplier earns 7 or more points, it is considered a Black Supplier, and is permitted to price match for the set-aside portion of the tender concerned, as stipulated in the enquiry. The price matching facility will be implemented from the highest Black Supplier rating to the lowest.

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**LEVER POND'S (PROPRIETARY) LIMITED**

**EXTRACT FROM THE MINUTES OF THE MEETING OF THE BOARD OF  
DIRECTORS OF THE COMPANY HELD AT DURBAN ON 29 APRIL 2003**

**MEMORANDUM OF AGREEMENT WITH TRANSNET LIMITED, t/a NATIONAL  
PORTS AUTHORITY**

**RESOLVED**

**THAT**

**MR C B WILKINS** in his capacity as **SUPPLY CHAIN DIRECTOR** of the Company, be and is hereby authorised to settle the terms and to sign the abovementioned agreement in respect of the consolidation of the various leases of land at Maydon Wharf, on behalf of the Company.

CERTIFIED A TRUE EXTRACT



\_\_\_\_\_  
COMPANY SECRETARY

CR308A

Dup. original

PD/WE 2/2/57

**DECLARATION OF RENTAL**

TRANSNET

**DECLARATION OF RENTAL** made and entered into between :

5/8/10  
cc P&C



national ports authority

TRANSNET LIMITED  
Registered No. 1990/000900/06

a public company with limited liability registered and properly incorporated in terms of the Company laws of the Republic of South Africa with its registered address at Carlton Centre, 150 Commissioner Street, Johannesburg and trading as Transnet National Ports Authority of South Africa represented herein by LINDA NODADA in her capacity as MANAGER PROPERTY being duly authorised thereto (hereinafter referred to as the "LESSOR")

and

30/3/11  
cc. T. CHIRIWA  
M/W

UNILEVER SOUTH AFRICA (PROPRIETARY) LIMITED  
Registration No. 1939/012365/07

a company registered under the Company laws of the Republic of South Africa, with its registered office at DURBAN, represented herein by PATRICK S. SITHOLE, in his/her capacity as GM VP, being duly authorised thereto by a Resolution of the Board of Directors dated 24/4/2008, a certified copy of which is annexed hereto (hereinafter referred to as the "LESSEE").

**WHEREAS** in terms of COMMERCIAL AGREEMENT of the lease of land, the LESSEE hires from the LESSOR Portion of Portion of Portion 1 of Erf 10019 and Portion of Portion 203 of Erf 10004, Durban being portion of the LESSOR's land at Maydon Wharf abutting on the Bay of Durban, Province of KwaZulu-Natal signed by TRANSNET LIMITED t/a Transnet National Ports Authority and the LESSEE on 24 April 2003 and 1 May 2003 respectively.

**AND WHEREAS** the rental payable by the LESSEE to the LESSOR has been reviewed in terms of the conditions of lease.

**NOW, THEREFORE, THE PARTIES HEREBY DECLARE THAT :**

In respect of the period 1 May 2008 to 30 April 2013 the annual rental, excluding V.A.T., shall be as follows:-

- 1st year - R10 242 158.40
- 2nd year - R11 266 374.24
- 3rd year - R12 393 011.66
- 4th year - R13 632 312.83
- 5th year - R14 995 544.11

THUS DONE and SIGNED at DURBAN on this 16 day of APRIL 2008.  
AS WITNESSES

1. [Signature]  
2. [Signature]

For and on behalf of the LESSEE

1. [Signature]

THUS DONE and SIGNED at DURBAN on this 22nd day of May 2008.  
AS WITNESSES :

1. [Signature]  
2. [Signature]

For and on behalf of the LESSOR

[Signature]



UNILEVER SOUTH AFRICA (PROPRIETARY) LIMITED

EXTRACT OF MINUTES OF THE MEETING OF THE DIRECTORS OF THE  
COMPANY HELD IN DURBAN ON 24 APRIL 2008

TRANSNET DECLARATION OF RENTAL AGREEMENT: MAYDON WHARF

RESOLVED

THAT

MR P D SITHOLE in his capacity as VICE PRESIDENT – SUPPLY CHAIN of the Company be, and he is hereby authorised to settle the terms and to sign the abovementioned Declaration of Rental Agreement on behalf of the Company, (iro Maydon Wharf) in terms of which annual rentals have been reviewed (in terms of the Lease Agreement) and agreed for the following five years (w.e.f. 01/05/2008) as follows:

1 <sup>st</sup> Year	-	R10 242 158.40
2 <sup>nd</sup> Year	-	R11 266 374.24
3 <sup>rd</sup> Year	-	R12 393 011.66
4 <sup>th</sup> Year	-	R13 632 312.83
5 <sup>th</sup> Year	-	R14 995 544.11

CERTIFIED A TRUE EXTRACT

  
\_\_\_\_\_  
DIRECTOR