

Before me, Doctor of Laws \_\_\_\_\_, a Notary Public duly admitted and sworn, have personally appeared and identified themselves according to law, by means of the hereunder mentioned official documents:

### **The Parties**

Of the first part:

\_\_\_\_\_, \_\_\_\_\_ son of the \_\_\_\_\_ and of \_\_\_\_\_, born at \_\_\_\_\_ on the \_\_\_\_\_ and residing at \_\_\_\_\_, holder of identity card number \_\_\_\_\_ who is appearing on this deed for and on behalf of the **Lands Authority** and the \_\_\_\_\_, as duly authorized by virtue of Government Notice numbered \_\_\_\_\_, published in the Government Gazette of the \_\_\_\_\_, hereinafter called '**the Government of Malta**'. The related papers are marked Lands number \_\_\_\_\_.

Of the second part:

**Ricasoli Port Facility Limited** a company registered and incorporated in Malta with registration C number five eight six nine one (C58691) and having its registered address at 42, Spencer Hill, Marsa represented hereon by \_\_\_\_\_, (holder of Identity Card Numbered \_\_\_\_\_ as duly authorised by virtue of \_\_\_\_\_ (hereinafter referred to as "**Emphyteuta**");

The Government and the Emphyteuta are in this deed collectively referred to as the "**Parties**" and each one a "**Party**".

### **Recitals**

WHEREAS:

The Emphyteuta previously held by title of temporary emphytheusis the immovable properties at Ricasoli (hereinafter referred to as 'the Ricasoli Site') as described in the deed dated the fourth (4th) of January of the year two thousand and thirteen (2013) in the acts of Notary Joseph Henry Saydon for a period of thirty (30) years with effect from the date of publication of the said deed and subject to the terms and conditions stipulated therein;

The Government of Malta requires the Ricasoli Site for public purposes and it was agreed with the Emphyteuta to terminate the emphyteutical deed relative to the Ricasoli Site and to grant to the Emphyteuta the Property described hereunder by title of emphytheusis for a period of twenty-six (26) years with effect from the date of publication of this deed and as subject to all the terms and conditions stipulated in this deed.

NOW, THEREFORE, having premised the above, the Parties do hereby agree and covenant as follows:

## Clause 1 – Definitions

In this deed, unless otherwise expressly stated or the contrary intention appears, and in addition to any other definitions contained elsewhere in this deed, the following terms shall have the following meanings respectively assigned to them:

**“Company”** means the private limited liability company Ricasoli Port Facility Limited, registration C number five eight six nine one (C58691);

**“Emphyteuta”** means the private limited liability company registered under the name of Ricasoli Port Facility Limited, a company registered and incorporated in Malta with registration C number five eight six nine one (C58691) and having its registered address at 42, Spencer Hill, Marsa and/or its successors in title;

**“Emphyteutical Site or Site”** has the same meaning as ‘Property’;

**“ERA”** means the Environment and Resources Authority set up in terms of the Environment Protection Act (Chapter 549 of the Laws of Malta);

**“Force Majeure”** means any act, event or circumstance which is beyond the reasonable control of a Party, including but not limited to acts of God, war, civil commotion, fire, flood or other calamity, strike, riot, lock-out or other industrial disturbance, terrestrial or extra-terrestrial interference, blockade, insurrection, action, order, direction judgement, including but not limited any other cause of a similar nature, which makes that party’s performance of its obligations under this contract impossible, or so impractical as to be considered impossible under the circumstances;

**“Government/Government of Malta”** means the Government of Malta and/or its successors in title and/or the dominus and/or its successors in title. For the purposes of this Deed, it shall also include the Lands Authority;

**“Ground-rent”** means the annual temporary ground-rent stated in clause seven (7) of this deed;

**“Immovable Things”** means all buildings, structures, developments, infrastructure, facilities, installations, and other improvements which are not Movable Things in terms of this Agreement, now existing, or which in the future shall exist, within the boundaries of the Property, whether installed, constructed or erected on, in or under the Property or which otherwise appertain to the Property but to the extent only that they are considered immovable things in terms of the Civil Code, Chapter sixteen (16) of the Laws of Malta and whether such buildings, structures, developments, infrastructure, facilities, installations, equipment, plant and machinery and other improvements are mentioned or otherwise in the description of the Property in these Definitions;

**“Movable Things”** means all items which can be removed from the Property and which are not included in the definition of “Immovable Things” herein and includes equipment, plant

and machinery and other improvements which are not deemed immovable things in terms of this Deed, now existing or which in the future shall exist, within the boundaries of the Property as installed in or appertaining to the Property to the extent that they are considered movable things in terms of the Civil Code, Chapter sixteen (16) of the Laws of Malta and which are not mentioned in the description of the Property in these Definitions;

“**PA**” means the Planning Authority set up in terms of the Development Planning Act (Chapter 552 of the Laws of Malta);

“**Permitted Uses,**” means the uses of the Property as specified in clause six (6) of this deed;

“**Property**” means:

(a) the facility known as the ‘Grand Harbour Installation’ which is built and developed on the plot of land known as ‘Spencer Gracis’ in the limits of Marsa measuring approximately ten thousand two hundred and ninety-five square meters (10,295 sq.m.) forming part of a larger site measuring approximately ten thousand six hundred and thirteen square meters (10,613 sq.m) which had been granted by title of temporary emphytheusis to Mediterranean Offshore Bunkering Company Limited (C 6052) by virtue of a deed of transfer dated the fifth (5th) of October of the year nineteen hundred and eighty-two (1982) in the acts of Notary Doctor Joseph Brincat and from which an area measuring approximately three hundred and eighteen square meters (318 sq.m.) was removed for road formation purposes, which plot of land bounded on the North, East and North-east by a public open square and on the South in part by a public open square and in part by a public road, including all buildings, installations, plant and equipment situated or installed therein, which property, as stated, has hitherto been occupied by title of temporary emphytheusis by Mediterranean Offshore Bunkering Company Limited (C 6052) – hereinafter also referred to as ‘MOBC’. The plot of land which was originally granted to MOBC measuring approximately ten thousand six hundred and thirteen square meters (10,613 sq.m) is shown on the plan which is being herewith attached and marked as Document ‘A’ whereas the plot of land measuring approximately ten thousand two hundred and ninety-five square meters (10,295 sq.m.) which is being granted by title of emphytheusis by the Government to the Emphytheuta is shown on the plan which is being herewith attached and marked as Document ‘B’; and

(b) the divided portion of land known as “Spencer Glacis” bounded on the north west and the south west by public roads, and on the North East by Government property, having an area of circa three thousand eight hundred and thirty square meters (3830 sq,m), shown delineated in red on the attached plan marked Document ‘C’, which plot of land is presently vacant and undeveloped;

“**Temporary Emphyteutical Grant**” means the temporary emphyteutical title over the Property granted by the Government to the Emphyteuta in terms of this Deed;

“**Term**” means the term of the Emphyteutical Grant as set out in Article five (5) of this deed.

## **Clause 2 – Interpretation**

2.1 In this deed, unless otherwise expressly stated or the contrary intention appears:

- a) words importing the masculine gender shall include the feminine gender and vice-versa and words importing the neuter gender shall include the masculine and the feminine gender;
- b) references to a Recital, Part, heading, section, clause, paragraph, document or schedule is to a Recital, Part, heading, section, clause, paragraph, document or schedule of or annexed to this deed;
- c) references to a person include references to any person, whether natural or legal and whether registered or not and whether incorporated or unincorporated, and includes without limitation an undertaking and this irrespective of citizenship, place of registration, residence or management;
- d) any reference to any law shall be deemed to include any amendment, replacement or re-enactment thereof for the time being in force and to include any subordinate legislation, legal notices, rules, regulations, orders, notices, directions, consents or permissions (together with any conditions attaching to any of the foregoing) made thereunder;
- e) all obligations undertaken by the Parties will be binding on them during the entire Term;
- f) where the context permits, the term “**Property**” shall include any part of the Property, together with all the Immovable Things which now, or in the future, shall appertain to them.
- g) The headings in this deed are inserted for convenience only and do not affect its construction.
- h) The documents annexed to this deed shall be construed to form a substantial and integral part of this deed and any reference to this deed shall include a reference to the said documents.

## **Clause 3 - Grant of Emphyteusis of the Property**

3.1 By virtue of this deed, the Government hereby grants by title of temporary emphyteusis to the Emphyteuta, which on its part accepts and acquires by the same title of temporary emphyteusis, the Property, for the Term and for the consideration and upon the terms and conditions set out and contained in this deed. The Property includes all its rights and appurtenances including the spaces above and below it (sub-soil).

3.2 The Property is being granted and accepted as subject to the annual and temporary ground-rent stipulated in clause seven (7) but otherwise as free and unencumbered, save for all existing servitudes and easements created by law burdening it, *tale*

*quale*, and with the exclusion of the warranty of hidden/latent defects. The Emphyteuta is being granted free and vacant possession over the Property save those restrictions resulting from this Deed and provided that in the event that any third party is in possession and occupying any part of the Emphyteutical Site without any title, Government shall apply those measures provided under Section nine (9) of the Government Lands Act – Chapter five hundred and seventy-three (573) of the Laws of Malta to secure the eviction of the said third party.

- 3.3 The Parties agree that the Property shall be granted and accepted as subject to all existing servitudes and easements created by law burdening it. The Property is also subject to the over ground or underground passage of public services and utilities (including water, sewage, electricity and telecommunications) and shall therefore be subject to the right of access to the Property by rightful owners and/or operators of such services and/or utilities and/or their agents for maintenance purposes as reasonably required:

Provided however that the Emphyteuta may at its cost and with the consent of the Government, which shall not be unreasonably withheld, and the rightful owners and/or operators of such services and/or utilities, alter the routes via which such services and/or utilities pass, to other parts of the Property:

And provided further that the Government shall be obliged to provide the Emphyteuta, at the Emphyteuta's request, with all schematic drawings and details which it may have in its possession relative to the public services and utilities passing through the Property.

- 3.4 The Government further reserves the right to access existent and create new servitudes and easements in its favour to be able to pass additional services and/or utilities including culverts for passing of electricity cables, water pipes drainage and sewerage as well as cables intended for telecommunication networks. Provided that in creating such servitudes and easements the Government shall consult the Emphyteuta so as to cause the least disruption and inconvenience to the Emphyteuta in the Permitted Use of the Property, in default of which the Government shall compensate the Emphyteuta for any damage that it may sustain as a result of the Government's actions. Provided further that in all other circumstances, the Government shall compensate the Emphyteuta for any costs and expenses the Emphyteuta may sustain so as to reinstate the Emphyteuta in the same position prior to when the damage was sustained:

Provided that the Government shall exert its best endeavours not to make use of such right whenever any additional services and/or utilities may be passed through alternative public property.

- 3.5 The Government accepts and agrees that any damage to any services and/or utilities passing through the Property which may occur during any works which

the Emphyteuta may want to execute in the Property as a result of the Emphyteuta being provided with inaccurate or incorrect information by the competent authorities/entities, shall not be the responsibility of the Emphyteuta which shall have no liability whatsoever in respect thereof.

- 3.6 The Government hereby warrants in favour of the Emphyteuta, that it has good and valid title, that the Property is free and unencumbered save for the restrictions outlined in sub-clause two of clause three (3.2) above and for the existing servitudes and easements created by law and the passing of services as outlined in sub-clause three of clause (3.3) above and shall further warrant in favour of the Emphyteuta the quiet and peaceful possession over the Property with all its rights and appurtenances according to law for the entire duration of the Term.
- 3.7 The Government hereby warrants and guarantees in favour of the Emphyteuta, that the Property may be legally transferred to the Emphyteuta in terms of this Agreement to be used for the Permitted Uses.
- 3.8 The Government hereby further warrants and guarantees that the Property can be used as may be required by the Emphyteuta for the proper operation of the Permitted Uses subject to the provisions of Clause 8 below and to facilitate any further development which may be required for the optimal utilization of the Property for the purposes of the Permitted Uses. Furthermore, the Government undertakes not to make use of adjacent government-owned property in such a manner which impedes or unreasonably interferes with or compromises the operations of the Permitted Uses.
- 3.9 The Emphyteuta may make use of the ground water on site at no additional cost to the Emphyteuta in conformity with the laws and regulations applicable at the time.
- 3.10 The Parties also declare and agree that the Property includes all the Immovable Things, which now or in the future shall appertain to the Property.

#### **Clause 4 - Terms and Conditions of the Emphyteutical Grant**

- 4.1 This Temporary Emphyteutical Grant is governed by the terms and conditions set out in this deed and, except to the extent lawfully excluded or modified hereby, also by the provisions of the Civil Code, Chapter sixteen (16) of the Laws of Malta.

#### **Clause 5- Term**

- 5.1 Unless terminated earlier pursuant to the terms of this Deed, this Temporary Emphyteutical Grant is being granted by the Government of Malta and accepted by the Emphyteuta for a period of twenty-six (26) years commencing from the date of publication of this deed.

- 5.2 On execution of this deed, the Government shall deliver and the Emphyteuta shall take possession of the Property on the terms and conditions set out in this deed.

#### **Clause 6- Permitted Uses**

- 6.1 Without prejudice to the Emphyteuta's obligations and rights of the Government of Malta pursuant to this Deed and saving as otherwise expressly agreed to herein, the Emphyteuta shall (subject to the attainment of any permits, licences or other authorizations issued by any competent authority which may be required by law) be entitled to enjoy and make full use of the Property for the following purposes:

(i) as a port reception facility of ship-generated residues, residue/water mixture, of noxious liquid substances, oily residues and oily mixtures, and tank cleaning of vessels for its own benefit pursuant to the terms and conditions hereof; and

(ii) to carry out the business which was hitherto carried out from the Property by Mediterranean Offshore Bunkering Company Limited (C 6052), including, principally, the operation of a fuel storage depot and bunkering terminal;

And for no other purposes or use unless such other purpose or use has been authorized by the Government in writing, and always within the land use parameters of and subject to the necessary licences, permits, clearances or approvals by the PA and/or ERA and/or other regulatory authorities and bodies, and generally in compliance with all applicable laws and regulations.

Paragraphs (i) and (ii) comprise the Emphyteuta's 'Permitted Uses' of the Property.

- 6.2 The Emphyteuta shall bear any and all costs and expenses, whether ordinary or extraordinary, that may be necessary or desirable in connection with the Permitted Uses as prescribed in sub-clause one of this clause six (6.1), and in accordance with the Emphyteuta's rights over the Property, the Emphyteuta shall be entitled to retain all revenues generated from the operation of the Property.
- 6.3 The Emphyteuta undertakes to continue to operate the Property for the duration of this emphyteutical grant.

#### **Clause 7- Ground-rent**

- 7.1 This Temporary Emphyteutical Grant is made in consideration of the payment by the Emphyteuta in favour of the Government of Malta of a yearly and temporary ground-rent of two hundred and sixty-four thousand and five hundred Euro (€264,500), payable yearly in advance ('the Ground-rent').

- 7.2 The Ground-rent shall be automatically increased at the rate of fifteen per cent (15%) after two (2) years, that is, in the year two thousand and twenty-three (2023) and every five (5) years thereafter.

#### **Clause 8 – Structural Alterations**

- 8.1 The Emphyteuta shall not at any time erect any permanent structure, building or construction or make any other structural alteration, addition, innovation or improvement of a material nature to the Property ('Structural Alterations') without first obtaining the prior consent in writing from the Government, which consent shall not be unreasonably withheld or delayed and which may be subject to any reasonable condition which the Government may deem fit. As a condition for evaluating any request made by the Emphyteuta pursuant to this provision, the Government may require the Emphyteuta to provide plans, specifications or other similar information to the Government, or to effect any reasonable technical or similar study to enable the Government to evaluate the Emphyteuta's request. The Government shall communicate its consent or otherwise within a reasonable time-frame set out in the Emphyteuta's request, taking into consideration the nature and extent of the Structural Alterations being requested:

Provided that, for the avoidance of doubt, the installation of plant, machinery and equipment required in connection with the Permitted Uses shall not be considered as Structural Alterations.

- 8.2 Any Structural Alterations which the Emphyteuta might want to carry out after having obtained the written consent of the Government shall be at its sole cost and expense. In all cases, the Emphyteuta must ensure that it is in possession of all the necessary permits and approvals required by the PA or any other competent authority. Such works are to be carried out in accordance with applicable statutory, normative and standard practices and PA permissions under the supervision and charge of a duly qualified architect / structural engineer and any other experts which may be required appointed by the Emphyteuta. Upon completion of the Works, the Emphyteuta shall provide the Government with a full compliance certificate issued by the PA together with a completion certificate addressed to the Emphyteuta and Government jointly by the qualified architect / structural engineer and any other experts under whose charge and supervision the works have been carried out, certifying that the works have been carried out *secundum artem* and in accordance with the issued permits and authorizations.
- 8.3 The Parties agree that any authorized Structural Alteration of an immovable nature in or to the Property shall accede to the Property at the expiration or termination of this emphyteutical grant without a right to compensation.

## **Clause 9 – Access Rights**

- 9.1 Saving in case of an emergency where no notice shall be necessary, upon being given forty-eight (48) hours' prior notice, the Emphyteuta shall permit, enable and facilitate the Government and/or its representative/s, officers, employees, agents and/or contractors as well as those of any other public authority to accede to the Property and to inspect the Property or any part thereof in order to verify whether the Emphyteuta's obligations in terms of this deed and/or in terms of law are being duly complied with and observed, as well as to carry out any other function competent to them at law. If any such inspection reveals that the Emphyteuta has not complied in a material manner with its obligations in terms of this deed and/or in terms of law, then, without prejudice to any other course of action competent to the Government in terms of this deed and/or of law, the costs of any such inspection shall be borne by the Emphyteuta.
- 9.2 In the event that the Emphyteuta defaults in its obligations under this provision and remains so in default following the expiration of forty-eight (48) hours from the time when it has received written notice from the Government requesting access for the purposes of inspecting the Property or any part thereof, the Emphyteuta will incur a penalty of one thousand Euro (€1,000) per day during which the execution of the inspection is refused, delayed or hindered, and this in addition to any other right of action competent to the Government.

## **Clause 10 – Transfer and Burdening of Property**

- 10.1 The Emphyteuta is prohibited from transferring or otherwise disposing of the Property, in whole or in part, even by title of sub-emphytheusis, without the prior written consent of the Government. Furthermore the Emphyteuta is prohibited from burdening the Property in any way without the prior written consent of the Government.
- 10.2 Control of the Company, meaning direct or indirect ownership of fifty-one per cent (51%) or more of the voting shares of the Company, or the right to control fifty-one per cent (51%) or more of the voting rights of the Company or the ability, directly or indirectly, to direct or procure the direction of the management and the affairs of the Emphyteuta, whether by way of contract, ownership of shares or otherwise howsoever (including any change in the rights pertaining to the shares in the Company) ("Control") may not change without the consent of the Government. Government hereby grants its consent to the Emphyteuta granting a pledge of its shares at any time to any financial or similar institution for the purposes of providing security for financing to the Emphyteuta directly and solely in connection with the Permitted Uses of the Property or otherwise in connection with this Deed.
- 10.3 Government reserves the right of *laudemium* equal to the amount of the annual Ground-rent in the case of any future transfer by the Emphyteuta, by way of

temporary sub-emphyteusis, of the Tenement subject to the consent of the Government.

- 10.4 The Emphyteuta shall furnish the Government with two official copies of any deed of transfer by way of temporary sub-emphyteusis, should this be allowed by the Government, within thirty (30) days of the publication thereof and a penalty of one hundred euro (€100) per day shall be due thereafter in case of non-observance.
- 10.5 In the event that the Government grants its consent to the transfer or disposal of the Property, under any title, any third party successor in title to all or any part of the Property shall be bound by the same terms and conditions herein.

#### **Clause 11 – Operation, Upgrading, Repair and Maintenance**

- 11.1 The Emphyteuta shall operate the Property in accordance with the Permitted Uses and as a port reception facility for ship-generated wastes to ensure that the Government is at all times in compliance with its obligations under the nineteen hundred and seventy-three (1973) IMO International Convention for the Prevention of Pollution from Ships as modified in nineteen hundred and seventy eight (1978) (MARPOL 73/78), as may be amended or replaced from time to time, and comply, inter alia, with the European Council Directive two thousand/fifty nine/EC (2000/59/EC) of the European Parliament and the Council of the twenty seventh (27th) November of the year two thousand (2000) and Legal Notice two hundred and seventy eight of the year two thousand and four (LN 278/2004) on port reception facilities for ship-generated waste and cargo residues as may be amended or replaced from time to time.
- 11.2 The Emphyteuta shall be responsible for carrying out, at its sole cost and expense, any works which may be necessary for the upgrading of the Property in order to be able to operate as a port reception facility in accordance with local and international legislation and accepted industry standards
- 11.3 The Emphyteuta shall, at its sole cost and expense operate, upgrade, maintain and repair (including the carrying out of extraordinary repairs) the Property throughout the duration of this Deed in order to carry out the Permitted Uses:
- (a) in accordance with industry practice, that is, those practices, methods and acts which at a particular time, or from time to time, are in accordance with the prevailing market operation and maintenance standards applicable to the activities to be carried out by the Emphyteuta at the Property in accordance with the provisions of this deed (hereinafter referred to as the "Industry Practice") and with all applicable legislation;
- (b) to the extent relevant, in accordance with such requirements as may be imposed by manufacturers or suppliers as a condition of the continuing validity of any

guarantees or warranties and otherwise in accordance with the reasonable recommendations of manufacturers or suppliers;

(c) in compliance with any remedial measures recommended pursuant to this Deed; and

(d) in compliance with this Deed and any applicable law and regulation relating to health, safety, security and the protection of the environment or otherwise and any permits, licenses or authorisations that may be required and that may be granted from time to time to the Emphyteuta.

11.4 Government may, from time to time, acting reasonably, request from the Emphyteuta written reports in respect of its compliance with the provisions of Article eleven.three (11.3) of this deed in order to ensure that the Emphyteuta is operating the Property in accordance with Industry Practice and in full compliance with all local and international rules and regulations.

11.5 If it is established that the Emphyteuta has not complied in any material respect with its obligations under Article eleven.three (11.3), the Government may serve written notice of the relevant breach upon the Emphyteuta and, if the Emphyteuta fails to remedy any such breach within ninety (90) days or such longer period as may be specified by the Government, the Government and its representatives shall be entitled (without prejudice to any other right arising under this deed or under any applicable law) to enter the Property for the purpose of remedying the relevant breach. Any reasonable costs properly incurred by the Government for such purpose shall be reimbursed by the Emphyteuta upon demand duly accompanied by supporting documentation and the Emphyteuta shall grant such access and assistance or procure the grant of such access and assistance (including from third parties) as the Government shall reasonably require in connection therewith.

11.6 The Emphyteuta hereby agrees that any material assets acquired by the Emphyteuta throughout the duration of this Deed shall be of such quality as to comply with Industry Practice.

11.7 Any question or difference which may arise concerning the construction, meaning or effect of this Article eleven (11) or concerning the rights and liabilities of the parties hereunder or any other matter arising out of or in connection with this Article 11 shall be referred to a single arbitrator to be agreed between the parties. Failing such agreement within thirty (30) days of the request by one party to the other that a matter be referred to arbitration in accordance with this Article the provisions of Article thirty-three (33) shall apply.

### **Clause 12 – Utilities**

- 12.1 All accounts and meter for utilities serving the Property shall be duly registered in the name of the Emphyteuta.
- 12.2 The Emphyteuta shall be solely responsible for, and shall promptly pay, all deposits, fees and charges for water, electricity, drainage, telephone and any other service or utility used in or upon or furnished to the Property as from the date of this deed.

### **Clause 13 – Environment, Health and Safety, Security**

- 13.1 The Emphyteuta shall be responsible for all aspects of environment, health, safety and security within the Property.
- 13.2 The Emphyteuta shall, at its sole cost and expense, abide by all applicable development planning and environmental laws and shall:
- (i) give written notice to the Government of the granting or refusal of any permission required under any development planning and environmental laws within ten (10) days after its receipt by the Emphyteuta;
  - (ii) unless the Government shall otherwise direct, carry out and complete before the expiration or earlier termination of this Deed any development begun at the Property prior to the expiration of this deed, and this as a condition of any planning permissions granted for such development by the competent authority or imposed by Government in terms of Article 8.2;
  - (iii) on demand produce to the Government any plans, document and other evidence the Government may reasonably require in order to be satisfied that any provisions of this Article or any parts of it have been complied with.

### **Clause 14 – Obligations of the Emphyteuta**

- 14.1 In addition to any and all obligations incumbent upon the Emphyteuta pursuant to this deed or under law generally, the Emphyteuta shall:
- (i) operate the Property within the limits of the Permitted Uses specified in Article six (6) and in accordance with Industry Practice (hereinafter referred to as the "Business");
  - (ii) develop and maintain the Property having regard to the actual and anticipated growth in the Business and having regard also to the Industry Practice;

(iii) use all reasonable endeavours to operate the Property in a manner which is likely to minimise any nuisance which may be occasioned to neighbouring tenements as far as reasonably possible having regard to the Business;

(iv) pay the Ground-rent and any other sum which may become due in terms of this deed in a prompt and timely manner; and

(v) in general, observe all the terms and conditions stipulated in this deed.

14.2 The Emphyteuta shall maintain accurate, up-to-date and complete records relating to the use, operation and maintenance of the Property and to hold such records for a period of six (6) years from the date of creation of the relevant records or until sixteen (16) months after the expiry or termination of this Deed, whichever is the earlier. After expiry of the periods aforesaid, before disposing of any such records, other than any records of a proprietary commercially sensitive nature, the Emphyteuta shall notify the Government before any such disposal and provide the Government with the opportunity to take delivery of such records.

14.3 The Government shall have the right to appoint, after the expiry of every five (5) year period of this Deed, an Inspection Engineer with not less than ten (10) years relevant technical inspection experience (hereinafter referred to as the "Inspector") to undertake an inspection of the Property. The Government shall prepare (in consultation with the Emphyteuta) the proposed terms of reference and scope of investigation for the Inspector. The terms of reference and scope of investigation shall include an identification of any failure by the Emphyteuta to comply with its obligations under this deed and/or in terms of law and shall include (where appropriate) recommended remedial measures which the Emphyteuta shall promptly put into effect. The costs of any such inspection shall be borne by the Government unless said inspection finds any failure or failures by the Emphyteuta to comply with its obligations under this deed and/or in terms of law which, in the aggregate, will cost more than two hundred and fifty thousand Euro (€250,000) to remedy, in which case the cost of any such inspection and/or survey shall be borne by the Emphyteuta. A copy of the Inspector's report shall be delivered to the Emphyteuta.

### **Clause 15 – Compliance and Monitoring**

15.1 The Emphyteuta shall ensure that all operations and activities carried out from the Property shall comply with any applicable law and regulations, and the Emphyteuta shall be liable for and shall indemnify and hold the Government and its bodies, officers, employees, agents and entities harmless from any expense, liability, loss, damages, claim or proceedings whatsoever arising from a breach of any such law and regulations by the Emphyteuta.

15.2 The person or entity responsible for monitoring compliance of the obligations and commitments arising under this deed shall vest in such person or entity

as may be delegated by the Government from time to time. Such person or entity shall be responsible for certifying annually that such obligations and commitments are being properly fulfilled and maintained and shall keep proper records thereof.

#### **Clause 16 – Insurance**

16.1 Without prejudice to any other obligation of the Emphyteuta under any applicable law and regulations and in terms of this deed, the Emphyteuta shall take out and keep throughout the term of this Deed the following insurance policies:

(i) Industrial All Risks Policy covering land and buildings at the Property;

(ii) Industrial All Risks Policy covering the plant and machinery at the Property;

(iii) Contractors' All Risks covering land, buildings, plant, machinery and third party property - this shall apply in the event that Structural Alterations are made during the execution of the works; and

(iv) third party damages and environmental cover outlined in paragraph sixteen.two (16.2) below

in each case for their respective indemnity value together with a sum equivalent to the then annual Groundrent. The Emphyteuta undertakes to keep the sums insured under the insurance policies referred to in paragraphs (i) and (ii) of Article sixteen.one (16.1) updated to reflect the indemnity value at all times. The Government shall have the right, from time to time at the Emphyteuta's expense, to obtain an appraisal of the Property inclusive of all the insurable items referred to in this Article sixteen.one (16.1) and any other additions thereto by an appraiser acceptable to the Emphyteuta's insurance' carrier. If any of the said indemnity values should increase, the Government may request the Emphyteuta to do all that may be required to increase the amount of such insurance coverage.

16.2 Without prejudice to any other obligation of the Emphyteuta under any applicable law and regulations and in terms of this deed, the Emphyteuta shall insure and keep insured throughout the term of this deed all sums which the Emphyteuta and/ or the Government, as *directus dominus* of the Property, may become legally liable to pay as compensation for damages to any person and/ or in connection with any damage to the environment and arising out of the use of the Property as are customarily insured against with respect to tenements and operations of similar character for a minimum limit of liability of five million Euro (€5,000,000) for each and every accident.

- 16.3 The Government reserves the right throughout the term of this deed and from time to time, but following consultation with the Emphyteuta, to increase the insurance requirements referred to in the above-mentioned Articles sixteen point one (16.1) and sixteen point two (16.2) above in order to reflect current acceptable norms in the insurance market.
- 16.4 The policies of insurance referred to in the above-mentioned Articles sixteen point one (16.1) and sixteen point two (16.2) are to be obtained and maintained in force throughout the term of this deed by the Emphyteuta at its sole expense and shall be obtained in the joint names of the Government and/ or the Emphyteuta, each for their respective rights and interests, and as if separately insured under separate policies. The Emphyteuta shall provide certified true copies of the insurance policies obtained to the Government together with any relative endorsements, amendments and renewal receipts by not later than fifteen (15) days from the date of any such policy, endorsement, amendment or renewal.
- 16.5 If the Emphyteuta fails to obtain the insurance policies referred to in the above-mentioned Articles sixteen point one (16.1) and sixteen point two (16.2) above or to provide the Government with evidence that the insurance policies have been obtained and maintained in force throughout the term of this Deed, the Government, at its sole discretion, may effect such insurance policies and charge the relative expense plus an administrative charge of fifteen per cent (15%) on costs to the Emphyteuta.

#### **Clause 17 – Force Majeure**

- 17.1 Neither party shall be liable for delay in performing or failure to perform obligations if the delay or failure results from any event or circumstance outside its control such as, but not limited to, the events or circumstances described below (any other event or circumstance whether or not of the same kind or nature) ("Force Majeure Event"):-
- (i) Acts of God, acts of foreign governments, explosion, flood, lightning, tempest, earthquake, tidal wave, typhoon, hurricane, storms, fire, or accident;
  - (ii) War, hostilities (whether war be declared or not), invasion, act of foreign enemies, sabotage or acts of terrorism;
  - (iii) Rebellion, revolution, insurrection, military or usurped power or civil war;
  - (iv) Riot, civil commotion or disorder;
  - (v) Plagues, epidemics or quarantine;

(vi) Strikes, lockouts or other industrial actions or trade disputes (whether involving employees of the party or a third party) outside the reasonable control of the parties to this Deed or successors in title; or

(vii) A public emergency declared in terms of the Emergency Powers Act (Chapter one hundred and seventy-eight (178) of the Laws of Malta, as amended, supplemented, varied or substituted from time to time.

17.2 Any delay or failure arising from a Force Majeure Event shall not constitute a breach of this Deed and the time for performance shall be extended by a period equivalent to that during which performance is so prevented.

### **Clause 18 – Indemnity**

18.1 The Emphyteuta shall indemnify and keep the Government and its officers, directors, employees and agents indemnified against and held harmless from all actions, proceedings, claims and demands brought or made against it, and all losses, damages, costs, expenses and liabilities of any kind (including reasonable legal fees and expenses) incurred, suffered or arising directly or indirectly in respect of or otherwise in connection with any third party liability, any loss or damage to third party property and any other liability whatsoever, including without limitation any liability for damage to the environment or pollution, where any such liability results from a breach of any of the Emphyteuta's obligations in terms of this deed or any negligent act or omission or wilful misconduct of the Emphyteuta and its officers, directors, employees and agents in relation to the Emphyteuta's possession, operation and maintenance of, or failure to operate and maintain, the Property and any improvements thereon from time to time. This provision shall survive the expiration or termination of this Deed.

18.2 The Government shall indemnify and keep the Emphyteuta and its officers, directors, employees and agents indemnified against and hold harmless from any actions, proceedings, prosecutions, claims and demands brought or made against it by third parties including government appointed bodies, including, without limitation, actions, proceedings, prosecutions, claims and demands related to any liability for environmental damage or pollution, that could have been caused to or by the Property relating to the period prior to the date on this deed, provided that within forty eight (48) hours of the Emphyteuta receiving notice of such actions, proceedings, claims or demands he shall forthwith inform Government in writing of such actions, proceedings, claims or demands.

### **Clause 19 – Surrender of Property**

19.1 The Emphyteuta shall at the expiration of this Deed, or at any earlier termination thereof, surrender the Property with all improvements made thereto, namely any immovable assets acquired by the Emphyteuta throughout the duration of this deed and that accede to the Property (whether for the purpose of replacement of

any assets forming part of the Property as at the date of commencement hereof or otherwise), to the Government in as good a condition as the Emphyteuta shall have received the same save for fair wear and tear and free from any burdens or from any other obligations in favour of third parties, other than those, if any which existed as on the date of this deed. Title to the improvements referred to in this Article twenty (20) shall pass to the Government without the Emphyteuta being entitled to any compensation whatsoever.

- 19.2 The Parties agree that a condition assessment of the Property (including all Immovable Things and Movable Things situated therein) is to be carried out in agreement between both parties, and that the final document containing the said condition assessment is to be counter-signed by both parties and to be considered as an integral part of the agreement between the Parties. Furthermore, the Government undertakes to make the necessary assessments in order to ensure the integrity of the pipelines passing through the Property and, should it result that any remedial and/or replacement works are necessary so that the Emphyteuta may properly operate the Property according to the Permitted Uses, such remedial works are to be carried out by the Government at its sole cost and expense.
- 19.3 A full inventory of movable equipment, plant and machinery already present at the Property at the time of publication of this deed shall be drawn up by not later than fifteen (15) days from today. When the Property is surrendered by the Emphyteuta to the Government, all items listed in the said inventory, or their replacement, shall pass to the Government without any right to compensation.
- 19.4 During the final year of the Emphyteutical Deed, the Emphyteuta shall cooperate fully with the Government with a view to transferring the Property unto any new emphyteuta/ operator that may be designated by Government. For this purpose, the Emphyteuta shall be responsible for:
- (i) providing to Government all and any information concerning the Property Site and related assets as may be required for the launch of a competitive process and efficient transfer of responsibility unto a new emphyteuta/ operator;
  - (ii) allowing the Government and/ or prospective emphyteuta/ operator access (at reasonable times and on reasonable notice) to the Property;
  - (iii) liaising with Government and/ or prospective transferees, and providing reasonable assistance and information concerning the Property and related assets; and
  - (iv) doing all necessary acts to ensure that the new emphyteuta/ operator obtains all of its rights, title and interest in and to the Property and related assets with effect on and from the date of termination of this deed.

19.5 The Emphyteuta shall use all reasonable endeavours so as to facilitate the smooth transfer of responsibility for the Property and related assets to any new emphyteuta/ operator as designated by Government, and the Emphyteuta shall take no action at any time during the period of the Emphyteutical Grant or thereafter which is calculated or intended, directly or indirectly, to prejudice or frustrate or make more difficult such transfer.

#### **Clause 20 – Defaults by the Emphyteuta**

20.1 The occurrence of any one or more of the following events shall constitute a material default and breach of this Deed by the Emphyteuta:

- a) If the Emphyteuta fails to pay the annual Ground-rent for two (2) years or if although it has made part payments in each year, a sum equal in amount to two (2) years' Groundrent is still owed to Government whether by way of ground-rent or interest thereon; or
- b) If the Emphyteuta uses the Property for any purpose other than the Permitted Uses, unless the Government has consented in writing to such other purpose; or
- c) If the Emphyteuta extends in any manner any building or structure constructed on the Property onto land adjacent to the Property, whether such land is also owned by the Government or otherwise; or
- d) If the Emphyteuta fails to obtain and keep in full effect the insurance cover it is required to keep in accordance with this deed; or
- e) If the Emphyteuta is in material breach of Article eleven (11), twelve (12) or fifteen (15) of this Deed; or
- f) If the Emphyteuta, for reasons attributable to the Emphyteuta, ceases for a period exceeding one (1) month to operate the Business from the Property in accordance with this Deed or for such period otherwise abandons the Property; or
- g) If the Emphyteuta becomes insolvent; or
- h) If a winding up order against the Company is made by the Court; or
- i) If a resolution for the voluntary winding-up of the Company is passed; or
- j) If a liquidator or provisional administrator for the Emphyteuta is appointed unless, in the case of a provisional administrator, he is removed within six (6) months; or

- k) If a court of competent jurisdiction sanctions any compromise or arrangement involving the Company in terms of section three hundred and twenty-seven (327) of the Companies Act of the year nineteen hundred and ninety five (1995); or
- l) If any material licence, approval or permit that may be applicable issued to the Emphyteuta in relation to the operation of the Property is suspended, cancelled, revoked or not renewed as a direct consequence of any act or omission of the Emphyteuta; or
- m) If the Emphyteuta is in breach of its obligations under Article twenty-three (23) of this Deed; or
- n) If the Emphyteuta is in breach of any of the other material obligations assumed by it in virtue of this Deed.

Provided that the Government shall only be entitled to dissolve this grant if the Emphyteuta remains in default for sixty (60) days after notice of default is given by the Government by judicial letter.

In the event that there is any dispute about the amount due in terms of (a) above, the Emphyteuta is obliged to effect payment of the amount not in dispute and the balance in dispute shall be payable together with interest thereon from the date when the balance was originally due at the rate provided in Article thirty one (31) when such dispute is resolved; and

#### **Clause 21 – Remedies**

- 21.1 In the event of any default or breach by the Emphyteuta in terms of Article twenty (20) hereof, the Government may, at any time thereafter, but subject always to the proviso thereto, by notice by registered letter to the Emphyteuta terminate this Deed whereupon this Deed shall be deemed to be dissolved ipso jure and without the need for judicial proceedings, and consequently the Emphyteuta's right to possession of the Property by any lawful means shall cease and the Emphyteuta shall immediately surrender possession of the Property and all structures, buildings, constructions, alterations, additions, innovations, improvements, fixtures and fittings thereon and therein to the Government in the condition required by the deed.
- 21.2 Without prejudice to such other rights as the Government may have in terms of law, the Government shall, in such event, be entitled to recover from the Emphyteuta all damages incurred by the Government by reason of the Emphyteuta's default.

## **Clause 22 – Bank Guarantee**

- 22.1 In observance of its obligations arising from the emphyteutical deed relative to the Ricasoli Site, the Emphyteuta had delivered to the Government, which accepted, an 'on demand' irrevocable bank guarantee for the sum of two hundred and fifty thousand Euros (€250,000) – hereinafter referred to as "the Guaranteed Amount" - and the Parties agree that the said bank guarantee shall continue to apply in relation to this deed. In the event that the stated bank guarantee cannot be applied to the present deed, the Emphyteuta shall have the right to obtain from the Government the surrender of the said bank guarantee contemporaneously with the provision by the Emphyteuta to Government of another bank guarantee of the same nature and for the same amount. The Emphyteuta undertakes to inform the issuing bank of this arrangement and to do all such things as may need to be done in order for this arrangement to be in place and to provide the Government with written evidence to this effect. The Emphyteuta undertakes to then maintain the said guarantee valid and effective for the entire duration of this deed and for a period extending to thirty (30) days following expiry or termination of this deed. After expiry of the said thirty (30) day period, the Emphyteuta shall be deemed released from the guarantee and the guarantee shall have no force or effect, and the Government shall return the guarantee to the Emphyteuta.
- 22.2 Should the Emphyteuta at any time fail to perform its obligations pursuant to this deed, then the Government, in its sole discretion, may call upon and apply all or any necessary portion of the Guaranteed Amount to compensate the Government for the loss or damage suffered directly as a result of such breach.

## **Clause 23 – Holding Over**

- 23.1 Without prejudice to any other right or remedy competent to the Government, if the Emphyteuta remains in possession of the Property or of any part thereof after the expiration of this Deed or after the earlier termination thereof, whichever is the earlier, without the express written consent of the Government, the Emphyteuta shall pay the Government a daily penalty, for mere delay, until such time that the Emphyteuta remains in possession of the Property, equivalent to five (5) times the Ground-rent due for each day calculated on a pro-rata basis on the annual Ground-rent which was payable immediately prior to the expiration of this deed or earlier termination thereof, as applicable.

## **Clause 24 – Confidentiality**

- 24.1 Each party to this Deed shall treat as confidential all information concerning the other parties' business coming to its knowledge in connection with this Deed.
- 24.2 Notwithstanding the provisions of Article twenty-four.one (24.1) above, the Emphyteuta grants its irrevocable consent to the Government to disclose or publish in such form and at such times as it sees fit, the following:

(i) the existence and terms of this Deed and any documents related thereto;

(ii) the amount of Ground-rent payable under this Deed;

(iii) such information as may reasonably be required by the Government in connection with this Deed.

24.3 Nothing in this Article twenty-four (24) shall be deemed to prohibit, prevent or hinder, or render the Emphyteuta or the Government liable for, the disclosure of any information relating to the performance of the Emphyteuta's obligation under this deed to Government, the Maltese House of Representatives (or any committee thereof) or any other regulatory authority.

24.4 This provision, and any other clauses necessary to give effect thereto, shall survive the termination or expiry of this deed.

#### **Clause 25 – Public Emergency**

25.1 Upon a declaration of Public Emergency in Malta, the Government shall have the right to take possession and full control of the Property, or such part or parts thereof as may be reasonably required by the Government subject to such compensation contemplated at law.

25.2 The Property or that part or parts thereof so effected shall be delivered to the Emphyteuta by the Government upon revocation of the declaration of Public Emergency.

25.3 For the purposes of this Article the term "Public Emergency" means a public emergency declared in terms of the the Emergency Powers Act (Chapter one hundred and seventy-eight (178) of the Laws of Malta) as amended, supplemented, varied or substituted from time to time.

#### **Clause 26 – Waivers**

26.1 No waiver by any party (the "Non-Defaulting Party") of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by any other party (the "Defaulting Party") of the same or any other provision.

26.2 The Non-Defaulting Party's consent to or approval of any act shall not be deemed to render unnecessary the obtaining of the Non-Defaulting Party's consent to or approval of any subsequent act by the Defaulting Party.

26.3 The acceptance of Ground-rent by the Government shall not constitute a waiver of any preceding breach by the Emphyteuta of any provision hereof other than the failure of the Emphyteuta to pay the particular Ground-rent so accepted,

regardless of the Government's knowledge of such preceding breach at the time of acceptance of such Ground-rent.

**Clause 27 – Cumulative Remedies**

27.1 No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies available at law.

**Clause 28 – Entire Agreement**

28.1 Each party hereto acknowledges that:

a) this deed contains the entire agreement between them with respect to any matter mentioned herein and that no other prior agreement or understanding pertaining to any such matter is effective;

b) it has not relied upon any oral or written representation made to it by the other party or by the latter's employees, servants or agents.

**Clause 29 – Headings**

29.1 Headings contained in this Deed are for reference purposes only and should not be considered part of the deed or used in any way as an indication of the meaning of the provisions in the Deed to which they relate.

**Clause 30 – Notices**

30.1 Any notice, notification or other communication under or in connection with this Deed shall be in writing and shall be delivered by hand or recorded delivery or sent by pre-paid first class post, or by electronic data transfer (subject to notification by the recipient of any facility it may operate for receipt of such data transfers) to the relevant parties at the relevant address for service set out below, or to such other address in Malta as each party may specify by notice in writing to the other party to the Deed:

In the case of Government:

Name: Lands Authority  
Address: Auberge de Baviere, Saint Sebastian Street, Valletta.  
Attention: Chief Executive Officer, Lands Authority

In the case of the Emphyteuta:

Name: Ricasoli Port Facility Limited  
Address: 42, Spencer Hill, Marsa MRS 1955  
Attention: The Directors

30.2 Any such notice or other communication shall be deemed to have been given to the party to whom it is addressed as follows:

(i) if sent by hand or recorded delivery, when so delivered; and

(ii) if sent by pre-paid first class post, from and to any place within Malta, three days after posting unless otherwise proven.

30.3 Notice may also be sent by either party by email as follows:

To Government on email address: .....

To the Emphyteuta on email address: .....

**Clause 31 – Interest**

31.1 Except as expressly provided herein, any amount unpaid by the Emphyteuta when due to the Government shall bear interest at the rate of eight per centum (8%) *per annum*, or such higher rate of interest as may be calculated in terms of Article twenty-six A (26A) of the Commercial Code, Chapter thirteen (13) of the Laws of Malta, with effect from the due date.

**Clause 32 – Dispute Settlement**

32.1 Without prejudice to the provisions of Article eleven.seven (11.7) above, the Parties agree and undertake that in the event that any dispute arises between them out of or in connection with this deed (including any issue regarding this deed's interpretation, validity, breach, cancellation, termination or suspension) or in connection with applicable law (excluding those provisions of any law establishing or otherwise contemplating an offence or the punishment therefor, which provisions and disputes arising between the parties in connection therewith shall be subject to the exclusive jurisdiction of the Maltese courts), they shall endeavour to use their best efforts to resolve their dispute amicably through a negotiated or mediated procedure. Any dispute arising as contemplated herein which cannot be settled amicably within ten (10) working days after receipt by one party of another party's written request for such amicable settlement shall, upon a referral by either party, be finally referred to and resolved by arbitration in accordance with the rules of the Malta Arbitration Centre as provided by the Arbitration Act (Chapter three hundred and eighty-seven [387] of the Laws of Malta) or any subsequent law amending or replacing such Act.

**Clause 33 – Severability**

33.1 If any part, clause or provision of this Deed shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court of law or other tribunal finds that any provision of

this Deed is invalid or unenforceable, but that by limiting such provision, it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

#### **Clause 34 – Transfer of Business (Protection of Employment) Regulations**

- 34.1 The Emphytheuta shall take over the business which has hitherto been operated from the Property by Mediterranean Offshore Bunkering Company Limited (C 6052) (hereinafter referred to as 'MOBC') and hence the Emphytheuta undertakes and binds itself to keep in employment all employees of MOBC (listed in the attached Document 'D') under the same terms and conditions and to observe the provisions relating to transfer of business as enshrined in article 38 of the Conditions of Employment Regulations Act, Chapter 452 of the Laws of Malta and the Transfer of Business (Protection of Employment) Regulations, Subsidiary Legislation 452.85:

Provided that it is being covenanted and agreed by the Parties that the business of MOBC consists in the operation of a fuel storage depot and bunkering installation and that all licences, permits and authorizations required for the business of MOBC are valid and up-to-date and not subject to any stop notice or compliance order, and that any fee payable in relation thereto have been paid to date. Furthermore it is being agreed that all assets used in the business of MOBC, including tanks, pipelines and commercial vehicles, are to be certified as being in good working order and in accordance with all applicable regulatory requirements. All documentation relating to the operation of the assets, including, amongst others, all maintenance manuals and schedules, inspection reports, safety and environmental reports, plans and schematics (but excluding any commercially sensitive data) are to be handed over to the Emphytheuta.

#### **Clause 35 - Governing Law**

- 35.1 This Deed shall be applied and construed in accordance with the laws of the Malta.

#### **Clause 36 – Costs**

- 36.1 All notarial fees and expenses as well as Duty on Documents payable upon publication of this Deed shall be at the charge of the Emphyteuta. Each party shall be responsible for the payment of the fees of its own advisors.

#### **Clause 37 – Final Provisions**

- 37.1 In security of the obligations assumed on this Deed in favour of the Government the Emphyteuta hypothecates in favour of the Government all its property, present and future in general, which the Government accepts and this besides the special privilege competent to the Government according to law. For the purpose of this

hypothecary inscription the Parties are establishing the sum of two hundred and sixty-four thousand and five hundred Euro (€264,500).

For the purposes of sub article twelve (12) of article five "A" (SA) of the Income Tax Act, the parties declare that they have declared to the undersigned notary all the facts that determine if the transfer is one to which Article five "A" SA applies and that are relevant for ascertaining the proper amount of tax chargeable or any exemption, including the value which, in their opinion, reasonably reflects the market value of the said property, if this value is higher than the consideration for the transfer. The parties make such declaration after the undersigned notary warned them about the importance of the truthfulness of this their declaration.

In terms of Legal notice four hundred and thirteen of the year two thousand and eleven (AL. 413/11), the emphyteuta declares that the Company is registered and is domiciled in Malta and that all its shareholders are of Maltese nationality and there is no intention of transferring the registered office of the Company to a foreign jurisdiction before having first filed its income tax returns.

Furthermore the Emphyteuta declares that it qualifies in such a way as to acquire the property above being transferred as it is registered in Malta, and all its shareholders are of Maltese nationality. The Emphyteuta is making such declaration after the undersigned notary warned them about the importance of the truthfulness of this their declaration.

For the purposes of the Duty on Documents and Transfers Act (Chapter Three Hundred and Sixty Four) (364) of the Laws of Malta) I the undersigned Notary declare that stamp duty due on the present deed amounts to \_\_\_\_\_ Euro (€\_\_\_\_\_).

For the purposes of the Income Tax Management Act (Chapter One Hundred and Twenty Three (123) of the Laws of Malta) I the undersigned Notary do hereby declare that no Provisional Capital Gains Tax is due by the Government as Government is exempt from the payment of Capital Gains Tax.

This deed of transfer is being executed following its approval by a parliamentary resolution dated \_\_\_\_\_, 2021 in terms of article 31(c) of Chapter 573 of the Laws of Malta.

This deed the import whereof has been explained by me to the parties in terms of law has been executed read and published at Valletta at the offices of the Lands Authority, the Auberge de Baviere in Saint Sebastian Street.

Before me, Doctor of Laws \_\_\_\_\_, a Notary Public duly admitted and sworn, have personally appeared and identified themselves according to law, by means of the hereunder mentioned official documents:

There appear on this deed –

Of the first part:

\_\_\_\_\_, \_\_\_\_\_ son of the \_\_\_\_\_ and of \_\_\_\_\_, born at \_\_\_\_\_ on the \_\_\_\_\_ and residing at \_\_\_\_\_, holder of identity card number \_\_\_\_\_ who is appearing on this deed for and on behalf of the **Lands Authority** and the \_\_\_\_\_, as duly authorized by virtue of Government Notice numbered \_\_\_\_\_, published in the Government Gazette of the \_\_\_\_\_, hereinafter called '**the Government of Malta**'. The related papers are marked Lands number \_\_\_\_\_.

Of the second part:

**Ricasoli Port Facility Limited** a company registered and incorporated in Malta with registration C number five eight six nine one (C58691) and having its registered address at 42, Spencer Hill, Marsa represented hereon by \_\_\_\_\_, (holder of Identity Card Numbered \_\_\_\_\_ as duly authorised by virtue of \_\_\_\_\_ (hereinafter referred to as "**Emphyteuta**");

The Government and the Emphyteuta are in this deed collectively referred to as the "**Parties**" and each one a "**Party**".

By means of the present the Parties refer to the deed dated the fourth (4th) of January of the year two thousand and thirteen (2013) in the acts of Notary Joseph Henry Saydon (hereinafter referred to as 'the Emphytheutical Deed') by virtue of which the Government had granted to the Emphyteuta the immovable property described hereunder for a period of thirty (30) years with effect from the date of publication of the said deed and subject to the terms and conditions stipulated in the said deed (hereinafter referred to as 'the Emphytheutical Grant'):

(i) the divided portion of land consisting of the Ricasoli Ditch and Ravelin within the limits of Kalkara measuring circa twenty-one thousand and one hundred thirty-four square meters (21,134m<sup>2</sup>), bounded on the North in part by Fort Ricasoli, on the East in part by a public open space and on the South West by public open space, which plot of land is shown edged in red and marked 'A' on a plan bearing reference PD two thousand and twelve\_four hundred and twenty-five (P.D 2012\_425) attached to the Emphytheutical Deed, referred to as the Ricasoli Ditch Facility, accessible from main gate marked one (1) having also two emergency gates marked three (3) and four (4); and

(ii) the site consisting of the Tank Cleaning Berth within the limits of Kalkara measuring circa five thousand four hundred and fifty square meters (5,450m<sup>2</sup>), bounded on the North in part by a public open space and in part by the foreshore, on the East in part by a public road and on the South West by the sea, which plot of land is shown edged in blue and marked 'B' on the above-mentioned plan bearing reference P.D 2012\_425 attached to the Emphytheutical Deed, referred to as the South Plant Facility, accessible from gate marked two (2); and

(iii) the bastions or fortifications forming part of the boundary of the sites described in (i) and (ii) above or adjacent thereto, in both cases marked in red and shown on a plan bearing reference two thousand and twelve\_four hundred and twenty five\_one (P.D 2012\_425\_1) annexed to the Emphytheutical Deed

as better described in the said deed (hereinafter referred to as 'the Emphytheutical Property').

And by virtue of this deed the Parties are hereby terminating the Emphytheutical Grant for all effects and purposes at law with immediate effect so that the Emphytheuta's title on the Emphytheutical Property is being herewith extinguished and terminated and the Emphytheutical Property, together with all its rights and appurtenances, including all improvements existing thereon (whether such improvements were made by the Emphytheuta or otherwise) is being formally returned to the Government *tale quale* and in its present state and condition:

Provided that the Emphytheuta is being allowed, free of charge, a period of three (3) months from date of signature of this deed to remove all plant and machinery which the Emphytheuta has installed at the Emphytheutical Property in order to relocate such plant and machinery to another site at Marsa which is being granted by the Government to the Emphytheuta for the same operations (hereinafter referred to as 'the Alternative Site') by means of a deed which is also being published today:

Provided further that, in the event that any permits and/or authorizations are required from any competent authorities for the removal of the plant and machinery from the Emphytheutical Property and the relocation thereof to the Alternative Site, the three-month period shall, on condition that the Emphytheuta files the necessary applications with the competent authorities in an expeditious and timely manner at its sole cost and expense, be extended accordingly up to such time that the removal of the plant and machinery and the relocation thereof to the Alternative Site can be executed in accordance with the acquired permits and/or authorizations.

The Parties do further covenant and agree that:

1. The Emphytheuta has no right to claim any compensation of whatsoever nature for the early termination of the Emphytheutical Grant and declares that it has been fully compensated for any loss or damage which it has sustained or may sustain as a result of

the early termination of the Emphytheutial Grant by means of the grant of alternative site in Marsa by title of temporary emphytheusis, and this by virtue of a deed which is being published contemporaneously with this deed.

2. All rights given by Government to the Emphytheuta by virtue of the Emphytheutical Grant, including the Berthing Rights emanating from Article nine (9) of the Emphytheutical Deed, are being terminated for all effects and purposes at law.

3. The Parties declare that they have no further claims against each other in relation to their respective rights and obligations as emanating from the Emphytheutical Deed and declare themselves to be fully satisfied for all effects and purposes at law.

This deed of termination is being executed following its approval by a parliamentary resolution dated \_\_\_\_\_, 2021 in terms of article 31(c) of Chapter 573 of the Laws of Malta.

This deed, the import whereof has been explained by me to the Parties in terms of law, has been executed, read and published at Valletta at the offices of the Lands Authority, the Auberge de Baviere in Saint Sebastian Street.

Before me, Doctor of Laws \_\_\_\_\_, a Notary Public duly admitted and sworn, have personally appeared and identified themselves according to law, by means of the hereunder mentioned official documents:

There appear on this deed –

Of the first part:

\_\_\_\_\_, \_\_\_\_\_ son of the \_\_\_\_\_ and of \_\_\_\_\_, born at \_\_\_\_\_ on the \_\_\_\_\_ and residing at \_\_\_\_\_, holder of identity card number \_\_\_\_\_ who is appearing on this deed for and on behalf of the **Lands Authority** and the \_\_\_\_\_, as duly authorized by virtue of Government Notice numbered \_\_\_\_\_, published in the Government Gazette of the \_\_\_\_\_, hereinafter called '**the Government of Malta**'. The related papers are marked Lands number \_\_\_\_\_.

Of the second part:

**Mediterranean Offshore Bunkering Company Limited**, a company registered and incorporated in Malta with registration C number six zero five two (C 6052) and having its registered address at Grand Harbour Bunker Terminal, Spencer Hill, Marsa represented hereon by \_\_\_\_\_, (holder of Identity Card Numbered \_\_\_\_\_ as duly authorised by virtue of \_\_\_\_\_ (hereinafter referred to as "**Emphyteuta**");

The Government and the Emphyteuta are in this deed collectively referred to as the "**Parties**" and each one a "**Party**".

By means of the present the Parties refer to the following:

(i) the deed dated the fifth (5th) of October of the year nineteen hundred and eighty-two (1982) in the acts of Notary Doctor Joseph Brincat (hereinafter referred to as 'the Deed of Transfer') by virtue of which the emphyteutical concession which the Government of Malta had granted to Sea Malta Company Limited relative to the property known as 'Grand Harbour Installation' at Blata l-Bajda (that is, the plot of land known as 'Spencer Gracis' in the limits of Marsa measuring approximately ten thousand six hundred and thirteen square meters (10,613 sq.m) bounded on the North, East and North-east by a public open square and on the South in part by a public open square and in part by a public road, including all buildings, installations, plant and equipment situated or installed therein, shown delineated in red on the attached plan marked Document 'A – hereinafter referred to as 'the Emphyteutical Property') by means of a deed of temporary emphytheusis dated the seventh (7th) of August of the year nineteen hundred and seventy-five (1975) in the acts of Notary Doctor Alexander Grech (hereinafter referred to as 'the Original Deed of Grant') was transferred to the Emphyteuta for the period

remaining from the original period of twenty-five (25) years to be reckoned from the Original Deed of Grant under the same terms and conditions; and

(ii) the deed dated the twenty-fifth (25th) of July of the year nineteen hundred and ninety-five (1995) in the acts of Notary Doctor Vincent Miceli by virtue of which the emphytheutical concession which had been granted to Sea Malta Company Limited by virtue of the Original Deed of Grant and transferred to the Emphytheuta by virtue of the Deed of Transfer which was due to expire on the seventh (7th) day of August of the year two thousand (2000) was granted to the Emphyteuta for a further period of twenty-five (25) years to be reconed from the said date, that is, up to the seventh (7th) day of August of the year two thousand and twenty-five (2025).

The title of temporary emphytheusis on the Emphytheutical Property enjoyed by the Emphytheuta is hereinafter referred to as 'the Emphytheutical Grant'. For the purposes of clarity and completeness, the Parties declare and agree that, by time, the superficial area of the Emphytheutical Property was reduced from ten thousand six hundred and thirteen square meters (10,613 sq.m) as originally granted to ten thousand two hundred and ninety-five square meters (10,295 sq.m.) as a result of the fact that an area measuring approximately three hundred and eighteen square meters (318 sq.m.) was removed therefrom for road formation purposes.

And by virtue of this deed the Parties are hereby terminating the Emphytheutical Grant for all effects and purposes at law with immediate effect so that the Emphytheuta's title on the Emphytheutical Property is being herewith extinguished and terminated and the Emphytheutical Property, together with all its rights and appurtenances, including all improvements existing thereon (whether such improvements were made by the Emphytheuta or otherwise) is being returned to the Government with immediate vacant possession in its present state and condition.

The Parties do further covenant and agree that:

1. The Emphytheuta declares and acknowledges for all effects and purposes at law that it has no right to claim any compensation of whatsoever nature for the early termination of the Emphytheutical Grant.
2. All rights given by Government to the Emphytheuta by virtue of the Emphytheutical Grant are being terminated for all effects and purposes at law.
3. The Parties declare that they have no further claims against each other in relation to their respective rights and obligations as emanating from the Emphytheutical Deed and declare themselves to be fully satisfied for all effects and purposes at law.

This deed of termination is being executed following its approval by a parliamentary resolution dated \_\_\_\_\_, 2021 in terms of article 31(c) of Chapter 573 of the Laws of Malta.

This deed, the import whereof has been explained by me to the Parties in terms of law, has been executed, read and published at Valletta at the offices of the Lands Authority, the Auberge de Baviere in Saint Sebastian Street.

## **Berthing Rights Agreement**

Today, the \_\_\_\_\_ (\_\_\_\_) of February, 2021

There appear on this Agreement –

Of the one part –

**The Authority for Transport in Malta**, an Authority established by virtue of the Authority for Transport in Malta Act (Cap. 499 of the Laws of Malta), represented hereon by its Chairman and Chief Executive Officer, Mr. Joseph Bugeja (holder of Maltese Identity Card Numbered \_\_\_\_\_), as duly authorised in terms of the afore-mentioned Act, hereinafter referred to as **‘the Authority’**;

And of the other part –

**Ricasoli Port Facility Limited**, a company registered and incorporated in Malta with registration C number five eight six nine one (C58691) and having its registered address at 42, Spencer Hill, Marsa represented hereon by \_\_\_\_\_ (holder of Maltese Identity Card Numbered \_\_\_\_\_), as duly authorised by virtue of \_\_\_\_\_, hereinafter referred to as **‘the Operator’**.

Hereinafter also each referred to as “a Party” and collectively and jointly referred to as ‘the Parties’.

### **Recitals**

(A) Whereas the Operator had been granted a site at Ricasoli, limits of Kalkara (hereinafter ‘the Ricasoli Site’) by virtue of a deed of temporary emphyteusis dated the fourth (4th) of January of the year two thousand and thirteen (2013) in the acts of Notary Joseph Henry Saydon (hereinafter referred to as ‘the Ricasoli Emphyteutical Deed’) to operate as a port reception facility as defined and better described in the Ricasoli Emphyteutical Deed;

(B) Whereas in terms of article nine (9) of the Ricasoli Emphyteutical Deed, the Operator was granted certain Berthing Rights on the area washed in orange on Drawing P.D. 2012\_425, which was attached to the Ricasoli Emphyteutical Deed;

(C) Whereas by virtue of a deed which is being published today, the Ricasoli Emphyteutical Deed is being terminated with immediate effect for all effects and purposes at law;

(D) Whereas by virtue of another deed which is also being published today (hereinafter referred to as the ‘Marsa Emphyteutical Deed’), the Operator is being granted a site at Marsa (hereinafter referred to as ‘the Marsa Site’, as better described in the said deed) by title of temporary emphyteusis for a period of twenty-six (26) years and under the terms and

conditions stipulated in the said deed, to operate as a port reception facility as well as a fuel storage depot and bunkering terminal (hereinafter referred to as 'the Permitted Uses');

(E) Whereas the Operator, in order to be able to carry out its operations, has requested the Authority to grant it certain berthing rights relative to New Flagstone Wharf (also known as Menqa quay) – hereinafter referred to as 'the Berth';

(F) Whereas the Authority has acceded to the Operator's request subject to the limitations, terms and conditions stipulated in this Agreement.

## **Agreement**

NOW, therefore, having premised the above, the Parties do hereby agree and covenant as follows:

1.1 The Authority hereby grants to the Operator, which accepts, priority but not exclusive berthing rights on the Berth, that is, the length of the quay indicated in red on the attached official navigation chart marked Document 'A'.

1.2 Consequently, the Operator shall have priority rights over other operators to make use of the Berth solely for the purposes of loading and discharge operations, but is specifically precluded from making use of New Flagstone Wharf as a lay-by berth at any time during the term of this Agreement.

1.3 The Operator shall make use of the Berth solely in line with the Permitted Uses and in strict observance of all applicable policies, laws and regulations as shall be in force from time to time, including but not limited to those relating to navigation, reporting formalities and pre-arrival notifications, port operations, safety and security, and pollution; and with any lawful directive given by the Authority from time to time further to its statutory powers.

1.4 This Agreement or the berthing rights or the Permitted Uses subject thereof are not transferrable and shall not be transferred to any third party without the prior written consent of the Authority. This is without prejudice to any assignment or transfer contemplated in terms of the Marsa Emphyteutical Deed.

1.5 The Operator shall not limit, restrict, hinder or otherwise interfere with the rights of third parties who have the use and enjoyment of the Berth or property, including the sea, adjacent thereto or in the vicinity thereof.

1.6 In the event that the Operator makes use, or attempts to make use, of the Berth in violation of the provisions stipulated in clauses 1.2 and 1.3, the Authority shall have the right to suspend or revoke the priority berthing rights which are being granted to the Operator in virtue of this Agreement. This is without prejudice to any other action that may be taken by the Authority in terms of law.

1.7 It is expressly being declared that the Authority is not granting under any title whatsoever any real or other personal rights over the Berth subject of this Agreement, or any

other property which is immovable by its nature or by reason of its object to which it refers thereon, adjacent to or connected to the Berth, except priority and not exclusive Berthing Rights as described. The ownership of the berth shall at all times vest in the Government of Malta.

1.8 The Operator is prohibited from carrying out any type of development or upgrading, whether of temporary or permanent nature, including the placing of structures, without the prior written authorisation of the Authority. Without prejudice to any direction given by the Authority, any such development or upgrading shall remain in favour of the Berth without any right for compensation on termination for whatsoever reason of this Agreement.

2.1 The berthing rights subject of this Agreement shall come into force on the date hereof and shall continue to apply, unless suspended or revoked in accordance with the terms of this Agreement, until the Marsa Emphyteutical Deed expires or is terminated in accordance with its terms and provisions.

2.2 The termination or dissolution of the Marsa Emphyteutical Deed for any reason will bring about the *ipso iure* extinguishment of this Agreement.

2.3 On the termination of this Agreement for whatever reason, the Operator shall remove at his sole risk and expense any property as directed by the Authority and shall hand back the vacant possession of the Berth to the Authority.

3.1 Without prejudice to acts, omissions and negligence imputable to the Operator, the Operator shall not be responsible for the maintenance and upkeep of the Berth. The Operator shall however be solely responsible for ensuring the applicable safety and security measures relative to his vessels and operations.

3.2 The Operator shall be obliged to pay the berthage fees as established in the Schedule to the Berthage and Anchorage Dues Regulations (Subsidiary Legislation 499.38) or as established by the Authority from time to time in accordance with the said Regulations.

4. No waiver by the Authority of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by the Operator.

5.1 Each Party hereto acknowledges that this Agreement contains the entire agreement between them with respect to any matter mentioned herein and that no other prior agreement or understanding pertaining to any such matter is effective. Furthermore, the Operator confirms that it has not relied upon any oral or written representation made to it by the Authority or by its representative or employees.

5.2 The Agreement may not be amended in any manner unless such amendment is in writing and signed by or in the name and on behalf of all the interested parties at the time of such amendment.

5.3 Any document attached to this Agreement shall be made part thereof for all intents and purposes.

6. Any notice, notification or other communication in connection with this Agreement shall be in writing and shall be delivered by hand or recorded delivery or by email transmission at the relevant address for service set out below, or to such other address in Malta as each Party may specify by notice in writing to the other Party:

To the Authority: \_\_\_\_\_

To the Operator: \_\_\_\_\_

7. The Authority represents and warrants to the Operator that it has full power and authority to enter and perform this Agreement which constitutes binding obligations on the Authority in accordance with its terms and provisions, and that any necessary authorisations and, or consent from any relevant third parties have been obtained and are in place.

8. The Parties undertake to cooperate fully with each other at all times to ensure the safe and secure Permitted Uses of the Berth. Both Parties shall provide each other with 24/7 contact numbers and immediately notify any change in them. Both Parties shall liaise with the designated personnel of the other Party regarding operational matters.

9. The Authority shall not be held responsible for any claims, compensation, loss or damages, including for loss of business, if it enforces any provisions of this Agreement, including suspending or revoking the grants therein.

10. The Operator shall indemnify and hold the Authority free and harmless from any and all liabilities, claims, loss, damages or expenses, including legal expenses, and from or against proceedings, resulting from the Permitted Uses of the Berth.

11.1 The Parties shall at all times comply with the obligations imposed by the General Data Protection Regulation and the Maltese law transposing the requirements of such, and any other law amending the same, as applicable.

11.2 Any and all information and documentation in connection with this Agreement which either Party may have imparted or may from time to time impart is proprietary and confidential, apart from that which is or through no fault becomes public knowledge and save where disclosure is required by law; and shall not be disclosed at any time during or after the termination of the Agreement except with the prior written authorisation of the Party owner of such information or documentation. This clause shall survive the termination of the Agreement.

11.3 The Authority may request from the Operator any statistical information concerning the Permitted Uses and the berthing rights and any other aspect concerning the implementation of this Agreement. The Operator shall comply with this request.

12. Neither Party shall be deemed to be in breach of this Agreement, or otherwise be liable to the other, by reason of any suspension or delay in performance, or non-performance, of any of its obligations hereunder to the extent that such delay or non-performance is due to any force majeure even of which it has notified the other party. The time for performance shall be extended accordingly.

13. The Parties agree and undertake that in the event that any dispute arises between them out of or in connection with this Agreement, they shall endeavour to use their best efforts to resolve their dispute amicably through a negotiated or mediated procedure. Any dispute arising as contemplated herein which cannot be settled amicably within ten (10) working days after receipt by one Party of another Party's written request for such amicable settlement shall, upon a referral by either Party, be finally referred to and resolved by arbitration in accordance with the rules of the Malta Arbitration Centre as provided by the Arbitration Act (Chapter three hundred and eighty-seven [387] of the Laws of Malta) or any subsequent law amending or replacing such Act:

Provided that any order which may have been given by the Authority shall continue to apply until such time that the arbitration procedures are concluded.

14. If any part, clause or provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court of law or other tribunal finds that any provision of this Deed is invalid or unenforceable, but that by limiting such provision, it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

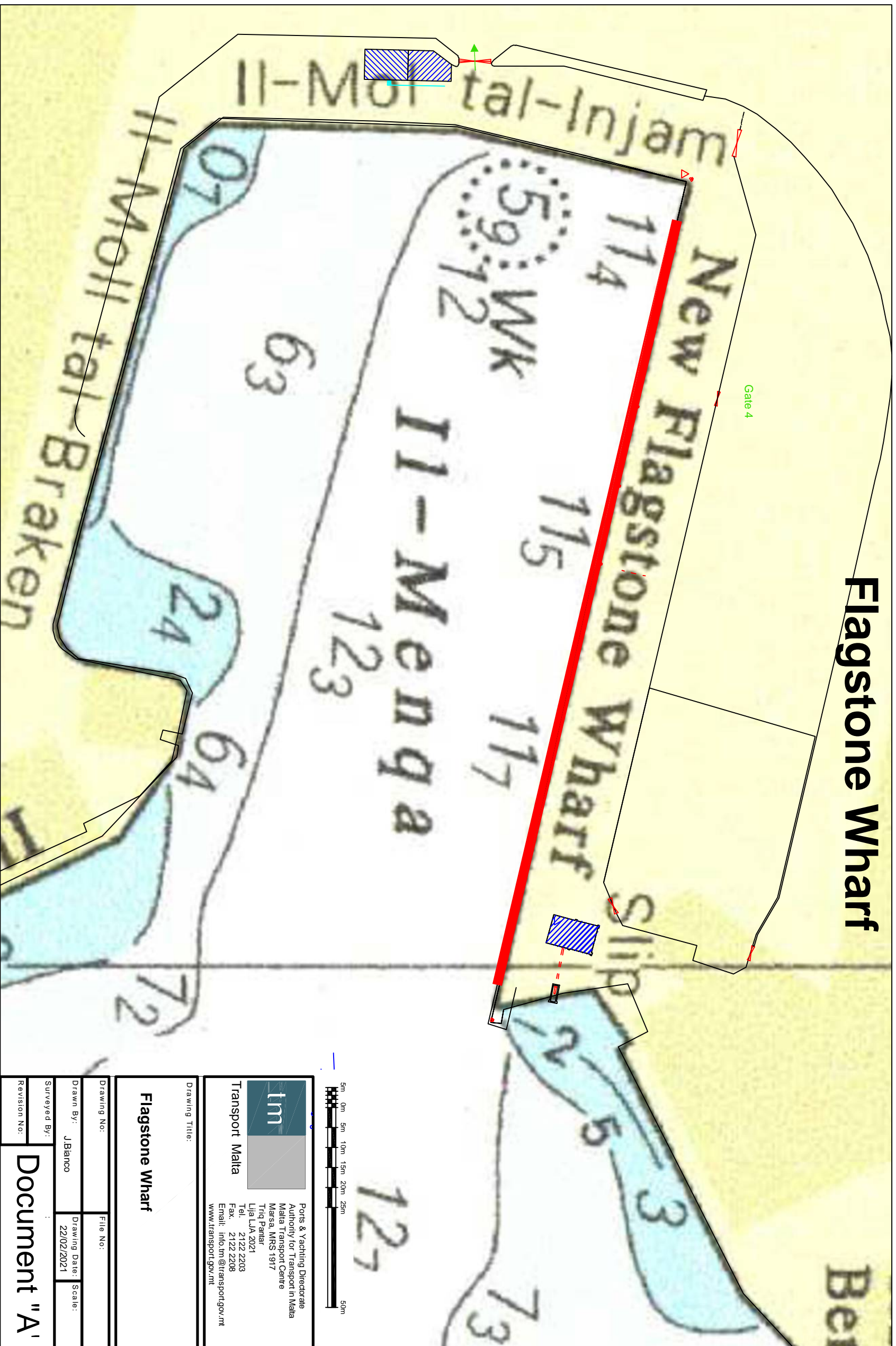
15. This Agreement shall be applied and construed in accordance with the laws of Malta and subject to the exclusive jurisdiction of the Maltese courts.


Signed in two (2) original copies.

.....  
**The Authority**

.....  
**The Operator**

# Flagstone Wharf



 <p>Ports &amp; Yachting Directorate          Authority for Transport in Malta          Malta Transport Centre          Marsa, MRS 1917          Triq Panar          Lija LJA 2021          Tel: 2122 2203          Fax: 2122 2208          Email: info.tm@transport.gov.mt          www.transport.gov.mt</p>	
<p>Drawing Title:  <b>Flagstone Wharf</b></p>	
Drawing No:	File No:
Drawn By: J.Bianco	Drawing Date: 22/02/2021
Scale:	
<p>Surveyed By:</p>	
<p>Revision No: <b>Document "A"</b></p>	