



ACCESS POLICY

Sociedad Portuaria Puerto Nuevo S.A.

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CHAPTER ONE GENERAL

Article 1. Legal grounds

In accordance with the obligations established in Law 1 of 1991; the Concession Contract 001 of March 31, 2011; the Rules of Operation Technical Conditions approved by Resolution 334 of 2013 of ANI; and Resolution 2734 of July 10, 2013 of the Ministry of Transport, PNSA hereby issues this Access Policy with the purpose of establishing the rules for gaining access to port services at Puerto Nuevo.

For the port operation, Resolution 2734 of 2013 provided that the aim of the general outline of the port policy and good governance practices is to establish clear rules for infrastructure use, efficient operation, and financial feasibility of port projects, by means of long-term contracts containing a continued stay agreement (*cláusulas de permanencia*).

As per Article 68 of the Rules of Operation Technical Conditions, "Puerto Nuevo is a port facility that renders a public service, therefore PNSA will grant permanent and/or temporary access to any Users as they require, provided that there is capacity available at Puerto Nuevo, and that the terms and provisions set out in the Access Policy are complied with under the (current and future) regulations issued by the Ministry of Transport and the other operation conditions established by PNSA as a port of public service under the definition provided in Law 1 of 1991 §5.15."

Puerto Nuevo Project was structured under a take or pay scheme in accordance with CONPES document 3540 of August 25, 2008; the Memorandum of Understanding executed on June 12, 2008 by the Government and several coal producer companies; the Ex-Officio Tender issued by the National Institute of Concessions-INCO by Resolution 548 of 2008; the approval of the Ex-Officio Tender by Resolution 135 of 2009; and the Concession granted by Resolution 333 of 2010.

Article 2. Scope of application

The provisions contained in this document govern the access to Puerto Nuevo services as required by any person that has or intends to export coal through Puerto Nuevo.

Article 3. Definitions

With the aim of interpreting the Access Policy correctly, the following definitions will be considered:

Affiliate	means, in respect of any individual or legal entity: a) a parent company thereof; and b) any entity that at the time in question is controlled, directly or indirectly, by such individual/entity or by any of such individual/entity's parent companies, or that is under common control with any such entities. For this purpose, control exists if:
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	<ul style="list-style-type: none"> i) more than 50 percent of an entity's capital belongs to the parent company, directly or through (i) another subordinated entity, (ii) its subordinated entities, and (iii) the subordinates of such subordinated entities; ii) the parent company and its subordinates hold the majority required (a) to pass decisions at the Board of Partners or General Shareholders Meeting (or equivalent), or (b) to elect the majority of the entity's Board of Directors. <p>When under items i) and ii) above, control is exercised by one or more persons, directly or through entities in which they hold more than 50 percent of the subordinate's capital, or who control the majority of the votes for making decisions or have the power to influence the subordinate's directive decisions.</p>
Allocation Process	means the access to PNSA's services through the mechanisms provided in Chapter Four of the Access Policy in accordance with the Flowchart.
ANI	means the Agencia Nacional de Infraestructura (National infrastructure agency (ANI)) of the Republic of Colombia, attached to the Ministry of Transport.
Application or Guaranteed Volume Application	means an application for Guaranteed Volume submitted by persons interested in having access to PNSA services. It is understood as including any Application regardless of the business terms and conditions that the parties agree subsequently, including Contracts of Provision of Short-Term Port Services, Long-Term User Contract, or otherwise contracts.
Applicant or Guaranteed Volume Applicant	means a company that has submitted a Guaranteed Volume Application.
Available Capacity	<p>means at a point in time at the end of a two months period, the difference—if positive—between (a) the Effective Loading Capacity expressed in million tons for that period and (b) (i) the Total Guaranteed Volume plus (ii) any capacity allocated by PNSA in that two months period to all the Users according to the procedure established in Chapter Four of this Access Policy.</p> <p>That difference may be allocated by a contract of one of the types set out in this Access Policy: (i) because it has not been allocated ever before; (ii) because it has been lost in application of UIOLI rules or by Contract non-performance as provided in the Access Policy; (iii) because the Contract is terminated and the User has not renewed;</p>

	<p>(iv) because it is capacity not projected for the annual period; (v) because it is non-reconfirmed capacity for the second semester; (vi) because of Voluntary Release of Guaranteed Volume; (vii) because the assignee does not sign the Contract; and (viii) because of Surplus Capacity Release.</p> <p>Available Capacity is understood as the equivalent to the reserve capacity provided in Resolution 2734 of 2013 §6 as modified or supplemented.</p>
Bank Guarantee	means a standby letter of credit payable on first demand, issued by a financial institution with first-class (investment grade) credit rating.
Central Government	means the government of the Republic of Colombia and its various departments and agencies, including but not limited to Ministry of Transport, Ministry of Mines, Ministry of Environment and ANI.
Coal Quality Parameters	Means the minimum quality conditions that the coal to be exported through Puerto Nuevo shall fulfill pursuant to the information described in Annex B of this Access Policy.
Confirmation on the Marketable Coal Reserves	it corresponds to the independent confirmation issued by the Superintendency of Ports and Transport about the coal reserves available for commercialization of the Applicant for the purposes of subparagraph i. Section 14.2 herein.
Contract	means the Contract of Provision of Short-Term Services, the Long-Term User Contract, or otherwise contract for the provision of services at PNSA to be entered into by Users and PNSA for a term agreed upon by the parties considering amongst other factors, the time to recovery of cost & expense by PNSA; the technical, financial, and marketing conditions of each operation; as well as the appropriate compensation of PNSA's shareholders equity as per Law 1 of 1991.
Contract of Provision of Short-Term Port Services	means a short-term contract for the provision of services at PNSA, to be entered into by Users and PNSA as agreed upon by the Parties considering amongst others the time to recovery of investment and costs & expenses by PNSA as well as the technical, financial, and marketing conditions of each operation including the contract performance guarantees (insurance policies) as set out by the Parties.
Days or Business Day	means a day (excluding Saturdays, Sundays and public holidays) the commercial banks are open for business in Bogotá, D.C., Colombia. It will be understood as calendar Days only if so explicitly provided in a section of the Access Policy.
Dollars or US\$	means the currency of the United States of America.

Effective Loading Capacity	means Puerto Nuevo's reasonable port load throughput expressed in million tons per year and as declared annually by PNSA. It takes into account, among others and without limitation, mechanic availability and train unloading station (TUS) utilization, material handling system, ship-loading equipment/infrastructure, bad weather, number of users, quantities of users' products, type/combination of vessel calls berthing at the port and configuration of trains delivering coal at the port, or any other factor that could affect the Effective Loading Capacity. The Effective Loading Capacity will be published in the terms of Resolution 2734 of 2013.
Effective Loading Capacity for the Concession	means the Effective Loading Capacity accrued throughout the term of the Concession as certified by PNSA annually or more frequently if required.
Ex-Officio Tender Process	means the procedure regulated by Law 1 of 1991 §13 that INCO commenced by Resolution 548 of December 10, 2008.
Expansion	means a project to increase the Effective Loading Capacity of Puerto Nuevo until reaching the next logic level of such Effective Loading Capacity that is feasible from the financial and marketing points of view in Puerto Nuevo.
Feasibility Study	means the study conducted by PNSA to determine the technical, environmental, and economic feasibility of incrementing the Effective Loading Capacity of Puerto Nuevo, as well as the capital investment and other requirements for such purpose.
Flowchart	means Annex A that includes a representation of PNSA's process to release and allocate capacity. Access Policy and Flowchart will be mutually explanatory and complementary. In the case of an explicit contradiction, the Access Policy provision will prevail.
Government Authority	means any authority or private entity that performs public functions within the Republic of Colombia, in the national, departmental or municipal level.
Government Authorization	means the permits and authorizations that the Colombian Government Authorities are to provide for the purposes of the Project, including amongst others the environmental licenses, the resolution of approval of the concession, the resolution of concession, the municipal and local construction permits, the registry of rates with the Superintendency of Ports and Transport and the job permits for the operation of the port.

Guaranteed Volume	means the volume in tons that a User is entitled to export through Puerto Nuevo as provided in the respective Contract.
Long-Term User Contract	means a long-term contract for the provision of services at PNSA, to be entered into between Users and PNSA as agreed upon by the Parties thereto, considering amongst others the time to recovery of investment costs & expenses by PNSA as well as the technical, financial, and marketing conditions of each operation, including a ToP Commitment.
Ministry of Environment	means the Ministry of Environment, Housing, and Territorial Development (<i>Ministerio de Ambiente, Vivienda y Desarrollo Territorial</i>) of the Republic of Colombia, or any successor entity as applicable.
Ministry of Mines	means the Ministry of Mines and Energy (<i>Ministerio de Minas y Energía</i>) of the Republic of Colombia, or any successor entity as applicable.
Ministry of Transport	means the Ministry of Transport (<i>Ministerio de Transporte</i>) of the Republic of Colombia, or any successor entity as applicable.
Period	means the time elapsed between June 30 of a year and June 15 of the next year.
Port Operator Rate	means the rate that PNSA may charge as a Port Operator for all services rendered that are not covered by the Regulated Rate.
Project	comprises (i) engaging the feasibility, technical, bathymetric, geotechnical, design, and environmental surveys required for the construction and operation of facilities for a dedicated direct coal loading port located at the site as provided in Resolution 5369/2007 of the Ministry of Transport; (ii) preparing and submitting an offer to INCO under the Ex-Officio Tender process; (iii) purchasing lands about Rio Toribio, and any other land PNSA deems necessary for the effective operation of Puerto Nuevo; (iv) preparing the environmental impact survey required to obtain the environmental license for Puerto Nuevo construction, operation, and maintenance; (v) preparing and submitting the terms and conditions applicable to Puerto Nuevo; (vi) taking the necessary steps to obtain the required environmental permits, construction permits, and any other Government Authorization; (vii) negotiation of any contract required to construct, operate and maintain Puerto Nuevo and obtaining the corresponding authorizations; (viii) setting up the legal and financial structure for constructing and operating Puerto Nuevo; (ix) Puerto Nuevo construction and completion, including procurement and contract

	processes as per the Project schedule; (x) managing security and communities impacted by the Project; (xi) hiring all the personnel responsible for performing and operating the Project; and (xii) subsequent operation and maintenance of Puerto Nuevo.
Puerto Nuevo	means the public service port for the export of coal located at the areas identified in Resolution 5369 of December 10, 2007, in Resolution 135 of February 26, 2009, in Prodeco's application to INCO dated October 28, 2009, and in Puerto Nuevo Concession Contract, including beaches, low tide zones and their sublittoral zones.
Puerto Nuevo Concession	means the concession granted to PNSA for the construction and operation of Puerto Nuevo, in accordance with Puerto Nuevo Concession Contract.
Puerto Nuevo Concession Contract	means the concession contract entered into by and between INCO and PNSA on March 31, 2011, as amended and added as the case may be.
Rates	means the applicable rates, including the Regulated Rate plus the Port Operator Rate. In accord with Law 1/1991, the Rates must cover port costs and expenses and adequately compensate PNSA shareholders' equity.
Regulated Rate	means the rate that PNSA will charge to all Users according to the Regulation in effect at any time as issued by the Superintendency of Ports and Transport comprising (a) Dockage, (b) Use of Facilities, (c) Warehousing and (d) Public Utilities.
Regulation	means any law, decree, resolution, standard, directive, official directive or mandatory requirement in the Republic of Colombia or under the laws of any other jurisdiction.
Release of Surplus Capacity	has the meaning ascribed in Article 10.
Sociedad Portuaria Puerto Nuevo S.A. or PNSA	means the company incorporated by private document dated March 10, 2009 and its amendments such as the conversion from <i>Sociedad por Acciones Simplificada</i> (Simplified stock-holding company) into a <i>Sociedad Anónima</i> (Stock company), by Public Deed 3188 of December 22, 2009.
Surplus Capacity	means at a point in time, the difference—if positive—between (a) the Available Capacity resulting from the additional capacity built in Puerto Nuevo through an Expansion and (b) the Guaranteed Volume

	requested in the Guaranteed Volume Application(s) of the User(s) with which PNSA entered into Long-Term User Contract(s) for an Expansion. Surplus Capacity may be allocated under different types of contract as defined in this document.
ToP Commitment	means the percentage of the Guaranteed Volume determined annually, the applicable Rate of which will be unconditionally paid by every User even if the ToP Commitment has not been fully exported through Puerto Nuevo. For Long-Term Contracts, the above percentage is 70%.
Total Guaranteed Volume	means the Guaranteed Volume accrued under a Contract for the whole term of said Contract.
UIOLI	means the 'use it or lose it' rules as provided in Article 8 hereof.
Unused Guaranteed Volume Tonnage	has the meaning ascribed in Article 8.1.3 c) ii).
Users	means the Users who have entered into a Contract with PNSA, which is in effect.
Voluntary Release of Guaranteed Volume	has the meaning ascribed in Article 6.

CHAPTER TWO

PRINCIPLES APPLICABLE TO THE ACCESS POLICY

Article 4. Principles Applicable to Puerto Nuevo Access Policy

The interpretation and integration of the Access Policy will take into account the principles of free competition, universal access by current and potential port users, efficient service provision, and coverage to service the demand, as provided in Resolution 2734 of July 10, 2013 or any other principles legally applicable in the future.

Article 5. Contract Types

In accordance with Resolution 2734/2013 of the Ministry of Transport, the efficient operation and the financial feasibility of port projects are obtained by means of long-term contractual agreements containing a continued stay agreement. Concurrent with the provisions of Law 1/1991 §5 and clause 6 of the concession contract, a public service port is the port that provides services to every customer willing to submit to the rates and conditions of operations.

PNSA will promote universal access by way of Contracts in conditions that do not entail any discrimination among PNSA's Users. Users will abstain from performing any act or formulating proposals that (i) contradict



the Access Policy or (ii) imply an unjustified discrimination of other Users with respect to the terms and conditions under which the access to PNSA has been granted.

CHAPTER THREE METHODS OF RELEASE OF CAPACITY

Article 6. Voluntary Release of Guaranteed Volume

In the course of the contract performance, Users will proceed as follows:

6.1 On November 30, each year, all the Users must project their capacity needs for the year to follow, on a monthly basis complying with the terms and conditions agreed upon in the Contract. By May 31 each year, Users will reconfirm their capacity needs for the second semester of that year, on a monthly basis as per the terms and conditions agreed upon in the Contract, taking into account the monthly projection profile of the Effective Loading Capacity.

6.2 The remainder of any not projected capacity in respect of their Guaranteed Volume will be deemed Available Capacity, in which case PNSA may allocate that Available Capacity, in full or in part, to Users or potential users, as provided in Chapter Four of the Access Policy.

To the effect, any User that is not going to use its Guaranteed Volume as projected for the year, confirmed for the first semester of the corresponding year and/or reconfirmed for the second semester of the corresponding year as provided in the preceding item, in whole or in part, temporarily or permanently, must inform PNSA of such event in as much advance as possible, in order for such Guaranteed Volume to be allocated through PNSA. With this aim, the User must inform PNSA of its decision that its Guaranteed Volume be allocated, indicating the Guaranteed Volume quantity intended for allocation, its intention to have it allocated on a permanent or temporary basis, and, if the latter, the specific term during which such quantity may be used by the User(s) to which it is allocated.

6.3 In all cases of Voluntary Release of Guaranteed Volume, if the Available Capacity is allocated to other Users in full or in part, the User will not have to pay for the commitment effectively allocated by PNSA. In any case, the User who has released its Guaranteed Volume and the User who was allocated such Guaranteed Volume are jointly and severally responsible for the performance of their obligations to PNSA—to PNSA's satisfaction—and for the guarantees (insurance policies) required by the Contract.

If the Available Capacity cannot be allocated in full or in part to another applicant, the User must honor the Contract, pay for the Guaranteed Volume and fulfill its obligations to PNSA.

Article 7. Release upon Termination of the Contract

The Contract will be terminated upon occurrence of any of the applicable legal and conventional termination events, including the expiration of the contract term agreed to by the Parties. In any case, the contract terms of the Contracts will be extended in the terms and conditions defined by common agreement by the Parties.



If the Contract is terminated, the capacity then released becomes Available Capacity and will be allocated in accord with the provisions of Chapter Four of the Access Policy.

Article 8. Release Due to Non-Performance or UIOLI

8.1 With the aim of maximizing the utilization of the public service infrastructure, PNSA may take as Available Capacity for the corresponding bimester, such capacity as resulting from a User's loss of capacity according to the UIOLI rules as provided below.

8.1.1 PNSA is entitled to reduce a User's Guaranteed Volume and ToP Commitment without requiring the User's consent if the User is not using its Guaranteed Volume in full, and then allocate it to each User under its Contract.

8.1.2 Each Contract executed by a User will include a provision incorporating the use it or lose it (UIOLI) rules as set out in this Access Policy, as follows:

8.1.3 In the cases that:

- a) PNSA becomes aware of a demand of Available Capacity by a User who has confirmed to PNSA that will take the tonnage requested under its Contract; and
- b) PNSA cannot fulfill that demand of capacity out of PNSA's Effective Loading Capacity; and
- c) PNSA knows that:
 - i) a User has not used at least 1.5 million tons of its Guaranteed Volume; or
 - ii) when 1.5 million tons is less than 20% of the User's Guaranteed Volume during an 18-month period, the User has not used at least 80% of its Guaranteed Volume under its Contract ("Guaranteed Volume Unused Tonnage") during a period of at least 18 consecutive months starting not before the anniversary that corresponds to mid-time of the Contract term; and
- d) PNSA has sent notice to that User of said Guaranteed Volume Unused Tonnage, seeking reasons for that lack of usage, in which case the User will have ten (10) Days from the receipt of the notice to answer to PNSA; and
- e) the User is not able to give a legitimate trade reason (in PNSA's reasonable opinion) for the lack of use of said Guaranteed Volume Unused Tonnage; and



- f) PNSA has given further notice to find why the User: (i) has not allocated or assigned the Guaranteed Volume Unused Tonnage subject to its Contract or (ii) has not Voluntarily Released its Guaranteed Volume; and
- g) User is not able to justify a legitimate trade reason (in PNSA's reasonable opinion) for the failure to allocate said Guaranteed Volume Unused Tonnage, with the aim of agreeing with PNSA the start of a Process of Allocation by Voluntary Release; and
- h) PNSA has sent a new notice within eight days following the first notice, of PNSA's intention to cancel said Guaranteed Volume Unused Tonnage, expecting User's reasons why PNSA should not; and
- i) the User is not able to justify a legitimate trade reason (in PNSA's reasonable opinion) why PNSA should not cancel the Guaranteed Volume Unused Tonnage therefore,

PNSA—within three months after the issuance of the last notice provided in item (h) above—may issue a final notice informing of PNSA's intention to cancel said Guaranteed Volume Unused Tonnage and reduce the Guaranteed Volume by an amount determined since a date specified by PNSA. Thereafter, the amount of reduction of the Guaranteed Volume becomes Available Capacity.

8.1.4 PNSA will cancel a User's Guaranteed Volume Unused Tonnage and reduce the User's Guaranteed Volume only if:

- a. PNSA issued the final notice of intention provided under the last paragraph of item 8.1.3 above informing of its intention to cancel the Guaranteed Volume Unused Tonnage upon performing all the procedures set forth in item 8.1.3 above, before said final notice, including the expiration of the 18-month period mentioned in same subsection; and
- b. PNSA agrees that a User or a third party that complies with the Guaranteed Volume Application criteria is willing to purchase immediately under a Long-Term User Contract the Available Capacity resulting from the cancellation of the User's Guaranteed Volume Unused Tonnage.

8.2 If a User does not pay timely and in full any applicable Rates and does not cure this default within thirty (30) days after PNSA's notice to the delinquent User, then the Total Guaranteed Volume of that User will be suspended until the delinquent User pays applicable Rates.

If within ninety (90) Days after the notice of default sent by PNSA to the delinquent User, this delinquent User does not cure the default, the User Contract will be terminated without detriment to the delinquent User's obligations and the Total Guaranteed Volume of that delinquent User will be



permanently deemed allocated to PNSA, who will be then authorized to allocate that Total Guaranteed Volume to one or more Guaranteed Volume Applicant(s), in accordance with the procedure set out in Chapter Four below.

If on the Contract termination date there remains some of the delinquent User's coal in Puerto Nuevo, this delinquent User will remove that coal from Puerto Nuevo facilities within fifteen (15) days and if the coal is not removed, PNSA will freely dispose of the coal at the delinquent User's expense.

Article 9. *Release upon failure to sign by awarded bidder*

In the case that a User has been an assignee as per any of the rules provided in Chapter Four of the Access Policy and abstains from executing the Contract or obtaining the guarantees (insurance policies) required by PNSA within ten (10) Days after PNSA notifies the allocation, it will be understood that there exists a non-performance of the Contract and therefore the Guaranteed Volume will go back to be Available Capacity that may be offered under Chapter Four of the Access Policy. The foregoing, without detriment to any legal consequences arising from the Applicant's non-performance.

Article 10. *Release of Surplus Capacity*

As a result of the Feasibility Survey of an Expansion, the next logic level that is feasible from the financial and marketing points of view, to which the Effective Loading Capacity should be enhanced, will be indicated as well as the proposed Expansion technical, financial, and environmental feasibility.

In the case that upon implementing an Expansion there is Surplus Capacity, it will be deemed Available Capacity for the purposes set out in Chapter Four of this Access Policy.

Article 11. *Assignment of rights and contractual position*

Right holders, regardless of the contract type they are subject to, may assign their rights and contractual positions under the contract upon PNSA's prior acceptance of the assign and under the rules provided in the civil and commercial legislation of the Republic of Colombia. In any case, the assignor will be jointly and severally liable for the compliance of the obligations to PNSA.

CHAPTER FOUR ACCESS TO PNSA'S AVAILABLE CAPACITY

Article 12. *Available Capacity Offering and Allocation*

Upon verification of the existence of Available Capacity PNSA will carry out the process of Available Capacity offering and allocation at any time of year, subject to the procedure set out in this Chapter.



For the purposes hereof, every two months PNSA will determine whether PNSA will have any Available Capacity: **(i)** because it has not been allocated ever before; **(ii)** because it had been lost in application of UIOLI rules or Contract non-performance as provided in the Access Policy; **(iii)** because the Contract is terminated and the User has not renewed its Contract; **(iv)** because it is capacity not projected for the annual period; **(v)** because it is capacity not-reconfirmed for the second semester; **(vi)** because of Voluntary Release of Guaranteed Volume; **(vii)** because the assignee fails to sign the Contract; and **(viii)** for Release of the Surplus Capacity.

Paragraph: In the case that PNSA identifies the existence of Available Capacity hereunder, PNSA will be empowered to conduct if required the offering and allocation process hereunder, by applying to that end criteria of time, financial, and operational efficiency that allow PNSA allocate Capacity in full. In this case, the Available Capacity will correspond to the one established for the last day of the two month period immediately preceding the month in which the Available Capacity offering and allocation process is going to be made.

Article 13. *Website post of the Available Capacity offering and allocation procedure*

For the purposes of this Chapter and according to the provisions of Chapter Five of this Access Policy, PNSA will post on its website the data about the Available Capacity and update it every two months in case there are changes with regard to the Available Capacity during said two months period.

Article 14. *Application Submission*

Every person interested in requesting access to PNSA (an Applicant) may submit an Application. Applicants will be entitled to access PNSA either by entering into a Contract or by an amendment to their existing contracts, as applicable.

14.1 A coal exporter interested in obtaining a Guaranteed Volume could submit an Application at any time of the year.

For the latter purposes, and subject to the existence of Available Capacity in the terms of this Chapter, PNSA shall apply to the Application the procedure established in articles 15 and following of the Access Policy. In case there is no Available Capacity, PNSA shall inform it to the Applicant and shall proceed with the procedure provided for in articles 18 and following of the Access Policy.

14.2 The Guaranteed Volume Applicant must fulfill the requirements provided in the Access Policy, in conditions of equality and in furtherance of the principle of universal access to PNSA. PNSA may prepare an Application submission form. An Application shall include:

- a. identification of the mine from which the coal to be exported will be brought;
- b. demonstration of the Guaranteed Volume Applicant's rights in and to the coal produced by the mine identified in previous item (a) (i.e., holder of the mine title, operator, supply contract), including a copy of the mining registry certificate. The Applicant shall not be required to disclose its mining plans, albeit the Applicant shall submit a certificate issued by the Superintendency of Ports and Transport and addressed to PNSA, confirming the information related to the annual



and long term mining plans (PTI/ PTO), based on the information provided by the mining authority (National Mining Agency ANM) to the Superintendency of Ports and Transport to that effect.

- c. the required Total Guaranteed Volume that the Applicant commits to export through Puerto Nuevo on an monthly basis for a term to be set out in the Contract, and the estimation of the required coal volume that is intended to be exported on an annual basis disaggregated by quality of coal.
- d. demonstration of the fulfillment of the Coal Quality Parameters as defined on Annex B herein.
- e. rail carriage contract, train capacity, identification of the rolling fleet to be used, in the latter case pursuant to the description included as Annex C herein;
- f. the commitment to pay the Rates and to obtain the Contracts' payment and contract performance insurance policy to be delivered in the form agreed to by the Parties, which could be used by PNSA as a source of payment of the Rates;
- g. a confidentiality agreement; PNSA may prepare a model confidentiality agreement for such purpose;
- h. Regarding the environmental license, it is sufficient if the Applicant submits a certification issued by the Superintendency of Ports and Transport that confirms that the Applicant has an environmental license and specifies which is the annual production authorized for exportation during the term of the mining project, under the terms of the environmental license, certification to be issued by the Superintendency of Ports and Transport based on the information that the environmental authority (ANLA) certifies to that entity; and
- i. a unilateral statement addressed to PNSA about their coal reserves available for commercialization, accompanied by an independent confirmation of the validity of the statement made by the Superintendency of Ports and Transport (the Confirmation on the Marketable Coal Reserves).

An existing User may submit a Guaranteed Volume Application in the cases that (i) it has the intention to export additional tonnage through Puerto Nuevo under its Contract or (ii) it has the intention to export tonnage after the termination of its current Contract under a new Contract. For the former, the Guaranteed Volume Application will be included as an annex to the corresponding Contract following the rule provided in Article 14, items 14.2 a) and b).

14.3 In the case of extension of the Long-Term User Contracts, their Guaranteed Volume will not be deemed released and will not count toward the Available Capacity under Chapter Three of the Access Policy.

Article 15. *Application completeness Evaluation and Preallocation*



- 15.1 PNSA will assess the Applications on an individual basis, checking each for completeness of information and documents as required in the Access Policy.

In the case that the Application fails to include all and complete information as well as the required documents, PNSA will reject outright and deem as not presented the Guaranteed Volume Application. If the Applicant still wants to gain access, the Applicant must submit a new Application and PNSA will assess that application subject to the procedure laid down for that purpose in this Access Policy.

- 15.2 PNSA may request additional information for clarification with respect to complete Applications. In particular, for the purpose of specifying (i) port entry information related to rail equipment, storage requirements, and product features, and port exit information related to the vessels receivers of the coal, or (ii) any other information that PNSA may reasonably deem necessary for logistics or management of the potential Contract. In no case, the additional information required will be used to disqualify an Applicant, nor to understand that the Application has been rejected. PNSA may give feedback to the Applicant about the preliminary review of the material delivered in support to its Application, to allow Applicant to supply additional information or other materials to support its application by a reasonable deadline, as notified by PNSA to the Applicant.

For purposes of the provisions of this section, PNSA will inform the Superintendence of Ports and Transport the request for additional information required with the corresponding justification, so that if the Superintendence of Ports and Transport deems appropriate, said Authority requires the Applicant to submit the additional information requested by PNSA.

- 15.3 As a result of the completeness evaluation, PNSA will pre-allocate the Available Capacity. To this end, using a descending size order criterion, PNSA will pre-allocate the Applications that comprehensively allow to generate a greater long-term efficiency in the use of the public service port infrastructure in terms of required volumes and times, and any other financial, marketing, and operational conditions.
- 15.4 Preassignees, (i) within five Days after PNSA completes the review of Applications, will be given notice by email of their compliance with all the criteria provided in the Access Policy; (ii) will be informed of whether as a result of the preallocation process, there is any PNSA's Available Capacity for the negotiations phase; and (iii) will be informed of the possibilities to meet the Applicants' needs by means of an Expansion.

Article 16. Available Capacity Offering

- 16.1 The Available Capacity will be made available to the preassignees following the order of precedence set out in Article 15 item 15.3, with the purpose of conducting the negotiations for twenty (20) Days. Throughout the negotiation of fundamentals with the preassignees, PNSA and the preassignee will reach agreements regarding time, quantity, mode, and capacity. In lack of Available Capacity sufficient to service the Application within the time frame or for the tonnage required, PNSA will offer the applicant other options available for preassignee's assessment purposes. The negotiation of the Contract term must be consistent with the other Contract terms

and conditions, so PNSA can recover all the costs and expenses and compensate appropriately the shareholders' equity as provided by Law 1/1991.

- 16.2 If no agreement with the preassignee is reached, PNSA will offer the Available Capacity to the other preassignees as per Article 15, seeking to allocate the Available Capacity in full.
- 16.3 If an agreement is reached, PNSA will award and allocate the Available Capacity as per the agreement between the Parties.
- 16.4 In the case that the Available Capacity is not allocated in full to a single interested applicant, PNSA shall allocate the balance of the Available Capacity to the next preassignee according to the order of precedence determined as per item 15.3 of the Access Policy and the procedure described above and so on up to exhausting the Available Capacity, always aiming, as possible, at allocating the Available Capacity in its entirety to the Users or potential Users of the port.

Article 17. *Entering into a Contract*

- 17.1 PNSA's approval of an Application will result in executing a Long-Term User Contract, Contract of Provision of Short-Term Services, or otherwise Contract and to the payment of Rates as agreed and consistent with the provisions of the applicable Regulation.

All the Users must pay the applicable Rates as established by PNSA. The payment of the Rates will give the Applicant the right of access to Puerto Nuevo. An advance payment may be agreed for the Rate applicable under the Contract and will be amortized per ton by using the corresponding Guaranteed Volume during the effective term of the Contract. The Contract will always provide the delivery of a payment insurance policy for still unpaid Rates and will serve as a source of payment for PNSA in the cases of User's default.

- 17.2 The Contracts will provide at least
 - a. the specific amounts of Guaranteed Volume, Total Guaranteed Volume, required insurance policies, and ToP Commitment, as agreed in the preallocation phase;
 - b. the User's obligation to pay the applicable Rates, obtain the insurance policies, and comply with its ToP Commitment in the case of annual exports below 70% of the Guaranteed Volume;
 - c. User Contract term;
 - d. applicable Rates and invoicing conditions for the payment of services;
 - e. other guarantees that the User is to deliver to PNSA's satisfaction, including the insurance policy of payment of the ToP Commitment as agreed;



- f. User's commitment to comply with all the applicable Regulations including without limitation the Rules of Operation Technical Conditions approved by ANI;
 - g. the Conditions for extending the Contract term that will allow User(s) to extend their Contract terms or terminate their Contract(s);
 - h. non-performance events;
 - i. termination events;
 - j. dispute resolution mechanisms.
- 17.3 PNSA will issue the invoice to the User on the date of the bill of lading for the Rates applicable to the number of tons shipped in accordance with the bill of lading. An invoice will be payable within fifteen (15) calendar Days after the date of acceptance of the invoice, as provided by the applicable Regulation.
- On the end date of each of the first trimesters, i.e. March 31, June 30, and September 30, an adjustment will be made to calculate the difference between the amount effectively paid by each User for the use of its Guaranteed Volume in the corresponding trimester as invoiced and paid, and the amount corresponding to the ToP Commitment percentage for each trimester. If the sum paid for the effective use of its Guaranteed Volume is less than the ToP Commitment percentage for the corresponding trimester, PNSA will invoice the difference to the User.
- A yearly adjustment will be made at the end of the year with the aim to compute the difference between amounts effectively paid by the User for its Guaranteed Volume usage in that year and its ToP Commitment for that year. PNSA will either invoice or reimburse the difference to the relevant User. That invoice will be payable within fifteen (15) calendar Days after the date of acceptance of the invoice, as provided by the applicable Regulation. PNSA's invoices may be delivered to the Users by courier or post mail, addressed to the contact person set out in the Contract and are payable by the User within fifteen (15) calendar Days following the date of acceptance of the invoice as provided in the applicable Regulation.
- 17.4 PNSA will be entitled to temporarily reduce the Guaranteed Volume of a User whenever the User does not comply with the technical performance standards and thus affects Puerto Nuevo capacity, thereby reducing that Guaranteed Volume until the User guarantees the compliance with the technical performance standards agreed upon in the preallocation phase and covenanted in the Contract.
- 17.5 If PNSA is not able to grant Users access to their Guaranteed Volume due to an unforeseen shortage of Effective Loading Capacity, PNSA will (i) immediately notify in writing of such event to each User with Contract; and (ii) reduce the Guaranteed Volume of each User pro rata in that temporary reduction period; and (iii) implement reasonable measures as required to solve the unforeseen capacity shortage, except if the shortage is directly associated with a User and/or the



User's upstream or downstream service providers, in which case the reduction will be applied firstly to the Guaranteed Volume of that User.

- 17.6 Users are responsible for ensuring that their upstream chain and carriage contracts are aligned and duly managed. In the case that the Guaranteed Volume reduction results from the specific upstream or downstream agreements of a User and reduces Puerto Nuevo Effective Loading Capacity, the reductions in the port throughput capacity will be assumed by said User and thus the User will hold PNSA harmless against any damages arising from the circumstances stated here.

Article 18. Access through an Expansion

In accord with the information supplied to the pre-assignees under Article 14 of the Access Policy, if there is not enough capacity to service an application (because the capacity submitted by the Applicant exceeds the Available Capacity), the Applicants not allocated any capacity will be offered the option of an Expansion.

In the case that one or more Applicants agree to this option, Feasibility Surveys will be conducted.

Paragraph. For Expansion cases not contemplated and different from those provided in this article, the Parties may negotiate directly.

Article 19. Feasibility Survey Agreement

- 19.1 The Feasibility Survey will be conducted on behalf of PNSA by an internationally renowned independent third party and the cost will be borne (i) by PNSA, if the Expansion is actually carried out, or (ii) by the Applicant if the Expansion is not carried out. The Feasibility Survey will state the next logical and feasible level from the financial standpoint, to which the Effective Loading Capacity should be enhanced, as well as the technical, financial, and environmental feasibility of the proposed Expansion.

The Expansion Feasibility Survey must include, unless provided otherwise by PNSA, at least:

- a. an assessment of Puerto Nuevo's Effective Loading Capacity with respect to the existing and future demand of Puerto Nuevo;
- b. an assessment of the Guaranteed Volume Applicant's commitment and nominated tonnages as well as a weighing of how the aggregate of Total Guaranteed Volumes of all the Users can be fulfilled;
- c. weighing of the existing requirements of Puerto Nuevo;
- d. weighing of Feasibility Surveys conducted previously and their recommendations and outcomes;
- e. PNSA's obligations to existing Users;



- f. the need to operate Puerto Nuevo according to the highest practices in the industry, including the compliance with the maintenance requirements;
 - g. the need to fulfill specific requirements as to operational parameters, future expansion requirements, technical quality standards, infrastructure services, and approval obligations;
 - h. probable impact on the congestion including delay costs;
 - i. weighing, based on the information available to PNSA, of the restrictions experienced or probably to be experienced in the future, in other parts of the coal supply chain that may impact Puerto Nuevo's efficient operation—if expanded—and, insofar as the impact can be determined reliably, the maximum capacity that may be delivered by the coal chain as a whole after the Expansion;
 - j. a study of all the accrued and projected costs and expenses related to or arising from the Expansion; and
 - k. optionally, additional matters reasonably determined by PNSA.
- 19.2 The Feasibility Survey will be required to indicate if the Expansion is technically feasible and/or if it affects the Guaranteed Volume or the Total Guaranteed Volume of the existing Users.
- 19.3 For the purposes of item 19.1 (ii) hereof, the Applicant(s) agree to provide PNSA with a Bank Guarantee substantially in the form established by PNSA to guarantee the payment of the estimated costs of the Expansion Feasibility Survey.

Article 20. *Feasibility Surveys Implementation and Advertising*

- 20.1 PNSA, acting reasonably and in good faith upon the completion of a Feasibility Survey and as soon as it is reasonably possible but not later than 60 Days after the Feasibility Survey completion, agrees to:
- a. identify Puerto Nuevo's annual Effective Loading Capacity reasonably achievable after completing the Expansion; and
 - b. identify the percentage of the Total Guaranteed Volumes required by the Guaranteed Volume Applicants that will be fulfilled by the Expansion (assuming that the Expansion will reach its foreseen Effective Loading Capacity); and
 - c. determine if it is probable that any Surplus Capacity remains after the Expansion.

PNSA will examine the financial feasibility that will allow to pay the Expansion costs and expenses as well as compensate adequately its shareholders' equity as provided by Law 1/1991.

- 20.2 If the Feasibility Survey indicates that the Expansion is financially, monetarily, administratively, and technically feasible and does not affect the Guaranteed Volume or Total Guaranteed Volume of



Long-Term Users, the PNSA's Board of Directors will review for approval or disapproval both of the Expansion budget and of the Expansion construction cash flow based on the Feasibility Survey. In addition, PNSA's Board of Directors is empowered to change or update the Expansion budget and cash flow if required to implement the Expansion.

- 20.3 Upon approval by PNSA's Board of Directors of the Expansion terms and conditions, PNSA will notify the Applicants of the Expansion feasibility by electronic means.
- 20.4 The Applicant(s) will provide PNSA with a Bank Guarantee substantially in the form established by PNSA to guarantee the payment of Rates and will agree to deliver any additional guarantees as agreed upon by the parties, to cover all the commitments assumed for the Expansion.
- 20.5 Applicants will have 10 calendar Days after the receipt of the notice of Expansion feasibility for approaching PNSA to execute the Contract, which includes a condition precedent that provides for all the Applicants to sign in the cases that the Expansion is carried out with the aim of servicing the aggregate demand resulting from multiple Guaranteed Volume Applications.
- 20.6 If (i) any of the Guaranteed Volume Applicants does not provide the Bank Guarantee requested by PNSA or (ii) the Bank Guarantee is voided for non performance and is not replaced by the corresponding Guaranteed Volume Applicant, this Guaranteed Volume Applicant will not be cleared for any Guaranteed Volume in the Expansion and PNSA will not be bound to enter into a Long-Term User Contract with that Guaranteed Volume Applicant in respect of the Expansion; or

If (i) one or more Guaranteed Volume Applicants fail to provide the Bank Guarantee(s) as required by PNSA; or (ii) the Bank Guarantee is voided for non-performance and is not replaced by the corresponding Guaranteed Volume Applicant; or (iii) later the Guaranteed Volume Applicant does not execute a Contract or does not confirm an increase in its Total Guaranteed Volume requirements under the existing Contracts, then PNSA may decide not to continue the Expansion, unless PNSA deems that the remaining Guaranteed Volume Applicants are willing to continue relying on the recalculation of the Rates and willing to increase their commitments and amend their Contracts (as applicable) to replace the commitments of the non-performing Guaranteed Volume Applicant.

PNSA may propose to the remaining Applicants **(i)** that they undertake the capacity, costs and Rates of the Applicant that did not execute the contract; or **(ii)** that they introduce a new Applicant to PNSA with all the documents to replace the Applicant that did not sign.

Article 21. *Entering into a Contract*

PNSA's approval of an Application will lead to the execution of a Contract and the payment of Rates, as provided in Article 16 of the Access Policy.

CHAPTER FIVE

PUBLICATION AND MODIFICATIONS TO THE ACCESS POLICY

Article 22. *Website Information*



- 22.1 PNSA will publish on its website www.puertonuevo.com.co as soon as practicable after such information becomes available, any information regarding Puerto Nuevo and its facilities that will assist any interested party to determine whether Puerto Nuevo, in terms of location and capacity of the physical infrastructure, is suitable for any potential user to export coal.
- 22.2 The information posted on PNSA's website will include data on the Available Capacity and applicable Rates, to be updated every two months as provided in the Available Capacity offering and allocation procedure of Chapter Four of the Access Policy. Likewise the website will include required additional information about availability and demand projections in accord with Resolution 2734/2013 §6 par. 2, as amended or complemented

Article 23. *Publication of the Access Policy*

PNSA will publish on its website this Access Policy as amended.

Article 24. *Changes to Access Policy*

If at any time, PNSA deems one or more aspects of the Access Policy to be unworkable or otherwise an impediment to the efficient and effective operation of Puerto Nuevo, the provision of services or the financial stability of Puerto Nuevo, PNSA may, at its own discretion and upon giving prior notice to the Superintendency of Ports and Transport, review and amend the Access Policy to address those unworkable, inefficient or ineffective aspects of the Access Policy, provided that the Access Policy as amended continues to be consistent at all times with the requirements of Law 1/1991, the Rules of Technical Operation Conditions, Resolution 2374 of July 10, 2013, the Concession Contract, and any other documents that form an integral part thereof.

Article 25. *Access Policy Changes Requested by the Superintendency of Ports and Transport*

- 25.1 The Superintendency of Ports and Transport in accordance with Resolution 2374 of July 10, 2013 may request PNSA to amend the Access Policy at any time by giving PNSA notice in writing within an administrative procedure, provided that the Access Policy remains consistent with the principles set out in the Constitution, Law 1/1991, the Concession Contract and Resolution 2374 of July 10, 2013.
- 25.2 If a requested change to the Access Policy requires a modification corresponding to any prior contracts entered into by PNSA and third parties (including the Users), PNSA will:
- a. in good faith seek an agreement upon the proposed amendments with the counterparties to the affected contracts; and
 - b. provided the counterparties have agreed to the proposed amendments and PNSA has obtained all other necessary approvals and consents, promptly amend the Access Policy and the affected contracts in accordance with the recommendations made by the Superintendency of Ports and Transport.



- 25.3 PNSA acknowledges its obligation to implement the Access Policy acting reasonably and in good faith. Without detriment to any other provision of this Access Policy, PNSA will not make any changes to this Access Policy, which adversely affects any entitlement, right or obligation of any Long-Term User without the prior written consent of the relevant User, unless a competent Government Authority requires the change.

Article 26. Confidential Information Protection

26.1 PNSA will ensure that any Confidential Information relating to its Users remains confidential and:

- a. is used only for the purpose for which it is provided;
- b. is disclosed by PNSA's authorized officers to other PNSA's officers and employees as approved, only for appropriate purposes and only to the extent necessary for them to perform their duties; and
- c. is otherwise treated in accordance with the confidentiality provisions set out in Short-Term, Long-Term or otherwise contracts.

26.2 Confidential Information means any information that has not been made public and which:

- a. is confidential by nature;
- b. was specified to be confidential by the person who supplied it; or
- c. is known as confidential by the person who uses or discloses it, not including however any information that:
 - i) is in the public domain other than through any act of PNSA; or
 - ii) is or was made available to PNSA by a third party who is or was not under any obligation of confidentiality.

26.3 PNSA may disclose Confidential Information as required:

- a. by law or by order of a competent court; or
- b. by any Government Authority.

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Annexes

Annex A	Flowchart
Annex B	Coal Quality Parameters
Annex C	Identification of the rolling fleet