

## **7 Guidelines for Agreements, Licences and Permits in terms of the National Ports Act No. 12 of 2005**

**“The main function of the Authority is to own, manage, control and administer ports to ensure their efficient and economic functioning, and in doing so the Authority must – ...**


- (h) ensure that adequate, affordable and efficient port services and facilities are provided;**
- (i) exercise licensing and controlling functions in respect of port services and port facilities;**
- (j) ensure that any person who is required to render any port services and port facilities is able to provide those services and facilities efficiently;”**

**National Ports Act No. 12 of 2005, Section 11 (1)**

**“The Board – ...**

- (f) sets criteria and policy for the effective execution of the Authority’s regulatory and control functions;”**

**National Ports Act No. 12 of 2005, Section 16 (2)**



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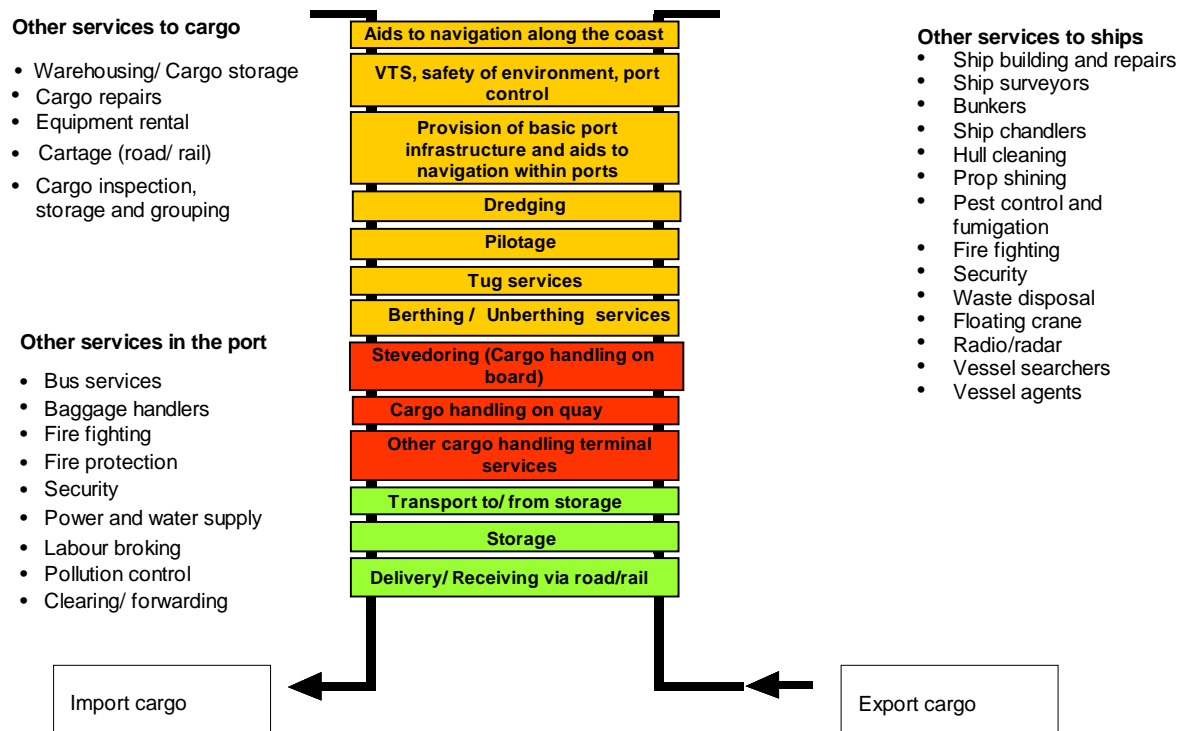
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## I. INTRODUCTION

1. The National Ports Act No. 12 of 2005 (*"the Act"*) establishes the National Ports Authority (*"the Authority"*) as the landlord of South Africa's ports, and establishes an independent Ports Regulator with oversight powers. The Act was proclaimed by the President of South Africa in the Government Gazette on 26 November 2006.
2. The Act prescribes a range of functions that the Authority must perform. These can be summarised as follows:
  - 2.1 As **landlord**: the Authority must promote the use, improvement and development of the ports and control land use within the ports, having the power to lease land under conditions it determines.
  - 2.2 As **port master planner**: the Authority must plan, improve, develop and maintain port infrastructure.
  - 2.3 As **controller of port navigation**: the Authority must make and apply rules to control navigation within port limits and approaches, ensure protection of the environment, and ensure safety and security within port limits.
  - 2.4 As **controller of port services and facilities**: the Authority must ensure that port services and facilities are provided, and can enter into agreements with other parties, or licence other parties, to provide these.
  - 2.5 As **administrator**: the Authority must ensure that adequate, affordable, equitable and efficient port services and facilities are provided for port users.
  - 2.6 As **change agent**: the Authority must take measures for advancement of previously disadvantaged persons, and for greater representivity and participation in port terminal operations.
  - 2.7 As **coordinator**: the Authority must coordinate the functions of organs of state in ports and aim to coordinate the general activities of the ports, and liaise with all stakeholders.
3. The primary mandate of the Authority is therefore to own, manage, control and administer ports to ensure their efficient, economic, safe and secure functioning. The regulatory functions of the Authority are key instruments for the fulfillment of this mandate.
4. This document describes how the Authority intends to perform some of its more important regulatory functions. It sets out the approach to be adopted by the Authority for the control of port facilities, port services and a number of other activities within the ports. Control will take place through licences and other authorisations issued and agreements entered into by the Authority and other powers exercised under the provisions of the Act.
5. This document will be referred to as the Guidelines for Agreements, Licences and Permits (*"the Guidelines"*). Each facility, service and activity to be controlled is dealt with separately in the *Guidelines* and the selection criteria and conditions for each are specified.
6. Services and facilities are primarily provided to ships and cargo in the ports. The services, facilities and activities dealt with in the *Guidelines* are represented in the diagram below:



7. The *Guidelines* explain to service providers, operators, port users, and the public in general how the Authority will regulate certain facilities, services and activities within the ports.
8. In establishing a framework for regulating these port services, facilities and activities, the *Guidelines* also aim to give effect to ss 11 and 12 of the Act, particularly, the following **functions and aims of the Authority**:
  - 8.1 to ensure that adequate, affordable and efficient port services and facilities are provided;
  - 8.2 to exercise licensing and regulatory functions in respect of port services and port facilities;
  - 8.3 to ensure that any person who is required to render any port services and port facilities is able to provide those services and facilities efficiently;
  - 8.4 to promote efficiency, reliability and economy on the part of the licensed operators in accordance with recognised international standards and public demand;
  - 8.5 to promote the achievement of equality by measures designed to advance persons or categories of persons historically disadvantaged by unfair discrimination in the operation of facilities in the ports environment;
  - 8.6 to promote greater representivity, and in particular to increase the participation of historically disadvantaged persons in terminal port operations;
  - 8.7 to satisfy all reasonable demands for port services and facilities;
  - 8.8 to ensure that orderly, efficient and reliable port services, including safe and secure cargo-storage and cargo-handling facilities, are provided to port users;

- 8.9 to promote the development and expansion of port services and facilities elsewhere in the world in collaboration with other countries and international organisations, in a manner consistent with the objectives of the Act;
  - 8.10 to promote and undertake the necessary measures to enhance safety and security of life and property in ports; and
  - 8.11 to integrate biophysical, social and economic issues in all forms of decision-making with regard to port development and operations.
9. There are a number of **other South African statutes** that impact on the manner in which the Authority should perform its functions. These statutes are discussed in Annexure A(i). Although the Authority is not the principal administrator of any of these statutes, it is required -
- 9.1 to regulate and control pollution and the protection of the environment within ports limits (s 11(1)(g)(vi)); and
  - 9.2 to regulate and control the enhancement of safety and security within port limits (s 11(1)(g)(vii)) and it must, in all its activities, aim to ensure that safe and secure cargo-storage and cargo-handling facilities are provided to port users, and promote and undertake the necessary measures to enhance safety and security of life and property in ports (s 12(f) and (h)).
10. The Authority is accordingly required to ensure that safety, health and environmental laws are adhered to within the ports. The Authority is also responsible for security in the ports. The Act imposes these obligations on the Authority in addition to its responsibility to ensure that orderly, economic and efficient and reliable port services are provided. The requirements laid down in safety, health and environmental laws and security policies have been taken into consideration in the development of criteria and terms and conditions of licences, authorisations and agreements.
11. **International instruments** impact on the manner in which the Authority should perform its functions. The Authority is required to discharge or facilitate the discharge of international obligations relevant to the ports (s 11(1)(t)). Most international obligations have been incorporated into South African law by statute, but the Authority may include even unincorporated international obligations into licences, authorisations and agreements. The international instruments of particular importance to the functions of the Authority are set out in Annexure A(ii).
12. The Authority is further committed to meeting **international best practice** in its regulation of the ports and the *Guidelines* are informed by these practices.
13. The *Guidelines* seek to meet the Authority's interests and obligations through non-invasive and flexible instruments, to the extent that this is permitted by the Act.
14. The *Guidelines* should not be interpreted or used in the same way as a statute. The *Guidelines* set out the Authority's interpretation of the laws and international instruments that apply to it and its approach to implementing the laws as regulator of services, facilities and activities within the ports. The *Guidelines* will not be rigidly applied. The Authority may deviate from the *Guidelines* if there is a good reason to do so. However, a stricter approach may be indicated by language and context, in which case the Authority will only deviate from the *Guidelines* in exceptional circumstances. To the extent that the *Guidelines* record the contents of statutory provisions, the approach to deviation does not apply.
15. The *Guidelines* also set out the Authority's understanding of the regulatory options available to it as well as the mode of regulation that it has adopted in respect of each port facility, service, and activity. The process that will be followed, the criteria that will be used and the conditions that the Authority will seek to impose, are separately described for each facility, service and activity.



16. The *Guidelines* are set out in the following manner:

Section of the Guidelines	Contents
Part II	Provides an explanation of key terms used in the <i>Guidelines</i> and a glossary of abbreviations used in the <i>Guidelines</i> .
Part III	Explains the statutory framework for agreements, licences and permits under the Act. The type of regulatory control that the Authority will exercise in relation to each service, facility and activity within the ports is identified.
Part IV	Explains how different procedures will be used for different groups of facilities, services and activities. This part provides a summary of the categorisation of services and facilities, the type of regulatory mechanism to be applied to each and the procedures that will be used for each category.
Part V	Sets out: <ul style="list-style-type: none"> <li>• The bidding procedures and broad criteria that will be used for port terminals, ship repair facilities, railway and rail siding facilities and offshore cargo handling facilities; and</li> <li>• The general terms and conditions of agreement that will be applied in future to the operators of such facilities.</li> </ul>
Part VI	Sets out: <ul style="list-style-type: none"> <li>• The application procedures for the following services: <ul style="list-style-type: none"> <li>○ Stevedoring</li> <li>○ Waste disposal</li> <li>○ Floating crane services</li> </ul> </li> <li>• The evaluation criteria against which applications for licences in respect of these services will be assessed.</li> </ul>
Part VII	Sets out the approach to services that will be exempted in terms of section 57(7) of the Act.
Part VIII	Sets out: <ul style="list-style-type: none"> <li>• The Port Rules licensing process (to be adopted in terms of s 80(2)(e) of the Act) in respect of the following: <ul style="list-style-type: none"> <li>○ Fire protection and fire equipment installation and maintenance;</li> <li>○ Bunkering;</li> <li>○ Pollution control;</li> <li>○ Diving; and</li> <li>○ Pest control.</li> </ul> </li> <li>• The Port Rules registration process (to be adopted in terms of s 80(2)(e) of the Act) for vessel agents.</li> <li>• The evaluation criteria for the assessment of applications for these licences and registrations.</li> </ul>
Part IX	Sets out: <ul style="list-style-type: none"> <li>• The processes for obtaining access permits, small vessel permits and pleasure vessel permits in terms of Port Rules to be adopted as contemplated in s 80(2)(a) of the Act.</li> </ul>
Part X	Explains the framework that will be adopted for services that are to be outsourced.
Part XI	Sets out the transitional arrangements for existing operators in terms of ss 65 and 57 of the Act.
Annexure A	Contains a summary of the South African statutes, policies and international instruments considered when drafting the <i>Guidelines</i> .
Annexure B	Set out the Authority's approach to the delegation of powers.
Annexures C to	Contain the standard terms and conditions of:

<b>Section of the Guidelines</b>	<b>Contents</b>
0	<ul style="list-style-type: none"><li>• licences for services to be regulated by means of s 57;</li><li>• Port Rule licences and registrations; and</li><li>• Access permits and permits for small vessels and pleasure vessels to be regulated in terms of the Port Rules.</li></ul>

## II. EXPLANATION OF KEY TERMS AND GLOSSARY OF ABBREVIATIONS

17. This part sets out how key terms in the *Guidelines* are used and provides a glossary of abbreviations used.

### (i) Explanation of key terms

18. Terms such as "*agreements*", "*instructions*", "*leases*", "*licences*" and "*permits*" are used in a technical manner, with reference to specific provisions of the Act. This usage does not always correspond with the commonly associated meanings of the terms and it is accordingly necessary to explain the usage. The terms are used as follows (all references to sections refer to sections in the Act):

18.1 "**Access permits**" are permits required for persons and vehicles to enter a port, issued in terms of the Port Rules.

#### 18.2 **Agreements**

18.2.1 "**Co-ordination agreements**" are agreements entered into by the Authority in terms of s 11(3) of the Act with another statutory body or organ of state in order to co-ordinate and harmonise the performance of functions similar or related to those of the Authority.

18.2.2 "**Lease agreements**" are not s 56 agreements (even though a lease may form part of a s 56(1) agreement). A lease agreement is a form of contract entered into between parties, where the parties agree that the landlord gives the use and enjoyment of the landlord's immovable property to the other party in return for payment of rent, for a certain period and both parties agree to comply with the general principles of contract and rules specific to the lease agreements.

18.2.3 "**Section 56(1) agreements**" are agreements entered into principally for the operation of a port terminal or a port facility, in terms of s 56(1). These agreements will in most instances include the lease of land and infrastructure and the right to operate the relevant port terminal or port facility, but are distinguished from lease agreements in the *Guidelines*.

18.2.4 "**Section 56(4) outsourcing agreements**" are agreements in respect of a service which the Authority is required to provide but which the Authority will fully or partially outsource through a competitive process to a third party in terms of s 56(4).

#### 18.3 **B-BBEE contributor level**

18.3.1 This refers to the level achieved by an organisation assessed in terms of the B-BBEE Codes of Good Practice on Black Economic Empowerment, GN 112 of 2007 in GG 29617 (9 February 2007), as issued by the Minister of Trade and Industry in respect of the Broad Based Black Economic Empowerment Act No. 53 of 2003.

## 18.4 Exemptions

18.4.1 **"Section 57(7) exemptions"** are exemptions from regulation by means of s 56 agreement or s 57 licence that may be granted if the Authority is satisfied that the port service or port facility is sufficiently regulated by another statutory body or organ of state and the Authority then enters into a co-ordination agreement with that statutory body or organ of state.

## 18.5 Instructions

18.5.1 **"Harbour Master's Written Instructions"** are written instructions issued by the Harbour Master in terms of s 74(3)(b).

18.5.2 **"Shore-side instructions"** are written or verbal instructions dealing with activities on the shore-side of a port issued by the Authority under the Port Rules.

## 18.6 Licences

18.6.1 **"Deemed licences"** are transitional licences conferred by the Act on those who provided port services and operated port facilities at the commencement of the Act (i.e. on 26 November 2006). These licences expire when the Authority has decided on the deemed licence holders' application for a licence in terms of s 65.

18.6.2 **"Section 65 licences"** are the licences that deemed licence holders must apply for when called upon to do so by the Minister of Public Enterprises. These licences must be issued by the Authority under s 65(3) and (5) to deemed licence holders, if they can comply with the terms and conditions of the licence.

18.6.3 **"Section 57 licences"** are the licences which are used by the Authority to regulate port services or port facilities, if the provision of such a service or facility is not governed by a section 56 agreement and a s 57(7) exemption does not apply to the port service or facility.

18.6.4 **"Section 77 pilot licences"** are licences to be issued to marine pilots in terms of s 77.

18.6.5 **"Section 80(2) licences"** are licences issued by the Authority in terms of the Port Rules, in order to regulate activities in the ports other than port services and port facilities.

18.7 **"Pleasure vessel permits"** are permits issued to the owner or master of a pleasure vessel in terms of the Port Rules, to lie in, use in or operate from a particular port.

18.8 **"Port facilities"** are port terminals and port repair facilities such as dry docks and vessel repair facilities within a port, as well as terminal infrastructure, rail sidings and infrastructure, cargo-handling equipment, sheds and other land-based structures used for the loading, storage, transshipment and discharging of cargo or the embarkation and disembarkation of passengers.

18.9 **"Port Rules"** are the rules that the Authority may, with the approval of the Minister of Transport, adopt in terms of s 80(2).

- 18.10 **“Port services”** are those defined in s 1, being: stevedoring, cargo handling, terminal operations, storage of cargo within a port, tug services, floating crane services, berthing services, fire fighting, security, radio and radar services, waste disposal, vessel repairs and any other services provided within a port which are designated as such by the Authority by notice in the Gazette.
- 18.11 **“Regulations”** are the regulations that the Minister of Transport may make in terms of s 80(1).
- 18.12 **“Small vessel permits”** are permits issued to the owner or master of a small commercial vessel in terms of the Port Rules, to lie in, use in or operate from a particular port.

**(ii) Glossary of abbreviations**

<b>Abbreviation</b>	<b>Definition</b>
Act	National Ports Act No. 12 of 2005
Authority	Transnet National Ports Authority
B-BBEE	Broad-Based Black Economic Empowerment as defined in the Broad Based Black Economic Empowerment Act No. 53 of 2003.
BCEA	Basic Conditions of Employment Act No. 75 of 1997
BLU Code	International Maritime Organisation Code of Practice for Safe Loading and Unloading of Bulk Carriers 1998
COIDA	Compensation of Occupational Injuries and Diseases Act No. 130 of 1993
DOTFAS	Department of Transport Fire Appliance Station
ECA	Environmental Conservation Act No. 73 of 1998
EoI	Expression of Interest
GIS	Geographic Information System
GPR	General Published Reasons
Guidelines	Guidelines for Agreements, Licences and Permits
ICT	Information and Communications Technology
IMO	International Maritime Organisation
IOD	Injury on Duty
ISGOTT	International Safety Guide for Oil Tankers and Terminals (5 <sup>th</sup> edition and any subsequent amendments)
ISM Code	International Management Code for the Safe Operation of Ships and for Pollution Prevention in terms of the Merchant Shipping (ISM Code) Regulations, 1998
ISPS	International Ships and Port Facilities Security Code
LRA	Labour Relations Act No. 66 of 1995
MARPOL	Marine Pollution (Prevention of Pollution from Ships) Act No. 2 of 1986
MSRS	Marine Service Reservation System
NEMA	National Environmental Management Act No. 107 of 1998
NERSA	National Energy Regulator
NFPA	National Fire Prevention Association
NIA	National Intelligence Agency
OHSA	Occupational Health and Safety Act No. 85 of 1993
PAIA	Promotion of Access to Information Act No. 2 of 2000
PAJA	Promotion of Administrative Justice Act No. 3 of 2000
PPE	Personal Protective Equipment

Abbreviation	Definition
PSP	Port Security Plan
RFP	Request for Proposals
RFQ	Request for Qualifications
RoD	Record of Decision
SAMSA	South African Maritime Safety Authority
SANS	South African National Standards
SAQA	South African Qualifications Authority
SAQCC	South African Qualifications Certificate Committee
SARS	South African Revenue Services
SBM	Single Buoy Mooring
SHE	Safety Health and Environmental
Succession Act	Legal Succession to the South African Transport Services Act No. 9 of 1989
TCSM	Technical Counter Surveillance Measures
TPT	Transnet Port Terminals
Transnet	Transnet Limited
TREM	Transport and Emergency Card
VAT	Value Added Tax
VTS	Vessel Traffic Services

### III. UNDERSTANDING AGREEMENTS, LICENCES, AND PERMITS IN TERMS OF THE NATIONAL PORTS ACT

19. This section of the *Guidelines* explains the statutory regulatory framework that applies to the Authority. It does so in four parts. The fourth part deals with the “*transitional*” regime in respect of entities that were providing port services or operating port facilities at the commencement of the Act. The first three parts deal with **future** agreements, licences and authorisations in respect of port facilities, port services and other activities within the ports. More specifically:
- 19.1 **Part 1** deals with services and facilities that the Act requires the Authority to regulate in a particular manner. In terms of s 57(1) of the Act, no person, other than the Authority, may provide a “*port service*” or operate a “*port facility*”, unless an agreement has been concluded in terms of s 56 or a licence has been issued to such a person in terms of s 57 of the Act. The term “*port service*” is defined in s 1 of the Act, but no definition is provided for the term “*port facility*”. The Authority’s understanding of the latter term is provided in Part 1. A specific regulatory regime is also prescribed for marine pilots and off-shore cargo handling facilities. This regime is explained.
- 19.2 **Part 2** deals with activities that will be regulated other than by way of a s 56 agreement or a s 57 licence. Section 57(7) provides for the granting of exemptions. Licences, registrations and permits may also be issued in terms of the Port Rules. These options were considered in respect of services and activities for which the regulatory framework established by ss 57-64 is inappropriate. For example, the obligation to submit to the Authority annual audited financial statements in terms of s 62(2)(a)(iv) may be inappropriate and too burdensome for some service providers. Regulation in terms of the Port Rules may then be used to meet the Authority’s interests, without imposing undue burdens on the service providers.
- 19.3 **Part 3** deals with **agreements other than s 56 agreements**. For example, new lease agreements unrelated to port services or facilities are dealt with in this part.
- 19.4 **Part 4** deals with the **transitional** provisions of the Act for **existing providers of port services and operators of port facilities**. In terms of s 65, any person who provided a “*port service*” (other than stevedoring) or operated a “*port facility*” immediately before 26 November 2006 (when the Act came into force), is deemed to hold a licence, but must apply for a licence in terms of s 57 within six months of a date to be determined by the Minister of Public Enterprises. In terms of s 65(3), a deemed licence holder must be issued with a licence if the Authority is reasonably satisfied that such an operator is capable of complying with the “*terms and conditions*” of the licence. The terms and conditions of these licences are set out separately for each type of operator and service provider. As far as possible, these terms and conditions have been tailored to suit the specific services and operators. However, the licensing **process, duties** and **conditions** are to a significant extent prescribed by s 57. Certain conditions and duties must form part of a s 65 licence. In terms of s 65(5-6), a slightly different regime applies to Transnet Limited (“*Transnet*”). The approach to be adopted in respect of Transnet is also dealt with in this part.

**(i) Part 1: Mandatory regulation of listed and designated port services, port facilities, off-shore cargo handling facilities and pilotage**

20. In terms of s 57(1) of the Act, no person, other than the Authority, may provide a "*port service*" or operate a "*port facility*", unless an **agreement** with such a person has been concluded in terms of **s 56** or a **licence** has been issued to such a person in terms of **s 57**.
21. The term "*port services*" is defined as follows in s 1 of the Act:

"port services' means stevedoring, cargo handling, terminal operations, storage of cargo within a port, tug services, floating crane services, berthing services, fire fighting, security, radio and radar services, waste disposal, vessel repairs and any other services provided within a port which are designated as such by the Authority by notice in the Gazette..."

22. No definition is provided for the term "*port facility*", but the following definitions provided in s 1 of the Act are of relevance:

'port infrastructure' means the basic structure of a port, including breakwaters, seawalls, channels, basins, quay walls, jetties, roads, railways and infrastructure used for the provision of water, lights, power, sewerage and similar services;

'port repair facilities' means dry docks, vessel repair facilities within a port and any other facilities which are designated as such by the Authority by publication in the Gazette;

'port terminal' means terminal infrastructure, cargo-handling equipment, sheds and other land-based structures used for the loading, storage, transshipment and discharging of cargo or the embarkation and disembarkation of passengers;

'terminal infrastructure' means terminal buildings, workshops, substations, surfacing, rail sidings and terminal operations and infrastructure for the provision of water, lights, power, sewerage and similar services within terminal boundaries;

'terminal operations' means services provided at a port terminal, consisting of handling cargo, storing cargo, transshipment of cargo and delivering cargo to vessels and services related thereto."

23. Most of the operators of "*port facilities*" as described above, are to be regulated by a s 56 agreement or a s 57 licence, by virtue of the fact that the following port services are listed in s 1 of the Act: "*cargo handling, terminal operations, storage of cargo within a port, floating crane services and vessel repairs*". Operators of railways and rail sidings are not specifically mentioned as providers of a port service, and are accordingly the only additional category created by the reference to the operators of "*port facilities*" in s 57(1).
24. Certain "*port services*" and "*port facilities*" will be provided **by the Authority** itself. It is recognised that one of the objectives of the Act is to strengthen the State's capacity to separate operations from the landlord function within ports (s 2(e)). Sections 11(1)(n) and 74(1)(e) provide the Authority with a choice whether to involve private service providers in respect of tugs, pilots boats and berthing, whereas ss 11(1)(g), 11(1)(o) and 74(1)(a), (b) and (f) appear to require the Authority to provide vessel traffic services and navigational aids itself. Section 74(1)(f) imposes the obligation on the Authority to provide, operate and maintain adequate and efficient lighthouses and other navigational aids within the port limits



and at such other places as the Authority may determine. Sections 11(1)(a) and 74(1)(g) also require the Authority to undertake dredging.

### **Services to be provided by the Authority**

The Authority will continue to provide the following services in the immediate future:

#### **Vessel traffic services, radio and radar services, lighthouses and other navigational aids:**

Internationally, the Harbour Master manages port activities relating to marine safety. These functions of the Harbour Master are rarely outsourced, as it would raise a conflict of interest between public interest (safety, equal treatment) and private interests. In line with international best practice, the Authority will continue to provide these services in South Africa.

**Maintenance dredging services:** Maintenance dredging will be retained by the Authority but may be outsourced as the need arises.

**Tug services:** The Authority will continue to provide all tug services in the ports, including tug services to off-shore cargo handling facilities within port limits, but excluding salvage tugs.

**Berthing services:** The Authority will continue to provide berthing services in the ports, except in Richards Bay, where an external service provider may be selected in terms of s 56(4) to provide the service, when the current contract expires.

**Floating crane services:** The Authority will continue to provide two floating crane services in the ports. Existing private service providers of floating cranes will be licensed in terms of s 65 of the Act.

25. Regulation of "*port services*" and "*port facilities*" are not required in terms of ss 56 and 57 if the Authority has **exempted** the service provider from having to obtain a licence in terms of s 57(7) of the Act. The port services in respect of which exemptions will be granted are set out in Part 2 below.
26. Port services and port facilities not listed in s 1 **may be designated** as such. Once designated, such a service then falls to be regulated by a s 56 agreement or s 57 licence.

### **Services to be designated**

No additional services or facilities will be designated in the immediate future. Designation under s 1 means that the port service must be dealt with in terms of s 56 agreement or s 57 licence.

27. The port services and facilities listed in s 1 of the Act (minus the ones to be provided by the Authority itself, and those exempted) must be regulated either by way of s 56 agreement or s 57 licence. The port services and port facilities which are not to be provided by the Authority or exempted are: terminal operations, ship repair facilities, off-shore cargo-handling facilities, provision of security, waste disposal, stevedoring and railways and rail siding operations. There are compelling reasons to regulate these services and facilities (apart from the statutory obligation to do so). Efficiency in respect of these port services and facilities are of vital importance for the proper functioning of a port, and the activities associated with them pose considerable safety, health and environmental risks. The Authority accordingly has a strong regulatory interest in respect of these services and facilities.

28. If the Authority elects to regulate the port service or facility by way of s 56 agreement, there are two options:
- 28.1 Section 56(1) provides for agreements entered into to design, construct, rehabilitate, develop, finance, maintain or operate a port terminal or a port facility.<sup>1</sup>
- 28.2 Section 56(4) provides that the Authority may contract out any service which it is required to provide in terms of the Act.<sup>2</sup>

### **Section 56(1) agreements**

In future, the Authority will enter into s 56(1) agreements in respect of the following port services and facilities:

- **Terminal operations**, including cargo handling and cargo storage within terminal boundaries;
- **Ship repair facilities**;-
- **New off-shore cargo handling facilities**; and
- **Dedicated passenger terminals**.

29. Given the need for a competitive process to select the operator of these port facilities, the complexity of the relationships at stake and the need for flexibility, a section 56(1) agreement is the preferred mode of regulation in respect of these facilities. It is also international best practice to deal with such services and facilities in this manner.. Although dedicated passenger terminals are not listed in s 1 of the Act, the considerations that apply in respect of the construction and operation of such a terminal are similar to cargo handling terminals. Section 56 provides the appropriate process and tool for the selection and regulation of dedicated passenger terminals and will be used if it is decided to construct such a terminal in any of the South African ports. The approach to off-shore cargo handling facilities is explained in greater detail below. It should be kept in mind that s 56 process will only be used to select future operators of terminals, ship repair facilities, new off-shore cargo handling facilities and dedicated passenger terminals. Existing operators of these port facilities will be licensed as required by s 65 and, in the case of off-shore cargo handling facilities, by s 66, as described below.

<sup>1</sup> Section 56(1), (2) and (5) of the Act provides under the heading "**Agreements in port operations and services**" as follows:  
"(1) The Authority may enter into an agreement with any person in terms of which that person, for the period and in accordance with the terms and conditions of the agreement, is authorised to-  
(a) design, construct, rehabilitate, develop, finance, maintain or operate a port terminal or port facility, or provide services relating thereto;  
(b) provide any other service within a port designated by the Authority for this purpose;  
(c) perform any function necessary or ancillary to the matters referred to in paragraphs (a) and (b); or  
(d) perform any combination of the functions referred to in paragraphs (a), (b) and (c).  
(2) An agreement concluded in terms of this section must provide for the Authority to monitor and annually review performance with regard to the operation of the terminal or facility and the provision of the relevant services in terms of a performance standard specified in the agreement....  
(5) An agreement contemplated in subsection (1) or (4) may only be entered into by the Authority in accordance with a procedure that is fair, equitable, transparent, competitive and cost-effective."

<sup>2</sup> Section 56(4) of the Act provides as follows:  
"(4) Notwithstanding any other provision of this Act, the Authority may enter into agreements in terms of which it contracts out any service which the Authority is required to provide in terms of this Act."

30. In exceptional circumstances, s 56 may not be appropriate for the regulation of future terminal operations, ship repair facilities, new off-shore cargo handling facilities and dedicated passenger terminals. For example, in some instances the procedural requirements for entering into a s 56 agreement or the monitoring process prescribed by s 56(2) may be inappropriate for these facilities, and a s 57 licence or a lease agreement combined with a 57 licence may then be used as the mode of regulation.

#### **Section 56(4) agreements**

To the extent that the Authority decides to outsource any of the following port services, a section 56(4) agreement will be concluded:

- **Security;**
- **Waste disposal** (service providers will have to obtain a s 57 licence in order to provide services to operators, tenants and ships directly);
- **Berthing** (in Richards Bay, an external service provider may be selected in terms of s 56(4) to provide the service, when the current contract expires); and
- **Maintenance dredging** (on an ad hoc basis, where required).

31. Section 57 must be used to licence two types of port services and facilities:
- 31.1 Port services listed in s 1 that are not provided by the Authority itself, not exempted in terms of s 57(7), nor regulated by a section 56(1) or a section 56(4) agreement; and
- 31.2 Port services and facilities provided at the commencement of the Act (26 November 2006). The existing service providers and operators, who hold deemed licences under s 65 of the Act, are dealt with in Part 4.

#### **Section 57 licences**

The port services to be regulated by s 57 licences are:

- **Stevedoring;**
- **Waste disposal** if provided directly to operators, tenants and ships (municipalities may be exempted if a co-ordination agreement with the municipality is concluded);
- **Cargo storage**, unless a co-ordination agreement is concluded with SARS, in which case these port services may be exempted; and
- **Private floating crane services**, if the Authority will not provide the service itself.

32. In terms of s 11(1)(g)(v), the Authority regulates and controls **off-shore cargo-handling facilities**, including navigation in the vicinity of such facilities. In terms of s 66, no person may erect or operate an off-shore cargo-handling facility other than in respect of a licence issued in terms of that section. However, in terms of s 66(3), ss 56 to 65 apply to off-shore cargo-handling. This means that the same regulatory framework is contemplated for off-

shore cargo handling facilities as is provided for the port services and facilities listed in s 1. Section 65 cannot sensibly be applied to off-shore cargo handling facilities because s 66 contains a different transitional regime to the one set out in s 65. In terms of s 66, a lease existing at the commencement of the Act constitutes a deemed licence which endures for the duration of the lease.

33. At the expiry of the deemed licence (the lease), the operation of an off-shore cargo-handling facility may be regulated by a section 57(7) exemption, a section 57 licence or a section 56(1) agreement. The Authority intends to regulate existing facilities, after the expiry of the current lease agreement, by way of a lease agreement and a section 57 licence, unless a co-ordination agreement concluded in terms of section 11(3) enables the Authority to exempt the licensing of an off-shore cargo handling facility in terms of section 57(7). The possibility of the conclusion of a coordination agreement with the National Energy Regulator of South Africa ("NERSA") is being investigated. New facilities will be governed in terms of agreements and will only be permitted after the procedures set out for section 56(1) agreements have been followed.

#### **Off-shore cargo handling facilities**

Unless exempted, **existing off-shore cargo handling facilities** will be dealt with by way of a lease agreement and a s 57 licence. **New off-shore cargo handling** facilities will be regulated in terms of an agreement following a section 56(1) process.

34. In terms of s 77(1), no person may perform the functions of a **pilot in a port** without having been duly certificated by the South African Maritime Safety Authority ("SAMSA") and licensed by the Authority. The Minister of Transport may prescribe requirements for the licensing of pilots, but SAMSA may recommend, after consultation with the Authority, minimum qualifications, including the content and nature of the examinations, if any, to be undertaken. Until requirements are prescribed, the current regulatory regime in respect of pilots will be continued.

#### **Section 77(1) licences**

**Pilots** will be licensed in terms of s 77(1).

### **(ii) Part 2: Other modes of regulation: exemptions, licences, registrations and permits in terms of the Port Rules**

35. The Authority may regulate certain activities in a port **other than** by way of s 56 agreement or s 57 licence. More specifically:

35.1 In terms of s 57(7), the Authority may exempt any person from having to obtain a licence in terms of Chapter 6, if a co-ordination agreement contemplated in s 11(3)

has been concluded and the Authority is satisfied that the activity is sufficiently regulated by another statutory body or organ of state.

- 35.2 In terms of s 80(2) of the Act, the Authority may, with the approval of the Minister of Transport, by notice in the Gazette, make rules for, amongst other things, the control and management of ports and the maintenance of safety, security and good order in the ports, including:

35.2.1 the "*manner in which control of a port must be exercised and the grounds on which access to a port may be refused*" (s 80(2)(a)); and

35.2.2 the "*licensing of activities carried out in the ports and at off-shore cargo-handling facilities*" (s 80(2)(e)).

**a) Exemptions**

36. Section 57(7) provides as follows:

*"(a) The Authority may exempt a person from having to obtain a licence in terms of this Act if-*

*(i) an agreement contemplated in section 11 (3) has been concluded; and*

*(ii) the Authority is satisfied that the activities of the person concerned are, for purposes of this Act, sufficiently regulated by the other statutory body or organ of state contemplated in that section.*

*(b) An exemption contemplated in paragraph (a) may be made subject to such conditions, authorised by this Act, as the Authority may deem fit."*

37. Section 11(3) provides that:

*"The Authority may enter into any agreement with any other statutory body or organ of state in order to co-ordinate and harmonise the performance of functions similar or related to those of the Authority."*

38. Given the need to minimise regulation, the Authority has decided to make use of exemptions in respect of port services and facilities if the Authority's interests are adequately addressed by another statutory body or organ of state.

### **Section 57(7) exemptions**

The relevant **local municipality** will be exempted in terms of s 57(7) from obtaining licences in respect of **fire fighting** and **waste disposal**, to the extent that these services are provided by the local authority in the ports. The Authority will retain some capacity in respect of fire fighting but the local authority is ultimately the only service provider which can deal with major fires. The local authority is responsible for the removal of solid waste in some ports. As part of the co-ordination agreement to be concluded with the local authority, the latter will be exempted in respect of these services from regulation under Chapter 6 of the Act.

The possibility of the conclusion of a co-ordination agreement with the Commissioner for the South African Revenue Service in respect of the regulation of **cargo storage** is being investigated. If such an agreement is concluded this port service may be exempted.

The loading and offloading of fish and fish products from small commercial vessels constitutes stevedoring, but the provision of this port service will be exempted from obtaining a licence from the Authority in terms of s 57(7) and a coordination agreement will be concluded with Department of Environmental Affairs and Tourism in terms of s 11(3) for this purpose.

#### **b) Licences and registrations under the Port Rules**

39. Section 80(2)(e) provides as follows:

*"The Authority may, with the approval of the Minister, by notice in the Gazette, make rules for the control and management of ports and the approaches thereto and for the maintenance of safety, security and good order in ports, in particular regarding ... (e) the licensing of activities carried out in the ports and at off-shore cargo-handling facilities"*.

40. Port Rules 148 to 151 deal with certain activities within the ports for which licences are required. The rules provide as follows:

*"148. Activities to be licensed or registered*

*The Authority may require persons who carry out certain activities in the ports and at off-shore cargo-handling facilities to apply for a licence or to register. These activities include —*

- (a) fire protection and fire equipment installation and maintenance;*
- (b) bunkering;*
- (c) pollution control;*
- (d) diving;*
- (e) pest control; and*
- (f) vessel agents.*

*149. Activities requiring licensing or registration may not be carried out without a licence or registration.*

*If a licence or registration is required, no person may carry out an activity in a port or at an off-shore cargo-handling facility without having a licence or without being registered.*

*150. Determination of licences or registration*

*The Authority may determine—*

- (a) which activities carried out in the ports should be regulated by way of licence or registration;*
- (b) the manner in which applications for licences or registrations are to be invited, assessed and decided;*
- (c) the qualifications and other suitable criteria, including security clearances, that applicants for licence or registration must meet in order to be licensed or registered; and*
- (d) subject to the Act and these rules, including the powers of the Harbour Master in terms of section 74(3)(b), the terms and conditions of the licence or registration.*

*151. Suspension, withdrawal or cancellation*

*The Authority may, on good cause shown, suspend, withdraw or cancel a licence or registration provided that it has followed a fair procedure before the decision is taken.*

41. The Authority has an interest in regulating a number of activities within the ports that are not port services or port facilities as defined in s 1. There are two main reasons for regulating these activities. The Authority is responsible to ensure the efficient and economic functioning of the ports. In order to meet this responsibility and to eliminate or minimise the health, safety and environmental risks associated with some of these activities, the Authority needs to control them. However, as the activities are not services listed in s 1 and as the s 57 licence process is inappropriate for regulating these activities, it was decided to tailor a licensing regime under the Port Rules to ensure their regulation. A flexible, non-invasive and uncomplicated framework has been designed. The aim of this regulation is not to limit the number of service providers in the Ports, but to raise the standards of service delivery. Provided that a limited number of clearly defined minimum criteria are met, persons and entities engaged in these activities will be licensed or registered under the Port Rules.

### **Port Rules licences**

The port activities to be regulated by way of Port Rules licences are:

- **Fire protection and fire equipment installation and maintenance** provided in a port unless provided on behalf of the Authority in terms of a s 56(4) agreement;
- **Bunkering;**
- **Pollution control**, unless provided by the Authority itself;
- **Diving;** and
- **Pest control.**

42. In order to fulfil its economic and efficiency functions under the Act, the Authority will require vessel agents to register in terms of the Port Rules. On-line registration will be

possible and vessel agents will be allowed to register at any time. The purpose of registration will also be to facilitate communication between the agents and the Authority.

### **Port Rules registrations**

The following agents will be required to register in terms of the Port Rules:

#### **- Vessel agents**

#### **c) Access permits and permits for small vessels and pleasure vessels**

43. Section 80(2)(a) provides as follows:

*"The Authority may, with the approval of the Minister of Transport, by notice in the Gazette, make rules for the control and management of ports and the approaches thereto and for the maintenance of safety, security and good order in ports, in particular regarding ... (a) the manner in which control of a port must be exercised and the grounds on which access to a port may be refuse."*

44. Section 80(3) of the Act provides that, subject to the Act, a port must be freely accessible to any person who conducts lawful business in it. In respect of the Port Rules, issued in terms of s 80(2) of the Act, access to ports is controlled as follows:

#### **"141. Access permits are required for entry into a port**

- (1) Subject to sub-rule (10), no person may enter a port without a valid access permit.*
- (2) The Authority may designate an area or areas of the port where a person is not required to obtain an access permit.*
- (3) The Authority will determine whether a permit is issued by the Authority, the operator of a facility within a port, or both.*
- (4) The Authority may, in respect of an access permit issued by the Authority –*
  - (a) determine the manner in which a permit is issued;*
  - (b) determine the duration for which it is valid;*
  - (c) set out in the Tariff Book, the fees, if any, payable for access permits;*
  - (d) determine the conditions of access; and*
  - (e) suspend, withdraw or cancel the permit.*
- (5) The operator of a port facility may, with the approval of the Authority, in respect of an access permit issued by the operator –*
  - (a) determine the manner in which a permit is issued;*



- (b) determine the duration for which it is valid;*
  - (c) determine the conditions of access; and*
  - (d) suspend, withdraw or cancel the permit.*
- (6) The Authority may require the operator that issues an access permit as contemplated in sub-rule (5), to pay to the Authority the fees, if any, set out in the Tariff Book for access permits.*
- (7) A person may be required to produce and show a valid access permit to an officer of the Authority or the operator of the relevant facility at any time while he or she is in the port, including at any exit point.*
- (8) Despite anything to the contrary in these rules, entry into any part of a port or port facility within a port is subject to the security plans for that port and that port facility as provided for by the Merchant Shipping (Maritime Security) Regulations, 2004.*
- (9) The master of a vessel must ensure that all crew members of the vessel have an identity document that complies with the Seafarers' Identity Documents Convention, 1958 or the Seafarers' Identity Documents Convention (Revised), 2003. The Authority will determine the date when it will no longer accept identity documents that are not in compliance with the Seafarers' Identity Documents Convention (Revised), 2003.*
- (10) The following categories of persons may enter a port without an access permit —*
- (a) persons authorised in terms of section 12 of the National Key Points Act No. 102 of 1980 to enter any National Key Point that is within port limits;*
  - (b) officials who are empowered in terms of any legislation to enter a port;*
  - (c) persons attending to emergencies, including doctors, paramedics and ambulance personnel attending to patients, fire fighters from local authorities and veterinary surgeons attending to animals.*
- (11) The persons referred to in sub-rule (10) must carry a letter or card identifying the institution that they work for or identifying their membership of the relevant professional society, as the case may be.*

**142. Compliance with the conditions of an access permit**

*A person in a port must comply with the conditions of his or her access permit or permits, unless the person is in an area of the port that is designated as not requiring an access permit.*

**143. Removal of persons and motor vehicles from a port**

*The Authority may remove or cause to be removed any person who or motor vehicle that fails to comply with the provisions of these rules, the Harbour Master's or Authority's instructions or the conditions of the access permit or motor vehicle access permit.*

**145. Entry points into a port**

*A person may only enter or leave a port through an entrance or exit designated by the Authority for that purpose.*

**146. Motor vehicles in a port**

- (1) A motor vehicle may only enter a port or be used in a port after the Authority has issued an access permit for that motor vehicle.*
- (2) Despite sub-rule (1), the Authority may designate an area or areas of a port where a motor vehicle is not required to obtain an access permit.*
- (3) The Authority will determine whether a motor vehicle access permit is issued by the Authority, the operator of a facility within a port, or both.*
- (4) The Authority may, in respect of motor vehicle access permits issued by the Authority itself—*
  - (a) determine the manner in which a permit is issued;*
  - (b) determine the duration for which it is valid;*
  - (c) require the holder of the permit to display proof of the permit in the motor vehicle;*
  - (d) set out in the Tariff Book, the fees, if any, payable for motor vehicle access permits;*
  - (e) determine the conditions of access; and*
  - (f) suspend, withdraw or cancel the permit.*
- (5) The operator of a port facility may, with the approval of the Authority, in respect of a motor vehicle access permit issued by the operator —*
  - (a) determine the manner in which a permit is issued;*
  - (b) determine the duration for which it is valid;*
  - (c) require the holder of the permit to display proof of the permit in the motor vehicle;*
  - (d) determine the conditions of access; and*
  - (e) suspend, withdraw or cancel the permit.*
- (6) The Authority may require the operator that issues a motor vehicle access permit as contemplated in sub-rule (5), to pay to the Authority the fees, if any, set out in the Tariff Book for motor vehicle access permits.*
- (7) The categories of persons set out in rule 141(10) are not required to obtain a motor vehicle access permit. "*

45. The Authority's obligations in respect of the maintenance of security in the ports will be partially addressed through a system of access permits. Safety, health, and environmental

management concerns are also addressed by way of these permits, but the primary purpose of access permits is to improve security and facilitate communication with regular port users and their movement through the ports.

46. Any port user who regularly requires access to areas within a port for which access permits are required, may request the Authority or the operator of the relevant facility (or both, if necessary) to issue it with longer term access permits for its personnel and motor vehicles. This means that, in practice, two types of permits may be issued:

46.1 Occasional port users will be issued with access permits for themselves and their motor vehicles on an *ad-hoc* basis.

46.2 Providers of port services and facilities, including those to be regulated in terms of s 56 agreements, s 57 licences, s 57(7) exemptions and s 80(2)(e) licences and registrations, and other persons who conduct lawful business on a regular basis within the ports, may be issued with longer term access permits for their personnel and motor vehicles.

47. Port Rule 47 deals with granting small vessels in the ports permits, where a small vessel is defined as a vessel used for commercial purposes and includes a tug, fishing vessel, launch, barge, lighter, rowing boat, skiboat, sailing boat, yacht or similar vessel, or a hulk of any of the vessels enumerated, but excludes a pleasure vessel. Pleasure vessels are dealt with in Chapter 6 of the Port Rules (Rule 128 to 138). Pleasure vessels are used, or intended to be used, solely for sports and recreation and do not carry more than 12 passengers. The Port Rules dealing with the provision of permits for small vessels and pleasure vessels provide as follows:

**“47. Small vessels**

- (1) *No small vessel may lie in, be used in or operated from a port unless —*
  - (a) *SAMSA, or another authority acceptable to SAMSA, has granted the owner or master of the small vessel a certificate of fitness; and*
  - (b) *the Harbour Master for that port has granted the owner or master of the small vessel a permit to do so.*
- (2) *The Authority may determine —*
  - (a) *the manner in which applications for permits for small vessels are to be invited, assessed and decided;*
  - (b) *in the Tariff Book, the fees payable for application for a small vessel permit and the permit itself;*
  - (c) *the qualifications and suitable criteria that applicants for a permit must meet in order to obtain a permit; and*
  - (d) *subject to the Act and these rules, including the powers of the Harbour Master in terms of section 74(3), the terms and conditions of the permit.*
- (3) *The Harbour Master for the port where the small vessel has applied for a permit as contemplated in sub-rule (1) may impose conditions or limitations upon the granting of the permit in the interests of safety, security, protection of the environment and the good order and efficient working of the port.*
- (4) *The Authority may, on good cause shown, refuse, suspend, withdraw or cancel a permit, provided it has followed a fair procedure before the decision is taken.*

- (5) *If an owner or master of a small vessel fails to obtain a permit, the Harbour Master may remove or shift the small vessel at the expense of the owner or master of the small vessel.*
- (6) *The owner or master of a small vessel must comply with the Harbour Master's restrictions relating to launching, speed and area of operations or any other restrictions determined by the Harbour Master in respect of small vessels within port limits.*
- (7) *A small vessel in possession of a permit as contemplated in sub-rule (1) must, at all times, keep out of the way of a vessel navigating in any channel or other area of the port.*
- (8) *No owner or master of a small vessel may allow the small vessel to come into contact with another vessel while within port limits unless the Harbour Master authorises it.*
- (9) *The provisions of rules 129 and 130, read with the changes required by the context, apply to small vessels in possession of a permit as contemplated in sub-rule (1).*
- (10) *The Authority will set out, in the Tariff Book, the fees, dues and fines applicable to small vessels.*
- (11) *The Harbour Master may issue written instructions about the regulation and control of small vessels in possession of a permit as contemplated in sub-rule (1).*
- (12) *The Authority may exempt small vessels in possession of a permit as contemplated in sub-rule (1) from the provisions of one or more of these rules.*

**136. Permits for a pleasure vessel**

- (1) *No pleasure vessel may lie or be used in or operated from a port unless —*
  - (a) *SAMSA, or another authority acceptable to SAMSA, has granted the owner or master of the pleasure vessel a certificate of fitness; and*
  - (b) *the Harbour Master for that port has granted the owner or master of the pleasure vessel a permit to do so.*
- (2) *The Authority may determine —*
  - (a) *the manner in which applications for permits for pleasure vessels are to be invited, assessed and decided;*
  - (b) *in the Tariff Book, the fees payable for application for a pleasure vessel permit and the permit itself;*
  - (c) *the qualifications and suitable criteria that applicants for a permit must meet in order to obtain a permit; and*
  - (d) *subject to the Act and these rules, including the powers of the Harbour Master in terms of section 74(3), the terms and conditions of the permit.*
- (3) *The Authority may on good cause shown, refuse, suspend, withdraw or cancel a permit, provided it has followed a fair procedure before the decision is taken.*
- (4) *If an owner or master of a pleasure vessel fails to obtain a permit, the Harbour Master may remove or shift the pleasure vessel at the expense of the owner or master of the pleasure vessel.*
- (5) *The Authority will set out, in the Tariff Book, the fees, dues and fines applicable to pleasure vessels in possession of a permit as contemplated in sub-rule (1).*

**Port Rule access permits and permits for small vessels and pleasure vessels**

- **Access permits** are required from the Authority or from the operator of a port facility (or both) in order for persons and vehicles to enter the ports, unless an area has been designated otherwise
- **Small vessels** are required to obtain **permits**
- **Pleasure vessels** are required to obtain **permits**

**(iii) Part 3: The conclusion of agreements other than s 56 agreements**

48. In terms of the Act, the Authority is empowered to conclude a number of agreements other than those provided for in s 56, which may have a bearing on the provision of services, the operation of facilities and other activities in the ports. The Act contains very few specific requirements for such "*other*" agreements. In s 11(2)(f) of the Act, it is simply provided that the Authority may "*enter into agreements*". In respect of leases, it is merely provided, in s 11(1)(c), that the Authority must "*control land use within ports*", and has the "*power to lease land under such conditions as the Authority may determine*". In terms of s 16(2)(i), the Board must approve the long-term lease of land.
49. In this part of the *Guidelines*, the approach of the Authority to agreements other than section 56 agreements are briefly set out. These agreements are:
- 49.1 co-ordination agreements with other statutory bodies or organs of state;
  - 49.2 leases other than leases incorporated into section 56 agreements; and
  - 49.3 purchase and sale agreements, contracts of work and agreements related to the planning, construction, development and maintenance of port infrastructure.
50. The Authority may also enter into tariff agreements in terms of section 72(4) of the Act. The approach to be adopted in relation to tariff agreements is not dealt with in these *Guidelines*.

**a) Co-ordination agreements**

51. In terms of s 11(3), the Authority may enter into an agreement with any other statutory body or organ of state in order to co-ordinate and harmonise the performance of functions similar or related to those of the Authority.

### **Co-ordination agreements**

The Authority intends to enter into co-ordination agreements with at least the following entities:

- Civil Aviation Authority;
- Department of Agriculture;
- Department of Environmental Affairs and Tourism;
- Department of Home Affairs;
- Local Authorities;
- National Energy Regulator;
- National Intelligence Agency;
- National Sea Rescue Institute;
- Nuclear Energy Regulator;
- Rail Safety Regulator;
- South African Maritime Safety Authority;
- South African Revenue Services;
- South African National Defence Force; and
- South African Police Services.

#### **b) Leases other than s 56 agreements**

52. In this part, the implications of the Authority's approach to lease management for the services, facilities and activities covered in the *Guidelines* are briefly explained.
53. The approach differentiates between four types of leases:
  - 53.1 **Incorporated leases** (leases incorporated within a section 56 agreement): These leases are dealt with in these *Guidelines*. The relationship between the Authority and terminal operators and ship repair facilities will in future be governed in terms of s 56 agreements. The terms and conditions of a lease in respect of these facilities will be incorporated into the s 56 agreement. No separate lease will be concluded. The process set out in these *Guidelines* will be followed.
  - 53.2 **Complementary leases:** Licensed or registered service providers in terms of these *Guidelines* may wish to lease land within the port from the Authority. A separate lease will then be concluded.
  - 53.3 **Commercial leases:** Commercial leases may be concluded with entities that wish to lease land for a commercial purpose unrelated to the provision of a port service, such as office space or warehousing. The Act does not contain requirements for such leases. The Authority's normal approach to the entering of lease agreements will be followed in respect of these leases.
  - 53.4 **Leases with other authorities:** In terms of s 84, the Authority must co-operate with immigration, customs, law enforcement and any other authority required to perform any function within a port, and must afford such authority every facility reasonably necessary, subject to such compensation as may be agreed between the Authority and the other authority or, failing an agreement, such compensation as the Minister of Transport may determine. Somewhat different considerations apply

to these leases and a new approach to conclusion of such leases is being developed.

**c) Purchase and sale agreements, contracts of works and agreements for the planning, construction, development and maintenance of port infrastructure**

54. The Act empowers the Authority to enter into:

54.1 purchase and sale agreements (s16(2)(h) and (i));

54.2 contracts for major works and purchases (s 16(2)(k));<sup>3</sup> and

54.3 agreements for the planning, construction, development and maintenance of port infrastructure (s 68(2)).

55. These agreements do not directly relate to the provision of a port service or the operation of a port facility. In respect of such purchase and sale agreements, contracts of works, and s 68(2) agreements, and while the Authority remains a division of Transnet, the Transnet procurement procedures will be followed. This procurement process is designed to be a system that is fair, equitable, transparent, competitive and cost-effective and will include preference for the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination in compliance with relevant legislation.

**(iv) Part 4: Regulation of existing providers of port services and operators of port facilities**

56. There are four types of "*existing service providers and operators of port facilities*":

56.1 The first group are those that provided a "*port service*" or operated a "*port facility*" (other than stevedoring entities) at the commencement of the Act on 26 November 2006 – "*existing operators*". In terms of s 65(1), these operators must apply for a licence in terms of s 57 within six months of a date to be determined by the Minister of Public Enterprises. Until their applications have been decided, the existing operators are deemed to hold licences. Section 65 does not envisage that existing operators must compete with others in order to acquire a licence when called upon to apply. In order to be awarded the licence, existing operators are merely required to satisfy the Authority that they are capable of complying with the terms and conditions of the new licence. The licence conditions will as far as possible be tailor-made for a specific port service or port facility.

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<sup>3</sup> Section 16(2)(k) and s 68(2) of the Act. In terms of s 16(2)(k), the requirements of s 54 of the Public Finance Management Act 1 of 1999 must be followed.

### **Section 65(3) licences**

The following service providers will be required to apply for s 57 licences in terms of s 65(3), within 6 months of the date determined by the Minister of Public Enterprises:

- **Existing terminals operators** (other than Transnet Port Terminals [ "TPT" ]);
- **Existing vessel repair operators;**
- **Existing rail operators** (other than Transnet Freight Rail [ "TFR" ]);
- **Existing waste disposal** (provided directly to port users); and
- **Existing private floating crane operators.**

The Authority will issue a licence to these operators if they are capable of complying with the terms and conditions of the licence.

56.2 The second group is the Transnet operating divisions in the ports. TPT and TFR will continue to operate its existing terminals and railways in the ports unless otherwise decided by the Board. Insofar as these existing terminals and railways are concerned, the legal framework is somewhat different. As with all the other existing operators, Transnet is, in terms of s 65(5) in respect of port services or port facilities provided or operated by TPT or TFR, the holder of a deemed licence, but must apply for such a licence within six months of the date determined by the Minister of Public Enterprises. However:

56.2.1 The deemed licence only remains valid until the Authority has decided on the licence application or until such time as a third party is authorised to provide such service or operate such facility, in terms of an agreement or licence concluded or issued under Chapter 6 of the Act (s 65(6)).

56.2.2 Any licence issued to Transnet is subject to the condition that such licence will terminate in the event that a third party is authorised to provide the relevant service or operate the relevant facility.

### **Section 65(5) licences**

In terms of s 65(5), within 6 months of the date determined by the Minister of Public Enterprises, TPT and TFR will be required to apply for licences in terms of a s 57 process for terminals and railways that they intend to continue operating. The Authority will issue them with licences if they are capable of complying with the terms and conditions.

56.3 The third group is stevedoring service providers. Section 65(1) does not apply to stevedoring. In terms of s 65(4)(b), the permission or authorisation to provide stevedoring services lapses at the end of the period for which it was granted. Stevedoring service providers will accordingly be required to apply for a licence in terms of s 57 of the Act, to conduct stevedoring operations after the licences issued to them under previous dispensation expire.

56.4 The fourth group are those entities that performed various activities in the port prior to the Act coming into operation, where these activities do not constitute the



provision of "*port services*" or the operation of "*port facilities*". No transitional regime applies to these entities. They will be required to apply for a licence, registration or a permit in terms of the new Port Rules.

57. Until such time as existing operators (deemed licence holders) are issued with licences in terms of s 65(3) and (5), the relationship between them and the Authority will continue to be governed by the existing contractual or other arrangements as supplemented by applicable provisions of the Act.
58. The "*deemed licence*" authorises the provision of the services or the operation of facilities engaged by the operator or service provider at the commencement of the Act (26 November 2006). Due to the time elapsed since that date, the Authority will however entertain applications, as part of the licensing process, for the limited expansion of an existing service, or limited additions and alterations to the provision of such a service or the operation of a facility. The Authority will determine, on a case by case basis, whether it will allow such limited expansion, addition or alteration or whether it amounts to a significant and material change to the provision of a service or the operation of a facility, in which case it will be dealt with under ss 56 or 57 of the Act, as set out in these *Guidelines*.

#### IV. INTRODUCING PROCEDURES & TERMS & CONDITIONS FOR AGREEMENTS, LICENCES AND PERMITS

59. This part of the Guidelines summarises the regulatory framework and application procedures for different port services, port facilities and activities within ports.
60. These are categorised as follows:
- 60.1 **Group A:** Bids for agreements to operate a port terminal, ship repair facility or new offshore cargo handling facility (agreements in terms of s 56).
  - 60.2 **Group B:** Applications for licences to provide a port service regulated by means of a s 57 licence.
  - 60.3 **Group C:** Applications for an exemption under s 57(7) of the Act.
  - 60.4 **Group D:** Applications for licences or registrations to carry out activities regulated by means of the Port Rules (Port Rules licence or registration).
  - 60.5 **Group E:** Applications for access permits and permits for small vessels and pleasure vessels in terms of the Port Rules.
  - 60.6 **Group F:** Tenders for outsourcing agreements in terms of s 56(4).
  - 60.7 **Group G:** Applications for licences in terms of s 65 by existing operators.
61. Different methods of **communication** will be used for the various groups ranging from electronic communication to communication through newspapers and, if required, the Government Gazette; communication through recognised Industry Associations; through Customer Service and Call Centres, and by way of Short Message Service.
62. The **invitations to apply for licences** will vary on aspects such as whether invitations will be gazetted, how they will be advertised, and forms of registration.
63. The **application process and forms** will differ in that each group will have a separate application process and, where applicable, each a separate application form.
64. The **distribution and receipting process** may differ for each group. This means that a different process will apply on where application forms, bid documents or tender documents can be collected or obtained and how they should be submitted.
65. The **assessment criteria** and **weightings** will differ. In general, two types of criteria will be used: exclusionary criteria and scoring criteria.
- 65.1 **Exclusionary Criteria:** Lodgement Criteria (for example, late submission, or no payment of the application fee); Material Defects (for example, the application is formally defective in that it contains false information or it was not signed) and Essential Requirements (threshold requirements of acceptability or responsiveness not met).
  - 65.2 **Scoring Criteria:** in a competitive process, scoring criteria will be used in order to select the best applicants.

66. The approach to the **assessment of information** and **verification** of information is likely to be different for the groups.
67. The approach to the **notification of decisions and reasons** is likely to be different for the various groups.
68. The approach to **appeals** and **dispute resolution** is likely to be different for the various groups.
69. The power to make decisions in respect of the bids, applications and tenders will be **delegated** to officials in the ports and at the Authority's head office in Johannesburg. The set of delegations are set out in Annexure B.
70. The remainder of the Guidelines set out the bidding and application procedures, the criteria against which applications will be assessed, and the standard terms and conditions of licence, agreement or permit that will be applied to each service within each Group.

**V. GROUP A: BIDS TO OPERATE A PORT TERMINAL, VESSEL REPAIR FACILITY OR NEW OFFSHORE CARGO HANDLING FACILITY (AGREEMENTS IN TERMS OF S56)**

**(i) Introduction**

71. This part of the Guidelines describes the procedures to be followed in respect of the adjudication of bids and the conclusion of s 56(1) agreements. The standard conditions for various kinds of port facilities are also set out.

72. In future, the Authority will enter into s 56(1) agreements in respect of:

72.1 Terminal operations, including cargo handling and cargo storage within terminal boundaries;

72.2 Ship repair facilities;

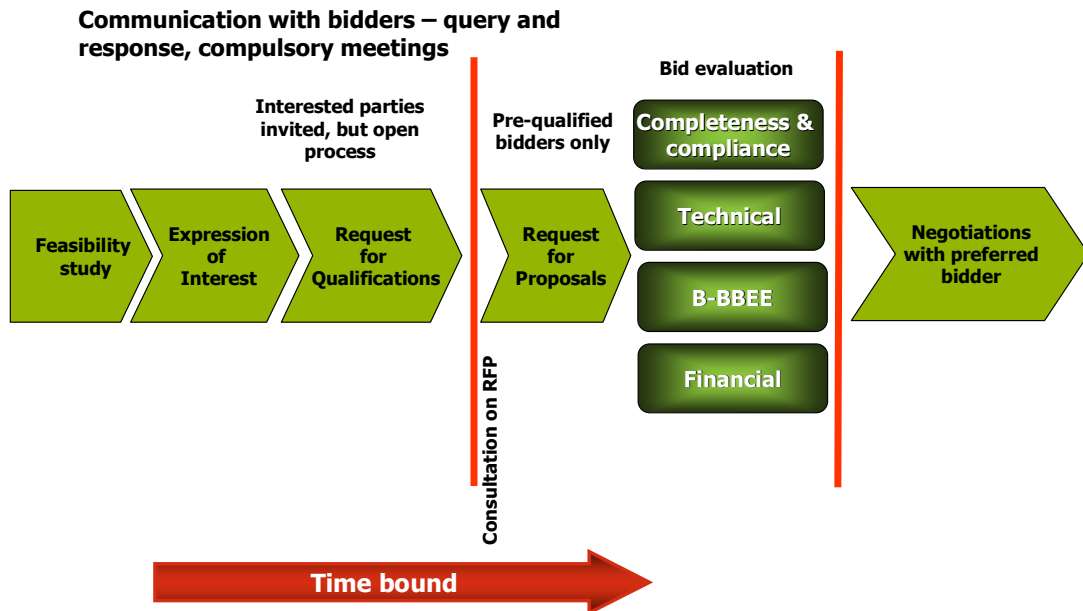
72.3 New off-shore cargo handling facilities; and

72.4 Dedicated passenger terminals.

**(ii) Competitive procedures for entering into s 56(1) agreements**

**a) Statutory procedural requirements**

73. In terms of s 56(5), an agreement contemplated in s 56(1) may only be entered into by the Authority in accordance with "a procedure that is fair, equitable, transparent, competitive and cost-effective". The Authority will comply with these requirements in the manner described below, where the procedure is summarised as follows:



**b) Process to be followed – an overview**

74. The process will consist of following six phases:
- 74.1 Feasibility report and recommendation to the Board in terms of s 16(2)(c));
  - 74.2 Expression of Interest;
  - 74.3 Pre-qualification of interested parties (Request for Qualification, or RFQ);
  - 74.4 Request to submit bids (Request for Proposals, or RFP);
  - 74.5 Bid evaluation of:
    - 74.5.1 Acceptability (completeness and compliance);
    - 74.5.2 Technical;
    - 74.5.3 B-BBEE;
    - 74.5.4 Financial; and
  - 74.6 Selection of preferred bidder and negotiations with preferred bidder.
75. This process is different from a conventional tender process. In a conventional tender process, an offer is made which can be accepted or rejected. In terms of the six-phase process, bidders may be excluded at various stages of the process.

**c) Feasibility phase**

76. The Authority shall compile an internal feasibility report in respect of each facility which is to be put up for bidding in terms of s 56. The report shall cover the following areas:
- 76.1 Historical use of the facility;
  - 76.2 Date of expiry of present lease or other agreement in respect of the facility;
  - 76.3 Property description and size and asset number;
  - 76.4 The zoning of the property and its compatibility with the proposed use;
  - 76.5 Any restrictions with regard to the property (title deed conditions and servitudes);
  - 76.6 The facilities and improvements on the property (physical site inspection and record of all facilities belonging to the Authority, and improvements and defects);
  - 76.7 Any infrastructure services available to and affecting the property;
  - 76.8 The compatibility of the proposed use of the property in terms of s11(1)(b) and the Port Development Framework Plan;
  - 76.9 Reports from all the relevant departments: Planning, Legal, Environmental, Infrastructure, Human Resources, etc;
  - 76.10 Valuation;

- 76.11 Motivation why the facility should be put up for competitive bidding in terms of s 56, specifying the term, use and income to be obtained for the Authority and why the s 56 process should be used; and
- 76.12 The process to be followed and whether a specialist project manager and/or transaction advisor should be appointed together with applicable terms of reference.
- 77. The feasibility report will be submitted to the Board for approval in terms of s16(2)(c). If approved, the Authority will follow the process set out in the Feasibility Report and the *Guidelines*.

**d) Pre-qualification and expression of interest**

- 78. The Authority will not necessarily advertise its intention to enter into a s 56 agreement in the Government Gazette, but will do so in the media and at venues and through industry associations aimed at soliciting the best possible response. As far as terminal operations are concerned, the Authority may, for larger facilities, advertise internationally.
- 79. Details of the s 56 facility will be provided and the Authority will invite interested parties to **express their interest** or to apply for **pre-qualification**.
- 80. The call for **expressions of interest ("EoI")** will be used if it is necessary to establish the level and type of interest in a particular terminal or other facility. The information sought will include: details and profile of the interested party, the reason why it is interested; B-BBEE status; history of involvement with similar facilities and contact details. The EoI process will not lead to exclusions. It will only be used, if necessary, to determine the extent of interest in a facility and it may be used before or after the feasibility report is compiled. If this is not necessary, the Authority will proceed directly to the next phase, which is the request for pre-qualification.
- 81. An **RFQ** will invite interested parties to submit information regarding:
  - 81.1 Composition and structure of interested party and, if a consortium, identification of the roles of the members;
  - 81.2 Current workload and ability to meet project timetable;
  - 81.3 Capability to operate the facility, including skill and experience of personnel and subcontractors in respect of similar facilities;
  - 81.4 The nature of the proposed contracts with subcontractors and lenders (if applicable) and between consortium members (if applicable);
  - 81.5 Financial and market standing and ability to raise debt, equity and to provide security;
  - 81.6 Ownership, directors and management;
  - 81.7 B-BBEE status;
  - 81.8 Understanding of key demands and complexities;
  - 81.9 Quality assurance systems; and
  - 81.10 Approach to and integration of deliverables.

82. The pre-qualification stage is intended to ensure that the bidding process is cost-effective, by permitting only a limited number of bidders, who are committed and capable of operating the facility, to submit bids. The maximum number of parties that will pre-qualify will be specified in the RFQ. The top scoring applicants will pre-qualify.
83. The pre-qualification criteria will be specified in the RFQ. Examples of RFQ criteria, which may be adapted or changed to meet the requirements of a specific facility, are set out in the table below. A set of "*weightings*" (points) will be assigned to each of the criteria. Each interested party will be scored in terms of the criteria and weightings.

<b>EXAMPLE OF CRITERIA FOR PRE-QUALIFYING BIDDERS</b>	
<b>Main criteria</b>	<b>Secondary criteria</b>
<ul style="list-style-type: none"> <li>▪ Capability</li> </ul>	<ul style="list-style-type: none"> <li>▪ Proposed composition and structure of the bidder</li> <li>▪ Skill and experience of personnel and key subcontractors in terms of construction (if applicable) and operations</li> <li>▪ Advisors</li> <li>▪ Suppliers</li> <li>▪ Quality of proposed contracts with subcontractors, lenders and between members of a consortium</li> <li>▪ Financial and market standing and ability to raise debt, equity and to provide security</li> </ul>
<ul style="list-style-type: none"> <li>▪ B-BBEE</li> </ul>	<ul style="list-style-type: none"> <li>▪ B-BBEE contributor level in terms of the Codes of Good Practice or other applicable Code</li> </ul>
<ul style="list-style-type: none"> <li>▪ Deliverability</li> </ul>	<ul style="list-style-type: none"> <li>▪ Ability to meet project timetable</li> <li>▪ Project management capability</li> <li>▪ Current workload</li> <li>▪ Quality assurance systems</li> <li>▪ Risk management capability</li> </ul>
<ul style="list-style-type: none"> <li>▪ Project awareness</li> </ul>	<ul style="list-style-type: none"> <li>▪ Demonstration of understanding of key demands and complexities</li> <li>▪ Approach to project and integration of deliverables</li> </ul>

**e) Request for proposals (RFPs)**

84. Pre-qualified bidders will be invited to submit proposals or "*bids*". The process relating to the distribution and receipting of bidding documents will be tailored to meet the requirements of a specific s 56 port terminal or facility. In general, the process will take the following form:

84.1 **Registration:** Each pre-qualified bidder will, on application, be issued with one set of bidding documents or *RFP* upon payment to the Authority of a prescribed fee or bid bond. The fee will be determined with reference to the nature of the facility and the cost of restarting the process from the pre-qualification stage. The fee will be returned to all unsuccessful bidders. Paid-up pre-qualified bidders will become registered bidders. The registered address (usually an e-mail address) will be used for all further communications. Registered bidders will be required to confirm receipt of all communications.

84.2 **Rules governing submissions by a consortium:** a consortium may register but must designate one or more person(s) to represent it. The Authority will assume that the authorised representative may perform all tasks, including responding to

- calls for further information and entering into contracts on behalf of the consortium. Each member of the consortium will be required to submit a signed letter as part of the consortium's bid, confirming that it has reviewed the entire proposal and that it agrees with the key elements of the proposal, including the technical and financial proposals, the description of the members' responsibilities and that it authorises the representative to act on its behalf.
- 84.3 **Non South African entities** will be required to incorporate an entity under the South African Companies Act 61 of 1973, to operate the facility if their bid is successful.
- 84.4 **Pre-bid inspection and conference:** Attendance at a pre-bid visit to the s 56 port terminal or facility and a pre-bid conference will, in general, be mandatory.
- 84.5 **Interactive process and queries and responses:** An opportunity will be given for queries to be raised during the pre-bid visit or conference. In addition, queries concerning the RFP may be sent to a specified e-mail address. The queries will be summarised (the summary will contain description of the query, without identifying its source) and responses will be distributed to all registered bidders, again by way of electronic mail. In general, communications made in another manner will not have any force.
- 84.6 **Data room:** A data room, with information about the facility that bidders may need to complete the RFP, may be made available.
- 84.7 **Amendment of RFP:** The Authority may, at any time prior to the deadline for submission of the bids, whether at its own initiative or in response to a submission or a query submitted by a bidder, modify the RFP, by issuing an addendum, which will be binding on all registered bidders. If necessary, to afford registered bidders a reasonable time to take an addendum into account in preparing their bids, the Authority will extend the deadline for the submission of bids.
- 84.8 **Validity of the bids:** Each bidder shall be required to submit a firm offer, which is valid and open for the prescribed period after closing day.
- 84.9 **Proposals to be submitted:** Each registered bidder will be required to submit one technical proposal, one B-BBEE proposal and one financial proposal.
- 84.10 **Closing day:** The proposal will have to be submitted at a particular time and place. Late proposals will not be considered and changes to submitted proposals after closing day will not be received or taken into consideration.
- 84.11 **Opening of bids:** The Authority will open the bids in the presence of those registered bidders who choose to attend, shortly after bids have been submitted.
85. **Proposal preparation cost:** As a rule, proposals are prepared at the bidder's cost and risk, including the costs of participation in the negotiation process. Bid compensation may, in exceptional cases (for example, if the size of the project makes bidding unaffordable or too risky), be considered. In such a case, bid compensation will comprise a pre-agreed percentage of the verifiable costs incurred by an unsuccessful bidder.
86. Pre-qualified bidders will be invited to comment on a draft RFP before it is finalised and distributed. The **RFP** will generally include the following:



- 86.1 **General information** relating to South Africa's maritime trade, South Africa's ports system (institutional aspects and structure), inland transport connections and regulatory framework.
- 86.2 The Authority's **over-arching objectives** regarding the provision of port services and the operation of port facilities.
- 86.3 **Specific project-related facts and port terminal or facility-related** information, including the Authority's strategy for the facility.
- 86.4 A **technical description of the facility**, covering the nature of the facility, its location and size (including scale drawings if appropriate), meteorological information, detailed specifications of equipment to be transferred, port planning parameters, land title and any existing servitudes, geo-technical conditions, existing contamination, utility service availability and capacity, environmental and heritage status of the land, and technical connectivity.
- 86.5 **Environmental impact study** (if any) and the record of decision in respect of an application for approval in terms of any applicable law (fulfilment of the requirements of the RoD will be at the cost and risk of the bidder).
- 86.6 The proposed arrangements regarding **existing staff** (if any), as well as copies of all communications to staff regarding the bid, collective agreements, and, if available, a costing of staff transfers.
- 86.7 The **sea access** to the port and terminal will be described.
- 86.8 **Inland transport access** to the port and terminal will be described.
- 86.9 The required content of the **business plan** will be set out, including:
- 86.9.1 A mission statement;
  - 86.9.2 A development plan;
  - 86.9.3 An operations plan;
  - 86.9.4 An Information and Communications Technology (ICT) plan;
  - 86.9.5 General personnel policies and procedures;
  - 86.9.6 Proposed marketing strategy;
  - 86.9.7 Forecast of expected throughput;
  - 86.9.8 Proposed tariffs;
  - 86.9.9 Proposed payments to the Authority (in the form specified);
  - 86.9.10 Capital investment, acquisition and financing plan (if applicable); and
  - 86.9.11 Financial projections and model.
- 86.10 The **criteria** for the evaluation of technical bids, B-BBEE bids and financial bids, including the formulae that will be used to compare the bids, will be provided.

- 86.11 The **period** of the s 56 agreement.
- 86.12 The content of the **technical, B-BBEE and financial proposals** that must be submitted.
- 86.13 The **format, number of originals, and requirements relating to the signing of proposals** (for example, the RFP will set requirements relating to completion of the form, signing and commissioning, the initialling of corrections, the number of originals which must be submitted).
- 86.14 The rules relating to **variant bids**. Innovation during bid preparation may add significant value. The RFP may allow variant bids to be submitted **in addition to** a compliant bid. However, variant bids must meet the acceptability or responsiveness threshold, and show how it differs from the compliant bid.
- 86.15 **Negotiation arrangements** and the **key elements of the section 56 agreement** to be concluded with the preferred bidder.

**f) Evaluation to determine acceptability**

- 87. In the first stage of the evaluation process, all the proposals will be assessed to determine whether they are acceptable, that is, whether they are responsive to the requirements of the bid. Bids that were "*improperly lodged*" or are "*materially defective*" or fail to meet the "*essential criteria*" will be rejected as non-responsive. In general, a non-responsive bid may not subsequently be made responsive by the correction or withdrawal of non-conforming deviations or reservations.
- 88. **Improperly lodged bids:** Examples of the lodgement criteria are:
  - 88.1 The bid was not received by the specified date and time.
  - 88.2 The prescribed fee did not accompany the bid.
- 89. **Materially defective bids:** Examples of materially defective criteria are:
  - 89.1 The proposal is not submitted in the prescribed format.
  - 89.2 The proposal is not valid for the prescribed period.
  - 89.3 The proposal is not signed or the declaration is not commissioned, as prescribed.
  - 89.4 The bidder attempted to improperly influence an employee or agent of the Authority concerning the award of the bid or unlawful compensation or consideration was given or offered to an employee or agent of the Authority.
  - 89.5 False or misleading statements are contained in the bid or the documents submitted show material inconsistencies.
- 90. **Essential requirements:** Examples of essential requirements are:
  - 90.1 **Financial**, information relating to the availability of funding, minimum insurance requirements, or risk assumption.
  - 90.2 **Legal**, requirements relating to members of a consortium or details of draft first-tier subcontracts.

- 90.3 **Technical**, information relating to the capacity to operate the facility.
- 90.4 **B-BBEE**, information relating to B-BBEE status.
- 90.5 **Additional mandatory requirements**, including tax clearance certificates.

**g) Evaluation of technical, B-BBEE and financial bids**

- 91. The technical, B-BBEE and financial proposals of all responsive bids will then be assessed.
- 92. The technical proposals will be evaluated in terms of a set of weighted criteria. In respect of some facilities, bids that do not score sufficient points for the technical bid will not be considered further. Examples of criteria that may be used for evaluating the technical bid are:
  - 92.1 Quality of business plan;
  - 92.2 Extent, quality, safety, cost effectiveness, functionality and innovation of designs (if applicable);
  - 92.3 Robustness of cost estimates;
  - 92.4 Robustness of bidder structures;
  - 92.5 Capacity for investment;
  - 92.6 Quality of proposed management structure, staff and personnel practices;
  - 92.7 Quality of proposed employment plan;
  - 92.8 Extent to which performance targets exceed minimum specifications, and quality of proposed services to end users;
  - 92.9 Proposal regarding the integration of facility with existing services;
  - 92.10 Impact on social and biophysical environment;
  - 92.11 Deliverability and meeting of time schedules;
  - 92.12 Integration of design, development and operations with a clear commissioning programme;
  - 92.13 Proposed quality management systems;
  - 92.14 Operating methodology;
  - 92.15 Extent to which asset management and maintenance philosophy support the project objectives and maximise value for money;
  - 92.16 Quality and extent of proposals on branding, promotion and public relations;
  - 92.17 Quality of safety plans; and
  - 92.18 Deviation from the proposed s56 agreement and risk created by deviation.

93. After the technical bids have been evaluated, the **B-BBEE bids** of the registered bidders will be assessed. The points to be allocated for B-BBEE will be indicated in the RFP, as set out in the Codes of Good Practice. The Authority is required to ensure that the specific B-BBEE targets, set out in the National Ports Regulations (R1091, GG 30486 of 23 November 2007), are met in all agreements, licences, leases and other authorizations given or entered into in terms of the Act.
94. After the technical and B-BBEE bids have been evaluated, the **financial bids** of the registered bidders will be assessed. As a rule, the financial proposal will be scored on the basis of the present value of the net cash flow to the Authority over the period of the agreement.
95. Registered bidders will be allowed to offer a mixture of compensation payments to the Authority, and the possibilities will be informed by the type and size of the facility, the way risk is expected to be shared and other requirements expressed in the RFP.
96. In general, the Authority will require:
  - 96.1 An initial fee to be paid when the contract is signed;
  - 96.2 An annual or monthly fee for port infrastructure; and
  - 96.3 A fee per unit of level or volume of activity or service provided.

#### **h) Negotiations with preferred bidder**

97. After the preferred bidder is selected, the Authority will enter into negotiations with this bidder, but if the negotiations do not result in a contractual agreement within the prescribed period, the Authority may start negotiations with the reserve bidder.

### **(iii) Terminal operations**

#### **a) Introduction**

98. The regulatory objectives of the Authority, and a general description of the standard terms and conditions to be used in future for terminal operators, are set out in this part of the *Guidelines*.
99. In terms of the Act, the Authority retains the right to operate port terminals itself, unless it decides to grant the right to another party. When it decides to do so, the typical complexity of terminal operations agreements makes a s 56(1) agreement the preferred mode of regulation for these transactions.
100. Section 16(4) of the Act provides categorically: "*Under no circumstances should land within ports owned by the Authority be sold*". The Act also provides for certain operations to be continued to be conducted by public sector entities. The Authority will maintain permanent and full public authority ownership of port property, and will enter into time-bound agreements with suitable operators (both public and private) in respect of port facilities, granting them certain rights and imposing on them obligations for investment, service provision and maintenance, as may be appropriate in each instance. It is these types of agreements that the Authority intends to enter into in terms of s 56.

**b) Regulatory objectives**

101. Economic and efficient terminal operations are vital to the proper functioning of the ports and to the country's freight transport system. The Authority accordingly has a significant interest in the performance of terminal operators and the monitoring of their operations. Terminal operations also pose a considerable risk to safety of property, persons within the port, and the environment. Improperly managed terminals can lead to collisions, explosions and fire, which can result in injuries and fatalities. Spillages from cargo handling, inappropriate pollution incident responses, the discharge of effluent from treatment plants, and leakages from equipment and vehicles may cause damage to the environment.
102. The Authority must also ensure that the ports are efficient and economically productive and that South Africa's complementary ports system is optimised for the development of an effective freight logistics system. Its contractual relationship with a port terminal operator must therefore ensure that the operator uses the facilities to full capacity, that port users receive services in line with the demands of international trade, and that the Authority generates appropriate returns on its assets to ensure long-term port capacity.
103. The terms and conditions of the s 56 terminal agreement are therefore of critical importance to the performance of South Africa's ports. For this reason, the Authority has set certain standard terms and conditions that it will use as the benchmark for these agreements. This has been done to ensure consistency in approach, to reduce the costs associated with each transaction, to enable the Authority to establish the necessary contract management systems and retain suitable staff capacity, and to provide predictability and certainty for operators.
104. The standard terms and conditions set out here will be used by the Authority to design each specific agreement for the purposes of offering a terminal or facility opportunity to bidders, and will be adapted as required in each instance. The final agreements in each case will of course also reflect the outcome of negotiations between the Authority and the winning bidder.

**c) Standard terms and conditions**

105. The standard terms and conditions will include the following:
  - 105.1 the services that may be provided by the Terminal Operator;
  - 105.2 the rights and responsibilities of the Terminal Operator and the rights and responsibilities of the Authority;
  - 105.3 arrangements concerning the provision of marine services and the allocation of berths;
  - 105.4 the duration of the agreement and options to renew;
  - 105.5 ownership of terminal infrastructure and arrangements regarding improvements and extensions; hand-back of assets at expiry of the agreement, early termination or cancellation;
  - 105.6 replacement of assets and repair and maintenance obligations of the Terminal Operator and the repair and maintenance obligations of the Authority;
  - 105.7 roadways and access to the terminal, private siding, and wayleaves;

- 105.8 labour and personnel related obligations, safety and security and environmental protection;
- 105.9 performance measurement;
- 105.10 payment to the Authority, payment of water and electricity, sanitation charges and property rates;
- 105.11 standardised provisions regarding insurance, indemnities; intellectual property; default interest rates, reporting obligations, register of complaints, confidentiality of information; monitoring and inspections; and
- 105.12 dispute resolution, terminal operator default, authority default, and force majeure.

#### **(iv) Ship repair facilities**

##### **a) Introduction**

- 106. The regulatory objectives of the Authority for ship repair facilities are set out in this part of the *Guidelines*. This part does not deal with vessel maintenance or limited ("wet") vessel repairs, but with repairs in dry-docks and other facilities owned by the Authority.
- 107. The Authority is currently directly involved in the provision of ship repair facilities in the ports, although its role is limited to the preparation of vessels (placing the vessel on blocks, etc) for repair by private operators.
- 108. The Authority will follow a s 56 process for the future investment, design, construction, operation and maintenance of ship repair facilities.

##### **b) Regulatory objectives**

- 109. The Authority's regulatory objectives in respect of ship repair facilities are:
  - 109.1 To improve efficiency, performance and the optimum usage of the facility. Economic and efficient ship repair operations are vital to the proper functioning of the ports. In its contractual relationship with a ship repair facility operator the Authority must therefore ensure that the operator uses the facility to full capacity and that port users receive repair services in line with the demands of international trade. The Authority must generate appropriate returns on its ship repair assets to ensure long-term port capacity.
  - 109.2 To deal with safety, health and environmental risk. Ship repair operations pose a considerable risk to safety of property and persons within the port, and the environment. Improperly managed ship repair facilities can lead to injuries and fatalities.
  - 109.3 To ensure access to facilities by ship repair operators and customers. The operator of a ship repair facility must provide ship repair services to port users on a common user basis. In its contractual relationship with the ship repair facility, the Authority

must therefore ensure that the facility is operated on common user principles, aligned with the specific repair market that the facility is aimed at.

110. The Authority accordingly has a significant interest in the performance of ship repair facility operators and the monitoring of their operations. The terms and conditions of the s 56 agreement will be of critical importance to ensure that these objectives are achieved.

**(v) Off-shore cargo handling facilities**

**a) Introduction**

111. The regulatory objectives of the Authority for off-shore cargo handling facilities are set out in this part of the *Guidelines*.
112. Off-shore cargo handling facilities mean any off-shore facility situated within the ports or in territorial waters, including a pipeline, which is used or intended to be used for the transfer of any cargo to and from a vessel. There are currently three off-shore cargo handling facilities situated at or close to the South African ports:
- 112.1 Single Buoy Mooring (SBM) outside the port of Durban;
  - 112.2 Single Point Mooring (SPM) at the port of Mossel Bay; and
  - 112.3 Conventional Buoy Mooring (CBM) at the port of Mossel Bay.
113. The Single Buoy Mooring (SBM) is situated outside of port limits of Durban. The Single Point Mooring (SPM) and Conventional Buoy Mooring (CBM) are situated within the port limits of Mossel Bay. The definition of the term "*off-shore cargo handling facility*" in s 1 of the Act makes clear that the Act applies to such facilities within or beyond port limits.
114. The buoy moorings are used to for the transfer of oil or petroleum products. The buoy mooring is not the only component involved in the import of petroleum products. Basically six components are involved in the import of any petroleum product or crude oil, namely:
- 114.1 the floating pipe connecting the ship to the buoy or mooring;
  - 114.2 the buoy or mooring;
  - 114.3 the pipes inside the mooring, forming an integral part of the buoy;
  - 114.4 the buried submarine pipeline (on the sea bed) connecting the vessel, via the pipes with the land based pump station;
  - 114.5 the crude tank farm; and
  - 114.6 the refinery.
115. A buoy mooring can also be used for the transfer of bulk liquids or other forms of cargo such as grain, but presently all the buoy moorings in South Africa are used for the transfer of petroleum products.

116. In terms of s 66(2), any lease agreement covering off-shore cargo handling facilities which existed on the date of commencement of the Act is deemed to be a licence issued in terms of the Act for the duration of the agreement and the agreement remains valid for the duration of the term specified therein.
117. The transitional regime applicable to off-shore cargo handling differs from the regime applicable to other "*port services*" and "*port facilities*". The deemed licence held by the operators of off-shore cargo handling facilities terminates at the end of the current lease agreements with the operators and not, as provided in s 65, when a decision is made on the s 65 licence application of the facility.
118. The Petroleum Pipelines Act 60 of 2003 applies to loading facilities that is or can be used to load or off-load petroleum. This includes auxiliary pipelines connected thereto, but excludes bunkering facilities. No person may construct or operate a petroleum pipeline, loading or storage facility without a licence issued by NERSA. The Authority will consult with NERSA with a view to concluding a co-ordination agreement with this organ of state in terms of s 11(3). This will create the possibility of exempting off-shore cargo handling facilities from regulation under the Act. The feasibility of such an exemption will be assessed once such an agreement has been concluded.
119. Unless exempted, on termination of the deemed licence (the current lease), the existing offshore cargo handling facilities will be regulated by a lease and a s 57 licence. The process to be followed for a s 57 licence application is set out below (Group B s 57 licence applications). New off-shore cargo handling facilities will be regulated by way of s 56 agreement. The process for entering into such an agreement is set out above.

**b) Regulatory objectives**

120. From a landlord port authority's perspective, the planning, provision and control of a buoy mooring, both within and outside commercial port limits, is part of its core functions.
121. In order to fulfil its statutory obligations to regulate and control navigation in the vicinity of off-shore cargo handling facilities (s 11(g)(v)) and the loading and unloading of cargo (s 11(g)(iii)), the Authority will recommend to the Minister of Transport that all off-shore cargo handling facilities are included within the regulated definition of port limits.
122. Off-shore cargo handling facilities create a significant safety and environmental risk. The Authority accordingly has a significant interest in the performance of these operators and the monitoring of their operations. Without regulatory control, the danger further exists that these facilities may proliferate along the South African coast.



**VI. GROUP B: APPLICATIONS TO PROVIDE A PORT SERVICE REGULATED BY MEANS OF A S 57 LICENCE (INCLUDING APPLICATIONS FOR A LICENCE UNDER S 65)**

**(i) Introduction**

123. This part of the *Guidelines* sets out the procedures that will be used, in general, for the s 57 licensing process. It should be noted that the procedures set out here are based on the prescriptive procedures for such licences as set out in the Act. Thereafter, the regulatory objectives, statutory framework, duration of licence, form of licence holder, evaluation criteria and standard conditions will be set out for each port service to be regulated by way of s 57 licence.

124. The s 57 licensing process will be used, **in future**, for issuing licences in respect of:

124.1 Stevedoring;

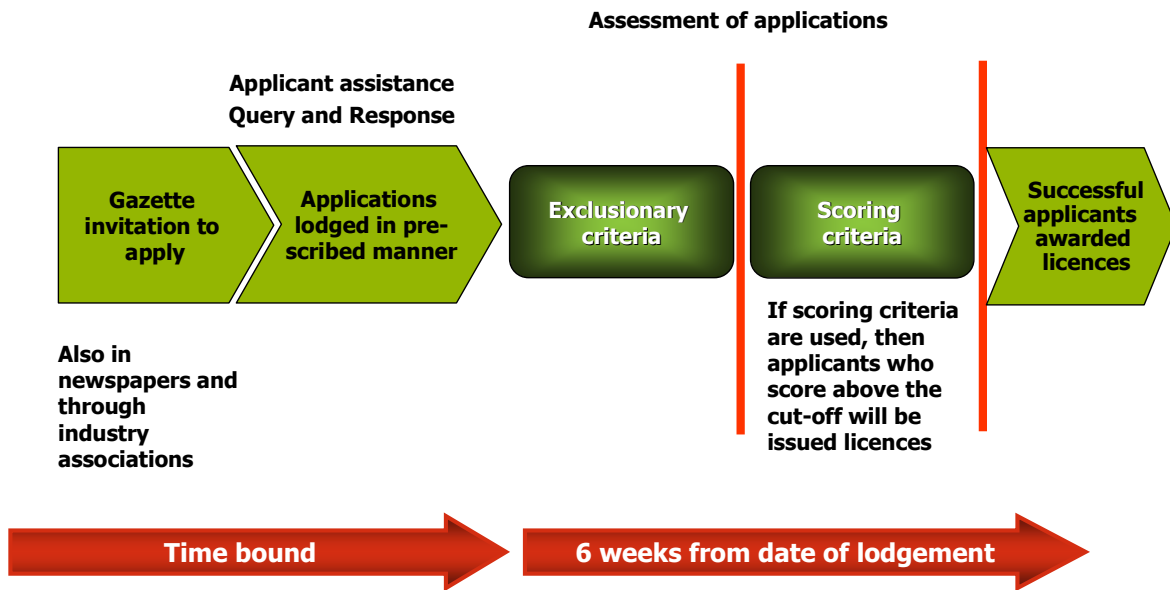
124.2 Waste disposal; and

124.3 Private floating crane operators.

125. However, entities that were providing **these port services or port facilities at the commencement of the Act** (other than stevedoring) may be called upon to apply for licences in terms of **s 65** of the Act. The transitional regime is dealt with in Part XI of the *Guidelines*.

**(ii) Procedures for s 57(1) licences**

126. The procedure for s 57(1) licences is summarised in the diagram below:



**a) Communication, invitations to apply for licences, application form and process**

127. The Authority's invitations to apply for s 57 licences will be published in newspapers, through industry associations, by notices in the Government Gazette, and on the Authority's website.
128. The Authority will, in the invitation, specify:
- 128.1 The kind of service for which applications are invited.
  - 128.2 The form in which applications must be submitted and any fee payable upon submission of an application. Different application forms will be designed for each service.
  - 128.3 The place where and times when any application form or relevant document may be obtained from the Authority will be prescribed.
  - 128.4 The period within which applications must be lodged will be prescribed. The Authority may determine that, after the first round of licence applications have been decided, further licence applications may be submitted at any time and such applications will then be assessed and decided as and when required.
  - 128.5 The manner in which it is contemplated that the service must be provided will be described.

**b) Assessment criteria and weightings**

129. The Authority will assess the applications for s 57 licences in terms of the following criteria:
- 129.1 **Lodgement criteria:** application was lodged at the prescribed place, date and time and application fee was paid.
  - 129.2 **Material defects:** application was submitted in the prescribed format; was signed and commissioned; no attempt was made to improperly influence any employee or agent of the Authority; the applicant co-operated with investigators (if applicable); no false or misleading statements were made.
  - 129.3 **Essential requirements:** the minimum threshold criteria will be specified separately for each service.
  - 129.4 **Scoring criteria:** will be specified separately for each service separately, if applicable.
  - 129.5 **B-BBEE criterion:** Any applicant, except a micro-enterprise, will be required to submit a verification certificate issued by a South African National Accreditation System (SANAS) accredited verification agency. A micro-enterprise (an enterprise with an annual revenue of R5 million or less) is deemed to have a level 4 contributor status. Such an enterprise may qualify for promotion to a level 3 contributor status, in the event that the enterprise is more than 50% owned by black persons. An auditor's certificate or similar certificate issued by an accounting officer or verification agency is viewed as sufficient evidence of qualification as an exempted micro-enterprise. Black individuals applying in their personal capacity will be recognised as level 1 contributors during adjudication. The Authority is required to ensure that the specific B-BBEE targets, set out in the National Ports Regulations

(R1091, GG 30486 of 23 November 2007), are met in all agreements, licences, leases and other authorizations given or entered into in terms of the Act.

130. The applications will be assessed in terms of the lodgement criteria, the material defect criteria and essential requirements, and if applicable, in terms of scoring criteria. Scoring criteria will only be used where the number of licences to be allocated in a particular port is to be limited. After receipting the applications, the essential requirements may be refined, if necessary, with reference to the information received. The scoring criteria, if any, will then be weighted for purposes of ranking the applicants. Scoring cut-offs may then be determined and all applicants with a score equalling or more than the cut-off will be allocated rights.

131. Within six weeks after the date of receipt of an application, the Authority will:

131.1 issue a licence subject to specified terms and conditions; or

131.2 refuse to issue a licence and give written reasons for such refusal.

**c) Assessment of information**

132. The Authority will adopt the following approach to assessment of information:

132.1 *Approach to parts of application form not completed:* Unless otherwise indicated, if a part of the application form is not completed, it will be assumed that that part of the form does not apply to the applicant. If the section has positive points associated with the answer, no points will be awarded. If compliance with the section is necessary in order to meet the essential requirements, the application may be rejected.

132.2 *Approach to late information:* Information submitted after closing day will not be considered, unless the information was requested by the Authority.

132.3 *Approach to the information received from external sources:* Prejudicial information about an application received from external sources will not be taken into account by the Authority unless the applicant is afforded the opportunity to make representations in respect of that information.

132.4 *Approach to the use of Authority's database:* The Authority may use information contained in the Authority's own databases, but will do so only to the extent that applicants were afforded the opportunity to make representations concerning the correctness of the data.

132.5 *Approach to the submission of false information, documents and non-disclosure:* Applicants for licences, or their authorised representatives, will be required to attest to a declaration before a commissioner of oaths stating, amongst other things, that they have not submitted false information or false documents and that they disclosed all material information. The submission of false information or false documents or the failure to disclose material information will constitute an independent ground for refusing an application. In addition, the making of a false statement in an attested declaration, knowing it to be false, constitutes a criminal offence.

**d) Verification of information**

133. The approach to **verification** of information will be as follows:

133.1 *Calls for further information:* in terms of s 57(7) of the Act, the Authority may require an applicant for a s 57 licence, at the applicant's expense, to furnish the Authority, within the period specified by it, with such further information as may be necessary in order to consider the application. The Authority may also invite an applicant to make oral submissions or to present further argument in writing if there is uncertainty concerning a material issue in an application. However, the responsibility to properly complete the application forms and submit all the requisite information rests with the applicant and the Authority is not obliged to call for further information in the case of uncertainty. The Authority will not allow applicants to supplement applications if this would result in unfairness to other applicants. If oral hearings are held, legal representatives will be permitted to address the Authority.

133.2 *Investigations:* the Authority may cause any matter relating to an application to be investigated, including the correctness of information provided. Applicants must cooperate with investigators by timeously submitting responses to written requests for information or explanations, by attending meetings with investigators and by answering questions satisfactorily at such meetings. A refusal or failure to cooperate will constitute an independent ground for refusing an application.

**e) Notification and reasons**

134. After the Authority has made decisions on s 57 applications, each applicant will be notified in writing of the outcome of the application. In addition, the Authority will publish the results electronically.

135. Applicants will receive:

135.1 a set of general published reasons which will record the criteria, the decision-making process and the methodology pertaining to decisions; and

135.2 a specific reason if the application was unsuccessful.

136. The specific reason contained in the notification letter to unsuccessful applications, together with the general published reasons, constitute the reasons for a decision to refuse an application.

**(iii) Stevedoring**

**a) Regulatory objectives**

137. The key objectives of the Authority in regulating stevedoring operations are:

137.1 the safe, orderly and efficient working of the ports;

137.2 environmental integrity of the ports; and

- 137.3 promotion of greater representivity, and, in particular, the increase in participation of historically disadvantaged persons in terminal port operations.
138. Efficient stevedoring operations are vital to the proper functioning of the ports. Stevedoring operations also pose a considerable risk to safety, health, the environment and security within the ports. More particularly:
- 138.1 **Safety:** During the provision of stevedoring services injuries and fatalities can occur.
- 138.2 **Health:** Noise-induced hearing loss, severe back damage and exposure to chemicals leading to occupational diseases such as cancers, respiratory problems and cardio-vascular conditions, may be caused by stevedoring operations.
- 138.3 **Environment:** There is a risk of pollution during handling of certain products, which may lead to both water and land pollution.
- 138.4 **Security:** Stevedoring operations pose a security risk in terms of increasing the possibilities of theft, smuggling, and terrorist attacks. Stowaways may present further security concerns.
- 138.5 **Efficiency:** Slow turnaround times of vessels create a knock-on effect on the port, the South African port system and a wide range of port users.
139. The Authority accordingly has a significant interest in the performance of stevedoring operators and the monitoring of operations.
140. The loading and off-loading of fish and fish products will be exempted from obtaining a stevedoring licence in terms of s 57(7), and a coordination agreement will be concluded with the Department of Environmental Affairs and Tourism in terms of s 11(3) for this purpose.

**b) Proposed mode of regulation**

**(i) Mode of regulation: s 57 licence**

141. Stevedoring is a port service listed in s 1 of the Act. This means that stevedoring must be regulated either by way of s 56 agreements or s 57 licences. The deemed licence provisions contained in s 65 pertaining to the providers of ports services and the operators of port facilities when the Act commenced find no application in respect of stevedoring. In terms of s 65(4)(b), any permission or authorisation to provide a stevedoring service granted before chapter 6 of the Act came into effect (26 November 2006) lapses at the end of the period for which the permission or authorisation was granted. Unlike the other port services listed in s 1, the transitional regime contained in s 65 accordingly does not apply to stevedoring.
142. Stevedoring has been regulated by way of licence in the past. However, the Act permits stevedoring to be regulated either by way of s 56 agreement or s 57 licence. This is made clear in s 56(3), which provides that the services authorised under an agreement contemplated in s 56(1) may include stevedoring on board a vessel.
143. The Authority will continue to regulate stevedoring operations by way of licence. The licensing regime established by ss 57 to 64 is appropriate for the regulation of stevedoring and the same licence criteria and conditions will be applied across the board to all stevedoring operators.

144. The Authority does not exclude the possibility that, in future, agreements entered into in terms of s 56(1) with terminal operators may confer a right to the operator to provide stevedoring services, subject to similar conditions that apply to stevedoring licensees. For the time being, it must also be pointed out that the conferral of a stevedoring licence is not a guarantee of obtaining work or contracts from terminal operators.

**(ii) The s 57 licensing regime**

145. The process for applying for a s 57 licence is set out above and will not be repeated here. The conditions of stevedoring licences are set out at the end of this part.

**c) Duration of the licence**

146. A number of factors militate against the allocation of licences for a long period of time:

146.1 The performance of stevedoring companies has not been sufficiently monitored in the past and limited data is available regarding their efficiency, safety and security records and compliance with their obligations regarding health and the environment. The Authority accordingly lacks the necessary information to award licences for a long period of time.

146.2 There is a need to improve the efficiency of these operations and the possibility of removing inefficient operators in the near future must be retained.

146.3 The stevedoring service sector is suited for the participation of small and medium-sized enterprises owned by historically disadvantaged groups. The Authority does not wish to close the door to the entry of such entities in the near future.

146.4 Stevedoring requires a relatively low level of investment. It is not necessary to allocate licences for a long period of time in order to encourage investment or protect existing investment. Some investment in equipment is necessary and investment in human capital and port centric expertise must be recognised.

147. Having regard to these factors, it was decided that licences will be allocated for a period of three (3) years, in respect of existing operators, provided that they have been audited in the last 12 months. New entrants will be afforded licences for a probationary period of 18 months. An audit has to be carried out at the end of the probationary period.

148. An annual licence fee will be payable, as provided for in s 58(1)(c).

149. The Authority will endeavour to provide a complementary lease within port limits to licensed service providers, should the licensee apply for the use of port property for the performance of the licensed service. The lease will be on market-related terms, it will be subservient to the licence, and its duration will be the same as that of the licence.

**d) Licence fee**

150. The Authority will set out, in the Tariff Book, the fees applicable to applications for a licence in terms of s 57, and the licence itself.

**e) Evaluation criteria**

151. All applications will be screened in terms of a set of criteria. All applicants that meet the requirements of the exclusionary criteria will be allocated a stevedoring licence.
152. Apart from the lodgement criteria and the material defects set out above, the Authority will exclude applicants that fail to meet **all** the essential requirements set out directly below, which will also be referred to as the "*acceptability criteria*".

<b>Stevedoring services criteria</b>			
	<b>Criterion</b>	<b>Yes</b>	<b>No</b>
	<b>Stevedoring Associations</b>		
	Membership of the National Association of Stevedores (NASASA) or exemption from the requirement.		
	<b>Insurance</b>		
	Has Public Liability Insurance, or if a new operator, qualifies for Public Liability Insurance.		
	<b>Risk assessment</b>		
	<p>Risk assessment report is included dealing with safety, health and the environment, and which:</p> <ul style="list-style-type: none"> <li>▪ Identifies any foreseeable hazards;</li> <li>▪ Assesses the risk of harm arising from the identified hazards;</li> <li>▪ Indicates if hazards can and will be eliminated; and</li> <li>▪ If hazards cannot be eliminated, identifies how risks can be controlled by implementing measures to lessen the risk of harm to the lowest possible level.</li> </ul> <p>Plan for reducing risk includes, where appropriate:</p> <ul style="list-style-type: none"> <li>▪ A medical surveillance programme that is applicable to the risks identified in the risk assessment.</li> <li>▪ Environmental Management Plans for identified potential environmental impacts.</li> <li>▪ Objectives, targets, action plans, assignment of responsibility and completion dates.</li> </ul>		
	<b>Competencies and appointments</b>		
	<p>Employs the following prescribed key personnel (numbers and types depends on the type of stevedoring) or provides written undertakings that persons with appropriate qualifications will work with or for the applicant:</p> <ul style="list-style-type: none"> <li>▪ One qualified first-aider per 50 stevedores employed must be available and at least one qualified first-aider must be present at every shift;</li> <li>▪ Employees trained in firefighting;</li> <li>▪ Safety Officers;</li> <li>▪ Riggers with suitable qualifications and experience;</li> <li>▪ Vehicle operators;</li> <li>▪ Lifting equipment operators;</li> <li>▪ Electricians;</li> <li>▪ Flag or signal operators;</li> <li>▪ Lifting equipment inspectors;</li> <li>▪ Hazardous cargo handlers;</li> <li>▪ Safety, health and environmental representatives; and</li> <li>▪ Operational manager or supervisor.</li> </ul>		
	<b>Equipment</b>		

<b>Stevedoring services criteria</b>			
	<b>Criterion</b>	<b>Yes</b>	<b>No</b>
	<p>Satisfies the following requirements in respect of <b>lifting equipment</b>:</p> <ul style="list-style-type: none"> <li>▪ The lifting appliances must be traceable;</li> <li>▪ All appliances must be marked with a safe working load;</li> <li>▪ A register of lifting appliances must be available;</li> <li>▪ Deviations from the statutory standards must be noted and followed through by replacing or repairing the piece of equipment;</li> <li>▪ Test certificates must be provided; and</li> <li>▪ Lifting specifications must be approved by the Department of Labour.</li> </ul>		
	<p>Satisfies the following requirements in respect of <b>motorised equipment</b>:</p> <ul style="list-style-type: none"> <li>▪ All vehicles must be marked with the company logo;</li> <li>▪ A register must be kept of all vehicles;</li> <li>▪ Proof is supplied that vehicles were regularly inspected, findings logged and actioned;</li> <li>▪ Proof that vehicles are licensed;</li> <li>▪ Proof that vehicles are in a good physical condition; and</li> <li>▪ Proof of drivers' licences.</li> </ul>		
	<p>Satisfies the following requirements in respect of <b>electrical equipment</b>:</p> <ul style="list-style-type: none"> <li>▪ Submitted a safety inspection register of all electrical equipment, which includes earth leakage tests.</li> </ul>		
	<p>Satisfies the following requirements in respect of <b>pallets</b>:</p> <ul style="list-style-type: none"> <li>▪ Demonstrated the sound construction of pallets and other containing and load supporting devices and indicated the inspection process for pallets and other devices.</li> </ul>		
	<p>Satisfies the following requirements in respect of <b>personnel protective equipment (PPE)</b> for all employees:</p> <ul style="list-style-type: none"> <li>▪ Hand protectors;</li> <li>▪ Head protectors;</li> <li>▪ Eye and face protection;</li> <li>▪ Footwear;</li> <li>▪ Protective clothing;</li> <li>▪ Hearing conservation;</li> <li>▪ Respiratory equipment; and</li> <li>▪ Safety harnesses.</li> </ul>		
	<b>Occupational Health and Safety Act No. 85 of 1993</b>		
	<p>Demonstrates compliance with the OHS Act in terms of:</p> <ul style="list-style-type: none"> <li>▪ Safety Health and Environment Representatives and Committees;</li> <li>▪ Incident investigation and recording; and</li> <li>▪ Training.</li> </ul>		
	<b>Emergency resources</b>		
	<p>Demonstrates that the following emergency measures are in place:</p> <ul style="list-style-type: none"> <li>▪ Employees required to undertake yearly refresher induction;</li> <li>▪ 1<sup>st</sup> aid boxes available on all shifts;</li> <li>▪ Facilities available to treat serious injuries;</li> <li>▪ Emergency numbers communicated; and</li> <li>▪ Practiced evacuation procedure.</li> </ul>		
	<b>Infrastructure</b>		
	<p>Demonstrates that infrastructure reasonably suitable for the business performed is available for:</p> <ul style="list-style-type: none"> <li>▪ Housekeeping;</li> <li>▪ Worker facilities;</li> </ul>		



Stevedoring services criteria			
	Criterion	Yes	No
	<ul style="list-style-type: none"> <li>▪ Stacking and storage; and</li> <li>▪ Inspections.</li> </ul>		
	<b>Tax Clearance Certificate</b>		
	Applicants will be required to provide valid SARS tax clearance certificates.		
	<b>Broad Based Black Economic Empowerment</b>		
	Submits a verification certificate from an accredited verification agency, indicating the B-BBEE contributor level of the applicant.		

**f) Standard conditions of licence**

153. The standard licence conditions that will apply to stevedoring operators are attached as **Annexure C**.

**(iv) Waste disposal**

**a) Regulatory objectives**

154. The key objectives of the Authority in regulating waste disposal operations are:

- 154.1 safe, orderly and efficient working of the ports;
- 154.2 environmental integrity of the ports; and
- 154.3 transformation of the port industry.

155. Efficient waste disposal operations are vital to the proper functioning of the ports. Waste disposal operations also pose a considerable risk to safety, health, the environment and security. More particularly:

- 155.1 **Safety:** Fatalities and injuries occur during the provision of waste disposal services due to injuries caused by the lifting of heavy objects and falling from heights.
- 155.2 **Health:** Chemical exposure during the provision of waste disposal services may lead to cancers and dermatitis.
- 155.3 **Environment:** Incorrect disposal may lead to pollution spreading.
- 155.4 **Other:** Incorrect disposal may lead to other problems such as foot and mouth outbreak.

156. The Authority accordingly has a significant interest in the performance of waste disposal operators and the monitoring of operations.

**b) Proposed mode of regulation**

**(i) Mode of regulation: s 57 licence**

157. Waste disposal is a port service listed in s 1 of the Act. This means that waste disposal must be regulated either by way of s 56 agreements or s 57 licences. The licensing regime established by ss 57 to 64 is appropriate for the regulation of waste disposal and will be implemented.
158. The deemed licence provisions and the transitional regime contained in s 65 apply to waste disposal services. The existing service providers are dealt with in part XI below, but the same licence criteria and conditions will be applied to all waste disposal operators (future and existing) in South African ports.

**(ii) The s 57 licensing regime**

159. The process for applying for a s 57 licence is set out above and will not be repeated here. The conditions of waste disposal licences are set out at the end of this part.

**c) Duration of the licence**

160. A number of factors militate against the allocation of licences for a long period of time at this stage:
- 160.1 The performance of waste disposal companies have not been sufficiently monitored in the past and limited data is available regarding their efficiency, safety and security records and compliance with their obligations regarding health and the environment. The Authority accordingly lacks the necessary information to award licences for a long period of time. The Authority, in particular, needs to review safety, health and environment and commercial performance parameters.
- 160.2 The waste disposal sector is suitable for small and medium-sized enterprises owned by historically disadvantaged groups to participate. The Authority does not wish to close the door to the participation of such entities in the provision of this service in the future.
- 160.3 The service requires a relatively low level of investment. It is not necessary to allocate licences for a long period of time in order to encourage or protect investment.
161. Having regard to these factors, it was decided that licences will be allocated for a period of five years or such longer period as the Authority may determine.

**d) Licence fee**

162. The Authority will set out, in the Tariff Book, the fees applicable to applications for a licence in terms of s 57, and the licence itself.

**e) Evaluation criteria**

163. All applications will be screened in terms of a set of criteria. All applicants that meet the requirements of the exclusionary criteria will be allocated a waste licence.
164. Apart from the lodgement criteria and material defects described above, the Authority will exclude applicants that fail to meet **all** the essential requirements set out directly below, which will also be referred to as the "*acceptability criteria*".

<b>Waste disposal services criteria</b>			
	<b>Criterion</b>	<b>Yes</b>	<b>No</b>
	<b>Protective clothing</b>		
	Demonstrates availability of the following protective clothing for each personnel member (South African National Standards certified): <ul style="list-style-type: none"> <li>• Hard hat;</li> <li>• Safety shoes / boots and gloves;</li> <li>• Reflective jacket; and</li> <li>• Self-inflating life jacket.</li> </ul>		
	<b>Qualifications and competencies of personnel</b>		
	Provides proof of the qualifications and training records of all personnel		
	<b>Memberships, permits and registrations</b>		
	Provides copies of the following documents: <ul style="list-style-type: none"> <li>• Proof of registration with the local authority with jurisdiction in the port;</li> <li>• Copies of registered landfill site permits; and</li> <li>• Proof of membership with an applicable Waste Management Institution.</li> </ul>		
	<b>Tax Clearance Certificate</b>		
	Applicants will be required to provide valid SARS tax clearance certificates.		
	<b>Insurance</b>		
	Has Public Liability Insurance, or, if a new operator, qualifies for Public Liability Insurance.		
	<b>Broad Based Black Economic Empowerment</b>		
	Submits a verification certificate from an accredited verification agency, indicating the B-BBEE contributor level of the applicant.		

**f) Standard conditions of licence**

165. The standard licence conditions that will apply to waste disposal operators are attached as **Annexure D**.

**(v) Floating crane services**

**a) Regulatory objectives**

166. The key objectives of the Authority in regulating floating crane services are to ensure:
- 166.1 safety and to minimize the risks that are associated with floating crane services; and
- 166.2 the orderly and efficient working of the ports.

**b) Proposed mode of regulation**

167. Floating crane services are port services listed in s 1 of the Act. This means that floating crane services must be regulated either by way of a s 56 agreement or a s 57 licence. However, floating crane services are currently provided by the Authority itself, with the exception of one crane in the Durban port which is operated by a private company. The Authority will continue to provide floating crane services in the immediate future. The transitional regime applies to the private operator. This means that the private operator currently holds a deemed licence in terms of s 65 and will be required to apply for a licence in terms of s 65 in the same manner as other existing operators. The application process and the terms and conditions that the existing operator will have to meet in order to be issued with a licence are set out in part L below.

**c) Duration of the licence**

168. Having regard to the significant investment required to operate a floating crane service and to encourage further investment in human capital, licences will be issued to existing operators for a period of five (5) years or such longer period determined by the Authority. New entrants will be issued with a licence for a probationary period of 36 months. An audit has to be carried out at the end of the probationary period.

**d) Licence fee**

169. The Authority will set out, in the Tariff Book, the fees applicable to applications for a licence in terms of s 57, and the licence itself.

**e) Evaluation criteria**

170. The existing operator will be issued with a licence if it satisfies the Authority that it is capable of complying with the criteria below and the terms and conditions of the licence set out in **Annexure E**.

<b>Floating crane services criteria</b>			
	<b>Criterion</b>	<b>Yes</b>	<b>No</b>
	<b>Protective clothing</b>		
	Demonstrates availability of the following protective clothing for each personnel member (South African National Standards certified):		
	<ul style="list-style-type: none"> <li>• Hard hat;</li> <li>• Safety shoes / boots;</li> <li>• Reflective jacket; and</li> <li>• Self-inflating life jacket.</li> </ul>		
	<b>Qualifications and competencies of personnel</b>		
	Provides proof of the qualifications and training records of all personnel		
	<b>Tax Clearance Certificate</b>		
	Applicants will be required to provide valid SARS tax clearance certificates.		
	<b>Insurance</b>		
	Has Public Liability Insurance, or, if a new operator, qualifies for Public Liability Insurance.		
	<b>Broad Based Black Economic Empowerment</b>		
	Submits a verification certificate from an accredited verification agency, indicating the B-BBEE contributor level of the applicant.		

## **VII. GROUP C: EXEMPTIONS UNDER S 57(7) OF THE ACT**

171. This part of the *Guidelines* deals with exemptions. Exemptions, and any conditions relating thereto, will form part of the agreement concluded in terms of s 11(3) of the Act between the Authority and the statutory body or organ of state which will be responsible for providing or regulating the port service. Exemptions in terms of s 57(7) will be provided for following the conclusion of such co-ordination agreements. It is anticipated that such exemptions may be granted for:

171.1 Waste disposal by the local municipality; and

171.2 Fire fighting by the local municipality.

171.3 Loading and off-loading of fish and fish products from small vessels (DEAT)

171.4 The possibility of issuing exemptions in respect of the following services are currently being investigated:

171.5 Cargo storage facilities (SARS); and

171.6 Off-shore cargo handling facilities (NERSA).

**VIII. GROUP D: APPLICATIONS TO UNDERTAKE ACTIVITIES REGULATED BY MEANS OF PORT RULES LICENCES OR REGISTRATIONS**

**(i) Introduction**

172. This part of the *Guidelines* sets out the procedures that will be used, in general, for the Port Rule licensing and registration processes. Thereafter, the regulatory objectives, duration of licence, form of licence holder, evaluation criteria and standard conditions will be set out for each port service to be regulated by way of Port Rule licence or registration.

173. The Port Rule licensing process will be used, **in future**, for issuing licences in respect of:

173.1 Fire protection and fire maintenance provided in a port (unless the activity is performed in terms of a s 56(4) agreement with the Authority);

173.2 Bunkering;

173.3 Pollution control (unless provided by the Authority itself); and

173.4 Diving (including hull cleaning and propeller shining, unless the provider is authorised to perform the activity in terms of a ship repair s 56 agreement); and

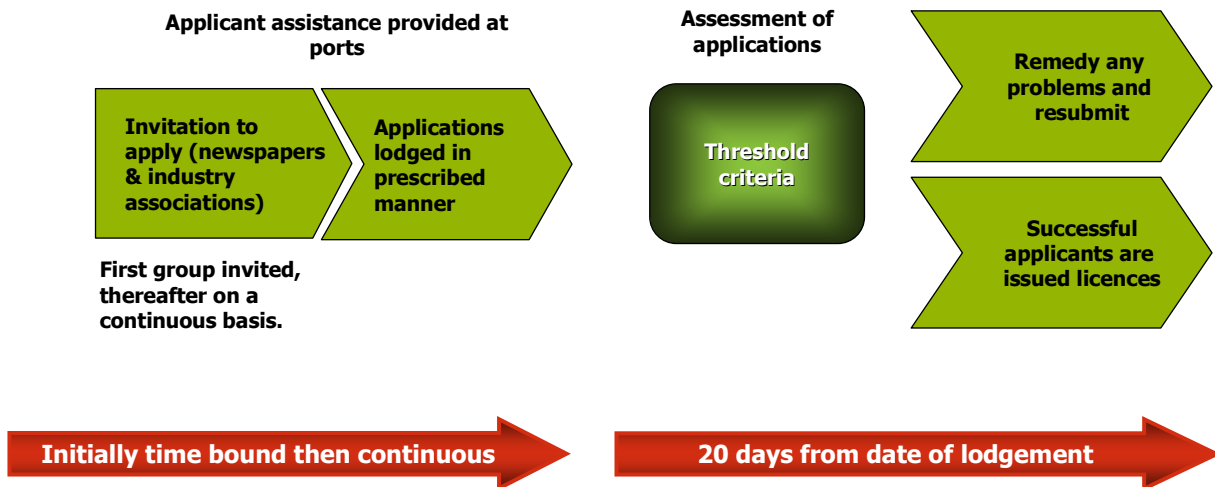
173.5 Pest control.

174. The Port Rules registration regime will be used to regulate:

174.1 Vessel agents.

**(ii) Procedures for Port Rules licences and registrations**

175. The procedure for Port Rules licences and registrations is summarised in the diagram below:



176. As the above activities are not "*port services*" or "*port facilities*" as defined in s 1 of the Act, the transitional regime set out in s 65 does not apply to them. All current providers (existing or new) will accordingly be called upon to apply for licences or to register in terms of the Port Rules and the same process will be followed for everyone.
177. In terms of the Port Rules, the Authority may determine the manner in which applications for these licences and registrations are to be invited, assessed and decided. Invitations for the first set of licences and registrations will be published in local newspapers, through industry associations and on the Authority's website. A closing date for these applications will also be published. Thereafter, applications will be assessed on a continuous basis, but the Authority is unlikely to consider new applications until the first set of applications have been finalised.
178. Application forms will be available from each port and on the Authority's website. Applicants will be encouraged to complete the forms at the ports, or electronically. In the case of vessel agents applicants will be required to register electronically on the Authority's website. Assistance in completing application forms may be provided in ports.
179. Different application forms will be available for each service to be regulated in terms of the Port Rules.
180. The Authority will in the application form specify:
- 180.1 The **lodgement criteria**, which will be that the application must be lodged at the place and by the date and time specified (if applicable); and that the application must be accompanied by the prescribed fee.
  - 180.2 The criteria relating to **material defects**, which will be that the application must be submitted in the prescribed format; the declaration must be signed; no attempt may be made to improperly influence any agent or employee of the Authority, the applicant must co-operate with investigators; and false or misleading statements may not be made in the application or supporting documents.
  - 180.3 The **essential requirements** will be described.
  - 180.4 **B-BBEE**: Any applicant, except a micro-enterprise, will be required to submit a verification certificate issued by a SANAS accredited verification agency. A micro-enterprise (an enterprise with an annual revenue of R5 million or less) is deemed to have a level 4 contributor status. Such an enterprise may qualify for promotion to a level 3 contributor status, in the event that the enterprise is more than 50% owned by black persons. An auditor's certificate or similar certificate issued by an accounting officer or verification agency is viewed as sufficient evidence of qualification as an exempted micro-enterprise. Black individuals applying in their personal capacity will be recognised as level 1 contributors during adjudication. The Authority is required to ensure that the specific B-BBEE targets, set out in the National Ports Regulations (R1091, GG 30486 of 23 November 2007), are met in all agreements, licences, leases and other authorizations given or entered into in terms of the Act.
181. Within 20 working days after receiving an application, the Authority will:
- 181.1 issue a licence subject to specified terms and conditions;
  - 181.2 request the applicants to provide further information, or

- 181.3 refuse to issue a licence and give written reasons for such refusal.
182. Applicants may be requested to supplement an application, if there is uncertainty concerning a material issue or if the application is not properly completed. However, the responsibility to properly complete the application forms and submit all the requisite information rests with the applicant, and the Authority is not obliged to allow an applicant to supplement its application before refusing it. The Authority will not allow applicants to supplement applications, if this would result in unfairness to other applicants.
183. The Authority may cause any matter relating to an application to be investigated, including the correctness of information provided. Applicants must co-operate with investigators by timeously submitting responses to written requests for information or explanations, by attending meetings with investigators and by answering questions satisfactorily at such meetings. The failure to cooperate will constitute an independent ground for refusing an application.

**(iii) Fire protection and fire equipment installation and maintenance**

**a) Application**

184. These activities include:

- 184.1 Fire protection for hot work on vessels and on shore, as well as work with dangerous cargo on vessels and on shore; and
- 184.2 Maintenance and installation of fire equipment.

185. Applicants may apply for one or both of these service types.

**b) Regulatory objectives**

186. If not properly performed, fire protection providers may create a risk for the Authority and port users and the safe management of the port. Incompetent risk assessors and fire watchers may fail to prevent injuries, fatalities and damage and loss of property. Ecological disturbances may also be caused. It is necessary to regulate the provision of this service in order to ensure safety and to minimise the risks associated with fire hazards in the port.

**c) Duration of the licence**

187. Fire protection and maintenance licences will be allocated for a period of three years.

**d) Licence fee**

188. The Authority will set out, in the Tariff Book, the fees applicable to applications for a licence in terms of the Port Rules, and the licence itself.

**e) Evaluation criteria**

189. All applications will be screened in terms of a set of criteria. All applicants that meet the requirements of the exclusionary criteria will be allocated a fire protection licence.



190. Apart from the lodgement criteria and the material defects described above, the Authority will exclude applicants that fail to meet *all* essential requirements set out directly below, which will also be referred to as the "acceptability criteria".

<b>Fire protection criteria</b>			
	<b>Criterion</b>	<b>Yes</b>	<b>No</b>
	<p><b>Experience</b></p> <p>If a high risk licence (petro-chemical), demonstrated at least three (3) years of experience in providing fire watch services within South African ports and provides the following information:</p> <ul style="list-style-type: none"> <li>• Number of hot work permits monitored; and</li> <li>• Number of hours worked within the petro-chemical environment (including a reference from the ship's agent or terminal operator).</li> </ul> <p>If a low risk licence (all other types of fire protection services) or a new entrant, no need to demonstrate experience (new entrants will only be permitted to apply for low-risk licences).</p> <p>Fire Protection applicants will be audited prior to a licence being issued in order to determine competency and relevant experience necessary in the Fire Protection Industry.</p>		
	<p><b>Maintained equipment</b></p> <p>Provides a list of all equipment to be used, together with copies of all test certificates for each piece of equipment.</p>		
	<p><b>Protective clothing</b></p> <p>Demonstrates each personnel member has the following protective clothing (South African National Standards certified):</p> <ul style="list-style-type: none"> <li>• Hard hat;</li> <li>• Safety shoes / boots;</li> <li>• Reflective jacket;</li> <li>• Self-inflating life jacket;</li> <li>• Fire helmet with visor (also National Fire Prevention Association - "NFPA" - approved); and</li> <li>• Fire coat or bunker suit (also NFPA approved).</li> </ul>		
	<p><b>Qualifications and competencies of personnel</b></p> <p>Demonstrates that all personnel have the following qualifications:</p> <ul style="list-style-type: none"> <li>• Basic Fire-Fighting Certificate, issued by the local authority that has jurisdiction in the port or a SAQA accredited body.</li> <li>• Basic Marine Fire-Fighting Certificate, issued by a Department of Transport Fire Appliance Station ("DOTFAS") accredited institution.</li> <li>• Level 1 First Aid Certificate.</li> <li>• Breathing Apparatus Certificate (if service will be provided in confined spaces or in chemical ship tankers), issued by the local authority that has jurisdiction in the port or a SAQA accredited fire-training institution.</li> <li>• General health and safety certificate, issued by a SAQA accredited training institution.</li> </ul> <p>New entrants must, in addition, demonstrate that they have passed an apprenticeship programme with the Transnet NPA Fire Department, including familiarity with ship construction.</p>		
	<p><b>Insurance</b></p> <p>Has Public Liability Insurance, or if a new entrant, qualifies for Public Liability Insurance.</p>		

<b>Fire protection criteria</b>			
	<b>Criterion</b>	<b>Yes</b>	<b>No</b>
	<p><b>Risk assessment</b></p> <p>Provides a risk assessment report in relation to safety, health and the environment, in terms of providing fire protection services in the port(s), which:</p> <ul style="list-style-type: none"> <li>▪ Identify any foreseeable hazards;</li> <li>▪ Assess the risk of harm arising from the identified hazards;</li> <li>▪ Indicate where hazards can and will be eliminated; and</li> <li>▪ Where hazards cannot be eliminated, identify how risks can be controlled by implementing measures to lessen the risk of harm to the lowest possible level.</li> </ul> <p>This risk reducing plan should include, where appropriate:</p> <ul style="list-style-type: none"> <li>▪ A medical surveillance programme that is applicable to the risks identified in the risk assessment.</li> <li>▪ Environmental Management Plans for identified potential environmental impacts.</li> <li>▪ Objectives, targets, action plans, assignment of responsibility and completion dates.</li> </ul>		
	<p><b>Tax Clearance Certificate</b></p> <p>Applicants will be required to provide valid SARS tax clearance certificates.</p>		
	<p><b>Broad Based Black Economic Empowerment</b></p> <p>Submits a verification certificate from an accredited verification agency, indicating the B-BBEE contributor level of the applicant.</p>		

<b>Fire equipment installation and maintenance criteria</b>			
	<b>Criterion</b>	<b>Yes</b>	<b>No</b>
	<b>Experience</b>		
	Has at least three (3) years of experience in providing fire equipment installation or maintenance support within South African ports.  Fire maintenance applicants will be audited prior to a licence being issued, in order to determine competency and relevant experience necessary in the fire maintenance industry.		
	<b>Equipment</b>		
	Provides a list of all equipment to be used together with copies of all test certificates for each piece of equipment.		
	<b>Association / Institution membership and registrations</b>		
	Demonstrates current membership of one or more of the following associations (depending on the type of service provided): <ul style="list-style-type: none"> <li>• Fire Fighting Equipment Traders' Association;</li> <li>• Automatic Sprinkler Inspection Bureau; or</li> <li>• Fire Detection Installers Association.</li> </ul> Demonstrates that all personnel are registered with the Fire Division of South African Qualifications Certificate Committee.		
	<b>Protective clothing</b>		
	Demonstrate that each personnel member has the following protective clothing (South African National Standards certified): <ul style="list-style-type: none"> <li>• Hard hat;</li> <li>• Safety shoes / boots;</li> <li>• Reflective jacket; and</li> <li>• Self-inflating life jacket.</li> </ul>		
	<b>Qualifications and competencies of personnel</b>		
	Demonstrates that all personnel have the following qualifications: <ul style="list-style-type: none"> <li>• Certificate of competence in fire maintenance issued by the local authority that has jurisdiction in the port.</li> <li>• SANS 1475 permit (production of reconditioned fire-fighting equipment).</li> <li>• DOFTAS Certificate of Accreditation for Marine Fire Service Station issued by a SAMSA inspector, if services on board a vessel will be provided.</li> <li>• General health and safety certificate issued by a SAQA accredited training institution.</li> </ul>		
	<b>Insurance</b>		
	Has Public Liability Insurance, or if a new entrant, qualifies for Public Liability Insurance.		
	<b>Risk assessment</b>		
	Provides a risk assessment report in relation to safety, health and the environment, which: <ul style="list-style-type: none"> <li>▪ Identifies any foreseeable hazards;</li> <li>▪ Assesses the risk of harm arising from the identified hazards;</li> <li>▪ Indicates where hazards can and will be eliminated; and</li> <li>▪ Where hazards cannot be eliminated, identifies how risks can be</li> </ul>		

Fire equipment installation and maintenance criteria			
	Criterion	Yes	No
	<p>controlled by implementing measures to lessen the risk of harm to the lowest possible level.</p> <p>Risk reducing plan should include, where appropriate:</p> <ul style="list-style-type: none"> <li>▪ A medical surveillance programme which is applicable to the risks identified in the risk assessment.</li> <li>▪ Environmental Management Plans for identified potential environmental impacts.</li> <li>▪ Objectives, targets, action plans, assignment of responsibility and completion dates.</li> </ul>		
	<b>Tax Clearance Certificate</b>		
	Applicants will be required to provide valid SARS tax clearance certificates.		
	<b>Broad Based Black Economic Empowerment</b>		
	Submits a verification certificate from an accredited verification agency, indicating the B-BBEE contributor level of the applicant.		

**f) Standard fire protection and fire equipment installation and maintenance licence**

191. The licence that will apply to fire protection and fire equipment installation and maintenance licensees is attached as **Annexure F**.

**(iv) Bunkering**

**a) Application**

192. Bunkering activities refer to the loading, discharging or transferring of bunkers by any means to a receiving ship, including from a bunker barge, a road tanker or marine terminal or marine facility. Any person responsible for the distribution, sale, exportation or disposal of bunkers, or for any other related activity, will be required to apply for a licence, regardless of whether such a person is responsible for physically transporting or conveying the bunkers to ships or not.

**b) Regulatory objectives**

193. Bunkering activities, if not properly performed, present serious safety and environmental risks. Such hazards include explosions and spillage during transfer, resulting in pollution, loss of biodiversity, and ecological disturbances and interruptions to the efficient operations of the port. Regulation is necessary to ensure a safe, orderly and efficient working in the ports.

**c) Duration of the licence**

194. Bunkering licences will be allocated to existing operators for a period of five (5) years or such longer period as the Authority may determine. This period was chosen in order to encourage investment in equipment and infrastructure and in human capital, in order to

allow for the development of port centric expertise, to maximize efficiencies and to allow for the review of safety, health and environmental performance over a longer period of time.

195. New entrants will be issued with licences for a probationary period of 36 months. An audit will have to be carried out at the end of the probationary period.

**d) Licence fee**

196. The Authority will set out, in the Tariff Book, the fees applicable to applications for a licence in terms of the Port Rules, and the licence itself.

**e) Evaluation criteria**

197. All applications will be screened in terms of a set of criteria. All applicants that meet the requirements of the exclusionary criteria will be allocated a bunkering licence.

198. Apart from the criteria described above pertaining to the lodgement of the applications and material defects, the Authority will exclude applicants that fail to meet *all* essential requirements set out directly below, which will also be referred to as the "acceptability criteria".

Bunkering criteria			
	Criterion	Yes	No
	<b>Experience</b>		
	Provides details of experience within the South African ports		
	<b>Protective clothing</b>		
	Demonstrates availability of protective clothing for each personnel member (South African National Standards certified):		
	• Self-inflating life jacket.		
	<b>Qualifications and competencies of personnel</b>		
	Demonstrates that all personnel have a general health and safety certificate issued by a SAQA accredited training institution.		
	<b>Insurance</b>		
	Has Public Liability Insurance, or if a new entrant, qualifies for Public Liability Insurance.		
	<b>Tax Clearance Certificate</b>		
	Applicants will be required to provide valid SARS tax clearance certificates.		
	<b>Broad Based Black Economic Empowerment</b>		
	Submits a verification certificate from an accredited verification agency, indicating the B-BBEE contributor level of the applicant.		

**f) Standard bunkering licence**

199. The licence that will apply to bunkering licensees is attached as **Annexure G**.

**(v) Pollution control**

**a) Application**

200. The activities performed by a pollution controller include clean-up operations, the prevention of the spreading of pollution and the safe disposal of pollutants.

**b) Regulatory objectives**

201. Pollution control operations, if not properly performed, present serious safety and environmental risks. Incorrectly performed operations, lack of response time, and incompetent staff may lead to spreading of pollution and incorrect disposal. Further, there is a high rate of occupational diseases, injuries and fatalities.

**c) Duration of the licence**

202. Pollution control licences will be allocated for a period of three years. Companies are not limited to investment or the provision of services in a particular port. It was not decided not to allocate licences for a longer period at this stage.

**d) Licence fee**

203. The Authority will set out, in the Tariff Book, the fees applicable to applications for a licence in terms of the Port Rules, and the licence itself.

**e) Evaluation criteria**

204. All applications will be screened in terms of a set of criteria. All applicants that meet the requirements of the exclusionary criteria will be allocated a pollution control licence.

205. Apart from the criteria described above pertaining to the lodgement of the applications and material defects, the Authority will exclude applicants that fail to meet **all** essential requirements set out directly below, which will also be referred to as the "*acceptability criteria*".

Pollution control services criteria			
	Criterion	Yes	No
	<b>Protective clothing</b>		
	Demonstrates that each personnel member will have access to the following protective clothing (South African National Standards certified): <ul style="list-style-type: none"> <li>• Hard hat;</li> <li>• Safety shoes / boots and gloves;</li> <li>• Reflective jacket; and</li> <li>• Self-inflating life jacket.</li> </ul>		
	<b>Qualifications and competencies of personnel</b>		
	Demonstrates that all personnel have a general health and safety certificate issued by a SAQA accredited training institution. Submits the training records and qualifications of all personnel.		
	<b>Associations</b>		
	Provides proof of memberships of the Institute of Waste Management		

Pollution control services criteria			
	Criterion	Yes	No
	South Africa.		
	<b>Insurance</b>		
	Has Public Liability Insurance, or if a new entrant, qualifies for Public Liability Insurance.		
	<b>Tax Clearance Certificate</b>		
	Applicants will be required to provide valid SARS tax clearance certificates.		
	<b>Broad Based Black Economic Empowerment</b>		
	Submits a verification certificate from an accredited verification agency, indicating the contributor level of the applicant.		

**f) Standard pollution control licence**

206. The licence that will apply to pollution control licensees is attached as **Annexure H**.

**(vi) Diving**

**a) Application**

207. Diving includes diving provided in connection with all vessel repair services, including hull cleaning and propeller shining, within the port.

**b) Regulatory objectives**

208. Diving is to be regulated in order to reduce the number of fatalities and injuries that are associated with diving. Furthermore, regulation is necessary to ensure the safe, orderly and efficient working of the ports.

**c) Duration of the licence**

209. Diving licences will be allocated for a period of three (3) years. The length of the period was chosen in order to encourage investment in equipment and in human capital, to allow for the development of port centric expertise, and to allow for the review of safety, health and environmental performance over a longer period of time. New entrants will be afforded licences for a probationary period of one (1) year and an audit will have to be carried out at the end of the period.

**d) Licence fee**

210. The Authority will set out, in the Tariff Book, the fees applicable to applications for a licence in terms of the Port Rules, and the licence itself.

**e) Evaluation criteria**

211. All applications will be screened in terms of a set of criteria. All applicants that meet the requirements of the exclusionary criteria will be allocated a diving licence.
212. Apart from the lodgement criteria and material defects described above, the Authority will exclude applicants that fail to meet **all essential** requirements set out below, which will also be referred to as the "*acceptability criteria*".

Diving criteria			
	Criterion	Yes	No
	<b>Experience</b>		
	Provides details of experience both within the South African ports or in other areas (if applicable).		
	<b>Maintained equipment</b>		
	Provides a list of all equipment to be used, including copies of all test certificates for each piece of equipment. Equipment must include two radio sets to monitor vessel traffic and receive communication from Port Control.		
	<b>Qualifications and competencies of personnel</b>		
	Demonstrates that all personnel are registered with the Department of Labour.		
	<b>Insurance</b>		
	Has Public Liability Insurance, or if a new entrant, qualifies for Public Liability Insurance.		
	<b>Tax Clearance Certificate</b>		
	Applicants will be required to provide valid SARS tax clearance certificates.		
	<b>Broad Based Black Economic Empowerment</b>		
	Submits a verification certificate from an accredited verification agency, indicating the B-BBEE contributor level of the applicant.		

**f) Standard diving licence**

213. The licence that will apply to diving licensees is attached as **Annexure I**.

**(vii) Pest control**

**a) Application**

214. Pest controllers provide fumigation and other pest control services.

**b) Regulatory objectives**

215. Pest control activities, if not properly performed, present safety and environmental risks. Incorrectly performed operations and lack of competent staff may lead to exposure and disease or pollution.



**c) Duration of the Licence**

216. Pest control licences will be allocated for a period of three years. Companies are not limited to investment or the provision of services in a particular port. It was decided not to allocate licences for a longer period at this stage.

**d) Licence fee**

217. The Authority will set out, in the Tariff Book, the fees applicable to applications for a licence in terms of the Port Rules, and the licence itself.

**e) Evaluation criteria**

218. All applications will be screened in terms of a set of criteria. All applicants that meet the requirements of the exclusionary criteria will be allocated a pest control licence.

219. Apart from the criteria described above pertaining to the lodgement of the applications and material defects, the Authority will exclude applicants that fail to meet **all** essential requirements set out directly below, which will be referred to as the "*acceptability criteria*".

Pest control criteria			
	Criterion	Yes	No
	<b>Protective clothing</b>		
	Demonstrates availability of the following protective clothing for each personnel member (South African National Standards certified): <ul style="list-style-type: none"> <li>• Hard hat;</li> <li>• Safety shoes / boots;</li> <li>• Reflective jacket;</li> <li>• Self-inflating life jacket;</li> <li>• Face masks when providing fumigation services; and</li> <li>• Protective gloves when working with hazardous material</li> </ul>		
	<b>Qualifications and competencies of personnel</b>		
	Demonstrates that all personnel have a general health and safety certificate issued by a SAQA accredited training institution. Submits the training records and qualifications of all personnel.		
	<b>Registration certificates</b>		
	Provides copies of registration certificates from the Department of Agriculture and the Local Authority that has jurisdiction in the port.		
	<b>Insurance</b>		
	Has Public Liability Insurance, or if a new entrant, qualifies for Public Liability Insurance.		
	<b>Tax Clearance Certificate</b>		
	Applicants will be required to provide valid SARS tax clearance certificates.		
	<b>Broad Based Black Economic Empowerment</b>		
	Submits a verification certificate from an accredited verification agency, indicating the B-BBEE contributor level of the applicant.		

**f) Standard pest control licence**

220. The licence that will apply to pest control licensees is attached as **Annexure J**.

**(viii) Vessel agents**

**a) Application**

221. This section applies to **vessel agents** who act as representatives of the owners of vessels, and who typically arrange for the:

221.1 berthing of vessels;

221.2 loading and discharging of cargo;

221.3 services provided by terminal operators, stevedores, tallymen and other contractors;

221.4 bunkering, repairs, husbandry, crew changes, passengers, ship's stores, spare parts, technical and nautical assistance and medical assistance;

221.5 appointment of surveyors;

221.6 the provision of documentation required by the Authority and consular requirements;

221.7 clearance of the vessel and all other services pertaining to the vessel's movement through the port;

221.8 payment for marine services requested and rendered by the Authority, including tug services, pilotage, light dues, berthing and VTS services; and

221.9 compliance with the Marine Service Reservation System (MSRS), which provides for information submission and booking procedures, as well as the allocation of marine resources.

**b) Regulatory objectives**

222. If not properly controlled, vessel agents may create the following risks for the Authority and port users and the efficient management of the ports:

222.1 **Environmental and safety risks:** these relate to vessel (ship-to-shore) related activities, waste management, pollution, declaration of information and discharge and loading activities.

222.2 **Efficiency:** the failure to timeously and accurately notify the Authority of prescribed information may result in delays in the ports.

222.3 **Security risks:** which relate to the illegal movement of cargo (for example documentation fraud) or persons (for example, stowaways and terrorism).

222.4 **Commercial risks:** vessel agents are responsible for the payment of all the vessel's debts that remain due to the Authority after the vessel has departed from the port, as stipulated in Port Rule 117.

**c) Duration of the registration**

223. Existing vessel agents will be registered for a period of three years. New entrants will be registered for a probationary period of 12 months.

**d) Registration fee**

224. The Authority will set out, in the Tariff Book, the fees applicable to applications for registrations in terms of the Port Rules, and the registration itself.

**e) Registration requirements**

225. All registration applications will be screened in terms of a set of criteria. All applicants that meet the requirements of the exclusionary criteria will be registered.

226. Vessel agents will be required to submit detailed biographical and contact information (including, names, identification or registration numbers, tax and VAT numbers, postal and business addresses, telephone, fax and cellular numbers and e-mail addresses) to the Authority when registering.

227. In addition to the above requirements, the Authority will exclude applicants that fail to meet **all** essential requirements set out directly below, which will be referred to as the "*acceptability criteria*".

Criteria for vessel agent registration			
	Criterion	Yes	No
	<b>Associations</b>		
	Demonstrates current membership of the South African Association of Ship Operators and Agents (SAASOA).		
	<b>Tax Clearance Certificate</b>		
	Applicants will be required to provide valid SARS tax clearance certificates.		
	<b>Broad Based Black Economic Empowerment</b>		
	Submits a verification certificate from an accredited verification agency, indicating the B-BBEE contributor level of the applicant.		

**f) Registration conditions**

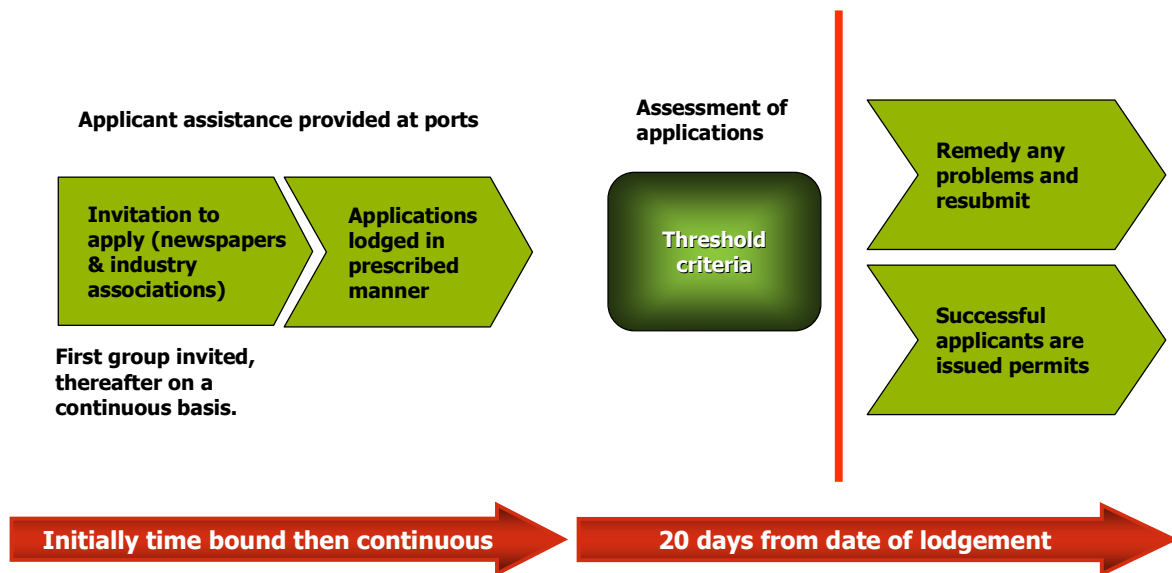
228. The registration conditions that will apply to vessel agents are attached as **Annexure K**.

**IX. GROUP E: APPLICATIONS FOR ACCESS PERMITS AND FOR PERMITS FOR SMALL VESSELS AND PLEASURE VESSELS IN TERMS OF THE PORT RULES**

229. This part of the Guidelines describes the approach to be adopted in respect of:

- 229.1 access permits for persons to enter the ports;
- 229.2 access permits for motor vehicles to enter the ports;
- 229.3 applications for small vessel permits and
- 229.4 applications for pleasure vessel permits in terms of the Port Rules.

The application process to be followed in respect of longer term access permits, small vessel permits and pleasure vessel permits is detailed in the figure that follows. Ad hoc access permits may be applied for at the offices of the Authority at each port.



**(i) Access permits**

230. The Port Rules provide that access permits are required for persons and motor vehicles to enter a port, unless the area has been designated as one in respect of which an access permit is not required. The Authority shall determine whether an access permit shall be obtained from the Authority or from the operator of a facility or from both the Authority and the operator. The Authority or the operator will then determine the manner in which applications for access permits are to be made and issued. The Port Rules require separate access permits to be issued in respects of persons and motor vehicles.

231. The Authority’s obligations in respect of the maintenance of security in the ports will be partially addressed through a system of access permits. Safety, health, and environmental management concerns are also addressed by way of these permits, but the primary purpose of access permits is to improve security and facilitate communication with regular port users and their movement through the ports.

232. Any port user who regularly requires access to a restricted area may request the Authority or the operator of the relevant facility (or both, if necessary) to issue it with a longer term permit. This means that, in practice, two types of permits may be issued:
- 232.1 Occasional port users will be issued with access permits on an **ad-hoc** basis for themselves and their motor vehicles.
  - 232.2 Providers of port services and facilities, including those to be regulated in terms of s 56 agreements, s 57 licences, s 57(7) exemptions and s 80(2)(e) licences and registrations, and other persons who conduct lawful business on a regular basis within restricted areas, may be issued with longer term access permits for their personnel and their motor vehicles. The latter group will include road cartage operators and vendors; all agents (vessel agents and cargo agents), labour brokers and vessel contractors, including ship chandlers that supply ships with necessary provisions; vessel searchers that provide dog-search services to ships seeking stowaways and contraband (including drugs and weapons); ship surveyors that inspect ships to ensure that they comply with national and international regulations; baggage handlers that load and unload passenger baggage; cargo surveyors that inspect cargoes of seagoing vessels to ensure compliance with national and international regulations in cargo handling and stowage; and cargo tallies that check goods or containers to be loaded or discharged from a vessel.
233. The Authority will set out, in the Tariff Book, the fees applicable to applications for an access permit in terms of the Port Rules, and the access permit itself.
234. The conditions that will apply to access permits to be issued by the Authority for persons are attached as **Annexure L** and the conditions that will apply to access permits to be issued by the Authority for motor vehicles are attached as **Annexure M**.

## **(ii) Small vessel permits**

235. The Port Rules define a 'small vessel' as a commercial small vessel that is registered in the Republic; lies in, is used in or operates from a port; and includes a tug, fishing vessel, launch, barge, lighter, rowing boat, skiboat, sailing boat, yacht or similar vessel, or a hulk of any of the vessels enumerated, but excludes a pleasure vessel.
236. In terms of Port Rule 58, no small vessel may lie in, be used in or be operated from a port unless SAMSA, or another authority acceptable to SAMSA, has granted the owner or master of the small vessel a certificate of fitness; and the Harbour Master for that port has granted the owner or master of the small vessel a permit to do so.
237. Applications for small vessel permits must be made to the Harbour Master of the relevant port and will be issued for a period of three years and will be assessed in terms of the criteria set out below.

Criteria for small vessel permits			
	Criterion	Yes	No
	<b>Documents to be submitted</b>		
	The Harbour Master must be provided with certified copies of: <ul style="list-style-type: none"> <li>• the small vessel's certificate of fitness issued by SAMSA, or another authority acceptable to SAMSA;</li> <li>• the master's eye sight certificate; and</li> <li>• the vessel's certificate of registration.</li> </ul>		

238. The owner or master of the vessel will be issued with a disc which must be displayed in a conspicuous position on the small vessel. Failure to display the disc shall constitute *prima facie* evidence that the permit has not been issued and that the small vessel is lying or being used in the port without the permission of the Harbour Master.
239. Applications for the transfer of the small vessel from one port to another must be directed to the Harbour Master of the port for which the small vessel holds a permit as contemplated in the Port Rules.
240. If the vessel can be accommodated in the port to which the vessel wishes to be transferred, the Harbour Master may grant permission for the transfer.
241. Upon arrival of the small vessel in the port to which it is transferred, the small vessel must present the permit to the Harbour Master for endorsement. The Harbour Master may impose any conditions upon the endorsement in the interests of safety, security, protection of the environment and the good order and efficient working of the port.
242. If the owner of the small vessel is a legal person such as a company, and it transfers some or all of its interests or shares such that there is a change of control of the small vessel, then the owner of the small vessel must inform the Authority of this change in control and re-apply for a permit. In the case of a listed public company, a sale of more than 35% of the shareholding constitutes a change of control.
243. The Authority will set out, in the Tariff Book, the fees applicable to applications for a small vessel permit in terms of the Port Rules, and the permit itself.
244. The conditions that will apply to access permits issued to small vessels by the Authority are attached as **Annexure N**.

**(iii) Pleasure vessel permits**

245. The Port Rules define a "pleasure vessel" as a vessel, however propelled, that is used, or intended to be used, solely for sports and recreation and that does not carry more than 12 passengers.
246. In terms of Port Rule 136, no pleasure vessel may lie in, be used in or be operated from a port unless SAMSA, or another authority acceptable to SAMSA, has granted the owner or master of the pleasure vessel a certificate of fitness, and the Harbour Master for that port has granted the owner or master of the small vessel a permit to do so.

247. Pleasure vessel permits must be made to the Harbour Master of the port, will be issued for a period of one year and will be assessed in terms of the criteria set out below.

Criteria for pleasure vessel permits			
	Criterion	Yes	No
	<b>Documents to be submitted</b>		
	The Harbour Master must be provided with certified copies of: <ul style="list-style-type: none"> <li>• the pleasure vessel's certificate of fitness issued by SAMSA, or another authority acceptable to SAMSA;</li> <li>• the master's eye sight certificate; and</li> <li>• the vessel's certificate of registration.</li> </ul>		

248. The owner or master of the vessel will be issued with a disc which must be displayed in a conspicuous position on the pleasure vessel. Failure to display the disc shall constitute *prima facie* evidence that the permit has not been issued and that the pleasure vessel is lying or being used in the port without the permission of the Harbour Master.

249. Applications for the transfer of the pleasure vessel from one port to another must be directed to the Harbour Master of the port for which the pleasure vessel holds a permit as contemplated in the Port Rules.

250. If the vessel can be accommodated in the port to which the vessel wishes to be transferred, the Harbour Master may grant permission for the transfer.

251. Upon arrival of the pleasure vessel in the port to which it is transferred the pleasure vessel must present the permit to the Harbour Master for endorsement. The Harbour Master may impose any conditions upon the endorsement in the interests of safety, security, protection of the environment and the good order and efficient working of the port.

252. If the owner of the pleasure vessel is a legal person such as a company, and it transfers some or all of its interests or shares such that there is a change of control of the small vessel, then the owner of the small vessel must inform the Authority of this change in control and re-apply for a permit. In the case of a listed public company, a sale of more than 35% of the shareholding constitutes a change of control.

253. The Authority will set out, in the Tariff Book, the fees applicable to applications for a pleasure vessel permit in terms of the Port Rules, and the permit itself.

254. The conditions that will apply to access permits issued to pleasure vessels by the Authority are attached as **Annexure O**.

**X. GROUP F: TENDERS FOR OUTSOURCING AGREEMENTS IN TERMS OF S 56(4)**

255. This part deals with tenders in terms of procurement procedures will be applied for all outsourcing in terms of s 56(4). This procurement process is designed to be a system that is fair, equitable, transparent, competitive and cost-effective and includes preference for the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination in compliance with relevant legislation.



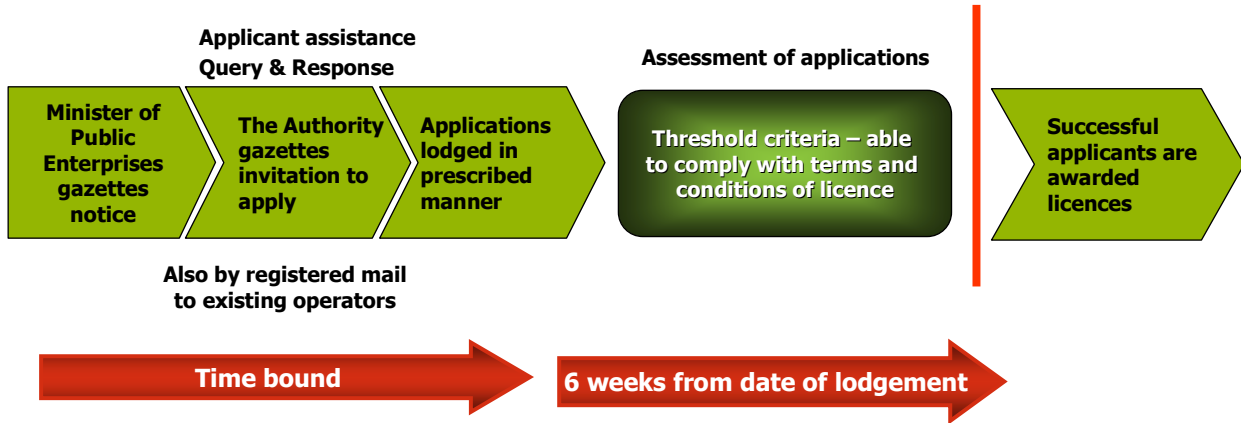
## **XI. GROUP G: TRANSITIONAL ARRANGEMENTS FOR EXISTING OPERATORS**

### **(i) Introduction**

256. This part of the *Guidelines* concerns the application for licences in terms of s 65 of the Act by “*deemed licence holders*” or “*existing operators*”.
257. Section 65 of the Act provides for a transitional mechanism in respect of entities that provided a “*port service*” or operated a “*port facility*” immediately before 26 November 2006, when the Act came into force. These service providers and operators are deemed to hold a licence under the Act, but must apply for a licence within six months of a date to be determined by the Minister of Public Enterprises. The deemed licence expires when the Authority decides on this licence application. No transitional regime is provided in respect of service providers other than “*port service*” providers “*port facility*” operators, as defined in s 1 of the Act.
258. In terms of s 65(3), deemed licence holders must be issued with a licence if the Authority is reasonably satisfied that such a service provider or operator is capable of complying with the terms and conditions of the licence. The process that will be used to assess licence applications for all these deemed licence holders, including Transnet, is set out below. The “*terms and conditions*” of these licences are also set out, in broad terms. The terms and conditions will be described in greater detail and will form the subject of consultations with each deemed licence holder, before the deemed licence holder is called upon to apply for licences.
259. This section applies to the following deemed licence holders:
- 259.1 Terminals operators (including TPT)
  - 259.2 Railway operators (including TFR);
  - 259.3 Vessel repair facility operators;
  - 259.4 Waste disposal (provided directly to port users); and
  - 259.5 Private floating crane services.

**(ii) Process for applying for s 65 licences**

260. The procedure for s 65 licences is summarised in the diagram below:



**a) Communication, invitations to apply for licences, application forms and process**

261. After the Minister of Public Enterprises has determined a date by notice in the Gazette in terms of s65(1), deemed licence holders will be invited by the Authority to apply for a s 65 licence by way of registered mail delivered at the registered address of the entity. Invitations will also be published in the Government Gazette.

262. The Authority will, in the invitation, specify:

- 262.1 The kind of service for which applications are invited. The service provided or the facility operated at the time of the commencement of the Act, i.e. 26 November 2006, will be described.
- 262.2 The form in which applications must be submitted, including any fee payable upon submission of an application. There will be no application forms in respect of s 65 licence applications, but deemed licence holders will be required to demonstrate, in the prescribed manner, that they are capable of complying with the terms and conditions of the licence.
- 262.3 The manner in which it is contemplated that the service must be provided will be described.
- 262.4 The place where and times when any relevant document may be obtained from the Authority will be prescribed.
- 262.5 The period within which such applications must be lodged will be prescribed.

**b) Assessment criteria and weightings**

263. The Authority will, in the invitation specify:

- 263.1 The **lodgement criteria**, which will be that the application must be lodged at the place and by the date and time specified, and that the application must be accompanied by the prescribed fee. The Authority will set out, in the Tariff Book, the fees applicable to applications for a licence in terms of 65, and the licence itself.
  - 263.2 The criteria relating to **material defects**, which will be that the application must be submitted in the prescribed format; the declaration must be signed and commissioned; no attempt may be made to improperly influence any employee or agent or official of the Authority; the applicant must co-operate with investigators; and false or misleading statements may not be made in the application or supporting documents.
  - 263.3 The **essential requirements** will be described. For s 65 licences, the terms and conditions of the licence will be the essential requirements.
264. The applications will then be assessed in terms of the lodgement criteria, the material defect criteria and essential requirements.
265. Within six weeks after receiving an application the Authority will:
- 265.1 issue a licence subject to specified terms and conditions; or
  - 265.2 refuse to issue a licence and give written reasons for such refusal.

**c) Assessment of information**

266. The Authority will adopt the following approach to **assessment of information**:
- 266.1 *Approach to parts of documentation not completed:* Unless otherwise indicated, if a part of the required documentation is not completed, it will be assumed that that part does not apply to the applicant. If compliance with the section is necessary in order to meet the essential requirements, the application may be rejected.
  - 266.2 *Approach to late information:* Information submitted after closing day will not be considered, unless the information was requested by the Authority.
  - 266.3 *Approach to the information received from external sources:* Prejudicial information about an application received from external sources will not be taken into account by the Authority unless the applicant is afforded the opportunity to make representations in respect of that information.
  - 266.4 *Approach to the use of Authority's database:* The Authority may use information contained in the Authority's own databases, but will do so only to the extent that applicants were afforded the opportunity to make representations concerning the correctness of the data.
  - 266.5 *Approach to the submission of false information, documents and non-disclosure:* Applicants for licences, or their authorised representatives, will be required to attest to a declaration before a commissioner of oaths stating, amongst other things, that they have not submitted false information or false documents and that they have not failed to disclose material information. The submission of false information or false documents or the failure to disclose material information will constitute an independent ground for refusing an application. It will further be assumed that an applicant has provided false information when there is a material discrepancy

between the information provided by the applicant in the original application and information provided by the applicant on appeal, and where both versions cannot be correct. In addition, the making of a false statement in an attested declaration, knowing it to be false, constitutes a criminal offence.

**d) Verification of information**

267. The approach to **verification** of information will be as follows:

267.1 *Calls for further information:* the Authority may invite an applicant to make oral submissions or to present further information in writing if there is uncertainty concerning a material issue in an application. However, the responsibility to properly complete the application forms and submit all the requisite information rests with the applicant and the Authority is not obliged to call for further information in the case of uncertainty. The Authority will not allow applicants to supplement applications if this would result in unfairness to other applicants. If oral submissions are necessary, legal representatives will be permitted to address the Authority.

267.2 *Investigations:* the Authority may cause any matter relating to an application to be investigated, including the correctness of information provided. Applicants must co-operate with investigators by timeously submitting responses to written requests for information or explanations, by attending meetings with investigators and by answering questions satisfactorily at such meetings. The failure to co-operate will constitute an independent ground for refusing an application.

**e) Notification and reasons**

268. After the Authority has made decisions on licence applications, each applicant will be notified in writing of the decision on the application. In addition, the Authority will publish the results electronically.

269. Applicants will receive:

269.1 a set of general published reasons which will record the criteria, the decision-making process and the methodology pertaining to decisions; and

269.2 a specific reason if the application was unsuccessful.

270. All results and general published reasons will be published on the Authority's website.

**(iii) Terms and conditions for existing operators and service providers**

271. Two types of terms and conditions will be imposed in terms of s 65:

271.1 The **first set of conditions** flow from the provisions of the Act that apply to s 57 licences. These terms and conditions will be dealt with below under the heading "**statutory terms and conditions**" and will be incorporated into each new licence as appropriate.

271.2 The **second set of conditions** aims to ensure that a similar set of obligations applies to all existing operators that provide a similar service or operate a similar

type of facility. Currently, the obligations differ in the various lease agreements concluded over the years. The same framework is to be introduced for similar services or facilities. These terms and conditions will be dealt with below under the heading "***non statutory terms and conditions***" and will also be incorporated into each new licence.

272. A distinction will be made between existing operators with contracts with the Authority (for example, a lease agreement in respect of a terminal) and those without such contracts. The entire relationship with the latter type of operator will be dealt with in terms of the licence to be issued in terms of s 65. In the case of the former, if appropriate and agreed between the operator and the Authority, the s 65 licence will replace the existing contract. In such cases, the commercial relationship will be dealt with in the licence. If such replacement is not appropriate or agreed, the licence will consist of additional obligations and duties designed to meet the Authority's regulatory interests.

**a) Statutory terms and conditions**

273. The statutory terms and conditions are set out in ss 58 to 63 of the Act. They are set out below under the following headings:

- 273.1 conditions of the licence;
- 273.2 transfer of licences;
- 273.3 suspension or cancellation of licences;
- 273.4 directives;
- 273.5 duties of licence holders;
- 273.6 routine inspections; and
- 273.7 powers in emergencies.

***Conditions of licences***

274. In terms of s 58(1), a licence issued under s 57 **must** set out-

- 274.1 The **duration** of the licence. The duration of the licence will be determined with reference to the remainder of the existing agreement with the terminal operator. However, the licence may be suspended or cancelled in terms of the statutory power of the Authority, before the expiry of the agreement. If no agreement exists, then the duration of the licence will be the same as set out above for "future" service providers.
- 274.2 The **types of services or facilities** to be provided by the licensed operator. In the case of all s 65 licences, this will be the services provided or the facilities operated by the applicant at the commencement of the Act (on 26 November 2006). In the case of some operators, these services and facilities are described in existing agreements. All existing terminal operators will be invited to comment on

the description and to motivate for the approval of proposals for the limited expansion of an existing service, or limited additions and alterations to the provision of such a service. The Authority will then determine, on a case by case basis, whether such a proposal ought to be approved or whether it amounts to a significant or material change, in which case it will not be dealt with through the s 65 process.

- 274.3 The **rights and obligations** of the licensed operator in respect of the services or facilities provided by it and **such other terms and conditions** as may be necessary. The terms of the contractual arrangements with each existing operator will be analysed in order to determine whether they meet the regulatory interests of the Authority in respect of the particular service or facility. To the extent that the contract does not meet the Authority's interests, additional duties and obligations will be designed. These will form part of the "**non statutory terms and conditions**" of the s 65 licence, discussed below. These terms and conditions will not seek to alter the commercial relationship between the Authority and the terminal operator, but will only deal with the regulatory interests of the Authority. However, if appropriate and agreed between the Authority and the existing operator, the s 65 licence may replace the contractual arrangement for the remainder of the period of the agreement, and in such instances the commercial aspects of the relationship will be dealt with in the licence.
- 274.4 The **annual licence fee** payable by the licensed operator. Unless the licence replaces the existing contract with an operator, the s 65 licence will specify that there will be no additional annual licence fee. The fees payable to the Authority by existing operators are specified in contracts with the operators. In the case of the other services, the annual licence fee will be the same as the fee for future licence holders.
275. In terms of s 58(2), a licence issued under s 57 **may** -
- 275.1 *"Control and restrict, directly or indirectly, the creation, holding or disposal of shares in the licensed operator or its shareholders or interests in the undertaking of the licensed operator"* - this aspect is dealt with together with the transfer of s 65 licences.
- 275.2 *"Restrict the carrying on by the licensed operator of any trade or business which is not related to the activity authorised in the licence"* - the s 65 licence of each will contain a condition that the operator may not engage in any trade or business within the port which is not authorised by the s 65 licence.
- 275.3 *"Provide for the modification of the licence"* – in s 65 licences relating to terminal operations, no provision will be made for the unilateral modification of the licence, but the Authority may of course change its rules, instructions and policies – and licence holders will be required to respect such changes. In other licences, the Authority may be afforded the power to change the "*terms and conditions*" of a s 65 licence, in order to meet its regulatory objectives, after consulting with the relevant licence holder(s). Any change to the terms and conditions of a licence may also result in an adjustment of the annual licence fee, if applicable.
- 275.4 *"Provide for the determination of performance standards"* - in the absence of a sufficiently competitive environment for the provision of a service, performance standards are essential to ensure the efficient provision of a service. Unless a good reason is provided for exempting a specific existing operator, such as that

performance standards already form part of the contract between the Authority and the operator, the Authority will design and incorporate performance standards into the licence conditions of each and every existing operator.

- 275.5 *"Provide for the control and, if necessary, the reasonable fixing of prices to be charged by a licensed operator"* – in general, the licence conditions of existing operators will not, at this stage, provide for the control or fixing of prices. However, economic regulation with respect to the business carried on by licensed operators is the resort of the Authority and may be introduced, if necessary, by the Authority at a later stage.

### **Transfer of licences**

276. In terms of s 59, a licence may not be transferred to any third party without the prior written consent of the Authority and any transfer of a licence without such consent is of no force or effect.
277. If the members of a licensed close corporation or the shareholders of a licensed company alienate some or all of their interests or shares, the licence remains with the same legal entity. Approval for the transfer of that licence has to be obtained from the Authority. Likewise, any transfer of shares or of membership interest that results in a change of control over the juristic person holding the licence requires approval. This is to prevent the circumvention of s 59 of the Act. If the licence holder is an individual, an application for transfer must also be made when the right holder dies and the executor wishes to transfer the licence to another person.

### **Suspension or cancellation of licence**

278. In terms of s 60(1), the Authority may cancel or for a reasonable period suspend a licence, if:
- 278.1 The licensed operator contravenes or breaches any condition of its licence, any provision of this Act or the regulations, or any directive issued by the Authority in terms of the Act. In terms of s 60(2), the Authority may direct a licensed operator to take specified measures to remedy any contravention or breach. The Authority is however not required to issue such a direction prior to initiating steps to cancel or suspend a licence. It is required to afford the licence holder a hearing, as set out in s 60(3), before taking steps to cancel or suspend a licence or before issuing a directive in terms of s 60(2). The Authority will initiate steps to suspend or cancel licences in the case of serious or repeated breaches of licence conditions, directives, the Act or the regulations.
  - 278.2 The licensed operator is sequestered, liquidated or placed under judicial management.
  - 278.3 The licensed operator has made any assignment to, or composition with, its creditors.
  - 278.4 The safety of vessels and persons within ports or the national security of the Republic so requires.
279. Prior to cancelling or suspending a licence or issuing a directive, the Authority, in terms of s 60(3), must give written notice to the licensed operator-

- 279.1 indicating the intention to cancel or suspend the licence or the intention to issue a direction;
  - 279.2 setting out the reasons why it is considering cancelling or suspending the licence or issuing the direction; and
  - 279.3 affording the licensed operator a reasonable opportunity to make representations as to why the licence should not be cancelled or suspended or the direction should not be issued.
280. If a licence is cancelled or suspended, the Authority may, if it considers that such cancellation or suspension would materially affect the movement of cargo or passengers in a port-
- 280.1 provide the port service or operate the port facility;
  - 280.2 engage any employee of the licensed operator, or any third party, to carry out functions as directed by the Authority; and
  - 280.3 recover any expenses from the licensed operator concerned.

### **Directives**

281. In terms of s 61(1), the Authority may issue directives with respect to standards of performance and procedures to be observed by licensed operators:
- 281.1 to ensure the "*reliability of the supply of port services and facilities*"; or
  - 281.2 in the interest of "*public safety*" or "*the environment*".
282. Before issuing a directive, the Authority must give written notice to the affected licensed operator:
- 282.1 indicating the intention to issue the directive;
  - 282.2 setting out the reasons why it is considering issuing the directive; and
  - 282.3 affording the operator a reasonable opportunity to make representations as to why the directive should not be issued.
283. To the extent that standards of performance, or standards relating to public safety and the environment do not form part of licence conditions, they may be imposed by directive. The preferred manner of regulation will be by way of the enforcement of licence conditions.

### **Duties of licensed operators**

284. In terms of s 62(1), a licensed operator must-
- 284.1 provide the port services and operate the port facilities specified in its licence;



- 284.2 comply with the Act and any other law;
  - 284.3 meet the performance standards specified in its licence; and
  - 284.4 provide reliable, efficient and economical port services and facilities to port users in accordance with the conditions of the licence granted to it.
285. In terms of s 62(2), every licensed operator must-
- 285.1 Within three months after the end of each financial year, submit to the Authority a report of its licensed operations during that financial year, including:
    - 285.1.1 the quality and level of its service in the financial year under review;
    - 285.1.2 its compliance with the terms and conditions of its licence, the Act and the regulations;
    - 285.1.3 steps taken to eliminate anti-competitive and discriminatory practices;
    - 285.1.4 its audited annual financial statements; and
    - 285.1.5 the quality and level of performance with regard to such environmental criteria and social responsibility requirements as may be set by the Authority or required by other national legislation.
  - 285.2 From time to time, and where applicable, submit to the Authority: -
    - 285.2.1 such statistical information relating to its licensed operations as may reasonably be required by the Authority;
    - 285.2.2 its cargo forecast over the period and in the form determined by the Authority; and
    - 285.2.3 future development plans relating to any service or facility which it is obliged to provide under the conditions of its licence.
  - 285.3 In terms of s 62(3) and (4), the Authority may require a licensed operator, at the operator's cost, to submit such additional information as may be necessary to explain or amplify any report or information submitted by the licensed operator. Any information required by the Authority must be lodged by the licensed operator within the period and in the manner determined by the Authority.
286. The Authority will insist on compliance with all of the above requirements by existing operators and will make available a pro forma report which must be completed by terminal operators on a yearly basis, containing specific requests for the information set out above.
287. In terms of s 62(5), a licensed operator must, within 24 hours of its occurrence or discovery, inform the Authority of:
- 287.1 any change in the control of the licensed operator;
  - 287.2 any industrial dispute between the licensed operator and its employees;
  - 287.3 any industrial accident or disaster involving any employee or agent of the licensed operator;

- 287.4 any occurrence of fire within its premises within the port;
  - 287.5 any theft or pilferage within its premises or any theft or pilferage involving any cargo in its possession or control;
  - 287.6 any proceedings or claim instituted or made against the licensed operator which could materially affect its ability to perform any obligation or to comply with any term or condition of its licence; and
  - 287.7 any spillage or pollution that may have an impact on the environment.
288. The Authority will insist on compliance with all of the above requirements by existing operators and will not hesitate to take steps to suspend or cancel a licence in respect of serious or repeat transgressions.

### **Routine inspections**

289. In terms of s 63(1), and in order to determine whether licence conditions are being complied with, any person duly authorised by the Authority in writing may, during office hours, enter any premises occupied by a licensed operator to inspect any activity, process, building or facility therein. The inspector may, when conducting an inspection, require the licensed operator to produce any book, record, statement or other document relating to matters dealt with in this Act for inspection, or for the purpose of obtaining copies thereof or extracts therefrom.

### **Special powers in emergency**

290. In terms of s 64(1), the Minister of Public Enterprises may, with the concurrence of the Minister of Transport, on the occurrence of any event which gives rise to an emergency which creates a real and imminent threat to the national interest of the Republic or public safety, authorise the Authority, for as long as such threat exists, to:
- 290.1 suspend the licence of a licensed operator, take temporary possession (either itself or through an authorised agent) of any port facility or undertaking relating to a port service of such licensed operator and operate it in such a manner as it deems fit; or
  - 290.2 withdraw either partially or totally the use of any port service or facility from any person or class of persons or from the public in general.
291. Where the Authority takes possession of any port facility or undertaking in terms of the emergency powers, adequate compensation must be paid, in the amount agreed between the Authority and the affected licensed operator, and failing agreement, in the amount determined by the Minister of Public Enterprises, whose decision is binding upon the parties.

### **b) Non-statutory terms and conditions for terminal operators, railway operators and ship repair**

292. The non-statutory terms and conditions will form the subject of negotiations with each existing operator. As stated above, in some instances the s 65 licence may replace an existing contract whereas in other cases the conditions will merely be aimed at meeting the Authority's regulatory objectives. Given the wide variety of possibilities that will form the subject of individual negotiations, it is not possible and it will serve little purpose to provide

in any degree of detail the kinds of conditions that will be imposed. The following broad areas will form the subject of negotiations with terminal operators and ship repairers in respect of the non-statutory terms and conditions of the s 65 licence:

- 292.1 if appropriate to renegotiate: the services that may be provided by the Terminal Operator;
- 292.2 if appropriate to renegotiate: the rights and responsibilities of the Terminal Operator and the rights and responsibilities of the Authority;
- 292.3 arrangements concerning the provision of marine services and the allocation of berths;
- 292.4 the duration of the licence and options to renew;
- 292.5 arrangements regarding improvements and extensions; hand-back of assets at expiry of the licence;
- 292.6 replacement of assets and repair and maintenance obligations of the Terminal Operator and the repair and maintenance obligations of the Authority;
- 292.7 roadways and access to the terminal, private siding, and wayleaves;
- 292.8 labour and personnel related obligations, safety and security and environmental protection,
- 292.9 performance measurement;
- 292.10 if appropriate to renegotiate: payment to the Authority, payment of water and electricity, sanitation charges and property rates;
- 292.11 if appropriate to renegotiate: standardised provisions regarding insurance, indemnities; intellectual property; default interest rates, reporting obligations, register of complaints, confidentiality of information; monitoring and inspections; and
- 292.12 if appropriate to renegotiate: informal dispute resolution, Terminal Operator default, Authority default, and Force Majeure.

**c) Non-statutory terms and conditions for waste disposal services**

- 293. The terms and conditions for waste disposal services that will have to be met by the private operators in order to be issued with a s 65 licence are attached as **Annexure D**.

**d) Non-statutory terms and conditions for floating crane services**

- 294. The terms and conditions for floating crane services that will have to be met by the private operator in order to be issued with a s 65 licence are attached as **Annexure E**.

**ANNEXURE A: STATUTES, POLICIES AND INTERNATIONAL BEST PRACTICE  
CONSIDERED IN THE DEVELOPMENT OF THE GUIDELINES**

**(i) Other South African statutes**

**1. The following laws applicable specifically to the ports were considered:**

- 1.1 The predecessor to the Act was the **Legal Succession to the South African Transport Services Act No. 9 of 1989** (*"the Succession Act"*). The Succession Act has been repealed by the Act in so far as the Succession Act relates to any provision for the management and operation of the ports referred to in the Act. A number of matters are dealt with in schedule 1 of the Succession Act which are not referred to in the Act. They are *"Lost Property"* (item 5); *"Disposal of Unclaimed Goods"* (item 6); *"Expropriation"* (item 7); *"Construction Work"* (item 8) and *"Offences"* (item 12). As these matters are not *"referred to"* in the Act, the Authority will continue to apply the Succession Act in respect of these matters. No other provision of the Succession Act will in future be applied or relied upon by the Authority.
- 1.2 In terms of the Succession Act, Transnet became the successor to the assets and rights of the South African Transport Services acquired in terms of the **South African Transport Services Act No. 9 of 1989**. In terms of s 27 of the Act, the Authority is to become the successor to Transnet on a date to be determined by the Minister of Public Enterprises. The property to be acquired by the Authority will include property rights over the sea, and the sea-shore between the low and high water marks, within the ports. Section 3 of the **Sea-Shore Act 21 of 1935**, which provides that the Minister of Transport may, on such conditions as he or she may deem expedient, let any portion of the sea-shore and the sea of which the State President is the owner, has no application to the ports. As far as the land and the sea within the ports are concerned, the power to lease land vests, in terms of s 11(1)(c), in the Authority.
- 1.3 In terms of s 2(2) of the **Port of Ngqura Establishment Act No. 77 of 1998**, the construction, equipment, control, management, possession and maintenance of the Port of Ngqura had to be undertaken by Transnet as from 1 February 2002 (Proclamation R2 in GG 23063 of 25 January 2002). In terms of s 10(1) of the Act, all ports, including the port of Ngqura, fall under the jurisdiction of the Authority. Port services and facilities in the port of Ngqura will accordingly be dealt with in terms of the ***Guidelines for Agreements, Licences and Permits***.
- 1.4 The ports are not national key points, but the Cutler Complex at Island View in the Durban port, as well as the Single Buoy Moorings in Durban and Mossel Bay have been declared national key points under of the **National Key Points Act No. 102 of 1980**. The owner of a national key point is required to take steps to the satisfaction of the Minister of Defence in respect of the security of the key point. The areas that have been declared to be national key points will be dealt with as per the directives of the National Key Points Act. The managers of the Cutler Complex and the operators of the SBMs at Durban and Mossel Bay (see the **National Ports Authority Security Policy** (March 2007)) will be approached, to the extent necessary, to ensure that the existing arrangements comply with the National Key Points Act.

2. The **Petroleum Pipelines Act No. 60 of 2003** establishes a licensing regime for the construction and operation of petroleum pipelines. This Act establishes a Petroleum Pipelines Regulatory Authority as the custodian and enforcer of the national regulatory framework. The National Energy Regulator undertakes the functions of regulator in terms of the Petroleum Pipelines Act and its powers and duties are set out therein. A person may not construct or operate a petroleum pipeline, a loading facility or a storage facility without a licence issued by the Regulator. The Petroleum Pipelines Act further provides for inspections and investigations by the Regulator. The Authority is investigating the possibility of concluding an agreement in terms of s 11(3) of the Act with the National Energy Regulator of South Africa to co-ordinate functions in respect of pipelines, loading facilities and storage facilities. The possibility of exempting off-shore cargo-handling facilities from regulation under Chapter 6 of the Act will then be considered.
3. The following **Marine Pollution laws** is of some importance:
  - 3.1 The objective of the **Marine Pollution (Prevention of Pollution from Ships) Act No. 2 of 1986 ("MARPOL")** is to give effect to the International Convention for the Prevention of Pollution from Ships, 1973, which applies to any South African ship and any ship in the Republic or its territorial waters. The Convention seeks to eliminate intentional pollution of the marine environment by oil and other harmful substances and the minimization of accidental discharge of such substances. This law contains important requirements relating to oil pollution and the management of waste generated by vessels, which will be applied by the Authority.
  - 3.2 The **Dumping at Sea Control Act No. 73 of 1990** provides for the control of dumping of substances in the sea. This Act prescribes that special permits are required for the loading or dumping of substances into the sea. Apart from applying these provisions, the Authority is also a subject of this law in that dumping permits are required for dredged material.
  - 3.3 The **Marine Pollution (Control and Civil Liability) Act No. 6 of 1981** prohibits the discharge of oil from a ship, tanker or offshore installation except as provided for in the Act. This Act furthermore places an obligation on the Master and crew of a ship to report any discharge of a harmful substance from the ship and deals with civil liability for damages caused. Tankers that hold more than 2 000 long tons of oil may not leave or enter a port into the Republic without the necessary insurance certificate.
  - 3.4 The **Marine Pollution (Intervention) Act No. 64 of 1987** gives effect to the International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties and to the Protocol relating to Intervention on the High Seas in Cases of Marine Pollution by Substances Other than Oil. The Convention stipulates that parties (States) may take such measures on the high seas as may be necessary to prevent, mitigate or eliminate grave and imminent danger to their coastline or related interests from pollution by oil (and substances other than oil). The Convention further sets out the conditions that must be met in exercising such a right.
  - 3.5 The **Marine Living Resources Act No. 18 of 1998** is directly relevant regarding fishing activities in ports and associated environmental management as well as waste management from fishing activities.
4. The following **environmental laws** are of some importance:

- 4.1 The **National Environmental Management Act No. 107 of 1998** ("*NEMA*") imposes certain obligations on the Authority, as landowner, to implement measures and take action to prevent any kind of pollution to air, water or land. In the absence of such measures, the Authority may be deemed, in certain circumstances, to be the responsible party, in which case it will bear the costs for remedying the damages cause, even though it did not cause the pollution. The duties imposed by NEMA have been considered when the Authority drafted licence conditions and the terms of agreements. It should further be kept in mind that environmental authorisation is necessary in respect of certain activities under s 24 of NEMA. There are also reporting obligations under NEMA in case of emergencies (s 30).
- 4.2 The **Environment Conservation Act No. 73 of 1998** ("*the ECA*") has particular importance in respect of waste management, which have been taken into account when the waste disposal licence conditions where considered.
- 4.3 The **Atmospheric Pollution Prevention Act No. 45 of 1965** provides for dust control and the control of noxious or offensive gases and regulates atmospheric pollution by smoke. The law remains applicable, but has been superseded by **National Environment Management: Air Quality Act No. 39 of 2004** ("*NEMAQA*"). NEMAQA provides for the listing of activities which result in atmospheric emissions that pose a threat to health or the environment. No person may without an atmospheric emission licence conduct any such activity listed. Appliances or activities may be declared to be controlled emitters or controlled fuels, which then have to comply with certain minimum emission standards. No person may use any appliance or conduct any activity declared as a controlled emitter or manufacture, sell or use a controlled fuel, unless it complies with the standards established. A pollution prevention plan may be required of any person conducting a listed activity which involves the emission of a priority air pollutant. The new provisions have been considered when the licence conditions of some existing terminal operators were drafted.
- 4.4 The **National Environmental Management: Biodiversity Act No. 10 of 2004** has implications for the Authority in terms of the management of alien species on land and in sea and imposes specific obligations on the Authority in term of flora and fauna management. The Act will also have implications in terms of rehabilitation. As land owner, the Authority will seek to ensure that the provisions of this law are adhered to by service providers and operators of port facilities.
- 4.5 The **National Environmental Management: Protected Areas Act No. 57 of 2003** has implications for the Authority to the extent that areas within the ports have been declared protected areas. The Authority will, again, seek to ensure that affected service providers comply with this law.
- 4.6 The **National Water Act No. 36 of 1998** is relevant for the Authority, and service providers, in terms of the water pollution, storm water management and the release of effluents.
5. In terms of s 2 of the South African Maritime Safety Authority Act No. 5 of 1998, SAMSA is responsible for the administration of the most important **shipping laws**. The broad aims of SAMSA are to maintain the safety of life and property at sea, to combat pollution and to protect the Republic's maritime interests. Most of the shipping laws do not directly impact on the Authority's function in respect of licensing and agreements and the requirements will, in general, not form part of the criteria or conditions of licences and agreements. Some of the regulations adopted under the Merchant Shipping Act do however contain important

requirements in respect of licensing and these have been incorporated into the licence criteria and conditions.

- 5.1 The **Merchant Shipping Act No. 57 of 1951** deals, amongst other things, with the powers of SAMSA and the licensing and registering of ships (and the maintenance of a register thereof); the qualifications and competence of crew to be employed on a ship; labour matters on ships; the safety of ships and life at sea, including the manner in which ships are constructed and the requirement to install radios and life-saving equipment; the requirement to hold a safety certificate and load line certificate; matters relating to navigation safety, including requirements relating to the employment of radio officers, operators and navigators, provision of a safety lamp; collisions and accidents at sea; and enquiries and court hearings. The regulations adopted under this law, contain highly relevant requirements relating to licensing and agreements, which were incorporated into the criteria and conditions. More particularly:
  - 5.1.1 The **Maritime Occupational Safety Regulations** contain important requirements relating to stevedoring operations.
  - 5.1.2 The **Merchant Shipping (Carriage of Cargoes) Regulations** contain requirements for the loading of bulk cargoes.
  - 5.1.3 The **Merchant Shipping (Dangerous Goods) Regulations** contain reporting and inspection duties regarding the loading of dangerous goods, as defined in the regulations.
  - 5.1.4 The **Merchant Shipping (IGC Code) Regulations** contain requirements relating to loading of Liquefied Gases in Bulk.
  - 5.1.5 The **Merchant Shipping (INF Code) Regulations, 2003** contain requirements relating to Safe Carriage of Packaged Irradiated Nuclear Fuel, Plutonium and High-Level Radioactive Wastes.
  - 5.1.6 The **Merchant Shipping (ISM Code) Regulations** contain provisions prohibiting the departure of a ship without an ISM Code certificate.
  - 5.1.7 The **Merchant Shipping (Maritime Security) Regulations, 2004** and the **Merchant Shipping (Maritime Security) Regulations, Requirements for Provision of Pre-Arrival and Pre-entry Information** contain requirements in respect of security, including maritime security competence requirements as per the ISPS Code.
  - 5.1.8 The **Merchant Shipping (Notification of Building of Vessels) Regulations, 2002** contain requirements for ship building in the ports.
- 5.2 The objective of the **Marine Traffic Act No. 2 of 1981** is to regulate marine traffic in South Africa. The powers of the SAMSA relating to ships whose passage is deemed to be "*not innocent*" are set out in this Act. SAMSA further administers the Maritime Zones Act 15 of 1994 and the Carriage of Goods by Sea Act 1 of 1986 (dealing with the law applicable to the carriage of goods by sea and the application of the Hague Rules).
- 5.3 The **Wreck and Salvage Act No. 94 of 1996** provides for the application in the Republic of the International Convention of Salvage, 1989. The Act creates obligations on the master of the ship to assist ships in distress, to render assistance

to persons in danger at sea and to render assistance to ships in collisions at sea. The Act provides for the appointment of salvage officers at ports or other places in the Republic, who, in terms of the Act, may conduct investigations concerning ships wrecked, stranded or in distress. The Act prohibits the unlawful interference with a wrecked ship or aircraft. Salvage shall be payable to the salvor by the owner of the ship or the owner of any wreck, whether or not such ship or wreck has been saved, when services are rendered in saving life from any ship.

- 5.4 Further laws applicable to SAMSA are the **South African Maritime Safety Authority Levies Act No. 6 of 1998**; and the **South African Maritime and Aeronautical Search and Rescue Act No. 44 of 2002**.
- 5.5 There are a number of other **shipping laws**, such as the Admiralty Jurisdiction Regulation Act 105 of 1983 (dealing with the jurisdiction of the High Courts of the Republic in respect of maritime claims) and the Sea Transport Documents Act 65 of 2000, which are not directly relevant for the purposes of the *Guidelines*.
6. The **Customs and Excise Act No. 91 of 1964** provides, in ss 59A to 64G of the Act, for the licensing of customs and excise warehouses for storage of dutiable goods and manufacturer of dutiable goods. An agreement relating to the regulation of container depot operators and cargo storage will be entered into in terms of s 11(3) of the Act with Customs and Excise.
7. The **Revenue Laws Second Amendment Act No. 21 of 2006**, has been promulgated but has not yet commenced. In terms of ss 23, 24, 25, 26, 27, 28 and 32 of the Amendment Act, container terminals; combi-terminals, car terminals, bulk terminals, container operators, transit sheds and ships agents may in future be licensed by the Commissioner. The possibility of concluding a co-ordination agreement with SARS leading to the exemption from regulation of port services such as cargo storage and container depot operations is being investigated.
8. A number of **safety laws** are of some importance:
  - 8.1 The **International Convention of Safe Containers Act No. 11 of 1985** incorporates the International Convention for Safe Containers adopted by the Inter-Governmental Maritime Consultative Organisation ('*IMCO*') in Geneva on 2 December 1972, into South African law. The Convention formalizes structural requirements to ensure safety in the handling, stacking and transporting of containers in the course of normal operations.
  - 8.2 The Authority has had regard to the applicable SANS standards set out in the **Hazardous Substances Act No. 15 of 1973**, which are directly relevant in the management of hazardous substances including the storage, handling and transport, and also for hazardous waste management.
  - 8.3 The **Explosives Act No. 26 of 1956** as well as the **Explosives Act No. 15 of 2003** (which will come into operation on a date to be fixed by the President by proclamation in the Gazette) were considered when dealing with the storage of explosives.
9. **Labour laws** of significance include the Basic Conditions of Employment Act No. 75 of 1997, the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993; the Employment Equity Act No. 55 of 1998; the Labour Relations Act No. 66 of 1995; the Occupational Health and Safety Act No. 85 of 1993 ("*OHS&A*"); Skills Development Act No. 97 of 1998; Skills Development Levies Act No. 9 of 1999; South African Qualifications Authority



No. 58 of 1995. The obligations set out in these laws are extensive and the Department of Labour has the primary responsibility for implementing these laws. However, the Authority may, and in some instances it has, incorporated labour standards into the assessment criteria and conditions. Where appropriate, it will be a condition of a licence or a term of a contract that the Authority will not be liable in terms of s 37(2) of OHSA for the conduct of a licensee, permit holder or lessees or other operators that it has contracted with in respect of services and facilities within the ports.

10. The **Broad Based Black Economic Empowerment Act No. 53 of 2003** and the Codes of Good Practice on Black Economic Empowerment, GN 112 of 2007 in GG 29617 (9 February 2007) will be applied by the Authority when considering applications for leases, licences and s 56 agreements. S 51(1) of the **Public Finance Management Act No. 1 of 1999** is of some importance in that provides that an accounting authority for a public entity must ensure that the public entity maintains an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective; and a system for properly evaluating all major capital projects prior to a final decision on the project. The *Guidelines* are designed to ensure that these requirements are met.
11. General regulatory laws such as the **Promotion of Administrative Justice Act No. 3 of 2000** ("PAJA"); and the **Promotion of Access to Information Act No. 2 of 2000** ("PAIA"), and the regulations passed under these laws, are of particular importance regarding the procedures to be applied by the Authority in assessing applications and the communication with applicants.

**(ii) International instruments**

12. International instruments of particular importance are:
  - 12.1 **IMO Rules, requirements, regulations, standards, codes guidelines and recommendations.** The IMO has been recognised as the principle forum for all matters affecting the safety of shipping. The transport of dangerous cargoes has been one of the IMO's main responsibilities since its founding in 1958. The IMO standards were taken into account.
  - 12.2 **International Convention for the Prevention of Pollution from Ships (MARPOL 1973/78).** The goal of MARPOL is to prevent pollution from ships. The Convention has been widely adopted throughout the world. It obligates signatory states to ensure the provision of adequate port reception facilities for waste, generated by vessels. MARPOL contains requirements relating to adequate reception facilities regarding Annex I (Oil); Annex II (Noxious Liquids); Annex III (Packaging), Annex IV (Sewage) and Annex V (Garbage). MARPOL has been incorporated into National law under the MARPOL Act, discussed above.
  - 12.3 The overall goal of the **Basel Convention on the Control of Transboundary Movements of Hazardous Waste and their Disposal** is to protect, human health and the environment against the adverse effects that may result from the generation, transboundary movement and management of hazardous and other wastes. This Convention was taken into account when the waste disposal licences were drafted.
  - 12.4 **International Ship and Port Facilities Security Code (ISPS Code).** The ISPS Code applies to all commercial vessels undertaking international voyages as well as all port facilities. The Code, amongst other things requires the Port Authority to adopt a port security plan.

**(iii) Other documents relating to international best practice**

13. Other documents relating to international best practice which were taken into consideration when the **Guidelines** were drafted are:
  - 13.1 UNCTAD (United Nations Conference on Trade and Development **Guidelines for Port Authorities and Governments on the privatization of port facilities** of 23 September 1998;
  - 13.2 World Bank Port Reform Tool Kit: Module 3 **Alternative Port Management Structures and Ownership Models;**
  - 13.3 World Bank Port Reform Tool Kit: Module 4 **Legal Tools for Port Reform** (2 ed) 2007.

## **ANNEXURE B: DELEGATIONS**

In terms of s 21 of the Act, the Board may, through a resolution, delegate any of its powers and assign any of its duties conferred or imposed by the Act and the memorandum and articles of association of the Authority to any member of the Board, the chief executive officer or any employee of the Authority.

In terms of s 16(2) of the Act, the Board is responsible for the following functions applicable to the agreements, licences and permits processes:

- “(c) approves port reform measures, including concession agreements contemplated in section 56;
- (d) ensures that small and medium-sized enterprises owned by historically disadvantaged groups have an equitable opportunity to participate in the operations of facilities in the ports environment;
- (f) sets criteria and policy for the effective execution of the Authority's regulatory and control functions;
- (h) approves the sale, acquisition and long-term lease of property in ports;
- (i) approves the long-term lease of land;”

These powers may be delegated to officials of the Authority and will be set out in the National Ports Authority's Delegations Policy.

**ANNEXURE C: STEVEDORING LICENCE**



**STEVEDORING LICENCE**

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

**Issued in terms of Section 57 of the National Ports Act No. 12 of 2005 ("the Act")**

**MAY NOT BE TRANSFERRED WITHOUT THE PRIOR WRITTEN CONSENT OF THE AUTHORITY [Section 59(1) of the Act]**

**Name of licensed operator:** .....

**Registered physical address from where principal business is carried on:**.....

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

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

("hereinafter referred to as the "Licensee")

is hereby licensed by the Authority to undertake the following activity, and none other, in the Port of:

**Nature of services or facilities authorised [Section 58(1)(b) of the Act]:**

Stevedoring (delete non-applicable service):

- |                       |                     |                            |
|-----------------------|---------------------|----------------------------|
| (a) Bags              | (e) Containers      | (i) Automotive             |
| (b) Bulk              | (f) Forest products | (j) All forms of breakbulk |
| (c) Reefer            | (g) Steel           | (k) Unrestricted           |
| (d) Lashing/ cleaning | (h) Fruit           |                            |

This licence is issued subject to:

- 1) compliance with conditions printed on this licence, which list some of the obligations of the Licensee;
- 2) compliance with the provisions of the Act, in particular sections 58 to 64, and all other relevant legislation;
- 3) compliance with any Regulations adopted in terms of section 80(1) of the Act;
- 4) compliance with the Port Rules for the commercial Ports of South Africa, adopted in terms of section 80(2) of the Act and with the Harbour Master's Written Instructions and the Authority's Written Instructions;
- 5) compliance with the Authority's Tariff Book, published in terms of section 72(1) of the Act;
- 6) compliance with the Code of Safe Working Practice for Ships Working Cargo in South African Ports, 2006, issued by the South African Maritime Safety Authority; and
- 7) compliance with the International Ship and Port Security Code ("the ISPS Code") as it applies to all Ports of South Africa.

**Duration of licence:** \_\_\_\_\_ to \_\_\_\_\_. [Section 58(1)(a) of the Act]

**Annual licence fee:** R [TBD] inclusive of VAT. [Section 58(1) (c) of the Act]

.....  
**THE AUTHORITY'S DELEGATEE**

**Date:** .....

The Licensee accepts that this licence is issued subject to compliance with the attached conditions and the statutory and other instruments listed above, as amended or changed from time to time.

.....  
**LICENSEE OR ITS AUTHORISED REPRESENTATIVE**

**Date:** .....

## **CONDITIONS OF STEVEDORING LICENCE**

### **GENERAL**

1. *All references to "the Act" are to the National Ports Act No. 12 of 2005.*
2. *The Licensee shall be a member of the National Association of Stevedores. If membership of the Association is refused or cancelled for any reason, the Authority may, on good cause shown, grant an exemption from this condition.*
3. *The Licensee may not act or purport to act on behalf of the Authority or to represent it in any way. The Licensee is not the mandatory, agent or employee of the Authority arising out of the issue of this licence. The Authority shall not be liable, vicariously or otherwise, for the acts or omissions of the Licensee.*
4. *The Licensee acknowledges and agrees that the Authority may disclose any or all of the information provided by the Licensee to law enforcement, government and regulatory agencies and the Licensee releases and indemnifies the Authority from and against all losses, claims, damages, costs, liabilities, actions and causes of action arising out of or in any way connected with the disclosure or release of any information provided by the Licensee to such bodies.*
5. *The Licensee shall comply with all relevant management systems, policies and procedures and directives of the Authority.*

### **SAFETY, HEALTH, ENVIRONMENT AND EFFICIENCY**

6. *Stevedoring must be performed diligently, safely and without deliberate or undue delay.*
7. *The Act requires the Licensee to provide reliable, efficient and economical port services and facilities to port users in accordance with the conditions of the licence granted to it.*
8. *The performance of stevedoring on board any vessel shall always be supervised by and be subject to the direction and approval of the vessel's master, or his duly authorized agent.*
9. *The Licensee shall have written safety, health, environment and quality programs in place at all times and shall make these available to the Authority for inspection upon request at all reasonable times.*
10. *The Licensee shall undertake annual risk assessments of the stevedoring services that it offers within the Port and shall make these available to the Authority for inspection upon request.*
11. *The Authority may conduct random Safety Health and Environmental (SHE) audits without prior notification, in terms of s 63 of the Act, to assess the Licensee's compliance with the stipulations in this licence, including compliance with all relevant laws and other instruments, whether specifically listed in the licence or not.*
12. *During the on-loading or off-loading of cargo and containers, the Licensee shall ensure that all necessary measures are taken to prevent the spillage of cargo or containers into the waters of the Port, or onto the quayside.*
13. *The dumping of material by or on behalf of the Licensee of any nature or specification anywhere within the Port is strictly prohibited.*

### **EMPLOYEES**

14. *The Licensee shall at all times employ, or have access to the following key personnel (numbers and types depend on type of stevedoring):*
  - *One qualified first-aider per 50 stevedores employed and at least one qualified first-aider present at every shift;*
  - *Employees trained in fire-fighting;*
  - *Safety officers;*
  - *Riggers with suitable qualifications and experience;*
  - *Motor vehicle operators;*
  - *Lifting equipment operators;*
  - *Electricians;*
  - *Flag or signal operators;*
  - *Lifting equipment inspectors;*
  - *Hazardous cargo handlers;*

- *Safety, health and environmental representatives; and*
  - *An operational manager or supervisor.*
15. *Only duly qualified permanent stevedores and suitably trained and competent casual stevedores may be employed by the Licensee.*
  16. *The Licensee is required to ensure that its total workforce, both permanent and casual employees, comply with the obligations contained in this licence.*
  17. *All forklift drivers, riggers, truck drivers, crane drivers, winch operators and gangway-men shall have a valid certificate of competence issued by the Transport Education Training Authority and any other SETA/body, and the certificate shall be available for inspection by the Authority.*
  18. *All employees of the Licensee shall be neatly and uniformly attired, with the name and identification mark of the Licensee conspicuously displayed on their attire when such employees are within the precincts of the Port.*
  19. *All employees of the Licensee must be in possession of a valid access permit issued in terms of the Port Rules.*
  20. *All personnel shall wear the protective clothing prescribed in the Port Rules.*

### **EQUIPMENT**

21. *All equipment shall be listed before use and the Licensee shall obtain test certificates from a competent person registered with the Department of Labour and the Engineering Council of South Africa. All lifting gear shall have a valid current inspection certificate which complies with the applicable legislation.*
22. *All stevedoring gear and equipment required for the proper carrying out by the Licensee of stevedoring shall be maintained in good order and condition.*
23. *All equipment must be in proper working order and machines and motor vehicles must be inspected regularly for oil leaks and spills. Any spills detected must be cleaned up immediately and disposed of at an appropriate landfill site by the Licensee to the satisfaction of the Authority and the competent authorities.*
24. *All equipment used by the Licensee shall be removed from wharfs, quays, jetties and other work places in a Port without delay after stevedoring is completed on a particular vessel, or within such extended time as the Authority may, on good cause shown, allow.*

### **MOTOR VEHICLES**

25. *Each motor vehicle used by the Licensee in the Port in excess of one and a half tonne carrying capacity, shall bear the name of the Licensee in a conspicuous place, or in such manner as the Authority may from time to time stipulate.*
26. *All motor vehicles used for the transport of employees within the precincts of the Ports shall be closed top motor vehicles.*

### **INSURANCE**

27. *Public liability insurance shall be effected and maintained at all times. The extent of public liability insurance may be adjusted by the Authority on an annual basis, or after consultation with the Licensee.*
28. *Upon request, the Licensee shall furnish proof to the Authority of the continued existence and validity of such insurance and the regular payment of all premiums due under the policy.*
29. *The Authority shall not be liable should it at any stage be established that the insurance obtained is inadequate or insufficient for any reason whatsoever, or should the relevant insurer for any reason refuse or be unable to meet its liabilities in terms of the said policy.*

### **STATUTORY CONDITIONS**

30. In terms of s 62(2) of the Act, the Licensee must-

- *Within three months after the end of each financial year, or such longer period permitted by the Authority, submit to the Authority a report of its licensed operations during that financial year, including:*
  - *the quality and level of its service in the financial year under review. The quality and level of service standards are established as the internationally accepted performance norms published by various institutions involved in the maritime industry, namely the IMO, the World Bank and others;*
  - *its compliance with the terms and conditions of its licence, the Act and the regulations;*
  - *steps taken to eliminate anti-competitive and discriminatory practices;*
  - *its audited annual financial statements; and*
  - *the quality and level of performance with regard to such environmental criteria and social responsibility requirements as may be set by the Authority or required by other national legislation.*
- *From time to time, and where applicable, submit to the Authority such statistical information relating to its licensed operations as may reasonably be required by the Authority.*

31. In terms of s 62(3) and (4) of the Act, the Authority may require a licensed operator, at the operator's cost, to submit such additional information as may be necessary to explain or amplify any report or information submitted by the licensed operator. Any information required by the Authority must be lodged by the licensed operator within the period and in the manner determined by the Authority.

32. In terms of s 62(5) of the Act, a licensed operator must, within 24 hours of its occurrence or discovery, inform the Authority of:

- *any change in the control of the licensed operator;*
- *any industrial dispute between the licensed operator and its employees;*
- *any industrial accident or disaster involving any employee or agent of the licensed operator;*
- *any occurrence of fire within its premises within the port;*
- *any theft or pilferage within its premises or any theft or pilferage involving any cargo in its possession or control;*
- *any proceedings or claim instituted or made against the licensed operator which could materially affect its ability to perform any obligation or to comply with any term or condition of its licence; and*
- *any spillage or pollution that may have an impact on the environment.*

33. Any incidents or accidents that may impact in any way on the environment shall be reported immediately to the Authority by the Licensee.

34. Any injury on duty (IOD), or fatality, shall be reported immediately to the Authority and to any applicable statutory body within the required time-frame.

### **TRANSFER**

35. In terms of s 59 of the Act, a licence may not be transferred to any third party without the prior written consent of the Authority and any transfer of a licence without such consent is of no force or effect. If the members of a licensed close corporation or shareholders of a licensed company alienate some or all of their interests or shares, prior written consent must be obtained if the transfer of shares or of membership interest results in a change of control of the licensee. In the case of a listed public company, a sale of more than 35% of the shareholding requires approval.

### **DIRECTIVES**

36. In terms of s 61(1) of the Act, the Authority may give directives with respect to standards of performance and procedures to be observed by licensed operators:

- *to ensure the reliability of the supply of port services and facilities; or*
- *in the interest of public safety or the environment.*

37. Before issuing a directive, the Authority must give written notice to the affected licensed operator:

- *indicating the intention to issue the directive;*
- *setting out the reasons why it is considering issuing the directive; and*

- *affording the operator a reasonable opportunity to make representations as to why the directive should not be issued.*

### **CANCELLATION AND SUSPENSION**

38. *In terms of s 60(1) of the Act, the Authority may cancel or for a reasonable period suspend this licence, if:*

- *the licensed operator contravenes or breaches any condition of its licence, any provision of the Act or the regulations, or any directive issued by the Authority in terms of the Act;*
- *the licensed operator is sequestrated, liquidated or placed under judicial management. One of the conditions of the s 57 licence is that a licensed operator must inform the Authority if any of these events were to occur;*
- *the licensed operator has made any assignment to, or composition with, its creditors; or*
- *the safety of vessels and persons within ports or the national security of the Republic so requires.*

39. *Prior to cancelling or suspending a licence or issuing a directive, the Authority, in terms of s 60(3), will give written notice to the licensed operator-*

- *indicating the intention to cancel or suspend the licence or the intention to issue a direction;*
- *setting out the reasons why it is considering cancelling or suspending the licence or issuing the direction; and*
- *affording the licensed operator a reasonable opportunity to make representations as to why the licence should not be cancelled or suspended or the direction should not be issued.*

40. *Where a licence is cancelled or suspended, the Authority may, if it considers that such cancellation or suspension would materially affect the movement of cargo or passengers in a port-*

- *provide the port service or operate the port facility;*
- *engage any employee of the licensed operator, or any third party, to carry out functions as directed by the Authority; and*
- *recover any expenses from the licensed operator concerned.*

### **MODIFICATION**

41. *The Authority may modify the terms and conditions of this licence. Prior to modification, the Authority will give written notice to the licensed operator-*

- *indicating the intention to modify the terms and conditions of the licence;*
- *setting out the reasons why it is considering modifying the terms and conditions of the licence; and*
- *affording the licensed operator a reasonable opportunity to make representations as to why the terms and conditions should not be modified.*



**ANNEXURE D: WASTE DISPOSAL LICENCE**



**WASTE DISPOSAL LICENCE**

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

**Issued in terms of Section 57 of the National Ports Act No. 12 of 2005 ("the Act")**

**MAY NOT BE TRANSFERRED WITHOUT THE PRIOR WRITTEN CONSENT OF THE AUTHORITY [Section 59(1) of the Act]**

**Name of Licensed Operator:** .....

**Registered physical address from where principal business is carried on:**.....

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

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

("hereinafter referred to as the "Licensee")

is hereby licensed by the Authority to undertake the following activity, and none other, in the Port of

.....

Nature of services or facilities authorised [Section 58(1)(b) of the Act]:

Waste disposal (delete non-applicable services):

- |                                    |                            |
|------------------------------------|----------------------------|
| (a) Collection and transport       | (d) Recycling waste oil    |
| (b) Provision of waste receptacles | (e) Recycling wastes other |
| (c) Maintenance activities         |                            |

This licence is issued subject:

- 1) compliance with conditions printed on this licence, which list some of the obligations of the Licensee;
- 2) compliance with the provisions of the Act, in particular sections 58 to 64, and all other relevant legislation;
- 3) compliance with any Regulations adopted in terms of section 80(1) of the Act;
- 4) compliance with the Port Rules for the commercial Ports of South Africa, adopted in terms of section 80(2) of the Act and with the Harbour Master's Written Instructions and the Authority's Written Instructions;
- 5) compliance with the Authority's Tariff Book, published in terms of section 72(1) of the Act; and
- 6) compliance with The International Ship and Port Security Code ("the ISPS Code") as it applies to all Ports of South Africa.

**Duration of licence:** \_\_\_\_\_ to \_\_\_\_\_. [Section 58(1)(a) of the Act]

**Annual licence fee:** R [TBD], inclusive of VAT. [Section 58(1) (c) of the Act]

.....  
**THE AUTHORITY'S DELEGATEE**

**Date:** .....

The Licensee accepts that this licence is issued subject to compliance with attached conditions and the statutory and other instruments listed above, as amended or changed from time to time.

.....  
**LICENSEE OR ITS AUTHORISED REPRESENTATIVE**

**Date:** .....

## **CONDITIONS OF WASTE DISPOSAL LICENCE**

### **GENERAL**

1. *All references to "the Act" are to the National Ports Act No. 12 of 2005.*
2. *The Licensee shall be a current member of Institute for Waste Management South Africa. If membership of the Institution is refused or cancelled for any reason, the Authority may, on good cause shown, grant an exemption from this condition.*
3. *The Licensee shall be registered in terms of the scheduled trades and occupational bylaws of the relevant municipality*
4. *The Licensee may not act or purport to act on behalf of Authority or to represent it in any way. The Licensee is not the mandatory, agent or employee of the Authority arising out of the issue of this Licence. The Authority shall not be liable, vicariously or otherwise, for the acts or omissions of the Licensee.*
5. *The Licensee acknowledges and agrees that the Authority may disclose any or all of the information provided by the Licensee to law enforcement, government and regulatory agencies and the Licensee releases and indemnifies the Authority from and against all losses, claims, damages, costs, liabilities, actions and causes of action arising out of or in any way connected with the disclosure or release of any information provided by the Licensee to such bodies.*
6. *The Licensee shall comply with all relevant management systems, policies and procedures and directives of the Authority.*

### **SAFETY, HEALTH, ENVIRONMENT AND EFFICIENCY**

7. *Waste disposal must be performed diligently, safely and without deliberate or undue delay.*
8. *The Act requires the Licensee to provide reliable, efficient and economical port services and facilities to port users in accordance with the conditions of the licence granted to it.*
9. *Copies of the registered landfill site permits obtained by the Licensee shall be made available to the Authority.*
10. *All waste disposal certificates, duly completed and signed, shall be forwarded to the Authority within 10 days after disposal.*
11. *Transporters will make available to the Authority:*
  - *a route plan;*
  - *a professional driving permit;*
  - *TREM Cards; and*
  - *the operator's registration.*

### **EMPLOYEES**

12. *Only employees with the applicable training as required by relevant legislation may be utilised by the Licensee. Training records shall be made available to the Authority upon request.*
13. *All employees of the Licensee must be in possession of a valid access permit issued in terms of the Port Rules.*
14. *All employees of the Licensee shall be neatly and uniformly attired, with the name and identification mark of the Licensee conspicuously displayed on their attire when such employees are within the precincts of the Port.*
15. *All personnel shall wear the protective clothing prescribed in the Port Rules.*

### **MOTOR VEHICLES**

16. *Each motor vehicle used by the Licensee in the Port in excess of one and a half tonne carrying capacity shall bear the name of the Licensee in a conspicuous place, or in such manner as the Authority may from time to time stipulate.*

17. All motor vehicles used for the transport of employees within the precincts of the Ports shall be closed top motor vehicles.

### **INSURANCE**

18. Public liability insurance shall be effected and maintained at all times. The extent of public liability insurance may be adjusted by the Authority on an annual basis, or after consultation with the Licensee.

19. Upon request, the Licensee shall furnish proof to the Authority of the continued existence and validity of such insurance and the regular payment of all premiums due under the policy.

20. The Authority shall not be liable should it at any stage be established that the insurance obtained is inadequate or insufficient for any reason whatsoever, or should the relevant insurer for any reason refuse or be unable to meet its liabilities in terms of the said policy.

### **STATUTORY CONDITIONS**

21. In terms of s 62(2) of the Act, the Licensee must-

- Within three months after the end of each financial year, submit to the Authority a report of its licensed operations during that financial year, including:
  - the quality and level of its service in the financial year under review. The quality and level of service standards are established as the internationally accepted performance norms published by various institutions involved in the maritime industry, namely the IMO, the World Bank and others;
  - its compliance with the terms and conditions of its licence, the Act and the regulations;
  - steps taken to eliminate anti-competitive and discriminatory practices;
  - its audited annual financial statements; and
  - the quality and level of performance with regard to such environmental criteria and social responsibility requirements as may be set by the Authority or required by other national legislation.
- From time to time, and where applicable, submit to the Authority such statistical information relating to its licensed operations as may reasonably be required by the Authority.

22. In terms of s 62(3) and (4) of the Act, the Authority may require a licensed operator, at the operator's cost, to submit such additional information as may be necessary to explain or amplify any report or information submitted by the licensed operator. Any information required by the Authority must be lodged by the licensed operator within the period and in the manner determined by the Authority.

23. In terms of s 62(5) of the Act, a licensed operator must, within 24 hours of its occurrence or discovery, inform the Authority of:

- any change in the control of the licensed operator;
- any industrial dispute between the licensed operator and its employees;
- any industrial accident or disaster involving any employee or agent of the licensed operator;
- any occurrence of fire within its premises within the port;
- any theft or pilferage within its premises or any theft or pilferage involving any cargo in its possession or control;
- any proceedings or claim instituted or made against the licensed operator which could materially affect its ability to perform any obligation or to comply with any term or condition of its licence; and
- any spillage or pollution that may have an impact on the environment.

24. Any incidents or accidents that may impact in any way on the environment shall be reported immediately to the Authority by the Licensee.

25. Any injury on duty (IOD), or fatality, shall be reported immediately to the Authority and to any applicable statutory body within the required time-frame.

### **TRANSFER**

26. In terms of s 59 of the Act, a licence may not be transferred to any third party without the prior written consent of the Authority and any transfer of a licence without such consent is of no force or effect. If the members of a licensed close corporation or shareholders of a licensed company alienate some or all of their interests or shares, prior written consent must be obtained if the transfer of shares or of

*membership interest results in a change of control of the licensee. In the case of a listed public company, a sale of more than 35% of the shareholding requires approval.*

### **DIRECTIVES**

27. *In terms of s 61(1) of the Act, the Authority may give directives with respect to standards of performance and procedures to be observed by licensed operators:*

- *to ensure the reliability of the supply of port services and facilities; or*
- *in the interest of public safety or the environment.*

28. *Before issuing a directive, the Authority must give written notice to the affected licensed operator:*

- *indicating the intention to issue the directive;*
- *setting out the reasons why it is considering issuing the directive; and*
- *affording the operator a reasonable opportunity to make representations as to why the directive should not be issued.*

### **CANCELLATION AND SUSPENSION**

29. *In terms of s 60(1) of the Act, the Authority may cancel or for a reasonable period suspend this licence, if:*

- *the licensed operator contravenes or breaches any condition of its licence, any provision of the Act or the regulations, or any directive issued by the Authority in terms of the Act;*
- *the licensed operator is sequestered, liquidated or placed under judicial management. One of the conditions of the s 57 licence is that a licensed operator must inform the Authority if any of these events were to occur;*
- *the licensed operator has made any assignment to, or composition with, its creditors; or*
- *the safety of vessels and persons within ports or the national security of the Republic so requires.*

30. *Prior to cancelling or suspending a licence or issuing a directive, the Authority, in terms of s 60(3), will give written notice to the licensed operator-*

- *indicating the intention to cancel or suspend the licence or the intention to issue a direction;*
- *setting out the reasons why it is considering cancelling or suspending the licence or issuing the direction; and*
- *affording the licensed operator a reasonable opportunity to make representations as to why the licence should not be cancelled or suspended or the direction should not be issued.*

31. *Where a licence is cancelled or suspended, the Authority may, if it considers that such cancellation or suspension would materially affect the movement of cargo or passengers in a port-*

- *provide the port service or operate the port facility;*
- *engage any employee of the licensed operator, or any third party, to carry out functions as directed by the Authority; and*
- *recover any expenses from the licensed operator concerned.*

### **MODIFICATION**

32. *The Authority may modify the terms and conditions of this licence. Prior to modification, the Authority will give written notice to the licensed operator-*

- *indicating the intention to modify the terms and conditions of the licence;*
- *setting out the reasons why it is considering modifying the terms and conditions of the licence; and*
- *affording the licensed operator a reasonable opportunity to make representations as to why the terms and conditions should not be modified.*

**ANNEXURE E: PRIVATE FLOATING CRANE LICENCE**



**PRIVATE FLOATING CRANE LICENCE**

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

**Issued in terms of Section 57 of the National Ports Act No. 12 of 2005 ("the Act")**

**MAY NOT BE TRANSFERRED WITHOUT THE PRIOR WRITTEN CONSENT OF THE AUTHORITY  
[Section 59(1) of the Act]**

**Name of Licensed Operator:** .....

**Registered physical address from where principal business is carried on:**.....

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

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

("hereinafter referred to as the "Licensee")

is hereby licensed by the Authority to operate a floating crane in the Port of

.....

This licence is issued subject to:

- 1) compliance with conditions printed on this licence, which list some of the obligations of the Licensee;
- 2) compliance with the provisions of the Act, in particular sections 58 to 64, and all other relevant legislation;
- 3) compliance with any Regulations adopted in terms of section 80(1) of the Act;
- 4) compliance with the Port Rules for the commercial Ports of South Africa adopted in terms of section 80(2) of the Act and with the Harbour Master's Written Instructions and the Authority's Written Instructions;
- 5) compliance with the Authority's tariff book published in terms of section 72(1) of the Act;
- 6) compliance with the Code of Safe Working Practice for Ships Working Cargo in South African Ports, 2006, issued by the South African Maritime Safety Authority; and
- 7) compliance with the International Ship and Port Security Code ("the ISPS Code") as it applies to all Ports of South Africa.

**Duration of licence:** \_\_\_\_\_ to \_\_\_\_\_. [Section 58(1)(a) of the Act]

**Annual licence fee:** R [TBD], inclusive of VAT. [Section 58(1) (c) of the Act]

.....  
**THE AUTHORITY'S DELEGATEE**

**Date:** .....

The Licensee accepts that this licence is issued subject to compliance with the attached conditions and the statutory and other instruments listed above, as amended or changed from time to time.

.....  
**LICENSEE OR ITS AUTHORISED REPRESENTATIVE**

**Date:** .....

## **CONDITIONS OF PRIVATE FLOATING CRANE LICENCE**

### **GENERAL**

1. All references to "the Act" are to the National Ports Act No. 12 of 2005.
2. The Licensee may not act or purport to act on behalf of Authority or to represent it in any way. The Licensee is not the mandatory, agent or employee of the Authority arising out of the issue of this licence. The Authority shall not be liable, vicariously or otherwise, for the acts or omissions of the Licensee.
3. The Licensee acknowledges and agrees that the Authority may disclose any or all of the information provided by the Licensee to law enforcement, government and regulatory agencies and the Licensee releases and indemnifies the Authority from and against all losses, claims, damages, costs, liabilities, actions and causes of action arising out of or in any way connected with the disclosure or release of any information provided by the Licensee to such bodies.
4. The Licensee shall comply with all relevant management systems, policies and procedures and directives of the Authority.

### **SAFETY, HEALTH, ENVIRONMENT AND EFFICIENCY**

5. The operation of the floating crane must be performed diligently, safely and without deliberate or undue delay.
6. The Act requires the Licensee to provide reliable, efficient and economical port services and facilities to port users in accordance with the conditions of the licence granted to it.
7. The Licensee shall have written safety, health, environment and quality programs in place at all times and shall make these available to the Authority for inspection upon request at all reasonable times.
8. The Licensee shall undertake annual risk assessments of the services that it offers within the Port and shall make these available to the Authority for inspection upon request.
9. The Authority may conduct random Safety Health and Environmental (SHE) audits without prior notification, in terms of s 63 of the Act, to assess the Licensee's compliance with the stipulations in this licence, including compliance with all relevant laws and other instruments, whether specifically listed in the licence or not.
10. During the on-loading or off-loading of cargo and containers, the Licensee shall ensure that all necessary measures are taken to prevent the spillage of cargo and/or containers into the waters of the Port, or onto the quayside.
11. The dumping of material by or on behalf of the Licensee of any nature or specification anywhere within the Port is strictly prohibited.

### **EMPLOYEES**

12. Only employees with the applicable training as required by relevant legislation issued may be utilised by the Licensee. Training records shall be made available to the Authority upon request.
13. All riggers, crane drivers, winch operators and gangway-men who are employed by the Licensee shall have a valid certificate of competence issued by an accredited institution which has been approved by the Maritime Industry Training Board and the certificate shall be available for inspection by the Authority.
14. All employees of the Licensee shall be neatly and uniformly attired, with the name and identification mark of the Licensee conspicuously displayed on their attire when such employees are within the precincts of the Port.
15. All employees of the Licensee must be in possession of a valid access permit issued in terms of the Port Rules.
16. All personnel shall wear the protective clothing prescribed by the Port Rules.

### **EQUIPMENT**

17. *All equipment shall be listed before use and the Licensee shall obtain test certificates from a competent person registered with the Department of Labour and the Engineering Council of South Africa. All lifting gear shall have a valid current inspection certificate which complies with the applicable legislation.*
18. *All gear and equipment required for the proper carrying out by the Licensee of stevedoring shall be maintained in good order and condition.*
19. *All equipment must be in proper working order and must be inspected regularly for oil leaks and spills. Any spills detected must be cleaned up immediately and disposed of at an appropriate landfill site by the Licensee to the entire satisfaction of the Authority and the competent authorities.*

### **MOTOR VEHICLES**

20. *Each motor vehicle used by the Licensee in the Port in excess of one and a half tonne carrying capacity, shall bear the name of the Licensee in a conspicuous place, or in such manner as the Authority may from time to time stipulate.*
21. *All motor vehicles used for the transport of employees within the precincts of the Ports shall be closed top motor vehicles.*

### **INSURANCE**

22. *Public liability insurance shall be effected and maintained at all times. The extent of public liability insurance may be adjusted by the Authority on an annual basis, or after consultation with the Licensee.*
23. *Upon request, the Licensee shall furnish proof to the Authority of the continued existence and validity of such insurance and the regular payment of all premiums due under the policy.*
24. *The Authority shall not be liable should it at any stage be established that the insurance obtained is inadequate or insufficient for any reason whatsoever, or should the relevant insurer for any reason refuse or be unable to meet its liabilities in terms of the said policy.*

### **STATUTORY CONDITIONS**

25. *In terms of s 62(2) of the Act, the Licensee must-*
  - *Within three months after the end of each financial year, submit to the Authority a report of its licensed operations during that financial year, including:*
    - *the quality and level of its service in the financial year under review. The quality and level of service standards are established as internationally accepted performance norms published by various institutions involved in the maritime industry, namely the IMO, the World Bank and others;*
    - *its compliance with the terms and conditions of its licence, this Act and the regulations;*
    - *steps taken to eliminate anti-competitive and discriminatory practices;*
    - *its audited annual financial statements; and*
    - *the quality and level of performance with regard to such environmental criteria and social responsibility requirements as may be set by the Authority or required by other national legislation.*
  - *From time to time, and where applicable, submit to the Authority such statistical information relating to its licensed operations as may reasonably be required by the Authority.*
26. *In terms of s 62(3) and (4) of the Act, the Authority may require a licensed operator, at the operator's cost, to submit such additional information as may be necessary to explain or amplify any report or information submitted by the licensed operator. Any information required by the Authority must be lodged by the licensed operator within the period and in the manner determined by the Authority.*
27. *In terms of s 62(5) of the Act, a licensed operator must, within 24 hours of its occurrence or discovery, inform the Authority of:*
  - *any change in the control of the licensed operator;*
  - *any industrial dispute between the licensed operator and its employees;*
  - *any industrial accident or disaster involving any employee or agent of the licensed operator;*

- *any occurrence of fire within its premises within the port;*
  - *any theft or pilferage within its premises or any theft or pilferage involving any cargo in its possession or control;*
  - *any proceedings or claim instituted or made against the licensed operator which could materially affect its ability to perform any obligation or to comply with any term or condition of its licence; and*
  - *any spillage or pollution that may have an impact on the environment.*
28. *Any incidents or accidents that may impact in any way on the environment shall be reported immediately to the Authority by the Licensee.*
29. *Any injury on duty (IOD), or fatality, shall be reported immediately to the Authority and to any applicable statutory body within the required time-frame.*

### **TRANSFER**

30. *In terms of s 59 of the Act, a licence may not be transferred to any third party without the prior written consent of the Authority and any transfer of a licence without such consent is of no force or effect. If the members of a licensed close corporation or shareholders of a licensed company alienate some or all of their interests or shares, prior written consent must be obtained if the transfer of shares or of membership interest results in a change of control of the licensee. In the case of a listed public company, a sale of more than 35% of the shareholding requires approval.*

### **DIRECTIVES**

31. *In terms of s 61(1) of the Act, the Authority may give directives with respect to standards of performance and procedures to be observed by licensed operators:*
- *to ensure the reliability of the supply of port services and facilities; or*
  - *in the interest of public safety or the environment.*
32. *Before issuing a directive, the Authority must give written notice to the affected licensed operator:*
- *indicating the intention to issue the directive;*
  - *setting out the reasons why it is considering issuing the directive; and*
  - *affording the operator a reasonable opportunity to make representations as to why the directive should not be issued.*

### **CANCELLATION AND SUSPENSION**

33. *In terms of s 60(1) of the Act, the Authority may cancel or for a reasonable period suspend this licence, if:*
- *the licensed operator contravenes or breaches any condition of its licence, any provision of the Act or the regulations, or any directive issued by the Authority in terms of the Act;*
  - *the licensed operator is sequestered, liquidated or placed under judicial management. One of the conditions of the s 57 licence is that a licensed operator must inform the Authority if any of these events were to occur;*
  - *the licensed operator has made any assignment to, or composition with, its creditors; or*
  - *the safety of vessels and persons within ports or the national security of the Republic so requires.*
34. *Prior to cancelling or suspending a licence or issuing a directive, the Authority, in terms of s 60(3), will give written notice to the licensed operator-*
- *indicating the intention to cancel or suspend the licence or the intention to issue a direction;*
  - *setting out the reasons why it is considering cancelling or suspending the licence or issuing the direction; and*
  - *affording the licensed operator a reasonable opportunity to make representations as to why the licence should not be cancelled or suspended or the direction should not be issued.*
35. *Where a licence is cancelled or suspended, the Authority may, if it considers that such cancellation or suspension would materially affect the movement of cargo or passengers in a port-*
- *provide the port service or operate the port facility;*
  - *engage any employee of the licensed operator, or any third party, to carry out functions as directed by the Authority; and*
  - *recover any expenses from the licensed operator concerned.*



**MODIFICATION**

36. *The Authority may modify the terms and conditions of this licence. Prior to modification, the Authority will give written notice to the licensed operator-*

- *indicating the intention to modify the terms and conditions of the licence;*
- *setting out the reasons why it is considering modifying the terms and conditions of the licence; and*
- *affording the licensed operator a reasonable opportunity to make representations as to why the terms and conditions should not be modified.*

## ANNEXURE F: FIRE PROTECTION AND FIRE EQUIPMENT INSTALLATION AND MAINTENANCE LICENCE



### FIRE PROTECTION AND FIRE EQUIPMENT INSTALLATION AND MAINTENANCE LICENCE

Licence Number: .....

Issued in terms of the Port Rules for the commercial ports of South Africa, adopted in terms of the National Ports Act No. 12 of 2005 ("the Act")

**MAY NOT BE TRANSFERRED WITHOUT THE PRIOR WRITTEN CONSENT OF THE AUTHORITY**

Name of Licensed Operator: .....

Registered physical address from where principal business is carried on: .....

Registration Number: .....

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

("hereinafter referred to as the "Licensee")

The Licensee is hereby licensed by the Authority to undertake the following activity, and none other, in the Port of .....

**Nature of services or facilities authorised:**

Fire protection and fire equipment installation and maintenance services (delete non-applicable service):

- (a) Fire protection services
- (b) Fire equipment installation and maintenance services

This licence is issued subject to:

- 1) compliance with the conditions printed on this licence, which list some of the obligations of the Licensee;
- 2) compliance with the provisions of the Act and all other relevant legislation;
- 3) compliance with any Regulations adopted in terms of section 80(1) of the Act;
- 4) compliance with the Port Rules for the commercial ports of the Republic of South Africa, adopted in terms of section 80(2) of the Act, and with the Harbour Master's Written Instructions and the Authority's Written Instructions;
- 5) compliance with the Authority's Tariff Book, published in terms of section 72(1) of the Act; and
- 6) compliance with the International Ship and Port Security Code ("the ISPS Code") as it applies to all Ports of South Africa.

Duration of licence: \_\_\_\_\_ to \_\_\_\_\_.

Annual licence fee: R [TBD], inclusive of VAT.

.....

**THE AUTHORITY'S DELEGATEE**

Date: .....

The Licensee accepts that this licence is issued subject to compliance with the attached conditions and the statutory and other instruments listed above, as amended or changed from time to time.

.....

**LICENSEE OR ITS AUTHORISED REPRESENTATIVE**

Date: .....

## **CONDITIONS OF FIRE PROTECTION AND FIRE EQUIPMENT INSTALLATION AND MAINTENANCE LICENCE**

### **GENERAL**

1. *The Licensee shall be a member of the applicable one or more of the following institutions:*
  - *Fire Fighting Equipment Traders' Association*
  - *Automatic Sprinkler Inspection Bureau*
  - *Fire Detection Installers Association**If membership to any of the Associations is refused or cancelled for any reason, the Authority may, on good cause shown, grant an exemption from this condition.*
2. *The Licensee may not act or purport to act on behalf of Authority or to represent it in any way. The Licensee is not the mandatory, agent or employee of the Authority arising out of the issue of this Licence. The Authority shall not be liable, vicariously or otherwise, for the acts or omissions of the Licensee.*
3. *The Licensee acknowledges and agrees that the Authority may disclose any or all of the information provided by the Licensee to law enforcement, government and regulatory agencies and the Licensee releases and indemnifies the Authority from and against all losses, claims, damages, costs, liabilities, actions and causes of action arising out of or in any way connected with the disclosure or release of any information provided by the Licensee to such bodies.*
4. *The Licensee shall comply with all relevant management systems, policies and procedures and directives of the Authority.*

### **SAFETY, HEALTH, ENVIRONMENT AND EFFICIENCY**

5. *Fire protection and fire equipment installation and maintenance services must be performed diligently, safely and without deliberate or undue delay.*
6. *The Licensee shall have written safety, health, environment and quality programs in place at all times and shall make these available to the Authority for inspection upon request at all reasonable times.*
7. *The Licensee shall undertake annual risk assessments of the fire protection services that it offers within the Port and shall make these available to the Authority for inspection upon request.*
8. *The Licensee shall notify the Authority of any fire or hazardous chemical spills without delay.*
9. *Any injury on duty (IOD), or fatality, shall be reported to the Authority without delay and to any applicable statutory body within the required time-frame.*

### **EMPLOYEES**

- 1) *Only duly qualified permanent personnel and suitably trained and competent casual personnel may be employed by the Licensee.*
10. *All personnel shall have a valid certificate of competence issued by the Local Authority (Fire Department) and the South African Qualifications Certificate Committee (SAQCC), and the certificate shall be made available by the Licensee for inspection by the Authority at all reasonable times.*
11. *All employees of the Licensee shall be neatly and uniformly attired, with the name and identification mark of the Licensee conspicuously displayed on their attire when such employees are within the precincts of the Port.*
12. *All employees of the Licensee must be in possession of a valid access permit issued in terms of the Port Rules.*
13. *All personnel shall wear the following protective clothing:*
  - a) *Fire Protection Services:*
    - *SANS approved safety shoes or boots;*
    - *A reflective jacket;*
    - *A fire helmet with visor (SANS and NFPA approved);*
    - *A fire coat or bunker suit (SANS and NFPA approved); and*

- *Any other personal protective equipment as identified by the risk assessment.*

*b) Fire Equipment Installation and Maintenance Services:*

- *SANS approved hard hat;*
- *SANS approved safety shoes or boots;*
- *A reflective jacket; and*
- *Any other personal protective equipment as identified by the risk assessment.*

**EQUIPMENT**

- 14. All equipment shall be listed before use and the Licensee shall obtain test certificates from a SANS accredited company or services provider. All equipment shall have a valid current inspection certificate which complies with applicable legislation.*
- 15. All fire protection equipment required for the proper carrying out by the Licensee of fire protection services shall be maintained in good order and condition.*
- 16. All equipment must be in proper working order and machines and motor vehicles must be inspected regularly for oil leaks and spills. Any spills detected must be cleaned up immediately and disposed of at an appropriate landfill site by the Licensee to the satisfaction of the Authority and the competent authorities.*
- 17. All equipment used by the Licensee shall be removed from wharfs, quays, jetties and other work places in a Port without delay after services have been completed on a particular vessel, or within such extended time as the Authority may allow, on good cause shown.*

**MOTOR VEHICLES**

- 18. Each motor vehicle used by the Licensee in the Port in excess of one and a half tonne carrying capacity shall bear the name of the Licensee in a conspicuous place on such motor vehicle, or in such manner as the Authority may from time to time stipulate.*
- 19. All motor vehicles used for the transport of employees within the precincts of the Ports shall be closed top motor vehicles.*

**REPORTING AND PROVISION OF INFORMATION**

- 20. The Licensee shall provide the Authority with a copy of the certificate of occupation upon inspection of a new building within the Port.*
- 21. The Licensee shall provide the Authority with a service record of all equipment that has been maintained in the Port.*

**INSURANCE**

- 22. Public liability insurance shall be effected and maintained at all times. The extent of public liability insurance may be adjusted by the Authority on an annual basis, or after consultation with the Licensee.*
- 23. Upon request, the Licensee shall furnish proof to the Authority of the continued existence and validity of such insurance and the regular payment of all premiums due under the policy.*
- 24. The Authority shall not be liable should it at any stage be established that the insurance obtained is inadequate or insufficient for any reason whatsoever, or should the relevant insurer for any reason refuse or be unable to meet its liabilities in terms of the said policy.*

**AMENDMENT, SUSPENSION, WITHDRAWAL OR CANCELLATION**

- 25. The Authority may on good cause shown, including the breach of any one or more of these conditions at any time suspend, withdraw or cancel this licence provided that it will follow a fair procedure before such a decision is taken.*
- 26. The Authority may also amend the conditions contained in this licence provided that, prior to making a decision to amend, the Authority will indicate the reasons why it considers it necessary to amend the conditions and afford the licensee a reasonable opportunity to make representations as to why the conditions should not be amended.*

*27. The Licensee shall have no claim against the Authority arising out of the suspension, withdrawal or cancellation of the permit or the amendment of the conditions, but shall be entitled to receive written reasons from the Authority in terms of the law.*

**ANNEXURE G: BUNKERING LICENCE**



**BUNKERING LICENCE**

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

**Issued in terms of the Port Rules for the commercial ports of South Africa, adopted in terms of the National Port Act No. 12 of 2005 ("the Act")**

**MAY NOT BE TRANSFERRED WITHOUT THE PRIOR WRITTEN CONSENT OF THE AUTHORITY**

**Name of Licensed Operator:** .....

**Registered physical address from where principal business is carried on:** .....

.....

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

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

("hereinafter referred to as the "Licensee")

The Licensee is hereby licensed by the Authority to undertake the following activities, and none other, in the Port of

.....

Bunkering services (delete non-applicable services):

- (a) Barge
- (b) Fixed (Quay side)
- (c) Road tanker
- (d) Unrestricted

This licence is issued subject to:

- 1) compliance with the conditions printed on this licence, which list some of the obligations of the Licensee;
- 2) compliance with the provisions of the Act and all other relevant legislation;
- 3) compliance with any Regulations adopted in terms of section 80(1) of the Act;
- 4) compliance with the Port Rules for the commercial ports of the Republic of South Africa, adopted in terms of section 80(2) of the Act, and with the Harbour Master's Written Instructions and the Authority's Written Instructions;
- 5) compliance with the Authority's Tariff Book, published in terms of section 72(1) of the Act; and
- 6) compliance with the International Ship and Port Security Code ("the ISPS Code") as it applies to all Ports of South Africa.

**Duration of licence:** \_\_\_\_\_ to \_\_\_\_\_.

**Annual licence fee:** R [TBD], inclusive of VAT.

**Date:** .....

.....  
**THE AUTHORITY'S DELEGATEE**

The Licensee accepts that this licence is issued subject compliance with the attached conditions and the statutory and other instruments listed above, as amended or changed from time to time.

**Date:** .....

.....  
**LICENSEE OR ITS AUTHORISED REPRESENTATIVE**

## **CONDITIONS OF BUNKERING LICENCE**

### **GENERAL**

1. *The Licensee shall comply at all times with all the provisions of MARPOL Annex I Regulation 13H (7), ISGOTT Manual and the ISM Code, as they may be amended from time to time. The Licensee must be familiar with the provisions of ISGOTT and the ISM Code and ensure that its personnel know these provisions and apply them.*
2. *The Licensee shall ensure that the bunker tanker has on board a copy of the ISGOTT at all times.*
3. *The Licensee may not act or purport to act on behalf of the Authority or to represent it in any way. The Licensee is not the mandatory, agent or employee of the Authority arising out of the issue of this Licence. The Authority shall not be liable, vicariously or otherwise, for the acts or omissions of the Licensee.*
4. *The Licensee acknowledges and agrees that the Authority may disclose any or all of the information provided by the Licensee to law enforcement, government and regulatory agencies and the Licensee releases and indemnifies the Authority from and against all losses, claims, damages, costs, liabilities, actions and causes of action arising out of or in any way connected with the disclosure or release of any information provided by the Licensee to such bodies.*
5. *The Licensee shall comply with all relevant Authority management systems, policies and procedures and directives.*

### **SAFETY, HEALTH, ENVIRONMENT AND EFFICIENCY**

6. *Bunkering operations must be performed diligently, safely and without deliberate or undue delay.*
7. *During operations the Licensee shall ensure that all necessary measures are taken to prevent fuel spillage into the waters of the Port, or onto the quayside. An Environmental Management Plan must be submitted to the Authority which must cover all spill and pollution control measures.*
8. *The Licensee shall have written safety, health, environment and quality programs in place at all times and shall make these available to the Authority for inspection upon request at all reasonable times.*
9. *The Licensee shall undertake annual risk assessments of the bunkering services that it offers within the Port and shall make these available to the Authority for inspection upon request.*
10. *Any injury on duty (IOD), or fatality, shall be reported to the Authority and to any applicable statutory body within the required time-frame.*
11. *Any incidents or accidents arising out of the licensed operations that may impact in any way on the environment shall be reported immediately to the Authority by the Licensee. The following information must, as a minimum, be provided:*
  - *the location of the spill;*
  - *the type of oil spilt;*
  - *the approximate quantity; and*
  - *action taken so far.*
12. *The manifold(s) of the bunker tanker shall be fitted with a drip spill pan to contain any oil spill. A gutter plate shall also be provided on the main deck to contain any oil spill on deck.*
13. *The bunker tanker shall have a proper fender system to minimise damage to the receiving vessel during bunkering.*
14. *The bunker tanker shall carry anti oil-pollution equipment and a minimum of 400 litres of approved dispersants at all times.*
15. *Shore bunkering connections shall not take place at the tankers' cargo manifold whilst cargo operations are in progress. Bunkering connections shall take place before or after completion of cargo operations.*
16. *Shore bunkering connections to petroleum, gas or chemical tankers whilst cargo or dedicated products are being discharged are prohibited. Bunkering connections shall take place before or after completion of the cargo operations or if the bunker point is situated away from the cargo manifold.*

17. *The Bunker Barge Master shall obtain permission from the Authority's Fire Services Department before coming alongside a petroleum or chemical tanker at berths designated to be high risk berths by the Authority.*

#### **EMPLOYEES**

18. *Only employees with the applicable training as required by relevant legislation may be utilised by the Licensee. Training records shall be made available to the Authority upon request.*

19. *All personnel shall wear the following protective clothing:*

- *Safety goggles (where applicable);*
- *Safety footwear;*
- *Hard hat;*
- *Gloves (where applicable); and*
- *Any other Personnel Protective Equipment as identified in a risk assessment.*

#### **EQUIPMENT**

20. *All Bunkering equipment required for the proper carrying out of the bunkering services shall be maintained in good order and condition. Maintenance of equipment shall be undertaken outside of the Authority's property.*

21. *All equipment used by the Licensee shall be removed from wharfs, quays, jetties and other work places in a Port without delay after bunkering operations have been completed on a particular vessel, or within such extended time as the Authority may allow, on good cause shown.*

22. *All bunkering equipment must be in proper working order and machines and motor vehicles must be inspected regularly for oil leaks and spills. Drip trays must be utilised where necessary. Any spills detected must be cleaned up immediately and disposed of at an appropriate landfill site by the Company to the satisfaction of the Authority and the competent authorities.*

#### **MOTOR VEHICLES**

23. *Each motor vehicle used by the Licensee in the Port in excess of one and a half tonne carrying capacity shall bear the name of the Licensee in a conspicuous place on such motor vehicle, or as the Authority may from time to time stipulate.*

24. *All motor vehicles used for the transport of employees within the precincts of the Ports shall be closed top motor vehicles.*

#### **INSURANCE**

25. *Public liability insurance shall be effected and maintained at all times. The extent of public liability insurance may be adjusted by the Authority on an annual basis, or after consultation with the Licensee.*

26. *Upon request, the Licensee shall furnish proof to the Authority of the continued existence and validity of such insurance and the regular payment of all premiums due under the policy.*

27. *The Authority shall not be liable should it at any stage be established that the insurance obtained is inadequate or insufficient for any reason whatsoever, or should the relevant insurer for any reason refuse or be unable to meet its liabilities in terms of the said policy.*

#### **AMENDMENT, SUSPENSION, WITHDRAWAL OR CANCELLATION**


28. *The Authority may on good cause shown, including the breach of any one or more of these conditions, at any time suspend, withdraw or cancel this licence provided that it will follow a fair procedure before such a decision is taken.*

29. *The Authority may also amend the conditions contained in this licence provided that, prior to making a decision to amend, the Authority will indicate the reasons why it considers it necessary to amend the conditions and afford the licensee a reasonable opportunity to make representations as to why the conditions should not be amended.*

30. *The Licensee shall have no claim against the Authority arising out of the suspension, withdrawal or cancellation of the permit or the amendment of the conditions, but shall be entitled to receive written reasons from the Authority in terms of the law.*



**ANNEXURE H: POLLUTION CONTROL LICENCE**

 <p><b>TRANSNET</b> national ports authority</p>	<h2 style="text-align: center;">POLLUTION CONTROL LICENCE</h2> <p style="text-align: right;">Licence Number: .....</p> <p><b>Issued in terms of the Port Rules for the commercial ports of South Africa, adopted in terms of the National Ports Act No. 12 of 2005 ("the Act")</b></p> <p><b>MAY NOT BE TRANSFERRED WITHOUT THE PRIOR WRITTEN CONSENT OF THE AUTHORITY</b></p> <p><b>Name of Licensed Operator:</b> .....</p> <p><b>Registered physical address from where principal business is carried on:</b> .....</p> <p>.....</p> <p><b>Registration Number:</b> .....</p> <p><b>V.A.T. Registration Number:</b> .....</p> <p>("hereinafter referred to as the "Licensee")</p> <p><b>Nature of services or facilities authorised:</b> Pollution control (delete non-applicable service):</p> <table border="0"><tr><td>(a) Management</td><td> </td><td>(c) control; and/ or</td></tr><tr><td>(b) Prevention</td><td> </td><td>(d) rehabilitation services.</td></tr></table> <p>This licence is issued subject to:</p> <ol style="list-style-type: none"><li>1) compliance with the conditions printed on this licence, which list some of the obligations of the Licensee;</li><li>2) compliance with the provisions of the Act and all other relevant legislation;</li><li>3) compliance with any Regulations adopted in terms of section 80(1) of the Act;</li><li>4) compliance with the Port Rules for the commercial ports of the Republic of South Africa adopted in terms of section 80(2) of the Act, and with the Harbour Master's Written Instructions and the Authority's Written Instructions;</li><li>5) compliance with the Authority's Tariff Book, published in terms of section 72(1) of the Act; and</li><li>6) compliance with the International Ship and Port Security Code ("the ISPS Code") as it applies to all Ports of South Africa.</li></ol> <p><b>Duration of licence:</b> _____ to _____.</p> <p><b>Annual licence fee:</b> R [TBD], inclusive of VAT.</p> <p>..... <b>Date:</b> .....</p> <p><b>THE AUTHORITY'S DELEGATEE</b></p> <p>The Licensee accepts that this licence is issued subject to compliance with the attached conditions and the statutory and other instruments listed above, as amended or changed from time to time.</p> <p>..... <b>Date:</b> .....</p> <p><b>LICENSEE OR ITS AUTHORISED REPRESENTATIVE</b></p>	(a) Management		(c) control; and/ or	(b) Prevention		(d) rehabilitation services.
(a) Management		(c) control; and/ or					
(b) Prevention		(d) rehabilitation services.					

## **CONDITIONS OF POLLUTION CONTROL LICENCE**

### **GENERAL**

1. *The Licensee shall be a member of the Institute of Waste Management South Africa. If membership is refused or cancelled for any reason, the Authority may, on good cause shown, grant an exemption from this condition.*
2. *The Licensee may not act or purport to act on behalf of Authority or to represent it in any way. The Licensee is not the mandatory, agent or employee of the Authority arising out of the issue of this Licence. The Authority shall not be liable, vicariously or otherwise, for the acts or omissions of the Licensee.*
3. *The Licensee acknowledges and agrees that the Authority may disclose any or all of the information provided by the Licensee to law enforcement, government and regulatory agencies and the Licensee releases and indemnifies the Authority from and against all losses, claims, damages, costs, liabilities, actions and causes of action arising out of or in any way connected with the disclosure or release of any information provided by the Licensee to such bodies.*
4. *The Licensee shall comply with all relevant management systems, policies and procedures and directives of the Authority.*

### **SAFETY, HEALTH, ENVIRONMENT AND EFFICIENCY**

5. *Pollution control must be performed diligently, safely and without deliberate or undue delay.*
6. *The Licensee shall have written safety, health, environment and quality programs in place at all times and shall make these available to the Authority for inspection upon request at all reasonable times.*
7. *The Licensee shall undertake annual risk assessments of the pollution services that it offers within the Port and shall make these available to the Authority for inspection upon request.*
8. *Any injury on duty (IOD), or fatality, shall be reported to the Authority without delay and to any applicable statutory body within the required time-frame.*
9. *Any incidents or accidents arising out of the licensed operations that may impact in any way on the environment shall be reported immediately to the Authority by the Licensee.*
10. *Any material retrieved shall be disposed of at an authorized site and a duly completed and signed waste disposal certificate shall be forwarded to the Authority within 10 days after disposal.*

### **EMPLOYEES**

11. *Only employees with the applicable training as required by relevant legislation within the ambit of the licence issued may be utilised by the Company. Training records shall be made available to the Authority upon request.*
12. *All personnel shall wear the protective clothing prescribed by the Port Rules.*

### **INSURANCE**

13. *Public liability insurance shall be effected and maintained at all times. The extent of public liability insurance may be adjusted by the Authority on an annual basis, or after consultation with the Licensee.*
14. *Upon request, the Licensee shall furnish proof to the Authority of the continued existence and validity of such insurance and the regular payment of all premiums due under the policy.*
15. *The Authority shall not be liable should it at any stage be established that the insurance obtained is inadequate or insufficient for any reason whatsoever, or should the relevant insurer for any reason refuse or be unable to meet its liabilities in terms of the said policy.*

### **AMENDMENT, SUSPENSION, WITHDRAWAL OR CANCELLATION**

16. *The Authority may, on good cause shown, including the breach of any one or more of these conditions, at any time suspend, withdraw or cancel this licence, provided that it will follow a fair procedure before such a decision is taken.*

- 17. The Authority may also amend the conditions contained in this licence provided that, prior to making a decision to amend, the Authority will indicate the reasons why it considers it necessary to amend the conditions and afford the licensee a reasonable opportunity to make representations as to why the conditions should not be amended.*
- 18. The Licensee shall have no claim against the Authority arising out of the suspension, withdrawal or cancellation of the permit or the amendment of the conditions, but shall be entitled to receive written reasons from the Authority in terms of the law.*

**ANNEXURE I: DIVING LICENCE**



**DIVING LICENCE**

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

**Issued in terms of the Port Rules for the commercial ports of South Africa, adopted in terms of the National Ports Act No. 12 of 2005 ("the Act")**

**MAY NOT BE TRANSFERRED WITHOUT THE PRIOR WRITTEN CONSENT OF THE AUTHORITY**

**Name of Licensed Operator:** .....

**Registered physical address from where principal business is carried on:** .....

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

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

("hereinafter referred to as the "Licensee")

The Licensee is hereby licensed by the Authority to undertake diving activities in the Port of .....

This licence is issued subject to:

- 1) compliance with the conditions printed on this licence, which list some of the obligations of the Licensee;
- 2) compliance with the provisions of the Act and all other relevant legislation;
- 3) compliance with any Regulations adopted in terms of section 80(1) of the Act;
- 4) compliance with the Port Rules for the commercial ports of the Republic of South Africa adopted in terms of section 80(2) of the Act, and with the Harbour Master's Written Instructions and the Authority's Written Instructions;
- 5) compliance with the Authority's Tariff Book, published in terms of section 72(1) of the Act; and
- 6) compliance with the International Ship and Port Security Code ("the ISPS Code") as it applies to all Ports of South Africa.

**Duration of licence:** \_\_\_\_\_ to \_\_\_\_\_.

**Annual licence fee:** R [TBD], inclusive of VAT.

.....  
**THE AUTHORITY'S DELEGATEE**

**Date:** .....

The Licensee accepts that this licence is issued subject to compliance with the attached conditions and the statutory and other instruments listed above, as amended or changed from time to time.

.....  
**LICENSEE OR ITS AUTHORISED REPRESENTATIVE**

**Date:** .....

## **CONDITIONS OF DIVING LICENCE**

### **GENERAL**

1. *The Licensee may not act or purport to act on behalf of Authority or to represent it in any way. The Licensee is not the mandatory, agent or employee of the Authority arising out of the issue of this Licence. The Authority shall not be liable, vicariously or otherwise, for the acts or omissions of the Licensee.*
2. *The Licensee acknowledges and agrees that the Authority may disclose any or all of the information provided by the Licensee to law enforcement, government and regulatory agencies and the Licensee releases and indemnifies the Authority from and against all losses, claims, damages, costs, liabilities, actions and causes of action arising out of or in any way connected with the disclosure or release of any information provided by the Licensee to such bodies.*
3. *The Licensee shall comply with all the Authority's relevant management systems, policies and procedures and directives, particularly the detailed Diving Procedures, as amended from time to time.*

### **SAFETY, HEALTH, ENVIRONMENT AND EFFICIENCY**

4. *Diving services must be performed diligently, safely and without deliberate or undue delay.*
5. *The Licensee shall ensure that all equipment used during the performance of diving operations, shall be removed from wharfs, quays, jetties and other work places in a Port without delay after the provision of services is completed on a particular vessel, or within such extended time as the Authority may allow, on good cause shown.*
6. *The Licensee shall have written safety, health, environment and quality programs in place at all times and shall make these available to the Authority for inspection upon request at all reasonable times.*
7. *The Licensee shall undertake annual risk assessments of the diving services that it offers within the Port and shall make these available to the Authority for inspection upon request.*
8. *Any injury on duty (IOD), or fatality, shall be reported to the Authority without delay and to any applicable statutory body within the required time-frame.*
9. *Any incidents or accidents arising out of the licensed operations that may impact in any way on the environment shall be reported immediately to the Authority by the Licensee.*

### **EMPLOYEES**

10. *Only employees with the applicable training as required by relevant legislation may be utilised by the Licensee. Training records shall be made available to the Authority upon request.*
11. *All employees of the Licensee must be in possession of a valid access permit issued in terms of the Port Rules.*

### **MOTOR VEHICLES**

12. *Each motor vehicle used by the Licensee in the Port in excess of one and a half tonne carrying capacity shall bear the name of the Licensee in a conspicuous place on such motor vehicle, or in such manner as the Authority may from time to time stipulate.*
13. *All motor vehicles used for the transport of employees within the precincts of the Ports shall be closed top motor vehicles.*

**INSURANCE**

14. *Public liability insurance shall be effected and maintained at all times. The extent of public liability insurance may be adjusted by the Authority on an annual basis, or after consultation with the Licensee.*
15. *Upon request, the Licensee shall furnish proof to the Authority of the continued existence and validity of such insurance and the regular payment of all premiums due under the policy.*
16. *The Authority shall not be liable should it at any stage be established that the insurance obtained is inadequate or insufficient for any reason whatsoever, or should the relevant insurer for any reason refuse or be unable to meet its liabilities in terms of the said policy.*

**AMENDMENT, SUSPENSION, WITHDRAWAL OR CANCELLATION**

17. *The Authority may on good cause shown, including the breach of any one or more of these conditions, at any time suspend, withdraw or cancel this licence provided that it will follow a fair procedure before such a decision is taken.*
18. *The Authority may also amend the conditions contained in this licence provided that, prior to making a decision to amend, the Authority will indicate the reasons why it considers it necessary to amend the conditions and afford the licensee a reasonable opportunity to make representations as to why the conditions should not be amended.*
19. *The Licensee shall have no claim against the Authority arising out of the suspension, withdrawal or cancellation of the permit or the amendment of the conditions, but shall be entitled to receive written reasons from the Authority in terms of the law.*

## ANNEXURE J: PEST CONTROL LICENCE



### PEST CONTROL LICENCE

Licence Number: .....

Issued in terms of the Port Rules for the commercial ports of South Africa, adopted in terms of the National Ports Act No. 12 of 2005 ("the Act")

**MAY NOT BE TRANSFERRED WITHOUT THE PRIOR WRITTEN CONSENT OF THE AUTHORITY**

Name of Licensed Operator: .....

Registered physical address from where principal business is carried on: .....

Registration Number: .....

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

("hereinafter referred to as the "Licensee")

**Nature of services or facilities authorised:**

Pest control (delete non-applicable service):

- |                              |                             |
|------------------------------|-----------------------------|
| (a) Aerial application       | (d) Structural pest control |
| (b) Plant pests and diseases | (e) Fumigation              |
| (c) Weed control             | (f) Wood preservation       |

This licence is issued subject to:

- 1) compliance with the conditions printed on this licence, which list some of the obligations of the Licensee;
- 2) compliance with the provisions of the Act and all other relevant legislation;
- 3) compliance with any Regulations adopted in terms of section 80(1) of the Act;
- 4) compliance with the Port Rules for the commercial ports of the Republic of South Africa, adopted in terms of section 80(2) of the Act, and with the Harbour Master's Written Instructions and the Authority's Written Instructions;
- 5) compliance with the Authority's Tariff Book, published in terms of section 72(1) of the Act; and
- 6) compliance with the International Ship and Port Security Code ("the ISPS Code") as it applies to all Ports of South Africa.

Duration of licence: \_\_\_\_\_ to \_\_\_\_\_.

Annual licence fee: R [TBD], inclusive of VAT.

.....  
**THE AUTHORITY'S DELEGATEE**

Date: .....

The Licensee accepts that this licence is issued subject to compliance with the attached conditions and the statutory and other instruments listed above, as amended or changed from time to time.

.....  
**LICENSEE OR ITS AUTHORISED REPRESENTATIVE**

Date: .....

## **CONDITIONS OF PEST CONTROL LICENCE**

### **GENERAL**

- 1. The Licensee shall be registered as a Pest Control Operator by the National Department of Agriculture, in terms of the Fertilisers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, Act No. 36 of 1947, and may only conduct such work in the specific field of pest control as registered for. In addition the Licensee shall be registered in terms of the scheduled trades and occupational bylaws of the Municipal area.*
- 2. The Licensee may not act or purport to act on behalf of Authority or to represent it in any way. The Licensee is not the mandatory, agent or employee of the Authority arising out of the issue of this Licence. The Authority shall not be liable, vicariously or otherwise, for the acts or omissions of the Licensee.*
- 3. The Licensee acknowledges and agrees that the Authority may disclose any or all of the information provided by the Licensee to law enforcement, government and regulatory agencies and the Licensee releases and indemnifies the Authority from and against all losses, claims, damages, costs, liabilities, actions and causes of action arising out of or in any way connected with the disclosure or release of any information provided by the Licensee to such bodies.*
- 4. The Licensee shall comply with all relevant Authority management systems, policies and procedures and directives.*

### **SAFETY, HEALTH, ENVIRONMENT AND EFFICIENCY**

- 5. Pest control must be performed diligently, safely and without deliberate or undue delay.*
- 6. The Licensee shall have written safety, health, environment and quality programs in place at all times and shall make these available to the Authority for inspection upon request at all reasonable times.*
- 7. The Licensee shall undertake annual risk assessments of the pollution services that it offers within the Port and shall make these available to the Authority for inspection upon request.*
- 8. Any injury on duty (IOD), or fatality, shall be reported to the Authority without delay and to any applicable statutory body within the required time-frame.*
- 9. Any incidents or accidents arising out of the licensed operations that may impact in any way on the environment shall be reported immediately to the Authority by the Licensee.*
- 10. Upon completion of pest control services, the Licensee shall submit a report to the Authority within 10 days after treatment in the format agreed upon with the Authority outlining all areas and products treated and the degree of infestation remaining.*

### **EMPLOYEES**

- 11. Only employees with the applicable training as required by relevant legislation within the ambit of the licence issued may be utilized. Training records shall be made available to the Authority upon request.*
- 12. All personnel shall wear the following protective clothing:*
  - SANS approved hard hat;*
  - SANS approved safety shoes or boots;*
  - A reflective jacket;*
  - Protective gloves when working with hazardous chemicals; and*
  - Any other personal protective clothing as indicated in a risk assessment.*



### **MOTOR VEHICLES**

13. *Each motor vehicle used by the Licensee in the Port in excess of one and a half tonne carrying capacity shall bear the name of the Licensee in a conspicuous place on such motor vehicle, or as the Authority may from time to time stipulate.*
14. *All motor vehicles used for the transport of employees within the precincts of the Ports shall be closed top motor vehicles.*

### **INSURANCE**

15. *Public liability insurance shall be effected and maintained at all times. The extent of Public liability insurance may be adjusted by the Authority on an annual basis, or after consultation with the Licensee.*
16. *Upon request, the Licensee shall furnish proof to the Authority of the continued existence and validity of such insurance and the regular payment of all premiums due under the policy.*
17. *The Authority shall not be liable should it at any stage be established that the insurance obtained is inadequate or insufficient for any reason whatsoever, or should the relevant insurer for any reason refuse or be unable to meet its liabilities in terms of the said policy.*

### **AMENDMENT, SUSPENSION, WITHDRAWAL OR CANCELLATION**

18. *The Authority may on good cause shown, including the breach of any one or more of these conditions, at any time suspend, withdraw or cancel this licence provided that it will follow a fair procedure before such a decision is taken.*
19. *The Authority may also amend the conditions contained in this licence provided that, prior to making a decision to amend, the Authority will indicate the reasons why it considers it necessary to amend the conditions and afford the licensee a reasonable opportunity to make representations as to why the conditions should not be amended.*
20. *The Licensee shall have no claim against the Authority arising out of the suspension, withdrawal or cancellation of the permit or the amendment of the conditions, but shall be entitled to receive written reasons from the Authority in terms of the law.*

**ANNEXURE K: VESSEL AGENT REGISTRATION CERTIFICATE**

  national ports authority	<h2>VESSEL AGENT REGISTRATION CERTIFICATE</h2>
<b>Registration Certificate Number:</b> .....	
<b>Issued in terms of the Port Rules for the commercial ports of South Africa, adopted in terms of the National Ports Act No. 12 of 2005 ("the Act")</b>	
<b>MAY NOT BE TRANSFERRED WITHOUT THE PRIOR WRITTEN CONSENT OF THE AUTHORITY</b>	
<b>Name of Vessel Agent :</b> .....	
<b>Registered physical address from where principal business is carried on:</b> .....	
.....	
<b>Registration Number:</b> .....	
<b>V.A.T. Registration Number:</b> .....	
("hereinafter referred to as the "Vessel Agent") is hereby registered by the Authority to be a Vessel Agent in respect of the Port(s) of .....	
This registration is issued subject to:	
1) compliance with the conditions printed on this Registration Certificate, which lists some of the obligations of the Vessel Agent;	
2) compliance with the provisions of the Act and all other relevant legislation;	
3) compliance with any Regulations adopted in terms of section 80(1) of the Act;	
4) compliance with the Port Rules for the commercial Ports of South Africa, adopted in terms of section 80(2) of the Act, and with the Harbour Master's Written Instructions and the Authority's Written Instructions;	
5) compliance with the Authority's Tariff Book, published in terms of section 72(1) of the Act; and	
6) compliance with the International Ship and Port Security Code ("the ISPS Code") as it applies to all Ports of South Africa.	
<b>Duration of registration certificate:</b> ____ to ____.	
<b>Annual registration certificate fee:</b> R [TBD], inclusive of VAT.	
.....	<b>Date:</b> .....
<b>THE AUTHORITY'S DELEGATEE</b>	
The Vessel Agent accepts that the registration is subject to compliance with the attached conditions and the statutory and other instruments listed above, as amended or changed from time to time.	
.....	<b>Date:</b> .....
<b>VESSEL AGENT OR ITS AUTHORISED REPRESENTATIVE</b>	

## CONDITIONS OF VESSEL AGENT REGISTRATION

1. *The Vessel Agent shall, in those Ports where an association is in existence, be a member of South African Association of Ship Operators and Agents (SAASOA). If membership of the Association is refused or cancelled for any reason, the Authority may, on good cause shown, grant an exemption from this condition.*
2. *The Vessel Agent shall provide the Authority with an agency appointment letter, indicating that the Vessel Agent represents the vessel. Such a letter shall be sent to the Authority at least three days in advance of the arrival of the vessel in the port, or such other shorter notice as the Authority may allow, on good cause shown.*
3. *The Vessel Agent may not act or purport to act on behalf of the Authority or to represent it in any way. The Vessel Agent is not the mandatory, agent or employee of the Authority arising out of the issue of this Licence. The Authority shall not be liable, vicariously or otherwise, for the acts or omissions of the Vessel Agent.*
4. *The Vessel Agent acknowledges and agrees that the Authority may disclose any or all of the information provided by the agent to law enforcement, government and regulatory agencies and the Vessel Agent releases and indemnifies the Authority from and against all losses, claims, damages, costs, liabilities, actions and causes of action arising out of or in any way connected with the disclosure or release of any information provided by the Vessel Agent to such bodies.*
5. *The Vessel Agent shall comply with all relevant management systems, policies and procedures and directives of the Authority.*
6. *The Vessel Agent shall be readily contactable:*
  - *At the time of berthing of the vessel;*
  - *At the time of sailing of the vessel;*
  - *At the time of ship's supply; and*
  - *At the time of loading or discharging of the vessel.*
7. *The Vessel Agent must perform the services diligently, safely and without deliberate or undue delay.*
8. *Only competent vessel contractors (ship chandlers, vessel searchers, ship surveyors, baggage handlers, cargo surveyors and cargo tallies) shall be utilised by the Vessel Agent.*
9. *Only stevedores with a valid licence issued by the Authority may be contracted by the Vessel Agent.*
10. *The Vessel Agent is responsible for payment to the Authority of all port dues, fees, fines and any other monies due to the Authority by the vessel's owner.*
11. *The Authority may on good cause shown, including the breach of any one or more of these conditions, at any time suspend, withdraw or cancel this registration provided that it will follow a fair procedure before such a decision is taken.*
12. *The Authority may also amend the conditions contained in this registration provided that, prior to making a decision to amend, the Authority will indicate the reasons why it considers it necessary to amend the conditions and afford the Vessel Agent a reasonable opportunity to make representations as to why the conditions should not be amended.*
13. *The Vessel Agent shall have no claim against the Authority arising out of the suspension, withdrawal or cancellation of the permit or the amendment of the conditions, but shall be entitled to receive written reasons from the Authority in terms of the law.*

**ANNEXURE L: ACCESS PERMIT: PERSONS**



**ACCESS PERMIT: PERSONS**

**Permit Number:** .....

**Issued in terms of the Port Rules for the commercial ports of South Africa, adopted in terms of the National Ports Act No. 12 of 2005 ("the Act")**

**MAY NOT BE TRANSFERRED WITHOUT THE PRIOR WRITTEN CONSENT OF THE AUTHORITY**

**Name of Permit Holder:** .....

**Registered physical address** from where principal business is carried on: .....

**Company or CC Registration Number:** .....

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

("hereinafter referred to as the "Permit Holder")

The Permit Holder requires access to the Port in order to conduct the following business:

The Permit Holder is hereby granted an access permit by the Authority for the Port of:

This permit is issued subject to:

- 1) compliance with the conditions printed on this Permit, which list some of the obligations of the Permit Holder;
- 2) compliance with the provisions of the Act and all other relevant legislation;
- 3) compliance with any Regulations adopted in terms of section 80(1) of the Act;
- 4) compliance with the Port Rules for the commercial ports of the Republic of South Africa, adopted in terms of section 80(2) of the Act, and with the Harbour Master's Written Instructions and the Authority's Written Instructions;
- 5) compliance with the Authority's Tariff Book, published in terms of section 72(1) of the Act; and
- 6) compliance with the International Ship and Port Security Code ("the ISPS Code") as it applies to all Ports of South Africa.

**Duration of the permit:** \_\_\_\_\_ to \_\_\_\_\_.

**Annual permit fee:** R [TBD], inclusive of VAT.

.....  
**THE AUTHORITY'S DELEGATEE**

**Date:** .....

The Permit Holder accepts that the permit is issued subject to compliance with the attached conditions and the statutory and other instruments listed above, as amended or changed from time to time.

.....  
**PERMIT HOLDER OR ITS AUTHORISED REPRESENTATIVE**

**Date:** .....

## **CONDITIONS OF ACCESS PERMIT FOR PERSONS**

### **GENERAL**

1. *The Permit Holder shall use the permit for the purpose of entering the Port and for no other purposes.*
2. *The Permit Holder undertakes to comply with all the Authority's health, safety, environmental and security policies, procedures and directives while in the precincts of the ports.*
3. *The Authority shall not be liable for any damages sustained by the Permit Holder by reason of any delay, regardless of the cause of the delay.*

### **CARTAGE ACTIVITIES**

4. *Drivers of motor vehicles within a port may not transport any container unless the container is properly secured, with the necessary locks designed to transport containers by land.*
5. *The discharging gate on the box of a motor vehicle shall have an adequate seal to prevent spillage of any material during transit.*
6. *The amount of the material loaded into motor vehicles shall not be such that it allows for any spillage from the top level of the motor vehicle box. This level should be at least 100 mm lower than the upper edges of the motor vehicle box.*
7. *The material loaded into motor vehicles shall be covered properly and secured before leaving the loading area. Covers shall be secured at both ends and both sides of the box in such a manner that no material will spill from the box during transportation.*
8. *No load shall be greater than the rated weight capacity of the motor vehicle as specified by the manufacturer and must not exceed the limits imposed by South African legislation.*
9. *Motor vehicles used for cartage in excess of one and a half tonne carrying capacity shall bear the name of the Permit Holder in a conspicuous place on such motor vehicle, or as the Authority may from time to time stipulate.*

### **BUSES AND MOTOR VEHICLES USED FOR THE TRANSPORTATION OF EMPLOYEES**

10. *All buses used in the ports must be properly maintained and in good condition and state of repair and meet all applicable safety, maintenance and operational standards and requirements.*
11. *Buses used in the port shall bear the name of the Permit Holder in a conspicuous place on such a bus, or as the Authority may from time to time stipulate.*
12. *All motor vehicles used for the transport of employees within the precincts of the Ports shall be closed top motor vehicles.*

### **VENDORS**

13. *Vendors shall have a valid hawker or food vendor licence, issued by the local municipality, which licence shall be made available for inspection by the Authority at all reasonable times.*
14. *If applicable, Vendors shall obtain written permission from the operator of a port facility where vending will be undertaken and shall make such a written permission available for inspection by the Authority at all reasonable times.*

### **EMPLOYEES**

15. *All employees shall be neatly and uniformly attired, with the name and identification mark of their employer conspicuously displayed on their attire at all times that such employees are within the precincts of the Port;*
16. *All employees shall wear the applicable personal protective clothing while in a restricted area in a port. .*

### **AMENDMENT, SUSPENSION, WITHDRAWAL OR CANCELLATION**

17. *The Authority may at any time suspend this access permit and, on good cause shown, including the breach of any one or more of these conditions, withdraw or cancel this permit, provided that it will*

*afford the Permit Holder an opportunity to make representations before a permit is withdrawn or cancelled.*

- 18. The Authority may amend the conditions contained in this permit provided that, prior to making a decision to amend, the Authority will indicate the reasons why it considers it necessary to amend the conditions and will afford the Permit Holder a reasonable opportunity to make representations as to why the conditions should not be amended.*
- 19. The Permit Holder shall have no claim against the Authority arising out of the suspension, withdrawal or cancellation of the permit or the amendment of the conditions, but shall be entitled to receive written reasons from the Authority in terms of the law.*

**ANNEXURE M: ACCESS PERMIT: MOTOR VEHICLE**



**ACCESS PERMIT: MOTOR VEHICLE**

**Permit Number:** .....

**Issued in terms of the Port Rules for the commercial ports of South Africa, adopted in terms of the National Ports Act No. 12 of 2005 ("the Act")**

**MAY NOT BE TRANSFERRED WITHOUT THE PRIOR WRITTEN CONSENT OF THE AUTHORITY**

**Make of motor vehicle::** .....

**Registration number of motor vehicle::** .....

.....

("hereinafter referred to as the "Permitted Motor Vehicle")

The Permitted Motor Vehicle requires access to the Port in order to conduct the following business:

.....

The Permitted Motor Vehicle is hereby granted an access permit by the Authority for the Port of:

.....

This permit is issued subject to:

- 1) compliance with the conditions printed on this Permit, which list some of the obligations of the driver and owner of the motor vehicle;
- 2) compliance with the provisions of the Act and all other relevant legislation;
- 3) compliance with any Regulations adopted in terms of section 80(1) of the Act;
- 4) compliance with the Port Rules for the commercial ports of the Republic of South Africa, adopted in terms of section 80(2) of the Act, and with the Harbour Master's Written Instructions and the Authority's Written Instructions;
- 5) compliance with the Authority's Tariff Book, published in terms of section 72(1) of the Act; and
- 6) compliance with the International Ship and Port Security Code ("the ISPS Code") as it applies to all Ports of South Africa.

**Duration of the permit:** \_\_\_\_\_ to \_\_\_\_\_.

**Annual permit fee:** R [TBD], inclusive of VAT.

.....  
**THE AUTHORITY'S DELEGATEE**

**Date:** .....

The driver and owner of the motor vehicle accept that the permit is issued subject to compliance with the attached conditions and the statutory and other instruments listed above, as amended or changed from time to time.

.....  
**MOTOR VEHICLE OWNER OR ITS AUTHORISED REPRESENTATIVE**

**Date:** .....

## **CONDITIONS OF MOTOR VEHICLE ACCESS PERMIT**

### **GENERAL**

1. *The permit shall be used for the purpose of entering the Port and for no other purposes.*
2. *The driver and owner of the motor vehicle undertake to comply with all the Authority's health, safety, environmental and security policies, procedures and directives while in the precincts of the ports.*
3. *The Authority shall not be liable for any damages sustained by the driver or owner of the motor vehicle by reason of any delay, regardless of the cause of the delay.*

### **CARTAGE ACTIVITIES**

4. *Drivers of motor vehicles within a port may not transport any container unless the container is properly secured, with the necessary locks designed to transport containers by land.*
5. *The discharging gate on the box of a motor vehicle shall have an adequate seal to prevent spillage of any material during transit.*
6. *The amount of the material loaded into motor vehicles shall not be such that it allows for any spillage from the top level of the motor vehicle box. This level should be at least 100 mm lower than the upper edges of the motor vehicle box.*
7. *The material loaded into motor vehicles shall be covered properly and secured before leaving the loading area. Covers shall be secured at both ends and both sides of the box in such a manner that no material will spill from the box during transportation.*
8. *No load shall be greater than the rated weight capacity of the motor vehicle as specified by the manufacturer and must not exceed the limits imposed by South African legislation.*
9. *Motor vehicles used for cartage in excess of one and a half tonne carrying capacity shall bear the name of the Permit Holder in a conspicuous place on such motor vehicle, or as the Authority may from time to time stipulate.*

### **BUSES AND MOTOR VEHICLES USED FOR THE TRANSPORTATION OF EMPLOYEES**

10. *All buses used in the ports must be properly maintained and in good condition and state of repair and meet all applicable safety, maintenance and operational standards and requirements.*
11. *Buses used in the port shall bear the name of the owner in a conspicuous place on such a bus, or as the Authority may from time to time stipulate.*
12. *All motor vehicles used for the transport of employees within the precincts of the Ports shall be closed top motor vehicles.*

### **AMENDMENT, SUSPENSION, WITHDRAWAL OR CANCELLATION**

13. *The Authority may at any time suspend this access permit and, on good cause shown, including the breach of any one or more of these conditions, withdraw or cancel this permit, provided that it will afford the owner of the motor vehicle an opportunity to make representations before a permit is withdrawn or cancelled.*
14. *The Authority may amend the conditions contained in this permit provided that, prior to making a decision to amend, the Authority will indicate the reasons why it considers it necessary to amend the conditions and will afford the owner of the motor vehicle a reasonable opportunity to make representations as to why the conditions should not be amended.*

*The driver and owner of the motor vehicle shall have no claim against the Authority arising out of the suspension, withdrawal or cancellation of the permit or the amendment of the conditions, but shall be entitled to receive written reasons from the Authority in terms of the law.*



**ANNEXURE N: SMALL VESSEL PERMIT**



**SMALL VESSEL PERMIT**

**Permit Number:** .....

**Issued in terms of the Port Rules for the commercial ports of South Africa, adopted in terms of the National Ports Act No. 12 of 2005 ("the Act")**

**MAY NOT BE TRANSFERRED WITHOUT THE PRIOR WRITTEN CONSENT OF THE AUTHORITY**

**Name of owner of the small vessel:** .....

**Physical address of owner:** .....

**Tel no:**.....

**Name of master of the small vessel:** .....

**Physical address of master:**.....

**Tel no:**.....

**Vessel's Name:** .....

**Vessel's Registration Number:** .....

**Vessel's Length Overall (LOA):**.....

**Number of persons the vessel is licensed to carry:** .....

**Name of applicant for permit:** .....

**Is application for a licence made for the owner or master of the small vessel?:**.....

(hereinafter, the "Permit Holder")

is hereby permitted by the Authority of South Africa ("the Authority") use and operate the vessel from the Port of: .....

**The Permit Holder is exempted from the following Port Rules, as indicated by the "X" in the respect box:**

Rule	Rule Heading	Yes	No
18	Notice of arrival		
31	Notice of port movements		
37	Notice of departure		
115	Security to be furnished to the Authority		
117	Port dues, fees and fines to be paid before the vessel departs from port		
118	Manifest of cargo		
119	Outturn reports		

**Is the Permit Holder exempted from appointing a Vessel Agent?**

Yes	No
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**Does the master of the small vessel have a pilotage exemption licence?**

Yes	No
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## SMALL VESSEL PERMIT

This permit is issued subject to:

- 1) compliance with conditions printed on this permit, which list some of the obligations of the Permit Holder;
- 2) compliance with the provisions of the Act and all other relevant legislation;
- 3) compliance with any Regulations adopted in terms of section 80(1) of the Act;
- 4) compliance with the Port Rules for the commercial Ports of South Africa, adopted in terms of section 80(2) of the Act, except those rules specified above and with the Harbour Master's Written Instructions and the Authority's Written Instructions;
- 5) compliance with the Authority's Tariff Book, published in terms of section 72(1) of the Act;
- 6) compliance with the Code of Safe Working Practice for Ships Working Cargo in South African Ports, 2006, issued by the South African Maritime Safety Authority;
- 7) compliance with the Merchant Shipping (Collisions and Distress Signals) Regulations, 2005, and the Merchant Shipping (Small Vessel Safety) Regulations, 2002, which apply within the port; and
- 8) compliance with the International Ship and Port Security Code ("the ISPS Code") as it applies to all Ports of South Africa.

**Duration of permit:** \_\_\_\_\_ to \_\_\_\_\_.

**Annual permit fee:** R [TBD] inclusive of VAT.

.....  
**THE AUTHORITY'S DELEGATEE**

**Date:** .....

The Permit Holder accepts that this permit is issued subject to compliance with the attached conditions and the statutory and other instruments listed above, as amended or changed from time to time.

.....  
**PERMIT HOLDER OR ITS AUTHORISED REPRESENTATIVE**

**Date:** .....

## **CONDITIONS OF SMALL VESSEL PERMIT**

### **GENERAL**

- 1. The Permit Holder may not act or purport to act on behalf of the Authority or to represent it in any way. The Permit Holder is not the mandatory, agent or employee of the Authority arising out of the issue of this permit. The Authority shall not be liable, vicariously or otherwise, for the acts or omissions of the Permit Holder.*
- 2. The Permit Holder acknowledges and agrees that the Authority may disclose any or all of the information provided by the Permit Holder to law enforcement, government and regulatory agencies and the Permit Holder releases and indemnifies the Authority from and against all losses, claims, damages, costs, liabilities, actions and causes of action arising out of or in any way connected with the disclosure or release of any information provided by the Permit Holder to such bodies.*
- 3. The Permit Holder shall comply with all the Authority's relevant management systems, policies and procedures and directives, including directives in the interests of safety, security, protection of the environment or the efficient working of the port.*
- 4. If any of the information supplied to the Authority in order to obtain this permit changes, including changes to the owner or master's address or contact details, the Permit Holder shall notify the Authority in writing forthwith of such change.*

### **DISC TO BE DISPLAYED**

- 5. The permit disc issued by the Authority, which bears the permit number and period of validity, must be encased in a suitable holder and affixed to the vessel in a conspicuous position.*

### **THE USE OF SMALL VESSELS**

- 6. The vessel may not be used in the port unless it is sufficiently manned and the person in the charge of the vessel is able to navigate and manage it with competence and skill.*
- 7. The number of persons the vessel may carry must be displayed on or available in the vessel at all times and no vessel may carry a greater number of persons than it is licensed to carry.*

### **PASSENGERS, CREW AND EMPLOYEES**

- 8. All passengers, crew and employees shall wear the appropriate and necessary personal protective equipment and clothing whilst in the port.*

### **EQUIPMENT**

- 9. All gear and equipment required for the proper functioning of the vessel shall be maintained in good order and condition.*
- 10. The vessel shall be equipped with such life-saving and fire-extinguishing equipment as required by the regulations promulgated under the Merchant Shipping Act, 1951. The equipment shall be kept aboard the pleasure vessel at all times and shall be fit for immediate use.*

### **LOADING AND OFF-LOADING OF CARGO, INCLUDING FISH AND FISH PRODUCTS**

- 11. The loading and off-loading of cargo, including fish and fish products:*
  - must be performed diligently and safely and all necessary measures must be taken to prevent the spillage of cargo or fish or fish products into the waters of the Port, or onto the quayside; and*
  - shall always be supervised by and be subject to the direction and approval of the vessel's master, or his duly authorized agent.*
- 12. The Authority may require that a Permit Holder that the loading and off-loading of cargo, including fish and fish products:*
  - adopt written safety, health, environment and quality programs;*
  - undertake annual risk assessments and shall make these available to the Transnet National Ports Authority for inspection upon request.*
- 13. The dumping of cargo, including fish or fish products, by or on behalf of the Permit Holder of any nature or specification anywhere within the Port is strictly prohibited.*

14. All personnel shall wear the protective clothing prescribed in the Port Rules.
15. All equipment and gear used for the loading and off-loading of cargo, including fish and fish products, shall be maintained in good order and condition.
16. All equipment used shall be removed from wharfs, quays, jetties and other work places in a Port without delay after the loading and off-loading of cargo is completed on a particular vessel.

**TRANSFER OF THE PERMIT**

17. The permit may not be transferred without the prior written consent of the Authority and any transfer of a permit without such consent is of no force or effect. If the owner of the small vessel is a legal person such as a company, and it transfers some or all of its interests or shares such that there is a change of control of the small vessel, then the owner of the small vessel must inform the Authority of this change in control and re-apply for a permit. In the case of a listed public company, a sale of more than 35% of the shareholding constitutes a change of control.

**CANCELLATION AND SUSPENSION**

18. The Authority may suspend or cancel this permit, if:
  - the Permit Holder contravenes or breaches any condition of this permit, or the provisions of the statutes and other instruments listed above, or any of the Authority's management systems, policies and procedures and directives issued by the Authority in terms of the Act;
  - the Permit Holder is sequestrated, liquidated or placed under judicial management;
  - the Permit Holder has made any assignment to, or composition with, its creditors; or
  - the safety of vessels and persons within Ports or the national security of the Republic so requires.

**CONDITIONS IMPOSED BY THE HARBOUR MASTER OF THE PORT IN WHICH THE SMALL VESSEL IS PERMITTED**

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**ANNEXURE O: PLEASURE VESSEL PERMIT**



**PLEASURE VESSEL PERMIT**

**Permit Number:** .....

**Issued in terms of the Port Rules published in terms of section 80(2) of the National Ports Act No. 12 of 2005 ("the Act")**

**MAY NOT BE TRANSFERRED WITHOUT THE PRIOR WRITTEN CONSENT OF THE AUTHORITY**

**Name of owner of the pleasure vessel:** .....

**Physical address of owner:**.....

**Tel no:**.....

**Name of master of the pleasure vessel:** .....

**Physical address of master:**.....

**Tel no:**.....

**Vessel's Name:** .....

**Vessel's Registration Number:** .....

**Vessel's Length Overall (LOA):** .....

**Number of persons the vessel is licensed to carry:** .....

**Name of applicant for permit:** .....

**Is application for a permit made for the owner or master of the pleasure vessel?:**.....

(hereinafter, the "permit holder")

is hereby licensed by the Authority to use and operate the vessel from the Port of:

This permit is issued subject to:

- 1) compliance with conditions printed on this permit, which list some of the obligations of the Permit holder;
- 2) compliance with the provisions of the Act and all other relevant legislation;
- 3) compliance with any Regulations adopted in terms of section 80(1) of the Act;
- 4) compliance with the Port Rules for the commercial Ports of South Africa adopted in terms of section 80(2) of the Act and with the Harbour Master's Written Instructions and the Authority's Written Instructions;
- 5) compliance with the Authority's tariff book published in terms of section 72(1) of the Act;
- 6) compliance with the Code of Safe Working Practice for Ships Working Cargo in South African Ports, 2006, issued by the South African Maritime Safety Authority;
- 7) compliance with the Merchant Shipping (Collisions and Distress Signals) Regulations, 2005 and the Merchant Shipping (Pleasure Vessel Safety) Regulations, 2002, which apply within the port; and
- 8) compliance with the International Ship and Port Security Code ("the ISPS Code") as it applies to all Ports of South Africa.

**Duration of permit:** \_\_\_\_\_ to \_\_\_\_\_.

**Annual permit fee:** R [TBD] inclusive of VAT.

**Date:** .....

**THE AUTHORITY'S DELEGATEE**

The Permit holder accepts that this permit is issued subject to compliance with the attached conditions and the statutory and other instruments listed above, as amended or changed from time to time.

**Date:** .....

**PERMIT HOLDER OR ITS AUTHORISED REPRESENTATIVE**

## **CONDITIONS OF PLEASURE VESSEL PERMIT**

### **GENERAL**

1. *The Permit Holder may not act or purport to act on behalf of the Authority or to represent it in any way. The Permit Holder is not the mandatory, agent or employee of the Authority arising out of the issue of this permit. The Authority shall not be liable, vicariously or otherwise, for the acts or omissions of the Permit holder.*
2. *The Permit Holder acknowledges and agrees that the Authority may disclose any or all of the information provided by the Permit holder to law enforcement, government and regulatory agencies and the Permit holder releases and indemnifies the Authority from and against all losses, claims, damages, costs, liabilities, actions and causes of action arising out of or in any way connected with the disclosure or release of any information provided by the Permit Holder to such bodies.*
3. *The Permit Holder shall comply with all relevant Authority management systems, policies and procedures and directives, including directives in the interests of safety, security, protection of the environment or the efficient working of the port.*
4. *If any of the information supplied to the Authority in order to obtain this permit changes, including changes to the owner or master's address or contact details, the Permit Holder shall notify the Authority in writing forthwith of such change.*

### **DISC TO BE DISPLAYED**

5. *The permit disc issued by the Authority, which bears the permit number and period of validity must be encased in a suitable holder and affixed to the vessel in a conspicuous position.*

### **THE USE OF PLEASURE VESSELS**

6. *The vessel may not be used in the Port unless it is sufficiently manned and the person in the charge of the vessel is able to navigate and manage it with competence and skill.*
7. *The number of persons the vessel may carry must be displayed on or available in the vessel at all times and no vessel may carry a greater number of persons than it is licensed to carry.*

### **PASSENGERS, CREW AND EMPLOYEES**

8. *All passengers, crew and employees shall wear the appropriate and necessary personal protective equipment and clothing whilst in the port.*

### **EQUIPMENT**

9. *All gear and equipment required for the proper functioning of the vessel shall be maintained in good order and condition.*
10. *The vessel shall be equipped with such life-saving and fire-extinguishing equipment as required by the regulations promulgated under the Merchant Shipping Act, 1951. The equipment shall be kept aboard the pleasure vessel at all times and shall be fit for immediate use.*

### **TRANSFER OF THE PERMIT**

11. *The permit may not be transferred without the prior written consent of the Authority and any transfer of a permit without such consent is of no force or effect. If the owner of the small vessel is a legal person such as a company, and it transfers some or all of its interests or shares such that there is a change of control of the small vessel, then the owner of the small vessel must inform the Authority of this change in control and re-apply for a permit. In the case of a listed public company, a sale of more than 35% of the shareholding constitutes a change of control.*

### **CANCELLATION AND SUSPENSION**

12. *The Authority may suspend or cancel this permit, if:*
  - *the Permit Holder contravenes or breaches any condition of this permit, or the provisions of the statutory and other instruments or any Authority management systems, policies and procedures and directives directive issued by the Authority in terms of the Act;*
  - *the Permit Holder is sequestered, liquidated or placed under judicial management;*

- *the Permit Holder has made any assignment to, or composition with, its creditors; or*
- *the safety of vessels and persons within ports or the national security of the Republic so requires.*

**CONDITIONS IMPOSED BY THE HARBOUR MASTER OF THE PORT IN WHICH THE PLEASURE VESSEL IS PERMITTED**

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