

King Abdullah Port Terms and Conditions

Preamble:

All concessions, authorizations, permits, rights or approvals (“**Approvals**”) howsoever granted by the Ports Development Company (“**PDC**”) to any person, whether corporate or individual, to access, egress from, operate, provide a service or utility in, use or to benefit from any of services, facilities or terminals of King Abdullah Port (“**KAP**”), shall without any limitation be subject to these Terms and Conditions, unless otherwise expressly agreed in writing under any binding agreement entered into by PDC and such party.

Introduction

- (A) Economic Cities Authority (“**ECA**”) has been granted the authority to administer, regulate and supervise the economic cities in the Kingdom of Saudi Arabia, including King Abdullah Economic City (“**KAEC**”), pursuant to the ECA Statute (as defined below).
- (B) In particular, ECA has the authority under Article 3 of the ECA Statute to conclude agreements and contracts and to grant rights to developers whether exclusive or non-exclusive as necessary for the development and operation of the economic cities and the ports within the economic cities; and has promulgated the Ports Regulation to regulate the operations of the ports at the economic cities.
- (C) Pursuant to the License Agreement and the Port Development Agreement entered into by ECA and PDC, ECA has appointed and licensed PDC, to exclusively own, develop, design, engineer, finance, construct, equip, operate, maintain, manage and repair King Abdullah Port.
- (D) PDC, pursuant to the above, is the exclusive master developer and operator of KAP, enjoying full powers to enter into agreements with contractors and sub-contractors, to grant licenses and concession rights whether exclusive or non-exclusive to other sub-developers or operators, as PDC decides suitable, for the purposes of KAP development and operations.

1. Definitions

In these Terms and Conditions:

- **Affected Party** means any party who is affected by a Force Majeure Event;
- **Applicable Law** means all laws, regulations, most notably the ECA Statute, including the Ports Regulation, decrees, statutes, acts, orders, rules, ordinances,

- decisions, codes, treaties, directives or circulars (to the extent having force of law in the Kingdom of Saudi Arabia) or any interpretation by a Competent Authority having jurisdiction over the matter in question, as enacted, introduced or promulgated by any Competent Authority having jurisdiction over the matter in question, including any amendments, modifications or replacements thereof;
- **Approvals** means any permit, license, consent, authorization, approval, registration, grant, acknowledgement or agreement required under an Applicable Law to be obtained from PDC or any Competent Authority in connection with KAP;
 - **Cargo** means any goods of natural, material, animal, agricultural, industrial or intellectual nature imported or exported via KAP;
 - **Change in Law** means:
 - (a) the introduction, adoption, enactment or promulgation of any new Law;
 - (b) the amendment or repeal of any Law;
 - (c) a change in the interpretation or enforcement of any Law;
 - (d) the introduction, adoption, amendment or repeal by any Competent Authority of any material condition in connection with the issuance, renewal or modification of any Approval, that:
 - i occurs after the date of the Port Development Agreement; and
 - ii materially and adversely effects the legal, economic, financial or commercial position of PDC or KAP;
 - **Competent Authority** means the government of the Kingdom of Saudi Arabia, ECA, any ministry, department or political subdivision thereof (including any municipal authorities), any court or tribunal or other governmental entity, instrumentality, agency, authority, committee or commission, under the direct or indirect control of the government of the Kingdom of Saudi Arabia, or any department or political subdivision thereof, or any independent regulatory authority relating thereto, and any operator or service provider (including the Harbor Master of KAP) or supplier of utilities and associated infrastructure in the Kingdom of Saudi Arabia, having jurisdiction under applicable Law over PDC or KAP;
 - **Contractor(s)** means any contractor or sub-contractor contracted by PDC or any Service Provider to perform works or any other activity at KAP;
 - **ECA** means the Economic Cities Authority, acting as the competent governmental authority in Saudi Arabia regulating and licensing all activities within the Economic

Cities, duly formed in accordance with Royal Decree No. (A/19) issued on February 24, 2010;

- **ECA Statute** means Royal Order No. (A/19) issued on 10/03/1431H (corresponding to 24/02/2010G);
- **Environmental Law** means any Law relating to the protection of the environment or harm to, or the protection of, human, animal or plant life, the air or to any water body or system;
- **Environmental Management Plan** or **EMP** means the written plan developed by PDC setting forth environmental quality objectives consistent with the national and international Environmental Laws, Regulations, and containing policies, procedures, schedules, plans, instructions and timelines for the management of the environment at KAP in order to meet such quality objectives;
- **Force Majeure Event** means any act, event or occurrence which:
 - i. is beyond the reasonable control of the Affected Party;
 - ii. could not reasonably have been foreseen by the Affected Party;
 - iii. cannot, despite the exercise of diligence, be prevented, avoided or overcome by the Affected Party; and
 - iv. prevents, hinders or delays the performance (whether in full or in part) by the Affected Party of its obligations, including:
 - 1- any act of God, flood, storm, tsunami, earthquake;
 - 2- act of the government or delay by any Competent Authority to perform its obligations towards PDC;
 - 3- fire, explosion, radiation, biological or chemical contamination, pressure waves and sonic boom; or
 - 4- war (whether declared or not), invasion, revolution, riot, insurrection, strikes and labour action (excluding strikes or labour action solely by the employees of the Affected Party or its contractors), blockade, embargo,
 - 5- and similar events.
- **Good Industry Practices** means those practices, methods, equipment, specifications and standards of Environment, safety, security and performance,

- which may change from time to time, employed by experienced international contractors or operators undertaking development, engineering, construction, operation, maintenance and/or management services in relation to port facilities of a type and size similar to KAP, which in the exercise of reasonable judgment in light of the facts known at the time the judgment or decision was made, are considered good, safe and prudent practices in connection with development, engineering, construction, operation, maintenance and/or management services (as applicable) in relation to port facilities of a type and size similar to KAP, with commensurate standards of safety, security, performance, dependability, efficiency and economy;
- **Harbour Master** means the harbour master of KAP who is the official responsible for enforcing the regulations of KAP, in order to ensure the safety and security of navigation, the security of the harbour and the correct operation of the port facilities.
 - **KAP** means King Abdullah Port which is located at King Abdullah Economic City, Rabigh, Kingdom of Saudi Arabia;
 - **KAP Fines and Penalties** means all the amounts determined and published by ECA as penalties against offenses or breaches of KAP Users, Contractors or Service Providers;
 - **KAP Tariffs** means all tariffs determined and imposed by PDC or any other Operator of any terminal or facility at KAP payable by KAP Users against the issuance of security passes, identification cards or any services rendered thereto including but not limited to the marine services fees, wharfage fees, Terminal handling fees, Port Community System fees, channel fees, not including ECA dues, Customs charges and any other fines and penalties composed by PDC or any Competent Authority at KAP;
 - **KAP Users** means any Person accessing or uses any of KAP services and/or facilities; including vessels owners, vessels masters, vessels agents or representatives, charterers, shipping lines, ship agents, ship chandlers, crews of vessels, mortgagors, mortgagees, cargo agents, stevedores, cargo owners, forwarders, shippers, consignees, vehicles owners, vehicles drivers or any other Person who is liable to pay Port Charges or KAP Tariffs as per these Terms and Conditions or as per any other agreement;
 - **KSA** means the Kingdom of Saudi Arabia;
 - **Marine Services** means any and all marine services provided to a Vessel and/or its crew at KAP, by PDC, its agents, licensees, contractors or sub-contractors, including but not limited to pilotage, towing, berthing and un-berthing, mooring, ship repairing, firefighting, etc;



- **Operator(s)** means any Person licensed by PDC to operate any of KAP Terminals or facilities;
- **Pass Dues** means charges to be imposed and collected by PDC, or on behalf of any Competent Authority to allow entry into KAP;
- **PDC** means Ports Development Company, a closed joint stock company, duly licensed by ECA to act as the exclusive owner, master developer and operator of KAP;
- **Person** means any natural person or legal entity duly incorporated as per the legislations of the country of origin including the Competent Authority;
- **Port Community System** or **PCS** means the computer system developed by PDC and used by Competent Authority, Services Providers, Marine Services, KAP Users, and Operator for Customs brokerage activities, vessel related operations, trucking operations and any other Port Services at KAP. For the avoidance of doubt, the Port Community System shall include any additional electronic systems or interactive services provided by, or on behalf of PDC.
- **PCS Documentation** means all electronic forms which shall be submitted electronically via the Port Community System, including but not limited to; (i) manifests; (ii) cargo summaries; (iii) dangerous cargo (iv) Vessel waste; (v) Vessel ballast; (vi) Vessel crew information; (vii) information relating to Vessel itinerary; and (viii) ISPS documentation.
- **Ports Regulation** means the Economic Cities Authority Regulation No. (2), dated July 2012, providing ECA the sole power to regulate the operations of all ports located at the economic cities in KSA including KAP, as may be amended from time to time;
- **Port Rules** means the port procedural rules and plans prepared and published from time to time by PDC relating to the handling of Vessels, cargo and passengers and other related activities as well as the day to day running of KAP;
- **Port Services** means all types of services directly provided by PDC or procured through third party service providers at KAP including the Marine Services;
- **Security Plan** means the security plan addressing security procedures within KAP (including traffic plans, traffic control plans, movement and transport plans, civil defense and security forces workforce plans) to be developed jointly by ECA and PDC approved by the Ministry of Interior;
- **Services Provider** means any Person or Operator (including their agents and subcontractors) that is licensed by PDC to provide any services or activities at KAP including the marine service provider;
- **Terminal** means the facilities and berths within KAP;



- **Terms and Conditions** means these Terms and Conditions applicable to KAP Users, Operators, Contractors, Service Providers and Persons which may be amended, revised, and supplemented in whole or part by PDC from time to time. For the avoidance of doubt, PDC shall have the right to issue supplementary Terms and Conditions regulating telephony services, fiber optic and any other communication services at KAP.
- **Vehicle(s)** means every description of carriage or other contrivance propelled or drawn by mechanical power and used for personal or commercial purposes on paved or unpaved roads in the transportation of passengers, passengers and property, or property or cargo entering KAP for whatsoever purpose.
- **Vessel(s)** means any vessel, which uses KAP Terminals or receives Marine Services; which includes every kind of water and aircraft or other contrivance used or capable of being used as a mean of transportation on water, or on water and in the air, as well as any ship, boat, barge, or other water craft or any structure capable of floating on the water.

2. Exclusivity

PDC is the exclusive master developer, owner and operator of KAP. For the avoidance of any doubt, no Person shall be eligible to exercise any right, including the right to conduct business within the territories of KAP, without the relevant written approval of PDC.

3. Port Rules

Notwithstanding any other provision in any other agreement or arrangement, and subject to KAP Fines and Penalties and to the right of PDC to terminate any license or approval granted by PDC, KAP Users, Operators, Persons, Service Providers and Contractors shall always comply with and adhere to the Port Rules promulgated by PDC, as amended and supplemented from time to time.

For the avoidance of any doubt, these **Terms and Conditions** are considered as an integral part of the Port Rules.

4. Environmental Law/Environmental Management Plan

Notwithstanding any other provision in any other agreement or arrangement, and subject to KAP Fines and Penalties and subject to the right of PDC to terminate any license or Approval granted by PDC, KAP Users, Service Providers and Contractors shall always comply with and adhere to the whole terms of the Environmental Law applicable at KAP and to all requirements of the Environmental Management Plan [together with its manuals]

as published by PDC and approved by the Competent Authorities, as amended from time to time.

5. Security Plan

5.1 Notwithstanding any other provision in any other agreement or arrangement, and subject to KAP Fines and Penalties and subject to the right of PDC to terminate any license or Approval granted by PDC, KAP Users, Service Providers and Contractors shall always comply with and adhere to the whole requirements of the Security Plan of KAP as published by PDC and approved by the Competent Authority, as amended from time to time.

5.2 PDC and/or the Saudi Border Guards security passes and/or identification cards issued to KAP Users, Service Providers and Contractors allowing them to enter restricted areas whether physical or virtual shall comply with the terms and conditions governing the use of such security passes and identifications cards as published by PDC and amended from time to time.

6. Applicable Laws

Notwithstanding any other provision in any other agreement or arrangement, and subject to; (i) ECA Enforcement Manual; (ii) KAP Fines and Penalties; and (iii) the right of PDC to terminate any license or Approval granted by PDC, KAP Users, Service Providers and Contractors shall always comply with and adhere to Saudi Applicable Law, including but not limited to the ECA Statute and Ports Regulation, as amended from time to time.

7. Good Industry Practices

Service Providers and Contractors shall perform their obligations in accordance with the Good Industry Practices.

8. Approvals

All Service Providers and Contractors shall at their cost and expense obtain and maintain in effect all Approvals (and renewals thereof) as required by the Applicable Laws and the Port Rules to be granted by PDC or ECA to enable such Service Providers or Contractors to perform their obligations or to exercise business at KAP.

9. Enforcement

In the event that any KAP User, Service Provider or Contractor is in breach of any of its obligations under the Applicable Laws, Port Rules, these Terms and Conditions or under any agreement, ECA or PDC [as the case would be] shall be entitled to take enforcement

actions (which may include formal warning, remediation and fines) against such breaching party in accordance with Applicable Laws.

10. KAP Tariffs

10.1 PDC shall have full and final authority to determine the tariffs payable by any KAP Users against the services of the port, and any amendments thereof, having regard to:

- i. PDC's overall obligation to operate KAP on a commercial basis;
- ii. the services available to Users;
- iii. the rates payable in other regional and local ports; and
- iv. other relevant features of competitors in the market.

10.2 PDC/Operator shall make available to the users of KAP services all updated information concerning the applicable KAP Tariffs.

10.3 PDC/Operator shall be entitled to grant discounts and exemptions in relation to such Tariffs based on its sole discretion.

10.4 KAP Tariffs shall be payable immediately on demand by PDC or by any of the Operators unless other payment arrangements are made and agreed in writing with PDC.

10.5 PDC/Operator reserves the right to require a deposit from any KAP User prior to the use of KAP or receipt of any Port Services by such KAP User.

10.6 Should a KAP User fail to pay the Tariff or should he dissatisfy any deposit required by PDC/Operator, PDC may then prevent such KAP User from accessing to KAP or may refuse to provide such KAP User with the Services or port clearance for any Vessel which such KAP User represents, owns, operates or is otherwise associated with.

10.7 PDC shall have a general as well as a particular lien on a Vessel, container, equipment or cargo in its possession, custody or control to secure payment of any KAP Tariff whatsoever due to PDC from any KAP User. Upon exercising a lien additional charges may apply to a Vessel, container, equipment or cargo held subject to the lien.

10.8 PDC shall be entitled to sell or dispose of a Vessel, containers, equipment or cargo at KAP User's expense and apply the proceeds towards payment of any outstanding KAP Tariffs and other charges, Fines and Penalties due upon serving a fifteen (15) days written notice to KAP User. Upon accounting to KAP User for any balance remaining after payment of any sums due and costs, PDC shall be discharged from all and any liability whatsoever in respect of such vessel, containers, equipment or cargo.

11. Representations

KAP Users, Service Providers and Contractors shall represent and warrant, for the benefit of PDC, that:

- 11.1 if legal entities, they are duly incorporated and are validly existing and in good standing under the ECA Statute and the Applicable Laws.
- 11.2 they have the power and authority to enter into and to perform their obligations under these Terms and Conditions.
- 11.3 there is no pending or threatened litigation or claim which would materially impair their ability to perform their obligations under these Terms and Conditions.
- 11.4 the performance of their obligations under these Terms and Conditions will not result in a breach of any term or provision of, or constitute a default under, any other agreement or under the Applicable Laws, to which they are parties or by which they are bound, nor will such performance conflict with any charter, by-law or similar provision applicable to them.

12. Undertakings

KAP Users, Persons, Service Providers, Operators and Contractors shall undertake to:

- 12.1 comply with and perform in a timely manner its obligations contained in these Terms and Conditions or under any written agreement entered into with PDC and/or ECA.
- 12.2 obtain and maintain at its own expense, all necessary licenses, authorizations, insurances and comply with all Applicable Law, acts, conventions, regulations, regulatory requirements and codes of practice issued by PDC or by any Competent Authority.
- 12.3 comply with all reasonable directions imposed by PDC, the Harbour Master and/or any Operator for the safe and/or efficient operations of KAP pursuant to the



Applicable Laws of KSA, international conventions and the International Maritime Organization Rules relating to safe, secure and efficient shipping on waters as applicable in KSA.

- 12.4 immediately inform PDC, and the Operator or the Competent Authority as relevant of any occurrence, accident or incidents which might affect the safe and efficient operations of KAP or endanger the health, safety and security of persons at KAP or which may cause pollution or damage to the environment and shall take such reasonable steps to control or eliminate any danger or inconvenience caused by such occurrence or incident as may be directed by PDC.
- 12.5 not to allow entering to KAP any prohibited cargo, store or dispatch such cargos within KAP boundaries, and shall inform PDC, Operator and the Competent Authority of any cargo which require prior approval as per the Applicable Laws.
- 12.6 complete and provide to PDC or any Operator any documents required pursuant to any Applicable Laws or Port Rules prior to the use of KAP or receipt of any Port Services,
- 12.7 complete and submit a signed and stamped terminal departure report and any other documents required by the Harbour Master as per the forms provided in the PCS or PDC's website.
- 12.8 accept these Terms and Conditions as legally binding with concern to any operations, services or businesses to be conducted at KAP, unless otherwise expressly agreed in writing under any binding agreement entered into by PDC.
- 12.9 KAP Users, Service Providers and Contractors shall, at all times ensure that they integrate, at their own cost and expense and where appropriate, their operations into the PCS as required by PDC from time to time. PDC may levy a fee as part of KAP Tariff for the use of the PCS.
- 12.10 KAP Users, Service Providers and Contractors shall ensure that any of their Vessels entering KAP, is seaworthy and holds valid ship certificates and crew certificates certifying the Vessel's condition and competency of the crew, in accordance with the Applicable Laws, Port Rules and any international standards. KAP Fines and Penalties shall apply on Vessels entering KAP.
- 12.11 KAP Users, Service Providers and Contractors shall ensure that their Vehicles entering KAP, including heavy trucks and Lorries are registered and fully insured as per Applicable Laws and PDC requirements. For the avoidance of any doubts, all



Vehicles entering KAP shall, without exceptions, procure the provision of fully comprehensive insurance policy with an extension to cover personal injury, death loss and damages to Persons, vehicles and property within KAP\Ports against all incident and/or accidents. PDC shall have the right to impose pass dues on vehicles entering KAP and restrict the entry as it deems appropriate. KAP Fines and Penalties shall apply on vehicles entering KAP.

12.12 KAP Users, Operators and Contractors shall ensure that all of their Vessels are adequately covered by comprehensive public liability third party insurance policies, covering Hull & Machinery, Protection & Indemnity, and covering solid, liquid, gaseous or thermal irritant or contaminant pollution in accordance with international standards, and that all such insurance is valid throughout the period that such Vessels use a Port or are provided with Marine Services.

12.13 KAP Users, Operators, Contractors and the Competent Authority in KAP warrant and undertake that they shall not:

12.13.1 use any devices which transmit radio signals and/or attempt to block radio signals, including without limitations global position system or any other devices that may interfere with radio signal whilst in KAP without prior permission from PDC, except that KAP Users may use marine band and radar frequencies providing that they are authorized by PDC to do so.

12.13.2 by any means; interfere with any systems, communication links, equipment, computer hardware and software whilst in KAP.

12.13.3 attempt to use any devices or software to obtain unauthorised data, information or access to any system at KAP.

12.13.4 attempt to use telecommunication ducting and infrastructure in KAP without the prior written consent of PDC.

12.14 obtain PDC and the Harbour Master prior approval as relevant with regard to the access, entry and use of a Terminal at KAP. PDC or the Harbour Master, as the case may be, shall have the right to deny such entry or use of a Terminal by a KAP Users, Operator or Contractor at their sole discretion.

13. Reservations by PDC

PDC, without any limitations, reserves the right to:

13.1 appoint contractors or sub-contractors or agents or Service Providers without the consent of KAP Users to perform all or any part of the Port Services.

- 13.2 withdraw contractors or sub-contractors or agents or Service Providers without the consent of KAP Users who were appointed by PDC to perform all or any part of the Port Services
- 13.2 suspend access to KAP or not to provide or to prevent the provision of any Port Services in the event of any breach of these Terms and Conditions by Port User, Service Providers or Contractors.
- 13.3 refuse the entry of a vessel or vehicle into KAP or not to provide or to prevent the provision of any Port Services for reasons of safety, security, environment or non-compliance by KAP User, Service Provider, Contractor or any of KAP User's vessels with any Port Rules, these Standard Terms and Conditions, the Applicable Laws or requirements of any competent authority having jurisdiction at KAP.
- 13.4 suspend the provision of Port Services for security measures in the event that PDC believes there is an attempt to damage or harm the Port Community System or any other electronic system provided by, or on behalf of PDC.
- 13.5 If PDC suspends access to KAP or does not provide or prevents the provision of any Port Services including the Port Community System and any other Services in accordance with this clause, PDC shall have no liability whatsoever to any KAP User, Service Provider, Contractor or to any third party affected by such procedure.

14. Responsibility Against Marine Services

- 14.1 KAP User acknowledges and agrees for itself and on behalf of its agents, employees or representatives that; PDC shall have no responsibility or liability whatsoever against KAP User default in respect of:
- 14.1.1 any damage of any description done by KAP User to a Vessel or done by or to any Cargo or other thing on board or being loaded on board or intended to be loaded on board of a Vessel or to or by any other object or property; or
- 14.1.2 any loss of a Vessel or of any Cargo or other thing on board or being loaded on board or intended to be loaded on board a Vessel or any other object or property; or
- 14.1.3 any claim by a person not a party to these Terms and Conditions for loss or damage of any description whatsoever arising from any cause whatsoever, including (without prejudice to the generality of the foregoing) negligence at any time of a person providing Marine Services, his servants or agents, unseaworthiness, unfitness or breakdown of a vessel providing Marine Services, its machinery, boilers, towing equipment, lines, ropes or wires, lack of fuel, stores, speed or otherwise.

- 14.2 Where Marine Services are not provided by PDC but by a Marine Services Provider, KAP Users and the Marine Services Provider shall, (subject to Clause 14.5) be responsible for agreeing directly between themselves the terms and conditions upon which Marine Services will be provided. At all times the Marine Services Provider will act on its own accord and will have no power to represent or bind PDC.
- 14.3 Where PDC provides Marine Services to KAP User, PDC and KAP User may agree on additional terms or a separate agreement to govern the provision of those Marine Services.
- 14.4 Marine Services that are tug and towage services provided by PDC or its appointed Marine Services provider shall be governed by the KSA Ports Authority conditions of port services.
- 14.5 Marine Service Provider liability to indemnify or compensate any damage, loss or injury caused to any of KAP Users, any Person, Vessels or any third party arising out or in relation to the marine services provided at KAP, whether based on a contract, wrongful act or omission or for any consequences thereof shall be limited to SAR 100,000 per event or series of related events which shall be deemed as a single damage event. For the avoidance of doubts, liability for any consequential damages arising out of the marine services are expressly excluded.

15. Responsibility against Environment

15.1 KAP Users, Service Providers, Operators and Contractors shall not cause or permit any pollution whatsoever in KAP territories; including but not limited to:

- General garbage.
- any vessels' pollution
- direct discharge
- land runoff
- acidification
- plastic debris
- toxins
- underwater noise
- atmospheric pollution

15.2 KAP Users, Service Providers and Contractors shall immediately and on becoming aware of any pollution notify PDC with sufficient particulars of each such occurrence and then:

15.2.1 promptly provide such further information as PDC or any Competent Authority may reasonably require;

15.2.2 shall at its expense clean-up and rectify any pollution caused by its acts, negligence or wrongful conduct; and

15.2.3 comply with any directions by PDC or any Competent Authority in connection with any pollution and its consequences including as to the time to carry out any such directions.

15.2.4 Without affecting any right or remedy available to PDC under the Applicable Law, in the event KAP Users, Contactor or Operator fail to comply with any of the provisions of this Clause 15, PDC shall then have the full right to clear the pollution and make good any damage connected with such pollution, at the sole cost, expense and risk of KAP Users, Contractor or Operator as the case maybe. All costs and expenses incurred by PDC in this regard must be paid in full to PDC no later than three (3) days upon receiving a notice by the defaulting party.

16. Force Majeure

PDC shall not be liable for any loss, damages, detentions, delay or termination of any agreement with any KAP Users, Person, Service Providers or Contractors resulting from causes beyond reasonable control of PDC or resulting from any Force Majeure Event.

17. Change in Law

PDC shall not be liable for any loss, damages, detentions, delay or termination of any agreement with any KAP Users, Service Providers or Contractors if such delay or termination was resulted from causes related to a Change in Law.

18. Health and Safety Requirements

18.1 KAP User acknowledges that occupational health and safety on and in connection with a Vessel is at all times the responsibility of the KAP User and the master of the Vessel.

18.2 KAP Users must adhere to any health and safety requirements applicable at KAP and shall obtain any safety permits when required by PDC or by any Competent Authority.

18.3 KAP Users acknowledges that occupational health and safety of the KAP User, its agents, employee, contractor and sub-contractor is at all times the responsibility of KAP Users.

18.4 KAP Users shall use best endeavors to ensure that its employees, agents, contractors and sub-contractors are not exposed to conditions or practices that have the potentiality to cause personal injury or death.

18.5 KAP Users shall use best endeavors to ensure that its employees, agents, contractors, sub-contractors are and invitees are complying with all applicable occupational health and safety requirements of KAP.

18.6 KAP Users shall immediately notify PDC of any matter affects occupational health and safety at KAP.

19. Emergency

KAP Users must, in the event of emergency, accident or threat to security of KAP or its tenants, provide PDC and any emergency service provider with such access, assistance and information as either of them may lawfully and reasonably require.

20. Insurance

KAP Users, Service Providers and Contractors are responsible for obtaining and providing full insurance coverage to all of its Vessels, Vehicles, cargoes, equipment and any liability arising out of the ownership or use of a Vessel, Vehicle, equipment or cargoes in accordance with the Good Industry Practices and as required under these Terms and Conditions, Port Rules and the Applicable Laws or the requirements of any Competent Authority having jurisdiction at KAP.

21. Liability

Notwithstanding any other provision in any other agreement:

21.1 KAP Users, Service Providers and Contractors shall notify PDC without undue delay upon becoming aware of any matter which gives rise to or may give rise to a claim for loss or damage against PDC in respect of any Port Services or any agreements where PDC is a party stating in reasonable detail or with such information as is available, the nature of the matter and claim, and so far as practicable, the amount claimed.

21.2 KAP Users, Service Providers and Contractors shall, without limitation, be responsible for any physical damage to KAP arising out of or resulting from their acts or omissions. PDC reserves the right to replace or repair any such damage caused by KAP Users, Service Providers or Contractors as it deems fit at their sole cost. In such event, KAP Users, Service Providers, and Contractors, shall within three (3) days upon receiving notice from PDC make full and complete payment

against any and all costs and expenses incurred by PDC in connection with replacement, repair or reinstate of KAP.

21.3 KAP Users, Service Providers, and Contractors agreed that their liability under these Terms and Conditions shall be joint and several with any other party (either as an agent, employee or representative) and shall not be conditional upon KAP proceeding first against any other person, whether or not such person is party or liable under these Terms and Conditions.

22. Indemnities

KAP Users, Service Providers, and Contractors (the “**Indemnifying Party**”) shall be fully liable and shall indemnify, defend and hold harmless PDC, its affiliates and contractors and its or their respective shareholders, directors, officers, employees, agents or representatives (each an “**Indemnified Party**”), from and against all claims whatsoever made against or suffered by an Indemnified Party in relation to any loss of or damage to property or death or injury to persons, resulting from any negligent act or omission of the Indemnifying Party or that arises out of or is in any manner connected with the performance by the Indemnifying Party of their obligations under these Terms and Conditions or under any other agreement, except to the extent that such loss, damage, injury or death is directly attributable to the negligence or misconduct of that Indemnified Party.

23. Indirect Damages

Unless otherwise explicitly provided for in any agreement duly executed by PDC, PDC shall not be held liable to any other party in contract, tort, warranty, strict liability, or any other legal theory for any indirect, consequential, incidental, punitive, or exemplary damages, including for example any loss of profit (whether direct or indirect), loss of market share, loss of goodwill, loss of future or anticipated sales, loss of production or factory down time.

24. Assignment

Unless otherwise explicitly provided for in any agreement duly executed by PDC, no assignment by any KAP User, Service Provider or Contractor to any of their rights or obligations under any agreement to third parties shall apply unless such assignment is approved by PDC in writing.

25. Dispute Resolution

25.1 Unless otherwise explicitly provided on in any agreement duly executed by PDC, if any dispute, claim, controversy or difference of any kind (a “**Dispute**”) shall arise concerning the provision of any service at KAP or concerning any agreement entered into

by PDC, the disputed parties shall attempt to resolve the Dispute amicably by discussion at an operational level for a period of thirty (30) days following the date on which any party has given notice of the Dispute to the other party.

25.2 If the Dispute has not been resolved by the end of such thirty (30) days period, then the Dispute shall be referred to mediation between the senior representatives of the parties within ten (10) business days and the senior representatives shall endeavor to resolve the Dispute.

25.3 If the Dispute has not been resolved within sixty (60) days of the date of the notice served under this paragraph, then any party may refer the Dispute for arbitration or tribunal as per the dispute resolution rules of ECA. If such ECA rules are not yet enacted or promulgated, Jeddah Courts shall have jurisdiction over all Disputes.

26. Waiver

The failure of PDC to enforce or to exercise at any time or for any period of time any term of or any right pursuant to these Terms and Conditions does not constitute, and shall not be construed as, a waiver of such term or right and shall in no way affect PDC's right later to enforce or exercise it.

27. Time Limitation

Any claim made against PDC shall be made in writing to PDC within fifteen (15) days from the event giving rise to such claim. Failure to make a claim within this period shall cause the claim to be barred unless the claimant can demonstrate that it was not possible to make a claim within this period and that the claim was made in writing to PDC as soon as reasonably practicable. In any event PDC shall be discharged from all liabilities whatsoever, howsoever arising unless a suit or legal proceedings is brought and written details served on PDC within one (1) month of the date when the event giving rise to the cause of action occurred.

28. General Provisions

28.1 Unless otherwise expressly agreed in writing under any binding agreement signed by PDC, these Terms and Conditions contains all the terms regarding its subject matter and supersedes any prior understanding or arrangement. No representation, undertaking or promise shall be taken to have been given or be implied from anything said or written.

28.2 The failure to enforce or to exercise at any time or for any period of time any term of or any right pursuant to these Terms and Conditions does not constitute, and shall not be

construed as, a waiver of such term or right and shall in no way affect that party's right later to enforce or to exercise it.

28.3 If any term of these Terms and Conditions is found to be illegal, invalid or unenforceable under the Applicable Law, such term shall, insofar as it is severable from the remaining terms, be deemed omitted from the Terms and Conditions and shall in no way affect the legality, validity or enforceability of the remaining terms.

28.3 Provisions herein which either are expressed to survive its expiry or termination or from their nature or context it is contemplated that they are to survive such expiry or termination, shall remain in full force and effect notwithstanding such expiry or termination.

29. Governing Laws and Courts of Jurisdiction

These Terms and Conditions shall be governed and construed in accordance with the KSA Laws. Jeddah courts shall have jurisdiction over any dispute, without any prejudice to paragraph (25) above.

END OF KAP TERMS AND CONDITIONS