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# GENERAL TERMS FOR RIGHTS OF USE

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PORT OF ROTTERDAM 2015



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2015**

*[These General Terms are a translation of the Algemene Bepalingen voor gebruiksrechten Havenbedrijf Rotterdam N.V. 2015. In case of difference(s) the Dutch version prevails.]*

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**General Terms for Rights of Use Port of Rotterdam 2015, adopted by the public limited company Havenbedrijf Rotterdam N.V. (PoR) and included in a deed executed on 18 March 2015 before J.T.A. van der Stok, a civil-law notary practising in Rotterdam, of which deed a copy has been registered with the Land Registry on 19 March 2015 in part 65877, number 179, which reads:**

## **I. GENERAL**

### **Article 1. Definitions**

**1.1** For the purposes of this deed, the following words shall have the meanings ascribed to them below.

- **Deed:**  
the (private or notarial) deed in which the Right of Use is granted;
- **General Terms:**  
these general terms applicable to Rights of Use to be granted by PoR;
- **Buildings:**  
the buildings, works or plants situated on, in or above the Real Property, which have been or will be realised or fixed by or for the account of the User or its legal predecessor;
- **Soil:**  
the soil or sub-soil or the groundwater forming part of the Real Property with the exclusion of the Water;
- **Contract depth:**  
the depth of Open Water that is subject to a Right of permanent Berth, measured against NAP (*see Amsterdam Ordnance Datum*);
- **Ground lease**  
the ground lease of the Real Property granted by a third party to PoR;
- **User:**  
the party or parties entitled to the Right of Use;
- **Right of Use:**  
the right of lease, sublease, ground lease and ground sublease, granted by PoR to the User;
- **Use-related payment:**  
the annual lease or ground rent payable by the User in respect of the Right of Use;
- **PoR:**  
the public limited company, Havenbedrijf Rotterdam N.V. (Port of Rotterdam), having its registered office at Rotterdam;
- **Year:**  
a period of time commencing on a certain day of a calendar year and terminating on the day before the same day of the next calendar year;
- **Land Registry:**  
the public registers held by the Cadastre, Land Registry and Mapping Agency;
- **Quayage:**  
the payment owed by the User for the Right of permanent Berth;
- **Quay wall:**  
a vertical or almost vertical facility on the bank constructed by or for the account of PoR, whether or not provided with slots for crane rails and all works forming part of it, such as anchoring cables and fender piles;
- **Terminal:**  
one or more berths in Open Water to which the Right of permanent Berth relates;

- **Month:**  
calendar month;
- **Environmental impact report:**  
the report or reports and the possible account from which the environmental condition of the Soil of the Site at the start of the Right of Use is evident;
- **Amsterdam Ordnance Datum (NAP):**  
Amsterdam Ordnance Datum (*Normaal Amsterdams Peil*);
- **Real Property:**  
the real property or the real properties – and, if applicable, the Facilities located on, in or above such real property – on which the Right of Use is granted, comprising:
  - a. the Site;
  - b. the Water;
  - c. the Slope;
  - d. the Quay wall; or
  - e. the Jetty;
- **Open Water:**  
a plot of land, not being a Slope, with water over it, with respect to which the Right of Use was not granted;
- **Price index:**  
the price index of Statistics Netherlands or any other price index replacing it to be stated in the Deed;
- **Right of permanent Berth:**  
the exclusive right of use of Open Water to allow ships to moor there and use such Open Water as berth(s);
- **Vessels:**  
things as referred to in Article 1, paragraphs 1 and 2 of Book 8 of the Dutch Civil Code;
- **Jetty:**  
a construction intended for the mooring of ships constructed by or for the account of PoR, not being a Quay wall, including other works such as mooring posts, footbridges and fender piles forming part of it;
- **Slope:**  
a plot of land, forming a sloping bank constructed by or for the account of PoR, which is located between the Site and the Water or the Open Water, which is bounded on the one side by the surface level of the adjacent Site (the crest line) and on the other side the Ground Level of the adjacent Water or the adjacent Open Water (the toe);
- **Drawing:**  
a site plan attached to the Deed, which shows the schematic location of the Real Property and the boundaries (as recorded in the Land Registry) at the time the Right of Use was granted, provisional or otherwise, and, if applicable, the Facilities, the Berth and the nautical channels;
- **Site:**  
a plot of land not being a Slope, over which there is no water;
- **Facilities:**  
buildings, works or plants realised or affixed or to be realised or affixed by or for the account of PoR, to which the Right of Use relates according to the Deed;

- **Judge in preliminary relief proceedings;**  
the judge in preliminary relief proceedings at the Court of Rotterdam;
  - **Water:**  
a plot of land, not being a Slope, with water over it.
- 1.2** Definitions may be used either in the singular or in the plural without any loss of meaning regarding their content.
- 1.3** References in these General Terms to ‘quay wall’, ‘slope’ or ‘jetty’ that are not capitalized, mean that the relevant quay wall, jetty or slope has not/is not being constructed by or for the account of PoR, but by or for the account of the User or by or for the account of its legal predecessor(s).

## **Article 2. PoR’s title to the Real Property**

- 2.1** PoR warrants that:
- a. upon the granting of the Right of Use, it holds such proprietary or beneficial title to the Real Property that the Right of Use may be granted by it with legal validity;
  - b. as regards PoR’s proprietary title, it has authority to dispose of the property;
  - c. as regards PoR’s beneficial title, it is sufficiently authorised to grant the Right of Use on behalf of the party holding the proprietary title and that the latter has authority to dispose of the property;
  - d. the Right of Use does not end as a result of any termination of the proprietary or beneficial entitlement of PoR to the Real Property.
- 2.2** The restricted rights, qualitative obligations and/or perpetual clauses, as well as the public-law restrictions as referred to in section 1 of the Immovable Property (Disclosure of Restrictions under Public Law) Act attached to the Real Property at the time the Right of Use was granted shall be stated in the Deed, to the extent that such is apparent from the Land Registry.
- 2.3** The Real Property and the Ground Lease shall be free from attachments or registrations thereof upon the granting of the Right of Use.

## **II. RIGHT OF USE**

### **Article 3. Creation of the Right of Use**

- 3.1** Where the Right of Use concerns lease or sublease, the Right of Use is granted by private instrument.
- 3.2** Where the Right of Use concerns ground lease or ground sublease, the Right of Use is granted by notarial Deed.

#### **Article 4. Scope and contents Right of Use; designated use**

- 4.1** The Right of Use shall relate to the Real Property.  
The Real Property shall be further described in the Deed, whilst stating the Land Registry particulars and in such manner that the description shall satisfy the rules set forth in respect of turnover tax.  
If any Facilities should form part of the Real Property, this shall be stated in the Deed and an accurate description of the nature and state of repair of such Facilities shall be made in an annex to be appended to the Deed.
- 4.2** The Deed shall specify the designated use of the Real Property, the Buildings and the Facilities if present.  
Any use contrary to the provisions in the Deed shall be permitted only with PoR's consent.
- 4.3** If the User has been granted a Right of permanent Berth, it will be allowed to use the Water, the Quay wall/quay wall, the Slope/slope and the Jetty/jetty for mooring Vessels, but only for the use referred to in article 4.2.  
Any deviating use on the instruction of the harbour master of Rotterdam pursuant to the provisions of article 18.6 constitutes an exception to the above.

#### **Article 5. Commencement, duration and renewal of the Right of Use**

- 5.1** The Right of Use shall commence or be deemed to commence on or as of the date specified in the Deed.  
The end date of the Right of Use shall also be stated in the Deed.
- 5.2** Where the User should, according to the Deed, be entitled to renew its Right of Use and the User wishes to exercise such right, the User must notify PoR hereof by registered letter by no later than one Year prior to the date on which its Right of Use will terminate.  
Where the User fails to provide the notification as referred to in the preceding sentence in due time, its right to renew shall lapse.  
If the User exercises the option of renewing the Right of Use, such must be laid down in a deed.  
The renewal shall commence or be deemed to commence as of the date immediately following the end date of the Right of Use.
- 5.3** Where the Deed does not grant the User any right to renew, but it does wish to renew, the User must apply for renewal to PoR by registered letter by no later than two Years prior to the date on which its Right of Use will terminate.

### **III. USE-RELATED PAYMENT**

#### **Article 6. Use-related payment**

- 6.1** The User shall owe the Use-related payment specified in the Deed for the use of the Real Property.  
Use-related payment shall be payable as of the date of commencement of the Right of Use.  
The Use-related payment consists of a payment for the use –insofar applicable – of:
- the Site;
  - the Water;
  - the Slope;
  - the Quay wall;
  - the Jetty; or
  - the Facilities.
- 6.2** When determining the amount of the Use-related payment, the value of the Buildings is not taken into account.
- 6.3** Where a Use-related payment per square metre of soil or water was agreed with regard to a Site, Water or Slope, and the relevant plot has not been measured yet on the day the Right of Use commences (including in the event the relevant plot concerns a plot with provisional boundaries or administrative boundaries as referred to in the Land Registry Decree on the date the Right of Use commences), the total Use-related payment will not be determined definitively until after the definitive (Land Registry) boundaries and size of the surface area of the relevant plot have been determined. Where the measurement should show that the definitive surface area of the relevant plot:
- a. is smaller than the number of square metres specified in the Deed, PoR shall refund the excess Use-related payment paid by the User; or
  - b. is larger than the number of square metres specified in the Deed, the User shall compensate any under-payment of the Use-related payment made so far to PoR.
- Neither in the event of a refund nor in the event of extra payment shall PoR or the User owe any interest.  
Measurements may be made officially by the Land Registry or upon instruction of PoR, whereby the measurement data generated on the instructions of PoR will be delivered to the Land Registry.  
The application of the provisions set forth above in this Article 6.3, shall be effected on the basis of the first measurement made.  
Where a second measurement should deviate from the first one, this shall not lead to any further settlement.
- 6.4** Where a Use-related payment for any Site, Water or Slope was not agreed per square metre of soil or water, any under or over measurement does not grant any right to PoR or the User.

#### **Article 7. Settlement of Use-related payment**

- 7.1** The User shall make the Use-related payment by direct debit collection in advance in twelve equal instalments that become due on the first day of each Month.

The User shall not terminate the direct debit collection.

The User shall ensure that sufficient means or sufficient overdraft facilities are available in the account from which the Use-related payment is collected.

- 7.2** PoR and the User may agree that the Use-related payment is not made by direct debit collection.  
In the latter instance the Use-related payment must be made in advance in four equal instalments that become due on the first day of the first Month of a calendar quarter.
- 7.3** Where the Right of Use commences on another day than the first day of the Month, the first instalment of the Use-related payment shall become due on the first day of the Month following on the Month in which the Right of Use commenced, when payment is made by direct debit collection.  
On the date on which the first instalment of the Use-related payment will be due in such case, the Use-related payment for the period as of the date of commencement of the Right of Use up to the date on which the first instalment is due shall also be payable.  
When payment is not made by direct debit collection, the first instalment of the Use-related payment shall be due upon the commencement of the Right of Use.  
Where the Right of Use commences on another day than the first day of the first Month of the calendar quarter:
- a. the first instalment of the Use-related payment shall commence on the first day of the first Month of the calendar quarter following the calendar quarter in which the Right of Use commenced; and
  - b. the User shall owe, in addition to the first instalment, the Use-related payment over the period as of the date of commencement of the Right of Use up to the date of the first month of the following calendar quarter.
- Further, payment of the first instalment of the Use-related payment and the Use-related payment referred to under b must in such case be made in advance upon the granting of the Right of Use.
- 7.4** The User and PoR may agree that the User buys off its obligation to pay the Use-related payment for a certain period.
- 7.5** Where the Use-related payment is bought off as of the commencement of the Right of Use, the lump sum payment shall be due on and as at the date on which the Deed is signed, or on or as at the date of commencement of the Right of Use, whichever is earlier.
- 7.6** Where turnover tax would be payable on the Use-related payment (or the buyout payment thereof) pursuant to the provisions set forth in the Turnover Tax Act 1968, or by virtue of the application turnover tax as referred to in Article 11.1, the User shall pay such turnover tax simultaneously with the Use-related payment, to the extent the levy of turnover tax has not been reverse-charged to the User.  
The provisions set forth in this Article 7 concerning payment of the Use-related payment shall apply accordingly to the turnover tax payable.

## **Article 8. Annual adjustment of Use-related payment**

- 8.1** The Use-related payment shall be adjusted annually to the course of the Price Index.
- 8.2** Adjustment is made by multiplying the latest applicable Use-related payment by a fraction of which the numerator shall consist of the price index figure of the seventh Month prior to the date of adjustment and the denominator by the same price index figure of the same Month one Year earlier.
- 8.3** The first adjustment shall take place on the first day of the twelfth Month after the Month in which the Right of Use commenced.
- 8.4** Where the Price Index stated in the Deed is updated, and starts using a Price Index on a more recent price basis, the updated Price Index shall be applicable as of the date the updated Price Index will become operative.  
If the Price Index stated in the Deed is discontinued, the Price Index replacing the discontinued Price Index or the Price Index closest to the discontinued Price Index shall – as of the date of discontinuation – be applicable.

## **Article 9. Review of Use-related payment**

- 9.1** Both PoR and the User may demand that the Use-related payment is reviewed as of the date of expiry of twenty-five Years after commencement of the Right of Use, and subsequently each time after expiry of a twenty-five Year period, provided the User or PoR was notified of such demand by no later than one hundred and twenty days prior to the date the review is demanded by registered letter.  
The provisions set forth in the previous sentence shall apply only if PoR or the User believes that the Use-related payment is not in agreement with similar use-related payments that have been agreed by PoR with third parties for the period of one Year prior to the Year in which the required review must be applied to the use of Sites, Water, Slopes, Quay walls, Jetties or Facilities, comparable to the Real Property, whilst taking into consideration:
- a. the location, nature and condition of the Real Property and comparable real properties, whereby no account is taken of use or availability or nature of Buildings, if any;
  - b. the provisions subject to which the relevant similar rights of use were granted; and
  - c. the circumstances subject to which the relevant similar rights of use were granted.
- Where either PoR or the User should request a review, PoR shall submit a proposal for such review to the User by no later than fourteen days prior to the date of review. Where PoR should fail to submit such proposal in due time, the request for review shall be deemed to have been withdrawn if PoR requested the review, or the request for review shall be deemed to have been rejected by PoR if the User requested the review.

The new Use-related payment shall be fixed on the basis of the proposal to be submitted by PoR that will be based on the provisions set forth above in this Article 9.1.

- 9.2** Where the parties fail to reach agreement on the new Use-related payment on the date of review, the Use-related payment will be fixed by binding decision of three experts having been appointed in accordance with Article 45.
- 9.3** For as long as the new Use-related payment has not been fixed, the User shall pay the latest Use-related payment applicable.  
As soon as the new Use-related payment has been fixed, the difference, if any, must be paid or refunded.  
In respect of the period to which such payment or refund relates an interest shall be payable equal to the three-monthly EURIBOR increased by 150 basis points.
- 9.4** After the new Use-related payment has been fixed, possibly with retroactive effect on the basis of Article 9.3, another annual adjustment shall take place in accordance with the provisions of Articles 8.1 and 8.2, on the understanding that the adjustment takes place on the first day of the twelfth month after the Month of review date as referred to in Article 9.1.
- 9.5** PoR shall notify the User of any adopted review of the Use-related payment under the provisions of this Article 9.

#### **Article 10. Fixing by experts**

- 10.1** Where the new Use-related payment as referred to in Article 9.1 is fixed by experts to be appointed in accordance with the provisions of Article 45, they will fix the Use-related payment whilst duly observing the provisions set forth in Article 9.1 under the letters a, b, and c.
- 10.2** Where no similar rights of use have been granted within one Year prior to the Year of the requested review, the three experts shall fix the new Use-related payment according to another reasonably acceptable pricing policy, whereby the following issues are taken into account in relation to the Real Property in respect of which the Use-related payment is being reviewed:
- a. the provisions set forth in Article 9.1 under the letters a, b and c;
  - b. any increase or decrease in the Real Property's value due to external circumstances; and
  - c. revaluation or devaluation of currency on the basis of the course of the Price Index.

#### **Article 11. Turnover tax payable on Use-related payments**

- 11.1** If turnover tax on the granting of the Right of Use is not already due by operation of law, PoR and the User will jointly opt for transfer or lease subject to turnover tax as

referred to in Article 11, paragraph 1, letter a, second point, or Article 11, paragraph 1, letter b, fifth point, of the Turnover Tax Act 1968.

- 11.2** The User shall permanently use the Real Property for performances entitling to deduction of turnover tax in full or almost in full, or cause the Real Property to be so used.  
Where the User should in any financial year not use the Real Property for purposes with respect to which it enjoys the right to deduction of turnover tax, the User shall notify PoR and the Tax and Customs Administration hereof in writing without delay, if this was directly foreseeable by the User, or, if it was not foreseeable by no later than within four weeks after the close of the financial year concerned.
- 11.3** Where the Use-related payment cannot be taxed with turnover tax or has wrongly been taxed with turnover tax, the User shall at any rate owe PoR, in addition to the Use-related payment, an amount equal to the amount in turnover tax that would have been payable if the Use-related payment could be or could have been taxed with turnover tax.  
In addition, the User shall be bound to reimburse PoR for any and all other turnover tax damage, such as review of the turnover tax deducted on account of investments made to be attributed to the Real Property or the impossibility to deduct the turnover tax paid by PoR in respect of maintenance and overhead costs, as well as any interest and fines owed in this connection to the Tax and Customs Administration, to the extent that such damage is not covered by the increase of the Use-related payment.
- 11.4** The compensations referred to in Article 11.3 are included in the Use-related payment owed in connection with the Right of Use and are payable immediately.
- 11.5** Articles 11.3 and 11.4 shall also apply when PoR is confronted with the losses referred to in Article 11.3 after termination of the Right of Use.
- 11.6** Notwithstanding the other provisions relating hereto as set forth in the General Terms, the User shall at any rate commence its use of the Real Property prior to the close of the financial year in which the Right of Use commenced, on the understanding that, where a Slope should form part of the Real Property and such Slope would be a building plot on which Buildings must be realised, the User shall commence the use of such Slope and the Buildings realised on it prior to the close of the financial year in which the Buildings are handed over to the User by the contractor concerned or – if the User is realising such Buildings itself – prior to the close of the financial year in which the Buildings are ready to be used.  
The User's financial year shall be stated in the Deed.

#### **IV. RIGHT OF PERMANENT BERTH; QUAYAGE; DREDGING WORK**

##### **Article 12. Right of permanent Berth; Quayage**

- 12.1** Where the User has a Right of permanent Berth, this should appear from the Deed and

the User shall owe Quayage to PoR.

- 12.2** PoR shall annually fix the rate for Quayage and for the excesses as referred to in Article 12.4 for the duration of one calendar year.  
The amount of Quayage is based on:
- a. the Contract depth;
  - b. the maximum length and width of the Berth(s) concerned; and
  - c. whether or not a Quay wall, Jetty or Slope is available for mooring.
- The Contract depth shall be stated in the Deed.
- 12.3** Quayage shall be payable in instalments that become due at the same date as the instalments referred to in Article 7, which Article shall apply mutatis mutandis.
- 12.4** Where the User causes a vessel to be moored in the Open Water with respect to which it has the Right of permanent Berth, which:
- a. draws, at any time, deeper than the Contract depth; or
  - b. protrudes beyond the maximum length or width of the Berth stated in the Deed,
- additional Quayage is payable by the User to PoR for this excess or these excesses; PoR shall invoice this additional Quayage to the User separately.
- 12.5** Where the User causes a vessel to be moored in the Open Water with respect to which it has no Right of permanent Berth, the User shall owe a payment to PoR, which shall be determined by PoR on the basis of the draught and length and width of the vessel concerned and on the Quayage rates used by PoR.  
PoR shall invoice this payment fixed by PoR to the User separately.
- 12.6** The User shall forthwith inform PoR of any excess as referred to in Article 12.4 or of any mooring as referred to in Article 12.5.
- 12.7** Turnover tax shall be payable on Quayage or the payment referred to in Article 12.5.
- 12.8** The Right of permanent Berth is inextricably linked to the Right of Use, which means that:
- the Right of permanent Berth can only be sold , transferred or given in use to a third party in combination with the Right of Use;
  - a renewal of the Right of Use can only take place in combination with a renewal of the Right of permanent Berth;
  - the Right of permanent Berth ends if and when the Right of Use ends.
- Articles 5.2, 5.3, 24 and 27 apply mutatis mutandis to the Right of permanent Berth.

### **Article 13. Dredging work**

- 13.1** All dredging work in Open Water necessary for the use of the Right of permanent Berth will be performed by or for the account of PoR.  
PoR shall endeavour to perform the dredging work concerned or cause it to be performed in such manner that any nuisance for the User is kept to a minimum.

- 13.2** The costs for this dredging work shall be for the account of:
- a. PoR, where it concerns normal maintenance;
  - b. The User, where it concerns extraordinary maintenance.
  - c. the User, if User, regularly or otherwise, requires more depth than the agreed Contract depth.

Normal maintenance is understood to mean: necessary dredging work caused by natural filling up.

Extraordinary maintenance is understood to mean: all further maintenance.

- 13.3** If and insofar as the Real Property is situated along Open Water with respect to which a third party holds a right of use, PoR's obligation as referred to in Article 13.1 or Article 13.2 shall exist only if such third party does not object to the performance of the required work.

## **V. STATE OF THE REAL PROPERTY**

### **Article 14. Real Property**

- 14.1** The User shall accept the Real Property in the state it is in upon the signing of the Deed or the handing over of the Real Property, whichever is earlier.
- 14.2** In addition to the Environmental Impact Report, the state of the Real Property shall be specified in an annex to be appended to the Deed.
- 14.3** To the extent applicable, the Deed shall specify an arrangement regarding:
- a. any connection of the Real Property to public utility companies;
  - b. firefighting and other safety regulations;
  - c. the taking of measures regarding the Real Property for the benefit of the User's business;
  - d. insurance of the Real Property or any parts thereof;
  - e. maintenance; or
  - f. instructions for use.
- 14.4** When pipes, cables or ducts or other works of PoR or third parties are present on, in or above the Real Property, the User shall be obliged to tolerate the presence of such pipes, cables or ducts or other works.  
The Right of Use does not relate to these items.

### **Article 15. Soil of the Site**

Prior to the commencement of the Right of Use, PoR shall cause a survey to be conducted into the environmental state of the Soil by an independent research agency recognised by PoR and in accordance with a research method approved by PoR and have a report drawn up thereof.

- 15.2** Where the report should show that the Soil of the Site is unsuitable for the use intended by the User, PoR shall take measures to render the Soil of the Site suitable for the use intended by the User.  
PoR is not obliged to take any measures if the budgeted costs of the relevant measures are so high that this cannot be expected of PoR within reason, partly in view of the amount of the future Use-related payment, such to be determined by PoR.  
In that case:
- a. PoR may decide not to grant the Right of Use if PoR is not yet under the obligation to grant it yet; or
  - b. PoR may terminate the agreement for renewal of the Right of Use with immediate effect,
- by means of a notice for such purpose to the User.  
Where the provisions set forth in the preceding sentence apply, PoR shall not be obliged to pay any compensation, howsoever named, to the User.
- 15.3** Where PoR should proceed to taking the measures concerned, PoR shall cause a report to be drawn up thereof.  
Where the measures referred to have not yet been effected at the date the Deed is signed, PoR shall ensure that these measures shall be effected as soon as possible thereafter and that a report shall be drawn up thereof.  
Subsequently, such report shall be forthwith submitted to the User.
- 15.4** The User shall be entitled to have a more detailed soil survey conducted of the Soil of the Site at its own expense.  
The User shall repair any damage to the Real Property due to such survey.  
Provided that this survey conducted on the User's instructions satisfies the prevailing state-of-the-art techniques and the standards relating to science and surveys at the time the survey is conducted, the report concerned shall be accepted by PoR as an addition to the report referred to in Article 15.1.  
This second report must have been drawn up and accepted prior to commencement of the Right of Use.  
If it is evident from this second report that the environmental condition of the Soil of the Site is not suitable for the use intended by the User, the provisions of Article 15.2 shall apply *mutatis mutandis*.  
Where the survey conducted by the User was not conducted in due time, or where the report based thereon was not submitted to PoR in due time, the User will not be able to derive any rights therefrom towards PoR.
- 15.5** In the event PoR implements the measures referred to in Article 15.2, the Real Property shall not be handed over to the User prior to the signing of the Deed.
- 15.6** The report referred to in Article 15.1, as well as – if applicable – the report referred to in Article 15.3, and the second report referred to in Article 15.4 and any report drawn up pursuant to that report shall jointly form the Environmental Impact Report.  
If and insofar as they have been drawn up on the signing of the Deed, the documents constituting the Environmental Impact Report will be appended to the Deed as an

annex.

- 15.7** On its signing the Deed, the User accepts the Environmental Impact Report and establishes that the Soil of the Site is suitable for its contemplated use or will become suitable for such use after the measures to be taken shall have been completed. The consequences of any pollution in the Soil of the Site – whether or not shown in the Environmental Impact Report – shall be at the User’s full risk and expense.

**Article 16. Area of the Real Property**

Except for settlement under the provisions of Article 6.3, any discrepancies in area of the Real Property or any part thereof or of a Berth, does not grant either PoR or the User any rights.

**Article 17. Quay wall, Slope or Jetty**

- 17.1** PoR shall maintain, repair and, if required, renew the Quay wall, Slope or Jetty forming part of the Real Property.
- 17.2** Any costs incurred for the construction, maintenance, repair and renewal shall be payable by PoR. If however any maintenance, repair and renewal is concerned on account of damage caused otherwise than following normal use, the costs hereof shall be payable by the User except for the provisions set forth in Article 26.3.

**VI. OBLIGATIONS AND PROHIBITIONS RELATING TO THE REAL PROPERTY AND THE BUILDINGS**

**Article 18. Tolerating of persons, works and activities; perpetual clauses**

- 18.1** All rights arising from:
- a. restricted rights, qualitative obligations or perpetual clauses specified in the Deed, which must be complied with by PoR, as well as those arising from public-law restrictions as referred to in Article 1 of the Immovable Property (Disclosure of Restrictions under Public Law) Act, shall also be complied with by the User; these obligations shall, if the Right of Use concerns a ground lease or ground sublease, also be imposed upon the User in the Deed, and the User shall accept them;
  - b. easements, including those that have not been specified in the deed, encumbering the Real Property, shall be observed by the User;
  - c. agreements concluded by PoR for the granting of the Right of Use, and that include a certain enjoyment for the benefit of a third party in relation to the Real Property, such as the tolerating of pipes, cables or ducts, shall be fulfilled by the User.
- 18.2** The User shall be obliged to tolerate that pipes, cables or ducts or other works are located in, on or above the Real Property and that those pipes, cables or ducts or other

works are inspected, maintained, repaired, renewed or removed by or for the account of PoR.

The User shall render all cooperation to the performance of the aforementioned activities and shall at all times grant access to all persons designated for such purpose and their equipment and materials.

- 18.3** The User shall be obliged at all times to grant all persons designated by PoR and their tools and materials access to the Real Property and, if necessary, allow temporary storage of the tools and materials for the purposes of:
- a. monitoring compliance with the provisions related to the Right of Use or the Right of permanent Berth and the matters agreed in that connection; and
  - b. performing works and repairs that are to be performed by or for the account of PoR whether or not pursuant to the provisions related to the Right of Use or the Right of permanent Berth.

The User shall render its full cooperation to the performance of the aforementioned works and shall also provide free mooring space to Vessels to be used in performing such work.

- 18.4** At its expense and risk, the User shall do all things required to, on or in the Real Property or the Buildings in connection with the work referred to in Article 18.3 to prevent damage from occurring due to such work.

- 18.5** The User is not entitled to any payment pursuant to the provisions of this Article 18, including a reduction of the Use-related payment.

- 18.6** Where a Slope, Quay wall or Jetty should form part of the Real Property and:
- a. Open Water is adjacent to the Real Property; and
  - b. the User has no Right of permanent Berth in respect thereof,
- the User shall be obliged to tolerate that – if the harbour master in Rotterdam should deem it necessary – vessels will be moored along the Real Property. In such case the User shall also tolerate that these vessels are stocked up and that persons come from and go to such vessels whilst using the Real Property. For such mooring the User will not owe any payment as referred to in Article 12.5.

- 18.7** The User has the right to demand that the persons to be admitted follow the instructions given by the User in the interest of order and safety on the Real Property.

### **Article 19. Construction and laying-out duties**

- 19.1** The User shall be obliged to commence the realisation of the Buildings set forth in the Deed within two Years after commencement of the Right of Use and to perform these activities continuously and without delay. Further, the User shall be obliged to take care of the Site's layout forthwith after completion of the building activities.

- 19.2** The Buildings shall be realised and the laying-out be made according to the Building

and Lay-out Plan approved by PoR, which also provides for the parking places and line-up facilities to be constructed for trucks and vehicles in connection with the use of the Real Property, the Buildings and - if present - the Facilities as described in the Deed.

**19.3** Only with PoR's permission shall the User be permitted to alter, extend or remove the Buildings and layout of the Site realised or to be realised.  
Such permission shall, however, not be required for pavements, sewers and connections to pipes, cables or ducts of utility companies.  
Adequate registration shall be made of the sewers and connections to pipes, cables or ducts of utility companies and such registration shall be submitted to PoR.

**19.4** The provisions of Articles 19.1, first sentence, 19.2 and 19.3 first sentence apply mutatis mutandis to quay walls, slopes and jetties.

The User must fence off the Site forming part of the Real Property of public roads and adjacent plots of land to PoR's satisfaction and maintain such fencing off at all times. In derogation from the second sentence of Article 5:46 of the Dutch Civil Code, the costs are entirely for the account of the User.

#### **Article 20. Continuous use of the Real Property and the Buildings; maintenance**

**20.1** The User shall be under the obligation to continuously use the Real Property and the Buildings to be realised, according to the use determined in the Deed.  
The use must be in accordance with all public-law regulations arising from the applicable zoning plan, the permits that have been granted and other statutory obligations.

**20.2** The User shall keep the Site clean and properly maintain, repair and, if required, renew the Site and the Buildings.  
Where the Buildings have nevertheless fallen into disrepair or are no longer used for the purposes specified in the Deed, the User shall remove the Buildings immediately upon PoR's demand and to the latter's satisfaction.

**20.3** Without PoR's permission, the User may not alter the Real Property.

#### **Article 21. Use of the Slope, Quay wall and Jetty**

**21.1** In the event that the User realises, repairs, alters, moves or removes a Building on, in, from or of the Quay wall or Slope, this must be done under PoR's supervision and according to the latter's instructions.  
Where the User intends to perform such work, the User shall inform PoR thereof by no later than seventy-two hours before commencement of such work.  
The User does not have the right to demolish or repair the rock landscape of the Slope; these activities may and will only be performed by or for the account of PoR.

- 21.2** Without prejudice to the provisions of Article 21.1, a strip of land with a width to be further determined in the Deed along the crest line of the Slope may not:
- a. be planted or built on;
  - b. contain any roots or foundations;
  - c. be used for the laying of pipes, cables or ducts, pavement or rails; or
  - d. be used for storage,
- without PoR's permission, on the understanding that it is allowed to cover this strip of land with grass or to pave it with light tiles or clinkers.
- A strip of land with a width to be further determined in the Deed along the landside of the Quay wall may not:
- a. be planted or built on; or
  - b. contain any roots or foundations;
- without PoR's permission, on the understanding that it is allowed to pave this strip of land with tiles or clinkers.
- Where the Deed does not specify such width, such strip shall at least have a width of three meters.
- 21.3** Houseboats, pleasure yachts or vessels that are not intended for sailing any longer may not be moored alongside the Quay wall, Slope or Jetty.
- 21.4** Where the heads, stumps or protrusions of posts or protruding parts of mooring places, Jetties, efflux facilities and the like in the Slope, irrespective of the party that fitted them and irrespective of when they were fitted, are not at least at surface level of the Site and these posts or protrusions constitute a danger to shipping in the opinion of PoR, the User shall, upon PoR's first request, forthwith draw such posts or protrusions in such manner that no heads or stumps remain in the water, the foregoing to PoR's satisfaction.
- The provisions set forth in 21.1 shall apply mutatis mutandis with regard to this work.
- 21.5** The User shall tolerate that the required mooring and anchoring facilities will be fitted, used and maintained by or on behalf of PoR on the Quay wall, the Jetty or in the strip of land alongside the crest line of the Slope of the Real Property for the mooring of dredging vessels, in locations to be indicated by PoR.

**Article 22. Other provisions relating to the Real Property and Buildings**

- 22.1** The User itself shall arrange for the connections of the Real Property and the Buildings to the public sewers, the gas, water, electricity, telephone, data traffic and rail network.
- 22.2** No advertisements, notices, announcements or signs may be affixed to the Real Property or the Buildings other than the ones containing an exclusive reference to the business conducted on the Real Property, unless they have been prescribed by the government or PoR.
- Where such non-allowed advertisements, notices, announcements or signs as referred to in the preceding sentence should nevertheless be affixed, the User must forthwith

remove them at PoR's first demand.

- 22.3** Where the User has a view, light and/or air creation at a spot where the Real Property does not border on public roads or Open Water, or may sail directly alongside the bank of an adjacent real property, the User may not make any claim in respect of the preservation thereof vis-à-vis PoR or the parties entitled to the adjacent or neighbouring real property.
- 22.4** The User shall have the right to make entrances and exits only where the Real Property borders on the public road, provided that PoR has approved the number, nature and place of the entrances and exits.
- 22.5** The Real Property and the Buildings must be used in such manner that:
- a. no pollution of the Soil or otherwise occurs or threatens to occur; and
  - b. no nuisance, danger or damage is caused, unless and to the extent permitted by the competent authority.

#### **Article 23. Provision concerning a quay wall, slope, jetty or the superstructure of a Jetty**

- 23.1** In the event the User has constructed a quay wall, slope, jetty or the superstructure of a Jetty, the User will be obliged to have the technical condition of the quay wall, slope, jetty or superstructure of the Jetty examined for its own account by an independent research agency recognised by PoR and in accordance with a research method approved by PoR, within a period to be determined by PoR, but in any event at least every five years.  
The User will make a copy of the investigation report available to PoR.
- 23.2** If the investigation report shows that the quay wall, the slope, the jetty or the superstructure of the Jetty is not in a sound state of repair, PoR will have the right to put the quay wall, the slope, the jetty or the superstructure of the Jetty out of operation without the User being entitled to compensation of the losses sustained by the User as a result.
- 23.3** The User will be obliged to repair for its account the quay wall, the slope, the jetty or the superstructure of the Jetty that is unsound in such a manner that a new investigation shows that it is, or they are sound again.  
If the User fails to repair the quay wall, the slope, the jetty or the superstructure of the Jetty, PoR has the right to have these activities performed for the account of the User.
- 23.4** Articles 21.2, 21.3, 21.4 and 21.5 apply mutatis mutandis to a quay wall, slope, jetty or superstructure of the Jetty constructed by or for the account and risk of the User or his legal predecessor(s).

#### **Article 24. Regulations, permits and licences**

- 24.1** When using the Real Property, the Buildings, the quay wall, the slope, the jetty or the

superstructure of the Jetty and thereafter in the case of the maintenance, repair or renewal thereof, the User shall observe all regulations given by PoR either upon commencement of the Right of Use or at a later date:

- a. to foster safety;
- b. to prevent and fight fires;
- c. to prevent danger, damage, injury or nuisance;
- d. to prevent noise pollution;
- e. to prevent pollution of or damage to the environment; or
- f. to prevent overburdening of the Real Property.

**24.2** The User shall take care of all required permits or exemptions for the realisation of the Buildings, the quay wall, the slope, the jetty, the superstructure of the Jetty, the lay-out of the Real Property, the use of the Real property and the Buildings, the placement of pipes, cables or ducts and the User's business operations.  
PoR shall not be liable in any way for the non-obtaining of any permission or exemption, for the withdrawal or any other termination thereof, nor shall any of the foregoing lead to a reduction of the Use-related payment, not even in the event of a review as referred to in Article 9.

**24.3** At PoR's first request, the User shall submit copies of the applications for permits or exemptions and those granted, as well as of the accompanying annexes.

## **VII. SALE, TRANSFER, GIVING IN USE, DIVISION AND ENCUMBRANCE**

### **Article 25. Sale, transfer, giving in use, division and encumbrance**

**25.1** Without PoR's written permission, the User is not authorised:

- a. to transfer or allocate the Right of Use or the Right of permanent Berth to a third party in its entirety or in part;
- b. to lease or sublease the Right of Use, the Real Property, the Buildings, the Right of permanent Berth or the Berth or to give it in use otherwise to a third party;
- c. to encumber the Right of Use, the Real Property or the Buildings with restricted rights, unless a right of mortgage is concerned;
- d. to encumber the Right of permanent Berth with restricted rights, unless it concerns a pledge to the same party to whom the Right of Use, the Real Property or the Buildings was mortgaged;
- e. to divide the Right of Use;
- f. to divide the Right of Use into apartment rights;
- g. to transfer to a third party an apartment right created after the division of the Right of Use;
- h. to create qualitative obligations with respect to the Right of Use as referred to in Article 252 of Book 6 of the Dutch Civil Code; or
- i. to conclude an agreement that may lead to a legal transaction as referred to under a up to g including.

**25.2** In the event of:

- a. transfer or allocation of the Right of Use or of any part thereof; or
- b. the encumbrance of the Right of Use or any part thereof with a restricted right of enjoyment,

the obligations pursuant to the Right of Use or the Right of permanent Berth pass by operation of law – insofar applicable: as qualitative obligation as referred to in Article 252 of Book 6 of the Dutch Civil Code – to the party that acquires the Right of Use or the restricted right.

If and insofar as such obligations do not pass on by operation of law, the User shall ensure that such obligations pass on to its legal successor or the holder of such restricted right by imposition and acceptance.

- 25.3** In the case of a transfer or allocation of the Right of Use or any part thereof, the new entitled parties notify PoR thereof within sixty days after the date of transfer or allocation and they shall submit to PoR an extract from or copy of a deed entered in the Land Registry and authenticated by a civil-law notary; such extract or copy must contain the date, part and number of the entry or, where no copy of the deed has been entered, a copy of the deed of transfer or other supporting documents, all this to PoR's satisfaction.
- 25.4** After transfer or allocation of the Right of Use or any part thereof, the acquirer and the User shall be jointly and severally liable for the amount owed by the latter on the date of transfer under the Right of Use or the Right of permanent Berth to PoR, which has become due in the preceding five Years.

## **VIII. LIABILITY FOR COSTS AND DAMAGE; INDEMNIFICATION**

### **Article 26. Liability**

- 26.1** The User shall be liable for all damage caused to the Real Property and the Buildings irrespective of its cause.
- 26.2** Damage caused to the Real Property or the Buildings shall forthwith be repaired by and for the account of the User, unless it concerns damage to the Real Property that must be repaired by PoR under the provisions of the Articles 13.2, 17.1 and 21.1, in which case the relevant work shall be performed by PoR at the User's expense.
- 26.3** Contrary to the provisions set forth in Article 26.1, damage to the Quay wall, Slope or the Jetty caused by a Vessel shall be for the account of:
- a. PoR if PoR knows which Vessel caused the damage;
  - b. PoR and the User, each for one half, if the identity of the Vessel's owner cannot be established.
- 26.4** The User is liable for all damage (direct or indirect) to be sustained by PoR or by third parties that results from a defect in a quay wall, slope, jetty or superstructure of the Jetty constructed by or for the account and risk of the User or its legal predecessor(s) as result of which the passage of the Open Water is blocked or restricted, as well as for

damage that results from the heads or stumps of posts or protruding parts of mooring facilities, jetties, efflux facilities and the like in the slope, irrespective of when or by whom they were constructed, which do not reach at least the surface level.

- 26.5** Where PoR would have to remove objects, liquids or materials with respect to which PoR makes plausible that such items originate from the Real Property or from a Vessel that is or has been moored in Water or in a Berth:
- a. the User shall reimburse PoR for the latter's costs incurred for the removal of such objects, liquids or materials; and
  - b. the User shall indemnify PoR against all third-party claims relating to damage arising due to the presence of such objects, liquids or materials.

### **Article 27. Indemnification**

The User shall indemnify and hold PoR harmless against all third-party claims relating to costs, damage and interests PoR might be ordered to pay on account of:

- a. liability under Article 174, Book 6 of the Dutch Civil Code;
- b. pollution of the Soil of the Site or of the Buildings, except insofar as such pollution is caused by the measures to be taken by PoR as referred to in Article 15.2;
- c. the User's failure to comply with any obligations under public law relating to the Real Property, the Open Water, the Buildings and the Facilities.

## **IX. TERMINATION OF THE RIGHT OF USE**

### **Article 28. Termination of the Right of Use**

- 28.1** The Right of Use shall terminate following:
- a. expiry of the term, whether renewed or otherwise, for which the Right of Use had been granted;
  - b. termination by PoR, if:
    - (i) the User has been declared bankrupt in a final and conclusive judgement or has applied for suspension of payments;
    - (ii) the User is in default with the Use-related payment for two consecutive Years – if the Right of Use related to ground lease or ground sublease – or for six Months – if the Right of Use relates to a lease or sublease – irrespective of the cause of such default;
    - (iii) in the event the Right of Use concerns a lease, the User attributably fails or in the event the Right of Use concerns a ground lease or ground sublease seriously fails to comply with one of its other obligations arising from the Right of Use or the Right of permanent Berth;
    - (iv) PoR should consider it recommendable, within the scope of an efficient layout or division of the companies in the port area, that another use is made of the Real Property and the Buildings than the one specified in the Deed in the future.
- 28.2** PoR shall not have the right to give notice of termination of the Right of Use on any

grounds other than the ones set forth in Article 28.1(b).

The User shall not have power to give notice of termination of the Right of Use.

- 28.3** For as long as the User does not vacate the Real Property after termination of the Right of Use in accordance with Article 32 or possibly in accordance with further agreements, its obligation to make Use-related payments and all other payment and other obligations arising from the Right of Use or the Right of permanent Berth continue.
- 28.4** As of one hundred and twenty days before termination of the Right of Use, the User shall, at PoR's request, open the Real Property for inspection by prospective buyers on such days and hours as determined by PoR in consultation with the User.
- 28.5** PoR has the right, also on behalf of the User, to have the end of the Right of Use registered with the Land Registry to the extent such is required.

#### **Article 29. Procedure for notice of termination by PoR**

- 29.1** Where the Right of Use is terminated by PoR giving notice of termination, the latter shall determine, in its decision to give notice of termination of the Right of Use, the day on which such Right of Use shall terminate.  
The period of time between the date of the decision and the date as of which the Right of Use is terminated shall at least be forty days, and in the event of termination on the basis of the provisions set forth in Article 28.1(b) under (iv) at least one Year.
- 29.2** Notice of termination must be given by bailiff's notification.

#### **Article 30. Notice of termination on account of User's failure**

- 30.1** Attributable failure or serious failure as referred to in Article 28.1(b) under (iii), exists if the User:
- (a) fails to use the Real Property or any part thereof with or without Buildings (or a part thereof, in which case PoR will have the right to terminate the Right of Use in whole or in part) for a period of at least three months, irrespective of whether compliance with the obligation to use has been claimed by PoR or not;
  - (a) fails to use the Real Property or any part thereof with or without Buildings (or a part thereof, in which case PoR will have the right to terminate the Right of Use in whole or in part) for a period of at least two Years in accordance with the use as provided for in the Deed, irrespective of whether compliance with the obligation to use has been claimed by PoR or not; or
  - (c) fails to comply with one of the obligations arising from the Right of Use or the Right of permanent Berth for a period of six Months commencing on the first day of the Month after the date of the notice of default.
- 30.2** Where the Right of Use is terminated by giving notice on the grounds of the provisions set forth in Article 28.1(b) under (ii) or (iii), the User shall owe PoR on

account of such termination a penalty in the amount of the quadruple of the sum of the Use-related payment at the time of termination, without prejudicing PoR's right to claim further damages.

**Article 31. Notice of termination on account of the layout of the port area**

- 31.1** PoR will not terminate the Right of Use on the basis of Article 28.1(b) under (iv) until after PoR and the User have failed to reach agreement within one Year after a proposal to that effect by PoR concerning the voluntary termination of the Right of Use and the conditions under which termination is to take place.
- 31.2** Where the Right of Use is terminated by PoR giving notice on the grounds of the provisions set forth in Article 28.1(b) under (iv), PoR shall carefully weigh the interests of the User and of the parties that hold a restricted right to the Right of Use.
- 31.3** Where the Right of Use is terminated on the grounds of the provisions set forth in Article 28.1(b) under (iv), PoR will compensate to the User an amount in compensation that is determined by the experts to be appointed in accordance with the provisions of Article 45, with due observance of the provisions of the Expropriation Act.  
PoR shall pay the amount within two Months after the fixing thereof, but it shall be authorised to deduct from such amount any sum payable by the User to PoR pursuant to the Right of Use or the Right of permanent Berth.

**Article 32. Transfer; underground works; actual state of Real Property**

- 32.1** Upon termination of the Right of Use, the User must transfer to PoR the Real Property at the level, levelled, free from Buildings, entirely vacated and further in the state in which the Real Property was in upon commencement of the Right of Use, without prejudice to the provisions of Article 32.4.
- 32.2** Where underground works such as piles and sheet piling should form part of the Buildings, the User must ask PoR in what manner and up to which depth such underground works must be removed.  
For this purpose, the User shall forward to PoR a complete and exactly specified general drawing of the location where these underground works are located.  
The User shall comply with PoR's instructions regarding the removal of these underground works.  
PoR may require that in order to prevent damage to the Real Property or any Facilities that are present one or more of these underground works are left behind without the User being entitled to any compensation in respect thereof.
- 32.3** Without prejudice to any public-law regulations, it applies between PoR and the User as regards the environmental condition of the Real Property that at the end of the Right of Use the Soil of the Site will be investigated for pollution on the instructions of PoR, but for the account of the User, by an independent research agency recognised

by PoR and in accordance with a research method approved by PoR.

If and to the extent that such survey should disclose that the Soil of the Site contains any pollution that was not shown in the Environmental Impact Report, such pollution is regarded to have been caused by the User and the User must clean up the Soil of the Site at its instruction and expense by a clean-up business recognised by PoR and according to a clean-up method approved of by the competent authorities and PoR and aimed at a clean-up objective determined by the competent authorities and PoR.

**32.4** Where the Right of Use also applies to Facilities, the User shall put such Facilities at the free disposal of PoR upon termination of the Right of Use, in such state as can reasonably be expected on the grounds of the state of the Facilities upon the granting of the Right of Use as specified in the Annex referred to in Article 4.1, whilst also taking into account the time during which the Right of Use existed and - if applicable - the User's obligation to maintain, repair and renew the Facilities.

Where the Facilities have been used incorrectly or carelessly by the User, the User shall compensate PoR for the latter's damage on account of such use.

**32.5** The User will draw up a plan concerning the approach with regard to compliance with the obligations imposed on it as described in Articles 32.1 to 32.4 within a reasonable term to be set by PoR but in any event at least 12 months before the end of the Right of Use.

The User will submit the plan to PoR for approval.

If PoR does not approve the plan and the User is not inclined to adjust the plan, such will constitute a dispute that will be submitted to the experts appointed in accordance with the provisions of Article 45.

### **Article 33. Failure upon transfer**

**33.1** Where the User should, after having been given notice of default, continue to fail to comply with its obligations under Article 32, PoR itself may order the performance of the necessary work until transfer as provided for in Article 32 can take place. In that case, the User will compensate PoR for all costs incurred by PoR, including any legal costs and statutory interest.

**33.2** Where the User fails to transfer the Real Property free from the Buildings within thirty days after termination of the Right of Use, it shall no longer be authorised to remove the Buildings.

In such case PoR does not owe any compensation for the Buildings to the User. PoR furthermore has the right to remove the Buildings for the account of the User.

### **Article 34. Exemption of removal duty or obligation to clean up the soil**

**34.1** Contrary to the provisions of Article 32.1, PoR may determine, upon termination of the Right of Use, that the Buildings or any parts thereof need not be removed.

Such Buildings must then be transferred to PoR by the User in a vacated state.

If the vacation takes place at the request of the User, PoR will not owe the User any

compensation howsoever named for the Buildings left behind or the relevant parts thereof.

If the vacation takes place at the request of PoR, the parties will consult with each other concerning the compensation of the Buildings left behind or the relevant parts thereof.

- 34.2** In derogation from the provisions of the second sentence of Article 32.3, PoR may release the User upon termination of the Right of Use from its obligation to clean up the Soil of the Site subject to conditions to be imposed by PoR, however not before:
- a. the competent authority has approved such, and
  - b. PoR and the User have reached agreement concerning a compensation for pollution left behind; the compensation consists in any event of compensation of damage, but may also include a buyout amount for the risk to be borne by PoR that the pollution may prove to be more or worse in future.

### **Article 35. Legal status of the Real Property upon termination of the Right of Use**

- 35.1** The User warrants and indemnifies PoR in respect hereof that, upon termination of the Right of Use, no personal or restricted rights of third parties are attached to the Real Property, the Right of Use of the Right of permanent Berth or can be enforced against PoR.
- 35.2** The User shall ensure deregistration at its expense of all such restricted rights as are still registered upon termination of the Right of Use at the charge of the Right of Use in the Land Registry.  
Where the User should fail to effect such deregistration, PoR shall be authorised to effect the same on behalf of the User and at the latter's expense.

## **X. MISCELLANEOUS**

### **Article 36. Notifications etc.**

- 36.1** All communications, notifications, requests, notices, notices of termination and claims must be effected in writing, unless it has been determined that they must be effected by registered letter or bailiff's notification.
- 36.2** An application for consent, approval or exemption to be granted by PoR for an act, whether at law or otherwise, to be performed by the User must have been submitted to PoR prior to the performance of such act and have been granted by PoR.
- 36.3** PoR's granting or rejection of a request as referred to in Article 36.1 shall be effected in writing.  
Any oral granting or compliance by PoR shall not be legally valid and shall be considered as not having been granted.
- 36.4** Where PoR grants its consent, approval or exemption, it has the right to subject such

consent, approval or exemption to terms such as:

- a. an increase in the Use-related payment;
- b. the granting for a certain period of time or until notice of termination; or
- c. stipulation of further or altered instructions for use.

### **Article 37. More Users; severalty**

- 37.1** Where the Right of Use is held by two or more persons or legal entities, they shall forthwith appoint one of them as their representative and this in the Deed or, in the event of the acquisition of the Right of Use in any other manner than by Deed, in the statement to be drawn up with such acquisition.
- 37.2** PoR shall forthwith be notified by registered letter of any change in the representation as well as of any (temporary) replacement.
- 37.3** Any communications, notifications, requests, notices, notices of termination and claims and granting of requests regarding the Right of Use shall be made by and to the representative most recently known to PoR.

### **Article 38. Indivisible obligations**

All that which is payable or may be claimed under the Right of Use or the Right of permanent Berth shall be indivisible.

### **Article 39. Charges and taxes**

- 39.1** Where any charges or taxes will be imposed upon PoR in connection with the Real Property or Buildings, the amount payable by PoR on this account shall be charged on to the User.
- 39.2** Where PoR should charge property tax, water authority charges or other taxes or charges on to the User and the User disagrees with the valuation of the Real Property or the Buildings under the Valuation of Immovable Property Act, the User may lodge an objection and appeal as the interested party against the assessment issued to PoR by the relevant agency that issued the assessment.  
If the property tax assessment following objection to the relevant municipality or appeal to the courts is set at a lower amount, PoR will pay this amount to the User after it has received this amount from the relevant municipality, which amount is the difference between the assessment that has been imposed and the lower amount that has been determined.  
Submitting an objection and appeal against the valuation of the Real Property or the Buildings does not release the User from its obligation to pay within the payment term that has been set for the charging on of the assessments imposed on PoR.

#### **Article 40. Payment, statutory interest and set-off**

- 40.1** The amounts owed by the User to PoR pursuant to the Right of Use or the Right of permanent Berth must be paid in a timely manner in legal tender and without any discount or settlement on any basis whatsoever.
- 40.2** Where the amounts owed by the User pursuant to the Right of Use or the Right of permanent Berth have been left unpaid on the date on which they were due, the amount receivable shall be increased on the basis of the statutory interest for commercial contracts for the period during which the payment continues to be overdue.  
The User shall compensate PoR for any and all costs for measures taken by PoR both in and out of court, including those for legal assistance.
- 40.3** Where PoR should owe the User any amount on any account whatsoever, PoR shall at all times be entitled to set off such amount irrespective of whether such amount was already due for payment by the User to PoR or not.
- 40.4** Any payment pursuant to the Right of Use or the Right of permanent Berth will first serve to pay for any costs, secondly to pay for the interest that is due, thirdly to pay for the Use-related payment, the Quayages and the current interest and fourthly to pay for all other amounts that may be owed.

#### **Article 41. Default**

The User is in default as a result of the mere expiry of a term set for a specific performance. In the event that no period of time has been fixed, default will occur by expiry of the period of time to be fixed in a notice of default, unless performance has already become permanently impossible in which case the User is in default without PoR having to set a term for compliance with the relevant obligation.

#### **Article 42. Penalty**

- 42.1** Where the User seriously fails in the fulfilment of any obligation arising from the Right of Use or the Right of permanent Berth, PoR has the right to impose on the User a penalty of at most ten times the amount of the Use-related payment prevailing at the time of the default without prejudice to the provisions set forth in Article 30.2
- 42.2** When imposing a penalty, PoR shall base the penalty in all reasonableness and fairness on the seriousness and duration of the breach.
- 42.3** PoR shall notify the User by registered letter of the amount of the penalty. Such penalty must be paid within thirty days after sending this letter.
- 42.4** Imposing a penalty does not affect PoR's right to claim damages in addition to the penalty.

### **Article 43 Third Parties**

Third parties may not derive any rights from the provisions set forth in the Deed or the General Terms.

### **Article 44. Costs**

All costs and taxes pursuant to the Deed are for the account of the User.

### **Article 45. Experts**

- 45.1** If pursuant to the General Terms experts have to decide on a dispute, each party shall appoint an expert, and these experts shall jointly appoint a third expert.  
The experts are notified by either of the parties of what has been determined in the Deed, in these General Terms and in any further agreements, immediately after they have been appointed.  
The experts shall give their decision within sixty days after they were all notified of their appointment.
- 45.2** Where the provisions set forth in Article 28.1(b) under (iv) apply, a third expert shall, contrary to the provisions set forth in Article 45.1, be appointed by the mortgagee(s), if any, and these three experts shall jointly appoint two additional experts.
- 45.3** Where the experts fail to give their decision within sixty days, the experts will be dismissed and new experts will be appointed by the judge in preliminary relief proceedings at the request of the party taking the initiative.
- 45.4** The costs incurred for the experts shall be borne by the party put in the wrong. Where both parties are put in the wrong, the costs are divided in proportion to the percentage of their being declared in the wrong.
- 45.5** Where a party fails to perform its duty to appoint an expert or where the appointed experts fail to jointly appoint the other expert(s) or should the mortgagee(s) fail to appoint an expert, such appointment shall be made by the judge in preliminary relief proceedings at the first request of a party.

### **Article 46. Address for service**

- 46.1** PoR elects an address for service at its offices for all things connected with the Deed. PoR shall notify the User in writing of any change in its address for service.
- 46.2** The User elects an address for service at the address of the Real Property for all things connected with the Deed, including the invoicing address, unless the User notifies PoR in writing that it elects an address for service elsewhere in the Netherlands. Any deviating address for service of the User shall be stated in the Deed.  
Change in address for service by the User may only be effected with PoR's consent.

### **Article 47. Disputes**

Disputes between the User and PoR on account of the rights or obligations concerning the Right of Use or any other rights or obligations under the Deed shall in first instance be submitted to the competent judge of the Rotterdam District Court, unless settlement of the dispute is charged to experts in the General Terms.

### **Article 48. General Extension of Time-limits Act**

The General Extension of Time Limits Act applies to the terms referred to in the Deed and in any further agreements.

### **Article 49. Public law**

- 49.1** The obligations of the User or PoR arising from the Right of Use or the Right of permanent Berth are without prejudice to any obligations by virtue of public law.
- 49.2** A permit or exemption obtained by the User under public law does not affect the obligations of the User arising from the Right of Use or the Right of permanent Berth.
- 49.3** The obligations of PoR arising from the Right of Use or the Right of permanent Berth are without prejudice to its duties under public law.  
Where PoR would be obliged to act, in the performance of its public duties, in contravention of (the purport of) its obligations arising from the Right of Use or the Right of permanent Berth, PoR shall not fail in the performance of its obligations and PoR shall not be liable in any way to the User.

### **Article 50. Non-applicability of provisions and unreasonably onerous provisions**

To the extent that any provision set forth in the Deed or the General Terms cannot be applied following a court ruling or otherwise, all other provisions shall remain in full force and effect and the non-applicable provision shall be replaced by a provision that can be applied and that is closest in meaning to the non-applicable provision with regard to objective and purport of the Deed or General Terms.

### **Article 51. Headings**

Any headings in the Deed and General Terms have only been provided for the sake of readability. No right may be derived from such headings.

### **Article 52. Citation name**

These General Terms may be cited as:

**General Terms for Rights of Use Port of Rotterdam 2015**

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