

## UNDERTAKING TO ACCESS NORTHPORT'S CLIENT ACCESS SYSTEM

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We \_\_\_\_\_ (Company name)  
\_\_\_\_\_(Registration No.) dated \_\_\_\_\_ (“Company ” or “we” or  
“us”) hereby covenant, undertake and/or acknowledge with Northport (Malaysia)  
Bhd[Registration No. 198501014394 (146850-A)] (“NMB”) throughout the subsistence of this  
Undertaking that at all times:-

### 1. SERVICES

- 1.1 NMB is the sole proprietor of software information in respect of a retrieving programme known as Client Access System (“**Services**”). The objective of the Service is to enable any vendor, occupier, contractor, licensee within NMB’s Port premises (collectively referred to as “**Port Users**”) to gain access to information pertaining to their respective terminal operations collated by NMB.
- 1.2 The Services is provided on “as is” and “as available” basis (which includes all faults present in the Services). NMB disclaims all warranties (express or implied), including but not limited to, any warranties of merchantability, quality of information, quiet enjoyment, non-infringement, title or fitness for a particular purpose. NMB does not warrant that the Services will be error-free, uninterrupted or free from any malware or will function to meet the Company’s individual requirements. This Services were not designed and produced solely for the Company’s individual requirement but for the general benefit of NMB and/or the Port Users.
- 1.3 NMB may, at its sole and absolute discretion, modify, improve, update and/or replace the Services, either in whole or in part, without degrading its functionality or security features at any time without notice.
- 1.4 The Company may access the Services to the extent that the Company is authorized by NMB and subject always to the terms and conditions in this Undertaking.

### 2. SECURITY RESPONSIBILITY

- 2.1 The Company shall at all times:-
  - (a) keep his credentials including the access information and password strictly

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private and confidential and will not share or disclose any information in respect of its credentials to any third party, including NMB's or its own unauthorized personnel;

- (b) take all reasonable precaution necessary to ensure that no other person have or will be granted access to its credentials (including but not limited to destroying all documents, either in hardcopy or in digital format, which contains information relating to its credentials);
- (c) not leave its computer and/or mobile devices unattended while accessing or using the Services;
- (d) be responsible for all instructions or transactions made by using the Services regardless whether these are made by the Company or its authorized personnel or otherwise;
- (e) be responsible for all access and/or use of the Services whether it was in fact made by the Company or its authorized personnel or otherwise; and
- (f) be solely responsible for the security and care of the computers or mobile devices used to generate, receive, access to and/or use of the Services.

2.2 In the event the Company discovers or reasonably has grounds to believe that its access to or use of the Services are compromised in any manner whatsoever which may indicate an unauthorized access or use of the Services by using the Company's credentials, the Company shall immediately notify the same NMB in writing.

2.3 In the event the Company contributes to any unauthorized access or use of the Services or suffered any loss resulting from such unauthorized access or use, the Company shall be solely responsible and liable to the same.

### 3. SUSPENSION, TERMINATION AND FORCE MAJEURE

3.1 NMB may immediately, without notice, refuse to carry out any instructions given by the Company, suspend, revoke or limit the Company's access to and use of the Services or terminate the Services in its entirety by giving seven (7) days prior written notice if NMB

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determines there is:-

- (a) any material breach of the Company's obligations in this Undertaking remains uncured within seven (7) days from of a written notice by NMB which demands the Company to rectify and/or cure such breach;
- (b) the Company makes a false declaration to any relevant authority;
- (c) any security breach;
- (d) any infringement of any intellectual property rights of NMB attached to the Services;
- (e) the Company commits any delay or default in fulfilling or observing any of its obligations under this Undertaking;
- (f) any step is taken or an order is made or a resolution is passed for the winding-up (whether voluntary or otherwise), dissolution, liquidation, restricting, amalgamation or otherwise or if a winding-up petition is presented or threatened against the Company; and/or
- (g) violation of any written law.

3.2 Neither Party is responsible for failure to fulfill any of its contractual obligations due to causes beyond its reasonable control including but not limited to events of riot, pandemic or epidemic as may be declared by the World Health Organization or the Government of Malaysia, quarantine or movement control order or any form of restriction of movement as may be imposed or declared by the Government of Malaysia, act of God or any act of Government of Malaysia provided always the affected party shall at the first instance endeavour to reasonably mitigate such event which may possibly cause the frustration of this Undertaking.

## 4. CONFIDENTIALITY

4.1 The Company gives its consent and authorize NMB to divulge, reveal and/or otherwise disclose any and all particulars and information relating to the Company or any

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instructions or transactions made by the Company in the course of accessing or using the Services to any governmental authority, body or agency to the extent necessary to:-

- (a) comply with any judicial order;
- (b) complete, verify or restrict your instructions or transactions under the Services;
- (c) assist and cooperate in any examination by any governmental authority, body or agency;
- (d) comply with any written laws, rules, regulations, circulars, requests or any directive by any governmental authority, body or agency either in Malaysia or elsewhere;
- (e) protect the Company and/or NMB from any liability;
- (f) protect the interests of the public, including but not limited to detection of any offence under any written law of Malaysia.

4.2 All information contained in the Services are to be treated as strictly private and confidential and to take all reasonable and practicable steps to ensure and protect the confidentiality thereof, and not to disclose the existence or content thereof (whether in full or in part or in summary form) to any third party unless we obtain NMB's prior written approval.

4.3 If such approval is given by NMB, the Company shall ensure that appropriate confidential undertaking are in place with each person to whom such information was disclosed to.

### 5. COSTS

The Company shall procure and install at its own risk, costs and expenses all necessary hardware and software including the costs of connecting to NMB's hardware.

### 6. LIMITATION OF LIABILITY

- 6.1 While the Services will be provided to the Company with commercially reasonable care and skill and shall be consistent with the manner provided under any applicable law, NMB makes no warranty that the access to and use of the Services will not be interrupted or error-free or free from unauthorized third-party disruption or access or fitness for any particular purposes. Such fault or shortcoming shall not in any way attach any liability on the part of NMB.
- 6.2 NMB shall not be liable for any direct, indirect, special or exemplary damages, claims, demands, liabilities or for any loss of profit or revenue arising from or attributed to any of the following:-
- (a) false or negligent data entry by the Company;
  - (b) breach of the Company's breach of contractual obligations;
  - (c) any loss, theft or unauthorized use of your information, credentials and/or data due to the failure of the Company to observe its obligations in this Undertaking;
  - (d) corruption, destruction, alteration, loss of or error in your instructions, transactions, data or information in the course of accessing or using the Services;
  - (e) intrusion, interference or cyber-attack by any person, malware or other harmful programs or files;
  - (f) misrepresentation by the Company; and
  - (g) any malfunction, breakdown, disruption and/or unavailability of the Services at any time howsoever arising.
- 6.3 In amplification and not in derogation to any of the provisions in this Undertaking, to indemnify and to keep NMB fully indemnified against all claims, proceedings, fines, suits, liabilities, losses, costs and expenses whatsoever resulting from and/or incidental to any breach and/or non-compliance to this Undertaking and/or any applicable laws.

### **7. THIRD PARTY BENEFICIARIES**

No right or cause of action for any third party is created by this Undertaking or any transaction under it.

### **8. NO INFRINGEMENT**

The Company shall not infringe the copyright or intellectual property rights attached to the Services and shall not resell or permit to give access to any third party access or use of the Services without the prior written approval of NMB.

### **9. GENERAL LIEN**

9.1 All properties, goods, equipment, cargoes, goods and monies belonging to the Company in the possession, custody and/or control of NMB will be subject to a general lien in favour of NMB in respect of all sums or other liabilities now or at any time due, owing or incurred by the Company to NMB.

9.2 NMB may at its sole and absolute discretion apply for the proceeds of such properties, goods, equipment, cargoes, goods and monies in settlement or set-off those sums and liabilities by giving a seven (7) days prior written notice to the Company. Pending such settlement or set-off, all properties, goods, equipment, cargoes, goods and monies shall lawfully remain suspended or held by NMB.

### **10. NO PARTNERSHIP**

Nothing in this Undertaking shall be construed to establish NMB as the Company's agent, joint-venturer, partner or fiduciary and NMB does not undertake to perform any of the Company's regulatory functions or assume any responsibility for the Company's business operations.

### **11. NO ASSIGNMENT**

The Company shall not have the right to assign or novate any or all of its rights, interests, benefits, obligations and/or liabilities in this Undertaking without the prior written approval from NMB.

### 12. MISCELLANEOUS

The Company covenants to comply with all applicable laws, policies, guidelines, rules and regulations enacted or amended by the federal or state government and/or agencies and any instruction or directive from NMB concerning matters of the port, as shall be imposed on the Company from time to time. The Company agrees to also comply and be bound by NMB's: (1) Terms & Conditions of Business; and (2) Business Associates Code of Conduct, which are accessible at NMB's official website.

### 13. SEVERABILITY

If any of the provisions in this Undertaking is held to be illegal, invalid or unenforceable under the present of future laws, such provision will be fully severable and the remaining provisions shall continue to be valid and effective as if such illegal, invalid or unenforceable provision was never a part of this Undertaking.

### 14. GOVERNING LAW

This Undertaking shall be interpreted and construed in accordance with and governed by the laws of Malaysia, and the Courts of Malaysia shall have the exclusive jurisdiction in relation to any dispute arising in connection with this Undertaking.

(Signature)

NAME :  
DESIGNATION :  
COMPANY :  
DATE :