

TANJUNG BRUAS PORT SDN. BHD.
(Formerly known as KMB Seaport Sdn. Bhd.)
(Company No. 1066930-A)

**TERMS & CONDITIONS
OF
BUSINESS**

1ST EDITION MARCH 2019

TANJUNG BRUAS PORT SDN. BHD. (1066930-A)
(Formerly known as KMB Seaport Sdn. Bhd.)

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PART I: STANDING OFFER, DEFINITIONS, CONSTRUCTION AND SAVINGS, APPLICABLE LAWS

1.0 STANDING OFFER

1.1 These Terms and Conditions of Business as notified in the Tanjung Bruas Port Sdn. Bhd.'s (formerly known as KMB Seaport Sdn. Bhd.) (hereinafter referred to as "TBP") website or through hard copies distributed by TBP to the User, its agents or by any manner deemed appropriate by TBP, shall constitute a STANDING OFFER upon which TBP makes its Services as herein defined available to the Users.

1.2 The STANDING OFFER shall be deemed to be accepted either upon

(a) Receipt of notification/application from the User to TBP of the intention to use and/or engage any of the Services at the Port as provided or made available by TBP,

OR

(b) the User transacting any Business with TBP.

2.0 ACCEPTANCE

Acceptance shall be deemed to create a distinct contract (hereinafter referred to as "the Contract") in respect of each paragraph herein. If the whole or any part of any provision of these Terms and Conditions of Business shall be or become illegal, invalid or unenforceable for any reason whatsoever (including by reason of any statutory provision or by reason of any decision of any Court or any other body or authority having Jurisdiction over TBP and the User or the Business), such whole or part of such provision shall be deemed to be deleted from these Terms and Conditions of Business and shall not affect any other paragraph.

3.0 CUMULATIVE REMEDIES

The rights and remedies given to TBP under the Contract shall be cumulative remedies and shall not prejudice any other rights or remedies of TBP contained in the Contract or at law or the right of action or other remedy of TBP under any other contract between TBP and the User for the recovery of any sums due to TBP from the User or in respect of any antecedent breach of the Contract by the User.

4.0 SURVIVAL OF OBLIGATIONS

Notwithstanding the complete performance of the Contract or the termination of the Contract insofar as it relates to the User, the terms and conditions of the Contract shall remain in full force and effect between TBP and the User insofar as such terms and conditions shall remain unfulfilled or relevant.

5.0 CONTRACT

5.1 The Contract

TBP shall provide and the User shall accept the Services all in accordance with these Terms and Conditions of Business in consideration of the payment according to the rates as provided under the Tariff and any other circular or amendments in relation thereto issued by the relevant authorities from time to time.

Any Business undertaken by TBP may be carried out by its authorised servants or agents, in which event all rights and protection from liability afforded to TBP by these Terms and Conditions of Business shall also be afforded to such persons.

5.2 Sooner termination for urgent reasons

Notwithstanding the other provisions to the contrary, TBP may terminate the Business forthwith at any time without any claim or charge by the User if TBP has an urgent reason for so doing. Such urgent reasons shall include but not be limited to the following:-

- (a) If the User shall fail to observe or perform any of its obligations under the Business and shall not remedy its failure within a reasonable time after TBP has notified the User of such failure;
- (b) If TBP shall be of the opinion that the presence of the User's cargo at any of the Port's premises may lead to any claim against TBP, its servants or agents;
- (c) If TBP shall be prevented from providing the Services or if the Services shall become unsuitable in any way for use due to any Force Majeure.

6.0 DEFINITIONS

In these Terms and Conditions of Business and in any agreement/contract entered into by TBP which include these Terms and Conditions, the following words and expressions shall unless the context otherwise requires, have the following meanings:

'Act' means the Port Authorities Act 1963 including the Malacca Port Authority By-Laws 1983, Pilotage By-Laws, the Scale of Charges By-Laws 2012 and other by-Laws and any successor Act as may be enacted for the regulation of the Services provided by TBP and for the administration, maintenance, management and operation of the Port by TBP.

'agent' includes unlicensed agents, shipping agents, representatives, brokers, freight forwarders, hauliers, persons acting in their capacities

as total logistics providers, direct and indirect subcontractors and their respective servants, agents and/or representatives.

‘anchorage area’ means an anchorage area within the Port Limits as may be designated by Malacca Port Authority.

‘applicable laws’ means among others, the prevailing national laws and their subsidiary legislations in force in Malaysia such as Environmental Quality Act 1974, Occupational Safety and Health Act 1994, the Protected Areas and Protected Places Act 1959, , Factories and Machinery Act 1967, Contracts Act 1950, the Limitation Act 1953 (Revised 1981), the Merchant Shipping Ordinance 1952, laws mentioned in Part III hereof, which are relevant and applicable to the operation of ports and terminals, , and the requirements for environmental control, including any international conventions ratified and adopted by Malaysia, such as the International Convention For the Safety of Life at Sea (SOLAS), the International Safety Guide For Oil Tankers and Terminals (ISGOTT), the United Nations Convention on International Multi-modal Transport of Goods (Geneva, 24 May 1980), International Convention for the Prevention of Pollution from Ships (MARPOL), Maritime Labour Convention 2006 as adopted by the 74th International Labour Conference (Maritime), International Convention on the Safety of Port Security Facilities (ISPS) Code, the International Maritime Dangerous Goods Code (IMDG), and any other national laws incorporating international conventions as may be ratified and adopted by Malaysia from time to time and applicable to ports and terminals in the Port.

‘Applications’ means the overall operations systems applications or facilities, which consists of the Marine Services System (MSS), *Sistem Maklumat Kastam* (SMK) Multi-Purpose Terminal System (MPTS) and any other computer network applications as established by TBP from time to time for purposes of conducting the Business of the Terminal in a

paperless electronic environment, and to facilitate the use of TBP's Services.

'Authority' shall mean Malacca Port Authority being the regulatory body established under the Act and empowered to regulate the Services provided by TBP under the Ports (Privatisation) Act 1990 and these Terms and Conditions of Business.

'Business' shall mean any transaction under these Terms and Conditions of Business, conducted by electronic means or otherwise between TBP and the User, for the provision of Services granted by TBP to the User at the User's request or transacted with or without a formal contract document in satisfaction of the conditions for the acceptance of the Standing Offer stated in Paragraph 1 herein.

'cargo' includes livestock, minerals, wares, edible or non-edible, vehicles, passenger luggage and effects, merchandises, construction, procurement, commissioning, repairs, retro-fitting and maintenance parts and materials, super heavy lift oversized and heavy lift oversized cargo as well as articles and equipment of every kind and description whatsoever whether containerised, in bulk or breakbulk or in liquid bulk form, for direct delivery, storage within the Port premises or for transshipment in whole or in part thereof as well as empty and laden containers. For the purpose of these Terms and Conditions of Business, the word 'cargo' shall be interchangeable with 'goods', wherever the context permits.

'container' shall mean any box or article of transport equipment (including tanks, flats and reefers) having a permanent character and being specially designed for the transportation of cargo by one or more modes of transport, without intermediate reloading, and fitted with devices permitting its ready handling by mechanical equipment, particularly its transfer from one mode of transport to another.

‘**EDI**’ means the Electronic Data Interchange of information or data between one computer to another computer.

‘**employee**’ means employees as defined in the Occupational Safety and Health Act 1994.

‘ **SST** means The Sales Tax and Service Tax or value-added tax or charge as imposed by the Government of Malaysia under the The Sales Tax 2018 and Service Tax Act 2018 on the sale of all goods and services within the country, except certain essentials as may be determined by the Government of Malaysia. It also refers to SST or its equivalent, imposed in any jurisdiction where the Services are rendered in respect of the Goods.

‘**ISPS**’ Code means the International Ship and Port Facility Security Code which amended the Safety of Life at Sea (SOLAS) Convention (1974/1988) and became mandatorily applicable on 1st July 2004 on the following:

- (a) vessels engaged on international voyages;
- (b) passenger vessels including high-speed passenger craft;
- (c) cargo vessels including high-speed craft of 500 gross tonnage and above;
- (d) mobile offshore drilling units; and
- (e) TBP facilities serving such vessels engaged on international voyages.

‘**Tanjung Bruas Port**’ means the TBP Port premises, being a major part of the Port premises as herein defined, situated at Mukim of Tanjung Kling Central, District of Malacca, primarily owned by the Authority and leased to and managed by TBP under a Concession Agreement signed with the Government of Malaysia and Authority, wherein the Services are principally generated, port facilities and port services are offered, provided and operated by TBP (under the Authority’s licence) within the Port.

‘TBP’ means the Tanjung Bruas Port Sdn Bhd (Company No. 1066930-A) acting in its capacity as:-

- a. the licensed port operator under Concession Agreement signed with the Government of Malaysia and the Authority;
- b. the land manager for the Authority under the said Concession Agreement; and
- c. the operator of terminals within the Port, which TBP is appointed to administer, manage and operate.

‘TBP SHE Guidelines’ means TBP’s Safety, Health And Environmental Guidelines & Rules appearing in Appendix V herein, applicable at the Port and any Health, Security, Safety and Environmental policies, guidelines, laws and rules that are applicable and relevant at terminals within the Port, which TBP is contractually required to operate on behalf of their owner.

‘Line’ includes any person (including without limitation whether shipping companies, ship owners, charterers, consortiums, conference and brokers) having any interest in a vessel and may include a person who is an operator as herein defined.

‘master’ includes every person, except TBP’s pilots having for the time being the command or charge of any vessel.

‘manoeuvring’ or **‘manoeuvred’** as the context may require means the vessel movement of approaching, leaving, berthing, unberthing, proceeding to anchor or underway for arrival at the port or terminals or departure from the port or terminals or such movements as performed by the vessel.

‘MPTS’ means the Multi-Purpose Terminal system to facilitate the use of the TBP Bulk and Break Bulk cargo Services.

‘marine services’ means the provision of marine services which include among others, receiving and monitoring applications and bookings for berths, carrying out ship to shore communication with Master/ship owner; providing and managing pilotage, towage, berthing, un-berthing and mooring, vessel lay-ups, ship to ship transfer, assisting in anchoring of vessels, assisting in cargo salvage operations, and other marine services as may be requested by the User from time to time;

‘MSS’ means the marine services system to facilitate the use of the TBP Marine services.

‘operator’ includes a User as defined herein and any person who directly or indirectly enters into any arrangement, contract or agreement with TBP in relation to the transport, storage or distribution of cargo or containers or any matter connected therewith and includes exporters, importers, consignors and consignees thereof and may include, if appropriate, a person who is a Line.

‘owner(s)’ in relation:

- (a) to goods, includes any consignor, consignee, shipper or agent, multi-modal transporter, freight forwarder or freight agent acting on behalf of the owner of such goods or for the sale, custody, shipping, transporting, loading, landing or delivery of such goods;
- (b) to vessel, includes any part owner, charterer, consignee or mortgagee in possession of the vessel agent acting on behalf of the vessel owner; and
- (c) to container, includes part owner, lessee, operator, or agent acting on behalf of the container owner.

‘passenger’ shall mean any person who travels in or on any vessel whose name appears or is recorded in the vessel’s list of passengers on board excluding a child under one year of age.

‘persons’ includes corporations whether aggregate or sole.

‘pilot’ means any person not belonging to a vessel who has conduct thereof and who is duly licensed by the Melaka Pilotage Board to act as a pilot within the Pilotage District and so engaged/employed (whether by contract or otherwise) by TBP for the purposes of the pilotage Services herein provided.

‘Pilotage District’ refers to the pilotage district gazetted by Authority and as declared by the Authority under the Act.

‘Port Limits’ refers to the gazetted Port Limits of the Tanjung Bruas Port declared by the Minister under Section 5 of the Merchant Shipping Ordinance, 1952 and includes any other limits or navigable river or channel in the Port so declared from time to time in the gazette.

‘Port’ shall mean Tanjung Bruas Port as specified in the First Schedule of the Act, declared within the limits defined under Section 6 of the Merchant Shipping Ordinance 1952.

‘Marine Facility Security Officer’ or its abbreviated term of reference **“MFSO”**, means an appointed and qualified TBP officer, designated to facilitate the requirements of the ISPS Code, for the development, implementation, revision and maintenance of the port facility security assessment and plan in liaison with the Ship’s Security Officers (SSO), Company Security Officers (CSO) and the Port Area Security Officer (PASO) as appointed by the Authority.

‘Port premises’ shall mean TBP port premises and shall include TBP’s inland port premises, terminals, places and land vested with TBP or administered, leased, owned or managed and operated by TBP under an operatorship contract or occupied by TBP at the Port or any area adjacent or connected to the Port by road and transportation links,

secured by TBP. Such terminals, places and land shall include, but shall not be limited to, areas used for the landing, loading, shipping, delivery and storage of goods and any portion of the bank of the river so vested or administered, leased, managed or occupied which has been improved to facilitate such landing, loading, shipping and delivery of goods and include any foreshore so vested with TBP or occupied and used for such purposes.

'PSSD' means the TBP Port Safety and Security Department.

'Restricted Areas' mean any areas identified by TBP to be restricted, within the requirements of the Protected Areas and Protected Places Ordinance 1959 (Revised Act 1959), to any unauthorised persons including Users, their personnel, invitees, vessel's crew and passengers. The Restricted Areas shall include the following areas and any additional areas as may be notified by TBP from time to time:

- (a) TBP shore and water-side area immediately adjacent to any vessel berthed alongside any TBP wharf or jetty;
- (b) TBP dangerous cargo jetties or oil jetties;
- (c) all TBP warehouses, wharves, yards where loading, unloading or storage and handling of cargo(es) and stores are being carried out;
- (d) all locations including any terminal within the Port where confidential and security-sensitive information including cargo documentations are held and or where the TBP computer server rooms are located;
- (e) all areas where dangerous goods and hazardous substances are stored or held;
- (f) all vessel traffic management control rooms, terminal control rooms, safety and security surveillance control rooms or tower;

- (g) all essential electrical, radio and telecommunications, water and other utility installations erected by TBP within the Port; and
- (h) other locations in the Port where access by vessels, vehicles and individuals are restricted from time to time.

‘Services’ means the provision by TBP of port services, facilities and equipment, inclusive of the use of jetty(ies) and or wharves for berthing and un-berthing of vessel, cargo and container handling, transportation & logistics services, water supply, internal haulage, reefer monitoring, container repairs, towage, pilotage, mooring, support services for the offshore inspection, maintenance & repairs, refurbishment and retrofitting of oil and gas and other vessels and for the non-cargo handling activities, operation of docks where the loading, unloading or repairing of vessels occurs, operation of harbour tugs, ship to ship and lay up, assisting in salvage operations and services, maintenance and supply of cranes, all connected to TBP’s Business requirements and subject to TBP’s capacity to undertake them at the request of the User, as well as the provision of information by electronic means or otherwise, for which charges shall be imposed based on the rates published in the Tariff, and/or as may be contractually agreed between TBP and the User.

‘Tanker’ means a merchant vessel designed to transport edible or non-edible liquids or gases in bulk and include such vessels as oil tankers, chemical tankers and gas carriers.

‘Tariff’ means the charges to be paid to TBP by the Users based on the scale of charges as specified in the Malacca Port Authority (Scale of Rates, Dues and Charges) By-Laws 1983 as may be amended from time to time or the non-prescribed charges levied in compliance with the requirements of the Authority, and/or the charges as stated in

Appendix I and/or any charges as may be agreed between the User and TBP in respect of the Business.

'terminal(s)' means private jetties within the Port either operated privately by the User or operated by TBP under any contractual operatorship arrangement.

'General Manager' or **"GM"** means the head of TBP and includes his assistants and any other officer acting under or with his authority.

'unprotected cargo' in relation to:

- (a) containerised cargo shall mean any cargo which are packed, stuffed, secured or stowed in or on a flat rack or u-rack or placed in an open-sided or open-top container or in a container where the bottom is not sufficiently secured or the container doors are not properly closed; and
- (b) bulk or breakbulk cargo shall mean any cargo not placed in a carton or any form of packaging or protective covering;

whereby such packing, stuffing, storage or form of packaging would result in their loss in weight, value or quality or in their damage.

'User' or **'Users'** includes customers, owners, operators, vendors, suppliers, importers, exporters, sub-lessees, tenants, contractors, multimodal transport operator, freight forwarders, freight agents, shipping agents, any persons and their respective representatives, successors and permitted assigns, who are using or engaging any of the Services of TBP at the Port or having or transacting Business with TBP in any manner whatsoever.

'SMK' means the *Sistem Maklumat Kastam* to facilitate dissemination of all data on each vessel, its arrival or departure, providing notice of port clearance obtained from the relevant authorities for each vessel's arrival or departure and other necessary data to facilitate the

acceptance of the vessel for admittance into the Port and henceforth the use of TBP's Services.

'vehicle' includes a carriage travelling on its own wheels or runners and used or intended to be used for the conveyance or carriage of persons, animals or goods into and out of the Port premises.

'vessel' includes every description of watercraft, non-displacement crafts capable of being used as a means of transportation on water, barges, lighters and any mechanically propelled ship or boat or any seagoing or inland water craft, oil rig, semi-submersible, jack-up rig, drill vessel including any floating objects used in navigation for the carriage of cargo, containers or passengers.

'Wharf' includes any quay, pier, jetty, ramp, landing place and any wall and building adjoining the foreshore, seabed or river bed at Tanjung Bruas Port or any terminal within the Port.

"work" means work as defined under the Occupational Safety and Health Act 1994.

7.0 CONSTRUCTION AND SAVINGS

7.1 In the construction of these Terms and Conditions of Business, no paragraph of any condition shall be taken to derogate from the generality of other paragraph.

7.2 Where the context permits, singular includes the plural and male gender includes female and neuter gender. In these Terms and Conditions of Business, any reference to more than one person, shall be construed as a reference to such persons or any one of them.

7.3 Reference in the Contract and in these Terms and Conditions of Business, to any statute includes a reference to such statute

in force from time to time and any regulations or orders made under such statute.

- 7.4 For the purposes required and applicable throughout these entire Terms and Conditions of Business, any references to any:
- (a) prescribed statutory forms, written applications, notices, any other form of notifications, circulars, orders, shipment manifests, permissions, advises, forms, directives, bills of lading, delivery order, etc.; or
 - (b) any documents whatsoever similar to those listed above whether referred to or not in these Terms and Conditions of Business or any communications required to be in written form or any documents whatsoever as required or may be required by TBP to be used in any transaction relating to the Business;

which is/are to be made by the User to TBP or vice versa in writing or in written form for any particular transaction with TBP or circumstances whether expressly stipulated or not by TBP in these Terms and Conditions of Business, shall be made by way of the Applications.

- 7.5 For the purposes required and applicable throughout these entire Terms and Conditions of Business, any references to certification required for any particular documents whatsoever as herein stipulated, shall mean the certification of documents by use of digital signatures under the Digital Signature Act 1997 as may be amended from time to time.

Any and all documents or communications, whether referred to in these Terms and Conditions of Business (inclusive of all documents required for purposes of transaction of the Services which are listed under Annexure III) or not, which are required to be made by the User to TBP, shall be digitally certified and

signed by the User only by digital signature(s) issued or certified by a certification authority recognised by TBP.

Such digitally signed documents or communications (including copies thereof), under the provisions of the Digital Signature Act 1997 and/or any other applicable laws of Malaysia in force at the time of the User's acceptance of these Terms and Conditions of Business and continuing therefrom, shall be deemed to be written original documents with all attending rights and liabilities under the law attaching to written original documents.

7.6 Insofar as all matters that concern the commercial procedures and practices carried out by TBP for the purpose of its Business, the Act and its by-laws, shall only be used as a guide for the interpretation of these Terms and Conditions of Business, and any contract entered into based on these Terms and Conditions of Business in relation to such commercial procedures and practices, shall at all times be independent of the Act and its by-laws for all intents and purposes.

7.7 Pursuant to the preceding Paragraph 7.6, except for the items prescribed in the Schedule according to the Tariff as may be amended from time to time and which shall be applicable in these Terms and Conditions of Business, unless otherwise agreed upon, references to "Authority" in the Tariff shall mean references to TBP with its rights to determine the following as stated in the Tariff:

(a) Any other conditions not relating to the rates and charges prescribed in the Tariff may be varied by TBP as deemed necessary for the efficacy of its Business within the requirements of the applicable laws.

Pursuant to the preceding Paragraph 7.6, all other by-laws under the Act shall be used only as a guide for the interpretation of these Terms and Conditions of Business.

8.0 CONDUCT OF BUSINESS

Every business conducted by TBP is subject to the exclusions and limitations of liability as set out in these Terms and Conditions of Business. The liability of the User and TBP under these Terms and Conditions of Business shall be deemed to be superseded only to the extent required by tort or statute.

9.0 APPLICABLE LAWS

These Terms and Conditions of Business shall be governed, construed and interpreted in all respects according to the laws in force in Malaysia, and all parties to these Terms and Conditions of Business shall submit to the jurisdiction of the Malaysian courts.

10.0 NOTICE

10.1 Unless otherwise provided, every notice, request, demand, or communication equivalent to notice with respect to the Services shall be given or made in writing by the User to TBP, or vice versa or posted on the website of TBP as the case may be and by using the Applications designed and implemented to support the Services.

10.2 Every notice, request, demand or other communication shall be given or made in writing by registered mail or by facsimile and by e-mail using the Applications, to the other party and shall be addressed to the party at its last known address, and it shall be deemed to have been received seven (7) days after being deposited in the post office (in case of a notice by registered mail) or on the next business day following the day upon which it was duly transmitted (in the case of a notice by

facsimile and e-mail). In the event that notice is posted on the website of TBP, such parties being the intended recipients(s) of the notice shall be deemed to have had notification of the said notice.

10.3 In the event of failure of the Applications, every notice, request, demand or other communication shall be given or made in writing by registered mail or by facsimile and by e-mail to the other party and shall be addressed to the party at its last known address, and it shall be deemed to have been received seven (7) days after being deposited in the post office (in the case of a notice by registered mail) or on the next business day following the day upon which it was duly transmitted (In the case of a notice by facsimile or by e-mail).

10.4 TBP may in its absolute discretion where TBP considers appropriate or conducive to efficiency or expediency, choose to give any notice to the User in relation to any matter under these Terms and Conditions of Business which may include but not be limited to any amendments or modifications of these Terms and Conditions of Business, by written circulars addressed to the User or any relevant agency and generally by electronic means or by posting a copy of such notices or circulars at the site office of any of TBP's terminals or such places where TBP deems fit.

11.0 WAIVER

No failure to exercise and no delay in exercising on the part of TBP In respect of any rights, remedies or privileges under these Terms and Conditions of Business or the general law shall operate as a waiver by TBP thereof.

PART II: SERVICES

A. IN RELATION TO VESSELS

12.0 APPLICATION FOR A BERTH

12.1 Notification Of Arrival

- (a) The User intending to call at the Port shall comply with the policy specified in Appendix III known as the 'POLICY ON VESSEL ACCEPTANCE'. He shall notify the operation executive in advance through the SMK, of its application for the Services at the Port, and submits the vessel's

data and documents for port clearance by the relevant authorities and eventually for acceptance by TBP.

- (b) The User shall provide adequate notice by using Notice of Vessel Arrival (“NOVA”) through the SMK, MSS, MPTS or, to the respective operation executive of the expected date and time of arrival of his vessel and furnishes information relating to such vessel in the following manner:
 - i) When applying for a berth for vessels handling Bulk and Break Bulk cargo, the User shall give to the operation executive the ETA notice, the confirmation of arrival and carry out the input of data and documentation within the following stated periods:

A. NOTIFICATION PERIODS FOR BULK AND BREAK BULK VESSELS CALLING AT THE TANJUNG BRUAS PORT AND TERMINALS IN THE PORT				
NO.	CATEGORY	NOTICE PERIOD OF ETA	CONFIRMATION OF ETA	INPUT OF DATA AND RELEVANT INFORMATION INTO MPTS AND/OR PTOS
1.	Break/Dry Bulk	7 days before ETA	48 hours before actual arrival	24 hours before actual arrival
2.	Liquid Bulk	7 days before ETA	48 hours before actual arrival	24 hours before actual arrival
3.	Cargo shipped from eastern Sumatera or any part of Indonesia.	72 hours before ETA	Any time before arrival	12 hours before actual arrival
4.	Dangerous Cargo on Scheduled Vessel.	30 to 45 days before ETA	72 hours before actual arrival.	24 hours before actual arrival

- ii) When applying for a berth for Marine Services, the User shall give the operation executive the ETA notice, confirmation of arrival and carry out the input of data and documentation within the following stated periods:

B. ALL VESSELS CALLING AT TANJUNG BRUAS PORT AND TERMINALS IN THE PORT ARE REQUIRED TO NOTIFY THE OPERATION EXECUTIVE AT LEAST 72 HOURS PRIOR TO THEIR ARRIVAL WITH 2 HOURS PRIOR REQUEST VIA MSS TO ENABLE DEPLOYMENT OF PILOT AND TUGS:

- **Two (2) hours before the ETA at the Pilot Boarding Ground via VHF channel 12.**
- **The ETA is to be confirmed two (2) hours before arrival.**
- **If pilot is not boarding on arrival, the vessel is required to anchor at the designated Tanjung Bruas Port Anchorage.**
- **Upon anchoring, all vessels are required to report their positions to TBP.**
- **Users are to furnish to TBP Marine:**
 - ✓ **Other than the information available in the SMK on Vessel's ETA;**
 - ✓ **Other Vessel's particulars; and**
 - ✓ **Information on the carriage of dangerous cargo on board.**

12.2 The User shall ensure that the information provided is accurate and that it is expressly agreed that by accepting and acting upon the information so provided, TBP shall not, at all material times, be subject to any liability or responsibility for any changes in the berthing schedules, delays, loss and/or damage resulting therefrom howsoever caused.

12.3 Allocation of Berths

- (a) The allocation of a berth for any vessel calling at Tanjung Bruas Port or any terminals in the Port is subject to the procedures and requirements as may be specified by the operation executive who shall have the absolute discretion for the allocation of any berth.

- (b) Apart from the MSS and SMK, allocation of berth shall be made by TBP or the operation executive using the MPTS subject to:
 - i) a written application by the User by entry into or keying in of data in the appropriate forms for such services by using of the MPTS;
 - ii) receipt by the operation executive, from the MPTS, of adequate written notification of the expected date and time of arrival of such vessel. For the purpose of this Paragraph, “an arrived vessel” shall mean a vessel which has entered the TBP designated Port Limits;
 - iii) submission of a summary of the cargo to be discharged or loaded accompanying the written application as stated in sub-Paragraph 12.3 (i) above;
 - iv) proof that any required declaration to any relevant authorities in respect of the vessel, cargo, have been duly complied with; and
 - v) any other procedures and requirements as TBP and/or the operation executive may from time to time prescribe, either made by way of circulars or notices in whatever form or manner.
- (c) TBP reserves the right to reject any berthing application without assigning any reason thereto.
- (d) Notwithstanding anything to the contrary, TBP shall not be held responsible if for any reason or cause whatsoever not due to the want of reasonable care of

TBP, a vessel could not be berthed at the Wharf applied for or at any other Wharf.

13.0 CLEARANCE BY RELEVANT AUTHORITIES FOR VESSEL TO BERTH AND TO DEPART

13.1 Shipping agents or freight forwarders or freight agents as the case may be must submit the necessary applications to the various relevant authorities, such as Customs Department, Malaysian Marine Department, Immigration Department, Port Health Department and any other relevant authorities (if required); and in the case of Dangerous Goods carried on board, to the Chemistry Department and or Department of Environment and or any other relevant authorities, and obtain the approval of these relevant authorities before making the application to berth for arrival or un-berth for departure through the SMK.

14.0 VESSELS BERTHING, UNBERTHING ALONGSIDE AND ANCHORING

14.1 At all material times, the Master shall be and remain in command of his vessel and take all necessary steps to preserve her safety and security at his own risk and expense.

14.2 Every vessel while manoeuvring or while lying alongside the Wharf or in the Port's Lay-Up areas does so at the sole risk and expense of the Master and shall remain in the charge of the Master.

14.3 The Master shall ensure and maintain at all material times, that the vessel:

- (a) will be navigated, and manoeuvred safely and in compliance with all relevant legislation or regulation prevailing and in accordance with TBP's operating procedures and safety requirements;

- (b) will not ground while manoeuvring or laying alongside the Wharf;
- (c) will not break adrift from her moorings;
- (d) will not cause any damage, howsoever occasioned, to the Wharf and to the Port premises, equipment, fixed or portable fenders or mooring bollards and other property belonging to TBP or to third parties or terminal owner(s) during or arising from the act of manoeuvring or lying alongside;
- (e) has been properly and safely berthed alongside at the Wharf to the satisfaction of manager;
- (f) shall discharge or load her cargo or containers safely and with reasonable despatch complying with the requirements of the rules and subsidiary laws made under the Merchant Shipping Ordinance 1952, and the Merchant Shipping (Load Line) Rules 2001;
- (g) shall leave the Wharf when so directed by TBP or the Port Executive or the Supervisor may direct the Master of the vessel which is berthed at any of the Wharf or anchored in the Port's Lay-Up areas to leave the Wharf or the anchored area or shift to a new position at the sole risk and expense of the owner, Master, servants or appointed agent.

14.4 No vessel shall:

- (a) lie alongside a berth after it has completed loading or discharging or the disembarkation of passengers; or
- (b) wait alongside a berth for goods; or
- (c) remain idle.

unless authorised by the operation executive.

- 14.5 A vessel shall be allowed to anchor at the anchorage area if it is transacting Business with TBP or business with any terminal operator in the Port. If no Business or business is transacted by the vessel, OR upon approval by TBP, may request for temporary anchorage. Otherwise, TBP reserves the right at its discretion at all times to alert the Government authorities to order the vessel's immediate departure from the anchorage area.
- 14.6 TBP will provide, without prejudice to the foregoing, berthing/unberthing personnel and mooring crew at the Wharf to render assistance under instruction from Master of the vessel for the sole purpose of making fast or casting off the vessel's hawsers and mooring ropes and all costs and expenses incurred shall be entirely borne by the Owner, Master, servants or their appointed agents.
- 14.7 Without prejudice to anything to the contrary, any services or assistance rendered by TBP to the Master and/or the vessel shall be subject to the express condition that TBP shall not be liable for any consequences (be it delay, loss, injury or damage to persons or property, direct or consequential) arising therefrom.
- 14.8 TBP shall not be liable in any manner whatsoever for any damage or loss to the vessel arising from any latent defects in fenders, mooring bollards or posts, nor for any improper mooring of the vessels at the Wharf whether by reason of incompetence or negligence of its officer or pilot, or as a result of insecure or improper mooring of the vessel whilst lying alongside the Wharf.
- 14.9 The Master shall keep TBP fully indemnified against all claims, demands, losses, costs and expenses arising from any such

damage or loss either to property or persons belonging to TBP or any third party pursuant to such berthing/unberthing and loading/discharging operations.

- 14.10 TBP shall have the discretion to enforce security, safety control and protective measures at the cost and expense of the Owner or the operator if TBP is of the opinion that they are necessary for the purpose of increasing the security and safety level of any vessel or that the vessel is in breach of the ISPS Code. For this purpose, TBP shall have the right to exercise security and safety inspection of all vessels, cargo(es), containers, personal effects and crew baggage and vessel supplies as specified under the ISPS Code.

15.0 PILOTAGE SERVICES

15.1 Navigating In Pilotage District

Every vessel, for which pilotage is compulsory as specified by the Authority from time to time, shall navigate in the Pilotage District with the assistance of a pilot or pilots as may be determined by TBP.

15.2 Requirement To Use TBP's Pilotage Services

Every vessel requiring pilotage for purpose of approaching or leaving or operating within the Pilotage District, shall engage a pilot or pilots as provided or authorised by TBP.

15.3 Use Of Pilotage Services

Pilotage services shall be undertaken by TBP under the following terms and conditions:

- (a) Pilotage services in respect of any movement of a vessel shall be deemed to commence when the pilot has boarded the vessel and to end when he leaves the vessel.

- (b) The pilot provided by TBP shall be deemed to be a servant of the Master or Owner of the vessel being piloted and neither TBP nor the pilot provided shall be liable for any loss or damage occasioned by any act, omission or default of such pilot.
- (c) Every vessel under pilotage shall remain at all material times at the sole risk and at the entire charge, care and expense of its Master or Owner in the same manner as if such pilotage were not compulsory or provided. The master retains full responsibility of the vessel and the Owner retains full liability for the consequences of negligent navigation.
- (d) For the ease of position identification by the pilot(s), all vessels equipped with Automatic Identification System or any other system as may be made mandatory by the International Maritime Organisation and the International Convention for the Safety of Life at Sea 1974, shall switch on the system while approaching a pilot station or anchoring at the anchorage area.
- (e) Every pilot engaged shall reserve the right:
 - i) to enhance the safety level of the vessel while navigating or manoeuvring by requesting additional tug assistance, manpower, etc. as he deems fit in accordance with the manoeuvring capability of the vessel, or
 - ii) to refuse to continue or undertake the pilotage services by anchoring or otherwise securing the vessel under his conduct as safely as possible, if he is of the opinion that:

- the vessel is not fit to proceed in her existing condition, or
- the vessel appears to be overloaded, and/or
- due to any other reasons that the pilot deems fit.

16.0 TOWAGE SERVICES

16.1 Requirement To Use TBP's Towage Services

Every vessel requiring towage for the purpose of manoeuvring or operating within the Port shall not make use of any towage services other than those provided by TBP.

16.2 Use Of Towage Services

Towage and assistance connected with the towage of vessels shall only be undertaken by TBP upon the following terms and conditions:-

- (a) The towage services shall be deemed to commence when the tug leaves its base and to end when it returns to its base.
- (b) The Master and crew of any tug provided by TBP under Paragraph 16.1 whilst performing towage inclusive of escort services shall be deemed to be the servants of and shall be under the order and control of the Master of the vessel receiving the services, and all costs and expenses incurred for the services shall be borne entirely by the Master of the vessel receiving the services.
- (c) TBP shall not be liable to the User for any damage, loss, personal injury or death. The User shall bear, pay and indemnify TBP against any damage or loss which it may suffer arising during the course of, or in connection with

the towage services from any cause whatsoever including unseaworthiness, unfitness or breakdown of the tug, its equipment or towing gear, lack of fuel, stores or speed or otherwise but not including negligence at any time of TBP, its employees or agents.

Provided that such damage, loss, personal injury or death is not caused by want of reasonable care before and at the beginning of the towage services on the part of TBP to make the tug seaworthy for the towage services.

- (d) The burden of proving any such want of reasonable care as referred in Paragraph 16.2 (c) shall be upon the User and the mere fact of unseaworthiness of any kind shall not be taken to be evidence of such want of reasonable care.
- (e) TBP may at any time, whether before or after the commencement of the towage services substitute one tug for another and may tow or otherwise assist in matters connected with the towage of more than one vessel at a time. TBP shall be at liberty to employ a tug belonging to other tug owners for the whole or any part of the towage services.
- (f) No sum payable by the User shall be discharged or diminished by any sums recovered by TBP from its insurers in respect of the same damage or loss, and the User shall not be entitled to be subrogated to any rights of TBP or have any right of contribution from TBP's insurers.

- (g) In the event of TBP employing a tug belonging to other tug owners, for the whole or any part of the towage services, the User shall not bring any suit against the other tug owners in respect of any matter arising out of such towage services rendered in connection with the towage services.
- (h) These Terms and Conditions of Business shall remain in force notwithstanding any deviation or interruption or failure in the performance of the towage services and whether or not there has been any substitution of tugs.

16A BARGE SERVICES AND HIRE OF EQUIPMENT AT A TERMINAL IN THE PORT OPERATED BY TBP

- 16A.1 Any User requiring barge services from TBP to transport cargo from any point at Tanjung Bruas Port or at any part of the Port premises to a terminal in the Port operated by TBP, shall give a written notification to TBP in writing.
- 16A.2 The User may however, upon giving prior written notice to TBP not less than fourteen (14) days before the date required for use of barging services, make his own private arrangement for the provision of barge services with another party on condition that the User shall be wholly responsible for any loss, damage, costs, personal injury and/or death, claims and suits that may be incurred or sustained by TBP and any third parties, and for any claims and suits that may be brought against TBP and/or any third party, arising from such supply of equipment through a private arrangement. In addition, the User shall also indemnify, and keep TBP indemnified against all such loss or damage, personal injury, death, liabilities, costs, claims and suits.

16A.3 All Users shall hire the equipment provided by TBP for the loading and/or discharging of cargo from any point at Tanjung Bruas Port. Subject to Paragraph 18.1(f), the User shall declare the weight of the cargo through the usage of TBP's weighbridge before he is allowed to hire any of TBP's equipment.

For the purpose of this Paragraph, equipment shall mean cranes, machineries and all equipment to facilitate lifting and transfer of cargo from a vessel to a transport vehicle for conveyance out of the Port premises and vice versa.

16A.4 The User may however upon giving prior written notice to TBP not less than fourteen (14) days before the date required for the use of equipment at the terminal operated by TBP, for any loading or discharging of cargo which exceeds 28 metric tonnes per lift in weight, make his own private arrangement for the provision of the equipment with another party on condition that the User shall be wholly responsible for any loss, damage, costs, personal injury and or death, that may be incurred or sustained by TBP or any third parties, and for any claims and suits that may be brought against TBP and/or any third party, arising from such supply of equipment through a private arrangement. In addition, the User shall also indemnify, and keep TBP indemnified against all such loss or damage, personal injury, death, liabilities, costs, claims and suits.

17.0 COMPLIANCE

17.1 Every vessel provided with pilotage and towage services by TBP shall be in full compliance with the Act, its by-laws and other applicable laws in respect of the pilotage, towage and marine services including any directives made or circulars issued by

the Authority and/or the relevant authorities or by TBP on their behalf or by the GM of the MFSO from time to time for the safety and convenience of the pilotage and towage services.

- **B. IN RELATION TO CARGO AND CONTAINER**

18.0 RECEIPT AND DELIVERY

18.1 Document And Manifest

- (a) Before any cargo or containers are landed or discharged a true copy of inward or transshipment manifest certified by the User as being correct in respect of goods to be discharged or transhipped, shall be provided to the operation executive by way of the MPTS or MSS if the cargo is to be discharged or loaded at a terminal operated by TBP. The manifest shall only be deemed to be certified correct if the User's digital signature is applied to the manifest. Such manifest shall contain all particulars as to gross weight, measurement, marks, numbers, contents and any other information as may be required of each package or unit of the goods and shall be transmitted/communicated by the MPTS or MSS to the office of the operation executive not less than twenty four (24) hours before the arrival of the vessel.
- (b) The User of any vessel which loads cargo or containers at any Wharf shall communicate by the MPTS or to the office of the operation executive and transmit a copy of outward manifest by way of the MPTS or MSS as the case may be and it shall be certified as being correct by the User by applying the User's digital signature to the manifest and shall be furnished within seventy two (72) hours of the departure of such vessel.
- (c) Any alteration to the information contained in the documentation for (a) and (b) above after presentation by the User and any additional services required by the User shall be advised on the TBP.

- (d) The User shall provide TBP with all necessary information and instructions including adequate notice relating to the conditions and nature of the cargo or containers and their contents which may require special handling.
- (e) The User shall further undertake to co-operate fully with TBP in arranging for speedy receipt and delivery of such cargo or containers in accordance with the requirements of TBP, the Authority and other relevant authorities.
- (f) The User shall be responsible to TBP in respect of any loss, damage (including to TBP's equipment, vessel and transport vehicle), claim or expense, personal injury or death incurred or sustained by TBP, its servants, agents and or by any third party, its servants and agents arising from inaccurate, erroneous, incomplete or an absence of information contained in the Applications relating to weight and the container contents or the nature of the cargo whether they constitute dangerous goods or otherwise, or from incorrect stowage of cargo where the User has previously approved the order of loading. TBP shall be entitled at any time and at the expense of the User to reject any cargo not conforming to the above requirements.
- (g) The User shall indemnify, and keep TBP indemnified from all liabilities in respect of any goods delivered to the person presenting a bill of lading or delivery order, as the case may be. TBP shall not be bound to make any inquiry whatsoever as to the right or title of such person thereto or as to the correctness or otherwise of any endorsement appearing or purporting to have been made on any such bill of lading or delivery order.

- (h) The User shall submit to TBP, twenty four (24) hours before reception at TBP's in-gates for export, storage or discharge from vessel and outward transportation at TBP's out-gate for import. TBP shall not be responsible for any deterioration, damage, loss to the cargo or container, and any delay due to waiting time if the User fails to comply with this requirement.

18.2 When Cargo Or Containers Are Considered Delivered and Landed

The delivery of cargo or containers shall not be considered to have been made to TBP, unless and until the cargo or containers have been landed or disconnected from the vessel's gear.

In this regard, 'landed' means discharged and landed on the Wharf deck or trailer or other transportation vehicles designated or contracted for such use by TBP whether owned by, or being used with the permission of TBP. To determine at which point or event, possession of the cargo or containers passes from the carrier or Owner to TBP, and when liability is assumed by TBP for loss or damage to the cargo or containers, reference shall be made to Paragraph 38.1(b), (c), (d) and (e) of these Terms & Conditions of Business.

18.3 Damage during Cranage

Where TBP undertakes the cranage of cargo or containers to and from vessels or transport vehicles, TBP shall not be responsible for loss or damage in consequence of:

- (a) any of TBP's cranes or the load attached thereto colliding with the rigging, spars or other equipment of

- the vessel or resulting from the shifting or movement of the vessel or any of its equipment,
- (b) faulty slinging or improper loading of any cargo or containers by persons, other than the servants of TBP acting within the scope of their employment,
 - (c) the vessel having improperly or insecurely moored,
 - (d) faulty vessel or vehicles twist-locks or any devices that secure the cargo or container to the vessel or vehicle including faulty cell guide of vessel that can cause damage to container/equipment,
 - (e) faulty devices that secure the cargo to the container,
 - (f) unstable condition or poor stability of vessel or vehicle,
 - (g) poor cargo stowage or cargo stacked away from the hatch square, or
 - (h) any error or inaccuracy or misrepresentation in the declaration by the User of the weight and height of cargo.

18.4 Loading Or Discharging

- (a) No cargo which are likely to be damaged by rain water shall be loaded or discharged during rain. The Master of the vessel shall ensure that all hatches are closed during rain.
- (b) Cargoes discharged or loaded through loading arms or flexible hoses for Liquid Bulk cargo; vessel's crane or mobile crane for Break Bulk cargo; conveyor, pipeline or conventional methods for Dry Bulk cargo; shall mean that even if installed with the assistance of TBP, shall at all times be under the sole responsibility, supervision and control of the owner, consignee, consignor, terminal, master of vessel, shipper, land or sea

transporter, contractor or any person who is in any way connected with the discharge or loading of the cargoes or who has knowledge of the properties of the cargoes and is responsible for enforcing the proper procedures and precautions for the discharging or loading of the cargoes. The service of fixing or unfixing such loading arms and or flexible hoses, such cranes, such pipelines, and or conveyor and or conventional methods by TBP shall not render TBP answerable for any loss, damage, injury or death caused during or after the discharging or loading of the cargoes.

- (c) A User who makes any request to re-arrange the position of any cargo discharged from the vessel and landed onto a transport vehicle provided by TBP for delivery, shall bear the costs, expenses and take the full risks and responsibility for any loss, damage or destruction that may be occasioned to the cargo, consequent upon such rearrangement of the cargo's original position on the transport vehicle.

18.5 Disposal Of Dunnages

All stages, dunnages, planks and other articles not provided by TBP shall, after use in discharging or loading a vessel, be removed from the Port premises within twelve (12) hours of the completion of works failing which TBP shall remove them at the User's costs and expense.

18.6 Refusal Of Objectionable Cargo

The GM may prohibit the landing of, or refuse to receive any cargo or containers which in his opinion is detrimental to the safety of TBP, or to all other cargo or containers, or properties or things within the Port Premises.

18.7 Unprotected Cargo

TBP shall not be liable in respect of breakage, loss of contents, damage or complete destruction of unprotected cargo or containers.

18.8 Sorting Cargo On board

Under normal circumstances, sorting of cargo prior to loading or upon discharge shall be carried out at the open yard or warehouse in the Port premises subject to conditions and charges to be laid down by TBP and agreed upon. Nevertheless, sorting of cargo on board, while the vessel is alongside the berth and engaged in the operation of loading or discharging of cargo may be carried out by the User upon request made to TBP. In approving such a request for sorting cargo on board, TBP shall have the right to determine the conditions and impose charges at agreed rates higher than the rates imposed for sorting cargo in the Port premises.

18.9 Acceptance of Cargo or Container Not Proof of Acceptance in Good and Undamaged Condition

Any acceptance of cargo or container by TBP, its employees, servants, or agents, shall not constitute proof that the cargo were accepted in a good and undamaged condition or that the container, packing and securing materials used conformed with the User's covenants specified in Paragraph 43.2 (b) and (c), herein. TBP shall notify the User in practicable time of any damage or defect of the cargo/container, its packing and securing materials, which is apparent at the time of delivery to the User and loading into vessel, provided that the User shall not make any claim against TBP, by reason of the absence of any notification on the state or condition of cargo or container accepted by TBP.

18.10 Period of Lodgement of Claim

The period of lodgement of any claim and the submission of claim documents shall be in adherence to Paragraphs 34.3 and 34.4 of these Terms and Conditions of Business.

18.11 Disputes

- (a) Any disputes in relation to discrepancies in the total amount, markings and numberings, stowage and conditions of cargo or containers to be loaded on board any vessel, should be communicated by the User, in writing to, and acknowledged by TBP, during loading of the cargo or container on board a vessel or prior to the completion of a vessel's operations (for the total amount disputed).
- (b) Any disputes in relation to discrepancies in the total amount, markings and numberings, and conditions of cargo or containers to be delivered to the User, shall be communicated by the User, in writing to, and acknowledged by TBP, prior to their delivery to the User, its employees, servants or agents.
- (c) Any disputes in relation to container or cargo damage shall be communicated by the User in writing to and acknowledged by TBP before the delivery, exit or gate out of the said container or cargo.
- (d) TBP reserves the right to reject claims of any loss or damage to the cargo or container if Paragraphs 18.10 (a), (b) and (c) are not complied with by the User.

18.12 Support Services for Non-Cargo Handling Activities

Support services for non-cargo handling activities connected to TBP's Business requirements shall be carried out only by TBP and not any other party, subject always to TBP's capacity to

undertake them and on condition that TBP shall not be held liable for any direct, indirect, punitive, special, incidental, or consequential damages, including, without limitation, lost revenues, or lost profits, arising out of or in any way connected with such provision of support services to the User.

19.0 STORAGE AND WAREHOUSING

- 19.1 Unless otherwise agreed, TBP may accept goods for storage or warehousing upon these Terms and Conditions of Business or subject to TBP's storage and warehousing terms as may be determined by TBP from time to time.
- 19.2 No goods shall be accepted by TBP for storage or warehousing without the submission by the User to TBP of a written list of the goods, their detailed descriptions and quantities acceptable and duly acknowledged by TBP in writing.
- 19.3 The User's acceptance or selection of a storage space(s) for his goods, as offered by TBP in any warehouse and storage area shall for the duration of such warehousing and storage be at the User's sole risks and expenses and TBP shall not in any way be liable to the User in respect of any loss, damage, deterioration or destruction that may be occasioned to the goods while they are in storage within the space(s) so accepted or selected by the User.
- 19.4 TBP may store in the open, goods which in the opinion of TBP and as agreed by the User, are suitable for such open storage, on condition that all risks for such storage shall be fully borne by the User who shall take all necessary precautions at his own costs and expenses to protect the goods so stored from damage, deterioration or loss howsoever caused.

- 19.5 TBP may at any time, give to the User not less than 30 days previous notice or any number of days considered by TBP as reasonable, for any goods, other than perishable or inflammable goods, in conventional form or containerised, to be removed by the User. On the failure to remove such goods pursuant to the notice given, TBP shall be at liberty to proceed in accordance with the actions stated in Paragraph 19.10 herein.
- 19.6 The operation executive may at his discretion remove any goods which have been landed or received into TBP's custody to any open-sided shed, warehouse, transit shed, open storage area, or from one place to another.
- 19.7 TBP reserves the right to shift any cargo stored in the Port premises without assigning any reason whatsoever. No shifting of cargo shall be carried out by TBP unless a prior written notice of not less than seven (7) days has been served on the User who shall agree to bear the costs for such shifting.
- 19.8 The owner of goods or its appointed surveyor, agent or representative shall be prohibited from entering any warehouse or storage areas within the Port premises without the prior written permission of TBP.
- 19.9 Subject to the preceding sub-paragraphs in this Paragraph on Storage and Warehousing, TBP disclaims all responsibility and liability for any loss or damage that may be occasioned to the goods so stored, and it shall be obligatory upon every User to rent TBP's portable fencing for the purpose of demarcating the storage and warehousing space occupied by the User, protecting and ensuring the safety of his goods.

19.10 Request For Early Removal Of Cargo / Abandoned Cargo

- (a) For any cargo either in conventional form or containerized, that remains in TBP's storage area or any part of the Port premises exceeding the period of thirty (30) days or any period earlier than the period specified for Abandoned cargo in Paragraph 19.10(b), from the date the cargo was first brought in for storage, if TBP wishes the cargo to be removed, TBP shall give a written notice to the owner of the cargo to remove such cargo within a period of thirty (30) days from the period of the notice, and if the owner of the cargo accepts the written notice, he will comply with such a notice.

- (b) If however the cargo remains in TBP's storage area or any part of the Port premises for a period of four (4) months from the date the cargo was first brought in for storage, then, TBP shall deem the cargo to be abandoned ("Abandoned Cargo") and the owner of the Abandoned Cargo shall be deemed to have unequivocally and irrevocably waived his right to assert any property rights to the Abandoned Cargo as against TBP.

- (c) TBP shall:
 - (i) if the owner of the Abandoned cargo cannot be traced or identified; furnish a written notice to the owner of the Abandoned cargo of not less than thirty (30) days before TBP's proposed date for removal or disposal or sale by public auction of the Abandoned cargo; or

 - (ii) publish its notice in the Gazette for a period of thirty (30) days before proceeding to remove,

dispose or sell the Abandoned cargo by public auction,

- (d) TBP may without any notice to the owner of the Abandoned cargo or without taking any action to publish any notice in the Gazette:
 - (i) Remove, dispose or sell by public auction any perishable cargo at any time, if not declared and immediately removed by the owner of the Abandoned cargo; and
 - (ii) Remove or dispose of any flammable cargo if it is not declared and removed at any time by the owner of such cargo after a period of fourteen (14) days after such cargo's arrival;
- (e) The proceeds of the sale by public auction shall be paid to the Federal Consolidated Fund after deducting the rental payable for storage at the TBP's storage area or any part of the Port premises (if not settled by the owner of the Abandoned cargo), costs and expense incurred by TBP in dealing with the removal and sale of the cargo.
- (f) TBP is not liable to any User, the owner of the Abandoned cargo and any cargo referred to in Paragraph 19.10(a) or anyone else for costs and losses that arise out of or in connection with any cargo and or Abandoned Cargo, including any act (tortious or otherwise) on the part of TBP or its related corporations as defined under the Companies Act 1965, while exercising its right under this Paragraph 19.10.

- (g) Without limiting any of TBP's other rights and remedies and as an alternative to the action by TBP as stated in Paragraph 19.10(e), any User who owns any cargo and or Abandoned Cargo shall reimburse TBP for all the rental charges due, its costs and losses that arise out of or in connection with the Abandoned Cargo, including any act or omission (tortious or otherwise) by TBP or any of its related corporation while exercising any rights under Paragraph 19.10.
- (h) Nothing in Paragraph 9.10 shall be interpreted to:
 - (i) make TBP a trustee in relation to any cargo and or Abandoned Cargo ; or
 - (ii) make TBP a bailee in relation to any cargo and or Abandoned Cargo.

C. IN RELATION TO VESSEL

20.0 COMPLIANCE WITH ISPS CODE

20.1 Each vessel engaged in international trades intending to call at the Port shall be ISPS Code compliant, and shall, not less than 48 hours prior to her entry, furnish to TBP together with her notification of arrival through MSS all information as required under the ISPS Code in particular the following:

- (a) the vessel's level of security (which shall be declared to TBP's Marine Control Tower via VHF Channel 12 not less than one (1) hour before TBP's pilot boards the vessel at the Pilot Boarding Point);
- (b) whether the vessel requires the Declaration of Security;
- (c) whether the vessel possess a valid International Ship Security Certificate and

- (d) the Flag of Administration applicable to the vessel.
Provided that TBP reserves the right to take action as provided under the ISPS Code for non-compliance or high security risk vessel. Provided further that TBP shall not be liable for any loss and or damage and for any suits, proceedings, costs or claims whatsoever from the owner or operator or any third party arising in consequence of such rejection or action by TBP.

20.2 Every vessel provided with pilotage and towage services by TBP shall be in full compliance with the Act, its by-laws and other applicable laws and with all International Conventions ratified by the Government of Malaysia in respect of the pilotage, towage and marine services including any directives made or circulars issued by TBP from time to time for the safety and convenience of the pilotage, towage and marine services.

D. IN RELATION TO THE MOVEMENT OF VEHICLES IN THE PORT

21.0 MOVEMENT OF VEHICLES

- 21.1 A User, his licensee and invitee including a passenger of a vessel under his care and control, who has been issued with a valid permit by TBP to enter the Port premises in vehicles or otherwise, shall only be allowed access into areas that have been assigned by the MFSO and no other.
- 21.2 TBP through its designated Port Safety Personnel reserves the right to stop vehicles and carry out physical inspection at the point of entry into and exit out of the Port premises for the purpose of enabling TBP to comply with the requirements of the ISPS Code.

21.3 A User, his licensee or invitee including a passenger of a vessel under his care and control when driving within the Port premises shall comply and abide with all traffic laws, rules and regulations, by-laws as provided in the Road Transport Act, 1987, the TBP SHE Guidelines as provided in Appendix V, and applicable laws in force from time to time.

**E. EMERGENCY RESPONSE SERVICES
(SECURITY, SAFETY, FIRE & RESCUE AND AMBULANCE SERVICES)**

22.0 TBP RESPONDING ON CALL OR ACT ON ITS OWN VOLITION

22.1 TBP may in response to any call from the User or on its own volition, act immediately in an emergency situation or in any situation deemed by TBP to be threatening or endangering to property and or life involving the User, by deploying its Security, Safety, Fire and Rescue and Ambulance personnel and vehicles to the scene, and when such a service is rendered, TBP shall have the right to claim for any loss and or damages, costs and expenses including any medical expenses that may be incurred by TBP for injury sustained by its personnel or by any third party in the course of responding to such emergency or reacting to any such threatening or endangering situations.

22.2 Provided that TBP shall have the right to respond to calls or to act on its own volition only in areas within a radius of 3 (three) kilometres outside the Port premises and or within the Port.

PART III: HANDLING OF DANGEROUS AND OBNOXIOUS GOODS

23.0 DANGEROUS GOODS AND HOT WORKS, ETC.

23.1 'Dangerous Goods' means all cargo defined as dangerous or hazardous by any Statute, Statutory Instrument or Order, any Regulation or recommendation made by the Government or the relevant authorities or by any applicable laws relating to the handling, storage or carriage of cargo; likewise all cargo which although not so defined, are known to have properties likely to endanger life or property.

23.2 The following shall apply to Dangerous Goods tendered to TBP;

- (a) the provision of the International Maritime Dangerous Goods Code (IMDG Code) standards as amended from time to time;
- (b) the provision of the Act;
- (c) the provision of any applicable laws as amended from time to time;
- (d) the provisions of any Federation Port Rules 1953 and any subsidiary laws of the Merchant Shipping Ordinance 1952;
- (e) the Petroleum Safety Measures Act 1984 as amended from time to time ;
- (f) the provision of the Rules and Regulations as stated in the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk;

- (g) Provision relating to the carriage of goods by road, rail or sea, contained in any statutory instrument or order made pursuant to the Act, applicable laws and in any international conventions or agreements or otherwise regulations and recommendations made by the Government or other relevant authorities and the requirements of local by-laws which may include the following Acts, Rules and Regulations as may be amended from time to time:
- i) Occupational Safety and Health Act 1994.
 - ii) Occupational Safety and Health Act 1994 (Control of Industrial Major Accident Hazard Regulations 1996).
 - iii) Atomic Energy Licensing Act 1984 Radiation Protection (Transport Regulations 1989).
 - iv) Environmental Quality Act 1974.
 - v) Environmental Quality (Schedule Wastes) Regulations 1989;
 - vi) Factories and Machineries Act 1967; and
 - vii) Other relevant Acts, Rules and Regulations pertaining to Malaysia in relation to Dangerous Goods as may be enacted from time to time.

23.3 Dangerous Goods shall not be presented to TBP unless permission has first been obtained. For this purpose, applications for permission shall be made by the User to TBP by way of the SMK or MPTS not less than 72 hours before the estimated time of arrival of the cargo by submitting to the MFSO, copies of the prescribed statutory forms stating clearly the proper name of the cargo as listed in the IMDG Code, IMO Code, Class No., UN No., the grouping of the cargo under

Malacca Port Authority DG Cargo Listings, if applicable, the flashpoint, if any, the method of packing, Material/Chemical Safety Data Sheet and any other material details which may be required by TBP or by any lawful authority pertaining to the carriage of Dangerous Goods.

- 23.4 The User shall be liable and accountable for any loss or damage caused to cargo or property or personal injury or death to persons, due to the User's omission to disclose to TBP or due to the User's false declaration or misstatements to TBP of the nature or classification of any Dangerous Goods delivered to TBP for storage or discharge at the Wharf. The User shall fully indemnify TBP for loss, damage, injury or death suffered by TBP or for any claims made against TBP by any party affected by such an act of omission or false declaration or misstatement.
- 23.5 TBP reserves the right to reject any Dangerous Goods if in the opinion of TBP, there is no suitable facility or expertise available to render a safe and proper handling, storage or transportation of such goods, and the User shall have no claim or any right of recourse against TBP for its refusal to accept such goods.
- 23.6 Where the MFSO has approved delivery of Dangerous Goods in containers or otherwise on a "direct delivery or direct loading" basis, the User has to ensure that such Dangerous Goods in containers or otherwise are collected directly from the vessel side using the User's vehicle for discharging operations, or such Dangerous Goods in containers or otherwise are delivered direct to the vessel side using the User's vehicle for loading operations, failing which TBP may disallow such Dangerous Goods in containers or otherwise to be received into the Port, or such Dangerous Goods in container or otherwise will be directed to be stored in a special area in the Port premises at

the sole risk and expense of the User. The User shall fully indemnify TBP for any damage suffered or loss incurred or any claims made against TBP by any party due to any mishap or incident consequent to the storage of such Dangerous Goods or container. TBP reserves the right to impose additional storage charges for its deployment of Port Safety personnel and equipment, as well as for any standby and escort services rendered.

23.7 Permit-to-Work

- (a) No works, including hot works, maintenance works, handling, bunkering, radiography, cold works, drilling, blasting, hydro jetting, diving, pressure test, working at height, excavating, confined-space entry, scaffolding, painting, grinding, operating with battery/ electrical tools, vessel-to-vessel transfer repair or maintenance works on vessel or barge or any other works that require safety precautions and procedures, shall be carried out in the Port premises without a Permit to Work issued by the MFSO.

- (b) The works carried out as described in Paragraph 23.7 (a) shall be deemed to be under the sole responsibility, supervision and control of the person executing the works, and the issuance of a Permit to Work by the MFSO shall not render TBP answerable for any loss, damage, injury or death caused by the works or by any fault of or omission in the execution of the works by the owner, consignee, consignor, operator of terminal, master of vessel, shipper, land or sea transporter, contractor or any person who is in any way connected with the works and is responsible for enforcing the proper procedures and precautions for the works.

24.0 OBNOXIOUS CARGO

24.1 For the purpose of these Terms and Conditions of Business “Obnoxious Cargo” means any of the following kinds of cargo which are not included in the category of Dangerous Cargo:

- (a) substances which can cause discomfort to or adversely affect personnel handling them;
- (b) substances which will taint or contaminate other cargo or containers in close proximity;
- (c) substances which will damage other cargo or container by contact or by shifting e.g. carbon, graphite, white pigments, greases and other ‘dirty cargo’;
- (d) hygroscopic or deliquescent goods or goods in a moist or wet condition such as hides;
- (e) cargo liable to infestation by insects, mites, weevils or grubs or any other cause which may require fumigation;
- (f) cargo of liquid or semi-solid nature and goods liable to qualify with a rise in temperature such as reasonably could be foreseen; or
- (g) any other cargo or container which is likely to adversely affect other cargo or containers or to present any special difficulties in handling.

24.2 Obnoxious goods shall not be permitted into the Port unless permission has first been obtained. For this purpose, application for permission shall be made by the User to TBP by way of the SMK, MPTS or in writing not less than forty eight (48) hours before the estimated time of arrival by submitting to the MFSO all relevant details which may be required by TBP or any lawful authority pertaining to the carriage of such obnoxious goods.

- 24.3 The User shall be liable and accountable for any loss or damage caused to cargo or property or personal injury or death to persons, due to the User's omission to disclose to TBP or false declaration or misstatements made by the User to TBP of any Obnoxious Cargo delivered to TBP, or discharged at the Wharf. The User shall fully indemnify TBP for any loss, damage, injury or death suffered by TBP or for any claims made against TBP by any party affected by such an act of omission or false declaration or misstatement.
- 24.4 TBP reserves the right to reject any Obnoxious Goods if, in the opinion of TBP, there is no suitable facility or expertise available to render safe and proper handling, storage or transportation of such Obnoxious Goods, and the User shall have no claim or any right of recourse against TBP for its refusal to accept such Obnoxious Goods.

PART IV: TARIFF AND OTHER CHARGES

25.0 TARIFF AND CHARGES

25.1 In consideration of the provision of the Services by TBP and or the Business, the User shall pay to TBP:

- (a) all dues, charges and other sums which are either prescribed in the prevailing Tariff or non-prescribed but approved by TBP or on mutual agreement between the Parties or as may be imposed by TBP under the law;
- (b) any costs and expenses which may be incurred by TBP in complying with any Government or the Authority's regulations, including but not limited to any requirement for the movement, treatment, removal or destruction of dangerous or obnoxious goods, infested, contaminated or condemned goods or the treatment of TBP's premises as a result of any infestation or contamination arising from such goods;
- (c) all rates for the supply of fresh water, from the main supply pipes to the supply points at Port premises to the User's premises and or to vessels. Provided that it shall be understood at all times that fresh water is sourced by TBP directly from the water supply company licensed by the Government of Malaysia, and therefore TBP shall not be held responsible and accountable for any contamination and or for the quality of the fresh water so supplied.

- (d) all costs and expenses incurred by TBP arising out of or incidental to the failure by the User to observe these Terms and Conditions of Business;
- (e) all taxes payable by the User for SST based on the prevailing percentage as shall be determined under SST;
- (f) all other charges in relation to the use of the Services as may be imposed on the User by the relevant authorities.

25.2 All sums of whatever nature due from the User to TBP pursuant to the Business shall be:-

- (a) payable without demand and without deduction not later than the date for payment stipulated in the invoice issued by TBP or under any contract or agreement, as the case may be; and
- (b) recoverable against the cargo and any other property delivered by the User to TBP under any other contract or arrangement made between TBP and the User;
- (c) except in case of User holding a ledger account in accordance with the following Paragraph 25.3, all charges shall be payable in cash.
- (d) cheques shall not be accepted in any payment to TBP except by special arrangement with TBP;
- (e) where a credit facility is available to the User under Paragraph 25.3, account in respect of such credit facility shall be settled within 30 days from the date on which such an account is dispatched;
- (f) an account which is not settled within the period of thirty (30) days shall be subject to a surcharge of two (2)

per cent thereof and any account which is not settled within a subsequent period of thirty (30) days shall be subject to a further surcharge of two (2) per cent thereof.

25.3 Traders Ledger Account Agreement and Other Securities

- (a) TBP shall require the User to open and maintain for the duration of the Business, an account with TBP's Finance Department subject to the terms and conditions provided in the Tariff.
- (b) In addition, Users shall be required to execute and enter into a Traders Ledger Account Agreement with TBP prior to engaging or transacting in any Business with TBP. Such Traders Ledger Account Agreement shall remain valid for the duration of the Business transaction and shall be deposited with the TBP's Finance Department.
- (c) Notwithstanding anything to the contrary, the User shall furnish security for a sum as specified and in a form approved by TBP for the prompt and proper performance and observance by the User of these Terms and Conditions of Business (including the obligation to pay the charges under the Tariff and other payment(s) due).

25.4 Access to the Applications (which shall be inclusive of User ID passwords, digital signature application or any other security access measures as directed by TBP from time to time) shall only be granted by TBP after the User has executed the Traders Ledger Account Agreement and has furnished security for a sum as specified and in a form approved by TBP (if so required) as stipulated above.

- 25.5 As long as payment due is not made or received as herein stipulated, TBP reserves the right to demand for payment in advance for each vessel calling at TBP from the defaulting User. Such advance shall be made prior to the arrival of vessel and shall be appropriated at the entire discretion of TBP.
- 25.6 Notwithstanding anything to the contrary, TBP shall, at its entire discretion, have the right to suspend any Business transaction or provision of the Services in the event the payment due exceeds the cash deposit or the Bank Guarantee.
- 25.7 Time shall be of the essence for the purposes of this Part of the Terms and Conditions of Business.

26.0 CHARGEABLE TONNAGE

- 26.1 Whether or not a ship's manifest or shipping note is lodged with TBP, TBP may elect to calculate all tonnage of goods according to the cubic measurement or gross weight, notwithstanding whichever is greater.
- 26.2 TBP may levy charges on the measurement tonnage if the weight tonnage cannot be ascertained or vice versa.
- 26.3 In the case of a vessel with dual tonnage or a vessel with an open or closed shelter deck, the higher tonnage shall be deemed to be the gross registered tonnage of the vessel.

27.0 UNDERCHARGE

- 27.1 TBP shall be entitled to collect any amount which may be ascertained to have been undercharged or which may otherwise be found to be due and shall demand in writing the

payment of any such amount any time within 6 years from the date the transaction is completed.

27.2 In this Clause “transaction” includes all services rendered, supplies provided and contracts to which TBP is a party.

28.0 OVERCHARGE

28.1 A User shall not be entitled to a refund of any overcharge unless he refers in writing to TBP within 6 years from the date the delivery bill, shipment bill or any other bill is issued to him, and he gives full information supported by such other documentary evidence as may be required.

28.2 Where any goods have been measured or weighed by TBP, no claim for a refund shall be accepted by TBP unless the User claiming the refund has disputed the measurement or weight of the goods at the time the goods were measured or weighed.

29.0 REMEDY FOR NON-PAYMENT

29.1 Default

(a) Notwithstanding the period for payment stipulated pursuant to Paragraph 25.2 above:

- i) if legal proceedings shall be commenced by any person for the bankruptcy, liquidation or winding up of the User;
- ii) if the User shall make any offer of composition to its creditors;
- iii) if any order of distress or attachment or similar order shall be made against any property of the User (including the Users’ cargo or vessel); or
- iv) if the User shall fail to perform or observe any of the stipulation under the Terms or Conditions of Business,

then, all sum or money due and owing by the User towards the account of TBP shall become immediately due and payable.

- (b) If due to any reason whatsoever (except the default of TBP) the User shall not make any payment on or before the due date for payment referred to in Paragraph 25.1 (a):
- i) TBP shall be entitled to engage the services of any person to recover such sum from the User, in which event the User shall also be liable for all costs incurred by TBP for such services (including the legal and related costs); and/or
 - ii) regardless of whether or not TBP shall have engaged the services of any person as described in sub-Paragraph 29.1 (b) i), the User shall in addition to the sum of money owing and the costs described in sub-Paragraph 29.1 (b) i) above (if any), pay to TBP interest on such sums and the costs at the rate equivalent to the rate stipulated in the invoice or any contract entered into between the parties, which interest shall be payable on a day to day basis from the date immediately after the due date for payment to the date of actual payment of such sums, the costs and interest thereon or to the date of expiry or sooner termination of the Business, whichever is earlier.

29.2 Right of lien and retention

- (a) TBP shall have the right of lien and retention over all property (including any sums collected by TBP from third parties on behalf of the User, if applicable), cargo,

containers (including the contents therein) and all documents which TBP shall now or hereafter hold, or for the User or which is now or hereafter due to the User, to secure the payment of all sums due from the User to TBP and the discharge of all liabilities of the User to TBP herein incurred or at law.

- (b) In the exercise of TBP's right of lien and retention, TBP shall be entitled to seize and detain such property, cargo, containers, sums and documents until the sums due from the User to TBP are fully paid.
- (c) TBP's lien shall have priority over all other liens and claims in respect of such property, cargo, containers, sums and documents.

29.3 Right to distrain for non-payment

- (a) If the User fails to pay any dues, charges or monies owing under any Business transacted, TBP may, in addition to any other remedy which TBP may be entitled to use, distrain or arrest the vessel in respect of which such dues, charges or monies are payable and the tackle, apparel or furniture or belongings thereto or any part thereof, and detain the same until the amounts so due are paid.
- (b) In case any part of the dues, charges or monies or of the costs of the distress or arrest, or of the keeping of the vessel, tackle, apparel or furniture, remain unpaid for a period of not less than fourteen (14) days after any such distress or arrest has been so made, TBP may cause the vessel or other thing so distrained or arrested to be sold, and with the proceeds of the sale, may satisfy those charges, other sums and costs, including the costs of sale

remaining unpaid, rendering the surplus, if any, to the master or owner of the Vessel on demand.

29.4 Right to sell for non-payment

If any charges are not paid after notice requiring payment has been given to the User, the cargo and/or containers may be sold without further notice and the proceeds applied in or towards satisfaction of the outstanding charges and the costs incurred by TBP in such sale. Any sale of cargo and/or containers by TBP pursuant to this Paragraph, may be conducted by private treaty, by public auction or otherwise in such manner as TBP shall in its sole discretion determine and TBP shall not be liable for any loss and damage to any person whatsoever as a result thereof. The exercise of such right of sale shall be without prejudice to any other right or remedy of TBP, and any deficiency in the proceeds of sale shall be recoverable from the User by civil action.

PART V: LIMITATION OF LIABILITY

30.0 LIMITATION OF LIABILITY

30.1 TBP as a bailee and or the provider of the Services to the User shall not be liable for:

- (a) any loss;
- (b) any damage; and
- (c) costs, expenses, injury or death,

of whatsoever nature or kind and howsoever sustained or occasioned and whether to property or persons, other than herein expressly stipulated.

30.2 Notwithstanding anything to the contrary, TBP shall only compensate the User for such physical and/or direct loss or damage as hereinafter specified on satisfactory PROOF THAT such direct physical loss/damage was caused by the want of reasonable care by TBP or its employees or agents whilst the goods are in the custody and control of TBP PROVIDED ALWAYS such compensation/liability, if so made, shall in no case exceed the financial limits set out hereunder:-

(a) Physical Loss or Damage To Container

TBP shall pay the depreciated value of the container or the reasonable cost of repair, whichever is the lesser, not exceeding:

- i) RM4,000 for a 6.1 metres (twenty-foot equivalent) dry container either fully enclosed, open-top, open-sided or flat-racks;

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- ii) RM7,500 for any other dry container either fully enclosed, open-top, open-sided or flat-racks, exceeding 6.1 metres;
 - iii) RM60,000 for an insulated, refrigerated or any tank container.

(b) Physical Loss or Damage to Cargo in Containers

TBP's liability under this paragraph shall not exceed 25 percent of the value of cargo per container load or per tonne as declared in the commercial invoice per container or per tonne, whichever is the lesser.

(c) Physical Loss or Damage to Cargo Shipped in Bulk or Breakbulk

TBP's liability shall not exceed 25 percent of the value of cargo as declared in the commercial invoice, per package or per tonne, whichever is the lesser.

(d) Physical Loss or Damage to Vessel and Its Equipment

TBP shall pay the depreciated value of such vessel or the reasonable costs of repair, whichever is the lesser, PROVIDED ALWAYS that the liability of TBP under this paragraph:

- (a) shall not exceed RM250,000; and
- (b) that the sum of RM250,000 shall be inclusive of any liability of TBP pursuant to Paragraphs 30.2 (a), (b) and (c).

(e) Physical Loss or Damage To Property not otherwise referred to in the Paragraphs 30.2 (a) to (d)

TBP shall pay the depreciated value of such property or the reasonable cost of repair, whichever is the lesser, PROVIDED ALWAYS that the liability of TBP shall not exceed the aggregate of RM25,000.

(f) Death or Injury

TBP shall pay an amount as may be required in tort.

30.3 The limitation of liability under this Part shall relate to the whole of any losses or damages which may arise upon any one distinct occasion, although such losses or damages may be sustained by more than one person, and shall apply whether the liability arises at common law or under any written law and notwithstanding anything contained in such written law.

30.4 Where more than one person have sustained loss or damage upon any one occasion for which TBP is liable and the aggregate amount of such loss or damage exceeds the amount to which TBP is liable by virtue of the limitation as herein contained, the liability of TBP to each such person shall abate proportionally.

30.5 Notwithstanding anything to the contrary as contained in the Paragraphs 30.1 to 30.4 above and in relation to the Applications, TBP shall not be liable for any physical and/or direct loss or damage suffered by the User unless such physical and/or direct loss or damage is proven conclusively to be caused by the want of reasonable care on the part of TBP in the maintenance of the Applications.

31.0 LIABILITY ON RECEIPT AND DELIVERY OF CARGO OR CONTAINERS

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- 31.1 Receipts either by endorsement on, or issuance by TBP, of document the transfer of cargo or container from the User to TBP, shall relate only to the outward appearance of the packages/containers, and shall not be construed as relating to the contents or state of the contents/containers.
- 31.2 TBP shall not be responsible for failing to note and take cognizance of any damage to any container or its contents or to any other cargo upon their discharge, receipt or handling.
- 31.3 TBP shall not be liable for any inherent loss and damage of the contents of the cargo or containers, subsequent loss, damage and deterioration of the contents or cargo while in the custody of TBP.

32.0 WHEN LIABILITY ATTACHES TO MORE THAN ONE PARTY

- 32.1 Where liability attaches to more than one party which can be defined as the `Users`, such liability shall be joint and several and may be enforced against any one or more parties.

33.0 TBP'S EMPLOYEES AND AGENTS SHALL HAVE BENEFIT OF PROVISIONS

- 33.1 Without prejudice to the foregoing, every such employee or agent of TBP shall have the benefit of all provisions herein, as if such provisions were expressly for their benefit. In entering into this contract, TBP, to the extent of those provisions, does so not only on its behalf, but as agent and trustee for employees and agents.

34.0 NOTIFICATION OF LOSS AND DAMAGE AND INTENTION TO CLAIM

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- 34.1 The User shall notify and obtain the acknowledgement of TBP of any disputes and discrepancies on the conditions, markings and quantities of cargo or containers, at the points of delivery as described in Paragraph 38.1 to the User either by land or by sea.
- 34.2 Claims of loss and damage to cargo or containers shall be considered null and void in the absence of the notifications mentioned in this paragraph.
- 34.3 All lodgement and notifications of claims as stated in Paragraph 18.10 in respect of any loss, damage, costs, expenses, death or injury shall be made to TBP by the User within forty eight (48) hours from the time of occurrence of such loss, damage, costs, expenses, death or injury.
- 34.4 Upon receipt of the notification within the time specified in Paragraph 34.3, TBP shall request for the submission of claim documents within a period of fourteen (14) days from the date of receipt of the notification, and any claim not notified or and not substantiated with the submission of claim documents to TBP within the periods specified, shall be deemed to have been waived.

35.0 INDEMNITY

- 35.1 The User undertakes that no claim shall be made against any employee or agent of TBP which imposes or attempts to impose upon any of them any liability whatsoever in connection with the cargo, containers or vehicles and if any such claim should nevertheless be made, to indemnify TBP against all consequences thereof.
- 35.2 The User shall defend, indemnify and hold harmless, costs and demands whatsoever and by whomsoever made or preferred in

excess of the liability of TBP under the Terms and Conditions of Business herein, and without prejudice to the generality of this paragraph, this indemnity shall cover all claims, costs and demands arising from or in connection with the negligence of TBP, its employees and agents.

35.3 The User shall indemnify TBP against all liability (as stipulated in Paragraphs 30.2 to 30.4) incurred by TBP, to the extent that such liability exceeds the financial limits therein prescribed.

36.0 DEFENCES AND LIMITS

36.1 The defences and limits of liability provided for in these Terms and Conditions of Business shall apply in any action against TBP for any loss, damage, costs and expenses, whether the action be founded in contract or in tort.

37.0 COST FOR SUIT OR ACTION

37.1 If any damages have been ascertained by agreement between the party claiming them and TBP, any other person interested, may require by notice at any time within the period referred to in Paragraph 34.0 that such damages shall be ascertained by suit or action, and shall in such suit or action be joined as a party thereto and shall be solely liable for any costs which, but for this provision, might have been awarded against TBP.

38.0 LIABILITY IN POSSESSION OF CARGO/CONTAINERS

38.1 TBP shall have no liability whatsoever for any loss or damage to the cargo or containers at the following points of event, however caused:

- (a) After the cargo or containers have passed over the vessel's railing or bulwark, or if applicable on the vessel's ramp, during loading;
- (b) Before the cargo or containers have been landed on the Wharf, or any transport during discharging;
- (c) After the cargo or containers have been delivered to the User or its agent. Delivery means the cargo or containers have been mounted on the User's or its agent's transport vehicles in the Port premises;
- (d) Before the cargo or containers have been received by TBP. 'Received' means the cargo or containers have been off-loaded from the User's or its agent transport vehicles in the Port Premises;
- (e) In respect of liquid bulk and dry bulk, delivery means arrival of the cargo at the User's facilities, be it conveyors or pipelines. 'Received' means off-loading of the cargo from the User's facilities;
- (f) In respect of cargo stuffed into container(s) by TBP at its Container Freight Station, when the cargo has been stuffed into the container(s), and a "clean" container packing lists are issued by the User;
- (g) In respect of cargo unstuffed from a container by TBP at its Container Freight Station, before the container is unstuffed and received into the Container Freight Station;
- (h) In case of refrigerated containers packed by or on behalf of the User, the User undertakes that the cargo has been

properly stowed in the container and that the thermostatic controls have been adequately set by the User before receipt of the container by TBP. The User's attention is drawn to the fact that refrigerated containers are not designed to freeze down cargo which has not been presented for stuffing or if the cargo is below its designated carrying temperature, and TBP shall not be responsible for the consequences of cargo presented at a higher temperature than that required for the storage in the TBP storage area and transported through TBP. If the above requirements are not complied with, TBP shall not be liable for any loss of or damage or deterioration to the cargo, howsoever arising.

PART VI: EXCLUSION OF LIABILITY TBP

39. EXCLUSION OF LIABILITY

39.1 Except where expressly agreed otherwise between TBP and the User, and notwithstanding anything to the contrary contained in these Terms and Conditions of Business, TBP shall not in any event be liable to the User for matters enumerated in Paragraphs 39.2 until 39.11 as follows:-

39.2 Any claim arising from:

- (a) Force Majeure;
- (b) Any act of God, act of war, public enemy, whether to person or property;
- (c) Any consequential loss, economic loss, loss of profit, business, goodwill, market performance, whatsoever and howsoever caused;
- (d) Climatic conditions, whether to persons or property;
- (e) Any third party interference;
- (f) Any failure to or of the Applications due to inherent bugs, defects or otherwise of the Applications; or
- (g) Any other circumstances the occurrence or extent of which TBP could not reasonably have controlled, foreseen, avoided, prevented or forestalled.

39.3 Any injury, illness to or death of any person and/or any saving or attempting to save life or property at sea or on land caused or contributed, but not limited to:

- (a) by a cargo or container or any inherent vice thereof; or
- (b) by the storage, carriage, handling or other dealings of cargo or container by persons other than TBP or its employees, servants or agents or sub-contractors.

39.4 Any loss or damage to any vessel, property, plant, equipment, cargo or container including but not limited to:

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- (a) inherent liability due to wastage in bulk weight, latent defects, contamination or inherent defects, vice or natural deterioration of cargo; or
 - (b) any failure or malfunction of insulated (reefer) containers, refrigeration equipment and gaseous refrigerants; or
 - (c) spillage, leakage or sullage from any tanks or pipelines; or
 - (d) any act or omission of any User or the owner of the cargo or containers or their respective employees, servants, agents or sub-contractors; or
 - (e) any defective or malfunctioning twist locks; or
 - (f) any act or omission of TBP in respect of its proposal and the execution of approved plans for the stowage of cargo /container on board any vessel, and the sequence of discharging and loading of cargo/containers, and the vessel stability calculations based on the information and approval obtained from the master or his representative; or
 - (g) failure to forward, misforwarding and delay in forwarding or misdelivery, non-delivery or delay in delivery of cargo or containers not attributable to TBP; or
 - (h) work carried out in the loading and/or discharging of containers onto or from a non-purpose built cellular container vessel not attributable to TBP; or
 - (i) any latent defects not discoverable by due diligence; or
 - (j) delay in connection with the vessel, cargo or containers or their delivery; or
 - (k) any detention of the vessel, cargo or containers; or

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- (l) any delays in discharging or loading containers or other cargo caused by inclement weather, mechanical failure in any cranes or other equipment; or
 - (m) for any breakage, loss of content, damage or complete destruction of unprotected cargo or containers not attributable to TBP; or
 - (n) the dangerous/hazardous/obnoxious nature of such cargo; or

39.5 Any damage to containers and its content of the following nature which shall be deemed not to have been caused by the want of reasonable care of TBP, its employees, servants agents, being damage to:

- (a) roof rails, damage thereto 60 cm (sixty centimetres) away from the container corner castings in any direction; or
- (b) roof puncture, 60 cm (sixty centimetres) away from the container corner castings in any direction; or
- (c) door mouldings, cracked or split door mouldings without evidence of physical damage; or
- (d) container walls, door, floor or roof, bulging or warping, caused by incorrectly loaded or inadequately secured cargo or by uneven distribution of cargo; or
- (e) damage of cargo/container due to defect in securing/lashing works or material of cargo in container.

39.6 Any loss or damage to any property or death or injury to persons in premises occupied and facilities controlled by the Users within the Port premises.

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- 39.7 Any loss or damage to any property otherwise than in the circumstances and to the amount not exceeding the limits respectively set out in Paragraph 30.0 herein.
- 39.8 Any injury loss or damage to person life or property resulting from improper or inapplicable or irrelevant input of data by the User into the Applications in relation to the business operations undertaken with TBP.
- 39.9 Any liability arising from the act of marine traffic control or monitoring of vessels in the Port.
- 39.10 Any liability or responsibility with respect to wreck removal at the Port Water Front or any navigable passage in the Port.
- 39.11 Any liability arising from the occurrence of pollution at the Port Water Front or any navigable passage in the Port, not attributable to TBP.

40.0 TERMS

- 40.1 For the purpose of this Part:
- (a) “Force Majeure” includes
- (i) act of God, act of war, civil war, hostilities, acts of terrorists,
 - (ii) fire, lightning or explosion, including any water or chemicals or measures used in extinguishing any fire;
 - (iii) vermin, white ants or other rodents, pests and insects;
 - (iv) acts or omissions of any port authority or of any Government or Semi-Government port, body or any other authorities;

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- (v) any industrial action or any action taken pursuant to such industrial action, including (without prejudice to the generality of the foregoing) strikes, lockouts, stoppage and restraint of labour, combination of scarcity of labour, labour bans, overtime and work bans and limitations, demarcation disputes, go-slow and work to rule.

 - (b) “Climatic condition” includes
 - (i) storm, typhoons, tornadoes, tidal waves, tempest, flood;
 - (ii) any rust, damage or deterioration caused by rain, exposure or other action of climatic conditions.

 - (c) “Third party interference” includes any criminal or tortious acts by persons known or unknown other than TBP or its employees and/or servants and in respect of the Applications, it shall include unauthorised access, transmission, communication, etc. in any method whatsoever.

PART VII: GENERAL CONDITIONS, COVENANTS AND RULES

41.0 COVENANTS BY TBP

- 41.1 In providing its Services TBP shall as far as possible carry out its operations in an efficient manner and provide appropriate and adequate operational labour and related facilities.
- 41.2 TBP shall endeavour to provide proper care for and control of the User's cargo, containers and equipment within TBP.
- 41.3 TBP shall endeavour to provide sufficient handling area for the volume of containers and cargo as indicated by the User to be loaded or discharged.
- 41.4 Subject to the provisions of these Terms and Conditions of Business, TBP will allow reasonable access to the User and his servants and agents for the purpose of performing and carrying out the business and agency requirements of the User relating to the Services supplied by TBP to the User PROVIDED ALWAYS THAT such User or persons shall observe all health, safety, security regulations and standing instructions made by TBP which may be operative at that time or by any relevant authorities.
- 41.5 **Special Arrangement**
- (a) TBP shall not be bound to accept any cargo, including but not limited to the excepted articles set out in Appendix II, whether containerised or in bulk or breakbulk, which cargo is of high value or requires special care, except under written special arrangement.

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- (b) It shall be a requirement under the special arrangement that the User shall give prior notice as may be specified by the Terminal and MFSO of the User's intended delivery to TBP of such cargo.
 - (c) TBP shall be entitled at its sole discretion to impose such terms and conditions including but not limited to the effecting and provision of the appropriate insurance and security services for the delivery and handling of such cargo at TBP.
 - (d) Under no circumstances shall the User deliver to the Port any such cargo or container without the prior written approval of TBP.

42.0 CONDITIONS OF SERVICES

42.1 Non-Delivery of Cargo/Container

TBP shall not be responsible for any wrong or non-delivery of cargo due to the following:

- (a) absence of any marking on the cargo/container;
- (b) error, deficiency, illegible or misleading markings; and
- (c) identical or similar markings for different consignments.

42.2 Damaged Cargo/Container

Damaged cargo/container shall be handled by TBP subject to the following conditions (not in order of sequence):

- (a) Damaged cargo/container shall be surveyed jointly by the User and TBP.
- (b) Damaged packages or cargo are to be repaired, restrapped or otherwise re-conditioned by the User to the satisfaction of TBP.
- (c) Receipt of such cargo/containers shall be endorsed "damaged cargo" by the vessel agent and TBP.

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- (d) Damaged cargo/containers shall be received only if they are able to be handled by the Port's equipment.
 - (e) A survey report in the form of Equipment Interchange Receipt shall be issued for damaged containers received by TBP and TBP shall not be accountable for contents or value and subject to all the paragraphs governing the relative bill of lading.

42.3 Joint Survey

- (a) Upon notification of the claims for damages and loss referred to in these Terms and Conditions of Business, the User shall give reasonable time for all parties related to the claims to conduct joint-surveys where applicable to ascertain the cause and extent of the loss and damage.
- (b) Cargo and containers and other property related to the claims shall not be removed or its state and conditions altered by the User before the joint-survey is conducted.
- (c) While consensus on the extent of loss and damage may be reached between parties related to the claim during the joint-survey, the observation on the cause of damage may remain confidential with each individual party related to the claim.
- (d) Where damaged packages or containers have been surveyed in the Port premises, the consignee or the agent of the vessel shall take delivery at the first opportunity.

42.4 Examination/Inspection by Customs and/or authorities

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- (a) The User shall advise TBP in advance in the prescribed form of any requirement for his cargo and/or containers to be examined by the Customs and/or authorities.
 - (b) TBP shall not be responsible for any shortages of contents for cargo as a consequence of samples being taken pursuant to such inspection/examination.

42.5 Where TBP provides adequate storage area in the Container Freight Station, it shall be the responsibility of the User to provide tally clerks for the tallying of cargo during the stuffing/unstuffing into/from containers.

42.6 Safety / Vehicle / Access to the TBP Premises

- (a) Users shall not be allowed to park their vehicles, trailers, prime movers, etc. at any area in the Port premises other than at designated parking areas.
- (b) User entering the Port premises must be in possession of a valid permit issued by a competent officer of TBP and shall at all times abide by the rules and regulations promulgated or enforced from time to time by TBP regarding the conduct of persons within the Port premises.
- (c) User shall indemnify and keep indemnified TBP at all times from and against all actions, proceedings and claims whatsoever brought against TBP and/or costs and expenses incurred by TBP which arise directly or indirectly from the actions or omissions of any User's visitor(s) causing or relating to any of the following matters:
 - (i) Loss of life or personal injury to any User's visitor(s).

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- (ii) Loss of or damage to the property of any User's visitor(s).
 - (iii) Loss of life or personal injury to any person which may be directly or indirectly attributable to the negligence of any User's visitor(s).
 - (iv) Loss of or damage to the property of any person which may be directly or indirectly attributable to the negligence of any User's visitor(s).
 - (v) Consequential loss arising from any of the above sub-Paragraphs 42.6(c) (i) - (iv).
- (d) A User intending to bring into the Port premises vehicles, equipment or machinery of a weight or size which may exceed the limit set by TBP, shall obtain prior permission in writing from TBP, failing which such vehicles, equipment or machinery shall be deemed to be trespassing into the Port premises.

42.7 Access to Port premises

- (a) All persons and vehicles entering, leaving and using the Services in the Port premises are subject to the requirements of the Act, its By-Laws, the provisions of the Protected Areas and Protected Places Act 1959 and applicable laws as may be revised from time to time in respect of the access to the Port premises.
- (b) Any entry into the Port premises shall be subject to the issuance of a permit by TBP who shall have the absolute discretion to revoke the permit at any time without assigning any reason whatsoever.
- (c) TBP shall also have the absolute discretion to designate areas within the Port premises and set procedures

(which may be revised from time to time) for the entry into, use of and exit from the Port premises.

- (d) All persons, Users and vehicles can only have access to and/or remain within, any part of the Port premises upon possession of a valid permit issued by the TBP's safety/security officer.
- (e) All persons, Users and vehicles shall leave the Port premises once the said permit expires or when ordered to do so by TBP and/or by any competent officers of TBP.
- (f) All persons, Users and vehicles shall enter, remain and exit the Port premises at their own risk and expenses. TBP shall not be liable for any injury, loss or damage whatsoever and howsoever caused to such persons or Users or vehicles.
- (g) TBP reserves the right to refuse, prevent and or restrict any person, User, vehicles from having access to or entering, remaining and or leaving the Port without assigning any reasons and without any limitation as to the duration of such as its allowed under the law.
- (h) The grant of TBP's permission herein required shall be evidenced by any permanent or temporary permit issued by TBP subject to such conditions as TBP may think fit to impose.
- (i) TBP may in its discretion without assigning any reason therefore, refuse entry or exit or require the User to remove any person or property whether or not such person or property is in possession of or covered by a permit or permits issued by TBP.

42.8 Retention/Lien

- (a) TBP shall be entitled to:
 - (i) Retain possession of any cargo/container passing through or stored in the Port premises.
 - (ii) Retain possession of cargo/container or prohibit any vessel from leaving the Port until payment of all charges in respect of such cargo/container or vessel are made.
- (b) All cargo, containers and all documents relating to cargo and containers shall be subject to a particular and general lien respectively for charges due to TBP from the User in respect of such cargo and/or containers.

42.9 Right of Inspection

TBP shall be entitled to inspect all bills of lading, consignment notes, freight lists, manifests of cargo and any other documents whatsoever relating to any vessel, vehicle or cargo which have used, are using or will be using or have been, are, or will be present in the Port. Either the operation executive or MFSO or both may board any vessel or enter any vehicle used in the Port premises in order to inspect such documents.

42.10 Right of Refusal, Cancellation and Removal

- (a) If in TBP's opinion there are any circumstances which may prevent or hinder the safe handling, storage, or transport of container or cargo, TBP may refuse to handle, store or transport the same and shall give notice of such refusal to the User, and upon receiving such notice the User shall remove container or cargo from the Port premises at its own risk and expense.

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- (b) If any of the Services are ordered from TBP and are cancelled for any reasons other than because of default of TBP, all fees for the same shall remain payable to TBP and any refunds or credits shall be at TBP's discretion.

42.11 Compliance

- (a) The User shall procure that its employees, contractors, agents and customers, with whom it has entered into any arrangement shall observe, comply with and be bound by these Terms and Conditions of Business, the Act, the special conditions in the Tariff, and all rules and regulations applicable directly or indirectly in relation to any cargo and/or container handled by TBP for or on its behalf or at its request or which the User is instrumental in delivering to TBP for handling.
- (b) The User shall also comply with the terms and conditions in TBP's operational, safety and security procedures issued by TBP from time to time. These procedures shall form and be construed as an integral part of these Terms and Conditions of Business.

42.12 Contingency Use of Physical Documents

In the event of the failure of the Applications, TBP shall prescribe such contingency measures for the temporary use of physical documents for all businesses and services of the Port, with procedures for the communication and handling of such physical documents as may be necessary, of which shall be fully complied with by the User until such time as TBP may declare that the use of the Applications has been restored and upon which the communication and handling of documents shall revert to the use of the Applications.

43.0 COVENANTS BY USER

- 43.1 By transacting any Business with TBP, the User signifies that the User has full knowledge and has accepted the Terms and Conditions of Business herein stipulated.
- 43.2 Unless expressly stated in writing otherwise by the User, at all material times TBP shall transact the Business and provide its Services to the User solely based upon the User's representations and assurances which include the following:
- (a) All export cargo and container presented for shipment by the User shall be accompanied by documents containing all relevant details as required by TBP.
 - (b) All cargo and container shipped by the User are in every manner safe and secure in accordance / compliance with all lawful requirements for handling by TBP, and where applicable does not exceed their rated gross weight.
 - (c) The container or cargo packing and stowage comply with the International Safety Rules, Regulations and best trade.
 - (d) Any information given as required shall be accurate. The User shall not hold TBP liable and shall indemnify TBP for any wrongdoings as a result of any inaccuracies contained in the information supplied, whether provided by electronic data or otherwise.
 - (e) The User shall respect and maintain the confidentiality of information acquired as a consequence of the electronic link to TBP's computer system and or Applications whether such information is specific to TBP or a third party and shall not disclose any such information to a third party without specific authority or unless there is a legal or professional duty to disclose.

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- (f) The User shall not divulge his ID, password, digital signature or any other security measures (as may be granted to the User by TBP or directed by TBP to be used by the User) for access to TBP's computer system to any unauthorised person.
 - (g) The User shall be fully responsible for the accuracy of the information pertaining to its cargo, container and vessel, transacted through TBP's computer system and or Applications via the User's authorised ID, password, digital signature or any other security measures (as may be granted to the User by TBP or directed by TBP to be used by the User from time to time).
 - (h) TBP shall not be made responsible, in any manner whatsoever, to any access to the information in TBP's computer system and or Applications due to the User's disclosure of his ID, password, digital signature or any other security measures (as may be granted to the User by TBP or directed by TBP to be used by the User from time to time) to any unauthorised person.
 - (i) The User shall comply with the software standards that TBP may impose from time to time and shall at its own cost provide the hardware and software necessary for the transmission and receipt of information.
 - (j) The User shall use the Applications only for lawful business and purposes related to the business of the Port.
 - (k) The User shall not place any unlawful material on TBP's computer system whether by way of the Applications or otherwise including but not limited to any material which would result in any violation of any contracts or

contractual duty whether with TBP or other third parties or any breach of law.

- (l) The User shall not deeplink any external websites to the TBP's computer system and or Applications.
- (m) The User shall not tamper, hack, invade, abuse or perform any unauthorised access or use of the TBP's computer system and or Applications. For the purposes of this sub-paragraph, all such acts prohibited under the laws of Malaysia relating to computers and computer networks, in addition to any other prevailing applicable laws, shall be deemed to be part of these Terms and Conditions of Business.
- (n) The User shall also not divulge, disclose or leak intellectual property or trade secrets of TBP or other materials which by form and/or nature are confidential to TBP, to other third parties unrelated to TBP. Any divulgence, disclosure or leakage by the User of TBP trade secrets or other TBP confidential material done without express authorisation in writing from TBP, shall be breach of trust and the User shall be liable for any and all damage suffered and sustained by TBP.
- (o) The User shall not put any defamatory, abusive, obscene, indecent, harassing or inflammatory material intending to defame, abuse, harass or inflame TBP, other employees of TBP or other third parties related or unrelated to TBP.
- (p) Other than connecting with TBP's Applications by way of the provided User ID name, the password, digital signature or any other security measures (as may be granted to the User by TBP or directed by TBP to be used by the User from time to time), the User shall also not

attempt to gain access to the Applications by using the administrator or other Users password, digital signature or any such other security measures or by masquerading as an administrator or other Users while using the Applications.

- (q) The User hereby also agrees to abide by any networking rules and regulations that may be publicly announced from time to time by TBP.
- (r) The User shall exercise due care and diligence in ensuring that such data entry or input entered by him into TBP's Applications is complete and accurate and reflects actual status and position of matters of business of TBP or pertaining to the Business with TBP.
- (s) In the event that such completeness and accuracy of status cannot be ascertained by the User, the User shall take all necessary measures reasonable and in all promptness to ensure the true position of matters including referring such matters to the TBP Management or the relevant department/division heads or controllers.
- (t) In the event that such necessary measures pursuant to above sub-paragraph(s) are not taken resulting in damage to TBP, employee(s) of TBP or other third parties doing business with TBP, the User shall be ultimately liable for such damage. However, this liability shall be limited to the extent where no due care and diligence was exercised by the User in the performance of his duty.
- (u) Such express authorisation by TBP shall be in writing and addressed to the User only. Such authorisation may also be accompanied by other networking rules, regulation,

acceptable uses policies or new User ID name, the password, digital signature or any other security measures (as may be granted to the User by TBP or directed by TBP to be used by the User from time to time) suitable for such authorisation as deemed fit by TBP; and TBP reserves the right to allow the User remote access or, in the event of the remote access being granted to the User, to revoke such remote access, and this right is exercisable by TBP at its absolute discretion.

- (v) The User hereby agrees not to disrupt, modify or interfere with the Applications software or hardware in any way, and the User further agrees not to impede or interfere with other authorised users of the Applications.
- (w) The User undertakes and agrees to indemnify, save and hold harmless TBP at all times against all actions, claims, proceedings, costs, or damages whatsoever arising from any action done by the User without due (reasonable) care and diligence on the User's part.
- (x) The User agrees that TBP shall not be liable to the User or any other third parties for any direct, indirect, special, consequential or punitive damages allegedly sustained arising out of the User's access to or inability to access the TBP's Applications, including loss of data from the TBP's Applications or for viruses alleged to have been obtained from the TBP's Applications, the User's use of or reliance on the TBP's Applications or any of the information or materials available on the TBP's Applications, regardless of the type of claim or the nature of the cause of action, even if advised of the possibility of such damages.

43.3 It shall be obligatory on the User to comply with the following, as may be notified by TBP from time to time:

- (a) Restricted areas prohibition;
- (b) Firearms prohibition;
- (c) Prohibition and control of fires;
- (d) Traffic/Safety Signs or Orders;
- (e) No Smoking and Unprotected Fire Signs;
- (f) Restriction on Speed;
- (g) Prohibition of taking photo and video;
- (h) The Requirement for co-operation with TBP authorized officers;
- (i) The usage of Personal Protective Equipment (PPE) in all operations area;
- (j) TBP's prevailing Drug Policy;
- (k) Other Polices pertaining to the practice and implementation for efficiency, safety and proper administration, management and operation of the Port.

43.4 It shall be obligatory on the User to adhere to and accept TBP's safety, health and environmental guidelines known as "TBP SHE Guidelines" appearing in Appendix V herein, as may be amended from time to time by TBP.

APPENDICES

APPENDIX I:

TARIFF OF CHARGES

(which shall be taken, read and construed as an integral part of these Terms and Conditions of Business).

- a. CHARGES AS STIPULATED IN THE MALACCA PORT AUTHORITY (SCALE OF RATES, DUES AND CHARGES) BY-LAWS 1983 OR THE PREVAILING

CHARGES PRESCRIBED IN THE AUTHORITY'S OR TBP'S TARIFF PUBLISHED OR CIRCULATED FROM TIME TO TIME,

- b. ANY NON-PRESCIBED CHARGES AS MAY BE APPROVED AND ENFORCED BY THE AUTHORITY; OR
- c. CHARGES AS STIPULATED HEREIN BELOW; AND
- d. ANY CHARGES AS MAY BE MUTUALLY AGREED BETWEEN TBP AND THE USER.

APPENDIX II:
EXCEPTED ARTICLES

- (1) Gold
- (2) Silver
- (3) Bullion, coins and currency notes
- (4) Precious stones
- (5) Precious metals
- (6) Securities for cash and stamps
- (7) Documents and title deeds
- (8) Opium, essential oils and similar valuable drugs
- (9) Lace, furs and feathers
- (10) Work of Art and paintings
- (11) Scientific instruments of all kinds
- (12) Revenue of postal stamps
- (13) Gold, silver and platinum watches
- (14) Precious metal jewellery
- (15) Antiques
- (16) All other precious or specially valuable articles
- (17) Fire Arm
- (18) Weapon
- (19) Explosive
- (20) Radioactive materials
- (21) Prohibited Drugs

APPENDIX III:
POLICY ON VESSEL ACCEPTANCE

1.0 Notwithstanding that a vessel has obtained port clearance from the Malaysian Marine Department and the other relevant authorities, to enter the Port for the purpose of transacting any Business with TBP under these Terms and Conditions of Business, if TBP is in doubt about the safety or the seaworthiness of a vessel, or if a vessel is found to be in distress and or in a situation of peril and likely to suffer loss which requires a salvage operation, then TBP shall have the right at its absolute discretion and/or subject to TBP's commercial considerations, to refer the vessel to the Port State Control to carry out the inspection of the vessel in order to verify the competency of the master and officers on board and ensure the condition of a vessel and her equipment comply with the requirements of international maritime conventions.

1.0A: THE CRITERIA WHICH THE VESSEL HAS FAILED TO COMPLY WITH ARE STATED BELOW:

1.1 IF THE VESSEL IS A TANKER: TBP shall have the absolute discretion to refer the vessel to the Port State Control if the owner, charterer or their shipping agent has failed to fulfil any or some of the following criteria set out below:

- (a) The shipping agent for the vessel has failed to submit a duly completed INTERTANKO'S STANDARD TANKER CHARTERER QUESTIONNAIRE 88 ("Q88") in his application for TBP's Services, through ("SMK").
- (b) The shipping agent for the vessel has failed to submit the statutory certificates carried on board the vessel as required under Q88 through the SMK, and upon arrival at the Port, has failed to produce the original statutory

certificates for TBP's inspection as to the validity of the statutory certificates.

- (c) Following the requirements of Q88, the vessel has failed to secure a Protection & Indemnity ("P & I") coverage against pollution liability for an amount that shall not be less than USD1.0 billion.
- (d) The vessel's Classification Society is not one of the members of the International Association of Classification Society ("IACS") which are stated below:
- i. American Bureau of Shipping (ABS);
 - ii. Bureau Veritas (BV);
 - iii. China Classification Society (CCS);
 - iv. Croatian Register of Shipping (CRS);
 - v. Det Norske Veritas Germanischer Lloyd (DNV GL);
 - vi. Indian Register of Shipping (IRS);
 - vii. Korean Register of Shipping (KR);
 - viii. Lloyd's Register (LR);
 - ix. Nippon Kaiji Kyokai (NK/Class NK);
 - x. Polish Register of Shipping (PRS);
 - xi. Registro Italiano Navale (RINA);
 - xii. Russian Maritime Register of Shipping (RS); and
 - xiii. Any other additional Classification Society(ies) registered and entered as member(s) of the IACS.
- (e) If the owner or the demised charterer of the vessel which is a tanker is a non-member of the International Tanker

Owners Pollution Federation Limited (“ITOPF”).

- (f) If the owner or the charterer of the vessel has failed to submit a Declaration of Security (“DOS”) in compliance with the requirements of International Ship and Port Facility Security Code (“ISPS Code”), to the relevant authorities prior to the vessel’s arrival and the passing of property and risk from the seller to the buyer, to evince that the cargo(es) carried on board is/are in at all times in compliance with the ISPS Code.
- (g) The vessel’s information found in Q88 is outdated for more than one (1) month from the date of the application for entry into the Port or if there is any other non-compliance with the requirements of Q88 or any other requirements of the relevant authorities, or any of the requirements as stated in this Policy On Vessel Acceptance.
- (h) If the vessel’s statutory certificate(s) had expired before the arrival date at the Port; and
- (i) If vessel is single hull instead of double hull as required under the International Convention for the Prevention of Pollution from Ships (MARPOL).

1.2 IF BOTH TANKERS AND NON-TANKERS ON INTERNATIONAL OR MALAYSIAN VOYAGE:

- 1.2.1 The shipping agent for the vessel has failed to provide to TBP upon request, after submitting through the SMK, the original of the following statutory certificates carried on board the vessel:
- (a) Certificate of Registry;
 - (b) International Tonnage Certificate (for vessels of

less than 24 m in length and above);

- (c) International Load Line Certificate (issued under the provisions of the International Convention on Load Lines, 1966, as modified by the 1988 LL Protocol for vessels of 24 m in length and above) and the Merchant Shipping (Load Lines) Rules 2001;
- (d) International Load Line Exemption Certificate (when an exemption has been granted under the provisions of the International Convention on Load Line, 1966 as modified by the 1988 LL Protocol or the Merchant Shipping (Load Lines) Regulations, as appropriate;
- (e) International Oil Pollution Prevention Certificate (issued in accordance with the regulation 4 of Annex 1 of MARPOL 73/78 to any oil tanker of 150 gross tonnage and above);
- (f) International Sewage Pollution Certificate (in accordance with regulation 4 of Annex IV of MARPOL 73/78);
- (g) International Air Pollution Prevention Certificate (in accordance with the regulation 5 of Annex VI MARPOL 73/78) to any ship of 400 gross tonnage or above engaged in voyages to ports or offshore terminals under the jurisdiction of other Parties ; and platforms and drilling rigs engaged in voyages to waters under the sovereignty or jurisdiction of other Parties to Protocol 1997, MARPOL 73/78 Annex VI, regulation 6, Prevention of Pollution of Sea (?Air) regulations;
- (h) Engine International Air Pollution Prevention Certificate;

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- (i) International Ship Security Certificate (“ISSC”) or Interim International Ship Security Certificate (in compliance with SOLAS Chapter XI-2 and part A of the ISPS Code);
 - (j) Certificates for Master, Officers or Ratings (in compliance with the STCW Code annexed to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 as amended);
 - (k) Deratting or Deratting Exemption Certificate;
 - (l) Certificate of Class under one of the classification societies which are members of the International Association Classification Society;
 - (m) Passenger Ship Safety Certificate in accordance with SOLAS 1974 requirements;
 - (n) Cargo Ship Safety Construction Certificate (for vessels of 500 gross tonnage and above as required under SOLAS 1974.);
 - (o) Cargo Ship Safety Equipment Certificate (for vessels of 500 gross tonnage and above as required under SOLAS 1974.);
 - (p) Cargo Ship Safety Radio Certificate (for vessels of 300 gross tonnage and above as required under SOLAS 1974 and to be supplemented by vessel’s Record of Equipment);
 - (q) All certificates including certificates of financial responsibility as required by applicable laws;
 - (r) Certificates required pursuant to the Civil Liability Convention for Oil Pollution Damage (“CLC”) or any Protocols thereto and the Malaysian Merchant

Shipping (Oil Pollution) Act 1994;

- (s) Wreck removal Certificate as specified by the Malaysian Marine Department; and
- (t) Safety Management Certificate (“SMC”) or Interim SMC for verification that a vessel is International Safety Management Code (“ISM”) compliant.

1.2.2 If the vessel does not carry on board documents, publications such as International Safety Guide for Oil Tankers and Terminals (“ISGOTT”) and drawings as specified by the relevant authorities to support the integrity of the vessel;

1.2.3 If the operational history of a vessel indicates that twelve (12) months before submission or application for berthing:

- (i) the vessel had been involved in causing pollution (oil or chemical or other substances carried on board),
- (ii) had grounded,
- (iii) involved in collision,
- (iv) had occasioned serious casualty(ies),
- (v) engaged in or caused other mishaps
- (vi) has failed to obtain customs clearance at the last port of call.
- (vii) has failed to meet Health and Immigration standards and requirements at the last port of call.

2. Vessels that have exceeded the age of twenty (25) years shall not be accepted to berth at any of the TBP’s wharves, however a state flag vessel of that age shall be referred to the Malaysian Marine Department for consideration and acceptance.

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3. The maximum period for dry docking of a vessel shall be two (2) years and six (6) months. TBP shall not consider any request for extension of this period unless the User furnishes a copy of the certificate indicating the vessel's Class Approval or the in-water survey and other related matters.
 4. A vessel exceeding twenty (20) years in age shall be required to undergo a conditional assessment program (CAP) 2 rating. The maximum validity period for CAP rating shall be thirty (30) months from the date of CAP survey. The CAP 2 rating shall include a comprehensive fatigue analysis and gauging record highlighting the maximum diminution of steel plating.
 5. A brand new vessel or a vessel that has been released from dry-docking shall be accepted only subject to conditions to be determined by TBP.
 6. Pre-berthing Inspection shall be carried out at the User's cost when the need arises.
 7. The cost for Pre-berthing Inspection is Ringgit Malaysia Five Thousand (RM5,000) per vessel or such amount as may be revised from time to time by TBP.
 8. It shall be understood that port clearance issued or re-issued by the relevant authorities upon the vessel's compliance of the criteria as set out herein, shall be valid for a period of three (3) months from the date of the issuance or re-issuance of the port clearance by the relevant authorities or not later than fourteen (14) days before the expiry of any of the statutory certificates as specified in Q88 or in paragraph 1.2 in this APPENDIX.

APPENDIX IV:

**STANDARD OPERATING PROCEDURES
FOR DANGEROUS GOODS HANDLING**

(which shall be taken, read and construed as an integral part of these Terms and Conditions of Business).

STANDARD OPERATING PROCEDURES FOR DANGEROUS GOODS HANDLING AT
TBP PUBLISHED OR CIRCULATED BY TBP AS MAY BE AMENDED FROM TIME TO
TIME.

APPENDIX V:

**TBP'S SAFETY, HEALTH AND ENVIRONMENTAL GUIDELINES & RULES
("TBP SHE Guidelines")**

1. Introduction

In keeping with the responsibility of Tanjung Bruas Port Sdn Bhd (“TBP”) to ensure a safe and healthy environment, TBP has established safety, health and environmental (“SHE”) related procedures affecting all TBP’s employees.

Since certain functions are contracted out to external contractors, there are times when more than one contractor may be working in TBP. Some on short term basis and others on a longer term contract.

Therefore it is imperative that TBP SHE Guidelines are issued to all contractors, tenants, lessees and port users (collectively “Users”) so that occupational safety health can be exercised at all times in the execution of jobs and ensure that the Users do not cause damage and/or loss to property and do not injure the workers and employees of other contractors, tenants, lessees, port users and TBP.

Port Users shall at all-time observe the TBP Integrated Quality, Safety, Health and Environment Policy that has been introduced in October 2012 which may be amended from time to time as necessary.

Knowing how to perform the work safely can save lives; negligent and dangerous working practices can kill or cause serious injury and property damage.

Safety is not the sole responsibility of TBP. All Users must take precautions to protect themselves and others. All Users must help to prevent accidents and save lives. All users shall wear the minimum standard of Personal Protective Equipment (PPE) at all time within the Port Area unless stated otherwise.

This special specification contains safety guidelines and rules for the Users. Please read these specifications and abide by them and ensure your workers and those you work with do likewise.

TBP wants you to work in a safe environment and it is important that you help us keep the workplace safe at all times.

The applicable local and international law and regulations shall consist of but not be limited to the following:

1. Occupational Safety & Health Act (OSHA) 1994
2. Factories and Machinery Act (FMA) 1967
3. Environmental Quality Act (EQA) 1974
4. Uniform Building By-Laws, 1984
5. Fire Services Act, 1988
6. Electricity Supply Act, 1990
7. Malaysian Shipping Ordinance 1952
8. Malacca Port By-Law 1979
9. Dangerous Goods Regulation
10. Petroleum Act 1984 (302)
11. Protected Areas & Protected Places Act 1959

Any requirements that has not been stipulated in this TBP SHE Guidelines shall follow the best practices in the port industry.

2. Identification of Workers

- 2.1 A list of workers with their National Registration Identity Card (“NRIC”) or MyKad numbers or other form of legally recognised identification document (for foreign workers) to be submitted to Port Security & Safety Department (PSSD) of TBP (“Port Security & Safety Department (PSSD)”) for entry passes.
- 2.2 Such entry passes shall be worn at all times whilst working in TBP (the “Port”).

3. User’s Representative

- 3.1 User shall nominate a representative(s) to be in charge and coordinate the work with the TBP’s personnel at TBP’s operation areas (wharves, jetties warehouses, etc.), where applicable.
- 3.2 The said representative(s) shall also be responsible to

continuously promote safety awareness amongst their personnel at all times during the contract execution period. As such, the User shall engage a minimum of one (1) dedicated safety officer/promoter or a full-time supervisor to organize safety talks, safety training and safety programmes on a regular basis. All expenditures related thereto shall be borne by the User. A monthly SHE report shall be submitted to Head of Section OSH, Port Security & Safety Department (PSSD).

4. Workers

- 4.1 The employees of the Users shall have attained the age of eighteen (18) years on the date of commencement of the work.
- 4.2 Employees shall be equipped, minimally, with safety shoes, safety helmet complete with chin strap, safety glasses or goggles, long pants, safety vest complete with reflector all the time throughout their work in TBP's operation areas. Other safety equipment such as safety harness, welding shield etc. shall also be provided to the workers based on the hazards and risks exposed to them.
- 4.3 The Users shall, at its own expense, supply to all its workers and ensure that its employees are provided with adequate personal protective clothing and equipment, which shall satisfy statutory requirements and accepted by industry standards. These shall include, but not necessarily be limited to, a polycarbonate or fiberglass safety helmet, gloves, relevant safety eye and ear protection, safety shoes or boots, and, where appropriate, safety harness. Such protective equipment shall be supplied to the employees and shall be maintained in good condition by the employees. Such protective equipment shall be worn by the employees on all relevant occasions as indicated by notices, instructions and good sense.

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- 4.4 Employees must take all practicable steps to ensure their own safety at work; also that their action or inaction does not harm anyone else.
- 4.5 No employees will be required to work in any task in which he/she may be exposed to a dangerous and unnecessary risk.
- 4.6 Employees must report all accidents and near-miss incidents to the employer and Port Security & Safety Department (PSSD) of TBP.
- 4.7 Protective clothing which is provided as a means of minimising an identified hazard must be worn.
- 4.8 The employer is required to ensure that every employee who does work or deals with any substance has been informed of:
- (a) Emergency procedures
 - (b) Hazards the employee may be exposed to while at work
 - (c) Hazards the employee may create while at work which could harm other people
 - (d) How to minimise the likelihood of these hazards becoming a source of harm to others
 - (e) The location and correct use of safety equipment.
- 4.9 The employer is also required to inform employees of the results of any health and safety monitoring. In doing so, the privacy of individual employees must be protected.
- 4.10 Employers and employees are also responsible for the health and safety of people who are not employees. They must take all practicable steps to ensure that anything they do or fail to do while at work does not harm any other person, including members of the public or visitors to the place of work.

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- 4.11 Where adequate protection against risk of accident, harm or injury (including harm arising from exposure to extremes in temperature) to health cannot be ensured by other means, employees must be provided with, and make proper use of, such personal protective equipment and protective clothing as is reasonably required for the safe performance of their work.
 - 4.12 Employees are required to take reasonable care of the protective equipment or clothing. Employers will establish procedures for the provision, maintenance and cleaning of the equipment and clothing.
 - 4.13 All personal safety equipment provided must comply with the relevant Malaysian or internationally recognised standard and be replaced at the recommended intervals.

5. Area of Work

Practicable steps that can be taken towards providing a safe place of work include:

- 5.1 Every workplace is to be laid out and operated as to ensure so far as is reasonable practicable the safety of the employees and people in the vicinity.
- 5.2 Walkways, roadways and storage areas are to be designed in a manner that provides for safe movement of foot and mechanised traffic throughout the workplace and any changes to be designated areas must be advised to all users.
- 5.3 All surfaces used for the movement of any lifting machinery, appliance, other cargo-handling equipment, or for vehicle traffic or for the stacking of goods or materials, need to be

suitable for the purpose, structurally sound, resilient to damage and properly maintained.

- 5.4 Where goods or materials are stacked, stowed, unstacked or unstowed, the work shall be done in a safe and orderly manner having regard to the nature of the goods or materials and their packing.
- 5.5 Where goods or materials are stacked, stowed, unstacked or unstowed, passageways of adequate width should be left to permit the safe use of any lifting machinery, appliance, other cargo-handling equipment and vehicles.
- 5.6 Any obstacle liable to be dangerous to the movement of a lifting machine, appliance, other cargo-handling equipment, vehicle or person which cannot be removed for practical reasons, shall be suitably and conspicuously marked and, where necessary, adequately lighted. All persons likely to be affected by such an obstacle need to be informed of its existence.
- 5.7 All practicable steps shall be taken to ensure no employee is exposed to toxic or harmful substances or agents, or oxygen-deficient or flammable atmospheres.
- 5.8 All practicable steps shall be taken to ensure that no employee is required to enter any confined space in which toxic or harmful substances may be present, or in which there may be oxygen deficiency, or in which the temperature of the atmosphere may cause harm.
- 5.9 The Users shall ensure his workers not indulge in practical jokes, boisterous behaviour, horseplay, scuffling and the like and shall not permit the use, possession or sale of alcoholic beverages or illegal drugs while working in TBP's premises.

6. Completion of Work

- 6.1 Workplace shall be maintained in a tidy manner after each day's work and on completion of the project.
- 6.2 All debris shall be deposited into the waste containers, or carted away, if requested.
- 6.3 Users' workers must leave TBP's premises immediately after their normal working hours or upon completion of work.

7. Hygiene

- 7.1 Food (packet or otherwise), packet drinks, spitting and littering are prohibited inside working/office areas.
- 7.2 Litter shall be deposited into waste bins at all times.

8. Rest Time

Lying around or sleeping is not allowed at any time within TBP's premises except at the designated rest area.

9. Gambling

All kinds of gambling are prohibited.

10. Alcohol and Drug

A safe and healthy work environment is of the utmost importance. Meeting this goal requires working safely without the influence of alcohol or drugs. Possession of alcoholic beverages or illegal drugs is prohibited on TBP's property. It is prohibited to use these items on breaks, lunchtime, or at any off-site function where the individual shall or may return to work.

11. Cigarettes

No smoking while working in areas which are designated as ‘no smoking’ areas.

12. Harassment

TBP is committed to maintaining an environment which is ‘harassment free’ for everyone working at or visiting TBP’s facilities. Harassment is defined as “behaviour, which offends other individuals on the basis of sex, race, religion, national origin, sexual orientation or other protected basis”. Users are expected to observe this code of conduct.

13. Vehicles

13.1 All drivers shall drive carefully while within TBP’s premises, follow the speed limit and switch on the hazard lights while moving at TBP. The maximum speed limit at the operation area is 35km/hr at the main road in Tanjung Bruas Port.

13.2 No TBP’s equipment should be removed without written authorization from TBP.

13.3 Vehicles are only allowed for delivery of equipment/materials and should not be parked in TBP’s compound unless authorized by TBP’s personnel.

13.4 At all times to give way to TBP’s vehicles as they have the right of way in TBP’s premises.

13.5 Carpool and shuttle service are highly recommended for port users with short - term project in TBP area.

14. Equipment

14.1 Users are to bring their own equipment and be responsible for them. TBP shall not be liable for any loss or damage of equipment within TBP’s premises.

14.2 All equipment must be in good and safe condition that meets TBP's SHE standards. The equipment is to be inspected and approved by TBP's authorized personnel before use in TBP's premises, when required.

15. Storeroom (if any)

Storeroom, if any, is provided for keeping Users' equipment and must be kept clean and tidy at all times.

16. Security

All Users' workers and vehicles whilst within TBP's premises, when exiting the Port and at any time whilst in the Port shall be subject to security checks by TBP's security personnel.

17. TBP's Property

Users are to ensure that when work is in progress; care shall be taken so as not to damage TBP's property or dirtying TBP's premises. Any damage shall be reported to TBP's supervisor-in-charge and the Users shall make good and restore TBP's property to its original condition within the period specified by TBP.

18. Safety Documentations (required when working at TBP's operation areas)

TBP's operation areas are wharves, terminals, jetties including dangerous cargo jetty's (DCJ) areas and any maintenance, service or construction activities inside the Port excluding Users' compound.

18.1 The Users are to be insured against the events of: -

- Damage and/or loss to TBP's properties;
- Injury to or death of TBP's personnel and visitors; and
- Relevant public liabilities.

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- 18.2 Valid Port Pass throughout the performance of the works in the Port's areas.
 - 18.3 List of workers submitted before work commences and any changes from time to time.
 - 18.4 Tool box briefing with attendance record.
 - 18.5 Job Safety Analysis to be submitted and acknowledge agreed and approved by Port Security & Safety Department (PSSD).
 - 18.6 HIRADC (Hazard Identification, Risk Assessment and Determining Control) to be conducted and undertake the mitigation that needs to be done.
 - 18.7 Method of Statement, SHE Procedures and Manual Instruction to be submitted as a part of the tools used in carrying out the works.
 - 18.8 Competencies certificates for personnel and PMA for machines as regulated by the relevant acts and work requirements to be submitted and acknowledged by TBP.
 - 18.9 Valid approval and/or endorsement from related local authorities shall be made available prior to work execution. It is the responsibility of the User to verify the related law and regulations that need to be adhered to.
 - 18.10 Support documents to mitigate the safety environment such as Traffic Management Plan, Emergency Response Plan, Safety Checklist and Confined Space Permit to be incorporated and submitted to TBP.

Safety Documentation requirement as above is subject to the works and risk of works carried out based on the applicability as approved by TBP as listed in the 'Permit To Works' ("PTW") issued before the commencement of works.

Valid PTW shall be displayed or make available all the time at the work areas or site for TBP's inspection from time to time.

19. Safety - General (required when working at TBP's operation areas)

19.1 All Users' workers and/or its sub-contractors' workers shall attend the Safety briefing or induction conducted by TBP prior to the commencement of work or any other necessary course that may be introduced from time to time. All Users' workers and/or its sub-contractors' must be trained and competent to carry out task given in safe and proper manner. A copy of certificate of competency (if any) or copy of attendance sheet shall be forwarded to PSSD when required.

19.2 Users, its sub-contractors and their workers shall have a valid "Green Card" issued by Construction Industry Development Board (CIDB) upon the commencement of work and whenever they are on site. This section is applicable to constructions activities as defined in BOWEC Regulations 1986.

19.3 Keep access routes clear at all times.

19.4 Do not leave oil spills or leaks and to clean them up as soon as they appear.

19.5 Make sure there are no cables or wires running across floors, roads, pavement etc.

19.6 Pay attention to demarcated areas which indicate fire fighting equipment, emergency exits or access to electrical

switchboards. All these areas are in “Yellow Lines” which mean KEEP CLEAR.

- 19.7 Obey signage and posters.
- 19.8 Upon hearing the Fire Alarm, stop work and evacuate the building in an orderly manner.
- 19.9 If a fire occurs at your worksite, use the portable fire extinguishers available to extinguish the fire.
- 19.10 If the fire cannot be controlled, immediately inform TBP’s executive, supervisor or Port Security & Safety Department (PSSD).
- 19.11 Report any unsafe acts, unsafe conditions, accidents or hazards immediately.
- 19.12 Where work is being carried out e.g. in container yard - the area shall be cordoned off using safety signs, lights and boards etc. to warn others.
- 19.13 Do not cause noise or dust pollution while working in TBP’s premises.
- 19.14 A copy of MSDS/CSDS shall be forwarded to Port Security & Safety Department (PSSD) prior to work execution when involving any chemicals as per USECHH 2000 regulation.
- 19.15 A proper scheduled waste area according to Environment Quality Act (EQA) 1974 shall be established and handled accordingly. No direct spillage to any drainage system etc. are allowed.
- 19.16 A proper oil spill recovery system shall be established for any operation that have the risk of oil spill.

20. Electrical Safety

- 20.1 Before tapping electrical supply, permission shall be obtained from TBP's authorized staff.
- 20.2 Users' electrical equipment and all jobs shall conform to Suruhanjaya Tenaga and Tenaga Nasional Berhad's Safety Regulations. Equipment is to be inspected by TBP's charge man before use.
- 20.3 All connections to TBP's supply shall use SIRIM's approved plugs. Broken plugs, switches and sockets shall not be used.
- 20.4 Make good damaged cables. Extension cable shall be properly and securely done e.g. with proper cable gland.
- 20.5 All electrical faults shall be reported immediately to TBP's charge man. Do not attempt to repair or adjust electrical equipment.
- 20.6 Work shall be carried out by competent qualified personnel only.
- 20.7 Lock-off switch boards (distribution boards) when under repair.
- 20.8 Weatherproof connections shall be used in outdoor areas and cable should not be left lying on the ground where vehicle could run over.
- 20.9 Use wooden ladders or metal ladders with insulated legs for all electrical works.
- 20.10 Work area shall be marked and cordoned off with warning signs.

21. Safety in Welding, Cutting & Grinding

- 21.1 Handle cylinders properly. Do not roll the cylinders. During welding, cylinders shall be properly secure upright on cylinder trolley.

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- 21.2 Store the various types of gasses safely. Oxygen and acetylene shall be stored in separate locations. Empty cylinders shall be stored separately from filled cylinders. Store them under cover and not under direct rays of the sun.
 - 21.3 Keep cylinders away from electrical welding tools and red hot metals.
 - 21.4 Never lubricate cylinder valve or any fittings with oil grease. High-pressure oxygen reacts violently with oil or grease and may result in explosion.
 - 21.5 Never use white or red lead, joining compound and joining tapes for cylinder valve or fittings.
 - 21.6 Always check your equipment before commencing any job and ensure that they are in order.
 - 21.7 PTW is required from TBP before commencing such work. This is applicable when working at TBP's operation areas only.
 - 21.8 Fire extinguishers should be readily available and all workers should be able to operate them.
 - 21.9 Fume hazards can occasionally exist in some flame/welding process, ensure fresh air within welding areas or wear an approved respirator.
 - 21.10 Always use a spark lighter to ignite gas - NEVER USE NAKED FLAME.
 - 21.11 Power supply shall be taken from "Welding Points" with 15A plug.
 - 21.12 Worker shall use proper goggles, welding shields and gloves.

21.13 Cordon off area with warning signs.

21.14 Clean-up and check areas upon completion of work.

21.15 Flash back arrestor shall be installed at every gas cylinder used.
Gas leak test shall be performed prior to gas cylinder usage.

22. Safe Use of Hand Tools (E.g. Hammer, Chisel, Spanners etc.)

22.1 Damaged tools such as files without handles, broken and cracked handles, mushroomed chisels and punches, worn screwdrivers, loose hammer heads or electrical tools with peeled or cracked insulation shall not be used.

22.2 Use only the correct tool for every job.

22.3 Regularly check your tools for damage due to wear and tear.

22.4 Store tools properly in a tool box when not in use. Never leave tools lying around when you have completed a job.

23. Safe Working with Ladders, Scaffoldings, Walkway & Platform

23.1 Portable ladders shall be checked for safety before use. Ensure rungs are not loose or broken.

23.2 Portable ladders should be properly angled at 75 degrees; secured at the top or bottom and stabilizers used, if possible.

23.3 Aluminium ladders shall be fitted with non-slip/insulated footing.

23.4 Stepladders are to be prevented from spreading by means of strays, chains or cords. These should be of sufficient strength, equal length and kept in good order.

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- 23.5 The top tread of a stepladder shall not be used for foot support unless there is an extension above the top to provide a handhold.
- 23.6 Do not carry heavy load on a ladder.
- 23.7 When working aloft on ladder, scaffolding or a platform, all tools shall be secured as they can cause serious accident if they fall. The area below shall be roped off and warning notices posted.
- 23.8 Workers shall be securely anchored when working above 3 metres from ground and shall wear safety harness or belt.
- 23.9 Scaffold shall be provided if a job is performed above 4 metres. Unless by specific suppliers' instructions, constructed height of portable scaffolding is calculated by the following formula i.e.:
- Maximum height = 3 x minimum base width of the scaffolding
- 23.10 When using personnel lift, ensure that the stabilizers are properly anchored. Follow manufacturer's instruction attached with the lift.
- 23.11 All workers shall use fall protection such as life lines and railings when working within 6 feet of open side roofs, ledges, catwalks or when parapets are less than 39 inches high.

It is the responsibility of the Users to meet all legal requirements (i.e., use of railings, fall restraint devices, safety harnesses and lanyards) when their workers shall perform work that exposes them to a potential fall of a 6 feet and greater (measured from the bottom of the worker's feet). In addition, approved full body harnesses (not belts) shall be worn when a worker may be exposed to a potential fall of 6 feet or greater (measured from the bottom of the feet).

The Users shall provide safety nets, full body harnesses, lifelines, barricades and delineator.

23.12 The utilization of man lift tools or equipment shall subject to the compliance of Act 139, Factories & Machineries Act, 1967 (Revised 1974).

24. Safety and Protection Equipment

24.1 Proper gloves shall be worn for cleaning work, welding jobs and chemical work.

24.2 Wear proper goggles to protect the eyes.

24.3 Use the appropriate types of welding, grinding and chipping to prevent eye injuries.

24.4 Long hair should be covered up or tied back to prevent from being caught in machinery parts.

24.5 Do not wear loose belts, open jackets, loose cuffs or items of jewellery while at work.

24.6 For high noise areas, protect your ears by wearing plugs of muffs and keep them clean.

24.7 Safe working areas and Safe Protection Equipment to be prepared and supplied all the time as precaution to the hazard and accident's mitigation.

25. Blasting and Painting

25.1 Blasting and asbestos removal activities shall have the approval from Department of Occupational Safety & Health (“DOSHS”). A copy of the approval letter shall be submitted to Port Security

& Safety Department (PSSD) prior to work execution, applicable when working at TBP's operation areas only.

25.2 Painting is allowed only on approval from TBP's authorized personnel, applicable when working at TBP's operation areas only.

25.3 Paints, thinner and other chemicals used are not to be kept in large quantity at worksite. Such materials shall be removed and kept in store after the day's work.

25.4 Machines, floors and other equipment shall be covered when painting is in progress.

25.5 Only competent and well trained workers are allowed to perform painting works at TBP's premises.

25.6 Any disposal of schedules waste materials shall adhere to the Environment Quality Act (EQA), 1974 accordingly.

25.7 PTW shall be applied by Users at Port Security & Safety Department (PSSD) prior to work execution, applicable when working at TBP's operation areas only.

26. Working with Compressed Air

26.1 Do not use compressed air unless you are authorized to do so.

26.2 Never play with compressed air.

26.3 Do not use compressed air longer than is absolutely necessary and wear safety glasses/goggles.

26.4 Users shall follow the manufacturer's instruction for handling compressed air.

27. Working with Lifting Equipment

27.1 Always check lifting equipment before using it.

- Anchor points are secure
- There is no physical damage
- There is no equipment stress
- No wire damage e.g. rusted, fraying or broken strands
- Hooks are fitted with clips
- Wire slings and fabric slings are in good condition

27.2 Handle lifting equipment carefully.

27.3 Never overload lifting equipment.

27.4 Cordon off area(s) with warning signs/boards. Delineator shall be used.

27.5 Use mechanical aids when necessary.

27.6 Only competent and well trained workers are allowed to involve in lifting activities.

27.7 Dedicated signalman shall be made available at all times during lifting operation.

27.8 Proper communication between the signalman, crane operator etc. shall be established to ensure safety of work.

28. Roof Work & Work in Water Tanks or Confined Underground Spaces

28.1 Safety harness and crawling boards shall be used when working on rooftop, water tank and underground.

28.2 Before entering water tank or underground, ensure sufficient supply of oxygen.

28.3 A minimum of 2 workers to form a team, with 1 worker outside holding a rope tied to the person working inside. Safety harness shall also be worn by the person who is inside. A mode of communication shall be worked out between the 2 workers before one of them enters the tank or go underground.

28.4 Cordon off the area with warning signs or boards. Delineator shall be used.

29. Hearing Protection

Any work with decibel A-weighted (dBA) levels greater than 85 require hearing protection. Users are required to wear hearing protection in areas marked “Hearing Protection Required” and are responsible for recognizing areas that may require hearing protection. Users shall also evaluate their own noise producing operations to determine if hearing protection is required and post warning signs, if appropriate.

30. Overhead Work

When work is being done above any people, another exposed level or an open floor, the area below the work shall be cordoned off with “Do Not Enter” tape and appropriate signs. Personnel working below shall be protected and hard hats shall be worn by those who work in the potential hazard area. All Users shall follow all other area-specific protocol or safety measures for overhead work.

31. Underwater Activities (applicable when working at TBP’s operation areas only)

Any underwater activities shall have the approval from Department of Marine Malaysia prior to PTW’s application at Port Security & Safety Department (PSSD), applicable when working at TBP’s operation areas only.

Only competent and well trained workers are allowed to perform the activities. The competency shall be recognized by related local authorities or international certification bodies. A copy of competency certificate shall be forwarded to Port Security & Safety Department (PSSD) prior to work execution.

32. Bunkering Activities

Any bunkering activities shall have the approval from Department of Marine Malaysia prior to PTW application at Port Security & Safety Department (PSSD). Stand-by person from Port Security & Safety Department (PSSD) is compulsory for every bunkering activity done. Users shall apply PTW at Port Security & Safety Department (PSSD) prior to work execution.

33. Scheduled Waste Activities

Any scheduled waste activities shall have the approval from Department of Marine Malaysia prior to PTW's application at Port Security & Safety Department (PSSD). Stand-by person from Port Security & Safety Department (PSSD) is compulsory for every scheduled waste activity done. Users shall ensure that only Department of Environment's ("DOE") registered contractor is involved in handling of scheduled waste. The Users shall apply PTW at Port Security & Safety Department (PSSD) prior to work execution, applicable when working at TBP's operation areas only. Users shall ensure that only the DOE's registered contractor is involved in handling of scheduled waste.

34. Confined Space and Hot Work Activities (applicable when working at TBP's operation areas only)

Any confined space and hot work activities in vessel shall have the approval from Department of Marine Malaysia prior to PTW's application at Port Security & Safety Department (PSSD).

The Users shall ensure gas free tests are done by Jabatan Kimia Malaysia prior to hot work or confined space activities in a vessel. A copy of the endorsed gas free certificate shall be forwarded to Port Security & Safety Department (PSSD) during the PTW's application.

Any confined space activities shall adhere to the Confined Space Entry Code of Practice by DOSH.

Users shall ensure a DOSH registered AGT perform the gas test prior to entry into a confined space. Continuous gas test shall be done and the result of each test shall be displayed. The frequency of monitoring and gas testing shall be decided by Port Security & Safety Department (PSSD) based on the risk and severity involves.

The Users shall ensure proper communication - entry supervisor and stand-by person are available at all time.

Users shall display a confined space board with name of entry personnel are available at the entry point. Safety signage and signboards shall be made available to alert others.

35. Fumigation (applicable when working at TBP's operation areas only)

The Users shall obtain the approval/endorsement from Veterinary Department of Malacca for fumigation activities.

A copy of competent personnel's certificate and approval document from Veterinary Department of Malacca shall be forwarded to Port Security & Safety Department (PSSD) during the PTW's application.

36.0 Safety Signs and Barricades

Work areas shall be properly barricaded and marked. TBP may also provide such signs and barricades applicable to TBP's work, and Users

shall adhere to these. Barricades of any kind, whether made of wood, ribbon, tape or other materials shall not be violated.

Users shall be responsible for providing all safety signs, barricades, stanchions, safety cones or safety taping as required to isolate the User's work area from pedestrian traffic and to prevent unauthorized access to the area.

The Users shall remove all signs and barricades when the potential hazard no longer exists.

The following are barricade materials and safety sign information that are approved for use by TBP:

- Delineator
- PVC railing
- Chain - plastic or metal
- Screens
- Cones
- Flashing lamps

37.0 Storage

37.1 Take all reasonable steps to ensure that all goods, materials, substances and equipment in the workplace are stacked, stored, secured and kept that:

- a) they do not constitute a danger to persons in their vicinity; and
- b) they cannot, whether of their own accord, or by virtue of any external force (intentionally applied or otherwise), so flow, move, roll, or collapse, as to constitute a danger to persons in their vicinity.

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- 37.2 As far as reasonably practicable, all storage containers, pallets and like equipment used for handling, transporting or storing materials must be maintained free from sharp edges, projections or rough surfaces that are likely to injure any person working near or passing them.
 - 37.3 Pallets and similar devices containing or supporting loads must be of sound construction, of adequate strength and free from visible defects liable to affect their safe use.
 - 37.4 Where it is practical to make use of marked aisles or walkways to maintain safe movement about any stored goods or materials, they should be used.

38.0 Hazardous Substances

- 38.1 Any dangerous cargo shall be packed, marked and labelled, handled, stored and stowed in accordance with the relevant requirements of the IMDG code applying to the transport of dangerous goods by water and those dealing specifically with the handling of dangerous goods in port.
- 38.2 Handling, storing and stowing hazardous substances must be done in accordance with the controls placed on those substances by regulations made under the applicable local and international regulations.
- 38.3 When receptacles, containers or packages of hazardous substances are broken or damaged, the person having control of the premises or ship upon such receptacles, containers, packages or substances are stored will stop all work in the area concerned, and all employees will be removed to a safe place. The area is to be isolated as to prevent access by persons,

other than persons engaged in eliminating such danger, until the danger has been removed.

39.0 Transport

39.1 When employees have to be transported to or from a place of work on land or ship, the employer will take all practicable steps to ensure any means of transport provided by the employer is safe.

39.2 When employees have to be transported to or from a ship other place by water, adequate measures to be taken to ensure their safe embarking, transport and disembarking. No personal is allowed to be in the TBP operation areas without wearing the appropriate PPE (safety helmet, safety shoe, safety vest, long pant).

40.0 Parking Allocation

40.1 Port users are not allowed to park their vehicle other than at the designated parking allocation. Shuttle service and pooling are highly recommended for all port users. TBP will deserves the rights to take action i.e. fine, clamping for any violation made herein.

41.0 Access To Ships' Holds, Cargo Decks and Cranes

41.1 Access to a ship:

a) When a ship is being loaded or unloaded alongside a quay or another ship, adequate and safe means of access to the ship is required, properly installed, secured and adjusted to suit tidal conditions.

b) From a wharf (quay) access to the ship must be by means of a gangway with nets slung from the ship's side to the opposite side of the gangway, or an enclosed solid

structure, or by other means that will prevent a person falling from the gangway and landing on the wharf or in the water.

- 41.2 Access to a ship's hold, cargo deck or crane may be means of:
- a) A fixed stairway, or where this is not practicable, a fixed ladder or cleats or cups of suitable dimensions, of adequate strength and proper construction. In no case shall any straight ladder exceed 6 metres in length without a landing or rest point.
 - b) Alternative means of access such as certified man cages, which may be supported by a spreader.
- 41.3 So far, as is reasonably practicable, the means of access will be separate from the hatchway opening.
- 41.4 Only a competent person is to be permitted to open or close power-operated hatch covers. The hatch covers are not to be opened or closed while any person is liable to be injured by the operation of the covers.
- 41.5 Before loading or unloading takes place, any hatch cover or beam that is not adequately secured against displacement is to be removed.
- 41.6 Hatch covers and beams not to be removed or replaced while work is in progress in the hold under the hatchway.
- 41.7 The provisions of this section will apply, with appropriate modification and application, to power-operated ship's equipment such as door in the hull of a ship, a ramp, a retractable deck or similar equipment.
- 41.8 A safe means of escape must always be available.

42.0 Holds and Cargo Decks

- 42.1 All practicable steps are to be taken to ensure the safety of employees required to be in the hold or on the cargo deck of a ship.
- 42.2 The industry recognises that the least number of staff involved in the hold of a ship while loading takes place is the safest option.
- 42.3 Loads are not to be raised or lowered unless slung or otherwise attached to the lifting machine or appliance in a safe manner.
- 42.4 Adequate ventilation is to be provided by the circulation of fresh air to prevent risk of injury to the health arising from any fume or dust emitted by the cargo being handled, or by any internal combustion engine or any other source.
- 42.5 Where a fall of more than 3 metres is possible, means must be provided to prevent a fall.
- 42.6 Adequate measures are to be taken to protect any opening in or on a deck where employees are required to work, through which opening employees, machinery, or other articles, materials or equipment are liable to fall.
- 42.7 Every hatchway not fitted with a coaming 900 mm minimum height and adequate strength shall be closed or its guard replaced when the hatchway is no longer in use, except during short interruptions of work, and a responsible person should be charged with ensuring that these measures are carried out.
- 42.8 Adequate arrangements, including safe means of escape, must be made for the safety of persons when dry bulk cargo is being

loaded or unloaded in any hold or cargo deck, or when an employee is required to work in a bin or hopper.

- 42.9 Suitable personal protective clothing and equipment is to be provided, including the provision of a suitable life line and harness for employees required to work in a bin or hopper, which must be attended by another employee at all times so that emergency assistance can be given if necessary.
- 42.10 All necessary measures must be taken to ensure the safety of employees required to work in any place in which the temperature of the atmosphere is likely to cause harm.
- 42.11 In the case of ships carrying containers, all practicable steps must be taken for ensuring the safety of employees lashing or unlashng the containers.
- 42.12 No person is to be conveyed to, nor be supported at, an elevated workplace by any self-propelled elevated work platform, or any device lifted by a crane or forklift, unless it has been certified for the carriage of personnel.

43.0 Crane Operations

- 43.1 No crane operator shall move a load when such action places others at risk.
- 43.2 Where the operator / driver working the move does not have a clear and unrestricted view of those parts of the hold and wharf where work is being carried on, or other personnel are working in such a position that a potential hazard exists, a clear means of signalling is required.

44.0 Machinery Guards

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- 44.1 All dangerous parts of machinery are to be effectively guarded, unless they are in such a position or of such construction as to be as safe as they would be if effectively guarded.
- 44.2 Only an authorised person is to be permitted to:
- a) Remove any guard where this is necessary for the purpose of the work being carried out;
 - b) Remove a safety device or make it inoperative for the purpose of cleaning, adjustment or repair.
- 44.3 If any guard is removed, adequate precautions must be taken, and the guard shall be replaced as soon as practicable.
- 44.4 If any safety device is removed or made inoperative, the device will be replaced or its operation restored as soon as practicable and measures taken to ensure that the relevant equipment cannot be used or inadvertently started until the safety device has been replaced or its operation restored.
- 44.5 Effective means are needed for promptly cutting off the power to any machinery in an emergency.

45.0 Mobile Plant

- 45.1 All mobile plant will be thoroughly examined by a competent person at least once every 6 months.
- 45.2 Any defects found on examination will be repaired.
- 45.3 A record is to be kept of all such examinations.
- 45.4 All mobile plant will be fitted with a roll over, fall on or other overhead protective structure as required by legislation or dictated by the identified hazardous situation. Any such structure must be constructed to an appropriate standard.

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- 45.5 No internal combustion engine is to be used in any refrigerated hold, space or cargo deck.

46.0 Cleaning and Maintenance

- 46.1 When any cleaning, maintenance or repair work that would expose any person to danger has to be undertaken on machinery, stop the machinery before work is begun and take adequate measures to ensure that the machinery cannot be restarted until the work has been completed.
- 46.2 Control devices are to be secured in the inoperative position by the use of locks or lockout procedures or other equally effective means. Provided that a responsible person who is following a procedure established for carrying out of cleaning, maintenance or repair in a safe manner may restart the machinery for the purpose of any testing or adjustment which cannot be carried out while machinery is at rest.

47.0 Electrical

- 47.1 All shore-based electrical equipment, appliances and installations are to be constructed, installed, operated and maintained as to prevent danger and comply with the requirements of the Electricity Supply Act 1990 and all relevant statutory regulations.
- 47.2 Electrical equipment on board a ship will be in accordance with classification society and international standards for marine electrical systems.

48.0 Lifting Machinery, Appliances and Loose Gear

- 48.1 Every lifting machine or appliance, every item of loose gear and every sling or other lifting device forming an integral part

of a load must be of good design and construction, of adequate strength for the purpose for which it is used or intended to be used, and maintained in good repair and working order.

- 48.2 Shore-based lifting appliances and gear must comply with requirements of the requirements of the approved Code of Practice for Cranes and the Code of Practice for Load Lifting Rigging.
- 48.3 Ship-based lifting appliances and loose cargo gear used with the ship's lifting appliances must comply with the requirements of Part 49 of the maritime rules Ships' Lifting Appliances.
- 48.4 Lifting machinery, appliances and loose gear must be used in a safe and proper manner and, in particular, not loaded beyond their safe working load or loads.
- 48.5 No lifting machinery, appliances or loose gear is to be used unless it has a relevant and valid certificate of inspection or current and valid certificate of test, as the case may be.
- 48.6 Every lifting machine, appliance and every item of loose gear is to be visually examined before use, supplemented if necessary by other suitable means or measures in order to arrive at reliable conclusion as to the safety of the machine, appliance or item of loose gear examined.
- 48.7 Expandable or disposable slings are for single trips only.
- 48.8 In case of pre-slung cargoes, the slings need to be inspected at regular intervals. An inspection means a visual inspection by a responsible person for the purposes of determining whether the gear or sling is safe for continued use.

48.9 Where safe and practicable, quick-release mechanisms are the preferred work practice.

49.0 Records and registers of Lifting Machinery, Appliances and Loose Gears

49.1 A register of all lifting machines and appliances and items of loose gears needs to be kept by the owner (or ship's master) specifying the safe working load and the dates and results of the tests, thorough examinations and inspections referred to in this section.

49.2 Particulars of all tests, examinations and inspections and any heat treatment, maintenance, repair or replace of loose cargo gear must be recorded in the register of equipment.

49.3 A register of equipment may be kept in any convenient form, provided each entry is authenticated by a responsible person. The register of equipment shall be available for inspection by officers of TBP.

49.4 Every ship shall carry rigging plans and any other relevant information necessary to permit the safe rigging of its derricks and accessory gears.

49.5 Every lifting machines and appliances and items of loose gear needs to have clear identification/tagging.

49.6 Load test are required to be performed by competent person to ensure related lifting gears such as sling wire, webbing sling, spreader bar, shackles etc. A copy of test results shall be forwarded to PSSD when required.

50.0 Instruction and Training of Employees

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- 50.1 Employees are not to be employed in any work unless they have been given adequate and suitable instruction or training as to the potential risks attached to the work, precautions to be taken against them, and safe performance of the tasks to be undertaken.
 - 50.2 The employer must ensure employees are either sufficiently experienced to do their work safely or are supervised by an experienced person.
 - 50.3 Employees need to be instructed in the effective use of personal protective clothing and equipment.
 - 50.4 All persons required to operate a lifting machine, appliance or other cargo-handling appliance will be provided with proper and adequate training and be the subject of continuous supervision, until proved competent, by a person experienced and competent in the operation of such machines and appliances.
 - 50.5 The employer must maintain records of training, together with copies of certificates from recognised training establishments or individuals.

51.0 Noise

- 51.1 No employee shall be exposed to noise of a level which is likely to, or may, cause damage to their hearing.
- 51.2 All practicable steps must be taken to protect employees against the harmful effects of excessive noise at any place of work by the elimination or isolation of the noise source.
- 51.3 Provided that where it is not practicable to eliminate or isolate the noise at source by engineering or other means, ear protectors of a suitable class and proper fit to protect the

exposed employees' hearing from harm must be provided, on an individual basis, to each employee so exposed.

51.4 The protectors need to be hygienically cleaned on a regular basis to prevent the spread of infections.

51.5 Care must be taken to ensure that hearing protection devices do not limit the effectiveness of any auditory communication or communication system.

52.0 Work-Related Stress

52.1 The industry recognizes that work-related stress as defined in the Act is a potential hazard which must be considered when systematically identifying hazards, and where a significant hazard exists, all practical steps must be taken to manage this hazard.

53.0 Hazard Management

53.1 Employers must identify hazards in the place of work (previously existing, new and potential) and regularly review them to determine whether they are significant hazards and require further action.

53.2 Where there occurs any accident or harm in respect of which an employer is required to record particulars, the Act requires employer to take all practicable steps to ensure that the occurrence is so investigated as to determine whether it was caused by or arose from a significant hazard.

53.3 Where the hazard is significant, the Act sets out an employer must take:

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- a) Where practicable, the hazard must be eliminated
 - b) If elimination is not practicable, the hazard must be isolated
 - c) If it is impracticable to eliminate or isolate the hazard completely, then the employer must minimise the hazard to employees

In addition, the employer must, where appropriate:

- a) Ensure the protective clothing and equipment is provided, accessible and used
- b) Monitor employees' exposure to the hazard
- c) Seek the consent of employees to monitor their health, and
- d) With informed consent, monitor employees' health

In addition to any other identified hazards, the industry recognises the following as hazards relevant to the port working environment:

- a) Melanoma
- b) Fumes
- c) Dust
- d) Excessive cold or heat
- e) High winds
- f) Excessive rain
- g) Harmful substances or agents
- h) Oxygen-deficient or flammable atmospheres
- i) Falling objects
- j) Asbestos
- k) Excessive noise
- l) Working at heights
- m) Manual handling

When elimination is not practicable, the hazard must be monitored to ensure no harm comes to the employees from the hazard.

54.0 Ships' Hazards

- 54.1 As every ship presents a different set of hazards, an inspection needs to be carried out by a competent person prior to the commencement of work.
- 54.2 Any defects are to be reported to the appropriate person who has the authority to initiate the necessary action.

55.0 Emergencies

- 55.1 Employers, together with employees, must develop emergency plans suitable for their workplaces. These plans will cover such matters as:
- a) Fire
 - b) Earthquake
 - c) Evacuation procedure
 - d) Responsibilities for contacting emergency services
 - e) Frequent of practice drills
 - f) Chemical spills
- 55.2 Emergency procedures need to take into account all persons in the workplace.
- 55.3 In the event that a place of work has become unsafe, or there is a risk of serious harm, no further work is to be carried out until that place has been made safe.
- 55.4 Effective, temporary measures to protect the employees and others include fencing, flagging or other suitable means which

discourage access to the place of work has been made safe again.

- 55.5 Suitable and adequate means for fighting fire are to be provided and kept available for use where port work is carried out.

56.0 First Aid

- 56.1 Suitable first aid facilities and personnel need to be available at each workplace to provide immediate treatment of injury.
- 56.2 Suitable personnel will be trained in the principles for first aid treatment for injured persons and in methods of rescuing injured persons.
- 56.3 Ensure that adequate numbers of such personnel are available during each working shift for the purposes of providing first aid and rescue services.
- 56.4 To ensure accident and emergency services are promptly directed to the scene of any accident, mishap or other emergencies, directions and instructions need to be displayed in conspicuous area.

57.0 Accidents and Serious Harm

- 57.1 Incident is defined as work-related event(s) in which an injury or ill health (regardless of severity) or fatality occurred, or could have occurred. It may also involve any harm to property or environment. An incident where no injury, ill health, or fatality occurs may also be referred to as a “near-miss”, “near-hit”, “close call”, or “dangerous occurrence”.
- 57.2 Every employer is required to maintain a register of accidents and serious harm, and to be record particulars pertaining to:

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- a) Every accident that harmed (or, as the case maybe, might have harmed) any employee at work, or any person in a place of work controlled by the employer.
 - b) Every occurrence of serious harm to an employee at work, or as a result of any hazard to which the employee was exposed while at work, in the employment of the employer.
- 57.3 All accidents, incidents, serious harm and harm must be the subject of full and proper investigation by the employer. The results of such investigation by that employer. The results of such investigation must be recorded in the register. Employer shall also forward a copy of the investigation report to Port Security & Safety Department (PSSD) of TBP when requested.
- 57.4 Every employer shall notify the nearest occupational safety and health office of any accident, dangerous occurrence, occupational poisoning or occupational disease which has occurred or is likely to occur at the place of work as per NADOOPOD Regulations 2004. For any fatality or lost time injury (LTI) cases, the employer is required to notify the authority immediately.
- 57.5 Where a person is seriously harmed while at work, no person may, unless authorised to do so, remove or in any way, interfere with or disturb any wreckage, article, or thing related to the incident except to the extent necessary:
- a) To save the life of, prevent harm to, or relieve the suffering of, any person; or
 - b) To maintain the access of the general public to an essential service or utility; or

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- c) To prevent serious damage to or serious loss of property.

58.0 Maintenance of Pipelines, Storage Tanks and Other Cargo Handling Facilities

58.1 The Owner or the employer shall take all necessary measures to ensure that all pipelines, storage tanks and other cargo handling facilities and systems are well-maintained and in safe operating conditions at all time. Periodic inspection and scheduled maintenance are required to ensure that the pipelines, storage tanks and other cargo handling facilities are in safe operating conditions.

58.2 The owner shall conduct the periodic integrity test for the pipelines and storage tanks as per the manufacturer or the applicable ASME or equivalent standard and code . This is to gauge the degradation from internal and external corrosion and stress due to climate and settling and also to ensure their continued reliability. A copy of report summary to be submitted to Port Security & Safety Department (PSSD) of TBP accordingly.

59.0 Safety Data Sheet (SDS)

59.1 Every chemicals used, stored and handled in TBP are required to have Safety Data Sheet (SDS) as per USECHH Regulation 2000. A copy of SDS required to be forwarded to Port Security & Safety Department (PSSD) for reference.

60.0 Notification to Respective Authority

The Users are required to update and notify the relevant Authorities on such compliance with Occupational Safety & Health Act (OSHA)

1994, Factories and Machinery Act 1967 (Revised 1974) etc. - based on the project type or nature of work.

61.0 Acceptance by the User

We hereby declare that:

- (a) We shall abide by the SHE rules and regulations currently enforced in TBP (TBP SHE Guidelines), Department of Occupational Safety and Health (DOSH) and other regulatory or governing bodies including Suruhanjaya Tenaga, Department of Environment (DOE), etc.;
- (b) We shall also extend the above declaration to include our appointed sub-contractors, agents, and other people engaged by us in the carrying out of our services;
- (c) We shall arrange and ensure that our personnel, agents, and other people engaged by us in the carrying out of our services are covered with the relevant insurance and workmen compensation insurance; and
- (d) Our personnel, sub-contractors, agents and people engaged by us for this work have been trained in terms of safety.

We hereby agree to indemnify TBP against any damage or loss to property, injuries or death to persons that may occur in the event such rules and regulations are not observed by our servants, workers, employees, sub-contractors, agents or other people engaged by us in the carrying out of our services.