



NAMIBIAN PORTS AUTHORITY

## BIDDING DOCUMENTS Issued on: 24 February 2020

Port of Walvis Bay (Head Office):  
P.O. Box 361 Walvis Bay, Namibia

Port of Lüderitz:  
P.O. Box 836 Lüderitz, Namibia

**Directors**

Adv. G S Hinda  
(Chairperson)  
Ms. JJ Comalie  
Mr. M Hindjou  
Mr. J Kangandjera  
Ms. N Hamunyela

**Chief Executive Officer**  
Kavin Harry (Acting CEO)  
**Company Secretary**  
Ms. N Haikali

## FOR THE LEASE OF LAND AND BUILDING TO DEVELOP AND OPERATE A COLD STORAGE FACILITY, AT THE PORT OF WALVISBAY, ON A PORTION OF ERF 1920, WALVIS BAY



**Procurement Reference No: NCS/ONB/NAMPORT/  
CS/2020**

**Cost: NAD1000.00 including VAT**



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# Invitation for Bids (IFB)

## (Open National Bidding)

Republic of Namibia

**NAME OF PROJECT:** LEASE OF LAND AND BUILDINGS TO DEVELOP AND OPERATE A COLD STORAGE FACILITY, AT THE PORT OF WALVIS BAY, ON A PORTION OF ERF 1920, WALVIS BAY

**REFERENCE NUMBER:** NCS/ONB/NAMPORT/ CS/2020

1. Bids are invited through Open National Bidding (ONB) procedures to Lease Land and Buildings to Develop and Operate a Cold Storage Warehouse, at the Port of Walvis Bay. The lease premises are situated on a portion of Erf 1920, Walvis Bay. The invitation is open to all eligible bidders as defined in ITB clause 3.
2. Bidders should take note that Namport will apply the monthly rental based on the approved rate applicable for the area as follow: Building N\$ 65/ m<sup>2</sup> and Land N\$50/ m<sup>2</sup> per month, which equates to N\$711 675.00 per month. The monthly Rental Fee above is subject to escalation, on each anniversary date from the commencement date to escalate by a percentage increase equivalent to the percentage increase in the Namibian Consumer Price Index (“NCPI”).
3. Interested eligible bidders may obtain further information from Namibian Ports Authority, Property Manager and inspect the Bidding Documents on the Namport website <https://www.namport.com.na> anytime.
4. Qualifications requirements include: refer to the detailed Bidding Document.
5. A complete set of Bidding Documents in English may be purchased by interested bidders at a cost of non- refundable fee of N\$1000 of which proof of receipt must be attached/accompany the submission of the bid. Failure to attach the proof of payment will lead to disqualification. The method of payment will be Cash, Electronic Funds Transfer (EFT) or via credit card transaction on site. The account details are to be provided upon request.
6. A pre-bid conference will be held at 10h00 local time on **10 March 2020** at Namport Head Office, No. 17 Rikumbi Kandanga Road, Walvis Bay Namibia. The last day for clarification requests will be on **13 March 2020**.
7. Bids must be delivered at Namport Head Office, No. 17 Rikumbi Kandanga Road at **12h00 on/or before 30 March 2020**.  
Electronic bidding will not be permitted. Late bids will be rejected. Bids will be opened in the presence of the bidders’ representatives who choose to attend in person.

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8. The address(es) referred to above is(are):

For Bidding Document Inspection:

Namibian Ports Authority (Namport) Reception, No. 17 Rikumbi Kandanga Road.

For Pre-Bid Meeting and Bid Opening:

Namibian Ports Authority (Namport Executive Boardroom, No. 17 Rikumbi Kandanga Road.

For Submission of Bids:

The Tender Box, Namibian Ports Authority (Namport) Reception, No. 17 Rikumbi Kandanga Road.

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# **Section I – Instructions to Bidders**

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# Section I. Instructions to Bidders

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## Instructions to Bidders

### A. General

- 1. Scope of Bid**
- 1.1 The Namibian Ports Authority also referred to herein as the Employer/Landlord invites bids for the for the lease of land and building to operate a Cold Storage, at the port of Walvis bay, on a portion of Erf 1920, Walvis Bay as described in Section III- Scope of Service and Performance Specifications.
- a) Lease Period and Condition: Namport intend to lease the facility on a long term basis, for a period of nine (9) years and eleven (11) months to the successful bidder subject to the terms and conditions of the lease agreement of which a copy of the standard agreement is attached hereto.
  - b) Applicants must satisfy themselves with services available and conditions of land, buildings/ facilities and infrastructure, prior to submission of their application.
  - c) Discussion drawings for the available properties is inserted below at the Scope of Service and Performance Specifications.
  - d) All installations/fixtures, storage racks and other required cargo equipment and machinery must be erected/installed at the applicant's cost and expense.
  - e) Monthly Rental: Namport will apply the monthly rental based on the approved rate applicable for the area as follow: Building N\$ 65/ m<sup>2</sup> and Land N\$50/ m<sup>2</sup> per month, which equates to N\$711,675.00 per month. The monthly Rental Fee above is subject to escalation, on each anniversary date from the Commencement Date, to escalate by a percentage equivalent to the percentage increase in the Namibian Consumer Price Index ("NCPI").
- 1.2 Throughout these bidding documents, the terms "in writing" means any typewritten or printed communication, including e-mail, and facsimile transmission, and "day" means calendar day. Singular also means plural.
- 2. Corrupt or Fraudulent Practices**
- 2.1 The Government of the Republic of Namibia requires that bidders/suppliers/contractors, participating in procurement in Namibia, observe the highest standard of ethics during the procurement process and execution of contracts.

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2.2 The Employer will reject a proposal for award if it determines that the Bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for the contract in question; For the purpose of this Sub-Clause:

- i. “corrupt practice”<sup>1</sup> is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
- ii. “fraudulent practice”<sup>2</sup> is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
- iii. “collusive practice”<sup>3</sup> is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
- iv. “coercive practice”<sup>4</sup> is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party; and
- v. “obstructive practice” is deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede an investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation.

**3. Eligible Bidders**

3.1 (a) A Bidder, and all parties constituting the Bidder, must be of Namibian nationality, as defined below. A Bidder shall be deemed to have the nationality of Namibia if the Bidder is a citizen or is constituted, incorporated, or registered and operates in conformity with the provisions of the laws of Namibia.



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(b) A Bidder may be a natural person, private entity, government-owned entity (subject to ITB 3.3) or any combination of them with a formal intent to enter into an agreement or under an existing agreement in the form of a Joint Venture (JV) with at least **30% ownership by Previously Disadvantaged Namibian (PDN)**. In the case of a JV:

(i) all parties to the JV shall be jointly and severally liable; and

(ii) a JV shall nominate a Representative who shall have the authority to conduct all businesses for and on behalf of any and all the parties of the JV during the bidding process and, in the event the JV is awarded the Contract, during contract execution.

3.2 The Employer may, in the course of bids evaluation, require the submission of signed statements from the bidders, certifying eligibility, in the absence of other documentary evidence establishing eligibility.

Eligibility compliance may refer to the following:

(a) Business registration, for which evidence may include the certificate of company registration;

(b) Tax status, for which documentation of tax registration and tax clearance are particularly relevant;

(c) Certifications by the Bidder of the absence of a debarment order and absence of conflict of interest; and

(d) Certification of status regarding conviction for any offence involving fraud, corruption or dishonesty.

3.3 Government-owned enterprises in the Republic of Namibia may only participate if they are legally and financially autonomous, operate under commercial law, and are not a dependent agency of the Employer.

3.4 A Service Provider that is under a declaration of ineligibility by the Government of Namibia in accordance with applicable laws, at the date of the deadline for bid submission or thereafter, shall be disqualified.

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3.5 Bidders shall provide such evidence of their continued eligibility to the satisfaction of the Employer, as the Employer shall reasonably request.

3.6 A Bidder shall not have a conflict of interest. All Bidders found to have a conflict of interest shall be disqualified. A Bidder may be considered to have a conflict of interest with one or more parties in this bidding process, if :

- (a) they have a controlling partner in common; or
- (b) they receive or have received any direct or indirect subsidy from any of them; or
- (c) they have the same legal representative for purposes of this bid; or
- (d) they have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the Bid of another Bidder, or influence the decisions of the Employer regarding this bidding process; or
- (e) a Bidder participates in more than one bid in this bidding process. Participation by a Bidder in more than one Bid will result in the disqualification of all Bids in which the party is involved. However, this does not limit the inclusion of the same subcontractor in more than one bid; or
- (f) a Bidder or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the contract that is the subject of the Bid.

**4. Qualification of the Bidder**

4.1 Bidders shall include the information and documents listed hereunder with their bids. If, after opening of bids it is found that any document is missing the Employer may request the submission of that document subject to clause 23.1. The non-submission of the document by the Bidder within the prescribed period may lead to the rejection of its bid.

- (a) copies of original documents defining the constitution or legal status, place of registration, and principal place of business;
- (b) copies of share certificates and detailed breakdown of ownership structure indicating shareholding. Clearly

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indicate Namibian and foreign shareholding.

- (c) a written authorization in the form of a power of attorney accompanying the proposal or any other evidence demonstrating that the representative signing the bid has been duly authorized to commit the Bidder
- (d) Demonstrate capacity either as an entity and/or through personnel to operate and manage a cold storage facility and have experience in services of a similar nature and of similar size as far as possible, in over the last ten years, and details of services under way or contractually committed; and names and addresses of references who may be contacted for further information on those contracts;
- (e) Qualifications and experiences of supervisory personnel proposed to ensure good performance of the service.
- (f) A local bank or financial institution must confirm through a letter that the Bidder has funds or have access to debt to invest in development/infrastructure of the Cold Storage facilities.
- (g) Project plan indicating key deliverables and milestones. Bidders must clearly indicate when operation is expected to commence;
- (h) A business case clearly demonstrating Bidders knowledge of the cold storage market in Walvis Bay.

4.2 To qualify for award of the Contract, Bidders shall meet the following minimum qualifying criteria:

- (a) a qualified and experienced manager/supervisor with five years' experience in operating and managing a cold storage facility of a comparable nature.
- (b) bidders demonstration to deliver on time (Delivery schedule)

A consistent history of litigation or arbitration awards against the Bidder may result in disqualification.

## **5. Cost of Bidding**

5.1 The Bidder shall bear all costs associated with the preparation and submission of his bid, and the Employer will in no case be responsible or liable for those costs.

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- 6. Site Visit/Pre-bid Meeting** 6.1 The Bidder, at his own responsibility and risk, is encouraged to visit and examine the site(s) and its surroundings where the services are required and obtain all information that may be necessary for preparing the bid and entering into a contract for the services. The costs of visiting the site shall be at the Bidder's own expense.

Bidders are invited to attend a compulsory pre-bid meeting to be held at Nampout Head, Executive Boardroom on **10 March 2020 at 10h00** am to raise any matter in the understanding of the requirements of the Employer, submission of documents etc.

Planned site visits have been scheduled same day of the pre bid meeting.

### **B. Bidding Documents**

- 7. Content of Bidding Documents** 7.1 The set of bidding documents comprises the documents listed in the table below and addenda issued in accordance with ITB Clause 9:

Section I	Instructions to Bidders
Section II	Bidding Forms
Section III	Scope of Service and Performance Specifications
Section IV	Lease Agreement
Section V	Schedules

- 7.2 The Bidder is expected to examine all instructions, forms, terms, and specifications in the bidding documents. Failure to furnish all information required by the bidding documents or to submit a bid substantially responsive to the bidding documents in every respect will be at the Bidder's risk and may result in the rejection of its bid. Sections II should be completed and returned with the bid in the number of copies specified in ITB Clause 15.

- 8. Clarification of Bidding Documents** 8.1 A prospective Bidder requiring any clarification of the bidding documents may notify the Employer at the following address **before 13 March 2020**:

**Contact Person: Mrs. Justina Evelinus**

**Telephone Number: +264 64 208 2337**

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**Fax Number: +264 64 208 2723**

**E-Mail Address: [j.evelinus@namport.com.na](mailto:j.evelinus@namport.com.na)**

The Employer will respond to any request for clarification received earlier than 13 March 2020. Copies of the Employer's response having any incidence in the preparation of bids will be forwarded to all those who received the bidding documents directly from the Employer, but without identifying its source.

- 9. Amendment of Bidding Documents**
- 9.1 Before the deadline for submission of bids, the Employer may modify the bidding documents by issuing addenda.
- 9.2 Any addendum thus issued shall be part of the bidding documents and shall be communicated in writing to those who obtain the bidding documents directly from the Employer. Prospective bidders shall acknowledge receipt of each addendum in writing to the Employer.
- 9.3 To give prospective Bidders reasonable time in which to take an addendum into account in preparing their bids, the Employer shall extend the deadline for submission of bids, as necessary in accordance with ITB Sub-Clause 17.2 hereunder.

### **C. Preparation of Bids**

- 10. Language of Bid**
- 10.1 All bids, proposals and contract documents relating to the bid shall be in "English".
- 10.2 Notwithstanding the above, documents in languages other than English may be accepted with translation.
- 11. Documents comprising the Bid**
- 11.1 The bid submitted by the Bidder shall comprise the Technical and Financial Proposals as detailed hereunder:
- (a) Qualification Information Form and Documents annexed to the Bid Submission Form in Section II;
  - (b) Documents listed in ITB Sub-Clause 4.1 and
  - (c) Proposal as required in ITB Sub-Clause 12.1
  - (d) Bid Submission Form ( contained in Section II);
  - (e) following documentary evidence (required from Namibian bidders):
    - I. a valid original good standing Tax Certificate;
    - II. a valid original good standing social security certificate;

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III. Business Registration Certificate/Trade License;

- (f) An undertaking on the part of the Bidder that the salaries and wages payable to its personnel in respect of this proposal are compliant to the relevant laws, Remuneration Order, and Award, where applicable if it is awarded the contract or part thereof; and.
- (g) Provide names of shareholders and shareholding percentages;
- (h) Share certificate(s) and copies of Identification documents must be submitted indicating proof of 51% Namibian owned and 30% owned by previously disadvantage Namibians
- (i) If joint venture/consortium, a JV/consortium agreement and partner information must be submitted.

**12. Technical Proposal and Evaluation Criteria**

12.1 The Bidder shall structure the operational and technical part of its Proposal as follows:

12.1.1 Business Concept

- a) This section should provide a brief description of the Bidder's cold storage business operations including warehouse management system and material handling equipment;
- b) The Bidder should demonstrate experience either as an entity or through personnel in managing cold storage facilities over the last ten years, including the maximum handling capacity of the cold storage facilities managed;
- c) The Bidders are required to submit a concept design signed off by a suitably qualified and experienced engineer for a refrigeration system/cooling plant, which will make use of seawater and not fresh water. The Bidders are required to demonstrate in their bids, at high level, how this requirement will be met.
- d) The Bidder is required to indicate the total pallets spaces and cargo storage capacity they will install in the cold storage.

12.1.2 Applicants Staff Experience and details

- a) The Bidder should submit organization structure clearly indicating number of staff to be employed.
- b) Experienced and qualified Manager with ten years'

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- experience in cold storage operations.
- c) Cold storage and warehouse supervisor with five years' experience.

12.1.3 Amount invested and/or to be invested.

- a) The Bidder must indicate the amount invested and/or to be invested to make the facility functional for storage and handling cargo.
- b) The Bidder should provide breakdown of major project expenditure items.

12.1.4 Proof of funding

- a) A local bank or financial institution must confirm through a letter that the bidder has funds or has access to debt to operate and manage the Cold Storage. In support of the bid response for [*bidder name*], we, [*lender name*] confirm that, that the lender will provide funding upon receipt of the Lease Agreement.

12.1.5 Safety, Health and Environmental Management Policy

The Supplier is hereby advised that the Landlord holds the following Safety, Quality and Environmental certifications:

- ISO 9001 (Quality Management Systems).
  - ISO 14001 (Environmental Management Systems).
  - ISO 45001 (Health and Safety Management Systems).
- a) The Supplier shall preferably have the same or equivalent certifications or in-house management policies.
- b) The Bidder should produce its Safety, Health & Environmental Policy and describe the arrangements made to fulfill its obligations to ensure compliance of the duty of the employer, as defined under the Occupational Safety and Health Act.

12.1.6 Estimated Annual Cargo Throughput

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- a) The Bidder is required to provide high-level summary of the cold storage market in Walvis Bay and potential new business.
  - b) The Bidder is required to indicate the estimated annual throughput of cargo.

#### 12.1.7 Project Execution Plan

The Bidder should submit a project plan indicating key deliverables and milestones. Bidders should indicate a firm timeline of setting up the facility and commencement date of imports and exports. Bidders shall be bound to the timelines committed to above. The Bidders are required to submit the following:

- (i) Project Plan
  - (a) The Bidder must prepare and submit a Project Execution Plan or Gantt Chart clearly indicating the key deliverables and milestones.
  - (b) Submit firm timelines for setting up the facility and commencement date for handling first cargo or imports and exports. This include the following key deliverables:
    - i. Project organization and implementation team;
    - ii. Acquisition, delivery and installation of implements and equipment;
    - iii. Resourcing schedule for human resources;
  - (b) The Bidders with the shortest project execution timeliness and commencement date for imports and exports will receive preference.

It is essential for the technical proposal to comprise detailed information on the requirements listed above. Non-submission of this information or submission of incomplete information could prove to be detrimental to the Bidder's proposal in the evaluation and marks allocation of its Technical Proposal.

### **13. Bid Validity**

- 13.1 Bids shall remain valid for the period of 90 days after the closing date for submission of bids.
- 13.2 In exceptional circumstances, the Employer may request that the Bidders extend the period of validity for a specified additional period. The request and the Bidders' responses shall be made in writing. A Bidder agreeing to the request will not be required or permitted to otherwise modify the bid.

### **14. Award**

The Namport shall award the Contract to the Bidder whose offer



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**Criteria** has been determined to be the highest evaluated bid and is substantially responsive to the Bidding Documents, provided further that the Bidder is determined to be qualified to perform the Contract satisfactorily.

- 15. Format and Signing of Bid**
- 15.1 The Bidder shall prepare one original set of the documents comprising the Technical and Financial Proposals as described in ITB Clause 11. In addition, the Bidder shall submit 1 copy of the Technical and Financial Proposals and one set of accompanying documents as listed in ITB Sub-Clause 4.1. In the event of discrepancy between them, the original shall prevail.
- 15.2 The original and all copies of the bid shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized to sign on behalf of the Bidder, pursuant to ITB Sub-Clauses 4.1(b). All pages of the bid, where entries or amendments have been made, shall be initialed by the person or persons signing the bid.

#### **D. Submission of Bids**

- 16. Sealing and Marking of Bids**
- 16.1 The Bidder shall seal the original and all copies of the Bid in one envelope.
- 16.2 The envelope shall:
- (a) bear the name and address of the Bidder;
  - (b) be addressed to:  
**Namibian Ports Authority**  
**P.O Box 361, Walvis Bay**  
**No. 17 Rikumbi Kandanga Road, Walvis Bay**  
**Clearly Marked: Lease of land and building to operate a cold storage, at the port of Walvis Bay, on a portion of Erf 1920, Walvis Bay**
  - (c) bear the name and identification number of the Contract as defined in the Invitation to bid; and
  - (d) provide a warning not to open before the specified time and date for Bid Opening as mentioned in ITB Clause 20.1.
- 16.3 If the envelope is not sealed and marked as above, the Employer will assume no responsibility for the misplacement or premature

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opening of the bid.

- 17. Deadline for Submission of Bids**
- 17.1 Bids shall be delivered to the Employer at the address specified above not later than **30 March 2020** and 12h00pm.
- 17.2 The Employer may extend the deadline for submission of bids by issuing an amendment in accordance with ITB Clause 9, in which case all rights and obligations of the Employer and the Bidders previously subject to the original deadline will then be subject to the new deadline.
- 18. Late Bids**
- 18.1 Any bid received by the Employer after the deadline prescribed in ITB Clause 16 will be returned unopened to the Bidder.
- 19. Modification and Withdrawal of Bids**
- 19.1 Bidders may modify or withdraw their bids by giving notice in writing before the deadline prescribed in ITB Clause 16.
- 19.2 Each Bidder's modification or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with ITB Clauses 15 and 16, with the outer and inner envelopes additionally marked "MODIFICATION" or "WITHDRAWAL," as appropriate.
- 19.3 No bid may be modified after the deadline for submission of bids.
- 19.5 Bidders may only offer discounts to, or otherwise modify the prices of their bids by submitting bid modifications in accordance with this clause, or included in the original bid submission.

## **E. Bid Opening and Evaluation**

- 20. Bid Opening-**
- 20.1 The Employer will open the bids, including modifications made pursuant to ITB Clause 19, in the presence of the Bidders' representatives who choose to attend in the **Executive Boardroom, Namibian Ports Authority, Walvis Bay Head Office, and No 17 Rikumbi Kandanga Road at 12h 10.**
- 20.2 Envelopes marked "WITHDRAWAL" shall be opened and read out first. Bids for which an acceptable notice of withdrawal has been submitted pursuant to ITB Clause 18 shall not be opened.
- 20.3 Only the Bidders' names will be announced by the Employer at the opening. No bid shall be rejected at Bid Opening except for the late bids pursuant to ITB Clause 17; Bids and modifications sent pursuant to ITB Clause 18 that are not opened and read out

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at bid opening will not be considered for further evaluation regardless of the circumstances. Late and withdrawn bids will be returned unopened to the bidders.

20.4 The Employer will prepare minutes of the Bid Opening, including the information disclosed to those present in accordance with ITB Sub-Clause 20.3.

**21. Confidentiality** 21.1 Information relating to the examination, clarification, evaluation, comparison of bids and recommendations for the award of a contract shall not be disclosed to Bidders or any other person not officially concerned with such process. Any effort by a Bidder to influence the Employer's processing of bids or award decisions, may result in the rejection of his bid.

**22. Clarification of Bids** 22.1 To assist in the examination, evaluation, and comparison of bids, the Employer may, at the Employer's discretion, ask any Bidder for clarification of the Bidder's Bid, including breakdowns of the prices in the Activity Schedule, and other information that the Employer may require. The request for clarification and the response shall be in writing via e-mail or facsimile, but no change in the price or substance of the Bid shall be sought, offered, or permitted except as required to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the bids in accordance with ITB Clause 25.

22.2 Subject to ITB Sub-Clause 21.1, no Bidder shall contact the Employer on any matter relating to its bid from the time of the Bid Opening to the time the contract is awarded. If the Bidder wishes to bring additional information to the notice of the Employer, he should do so in writing.

22.3 Any effort by the Bidder to influence the Employer in the Employer's bid evaluation or contract award decisions may result in the rejection of the Bidder's bid.

**23. Examination of Bids and Determination of Responsiveness** 23.1 Prior to the detailed evaluation of bids, the Employer will determine whether each bid:

- (a) meets the eligibility criteria defined in ITB Clause 3;
- (b) has been properly signed; and
- (c) is substantially responsive to the requirements of the bidding documents.

23.2 A substantially responsive bid is one which conforms to all the terms, conditions, and specifications of the bidding documents,

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without material deviation or reservation. A material deviation or reservation is one:

- (a) which affects in any substantial way the scope, quality, or performance of the Services;
- (b) which limits in any substantial way, inconsistent with the bidding documents, the Employer's rights or the Bidder's obligations under the Contract; or
- (c) whose rectification would affect unfairly the competitive position of other Bidders presenting substantially responsive bids.

23.3 If a bid is not substantially responsive, it shall be rejected by the Employer, and may not subsequently be made responsive by correction or withdrawal of the nonconforming deviation or reservation.

**24. Errors and Omission**

24.1 In the examination of substantially responsive bids, the Public Entity shall distinguish between errors and omissions that are properly subject to correction and those that are not. A Bidder should not be automatically disqualified for not having presented complete information, either unintentionally or because the requirements in these bidding documents were not sufficiently clear. Provided that the error or omission in question is subject to correction –generally a situation arising in the context of issues relating to data, information of a factual or historical nature, or issues that do not affect the principle that bids should be substantially responsive, the Public Entity must permit the Bidder to promptly provide the missing information or correct the mistake. However, there are certain basic errors or omissions which, because of their nature are not subject to correction. Examples of these are failure to sign a bid or submit a guarantee. Furthermore, the Bidder may not be permitted to correct errors or omissions that alter the substance of an offer, constitute material deviation or reservation, or in any way improve it.

**25. Comparison of Technical Proposal**

25.1 The Technical Proposals shall be evaluated as per a marking system as indicated in Section V- Schedule. Only those having scored the minimum pass marks or more, shall be retained for the final evaluation.

**26. Correction of Errors**

26.1 Bids determined to be substantially responsive shall be checked by the Public Entity for any arithmetic error. Errors shall be corrected by the Public Entity as follows:

- (a) where there is a discrepancy between the amounts in figures and in words, the amount in words shall govern;

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and

- (b) where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the unit rate as quoted shall govern, unless in the opinion of the Employer there is an obviously gross misplacement of the decimal point in the unit rate, in which case the line item total as quoted shall govern, and the unit rate shall be corrected.

26.2 The amount stated in the bid shall be adjusted by the Employer in accordance with the above procedure for the correction of errors and, with the concurrence of the Bidder, shall be considered as binding upon the Bidder. If the Bidder does not accept the corrected amount, the bid shall be rejected.

## **F. Award of Contract**

### **27. Award Criteria**

27.1 Subject to ITB Clause 28, the Employer will award the Contract to the Bidder whose bid has been determined to be substantially responsive to the bidding documents and who has scored the highest marks per provided that such Bidder has been determined to be:

- (a) eligible in accordance with the provisions of ITB Clause 3, and
- (b) qualified in accordance with the provisions of ITB Sub-Clause 4.2.

### **28. Employer's Right to Accept any Bid and to Reject any or all Bids**

28.1 Notwithstanding ITB Clause 27, the Employer reserves the right to accept or reject any bid, and to cancel the bidding process and reject all bids, at any time prior to the award of Contract, without thereby incurring any liability to the affected Bidder or Bidders.

### **29. Notification of Award and Signing of Agreement**

29.1 Prior to the expiration of the period of bid validity, the Employer shall, for contract amount above the prescribed threshold, notify the selected bidder of the proposed award and accordingly notify unsuccessful bidders. Subject to challenge and Appeal the Employer shall notify the selected Bidder, in writing, by a Letter of Acceptance for award of contract. It will state the sum that the Employer will pay to the Service Provider in consideration of the execution of the services by the Service Provider as prescribed by the Contract (hereinafter and in the

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Contract called the “Monthly rental”).

29.2 The notification of award will constitute the formation of the Contract.

29.3 The Contract, in the form provided in the bidding documents, will incorporate all agreements between the Employer and the successful Bidder. It will be signed by the Employer and sent to the successful Bidder along with the Letter of Acceptance.

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## Section II – Bidding Forms

### Table of Forms

<b>Bid Submission Form .....</b>	<b>20</b>
<b>Qualification Information .....</b>	<b>21</b>

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## Bid Submission Form

Date.....:

To:.....[name and address of Employer]

(a) Having examined the bidding documents [including .....addenda], we offer to execute the.....

-----  
[name and identification number of Contract] in accordance with the Conditions of Contract, Scope of Service and Performance Specifications and the Activity Schedules accompanying this bid for the monthly rental price of N\$ 65/ m<sup>2</sup> for the building and land N\$50/m<sup>2</sup> for the land thus N\$ N\$711 675.00 (Seven hundred and Eleven, Six hundred and Seventy Five Namibian Dollars per month  
.....  
.....

(b) The price is not negotiable. Bidders not accepting the price, their bids will be rejected

(c) This Bid and your written acceptance of it shall constitute a binding Contract between us. We understand that you are not bound to accept the lowest, highest or any bid you receive.

(d) We have read and understood the content of the Bid Securing Declaration form contained in Section II and subscribe fully thereto. We further understand that this declaration shall be construed as a signed Bid Securing Declaration which could lead to disqualification on the grounds mentioned therein.

(e) We confirm that the salaries and wages payable to our personnel in respect of this proposal are in compliance with the relevant Laws, Remuneration Order and Award, where applicable if we are awarded the contract or part thereof.

\_\_\_\_\_  
[if none, state "none"]

Authorized Signature: \_\_\_\_\_

Name and Title of Signatory: \_\_\_\_\_

Name of Bidder: \_\_\_\_\_

Address: \_\_\_\_\_

[ Company's seal]

[This form is to be deleted if Bid Security is not applicable.]

**Appendix to Bid Submission Form**



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**Annex to Technical Proposal Form**

**Qualification Information**

**1. Individual Bidders**

- 1.1 Constitution or legal status of Bidder: *[attach copy]*  
Place of registration: *[insert]*  
Principal place of business: *[insert]*  
Power of attorney of signatory of bid or alternative acceptable evidence: *[attach]*
- 1.2 Total annual volume (amount in Namibian Dollars) of services performed in each of the last three years: *[insert]*
- 1.3 Services performed as prime Service Provider on the provision of services of a similar nature over the last three years. Also list details of work under way or committed, including expected completion date.

Project name and country	Name of employer and contact person	Type of Services provided and year of completion	Value of contract
(a)			
(b)			

- 1.4 Major items of Equipment and logistics proposed for carrying out the Services. List all information requested below.

Item of equipment	Description, make, and age (years)	Condition (new, good, poor) and number available	Owned, leased (from whom?), or to be purchased (from whom?)
(a)			
(b)			

1.5 Qualifications and experience of key personnel proposed for administration and execution of the Contract. Attach biographical data.

Position	Name	Years of experience (general)	Years of experience in proposed position
(a)			
(b)			

1.6 Proposed subcontracts and firms involved.

Sections of the Services	Value of subcontract	Subcontractor (name and address)	Experience in providing similar Services
(a)			
(b)			

1.7 Financial reports for the last two years: balance sheets, profit and loss statements, auditors' reports, Financial Statements etc. List below and attach copies.

1.8 Name, address, and telephone, and facsimile numbers of banks that may provide references if contacted by the Employer.

1.9 Information regarding any litigation, current or within the last five years, in which the Bidder is or has been involved.

Other party(ies)	Cause of dispute	Details of litigation award	Amount involved
(a)			
(b)			

1.10 Statement of compliance with the requirements of ITB Sub-Clause 4.1.

**2. Additional Requirements**

2.1 Bidders should provide any additional information required in the ITB and to fulfill the requirements of ITB Sub-Clause 4.1, if applicable.

---

## **Section III – Scope of Service and Performance Specifications**

### **Background and Purpose of the service**

Namibian Ports Authority (Namport) is inviting budding entrepreneurs, developers, operators and/or investors to submit substantive proposals to lease, develop, operate and market a cold storage facility at the Port of Walvis Bay. Namport intends to lease the warehouse on a long term basis, for a period of nine (9) years and eleven (11) months to the successful bidder.

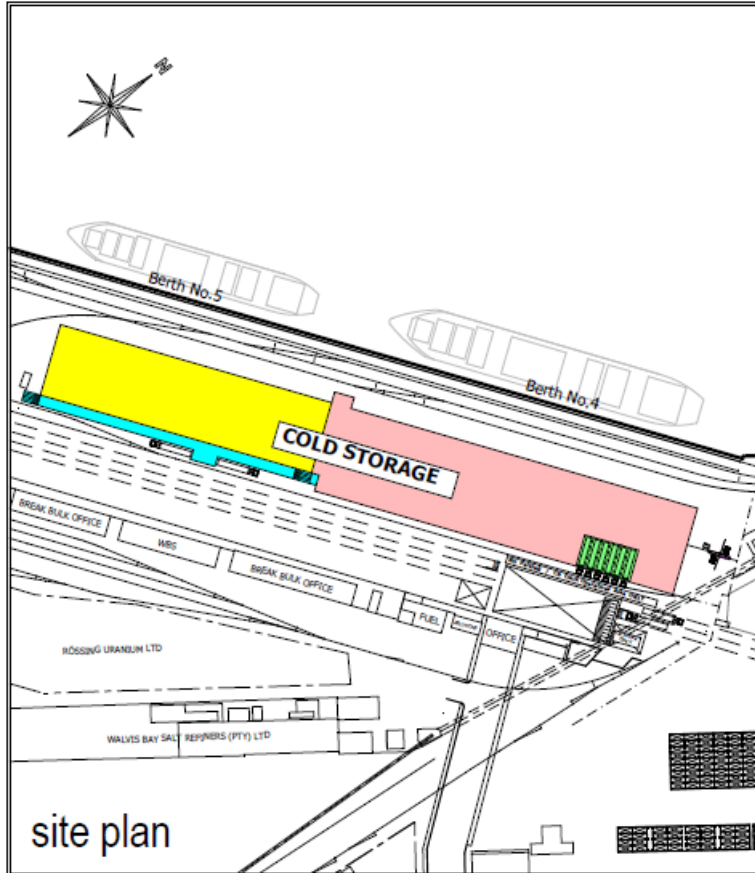
### **Description of the property**

The lease premise is a portion of land and building on situated on a Portion of Erf 1920, Walvis Bay, measuring 11,040m m<sup>2</sup>. The current capacity of the facility consist of three chambers of about 5,000 pallets positions, which may be increase to about 9,000 pallets. The currently installed pallets and material handling equipment will not be available to the successful bidder. Therefore, the Bidders will be required to design and install pallets spaces and provide materials handling equipment.


The area is situated inside the port, behind Berths No 4 and 5 as described below:


Building 1	3,926 m <sup>2</sup>
Building 2	6,062 m <sup>2</sup>
Platform(building)	657 m <sup>2</sup>
Loading Bay (land)	395 m <sup>2</sup>

Please see layout plan below for more details.



NOTES	
Description of Land :- A Portion of Erf No 1920, Walvis Bay	
<span style="display:inline-block; width:15px; height:15px; background-color:yellow; border:1px solid black;"></span>	Area of Cold Storage area 1 (Building) = 3 926 m <sup>2</sup>
<span style="display:inline-block; width:15px; height:15px; background-color:lightcoral; border:1px solid black;"></span>	Area of Cold Storage area 2 (Building) = 6 062 m <sup>2</sup>
<span style="display:inline-block; width:15px; height:15px; background-color:cyan; border:1px solid black;"></span>	Area of platform (Building) = 657 m <sup>2</sup>
<span style="display:inline-block; width:15px; height:15px; background-color:lightgreen; border:1px solid black;"></span>	Area of loading bays (Land) = 395 m <sup>2</sup>
<hr/>	
Total area leased to CCS = 11 040 m <sup>2</sup>	


 Namibian Ports Authority  
**PORT OF WALVIS BAY**  
**DISCUSSION PLAN**  
**BERTH 4&5 COLD STORAGE WAREHOUSE**  
 Total area leased = 11 040 m<sup>2</sup>

  
 Port Engineer  
 Date \_\_\_\_\_  
**This Discussion Plan is invalid unless the Port Engineer's signature is also contained on it.**

Drawn	Saban S.
Checked	Elzevir Gelderbloem
Scale	1 : 2000
File	C/1042/1W
Date	16 December 2019

**Sketch  
Nr. 854**

## Section IV – Evaluation Criteria

Details of Technical Evaluation Markings		
	Max Marks	
Company Profile and Ownership)	Score	Total
Previously Disadvantaged Namibians owned (30 % and above) (Pass/Fail)		20
Namibian Owned (above 51 %)		15
Namibian Owned (30 % - 50 %)		10
Namibian Owned (<30 %)		0
<b>Sub Total (A)</b>		<b>35</b>
Business Concept & Experience		
Description of the Bidder's cold storage business operations including warehouse management system and material handling equipment		5
Completeness of the description of the Bidder's cold storage business operations including warehouse management system and material handling equipment.	5	
Incomplete description of the Bidder's cold storage business operations with no systems and/ or material handling equipment	0	
Demonstrate experience either directly as an entity or a JV partner or through personnel over the last ten years managing cold storage facilities		10
10 or more years' experience in managing cold storage facilities	10	
Between 5 to 10 years' experience in managing cold storage facilities	5	
Less than 5 years' experience in managing cold storage facilities	0	
Concept design of pallet spaces to be installed		10
Total pallet spaces in excess of 10 000 pallets	10	
Total pallet spaces between 6 000 - 10 000 pallets	5	
Total pallet spaces in less than 6 000 pallets	2	
Concept design on refrigeration/cooling systems		5
Concept design on refrigeration/cooling systems submitted	5	
Concept design on refrigeration/cooling systems not submitted	0	
<b>Sub Total (B)</b>		<b>30</b>
Staff Experience		
Organizational Structure for the operations and number of employees		3
Organizational Structure submitted	3	
Organizational Structure not submitted	0	
Manager's Experience		5
Manager has 10 years' management experience in cold storage operation of similar size and complexity	5	
Manager has less than 10 years' management experience in cold storage operation of similar size and complexity	0	
Experience warehouse supervisors		2
Supervisor has 5 years' experience in supervisor cold storage operations of similar size and complexity	2	

Supervisor has less than 5 years' supervisory experience in cold storage operations of similar size and complexity	0	
<b>Sub Total (C)</b>	<b>10</b>	
<b>Proof of funding</b>		
Confirmation letter from a local bank or financial institution that the Bidder has funds or have access to debt to invest in development/ infrastructure of the Cold Storage facilities submitted		5
Submitted	5	
Not submitted	0	
<b>Sub Total (D)</b>	<b>10</b>	
<b>Project Execution Plan</b>		
Commencement date for handling first cargo or imports and exports in less than 6 months from date of signature of lease agreement	10	
Commencement date for handling first cargo or imports and exports in 6 to 9 months from date of signature of lease agreement	5	
Commencement date for handling first cargo or imports and exports in more than 9 months from date of signature of lease agreement	0	
<b>Sub Total (E)</b>	<b>10</b>	
<b>Safety, Health and Environmental Management Systems</b>		
Bidder has the same or equivalent certifications to ISO 9001, ISO 14001 and ISO 45001 for Quality, Environmental, Health and Safety Management Systems or in-house policies in place	5	
Bidder has some management systems or equivalent certifications for Quality, Environmental, Health and Safety Management Systems or in-house policies in place.	3	
Bidder has no management systems or equivalent certifications for Quality, Environmental, Health and Safety Management Systems or in-house policies in place.	0	
<b>Sub Total (F)</b>	<b>5</b>	
<b>TOTAL MARKS-Technical (A+B+C+D+E+F)</b>	<b>100</b>	

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## **Section V - Lease Agreement**

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# AGREEMENT OF LEASE

entered into by and between:



## NAMIBIAN PORTS AUTHORITY

a body corporate established and incorporated under the *Namibian Ports Authority No. 2 of 1994* with registration number CY/1994/0002, and with its principal place of business situated at No. 17 Rikumbi Kandanga Road, Walvis Bay, Republic of Namibia

(herein represented by **Kavin Harry**, in his capacity as **Acting Chief Executive Officer** and him warranting to be duly authorised thereto)

(hereinafter referred to as “**the Landlord**”)

**and**

**[XXX]**  
with company registration number **[XXX]** and duly registered according to the applicable company laws of the Republic of Namibia, with its principal place of business situated at Erf 1920, C – Shed, Port of Walvis Bay, Republic of Namibia

(herein represented by **[XXX]**, in his capacity as **[XXX]** and him warranting to be duly authorised thereto)

(hereinafter referred to as “**the Tenant**”)

**WHEREAS** the Landlord hereby lets to the Tenant who hereby agrees to rent from the Landlord the Premises described in sub – clause 1.1.8 hereunder subject to the terms and conditions of this Agreement.



---

NOW THEREFORE the Parties agree as follows:

**1. Definitions and Interpretation**

Definitions

- 1.1 In this Agreement, unless the context indicates otherwise:-
- 1.1.1 “**Commencement Date**” means [XXX];
  - 1.1.2 “**Improvements**” means buildings or other structures built on or affixed to the Premises, intended to be of a permanent nature;
  - 1.1.3 “**Landlord**” means the Namibian Ports Authority, as identified under the heading “Parties to this Agreement” above;
  - 1.1.4 “**Lease**” means the lease of the Premises in terms of this Agreement;
  - 1.1.5 “**Namibian Ports Authority Act, 1994**” means the *Namibian Ports Authority Act, Act 2 of 1994, as amended from time to time*;
  - 1.1.6 “**Parties**” means the parties to this Agreement, being the Landlord and the Tenant and “**Party**” means any one of them, as the context may indicate;
  - 1.1.7 “**Property**” means the property owned by the Landlord at the Port of Walvis Bay;
  - 1.1.8 “**Premises**” means the Property and, more specifically, the shed owned by the Landlord, situated within the Port of Walvis Bay, measuring a total of 11 040m<sup>2</sup> (Eleven Thousand and Forty Square Metres) and as schematically depicted and detailed in the shaded areas of the annexed plan WBH 602 A [XXX] contained in Schedule 1;
  - 1.1.9 “**Pro Rata Rates and Taxes**” means a portion of Rates and Taxes calculated with reference to the area of the Premises measured against the area of the Property;
  - 1.1.10 “**Rates and Taxes**” shall mean the proportional amount of rates and taxes levied on the Landlord by the Municipality of Walvis Bay in relation to the Property assessed on the area of the Premises measured and the basis of bare ground;
  - 1.1.11 “**Rent/Rental Fee**” means the initial Rental Fee or Escalated Rental Fee (as applicable) (as such terms as defined in Clause 5);

- 
- 1.1.12 “**Schedule**” means Schedule 1 attached hereto, depicting the premises;
- 1.1.13 “**SHEQ Policy**” is the abbreviated term used for “**Safety, Health, Environmental and Quality Policy**”, and means a policy document of the Landlord (as may be amended from time to time) providing a common framework for managing safety, health, environmental and quality matters within the Property, based on relevant Namibian legislation, or national or international standards, as the case may be, to which the Landlord may from time to time be bound. The latest copy of which is annexed hereto and marked Schedule 2;
- 1.1.14 “**Signature Date**” means the date when the last of the Parties hereto have executed and signed this Agreement;
- 1.1.15 “**Substandard Act**” means a violation of a safety instruction, a hazardous physical condition or circumstances which could permit the occurrence of any accident;
- 1.1.16 “**Tenant**” means **[XXX]**, as identified under the heading “Parties to this Agreement” above;
- 1.1.17 “**This Agreement/ This Lease**” means the entire lease agreement entered into between the Parties, including addenda, annexures, plans and/or the like which have been signed and initialled by the Parties or be incorporated herein by reference, as being relevant thereof;

### Interpretation

- 1.2 In this Agreement:
- 1.2.1 expressions in the singular also denote the plural, and *vice versa*;
- 1.2.2 words and phrases denoting natural persons refer also to juristic persons, and *vice versa*, and
- 1.2.3 pronouns of any gender include the corresponding pronouns of the other genders.
- 1.3 In this Agreement, unless the context otherwise indicates, a reference to:

- 
- 1.3.1 this Agreement, any other agreement or an instrument or any provision of any of them includes any amendment, variation or replacement of that agreement, instrument or provision;
- 1.3.2 a clause, unless the context otherwise indicates, is a reference to a clause of this Agreement;
- 1.3.3 a statute or statutory provision includes a reference to:-
- (a) any applicable statute or statutory provision as modified or re-enacted (or both) before or after the Signature Date; and
  - (b) any subordinate legislation made under any applicable statute or statutory provision before or after the Signature Date;
- 1.3.4 a person includes a reference to any natural person, firm, body corporate, unincorporated association or partnership, joint venture, trust and unincorporated association, the state or local government or regulatory department, body, instrumentality, agency, minister or the authority having jurisdiction over any of the Parties;
- 1.3.5 a reference to a person includes a reference to that person's legal personal representatives, executors, administrators, successors and substitutes (including, but not limited to, persons taking by novation) and permitted assigns;
- 1.3.6 one gender includes all genders;
- 1.3.7 time is a reference to Namibian time as per the *Namibian Time Act, 1994*, and the following construction shall apply to time matters:-
- (a) if a period of time is specified and the period dates from a given day or the day of an act or event, it is to be calculated exclusive of that day and if a period of time is specified as commencing on a given day or the day of an act or event, it is to be calculated inclusive of that day;
  - (b) if the time for performing an obligation under this Agreement expires on a day that is not a business day, time will be extended until the next business day;
  - (c) a reference to a "year" means a period of twelve (12) consecutive months;

- 
- (d) a reference to a “month” is a reference to a calendar month, and more specifically, (i) in reference to a number of months from a specific date, a calendar month commencing on that date or the same date of any subsequent month, and (ii) in any other context, one of the twelve months of the calendar;
  - (e) a reference to a “day” is a reference to any day;
  - (f) a reference to a “business day” is any day other than a Saturday, Sunday or public holiday in Namibia.

- 1.4 Any provision of this Agreement imposing a restraint, prohibition, or restriction on the Parties shall be so construed that the Parties are not only bound to comply therewith, but are also obliged to procure that the same restraint, prohibition, or restriction is observed by any third party engaged by, acting under the authority or with the written consent of the Parties.
- 1.5 Where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause only, shall bear the same meaning as ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in this clause 1.
- 1.6 Any substantive provisions contained in a definition clause shall create substantive obligations.
- 1.7 Where a word or phrase is specifically defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

## **2. Letting and Hiring**

Subject to the terms and conditions of this Agreement, the Landlord hereby lets the Premises to the Tenant, who hereby hires same from the Landlord.

## **3. Duration, Renewal and Termination**

### Duration

This Lease shall commence on the Commencement Date and shall continue for a period of nine (9) years and eleven (11) months, unless otherwise terminated in accordance with the provisions of this Agreement.

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#### **4. Use of Premises**

##### General

- 4.1 The Premises shall be used for operating a cold storage facility and for no other purpose, unless the Landlord's prior written consent is obtained.
- 4.2 The Tenant shall conduct its Business at the Premises with due regard to the business and interests of the Landlord, and shall not do, nor cause, nor permit anything to be done which is or may become a nuisance to the Landlord, neighbouring premises and other tenants or the public using the Port of Walvis Bay.

##### No Warranty for Fitness for Purpose

- 4.3 The Premises is leased to the Tenant as is and as it stands and lies, and the Landlord does not warrant that the Premises is suitable for any specific purpose that may be contemplated by the Tenant, or that the Premises is suitable for the Tenant's Business, and the Tenant shall in any event conduct its Business at the Premises at its own risk and cost.

##### Licences and Approvals, Statutes, Regulations and By-Laws

- 4.4 The Tenant shall be required to hold any and all licences and permits that may be required under the laws of Namibia for the conduct of its Business, which licences shall be the duty of the Tenant to obtain.
- 4.5 The Tenant acknowledges and agrees that it shall not be exempted from compliance with any statute, regulation or by-law imposing duties or obligations upon it as Tenant or affecting the use of the Premises or the Property. The Tenant shall therefore not be entitled to claim relief from any burden or infringement of its rights under this Agreement resulting from the operation of any such statute, regulation or by-law or any action lawfully taken thereunder by any local or other competent authority.

#### **5. Rent**

- 5.1 The Tenant shall for the first year of this Agreement pay to the Landlord Rental in the sum of N\$ 711 675 – 00 (Seven Hundred and Eleven Thousand Six Hundred and Seventy Five Thousand Namibian Dollars) per month, made up and arrived at as follows:

##### Buildings:

- 5.1.1 The monthly rate of 65/m<sup>2</sup> (sixty five Namibian Dollars per square metre), exclusive of Value Added Tax which shall be added thereon, multiplied by the number of square metres of the two (2) Buildings on the Premises (as recorded in Schedule 1

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Land Area:

- 5.1.2 The monthly rate of N\$50/m<sup>2</sup> (fifty Namibian Dollars per square metre), exclusive of Value Added Tax which shall be added thereon, multiplied by the number of square meters of the land area of the Premises (as recorded in Schedule 1) .

Escalation

- 5.2 During the duration of this Agreement, the monthly rental shall, on each anniversary date from the Commencement Date, escalate by a percentage equal to the weighted average of the Namibian Consumer Price Index (the “NCPI”) (as may be published from time to time in the Government Gazettes of the Republic of Namibia, or as may otherwise be available from relevant Namibian government institutions (such as the National Planning Commission), or any other official index published or available in Namibia in substitution thereof) prevailing in the year immediately prior to such anniversary of the Commencement Date (such escalation percentage herein referred to as the “Escalation Rate”).

Deposit

- 5.3 Notwithstanding the provisions of clause 5.1 above, the Tenant shall, on payment of the first amount of Rental Fee, deposit with the Landlord an amount equal to one (1) month’s rental, which shall bear no interest in favour of the Tenant and be held by the Landlord as security for the due performance of the terms of this Agreement.
- 5.4 Should the Tenant at any time fail to promptly make payment of any amount due under this Agreement, or should the Tenant cause damage to the Premises or any of the Landlord’s properties, such deposit may be appropriated by the Landlord towards such unpaid amount and/or as compensation for such damage provided that the Tenant, with the written consent of the Landlord, may provide an approved guarantee in place of the said deposit.

Payment in Advance

- 5.5 All rental shall be payable monthly in advance on or before the first day of each and every month and without any deductions or set – off whatsoever for bank or other charges.

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Tax on Rentals

- 5.6 The Rental Fee (or Escalated Rental Fee) recorded above excludes all taxes levied from time to time by any competent authority in relation to such Rental, and the Landlord shall be entitled to recover, in addition to the Rental Fee determined as set out above, any and all taxes levied by any competent authority in relation to such Rental Fee, including, but not limited to value added tax under the *Value Added Tax Act, 2000*.

**6. Payments and Interest**

- 6.1 All payments due by the Tenant to the Landlord under this Lease shall be made, free of deductions or bank exchange and shall be deposited into the Landlord's banking account, being:

Bank: **Bank Windhoek**  
Account Name: **Namibian Ports Authority**  
Account No.: **800 140 52 24**  
Account Type: **Cheque Account**  
Branch: **Walvis Bay**  
Branch Code: **481872**  
SWIFT CODE: **BWLINANX**

- 6.2 The Tenant shall be liable for interest on all overdue amounts payable under this Lease at the repo rate of the Bank of Namibia applicable from time to time. In the event of a dispute as to the interest rate payable, a certificate signed by any manager, accountant or other relevant official of the Bank of Namibia shall be *prima facie* proof of such interest rate.

**7. Cession and Assignment and Subletting**

Cession and Assignment

- 7.1 The Tenant shall not cede or assign this Lease (and, for the avoidance of doubt, any of its rights and obligations in terms of this Agreement), or otherwise dispose of or in any way mortgage or hypothecate this Lease or the Premises (or any portion thereof).

Sub-Letting

- 7.2 The Tenant shall not have the right to sublet or otherwise dispose of or in any way hypothecate this Lease or the Premises or any portion thereof.

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## 8. Improvements

### General

- 8.1 It is recorded that the Premises may not currently be suitable for the Tenant's Business. The Landlord acknowledges that the Tenant may make Improvements to the Premises.
- 8.2 For the duration of this Lease, but subject to the further provisions of this Agreement and all approvals required to be obtained by the Tenant, the Tenant shall be entitled, at its own risk and at its own costs, to make Improvements to the Premises. The Landlord shall provide the Tenant and the Tenant's construction contractors with access to the Premises for the construction of the Improvements, such access being subject to the Landlord's reasonable security and other access requirements.
- 8.3 Any Improvements shall require the prior written approval of the Landlord at least three (3) months prior to the commencement of construction unless otherwise agreed to in writing, which approval shall not unreasonably be withheld by the Landlord.
- 8.4 All Improvements are subject to any applicable or required statutory approvals or authorisations from the relevant competent authorities.
- 8.5 All Improvements shall further be constructed in accordance with and subject to the terms and conditions of relevant approvals and the provisions of applicable statutes and regulations of any competent authority.
- 8.6 Appropriate and adequate plans and building specifications (herein jointly referred to as "**Plans**") for any proposed Improvements shall be submitted by the Tenant to the Landlord for its approval, which approval shall not unreasonably be withheld, within three (3) months prior to the commencement of any construction envisaged on the Premises unless otherwise agreed to in writing. The Tenant undertakes to acquire any additional approvals of Plans or specifications, if and as may be required from any other relevant authorities.
- 8.7 The Landlord reserves the right to inspect any Improvements (both during the construction phase and thereafter) periodically to ensure strict adherence to any approved Plans. The Tenant undertakes to abide by any reasonable directive of the Landlord relating to reasonable precautionary measures to protect the Landlord's or other tenants property, existing assets and services on or near the Premises during the construction of the Improvements.



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- 8.8 No Improvements shall be removed, amended or altered by the Tenant during the currency of this Lease without prior written approval of the Landlord, which approval shall not unreasonably be withheld.
- 8.9 In the event of any Improvements (or alterations or additions thereto) being made by or on behalf of the Tenant without the required prior written consent of the Landlord or relevant competent authority, the Landlord shall have the right to-
- 8.9.1 require from the Tenant, by way of written notice, to remove the Improvements (or alterations or additions thereto) and to promptly reinstate the Premises into its prior condition, failing which the Landlord may attend thereto at the cost of the Tenant;
- 8.9.2 where no written notice in terms of clause 8.9.1 hereof is given, and the relevant competent authority at any time during the duration of this Lease imposes certain requirements for the alteration or removal of Improvements, require from the Tenant to carry out such alterations or removals at the Tenant's own cost.

#### Improvements on Termination of Lease

- 8.10 Subject to the further provisions of this Agreement, and in the event of a termination of this Lease, any Improvements made by the Tenant shall be dealt with as follows:
- 8.10.1 Subject to the provisions of clause 8.10.2 below, the Landlord shall have the right to require the Tenant, by written notice addressed to the Tenant, to remove, at the Tenant's cost, all Improvements made on the Premises, and to restore the Premises, to the satisfaction of the Landlord, to the same or reasonably similar condition to that it was in prior to the Tenant having made such Improvements.
- 8.10.2 Except in the case of a termination on breach as contemplated in clause 23.31, the Landlord shall not give a notice contemplated in clause 8.10.1 to the Tenant unless the Landlord has given the Tenant (i) not less than two (2) months written notice of its intention to require the Tenant to remove the Improvements and (ii) has given the Tenant, within such two (2) months, an opportunity to make representations to the Landlord as to how the Improvements may be dealt with.

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8.11 If, following the representations made by the Tenant (if any):-

8.11.1 the Landlord still requires the Tenant to remove all the Improvements, the Tenant shall be obliged to so remove the Improvements; or

8.11.2 the Landlord does not require the Tenant to remove all the Improvements, or only part of the Improvements, the Tenant shall be obliged to remove only such Improvements as required to be removed by the Landlord,

and the Tenant shall if so required remove such Improvements and restore the Premises to its original condition prior to the expiration of this Lease.

8.12 If the Tenant fails to remove any Improvements it is obliged to remove in terms of this Agreement, the Landlord may do so and may reinstate the Premises accordingly at the cost of the Tenant.

8.13 Notwithstanding anything to the contrary contained in this Agreement, unless otherwise agreed to in writing between the Landlord and the Tenant, the Tenant shall be entitled, at its cost, to remove any Improvements from the Premises upon the termination of this Agreement, subject to its obligation to restore the Premises, to the satisfaction of the Landlord, to the same condition to that it was in prior to the Tenant having made such improvements, subject to clause 8.12.

8.14 For the avoidance of doubt, on termination of this Lease any immovable property will become the property of the Landlord, without payment of any compensation by the Landlord, and the Tenant shall not be entitled to claim that the Landlord is obligated to compensate the Tenant for any such Improvements effected on the Premises.

## **9. Maintenance and Repairs**

The Landlord shall, during the duration of this Lease, and without recourse to the Tenant, maintain and be responsible for, and it shall keep the Premises in good order and condition.

## **10. Services**

10.1 All services not rendered by the Landlord, but which may be required for and in connection with all or any of the activities which are to be carried out on the Premises (including, but not limited to water and electricity), shall be acquired or arranged by and at the sole cost of the Tenant with the relevant local or competent authority or service provider.

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10.2 For the avoidance of doubt, the Tenant shall at its own cost arrange or procure competent contractors for such installation, which installation must be to the Landlord's satisfaction.

10.3 The Tenant specifically agrees that should it persistently be late in paying for any Rental Fee, services (water and electricity), the rates and taxes or any other amount required to be paid in terms of this Lease, the Landlord shall have the right to:

- (i) disconnect the electricity and water supply to the Premises until payment of the outstanding amount(s) is made;
- (ii) proceed with any rights the Landlord has for the recovery of any amount due and owing by the Tenant;
- (iii) suspend any or all other Services to the Premises for such time as may be considered necessary.

10.4 Services rendered to the Tenant by the Landlord, or by any relevant local authority over the Property, may form the subject of a separate Agreement.

## **11. Payment of Rates and Taxes**

The Tenant shall, within thirty (30) calendar days after being called upon to do so, refund to the Landlord such payments as the Landlord may have made to the local or other competent authority in respect of Pro Rata Rates and Taxes or any other form of taxation which may from time to time be levied by such authority in connection with the Premises.

## **12. Limitation of Landlord's Liability**

12.1 The Landlord shall not be liable to the Tenant for any losses or damages of whatsoever nature (including, for the avoidance of doubt, any direct or indirect losses or damages, or consequential losses, losses of profit or punitive damages, whether related to the Tenant's Business or not), which the Tenant may sustain as a consequence of any defect coming into existence in or on or around the Premises during the currency of this Lease.

12.2 The Tenant shall have no claim of any nature whatsoever against the Landlord (whether for damages or for remission of rent or otherwise):-

- 12.2.1 for any failure of or interruption in any amenities and services (including, but not limited to the supply of water and electricity) provided by the Landlord, any statutory authority or other service

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provider to the Premises or the Property, notwithstanding the cause of such failure or interruption;

- 12.2.2 by reason of any nuisance or inconvenience occasioned or suffered by the Tenant on account of maintenance work, repair work, the effecting of alterations, additions or removals, any construction or development activity on the Premises or the Property (or any premises adjoining or in the vicinity), any restriction of access to the Premises occasioned by any of the foregoing, any noise, dust or Landlord's contractors, staff or servants, or caused by any other tenants or the local or any other competent authority.
- 12.2.3 for any accident, injury, loss or damage caused to the Tenant, the Tenant's Assets or Business, the Tenant's (i) officers, (ii) agents, (iii) employees, (iv) visitors or guests, in connection with such persons using any portion of the Premises, irrespective of whether or not the cause of such accident, injury, loss or damage arises from the negligence of the Landlord or the Landlord's servants, save in the case of the gross negligence or wilful default on the part of the Landlord or the Landlord's contractors, staff or servants.
- 12.3 The Tenant hereby indemnifies and holds the Landlord harmless against any and all claims contemplated in 12.2 to the fullest extent allowed by law.
- 12.4 Nothing contained in clauses 12.1, 12.2 or 12.3 shall excuse the Landlord from specific performance of any of its obligations under this Lease in terms of this Agreement, whether expressed or implied, and particularly (but not only) its obligations to afford the Tenant undisturbed occupation and enjoyment of the Premises as contemplated herein.

### **13. Tenant's Further Indemnities**

- 13.1 The Tenant hereby specifically indemnifies and holds the Landlord harmless against:
- 13.1.1 liability in respect of the death of or injury to any (i) officers, (ii) agents, (iii) employees of the Landlord or any third party or person caused by any act or omission by the Tenant or the Tenant's (i) officers, (ii) agents, (iii) employees (iv) visitors or guests;
- 13.1.2 liability resulting from claims in respect of the contravention or non-compliance by the Tenant or its (i) officers, (ii) agents, (iii) employees, (iv) visitors or guests with the provisions of environmental laws applicable in Namibia;

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13.1.3 any legal costs or any other expenses reasonably incurred in connection with claims or actions arising out of any of the foregoing, whenever the damage, injury or death referred to in 13.1.1 or 13.1.2 above, is due to or arises out of or in connection with this Lease, the occupancy or the use of the Premises or the Property by the Tenant; provided that the Tenant shall incur no liability for such legal costs in the circumstances where the damage, injury or death arises from the gross negligence or the wilful misconduct of the Landlord and its (i) officers, (ii) agents, (iii) employees, (iv) visitors or guests.

13.2 The Landlord shall notify the Tenant forthwith upon receipt of information of the occurrence of any damage or consequential damage or the receipt of any claim or demand for or against which the Tenant is *prima facie* liable to indemnify the Landlord in terms of this Agreement, and shall in respect of such claim or demand abide by the directions of the Tenant as to whether and on what terms it shall be settled, compromised or contested; it being agreed that whatever action may be taken by the Landlord pursuant to such directions of the Tenant shall be at the Tenant's risk and expense.

#### **14. Limitation of Tenant's Liability**

14.1 In no event shall the Tenant be liable for unforeseeable, indirect, incidental or special damages, resulting from any act or omission by the Landlord in respect of the obligations of the Landlord in terms of this Lease.

14.2 The Tenant shall not be liable for loss, damage, or injury caused to third parties by any default attributable to the Landlord or its employees or agents during the period of this Lease.

14.3 The Tenant acknowledges the Landlord's right of entry into the Premises by the Landlord's representatives, agents, servants, and contractors, for inspection or to carry out any necessary works, but should there be a failure on the part of such persons to comply with the Tenant's safety and security regulations, the Tenant shall not be liable for any loss, damage, or injury that may be sustained to such persons or property entering the Premises, provided that the Tenant informs the Landlord's representatives, agents, servants, and contractors of its applicable safety and security regulations.

#### **15. Indemnities by the Landlord**

15.1 The Landlord hereby undertakes to indemnify and keep indemnified the Tenant against all loss, damage, costs and expenses which the Tenant may sustain or

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incur as a result of it remaining in occupation of the Premises in terms of this Lease, if during the term of this Lease any claim is made against the Tenant by a third party claiming to be the lawful owner of the Premises, and such third party seeking (i) occupation and possession of the Premises, (ii) and the ejection from the Premises of the Landlord and of all persons holding through or under it; (iii) or for rental therefore; (iv) or for damages sustained by the third party by reason of the Tenant's occupation thereof, and the Landlord shall immediately upon being notified by the Tenant of such claim, at its own cost and expense undertake the defence of such claim in the name of and for the benefit of the Tenant.

- 15.2 If the Tenant shall, pursuant to the judgment of any competent court under the circumstances contemplated in clause 15.1, be ordered to vacate the Premises at any time before the natural expiration of the period of this Lease, the Landlord's undertaking under clause 15.1 to so indemnify the Tenant shall in no way be affected thereby.
- 15.3 The obligations set out in this clause shall survive the completion, expiration or termination of this Agreement.

## **16. Insurance**

- 16.1 The Tenant shall be obliged, at its cost, to take out and keep in force during the currency of this Lease, adequate public liability insurance and/or any other insurance for such amount as will provide adequate coverage for the risks associated with the Tenant's Business and use of the Premises.
- 16.2 The Tenant shall be obliged, at its cost, to take out and keep in force during the currency of this Lease, adequate public liability insurance and such other relevant insurance for such amount as will provide adequate indemnity in respect of all claims which may foreseeably be made against the Tenant and/or the Landlord arising out of the Tenant's Business and use of the Premises.
- 16.3 For the avoidance of doubt, the Tenant agrees to indemnify the Landlord as stipulated in clause 12, 13 and 18 or elsewhere in this Agreement and shall hold the Landlord harmless in respect of any such claims brought by third parties and shall defend, compromise and/or settle and pay all costs, damages, awards, fees (including legal fees) and judgments finally awarded against it or the Landlord arising from such claims. This indemnity shall apply whether or not the Landlord has allowed the Tenant to control and manage the defence, compromise or settlement of a claim, but the Tenant shall in any event pay all costs, damages, awards, fees (including legal fees) and judgments finally awarded against the Landlord arising from such claims. In addition thereto, the Tenant will (where deemed necessary by the Landlord) provide the Landlord with notice of

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any such claims, full authority to defend, compromise or settle such claims and provide reasonable assistance necessary to defend such claims, at the Tenant's sole expense.

- 16.4 The Tenant shall provide a copy of its insurance cover to the Landlord upon the Landlord's request for same and should the Landlord or the Landlord's insurers find that the Tenant's insurance cover not to be adequate, the Tenant shall ensure that it without delay obtains insurance cover that is reasonably to the satisfaction of the Landlord or the Landlord's insurers.

## **17. Fire Protection**

- 17.1 The Tenant shall arrange, at its own cost, for the installation of adequate firefighting equipment on the Premises, and shall ensure during the currency of this Lease that such firefighting equipment be properly maintained in accordance with the relevant Namibian standards (currently as outlined in SABS codes) as well as the directives as may be determined from time to time by the Landlord and the relevant competent authorities.
- 17.2 Adequate provision for protective risk control measures against fire and allied perils shall be put in place by the Tenant and the Landlord reserves the right, if at any time during the currency of this Lease it is reasonably of the opinion that the absence or inadequacy of such protective risk control measures is or may become a hazard to the Landlord's own building(s) or Property or the buildings or property of third parties, to call upon the Tenant by notice in writing to provide and install on the Premises any or all such devices, appliances and installations as the Landlord may reasonably consider necessary to minimise the risk of any fire occurring therein or thereon or to extinguish or prevent the spread of any fire, which may occur. The Tenant shall, when so called upon, comply to the satisfaction of the Landlord with the requirements set forth in such notice, within the reasonable time therein specified.
- 17.3 In the event of a fire occurring on the Premises, the Landlord shall not be responsible for any cost incurred and shall in no way be under any obligation to assist in extinguishing the fire.

## **18. Safety, Health, Environmental and Quality (SHEQ) Management**

- 18.1 The Tenant shall at all times accept and recognise the Landlord's commitment towards improved SHEQ performance and business efficiency, by acquainting itself and adhering to the existing SHEQ Policy and related policies, relevant laws and regulations as may be reviewed or amended from time to time. The Tenant is therefore liable to always ensure that all its activities are consistent with the Landlord's SHEQ

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goals, practices and procedures as well as to participate and co-operate during the performance of a SHEQ site assessment prior to or after the effective date of this Lease to establish the SHEQ standards that the Tenant will be subject to throughout this Lease.

- 18.2 In terms of the activities on the Premises, the Tenant has the responsibility to act under all applicable national, local legislation and applicable regulations of the Landlord to ensure that the activities meet with the existing SHEQ regulatory requirements and the prevailing SHEQ Policies (particularly the management policies) in respect of the Property.
- 18.3 Pollution or Substandard Acts on the Premises (or premises adjoining the Premises) or on any part of the Property by any means whatsoever are strictly prohibited.
- 18.4 In the event that non-compliance with this requirement or any other relevant condition of this Lease is observed or SHEQ deficiencies are discovered on the Premises, or on any property adjoining or in the vicinity of the Premises or on any part of the Property that could be associated with the Tenant's operational activities or proof of non-compliance with such SHEQ Management Policies, relevant laws and regulations is discovered, the Landlord shall be entitled, without prejudice to any of its rights, to institute such breach procedures as may be appropriate under the circumstances, in terms of this Agreement or any such procedures or penalties as may be prescribed or defined within the SHEQ Management Policies, relevant laws, and other regulations. Furthermore the Tenant shall in terms of this clause 18, and at its own cost, provide efficient means to remedy the situation within such time as would be determined reasonable under the circumstances.
- 18.5 Failure to effectively execute such remediation strictly in compliance with the prescribed standards of the Landlord and other relevant regulatory agency guidelines, the Landlord shall have the right to execute such remediation but at the cost of the Tenant.
- 18.6 It is specifically recorded that the Tenant shall prepare the Premises for its Business as well as for prevention of pollution or contamination (whether or not environmental) and the Tenant shall take all such steps as are necessary to ensure that the Premises and/or Property are not in any way polluted or contaminated and/or that its Business (operations) do not pollute or contaminate the Premises, Property or the commodities of other tenants of the Landlord in any way whatsoever.
- 18.7 For the avoidance of doubt, the Tenant records that it is aware of the possible risk of contamination of commodities in a Port environment, and warrants that it shall take all necessary steps to prevent contamination of



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by any other contaminant, in, on or around the Premises and/or Property, including the erection of the necessary structures to prevent possible pollution and/or contamination. The Tenant shall notify the Landlord of any discovery of contamination and should contamination be discovered, howsoever arising, the Tenant shall bear all costs in connection therewith, shall take the necessary remedial steps to remove the contamination (whether or not in or around the Premises and/or Property) and the Landlord shall in no way whatsoever be held liable for any claims related to contamination whether or not such claim(s) are brought by another tenant(s) on the Property or any third party.

18.8 The Tenant shall be responsible for its own security arrangements in respect of the Premises.

**19. Inspection**

Any officer authorised by the Landlord may, at all reasonable times, but by prior appointment, enter upon and inspect the Premises for the purposes of monitoring or ensuring the Tenant's compliance with the conditions of this Lease or specifically safety, health and environmental issues as contemplated in clause 18 hereof, and the Tenant undertakes to afford such officer all reasonable facilities for such inspection. Such officer, whilst making use of the said facilities, shall be bound to comply with all safety and security regulations laid down by the Tenant, provided that the Tenant informs the Landlord's representatives, agents, servants, and contractors of its applicable safety and security regulations.

**20. Tenant not to contravene any Laws**

During the currency of this Lease the Tenant shall not do, or permit to be done, anything which may result in a contravention of any law or regulation affecting the Premises, or anything which may result in civil or criminal liability being attached to the Landlord in its capacity as owner of the Premises.

**21. No withholding of Payments**

The Tenant shall not, during the currency of this Lease, be entitled to withhold, delay or defer payment of any amounts due in terms of this Lease, or apply set off in respect thereof, for any reason whatsoever.

**22. Various Obligations**

Tenant

22.1 The Tenant shall:

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- 22.1.1 not permit the growth upon the Premises of noxious weeds and shall comply with the provisions of any law relating to the eradication of such weeds;
  - 22.1.2 at all times keep the Premises in a clean, orderly and sanitary condition to the reasonable satisfaction of the Landlord;
  - 22.1.3 at all times comply with the Landlord's environmental policies and other applicable regulations (as may be amended from time to time) and shall do everything reasonably required to maintain and uphold the environmental standards applied on the Property;
  - 22.1.4 conduct its Business so as not to cause a nuisance or danger to the occupants of neighbouring properties or third parties or the public at large or to amount to a contravention of any statutory regulation or by-law;
  - 22.1.5 not, save in so far as it may reasonably be necessary for the Tenant to conduct its Business on the Premises, keep or store on the Premises explosives or flammable goods, substances or liquids;
  - 22.1.6 not do or display anything, which causes the Premises to appear unsightly; and
  - 22.1.7 subsequent to the Tenant being in full occupation of the Premises and the Premises being in full use for the purpose envisaged not allow the Premises to remain unused for a period of more than one (1) month without the prior written consent of the Landlord.

#### Landlord

22.2 The Landlord shall:

- 22.2.1 where applicable, provide the Tenant with locality plans of the Premises and shall be responsible for demarcating the boundary lines of the Premises by the erection of beacons or other suitable means. The Landlord shall also where applicable indicate on the agreement plan the point or points and the routing by means of which various services are available to the Premises;
- 22.2.2 ensure that the Premises are vacant at the time they are to be ready for occupation by the Tenant;
- 22.2.3 ensure the Premises delivered shall be that agreed upon;

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22.2.4 be obliged to give the Tenant such rights of entry and access over the Landlord's Property as is reasonably practicable to enable the Tenant to enjoy the full use of the Premises;

22.2.5 extend to the Tenant a right to exercise all servitudes (if any) that may be imposed for the benefit of the Premises;

22.3 The Landlord warrants that no person with a superior title to the Property will disturb the Tenant's use of the Premises.

## **23. Miscellaneous**

### Governing Law

23.1 This Agreement is governed by and shall be construed in accordance with the laws in force in the Republic of Namibia.

### Language

23.2 The language used for or in connection with this Agreement shall be the English language.

### Execution

23.3 This Agreement may be executed in any number of counterparts each of which when executed and delivered shall be an original, but all the counterparts together shall constitute one and the same document. For the purposes of establishing whether a document is an original counterpart, documents delivered by facsimile or by any means of authenticated electronic transmission shall be deemed an original counterpart.

23.4 Each Party shall (at its own expense) do and execute or procure to be done and executed all necessary acts, deeds, documents and things within their power as may be reasonably necessary to give effect to this Agreement.

### Costs

23.5 Each Party shall pay its own costs of and incidental to the negotiation, preparation, execution and implementation by it of this Agreement.

### Unenforceability and Severability

23.6 In the event that any of the terms of this Agreement are found to be invalid, unlawful or unenforceable, such terms shall be severable from the remaining terms, which will continue to be valid and enforceable. In the circumstances contemplated hereinbefore, the Parties agree to meet and

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review the matter and if any valid and enforceable means is reasonably available to achieve the same object of the invalid provision, to adopt such means by way of written variation of this Agreement.

No Set-Off

23.7 The Tenant shall not be entitled to set-off any amount due or owing by the Tenant to the Landlord in terms of this Agreement against any amount due or owing by the Landlord to the Tenant.

No variation

23.8 No variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the duly authorised signatories hereto.

Entire Agreement

23.9 This Agreement constitutes the full and complete consensus between the Parties in relation to its subject matter and supersedes all prior negotiations, understandings and agreements with respect thereto.

No Waiver

23.10 Neither Party shall be regarded as having waived, or be precluded in any way from exercising, any right under or arising from this Lease by reason of such Party having at any time granted any extension of time for, or having shown any indulgence to the other Party with reference to, any payment or performance hereunder, or having failed to enforce, or delayed in the enforcement of, any right of action against the other Party. The failure of either Party to comply with any provision of this Lease shall not excuse the other Party from performing the latter's obligations hereunder fully and timeously.

Remedies Cumulative

23.11 Except as expressly provided for in this Agreement, the rights and remedies contained in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

Time of the Essence

23.12 Any date, time or period referred to in this Agreement shall be of the essence except only to the extent to which the Parties agree in writing to vary any date, time or period in which event the varied date, time or period shall be of the essence.

Third Parties

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23.13 A person who is not a party to this Agreement shall have no rights to enforce any provision of this Agreement, but this shall not affect any right which exists or is available apart from this Agreement.

Vis Major

23.14 Neither Party shall be liable for its failure to perform any of its obligations under this Agreement due to a cause beyond its control (except those caused by its own lack of funds) including, but not limited to, war, insurrection, civil unrest, adverse weather conditions, environmental protests or blockages, acts of God, fire, flood, explosion, strikes, lockouts or other industrial disturbances, laws, rules and regulations or orders of any duly constituted governmental authority or non-availability of materials or transportation (each of which is an “**Intervening Event**”).

23.15 All time limits imposed by this Agreement shall be extended by a period equivalent to the period of delay resulting from an Intervening Event as contemplated in clause 23.14 above; provided that a Party relying on the provisions of clause 23.14 above shall take all reasonable steps to eliminate any Intervening Event and, if possible, shall perform its obligations under this Agreement as far as practical, but nothing contained herein shall require such Party to question or to test the validity of any law, rule, regulation or order of any duly constituted governmental authority or to complete its obligations under this Agreement if an Intervening Event renders performance impossible.

Breach

23.16 In the event of either Party (the “**Defaulting Party**”) breaching this Agreement, the other Party (“**Aggrieved Party**”) may call on the Defaulting Party by written notice to remedy its breach within thirty calendar (30) days of such notice.

23.17 Should the Defaulting Party fail to so remedy its breach, the Aggrieved Party shall be entitled to cancel this Agreement by written notice to the Defaulting Party, such cancellation to be without any prejudice to the Aggrieved Party’s right to claim damages.

23.18 If the Tenant should dispute any termination of this Agreement by the Landlord and should remain in occupation of the Premises, the Tenant shall continue paying the rent and all other amounts due in terms of this Agreement, and shall continue to fulfil any and all other obligations in terms of this Agreement pending the determination of such dispute. The Landlord shall be entitled to accept such payments without prejudice to any of its other rights or remedies in terms of law. If such dispute is

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resolved in favour of the Landlord, then any such payments will be deemed to having been paid on account of damages suffered by the Landlord as a result of the unlawful holding over by the Tenant of the Premises.

### Dispute Resolution

23.19 In the event of any disputes arising out of this Lease, the Parties shall first endeavour to resolve such disputes amicably on the highest possible internal level. If an amicable solution of the dispute is not possible within a reasonable period of time, the Parties shall follow the procedure set out hereinafter.

23.19.1 Any dispute between the Parties in connection with the interpretation or the application of the provisions of this Lease, its breach or termination, or any documents furnished by the Parties pursuant to the provisions of or in connection with this Lease, shall, unless resolved amongst the Parties, in accordance with clause 23.19 be referred to and determined by Arbitration (“Arbitration”) under and in accordance with the provisions of sub – clause 23.19.2 to 23.19.13 below and in line with the Namibian *Arbitration Act of 1965*.

23.19.2 The Parties may demand that any dispute referred to in sub – clause 23.19.1 be determined in terms of this dispute resolution clause by a written notice to the other Party setting out a brief description of the nature of the dispute, including the amount involved, if any, the date on which the dispute arose, and the relief sought.

23.19.3 The provisions of this dispute resolution clause will not preclude any of the Parties from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision by the Arbitrator.

23.19.4 Arbitration will take place at Walvis Bay, or such other place as the Parties may agree to, with only the legal and other representatives of the Parties to the dispute present thereat.

23.19.5 Any Arbitration shall be conducted in English and in accordance with the formalities and procedures settled by the Arbitrator in his or her discretion, and may be held in an informal and summary manner, on the understanding that it will not be necessary to observe or carry out the usual formalities or procedures, pleadings and discovery or the strict rules of evidence, it being the intention that the Arbitration will be held and completed promptly and expeditiously.

23.19.6 The Arbitrator will be agreed upon by the Parties, and, if the matter in dispute relates to: -

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- 23.19.6.1 principally an accounting matter, a practising chartered accountant duly admitted to practice in Namibia and of at least ten (10) years standing, and
- 23.19.6.2 any other matter, a practising legal practitioner duly admitted to practise in Namibia and of at least ten (10) years standing.
- 23.19.7 Should the Parties fail to agree upon the appointment of an Arbitrator within five (5) business days after the giving of Notice in terms of sub – clause 23.19.2 above whether or not the dispute is principally a legal or accounting matter, the matter will be deemed to be a legal matter and the Arbitrator shall be appointed, at the request of either Party to the dispute, by the President of the Law Society of Namibia, according to the provisions of this dispute resolution.
- 23.19.8 The decision of the Arbitrator shall be final and binding on the Parties to the dispute, and may be made an order of the High Court of Namibia, subject to either Party having the right to have the decision set aside in terms of section 33 of the *Arbitration Act 42 of 1965*. For the purpose of this Agreement, the Parties hereby submit to the exclusive jurisdiction of the Magistrate’s Court of Namibia.
- 23.19.9 The Arbitrator will be entitled to make such award, including an award for the specific performance, an interdict, damages or penalty or otherwise as the Arbitrator in his or her sole discretion may deem fit and appropriate, and to deal as he or she deems fit with the question of costs, including, the Arbitrator’s fees. An award for costs, made by the Arbitrator is final and binding upon the Parties and shall be carried into effect by them.
- 23.19.10 The provisions of sub-clause 23.19.1 to 23.19.13 constitute an irrevocable consent by the Parties to any proceedings in terms hereof, the Parties may not consent to withdraw or claim at any such proceedings that it is not bound by such provisions and the Parties furthermore agree that the provisions of sub-clause 23.19.1 to 23.19.13 are not severable from the rest of this Agreement and will remain in effect despite the termination of or invalidity for any reason of this Lease or any part thereof.
- 23.19.11 The appointed Arbitrator conducting the Arbitration shall be and remain at all times impartial and independent of the

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Parties; and shall not act in the Arbitration as advocates for any Party. No Arbitrator, whether before or after appointment, shall advise any Party on the merits or outcome of the dispute.

23.19.12 The Arbitrator shall make his or her award in writing and, unless all Parties agree in writing otherwise, shall state the reasons upon which his or her award is based.

23.19.13 Unless the Parties expressly agree in writing to the contrary, the Parties undertake as a general principle to keep confidential all awards in their Arbitration, together with all materials in the proceedings created for the purpose of the Arbitration and all other documents produced by another Party in the proceedings not otherwise in the public domain, save and to the extent that disclosure may be required of a Party by legal duty, to protect or pursue a legal right or to enforce or challenge an award in bona fide legal proceedings before a competent court of jurisdiction.

*Domicilium citandi et executandi*

23.19.14 All communications and notices by the Tenant to the Landlord shall be in writing and addressed to:

P.O. Box 361, Walvis Bay, Namibia

Telefax: + 264 – 64 – 208 2323

To be delivered to No. 17 Rikumbi Kandanga Road, Walvis Bay

E-mail address: [tino@namport.com.na](mailto:tino@namport.com.na)

and shall be marked for the attention of **Immanuel !Hanabeb**  
**Executive: Commercial**

23.19.15 All communications and notices by the Landlord to the Tenant shall be in writing and addressed to:

P.O. Box [XXX], Namibia

Telefax: + 264 – [XXX]

To be delivered at the Premises

E-mail address: [XXX]

and shall be marked for the attention of [XXX]



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[XXX]

The Parties choose the addresses as set out in clause 23.19.14 and 23.19.15 as their respective *domicilium citandi et executandi* for all purposes under this Agreement whether in respect of payment of money, the service or delivery of court or arbitration process, notices or other documents or all other communications.

- 23.19.17 Any notice or communication required or permitted to be given in terms of this Agreement will be valid and effective only if it is in writing, but, where, in terms of this Agreement, any communication is required to be in writing, the term “writing” will include communications by telefax and e-mail.
- 23.19.18 Any Party may by written notice to the other Party change its telefax number, or the address chosen as its *domicilium* address, to another telefax number, address which is not constituted exclusively by a post office box address; such change will become effective on the second (2<sup>nd</sup>) business day from date of deemed receipt of the notice by the addressee.
- 23.19.19 Any notice to a Party sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope to it at its *domicilium* address will be deemed to have been received on the seventh (7<sup>th</sup>) business day after posting (unless the contrary is proved).
- 23.19.20 Any notice to a Party delivered by hand to a responsible person during ordinary business hours at its *domicilium citandi et executandi* will be deemed to have been received on the day of delivery (unless the contrary is proved).
- 23.19.21 Any notice to a Party sent by telefax to its chosen telefax address, will be deemed to have been provided, unless the contrary is proved at 12h00 noon of the first (1<sup>st</sup>) business day following the issuance, by the transmitting telefax machine, of a report confirming correct transmission of all the pages of the document containing the notice.
- 23.19.22 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a Party will be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

Review of Agreement

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23.19.23 The Parties acknowledge and agree that circumstances may arise that were neither contemplated nor foreseen by the Parties at the Signature Date of this Agreement. Accordingly, and during the currency of this Agreement, either Party may reasonably and by written notice call on the other Party to review any particular matter contained in or relating to this Agreement, in which case the Parties shall communicate and engage each other in good faith within two (2) months of such notice with a view of addressing the matter in question.

#### Revenue Stamps

23.19.24 Unless this Lease is lawfully exempted by the Government of the Republic of Namibia (acting through its relevant Ministry or the revenue authorities) from payment of stamp duties, the Landlord shall be entitled to recover from the Tenant stamp duties payable on this lease in terms of the provisions of the *Stamp Duties Act, 1993*, such stamp duties to be paid on demand by the Landlord but otherwise in accordance with relevant directives (if any) from the Government of Namibia (acting through its relevant Ministry or the revenue authorities).

#### Termination

23.19.25 This Agreement shall be terminated in the event that:

- (a) The Lease Period has expired;
- (b) The Parties mutually agree in writing to terminate this Agreement;
- (c) At the option of the non-defaulting Party, in the event of the dissolution or liquidation of the other Party or where a judicial manager, Receiver or similar officer has been appointed in respect of the defaulting Party or any material part of the other Party's assets;
- (d) At the option of the non-defaulting Party, if the other Party becomes bankrupt or insolvent. As regards the Tenant, it includes a situation where the Tenant commits or performs an act which would constitute an act of insolvency as specified in section 8 of the *Insolvency Act No. 24 of 1936*, a special resolution is passed for its voluntary winding up pursuant to section 354 of the *Companies Act No. 28 of 2004*, where a Party finds itself in circumstances which would entitle a competent court to make an order for its winding up under section 354 of the *Companies Act No 28 of 2004* or where any person entitled by section 351 of the *Companies Act No. 8 of 2004* institutes an application against the Tenant for winding up.

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- (e) Subject to clause 23.17, at the option of the non-defaulting Party (the "**Aggrieved Party**"), in the event that the other Party (the "**Defaulting Party**") materially breaches this Agreement and such material breach is not remedied within thirty (30) calendar days (or such longer period as the Aggrieved Party may in its sole discretion decide) of service by the Aggrieved Party of a written notice demanding such rectification;
- (f) At the option of the Landlord (upon giving the Tenant no less than one month written notice), if the Tenant fails, for a consecutive three (3) months period, to pay the Rental Fee (or Escalated Rental Fee) in accordance with the terms of this Agreement.

23.19.26 The date on which such termination occurs in accordance with Clause 23.19.25 shall be hereinafter referred to as a "**Termination Date**".

23.19.27 Termination of this Agreement shall be without prejudice to the rights of any Party accrued prior to such termination, or under any provision which is expressly stated not to be affected by such termination including in respect of any prior breach of this Agreement.

23.19.28 Notwithstanding anything herein contained, this Agreement may be terminated by either Party for any reason whatsoever by giving the other Party at least six (6) months' notice to that effect.

### Relocation

23.19.29 It is specifically recorded that the Landlord shall have the option at any time during the currency of this Agreement to relocate the Tenant to alternate and reasonably comparable Premises in terms of land size ("the Alternate Premises"), provided that a notice of relocation is given to the Tenant in writing.

23.19.30 The Tenant shall have thirty (30) business days from date of receipt of a Notice of Relocation to relocate to the Alternate Premises and the Tenant shall in such event bear the costs of relocation and ensure that the Premises is restored to the same condition that it was in at Commencement Date of this Agreement, fair wear and tear excepted.

23.19.31 In the event that the Landlord and the Tenant cannot agree on thirty (30) business days written notice by the Landlord to the Tenant on the size, location or condition of the Alternate Premises, then the Landlord shall have the right to terminate this Agreement following thirty calendar (30) days written notice to the Tenant, notwithstanding what is recorded in clause 23.31 or 23.34 above.

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Confidentiality

23.19.32 Each Party undertakes not to disclose the contents of this Agreement in whole or in part to any third party other than its auditors, office bearers or legal advisor(s) without the prior written consent of the other Party.

Faxed or Scanned Agreement

23.19.33 This Agreement shall be valid and binding upon the Parties thereto, notwithstanding that one or more of the Parties may sign a faxed or scanned copy thereof, however, such faxed or scanned copy shall contain the signatures of the both Parties.

**FOR AND ON BEHALF OF THE LANDLORD:**

THUS DONE and SIGNED at **WALVIS BAY** on this the \_\_\_\_\_ day of \_\_\_\_\_ **2020**.

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AS WITNESSES:

1. \_\_\_\_\_

2. \_\_\_\_\_

\_\_\_\_\_  
**KAVIN HARRY**  
**ACTING CHIEF EXECUTIVE OFFICER**

**FOR AND ON BEHALF OF THE TENANT:**

THUS DONE and SIGNED at \_\_\_\_\_ on this the \_\_\_\_ day of \_\_\_\_\_  
**2020.**

AS WITNESSES:

1. \_\_\_\_\_

2. \_\_\_\_\_

\_\_\_\_\_  
**TENANT**

**SCHEDULE 1**  
**SCHEMATIC DEPICTION OF PREMISES**

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**SCHEDULE 2  
SHEQ POLICY**