

## RIŻOLUZZJONI DWAR TRASFERIMENT TA' ART

### IL-MINISTRU GHALL-EKONOMIJA FONDI EWROPEJ U ARTIJET JIPPROPONI ILLI L-KAMRA TAD-DEPUTATI TAPPROVA DIN IR-RIŻOLUZZJONI:-

Billi huwa l-għan tal-Gvern li jkompli jkabbar l-ekonomija ta' pajjiżna u l-ħolqien ta' aktar opportunitajiet ta' xogħol ta' kwalita';

Billi dan il-Gvern irid ikompli jagħmel lil pajjiżna centru ta' attivita' marittima;

Billi dan il-Gvern irid ikompli jaħdem mas-settur privat u jixpruna aktar investment lejn pajjiżna;

Billi kontributor ewlieni għall-ekonomija ta' pajjiżna hu l-Port Hieles u l-attivitá kollha gġenerata minn;

Billi l-Port Hieles ta' Malta huwa l-port ewlieni għall-garr u ħatt tal-kontejners u jakkonta għal aktar minn 67% tal-merkanzija li tgħaddi minn pajjiżna;

Billi bħala gżira, l-attivitá tal-Port Hieles hi mhix biss ta' benefiċċju għall-ekonomija imma hija wkoll vitali għas-sigurta' tal-provvista ta' dak kollu essenzjali, partikolarment l-ikel u l-materja prima, hekk kif hu stmat li 85% tal-importazzjoni kollha ta' pajjiżna tgħaddi minn dan il-port;

Billi sa mill-privatizzazzjoni tal-Port Hieles fl-2004, il-Kumpanija Malta Freeport Terminals komplet tinvesti bis-sħiħ tant li għamlet lil Malta centru ewlieni ta' trasbord marittimu fil-Mediterran, b'konnessjonijiet essenzjali għall-importazzjoni u l-esportazzjoni ta' oġġetti essenzjali minn u lejn Malta b'aktar minn 110 port madwar id-dinja;

Billi din il-kumpanija qed tbassar tkabbir organiku ta' aktar minn 3.5% fil-mija, izda fl-istess waqt ninsabu konxji li l-kompetizzjoni minn portijiet oħra fil-Mediterran qed issir dejjem aktar ħarxa, u allura l-bżonn li nkomplu ninvestu fl-infrastruttura sabiex nassiguraw li Malta tibqa' fiċ-ċentru ta' din l-attivitá, u li fin-nuqqas ta' dan, nipperikolaw l-*istatus* tagħna bħala wieħed miċ-ċentri ewlenija tat-trasbord fil-Mediterran, b'riskju li wħud mil-linji tal-vapuri maġġuri ma jibqgħux jieqfu f'pajjiżna;

Billi l-Port Hieles qed jaffaċċja sfidi ta' spazju, u studji juru li b'din ir-rata ta' tkabbir, sa jkun laħaq il-kapaċita' massima tiegħu sas-sena d-dieħla 2024;

Fid-dawl ukoll tad-tendenza li l-vapuri futuri ser ikunu itwal minn 400 metru bħala dimensjoni bi *draft* li taqbez is-16-il metru, tikber il-ħtieġa ta' infrastruttura adekwata biex tilqa' għal dan kollu;

Illi allura, l-Malta Freeport Terminals kienet avvċinat lill-Gvern bil-ħsieb tagħha li jtkabbar Terminal 2 billi jiġi *squared off* permezz ta' *land reclamation* b'espansjoni ta' 176 metru fil-moll tat-tramuntana u 195 metru fil-moll tal-punent, b'spazju tgħdid a' aktar minn 30,000 metru kwadru, sabiex jippermetti li jibda jilqa' bastimenti ta' 24,000TEU jew aktar, liema proġett hu kopert b'permess tal-Awtorita' tal-Ippjanar PA 2217/09, imgedded fl-2018 (PA 9495/17);

Billi dan il-proġett jinvolvi spiza sinifikanti ta' aktar minn Eur 103.8 miljun, li Eur 55 miljun minnhom jirrelataw ma' xoghlijiet infrastrutturali, bil-bqija tat-Eur 48 miljun marbuta ma' xiri ta' apparat għdid u infrastruttura relatata;

U billi gie aċċertat li dan il-proġett ma jstax ikun kummerċjalment vijabbli li jsir mill-Malta Freeport Terminals waħedha u li allura jirrikjedi fondi pubbliċi għal madwar nofs l-ispiża relatata mal-parti infrastrutturali;

U billi ġie aċċertat li din l-għajnuna hi konformi mar-regolamenti applikabbli tal-Unjoni Ewropea rigward *State Aid*;

U billi b'dan il-proġett il-Gvern għaraf ukoll opportunita' li permezz tagħha, attivita' fil-Port Hieles li setgħet kienet ta' disturbanza akbar għar-residenti tal-madwar, tidbiegħed aktar 'il barra, sabiex jonqos l-inkonvenjent għar-residenti;

Allura l-Gvern qabel li jiffinanzja parzjalment dan il-proġett b'għajnuna ta' Eur 28 miljun, liema somma hi l-ekwivalenti għall-*funding gap* stmata għal dan il-proġett, u dan isir billi l-Malta Freeport Corporation, li hi s-sid tal-art, tnaqqas l-ekwivalenti somma mill-kirja li l-Malta Freeport Terminals tħallas lilha, fuq medda ta' seba' snin, u li pero' dan isir biss taht numru ta' kundizzjonijiet li jridu jiġu osservati, fosthom li l-kumpanija trid:

1. Tirrinunzja għad-dritt li tinstalla *Quay Cranes* fl-aktar parti viċin ir-residenti fuq Terminal 1. Dan ifisser li b'hekk tingħalaq darba għal dejjem il-possibilita' li ssir attivita' fuq it-Terminal l-aktar viċin għar-residenti ta' Birzebbugia, filwaqt li l-massa tal-attivita' tiġi ttrasferita fuq il-parti l-ġdida li hi sew aktar imbiegħda mir-residenti;
2. Li kwalunkwe attivita' ta' *Roll-on Roll-off* ma ssirx fil-ħinijiet ta' tard bil-lejl jew fis-sigħat bikrin ta' filgħodu;
3. Li tikkontribwixxi s-somma ta' Eur 300,000 bħala *Corporate Social Responsibility* li jintużaw għal skopijiet soċjali;

Għalhekk, peress illi l-Gvern tar-Repubblika ta' Malta jista' jittrasferixxi jew jagħti artijiet bi kwalunkwe titolu jkun li jkun ai termini tal-Artikolu 31(ċ) tal-Att Dwar l-Artijiet tal-Gvern, Kapitolu 573 tal-Liġijiet ta' Malta, skont rizzoluzzjoni speċjali tal-Kamra tad-Deputati li tkun fis-seħħ fil-waqt tat-trasferiment.

Huwa b'dan rizzolut illi

1. L-art li ser tiġi reclaimed (immarkata XX) liema art tiffirma parti minn port, u għalhekk mhux meħtieġ li tiġi deklassifikata skont ir-raba' skeda tal-Kapitlu 16 tal-liġijiet ta' Malta, u li ladarba tiġi reclaimed tikkwalifika bħala 'Port Hieles' ai termini tal-Att Dwar il-Portijiet Hiesla Ta' Malta (Kap. 334 tal-Liġijiet ta' Malta) u issir propjeta' assoluta tal-Gvern ta' Malta, tgħaddi b'titolu ta' propjeta' assoluta lill-Malta Freeport Corporation Limited (C-9353), bħala 'l-Awtorita' hekk kif imfissra ai termini tal-istess Att Dwar il-Portijiet Hiesla Ta' Malta, sabiex l-imsemmija Malta Freeport Corporation Limited tamministra din l-art esklussivament skond is-setgħat mogħtija lilha permezz tal-Artikolu 6 tal-Att Dwar il-Portijiet Hiesla Ta' Malta, u partikularment sabiex din tingħata b'titolu ta' kera lill-operatur tal-Port Hieles, li illum huwa Malta Freeport Terminals Limited (C-27581), u dan skond il-pattijiet u l-kundizzjonijiet imsemmija fl-abbozz ta' kuntratt hawn anness u mmarkat 'Dok A', li jinsab imqiegħed fuq il-Mejda tal-Kamra.

IL-MINISTRU GHALL-EKONOMIJA, FONDI EWROPEJ U ARTIJIET

Onorevoli Silvio Schembri

Enc. Abbozz tal-kuntratti  
Pjanta 007294

DATED \_\_\_\_\_ 2023

FOURTH AMENDMENT TO  
LICENCE GRANTED BY  
MALTA FREEPORT CORPORATION LIMITED  
GUARANTEED BY  
THE GOVERNMENT OF MALTA  
TO  
MALTA FREEPORT TERMINALS LIMITED  
GUARANTEED BY  
CMA CGM  
AND  
YILDIRIM HOLDING A. S.

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FOURTH AMENDMENT TO  
LICENCE RELATING TO THE OPERATION AND  
MANAGEMENT OF MALTA FREEPORT,  
PORT OF MARSAXLOKK, MALTA

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**THIS FOURTH AMENDMENT IS MADE TO THE LICENCE** granted on the 5<sup>th</sup> day of October 2004 as amended on the 4<sup>th</sup> day of February 2008 and on the 4<sup>th</sup> day of November 2011 and on the 14<sup>th</sup> August 2017

**BY:**

- (1) **MALTA FREEPORT CORPORATION LIMITED** (registered under the Companies Act with number C9353) (the “**Licensor**”) represented by [•], bearer of identity card number [•], as duly authorised;

**GUARANTEED BY:**

- (2) **THE GOVERNMENT OF MALTA** (the “**Government**”) represented by [•], bearer of identity card number [•], as duly authorised;

**TO:**

- (3) **MALTA FREEPORT TERMINALS LIMITED** (registered under the Companies Act with number C27581) (the “**Licensee**”) represented by [•], bearer of identity card number [•], as duly authorised;

**GUARANTEED BY:**

- (4) **CMA CGM**, a société anonyme incorporated in France (registered no. 562 024 422 R.C.S) (“**CMA CGM**”) represented by [•], holder of [passport [•]], as duly authorised; and
- (5) **YILDIRIM HOLDING A. S.**, a joint stock company organised under the laws of Turkey, registered with the Registry of Commerce of Gemlik (Turkey) under identification number 4455 (“**Yildirim**”) represented by [•], holder of [passport [•]], as duly authorised;

CMA CGM and Yildirim are together referred to as the “**Guarantors**”

Is entered into today the \_\_\_\_\_ 2023.

**WHEREAS:**

- (A) The Licensor (with obligations guaranteed by the Government) and the Licensee (with obligations guaranteed jointly by CMA CGM and Yildirim) are parties to a licence agreement originally entered into on the 5<sup>th</sup> October 2004, and amended on the 4<sup>th</sup> February 2008, 4<sup>th</sup> November 2011 and 14<sup>th</sup> August 2017 (the “**Licence**”) by virtue of which the Licensee was granted a license in terms of the Malta Freeports Act (Chapter 334 of the Laws of Malta) to operate from the Site (as such term is defined in the Licence) occupied by the Licencee pursuant to the Lease (as such term is defined in the Licence);
- (B) Further to discussions between the Licensee and the Government, the Licensee is willing to carry out land reclamation works in respect of the North and West quays of Terminal 2 at the Site (the “**Project**”) pursuant to the option granted to the Licensee as contemplated *inter alia* in terms of Recital D to the Licence Amendment Agreement entered into on the 4<sup>th</sup> February 2008;
- (C) The Project is not commercially feasible for the Licensee and the Government has agreed, in accordance with the terms of Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union, to finance the funding gap of the Project through a deduction of the rent due to the Licensor (in its capacity as lessor of the Site and the set-off mechanism agreed between the Licensee and the Licensor in the Project Supplemental Lease Agreement (as such term is defined below);
- (D) The Licensee and the Licensor (in its capacity as lessor of the Site) have today entered into a notarial deed to supplement the Lease so as to regulate *inter alia* the manner in which the Project shall be carried out and financed (the “**Project Supplemental Lease Agreement**”);
- (E) In connection with the Project, the Licensor and the Licensee wish to enter into this fourth amendment agreement; and
- (F) The Guarantors and the Government appeared on the Licence as amended and in terms of Clauses 28 and 29 thereof to guarantee the obligations of the Licensee and the Licensor respectively, and are appearing on

this fourth amendment agreement in order to guarantee the further obligations assumed by the Licensor and the Licensee in terms of this fourth amendment agreement.

**NOW THEREFORE**, the Licensor and the Licensee hereby agree as follows:

## **1. DEFINITIONS**

Capitalised terms used in this fourth amendment agreement, including the preambles, shall, unless otherwise stated have the same meanings ascribed thereto in the Licence and, or the Project Supplemental Lease Agreement.

## **2. THE PROJECT**

2.1 The Licensor is hereby giving its consent to the Licensee to carry out the Project according to the Lease and the Licensee hereby undertakes and obliges itself to carry out the Project, and:

- (i) For the purposes of Clause 5.4 (ii) of the (first) licence amendment agreement relating to the Licence entered into on the 4<sup>th</sup> February 2008 it is declared that the Project shall not qualify as one of the Approved Licence Assets for the purposes of the Licence and that accordingly Part 7 of Schedule 7 of the Licence (“Part 7 Residual Value of Licensee Investments”) as amended by the the (first) licence amendment agreement relating to the Licence entered into on the 4<sup>th</sup> February 2008 shall not apply for the purposes of determining the residual value of the Project; and
- (ii) The Project shall be fully amortised over a period of twenty-five (25) years as calculated in the ‘funding gap’ analysis carried out by the Government for the purposes of determining the Lessor’s Contribution towards the Project in compliance with the EU State aid rules.

2.2 The Licensor and the Licensee acknowledge and declare that the Site granted on lease by the Licensor to the Licensee will, following the completion of the Project, be enlarged to a total superficial area of approximately 813,250 square metres (sq.m.), such that pursuant to the notarial deed in the records of Notary Public Dr. Pierre Attard of the 4<sup>th</sup> February 2008 (the “**Second Deed**”), the two additional areas within the Freeport Zone shown shaded in light blue on the plan annexed as a document marked with the letter “D” to the Second Deed, to be reclaimed from the sea, were included in the Lease as an integral part of the Site for the purposes outlined in the Licence and that accordingly the Licensor and the Licensee hereby agree that the second paragraph of Clause 4.1 of the Memorandum of Agreement between the Licensor and the Licensee in relation to ‘A Project for the Extension of the Malta Freeport Terminals’ dated 7<sup>th</sup> December 2007 shall be considered deleted.

## **3. AMENDMENTS TO LICENCE PROVISIONS**

3.1 Amendment to Clause 1.1 of the Licence

In Clause 1.1 of the Licence, the definition of the term “Lease” is hereby deleted and substituted by the following new definition:

“**Lease**” means the lease agreement dated 5<sup>th</sup> October 2004 entered into by the Licensor and the Licensee relating to the Site as amended and supplemented by virtue of a lease amendment agreement dated 4<sup>th</sup> February 2008, a lease amendment agreement dated 4<sup>th</sup> November 2011, a supplemental lease agreement and amendment entered into on the 14<sup>th</sup> August 2017 and a supplemental lease agreement entered into on [\_\_\_\_\_].

**4. OTHER TERMS AND CONDITIONS UNALTERED**

The parties agree that all other terms and conditions of the Licence which remained unaltered by virtue of this fourth amendment agreement shall continue to apply *mutatis mutandis* between them.

For the avoidance of doubt this fourth amendment agreement shall be deemed to be a Licence Document as defined in and for all intents and purposes of the Licence.

**THIS AGREEMENT** has been duly executed on the date first stated above.

\_\_\_\_\_  
Name: [•]  
*For and on behalf of*  
**Malta Freeport Corporation Limited**  
The Licensor

\_\_\_\_\_  
Name: [•]  
For and on behalf of  
**Malta Freeport Terminals Limited**  
The Licensee

\_\_\_\_\_  
Name: [•]  
*For and on behalf of*  
**The Government of Malta**

\_\_\_\_\_  
Name: [•]  
For and on behalf of  
**CMA CGM**  
As joint guarantor of the Licensee

\_\_\_\_\_  
Name: [•]  
For and on behalf of  
**Yildirim Holding A. S.**  
As joint guarantor of the Licensee

No.

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

Of the one part:

< > who is appearing on this Deed in the name for and on behalf of **MALTA FREEPORT CORPORATION LIMITED**, a limited liability company registered under the Companies Act, Chapter three hundred and eighty six (Cap 386) of the Laws of Malta, with letter C numbers nine three five three (C9353) (hereinafter referred to as the "**Lessor**") as duly authorised.

Of the other part:

< > who is appearing on this Deed in the name for and on behalf of **MALTA FREEPORT TERMINALS LIMITED**, a limited liability company registered under the Companies Act, Chapter three hundred and eighty six (Cap 386) of the Laws of Malta, with letter C numbers two seven five eight one (C27581) (hereinafter referred to as the "**Lessee**") as duly authorised.

In this Deed, the Lessor and Lessee are collectively referred to as the "**Parties**".

## **1. Definitions**

1.1 Unless the context otherwise requires and in addition to other terms defined elsewhere in this Deed, in this Deed:

"**Act**" means the Malta Freeports Act, Chapter three hundred and thirty four (Cap 334) of the Laws of Malta.

Supplemental to Lease Agreement made by Deed in the Records Notary Pierre Attard of the 5<sup>th</sup> October, 2004 as amended by Deed in the Records Notary Pierre Attard of the 4<sup>th</sup> February, 2008 as further amended by Deed in the Records Notary Pierre Attard of the 4<sup>th</sup> November 2011 and further amended by Deed in the Records Notary Pierre Attard of the 14<sup>th</sup> August 2017.

**“Additional Rent”** means USD 12.65 per square metre per annum, payable by the Lessee to the Lessor in respect of each square metre of the Designated Site, which shall become payable in addition to the Rent, in accordance with this Agreement.

**“Adverse Weather Conditions”** means:

- (i) in relation to the Quay Wall Works, waves of one (1) metre or more in height and/or winds or gusts of Force 7 or more on the Beaufort Scale; and
- (ii) in relation to the Other Works, winds or gusts of Force 7 or more on the Beaufort Scale.

**“Architect”** means an independent warranted architect authorised to exercise such profession in Malta, who is engaged by the Lessee with the prior written approval of the Lessor to perform such functions as set out in this Deed and who is remunerated by the Lessee.

**“Base Penalty”** means a daily penalty payable by the Lessee to the Lessor as a penalty for mere delay and which is not subject to abatement under article 1122 of the Civil Code (Chapter 16 of the laws of Malta), having a value equivalent to eighth thousand Euro (€8,000).

**“Completion Certificate”** has the meaning given to the term in Clause three point three (3.3) of this Deed.

**“Completion Date”** means the fifth day of October of the year two thousand and four (05/10/2004).

**“Designated Site”** means the area within the Freeport Zone shown shaded in light blue on the plan hereto annexed as a document marked with the letter “A”, to be reclaimed from the sea and which is expected to measure approximately thirty thousand square metres (30,000 sq.m.), which is bounded on the south and west by the remainder of the Port Site and on the north and east by the sea, and which when



reclaimed and developed shall form part of the Port Site, and more specifically part of the terminal in the Port Site known as Terminal Two.

**“this Deed”** means this notarial deed including its attachments.

**“First Deed”** means the notarial deed in \_\_\_\_\_ of the fifth day of October of the year two thousand and four (5/10/2004) entered into by the Parties.

**“Fourth Deed”** means the notarial deed in \_\_\_\_\_ of the fourteenth day of August of the year two thousand and seventeen (14/08/2017) entered into by the Parties.

**“Fourth Licence Amendment Agreement”** means the agreement of even date hereof by virtue of which the Parties and the Government of Malta further amended the Licence, a copy of which is hereto annexed as a document marked with the letter “B”.

**“Infrastructural Cost”** has the meaning given to the term in Recital two point two (2.2) of this Deed.

**“Initial Delay Period”** means the period of six (6) calendar months commencing on the day immediately following the Longstop Date, as may be extended (in accordance with the provisions of this Deed) for reasons of ForceMajeure and/or Adverse Weather Conditions.

**“Interest”** means interest chargeable at the rate applied by the European Central Bank on marginal lending facility at the time the said interest accrues in terms of this Deed.

**“Lease”** means the lease agreement made by virtue of the First Deed as amended by virtue of the Second Deed, the Third Deed and the Fourth Deed, by virtue of which four deeds the Lessor granted the Site by title of lease to the Lessee

for sixty five (65) years from the Completion Date; and pursuant to this Deed shall mean, the lease agreement made by virtue of the First Deed as amended by virtue of the Second Deed, the Third Deed, the Fourth Deed and as further subject to the terms and conditions contained in this Deed.

**“Lessor’s Contribution”** means the sum of twenty-eight million Euros (€28,000,000), payable in accordance with, and subject to, the provisions of this Deed.

**“Licence”** means the licence issued on the fifth day of October of the year two thousand and four (5/10/2004) in terms of the Act and granted by the Lessor (in its capacity as Licensor) to the Lessee, as amended by the Licence Amendment Agreement and the Second Licence Amendment Agreement and the Third Licence Amendment Agreement and the Fourth Licence Amendment Agreement.

**“Licence Amendment Agreement”** means the agreement dated the fourth day of February of the year two thousand and eight (4/2/2008) by virtue of which the Parties and the Government of Malta amended the Licence, a copy of which agreement is annexed as a document marked with the letter “C” to the Second Deed.

**“Longstop Date”** means the date being twenty-four (24) calendar months after the date of this Deed, as the same period may be extended (in accordance with the provisions of this Deed) for reasons of ForceMajeure and/or Adverse Weather Conditions.

**“Other Works”** means those works required to be performed as part, and in pursuance, of the Project, other than the Quay Wall Works.

**“Project”** has the meaning given to the term in Recital two point two (2.2) of this Deed.

**“Quay Wall Works”** means those works required to be performed as part of the Project and which: (i) consist of the construction of the quay wall which is to eventually form part of the Designated Site, (ii) are carried out in and/or from the sea; and (iii) are affected by water currents and swells, but shall exclude any backfilling or similar works for land reclamation purposes.

**“Rent”** means the sums per annum set out in the appendix annexed to the Third Deed as a document marked with the letter “D”, a copy of which is annexed to this Deed as a document marked with the letter “C”.

**“Second Deed”** means notarial deed in \_\_\_\_\_ of the fourth day of February of the year two thousand and eight (4/2/2008) entered into by the Parties.

**“Second Licence Amendment Agreement”** means the agreement of the fourth day of November of the year two thousand and eleven (4/11/2011) by virtue of which the Parties and the Government of Malta further amended the Licence, a copy of which agreement is annexed as a document marked with the letter “C” to the Third Deed.

**“Site”** means the Port Site and the Freeport Centre.

**“Third Deed”** means notarial deed in \_\_\_\_\_ of the fourth day of November of the year two thousand and eleven (4/11/2011) entered into by the Parties.

**“Third Licence Amendment Agreement”** means the agreement of the fourteenth day of August of the year two thousand and seventeen (14/08/2017) by virtue of which the Parties and the Government of Malta further amended the Licence, a copy of which agreement is annexed to the Fourth Deed as a document marked with the letter “D”.

**“Works Commencement Date”** means the date on which works in pursuance of the Project are first carried out or

otherwise undertaken, on or after the date of this Deed, by and/or on behalf of the Lessee.

**“Works Contract”** means the contract entered into by and between the Lessee (or any person on behalf of or for the benefit of the Lessee) and the main contractor engaged to perform works in pursuance of the Project, which may be a turnkey contract.

1.2 Unless otherwise stated, all other capitalized terms used in this Deed which are not defined in Clause one point one (1.1) above, if:

i. defined in the First Deed, shall have the same meaning given to them in the First Deed and if modified by the Second Deed or the Third Deed or the Fourth Deed shall have the same meaning as modified by virtue of the Second Deed or the Third Deed or the Fourth Deed, as the case may be; and

ii. defined in the Licence, shall have the same meanings given to them in the Licence and if modified by the Licence Amendment Agreement or the Second Licence Amendment Agreement or the Third Licence Amendment Agreement or the Fourth Licence Amendment Agreement shall have the same meaning as modified by virtue of the Licence Amendment Agreement or the Second Licence Amendment Agreement or the Third Licence Amendment Agreement or the Fourth Licence Amendment Agreement, as the case may be.

## **2. Recitals:**

2.1 The Parties hereby premise, acknowledge and agree that:

(A) On the fifth day of October of the year two thousand and four (05/10/2004), the Lessor granted to the Lessee a licence in terms of the Act, guaranteed by the Government of Malta, to operate the terminal within the Site

(as the term is defined in First Deed) and subsequently by virtue of the First Deed, the Parties entered into the Lease under the terms and conditions set out in the First Deed.

(B) On the fourth day of February of the year two thousand and eight (04/02/2008), the Parties, amongst others, entered into the Licence Amendment Agreement and amended the Licence and subsequently by virtue of the Second Deed, the Parties amended the First Deed and thereby modified the Lease and *inter alia*:

i. the Site granted on lease by the Lessor to the Lessee was enlarged to a total superficial area of approximately eight hundred and thirteen thousand two hundred and fifty square metres (813,250 sq.m.), such that pursuant to the Second Deed, the two additional areas within the Freeport Zone shown shaded in light blue on the plan annexed as a document marked with the letter "D" to the Second Deed, which shall be reclaimed from the sea, were included in the Lease as an integral part of the Site for the purposes outlined in the Licence;

ii. the term of the Lease was extended by an additional five (5) years for the period of thirty-five (35) years from Completion Date; and

iii. the Rent (as originally agreed in the First Deed) was revised to the sums per annum set out in the appendix annexed to the Second Deed as a document marked with the letter "E".

(C) On the fourth day of November of the year two thousand and eleven (04/11/2011), the Parties, amongst others, entered into the Second Licence Amendment Agreement and further amended the Licence and subsequently by virtue of the Third Deed, the Parties further modified the Lease and in addition to other amendments to the Lease they also adjusted and increased the Rent for certain years of the Lease and substituted the document marked with

the letter "E" to the Second Deed with the document marked with the letter "D" annexed to the Third Deed (a copy of which is annexed to this Deed as a document marked with the letter "C"); which Rent is the current applicable Rent of the Lease.

(D) On the fourteenth day of August of the year two thousand and seventeen (14/08/2017), the Parties, amongst others, entered into the Third Licence Amendment Agreement and further amended the Licence and subsequently by virtue of the Fourth Deed, the Parties further modified the Lease and in addition to other amendments to the Lease they also extended the term of the Lease for an additional term commencing on the day following the expiry of the thirty-fifth (35<sup>th</sup>) year after the Completion Date and expiring thirty (30) years thereafter, therefore expiring on the fifth day of October of the year two thousand sixty nine (05/10/2069).

(E) On the day of this Deed the Parties, the Guarantors (as the term is defined in the Fourth Licence Amendment Agreement) and the Government of Malta are also entering into the Fourth Licence Amendment Agreement wherein the Lessor *inter alia* is approving, and the Lessee is undertaking to carry out, the Project.

2.2 The Lessee declares that it wishes to reclaim the Designated Site from the sea and to develop the reclaimed land to square-off and extend the terminal known a Terminal Two within the Port Site (such that the Designated Site shall form part of the Port Site) and thereby extend the North Quay of Terminal Two by approximately two hundred metres (200m) and the West Quay of Terminal Two by approximately one hundred and ninety two metres (192m) (in this Deed referred to as the "**Project**") and that the lowest bid that meets the specifications stipulated in the international tender issued by the Lessee for the completion of the civil works component of the infrastructural works of the Project is fifty five million four hundred thousand euro (EUR55,400,000) (in this Deed

referred to as the “**Infrastructural Cost**”). The Lessee shall enter into the Works Contract for the Project on or before the Works Commencement Date and shall, by not later than fifteen (15) days from the Works Commencement Date, provide a copy of the Works Contract to the Lessor.

2.3 The Parties declare that, subject to the provisions of this Deed, the Lessor shall contribute to the Infrastructural Cost through the Lessor’s Contribution, which Lessor’s Contribution is compliant with the EU State aid rules insofar as it represents the funding gap of the Project in terms of Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union and that the Lessor’s Contribution shall be made on the basis of the deduction of the Rent payable by the Lessee to the Lessor for each year over a period of seven (7) years from the first invoice for Rent issued by the Lessor after the Works Commencement Date, in the manner stated in this Deed and subject to the other terms and conditions of this Deed.

3. **Now therefore**, by virtue of this Deed, the Parties agree as follows:

3.1 The Lessee hereby undertakes to implement and complete the Project at its sole risk and to punctually settle all invoices and costs related thereto, as and when they arise. The Lessee shall, on or before the Works Commencement Date, engage an Architect and retain an Architect engaged throughout the performance of the works relating to the Project until a Completion Certificate is issued by such Architect. On or before the fifteenth (15<sup>th</sup>) day of every calendar month (each such calendar month a ‘reporting period’), from the month following the month on which this Deed is published, and until the completion of the Project, the Lessee shall submit to the Lessor a written progress report. Each such monthly report shall be submitted in a format reasonably acceptable to the Lessor and shall describe the

status of the works from the Works Commencement Date, the works carried out during the relevant reporting period, the work planned for the next reporting period, as well as a description of any issues that could result in additional time, delays and/or anticipated concerns, together with the action to be taken by the Lessee to address the same.

3.2 The Lessor promises and undertakes to contribute to the Infrastructural Cost through the Lessor's Contribution.

3.3 The Parties agree that the Lessor's Contribution shall become due and payable (such payment to be made in accordance with Clause 3.4) by the Lessor to the Lessee when the Lessee shall provide the Lessor with a report prepared and certified by the Architect (i) setting out a bill of quantities and related drawings of the works constituting the Project, a description of the works so carried out and a list of the costs incurred in connection thereto; and (ii) confirming that the Project is completed and operations therefrom may commence (hereinafter referred to as the "**Completion Certificate**") and the Lessor shall be bound by such Completion Certificate.

3.4 The Parties further agree that by way of modality for the payment and settlement of the Lessor's Contribution, this shall take place as follows:

i. notwithstanding that a Completion Certificate may not yet have been issued, as well as after the issuance of the said Completion Certificate, each year for seven (7) years starting from the first invoice for Rent issued by the Lessor after the Works Commencement Date, the Rent due by the Lessee to the Lessor shall be reduced by the sum of four million Euros (€4,000,000) each year (hereinafter, each annual deduction is referred to as the "**Annual Deducted Amount**" and when reference is made to more than one annual deduction as the "**Annual Deducted Amounts**"). Accordingly, each quarterly invoice issued by the Lessor for the payment of Rent shall reflect a deduction equivalent to



one-fourth ( $\frac{1}{4}$ ) of the Annual Deducted Amount, being one million Euros (€1,000,000) (each a “**Quarterly Deduction**”). Given that the Rent is payable in United States Dollars (“USD”), each Quarterly Deduction shall be converted from Euro to USD using the mid-market exchange rate as published by the European Central Bank on the date on which the relevant invoice for Rent is issued by the Lessor (or if none is issued on that day, the latest issued before that day) and the Lessee shall pay the Rent as indicated in the relevant invoice (and therefore net of the relevant Quarterly Deduction converted to USD), in accordance with the terms of the Lease;

ii. subject to clause 3.5.1, upon receipt by the Lessor of the Completion Certificate, the Annual Deducted Amounts applied until that date shall be immediately set-off against the Lessor’s Contribution, and the subsequent Annual Deducted Amounts shall be taken on account of the Lessor’s Contribution until it has been settled in full and the Parties agree that the set-off contemplated in this clause shall take priority over any other possible set-off between the Parties for any other sums due to each other;

iii. any penalties for delay which the Lessee may become liable to pay in terms of this Deed (including, without limitation any Base Penalties) shall be payable by the Lessee to the Lessor on a monthly basis, upon the Lessor issuing an invoice to the Lessee for the payment of the relevant penalty/ies.

3.5.1 (i) The Parties hereby agree that if the Project is not completed by the Longstop Date, the Lessee shall pay to the Lessor the Base Penalty for each day of delay during the Initial Delay Period.

(ii) Without prejudice and in addition to the Force Majeure provisions of the Licence, the Longstop Date shall be extended as follows: (a) by two and a half (2.5) days for each day that the Quay Wall Works are suspended due to Adverse Weather Conditions; and (b) by one (1) day for each day that

the Other Works are suspended due to Adverse Weather Conditions, provided that if on the same day both the Quay Wall Works and the Other Works are suspended due to Adverse Weather Conditions, the Longstop Date shall only be extended by two and a half (2.5) days. The Lessee shall give the Lessor prompt notification in writing each time the Quay Wall Works and/or the Other Works are suspended due to Adverse Weather Conditions, providing reasonable evidence of such Adverse Weather Conditions.

(iii) After the Longstop Date, the Initial Delay Period shall also be extended in the same manner set out in Clause 3.5.1(ii) above, subject to the same obligations on the Lessee to give the Lessor prompt notification in writing, and evidence, of such occurrence(s).

(iv) If the Project remains uncompleted and the Completion Certificate is not yet issued by the expiry of the Initial Delay Period, as extended in accordance with Clause 3.5.1(iii), the Architect shall determine, as an independent expert and within one (1) week from the expiry of the Initial Delay Period, the percentage status of completion of the Project (hereinafter the "**Expert Report**").

(v) The amount of the Lessor's Contribution shall then be automatically reduced by a percentage equivalent to the percentage amount of the Project yet to be completed as at the expiry of the Initial Delay Period as determined by the Expert Report, and the Annual Deducted Amounts shall be adjusted accordingly.

(vi) The Lessee shall pay to the Lessor the Base Penalty for each day from the day immediately following the the expiry of the Initial Delay Period, until the Completion Certificate is issued by the Architect;

Provided that if the Project remains uncompleted and the Completion Certificate is not yet issued on the day falling six (6) calendar months following the the expiry of the Initial

Delay Period, the obligation of the Lessor to pay the Lessor's Contribution shall terminate, the reduction in Rent provided for in paragraph 'i' of clause three point four (3.4(i)) shall cease to apply, and the Annual Deducted Amounts applied by the Lessor shall become payable by the Lessee forthwith, together with Interest thereon, which Interest shall be deemed to have accrued from the date on which the relevant Annual Deducted Amounts (in the form of Quarterly Deductions) were made, until the date on which effective payment is made to the Lessor;

Provided further that upon a written request served by the Lessee to the Lessor prior to the Longstop Date the Lessor may, but shall not be obliged to, extend the Longstop Date for an additional period ("**Extension Period**"). Each Extension Period shall, if granted by the Lessor, be subject to such terms and conditions as may be imposed by the Lessor including, without limitation, the imposition of a higher penalty for delay upon the Lessee.

3.5.2 The Parties agree that, without prejudice and in addition to the automatic extensions in time contemplated by Clauses 3.5.1(i) and (ii) above if, and to the extent that, the failure of the Lessee to complete the Project by the Longstop Date or by the end of the Extension Period is caused by or is due to Force Majeure (as this term is defined in the Licence), the Longstop Date or the Extension Period, as applicable, shall be extended by the time of delay caused by the Force Majeure, but only if and to the extent that:

(a) despite the exercise of reasonable diligence, the Force Majeure event cannot be prevented, avoided or removed by the Lessee;

(b) the Force Majeure event prevents the Lessee from performing its obligations under this Deed;

(c) the Force Majeure event is not the direct or indirect result of a breach by the Lessee of any of its obligations under this Deed; and

(d) the Lessor is provided with notice of the occurrence of Force Majeure in accordance with clause three point five point three (3.5.3) below.

3.5.3 Upon the occurrence of Force Majeure the Lessee shall immediately notify the Lessor as soon as reasonably possible of the nature of the Force Majeure and the extent to which the Force Majeure affects the performance of the Lessee obligations under this Deed.

3.6 Should a dispute arise between the Parties with respect to the completion of the Project and /or the payment of the Annual Deducted Amounts by the Lessee, any claim by the Lessor against the Lessee for the payment of the Annual Deducted Amounts or any part thereof shall be treated and construed as claim for payment for monies due and not a default to pay Rent and accordingly the consequences and remedies which would otherwise be available to the Lessor if the claim is treated or construed as a claim for unpaid Rent shall not apply.

3.7.1 The Additional Rent payable by the Lessee to the Lessor will be calculated on the basis of the area of the Designated Site, which measurement shall be determined by the Architect upon completion of the land reclamation works forming part of the Project and notified to the Lessor forthwith.

3.7.2 The Lessee's obligation to pay Additional Rent shall commence, and the Additional Rent shall become due and payable, on the earlier of (i) the Longstop Date, and (ii) the completion of reclamation works forming part of the Project, and shall be due and payable by the Lessee to the Lessor together with (and in addition to) each payment of the Rent.

3.7.3 The Additional Rent shall be subject to the same adjustment / incremental increases as applicable to the Rent in accordance with the Lease.

3.8 As an integral part of this Agreement, and while reaffirming and confirming the obligations, undertakings and commitments as set out in the Memorandum of Understanding of the 14 August 2017, the Lessee hereby promises and undertakes in favour of the Lessor, which accepts:

(a) that once the Project is completed and operational, not to install Quay Cranes on Terminal One -West Quay and thus renouncing to operating container vessels with the use of Quay Cranes on the same quay which is located closest to the residential area.

(b) to utilise Terminal One West Quay for vessels operations (including ro-ro) between six (6) in the morning and ten (10) in the evening only.

(c) a further Corporate Social Responsibility commitment to make a one-time payment to the Lessor equivalent to three hundred thousand Euros (€300,000), payable on or before the date of this Deed and to be utilized for social purposes to be determined by the Lessor, at its discretion.

3.9 The Parties agree that all other terms and conditions of the Lease to the extent that they are not incompatible with the terms and conditions contained in this Deed shall continue to apply between them.

3.10 The Parties agree that notarial fees and all other fees and expenses relative to this deed shall be borne by the Lessee, whilst each Party shall pay its own legal and other advisors.

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This Deed has been done, read and published by me the undersigned Notary after having explained the contents thereof to the appearers in accordance to law in Malta at

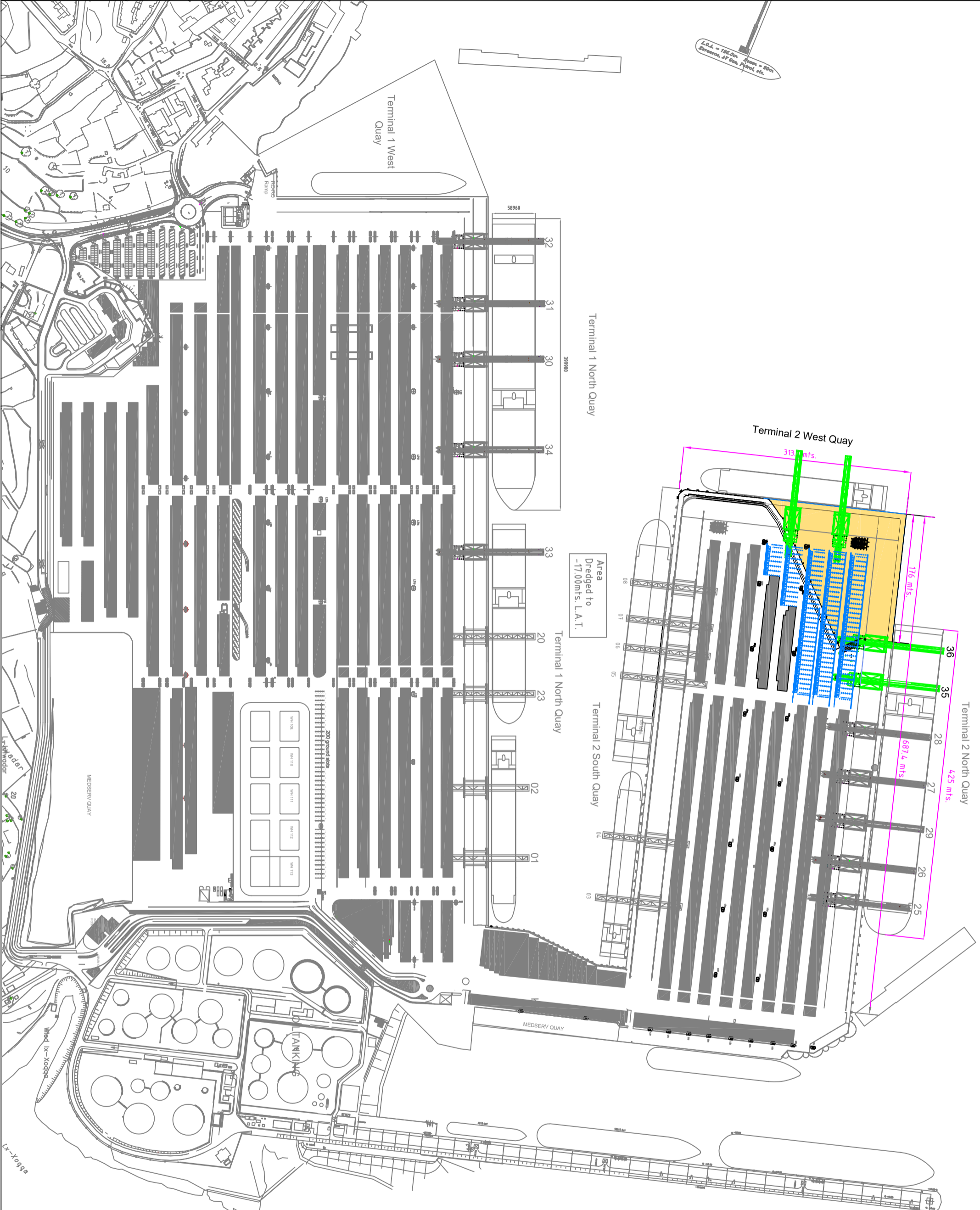
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List of Documents:


Document A – Designated Site

Document B – Fourth Licence Amendment Agreement

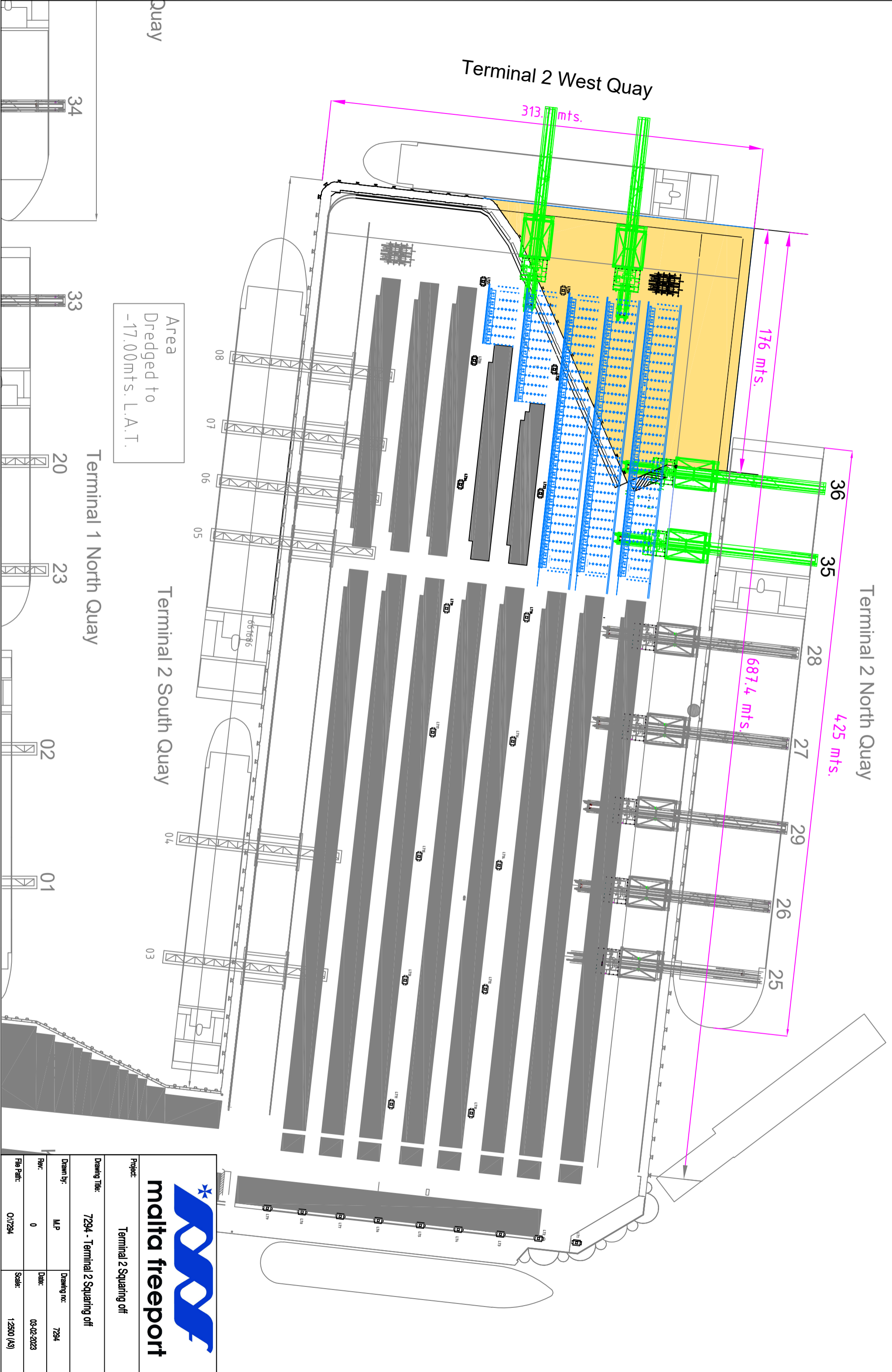
Document C – Rent



L.A.T. = 180.0m  
 Surrounds AF Gun Patrol etc.

 <b>malta freeport</b>	
<b>Terminal 2 Squaring off</b>	
<b>Project:</b> Terminal 2 Squaring off	
<b>Drawing Title:</b> 7294 - Terminal 2 Squaring off	<b>Drawn by:</b> M.P.
<b>Rev:</b> 0	<b>Drawing no.:</b> 7294
<b>Date:</b> 03-02-2023	<b>File Path:</b> 0\7294
<b>Scale:</b> 1:5000 (A3)	





Area  
Dredged to  
-17.00 mts. L.A.T.

Terminal 2 South Quay

Terminal 1 North Quay



**malta freeport**

Project: Terminal 2 Squaring off

Drawing Title: 7294 - Terminal 2 Squaring off

Drawn by:	M.P.	Drawing no:	7294
Rev:	0	Date:	03-02-2023
File Path:	Q:\7294	Scale:	1:2500 (A3)