

## **MASTER AGREEMENT**

entered into by and between

**TRANSNET SOC LTD**

and

**FOR THE PROVISION OF : PREPARE PRECINCT PLANS FOR THE PORT OF EAST LONDON FOR A PERIOD OF 5 MONTHS**

**Agreement Number**

**Commencement Date**

**02 February 2023**

**Expiry Date**

**01 June 2023**

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## 1 INTRODUCTION

This Agreement is entered into by and between:

**Transnet SOC Ltd** [Registration Number 1990/000900/30] whose registered address is P O Box 72501, Parkview, 2122, Republic of South Africa

**[Transnet]**

and

**[the Service Provider]**.

### NOW THEREFORE, IT IS AGREED:

- 1.1 Transnet hereby appoints the Service Provider to provide, and Transnet undertakes to accept the supply of Goods / provision of Services provided for herein, as formally agreed between the Parties and in accordance with the Schedule of Requirements / Work Orders issued as a schedule to this Agreement; and
- 1.2 the Service Provider hereby undertakes to provide the Goods/Services provided for herein, as formally agreed between the Parties and in accordance with the Schedule of Requirements issued as a schedule to this Agreement.

## 2 DEFINITIONS

Where the following words or phrases are used in this Agreement, such words or phrases shall have the meaning assigned thereto in this clause, except where the context clearly requires otherwise:

- 2.1 **AFSA** means the Arbitration Foundation of South Africa;
- 2.2 **Agreement** means this Agreement and its associated schedules and/or annexures and/or appendices, and/or schedules, including the Schedule of Requirements/Work Orders, the technical specifications for the Goods/Services and such special conditions as shall apply to this Agreement, together with the General Tender Conditions and any additional provisions in the associated bid documents tendered by the Service Provider [as agreed, in writing, between the Parties], which collectively and exclusively govern the provision of Services and provision of ancillary Services by the Service Provider to Transnet;
- 2.3 **Background Intellectual Property** means all Intellectual Property introduced and required by either Party to give effect to their obligations under this Agreement owned in whole or in part by or licensed to either Party or their affiliates prior to the Commencement Date or developed after the Commencement Date otherwise pursuant to this Agreement;
- 2.4 **Business Day(s)** means Mondays to Fridays between 07:30 and 16:00, excluding public holidays as proclaimed in South Africa;
- 2.5 **Commencement Date** means 02 February 2023, notwithstanding the signature date of this Agreement;
- 2.6 **Confidential Information** means any information or other data, whether in written, oral, graphic or in any other form such as in documents, papers, memoranda, correspondence, notebooks, reports, drawings, diagrams, discs, articles, samples, test results, prototypes, designs, plans, formulae, patents, or inventor's certificates, which a Party discloses or provides to the other Party [intentionally or unintentionally, or as a result of one Party permitting the representative of

the other Party to visit any of its premises], or which otherwise becomes known to a Party, and which is not in the public domain and includes, without limiting the generality of the term:

- a) information relating to methods of operation, data and plans of the disclosing Party;
- b) the contents of this Agreement;
- c) private and personal details of employees or clients of the disclosing Party or any other person where an onus rests on the disclosing Party to maintain the confidentiality of such information;
- d) any information disclosed by either Party and which is clearly marked as being confidential or secret;
- e) information relating to the strategic objectives and planning of the disclosing Party relating to its existing and planned future business activities;
- f) information relating to the past, present and future research and development of the disclosing Party;
- g) information relating to the business activities, business relationships, products, services, customers, clients and Subcontractors of the disclosing Party where an onus rests on the disclosing Party to maintain the confidentiality of such information;
- h) information contained in the software and associated material and documentation belonging to the disclosing Party;
- i) technical and scientific information, Know-How and trade secrets of a disclosing Party including inventions, applications and processes;
- j) Copyright works;
- k) commercial, financial and marketing information;
- l) data concerning architecture, demonstrations, tools and techniques, processes, machinery and equipment of the disclosing Party;
- m) plans, designs, concepts, drawings, functional and technical requirements and specifications of the disclosing Party;
- n) information concerning faults or defects in Goods, equipment, hardware or software or the incidence of such faults or defects; and
- o) information concerning the charges, fees and/or costs of the disclosing Party or its authorised Subcontractors, or their methods, practices or service performance levels actually achieved;

2.7 **Copyright** means the right in expressions, procedures, methods of operations or mathematical concepts, computer program codes, compilations of data or other material, literary works, musical works, artistic works, sound recordings, broadcasts, program carrying signals, published editions, photographic works, or cinematographic works of the copyright owner to do or to authorise the doing of certain acts specified in respect of the different categories of works;

2.8 **Data** means all data, databases, documents, information, graphics, text or other material in an electronic or tangible medium which the Parties to this Agreement generate, collect, process, store or transmit in relation to their business;

2.9 **Designs** mean registered Designs and/or Design applications and will include the monopoly right granted for the protection of an independently created industrial design including designs dictated essentially by technical or functional considerations as well as topographies of integrated circuits and integrated circuits;

2.10 **Expiry Date** means 01 June 2023;

- 2.11 **Foreground Intellectual Property** means all Intellectual Property developed by either Party pursuant to this Agreement;
- 2.12 **ICC Incoterms** means the the latest version of commercial trade terms as published by the International Chamber of Commerce, Paris [ICC], which are otherwise referred to as purchase terms and which define precisely the responsibilities, costs and risks of the buyer [**Transnet**] and the seller [**the Supplier**]. Incoterms are only applicable to contracts involving the import or export of Goods from one country to another and for the purpose of this Agreement, if applicable, shall mean the designated Incoterm as stipulated in Schedule 1 hereto. Further details of the Incoterm [purchase terms] for this Agreement, if applicable, can be viewed at the International Business Training website - <http://www.i-b-t.net/incoterms.html>;
- 2.13 **Intellectual Property** means Patents, Designs, Know-How, Copyright and Trade Marks and all rights having equivalent or similar effect which may exist anywhere in the world and includes all future additions and improvements to the Intellectual Property;
- 2.14 **Know-How** means all Confidential Information of whatever nature relating to the Intellectual Property and its exploitation as well as all other Confidential Information generally relating to Transnet's field of technology, including technical information, processing or manufacturing techniques, Designs, specifications, formulae, systems, processes, information concerning materials and marketing and business information in general;
- 2.15 **Parties** mean the Parties to this Agreement together with their subsidiaries, divisions, business units, successors-in-title and assigns;
- 2.16 **Party** means either one of these Parties;
- 2.17 **Patents** mean registered Patents and Patent applications, once the latter have proceeded to grant, and includes a right granted for any inventions, products or processes in all fields of technology;
- 2.18 **Permitted Purpose** means any activity or process to be undertaken or supervised by a Staff member of one Party during the term of this Agreement, for which purpose authorised disclosure of the other Party's Confidential Information or Intellectual Property is a prerequisite in order to enable such activity or process to be accomplished;
- 2.19 **Price(s)** means the agreed Price(s) for the Goods/Services to be purchased from the Service Provider by Transnet, as detailed in the Schedule of Requirements, issued in accordance with this Agreement, as amended by mutual agreement between the Parties and in accordance with the terms and conditions in this Agreement from time to time;
- 2.20 **Purchase Order(s)** means official orders issued by an operating division of Transnet to the Service Provider for the supply of Goods or Services;
- 2.21 **Service(s)** means **PREPARE PRECINCT PLANS FOR THE PORT OF EAST LONDON**, the Service(s) provided to Transnet by the Service Provider, pursuant to the Work Order(s) in terms of this Agreement; **Service Level Agreement** or **SLA** means the processes, deliverables, key performance indicators and performance standards relating to the Services to be provided by the Service Provider;
- 2.22 **Service Provider Materials** means all works of authorship, products and materials [including, but not limited to, data, diagrams, charts, reports, specifications, studies, inventions, software, software development tools, methodologies, ideas, methods, processes, concepts and techniques] owned by, or licensed to, the Service Provider prior to the Commencement Date or independently developed by the Service Provider outside the scope of this Agreement at no expense to Transnet, and used by the Service Provider in the performance of the Services;

- 2.23 **Staff** means any partner, employee, agent, consultant, independent associate or contractor, Subcontractor and the staff of such Subcontractor, or other authorised representative of either Party;
- 2.24 **Schedule of Requirements** means Schedule 1 hereto;
- 2.25 **Subcontract** means any contract or agreement or proposed contract or agreement between the Service Provider and any third party whereby that third party agrees to provide to the Supplier the Goods or related Services or any part thereof or material used in the manufacture of the Goods or any part thereof;
- 2.26 **Subcontractor** means the third party with whom the Service Provider enters into a Subcontract;
- 2.27 **Tax Invoice** means the document as required by Section 20 of the VAT Act, as may be amended from time to time;
- 2.28 **Trade Marks** mean registered Trade Marks and Trade Mark applications and include any sign or logo, or combination of signs and/or logos capable of distinguishing the goods or services of one undertaking from those of another undertaking;
- 2.29 **VAT** means Value-Added Tax chargeable in terms of the VAT Act, 89 of 1991, as may be amended from time to time; and
- 2.30 **VAT Act** means the Value Added Tax Act, No 89 of 1991, as may be amended from time to time.
- 2.31 **Work Order(s)** means a detailed scope of work for a Service required by Transnet, including **timeframes**, Deliverable, Fees and costs for the supply of the Service to Transnet, which may be appended to this Agreement from time to time.

### 3 INTERPRETATION

- 3.1 Clause headings in this Agreement are included for ease of reference only and do not form part of this Agreement for the purposes of interpretation or for any other purpose. No provision shall be construed against or interpreted to the disadvantage of either Party hereto by reason of such Party having or being deemed to have structured or drafted such provision.
- 3.2 Any term, word or phrase used in this Agreement, other than those defined under the clause heading "*Definitions*" shall be given its plain English meaning, and those terms, words, acronyms, and phrases used in this Agreement will be interpreted in accordance with the generally accepted meanings accorded thereto.
- 3.3 A reference to the singular incorporates a reference to the plural and *vice versa*.
- 3.4 A reference to natural persons incorporates a reference to legal persons and *vice versa*.
- 3.5 A reference to a particular gender incorporates a reference to the other gender.

### 4 NATURE AND SCOPE

- 4.1 This Agreement is an agreement under the terms and conditions of which the Service Provider will arrange for the supply/provision to Transnet of the Goods/Services which meet the requirements and specifications of Transnet, the delivery of which is controlled by means of Purchase Orders to be issued by Transnet and executed by the Service Provider in accordance with this Agreement.
- 4.2 Such Purchase Orders and deliveries to Transnet shall be agreed between the Parties from time to time, subject to the terms of the Schedule of Requirements/Work Order.
- 4.3 Each properly executed Purchase Order forms an inseparable part of this Agreement as if it were fully incorporated into the body of this Agreement.
- 4.4 During the period of this Agreement, both Parties can make written suggestions for amendments to the Schedule of Requirements/Work Orders in accordance with procedures set out in clause 35

*[Amendment and Change Control]*. A Party will advise the other Party within 14 [fourteen] Business Days, or such other period as mutually agreed, whether the amendment is acceptable.

- 4.5 Insofar as any term, provision or condition in the Schedule of Requirements/Work Order conflicts with a like term, provision or condition in this Agreement and/or a Purchase Order, the term or provision or condition in this Master Agreement shall prevail, unless such term or provision or condition in this Master Agreement has been specifically revoked or amended by mutual written agreement between the Parties.
- 4.6 Time will be of the essence and the Service Provider will perform its obligations under this Agreement in accordance with the timeframe(s) [if any] set out in the relevant schedule, save that the Service Provider will not be liable under this clause if it is unable to meet such obligation within the time required as a direct result of any act or omission by Transnet and it has used its best endeavours to advise Transnet of such act or omission. In the event of such delay, any time deadlines detailed in the relevant schedule shall be extended by a period equal to the period of that delay.

## **5 AUTHORITY OF PARTIES**

- 5.1 Nothing in this Agreement will constitute or be deemed to constitute a partnership between the Parties, or constitute or be deemed to constitute the Parties as agents or employees of one another for any purpose or in any form whatsoever.
- 5.2 Neither Party shall be entitled to, or have the power or authority to:
- a) enter into an agreement in the name of the other; or
  - b) give any warranty, representation or undertaking on the other's behalf; or
  - c) create any liability against the other or bind the other's credit in any way or for any purpose whatsoever.

## **6 DURATION/TERM AND CANCELLATION**

- 6.1 Notwithstanding the date of signature hereof, the Commencement Date if this Agreement is 02 February 2023 and the duration shall be for a 5 months period, expiring on 01 June 2023, unless:
- a) this Agreement is terminated by either Party in accordance with the provisions incorporated herein or in any schedules or annexures appended hereto, or otherwise in accordance with law or equity; or
  - b) this Agreement is extended at Transnet's option for a further period to be agreed by the Parties.
- 6.2 Notwithstanding clause 22 *[Breach and Termination]*, either Party may cancel this Agreement without cause by giving 30 [thirty] calendar days prior written notice thereof to the other Party, provided that in such instance, this Agreement will nevertheless be applicable in respect of all Purchase Orders which have been placed prior to the date of such cancellation.

## **7 RISK MANAGEMENT**

- 7.1 Where Transnet determines appropriate, within 2 weeks from the date of contract signature, the Parties are to meet to prepare and maintain a contract Risk Register. The Risk Register shall include a description of the risks and a description of the actions which are to be taken to avoid or reduce these risks which both Parties shall jointly determine.
- 7.2 Contract progress meetings shall be held monthly, or unless otherwise agreed between the Parties in writing. The purposes of these progress meetings shall be to capture the number of late deliverables against agreed milestones, actual costs against payment plans, performance issues or

concerns, contract requirements not achieved, the status of previous corrective actions and risk management. Minutes of meetings shall be maintained and signed off between the Parties throughout the contract period

## **8 TRANSNET'S OBLIGATIONS**

- 8.1 Transnet undertakes to promptly comply with any reasonable request by the Service Provider for information, including information concerning Transnet's operations and activities, that relates to the Goods/Services as may be necessary for the Service Provider to provide the Goods/Services, but for no other purpose. However, Transnet's compliance with any request for information is subject to any internal security rules and requirements and subject to the observance by the Service Provider of its confidentiality obligations under this Agreement.
- 8.2 The Service Provider shall give Transnet reasonable notice of any information it requires.
- 8.3 Transnet agrees to provide the Service Provider or its Personnel such access to and use of its facilities as is necessary to allow the Service Provider to perform its obligations under this Agreement.

## **9 GENERAL OBLIGATIONS OF THE SERVICE PROVIDER**

- 9.1 The Service Provider shall:
  - a) respond promptly to all complaints and enquiries from Transnet;
  - b) inform Transnet immediately of any dispute or complaint arising in relation to the storage or delivery of the Goods;
  - c) conduct its business in a professional manner which will reflect positively upon the Service Provider and the Supplier's/Service Provider's products/services;
  - d) keep full records clearly indicating all transactions concluded by the Service Provider relating to the delivery of the Goods/Services and keep such records for at least 5 [five] years from the date of each such transaction;
  - e) obtain, and at all times maintain in full force and effect, any and all licences, permits and the like required under applicable laws for the provision of the Goods/Services and ancillary Services and the conduct of the business and activities of the Service Provider;
  - f) observe and ensure compliance with all requirements and obligations as set out in the labour and related legislation of South Africa, including the Occupational Health and Safety Act, 85 of 1993, as may be amended from time to time;
  - g) observe and ensure compliance with all requirements and objectives of the Transnet Supplier Integrity Pact as agreed to in response to the RFP. The general purpose of the Supplier Integrity Pact is to agree to avoid all forms of dishonesty, fraud and corruption by following a system that is fair, transparent and free from any undue influence prior to, during and subsequent to the currency of the procurement event leading to this Agreement and this Agreement itself;
  - h) comply with all applicable environmental legislation and regulations, demonstrate sound environmental performance and have an environmental management policy which ensures that its products, including the Goods/Services or ancillary Services are procured, produced, packaged, delivered and are capable of being used and ultimately disposed of in a way that is environmentally appropriate; and
  - i) ensure the validity of all renewable certifications, including but not limited to its B-BBEE Verification Certificate, throughout the entire term of this Agreement. Should the Service

Provider fail to present Transnet with such renewals as they become due, Transnet shall be entitled, in addition to any other rights and remedies that it may have in terms of the Agreement, to terminate this Agreement forthwith without any liability and without prejudice to any claims which Transnet may have for damages against the Service Provider.

9.2 The Service Provider acknowledges and agrees that it shall at all times:

- a) render the supply of the Goods/Services and ancillary Services (if applicable) and perform all its duties with honesty and integrity;
- b) communicate openly and honestly with Transnet regarding the supply and performance of the Goods/Services and demonstrate a commitment to effecting the supply and performing ancillary Services timeously, efficiently and at least to the required standards;
- c) endeavour to provide the highest possible standards of service and workmanship, with a reasonable degree of care and diligence;
- d) use its best endeavours and make every diligent effort to meet agreed deadlines;
- e) treat its own Staff, as well as all Transnet's Staff, with fairness and courtesy and respect for their human rights;
- f) practice and promote its own internal policies aimed at prohibiting and preventing unfair discrimination;
- g) treat all enquiries from Transnet in connection with the supply of the Goods/Services and/or ancillary Services with courtesy and respond to all enquiries promptly and efficiently. Where the Service Provider is unable to comply with the provisions of this clause, the Service Provider will advise Transnet of the delay and the reasons therefor and will keep Transnet informed of progress made regarding the enquiry;
- h) when requested by Transnet, provide clear and accurate information regarding the Supplier's/Service Provider's own policies and procedures, excluding Know-How and other Confidential Information, except where a non-disclosure undertaking has been entered into between the Parties;
- i) not allow a conflict of interest to develop between its own interests [or the interests of any of its other customers] and the interests of Transnet;
- j) not accept or offer, nor allow, induce or promote the acceptance or offering of any gratuity, enticement, incentive or gift that could reasonably be regarded as bribery or an attempt to otherwise exert undue influence over the recipient;
- k) not mislead Transnet or its officers, employees and stakeholders, whether by act or omission;
- l) not otherwise act in an unethical manner or do anything which could reasonably be expected to damage or tarnish Transnet's reputation or business image;
- m) immediately report to Transnet any unethical, fraudulent or otherwise unlawful conduct of which it becomes aware in connection with Transnet or the supply of Goods/Services or ancillary Services to Transnet;
- n) ensure that at all times, during the currency of this Agreement, it complies with all obligations and commitments in terms of the provisions of the Income Tax Act, No 58 of 1962, the VAT Act or any other tax legislation relating to their liability for Income Tax, VAT, Pay as You Earn or any other tax. The Service Provider shall further ensure Tax Clearance Compliance, for the duration of this Agreement;

- o) not victimise, harass or discriminate against any employee of either Party to this Agreement or any applicant for employment with either Party to this Agreement due to their gender, race, disability, age, religious belief, sexual orientation or part-time status. This provision applies, but is not limited to employment, upgrading, work environment, demotion, transfer, recruitment, recruitment advertising, termination of employment, rates of pay or other forms of compensation and selection for training.
  - p) shall ensure that its employees, agents and Subcontractors will not breach any applicable discrimination legislation and any amendments and re-enactments thereof.
- 9.3 In compliance with the National Railway Safety Regulator Act, 16 of 2002, as may be amended from time to time, the Supplier shall ensure that the Goods/Services and ancillary Services, to be supplied to Transnet under the terms and conditions of this Agreement, comply fully with the Specifications as set forth in Schedule 1 hereto, and shall thereby adhere [as applicable] to railway safety requirements and/or regulations. Permission for the engagement of a Subcontractor by the Supplier, as applicable, shall be subject to a review of the capability of the proposed Subcontractor to comply with the specified railway safety requirements and/or regulations. The Supplier and/or its Subcontractor shall grant Transnet access, during the term of this Agreement, to review any safety-related activities, including the coordination of such activities across all parts of its organisation.

## **10 SERVICE PROVIDER'S PERSONNEL**

- 10.1 The Service Provider's Personnel shall be regarded at all times as employees, agents or Subcontractors of the Service Provider and no relationship of employer and employee shall arise between Transnet and any Service Provider Personnel under any circumstances regardless of the degree of supervision that may be exercised over the Personnel by Transnet.
- 10.2 The Service Provider warrants that all its Personnel will be entitled to work in South Africa or any other country in which the Services are to be performed.
- 10.3 The Service Provider will ensure that its Personnel comply with all reasonable requirements made known to the Service Provider by Transnet concerning conduct at any Transnet premises or any other premises upon which the Services are to be performed [including but not limited to security regulations, policy standards and codes of practice and health and safety requirements]. The Service Provider will ensure that such Personnel at all times act in a lawful and proper manner in accordance with these requirements.
- 10.4 Transnet reserves the right to refuse to admit or to remove from any premises occupied by or on behalf of it, any Service Provider Personnel whose admission or presence would, in the reasonable opinion of Transnet, be undesirable or who represents a threat to confidentiality or security or whose presence would be in breach of any rules and regulations governing Transnet's Personnel, provided that Transnet notifies the Service Provider of any such refusal [with reasons why]. The reasonable exclusion of any such individual from such premises shall not relieve the Service Provider from the performance of its obligations under this Agreement.
- 10.5 The Service Provider agrees to use all reasonable endeavours to ensure the continuity of its Personnel assigned to perform the Services. If any re-assignment by the Service Provider of those Personnel is necessary, or if Transnet advises that any such Personnel assigned are in any respect unsatisfactory, including where any such Personnel are, or are expected to be or have been absent for any period, then the Service Provider will promptly supply a replacement of equivalent

calibre and experience, and any such replacement shall be approved by Transnet prior to commencing provision of the Services, such approval not to be unreasonably withheld or delayed.

## **11 SUBCONTRACTING**

- 11.1 The Service Provider may only enter into a subcontracting arrangement or replace a subcontractor with the approval of Transnet.
- 11.2 If the Service Provider subcontracts a portion of the contract to another person without declaring it to Transnet reserves the right to penalise the Service Provider up to 10% of the value of the contract.
- 11.3 Where the Service Provider seeks to replace a subcontractor Transnet shall be entitled to obtain representations or input from the initial subcontractor who was part of the tender process whose credentials were used in the Service Provider's tender submission. Transnet shall consider input from all parties concerned, in order to take a decision on the proposed replacement of the subcontractor. The subcontracting arrangement or contract remains between the Service Provider (main contractor) and the subcontractor.
- 11.4 Should Transnet approve the Supplier's/Service Provider's subcontracting arrangement, the Service Provider and not the Sub-contractor will at all times be held liable for performance in terms of its contractual obligations.
- 11.5 The Service Provider may not subcontract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.
- 11.6 The Service Provider may not subcontract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level of contributor than the Service Provider, unless the contract is subcontracted to an Exempted Micro Enterprise (EME) that has the capability and ability to execute the Subcontract.

## **12 PAYMENT TO SUB-CONTRACTORS**

- 12.1 Transnet reserves the right, in its sole discretion, to make payment directly to the sub-contractor of the Service Provider, subject to the following conditions:
  - a) Receipt of an undisputed invoice from the sub-contractor; and
  - b) Receipt of written confirmation from the Service Provider that the amounts claimed by the sub-contractor are correct and that the services for which the sub-contractor has requested payment were rendered to the satisfaction of the Service Provider, against the required standards.
- 12.2 Nothing contained in this clause must be interpreted as bestowing on any sub-contractor a right or legitimate expectation to be paid directly by Transnet. Furthermore, this clause does not bestow any right or legitimate expectation on the Service provider to demand that Transnet pay its sub-contractor directly. The decision to pay any sub-contractor directly, remains that of Transnet alone.
- 12.3 The Service Provider remains liable for its contractual obligations under the Agreement, including all services rendered by the sub-contractor.
- 12.4 This clause does not establish any contractual relationship between Transnet and any sub-contractor of the Service Provider, whatsoever.

## **13 B-BBEE AND SOCIO-ECONOMIC OBLIGATIONS**

### **13.1 B-BBEE Scorecard**

- a) Transnet fully endorses and supports the Broad-Based Black Economic Empowerment Programme and is strongly of the opinion that all South African business enterprises have an equal obligation to redress the imbalances of the past.
- b) In response to this requirement, the Service Provider shall submit to Transnet's Contract Manager or such other designated person details of its B-BBEE status in terms of the latest Codes of Good Practice issued in terms of the B-BBEE Act and proof thereof at the beginning of March each year during the currency of this Agreement.
- c) The Service Provider undertakes to notify and provide full details to Transnet in the event there is:
  - (i) a change in the Supplier's/Service Provider's B-BBEE status which is less than what it was at the time of its appointment including the impact thereof; and
  - (ii) a corporate or internal restructure or change in control of the Service Provider which has or likely to impact negatively on the Supplier's/ Service Provider's B-BBEE status.
- d) Notwithstanding any other reporting requirement in terms hereof, the Supplier Service Provider undertakes to provide any B-BBEE data (underlying data relating to the Supplier /Service Provider which has been relied upon or utilised by a verification agency or auditor for the purposes of issuing a verification certificate in respect of the Service Provider B-BBEE status) which Transnet may request on written notice within 30 (thirty) calendar days of such request. A failure to provide such data shall constitute a Supplier/ Service Provider Default and may be dealt with in accordance with the provisions of clause 22.
- e) In the event there is a change in the Supplier's/ Service Provider's B-BBEE status, then the provisions of clause 22 shall apply.

### **13.2 Green Economy/Carbon Footprint**

- a) The Service Provider has in its bid provided Transnet with an understanding of the Supplier's/Service Provider's position with regard to issues such as waste disposal, recycling and energy conservation.

## **14 PENALTIES**

### **14.1 Penalties for Non-compliance to Service Level Agreement**

Where the Service Provider fails to deliver the Services within the agreed and accepted milestone timelines and provided that the cause of the delay was not due to a fault of Transnet, penalties shall be imposed at R2 000.00 per day.

#### **Payment of Non-compliance Penalties:**

- a) Subject to Clause (e) above, the Service Provider shall pay the Non-compliance Penalty indicated in the Non-compliance Penalty Certificate within 10 (ten) Business Days of Transnet issuing a valid Tax Invoice to the Service Provider for the amount set out in that certificate. If Transnet does not issue a valid Tax Invoice to the Service Provider for Non-compliance Penalties accrued during any relevant period, those Non-compliance Penalties shall be carried forward to the next period.
- b) The Service Provider shall pay the amount due within 10 (ten) days after receipt of a valid Tax Invoice from Transnet, failing which Transnet shall, without prejudice to any other

rights of Transnet under this Agreement, be entitled to call for payment which may be in any form Transnet deems reasonable and/or appropriate.

- c) Should the Service Provider fail to pay any Non Compliance Penalties within the time indicated above (as applicable), Transnet shall be entitled to deduct (set off) the amount not paid by the Service Provider from the account of the Service Provider in the ensuing month.
- d) The Non Compliance Penalties set forth in this Clause are stated exclusive of VAT. Any VAT payable on Non Compliance Penalties will be for the account of the Service Provider.

## **15 FEES AND EXPENSES RELATING TO SERVICES**

- 15.1 In consideration of the provision of the Services, Transnet will pay to the Service Provider the Fees detailed in the relevant schedule or Work Order.
- 15.2 Transnet will not be invoiced for materials used in the provision of the Services save for those materials [if any] set out in the Work Order and accepted by Transnet or in any relevant Work Order [which will be invoiced to Transnet at cost].
- 15.3 Unless otherwise agreed in a schedule or Work Order, Transnet will reimburse to the Service Provider all reasonable and proper expenses incurred directly and solely in connection with the provision of the Services, provided that all such expenses:
  - a) are agreed by Transnet in advance;
  - b) are incurred in accordance with Transnet's standard travel and expenses policies;
  - c) are passed on to Transnet at cost with no administration fee; and
  - d) will only be reimbursed if supported by relevant receipts.
- 15.4 All Tax Invoices relating to Fees, out of pocket expenses and, if applicable, travel and accommodation costs, will provide the detail for each of the Personnel carrying out the Services and incurring the expenses, and the Tax Invoice will, where appropriate, include VAT as a separate item.

## **16 INVOICES AND PAYMENT**

- 16.1 Transnet shall pay the Service Provider the amounts stipulated in each Purchase Order/Work Order, subject to the terms and conditions of this Agreement.
- 16.2 Transnet shall pay such amounts to the Service Provider upon receipt of a valid and undisputed Tax Invoice together with the supporting documentation, as specified in the Schedule of Requirements appended hereto, once the valid and undisputed Tax Invoices or such portions of the Tax Invoices which are valid and undisputed become due and payable to the Service Provider for the delivery of the Goods/Services ordered, in terms of clause 16.5 below.
- 16.3 Transnet may, pending an investigation, withhold any payments to the Service Provider, in the case where irregular expenditure has been identified in the particular contract and that there is reasonable suspicion that the Service Provider is involved or was aware that the contract transgressed any legislation.
- 16.4 All Prices set out in this Agreement and the Schedule of Requirements hereto are to be indicated inclusive and exclusive of VAT, which will be payable at the applicable rate in ZAR.
- 16.5 Unless otherwise provided for in the Schedule of Requirements appended to this Agreement, Tax Invoices shall be submitted together with a month-end statement. Payment against such month-end statement shall be made by Transnet within 30 [thirty] calendar days after date of

receipt by Transnet of the Supplier's/Service Provider's statement together with the relevant valid and undisputed Tax Invoice(s) and supporting documentation.

- 16.6 Where the payment of any Tax Invoice, or any part of a Tax Invoice which is not in dispute, is not made in accordance with this clause, the Service Provider shall be entitled to charge interest on the outstanding amount, at The Standard Bank of South Africa's prime rate of interest in force, for the period from the due date of payment until the outstanding amount is paid.
- 16.7 The Service Provider shall remain the owner of all plant, material, machinery, equipment and the like [collectively, **the Supplier's Goods**] provided to Transnet until Transnet has paid in full for the Supplier's Goods, it being specifically agreed that Transnet shall acquire no rights [including liens] of whatsoever nature in such Supplier's Goods until date of final payment by Transnet. Subject to the foregoing, all risk and benefit to the Supplier's Goods shall pass from the Supplier to Transnet on delivery of the Supplier's Goods by the Supplier to Transnet.

## **17 PRICE ADJUSTMENTS**

- 17.1 Prices are fixed and firm for the duration of the contract.

## **18 WARRANTIES APPLICABLE TO SERVICES**

- 18.1 The Service Provider warrants to Transnet that:
- a) it has full capacity and authority to enter into and to perform this Agreement and that this Agreement is executed by a duly authorised representatives of the Service Provider;
  - b) it will discharge its obligations under this Agreement and any annexure, appendix or schedule hereto with all due skill, care and diligence;
  - c) it will be solely responsible for the payment of remuneration and associated benefits, if any, of its Personnel and for withholding and remitting income tax for its Personnel in conformance with any applicable laws and regulations;
  - d) it will procure licences for Transnet in respect of all Third Party Material detailed in the Work Order(s), and will procure the right for Transnet to take such copies [in whole or in part] of such Third Party Materials as it may reasonably require for the purposes of back-up for archiving and disaster recovery; and
  - e) the use or possession by Transnet of any Materials will not subject Transnet to any claim for infringement of any Intellectual Property Rights of any third party.
- 18.2 The Service Provider warrants that it will perform its obligations under this Agreement in accordance with the Service Levels as defined in the relevant schedule. Transnet may at its discretion audit compliance with the Service Levels, provided that any such audit is carried out with reasonable prior notice and in a reasonable way so as not to have an adverse effect on the performance of the Services. Without prejudice to clause 18.3 below, in the event that the Service Provider fails to meet the Service Levels, Transnet may claim appropriate service credits or invoke a retention of Fees as detailed in the relevant schedule and/or Work Order.
- 18.3 The Service Provider warrants that for a period of 90 [ninety] calendar days from Acceptance of the Deliverables they will, if properly used, conform in all material respects with the requirements set out in the relevant schedule. The Service Provider will at its expense remedy any such non-conformance as soon as possible but in any event within 30 [thirty] calendar days of notification by Transnet. In the event that the Service Provider fails or is unable to remedy such non-conformance within such time-scale, Transnet will be entitled to employ a third party to do so in

place of the Service Provider and any excess charges or costs incurred by Transnet as a result shall be paid by the Service Provider.

- 18.4 The Service Provider will remedy any defect within 30 [thirty] calendar days of being notified of that defect by Transnet in writing.
- 18.5 The Service Provider will not be liable to remedy any problem arising from or caused by any modification made by Transnet to the Deliverables, or any part thereof, without the prior approval of the Service Provider.
- 18.6 The Service Provider shall advise Transnet of the effects of any steps proposed by Transnet pursuant to clause 18.5 above, including but not limited to any cost implications or any disruption or delay in the performance of the Services. The Parties agree that any changes to the Services, including the charges for the Services or any timetables for delivery of the Services, will be agreed in accordance with the change control procedure, as set out in clause 35 [*Amendment and Change Control*].
- 18.7 The Service Provider warrants that:
- a) it has, using the most up-to-date software available, tested for [and deleted] all commonly known viruses in the Materials and for all viruses known by the Service Provider at the date of the relevant Work Order; and
  - b) at the time of delivery to Transnet, the Materials do not contain any trojan horse, worm, logic bomb, time bomb, back door, trap door, keys or other harmful components.
- The Service Provider agrees that, in the event that a virus is found, it will at its own expense use its best endeavours to assist Transnet in reducing the effect of the virus and, particularly in the event that a virus causes loss of operational efficiency or loss of data, to assist Transnet to the same extent to mitigate such losses and to restore Transnet to its original operating efficiency.
- 18.8 The Service Provider undertakes to comply with South Africa's general privacy protection in terms of Section 14 of the Bill of Rights in connection with this Agreement and shall procure that its Personnel shall observe the provisions of Section 14 [as applicable] or any amendments and re-enactments thereof and any regulations made pursuant thereto.
- 18.9 The Service Provider warrants that it has taken all reasonable precautions to ensure that, in the event of a disaster, the impact of such disaster on the ability of the Service Provider to comply with its obligations under this Agreement will be reduced to the greatest extent possible, and that the Service Provider shall ensure that it has appropriate, tested and documented recovery arrangements in place.
- 18.10 In compliance with the National Railway Safety Regulator Act, 16 of 2002, the Service Provider shall ensure that the Services, to be supplied to Transnet under the terms and conditions of this Agreement, comply fully with the specifications as set forth in Schedule 1 hereto, and shall thereby adhere [as applicable] to railway safety requirements and/or regulations. Permission for the engagement of a Subcontractor by the Service Provider [as applicable] shall be subject to a review of the capability of the proposed Subcontractor to comply with the specified railway safety requirements and/or regulations. The Service Provider and/or its Subcontractor shall grant Transnet access, during the term of this Agreement, to review any safety-related activities, including the coordination of such activities across all parts of its organisation.

## **19 THIRD PARTY INDEMNITY**

The Service Provider hereby indemnifies and shall hold Transnet harmless against any direct damages suffered by or claims arising against Transnet.

## **20 TOTAL OR PARTIAL FAILURE TO PERFORM**

20.1 In the case of Goods to be specially manufactured for it, if Transnet at any time ascertains that:

- a) no manufacturing of the Goods specified in a Purchase Order has commenced and there is little or no prospect, in Transnet's opinion, that manufacturing will commence within a reasonable time; or
- b) delivery of any of the Goods is being or is likely to be delayed beyond the promised delivery date(s), and there is little or no prospect of the Purchase Order(s) being carried out within reasonable adherence to the promised delivery rate(s) or time(s),

then Transnet may, irrespective of the cause of the delay, by notice to the Supplier, cancel as from a future date specified in such notice the whole or any part of this Agreement or Purchase Order in respect of which the Goods to be supplied have not been completed by that date, without incurring any liability by reason of such cancellation except as provided in this clause.

20.2 The Service Provider shall thereupon, as soon as possible after such date, deliver to Transnet the Goods/Services [if any] already completed, and payment for the part performance shall be made on a pro rata basis, provided the uncompleted part is not an integral or essential part of the completed Goods/Services. Where an integral or essential part of the work has not been completed, the amount to be paid to the Service Provider will be calculated on the basis of Transnet's enrichment. The Service Provider shall, wherever practicable, supply Transnet with the necessary drawings and/or specifications to enable it to complete the work.

## **21 RIGHTS ON CANCELLATION**

21.1 If this Agreement or Purchase Order is cancelled in whole or in part in terms of clause 20 [*Total or Partial Failure to Perform*], Transnet may execute or complete this Agreement with any other entity and do so on such terms as it may deem proper, or may procure other comparable Goods/Services in substitution for those neglected to be manufactured or supplied or rejected as aforesaid, and may recover from the Supplier the difference between the cost of such Goods/Services and the Price [if the latter was lower] as well as any costs and expenses [including any additional transport costs] which Transnet may have had to incur in consequence of the Supplier's/Service Provider's default.

21.2 Any amount which may be recoverable from the Service Provider in terms of clause 21.1 above, without prejudice to any other legal remedies available to Transnet, may be deducted in whole or in part from any monies in the hands of Transnet and due for payment to the Service Provider.

## **22 BREACH AND TERMINATION**

22.1 Termination in accordance with clause 6 [Term and Cancellation] shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either Party and all provisions which are to survive this Agreement or impliedly do so shall remain in force and in effect.

22.2 On termination of this Agreement or a Work Order, the Service Provider will immediately deliver up, and procure that its Personnel will immediately deliver up to Transnet, all Deliverables and property belonging to Transnet [or, in the event of termination of a Work Order, such as is relevant to that Work Order] which may be in the possession of, or under the control of the Service Provider, and certify to Transnet in writing that this has been done.

22.3 To the extent that any of the Deliverables and property referred to in clause 22.2 above are in electronic form and contained on non-detachable storage devices, the Service Provider will provide

Transnet with unencrypted copies of the same on magnetic media and will irretrievably destroy and delete copies so held.

- 22.4 In the event that this Agreement is terminated by the Service Provider under clause **Error! Reference source not found.**[Term and Cancellation], or in the event that a Work Order is terminated by Transnet under clause **Error! Reference source not found.** [Breach and Consequences of Termination], Transnet will pay to the Service Provider all outstanding Fees [apportioned on a pro rata basis] relating to the work undertaken by the Service Provider up until the date of such termination. Transnet will also pay the costs of any goods and materials ordered by the Service Provider in relation to the such work for which the Service Provider has paid or is legally obliged to pay, in which case, on delivery of such goods or materials, the Service Provider will promptly deliver such goods and materials to Transnet or as it may direct.
- 22.5 If either Party [**the Defaulting Party**] commits a material breach of this Agreement and fails to remedy such breach within 30 [thirty] calendar days of written notice thereof, the other Party [hereinafter **the Aggrieved Party**], shall be entitled, in addition to any other rights and remedies that it may have in terms of this Agreement, to terminate this Agreement forthwith without any liability and without prejudice to any claims which the Aggrieved Party may have for damages against the Defaulting Party.
- 22.6 Either Party may terminate this Agreement forthwith by notice in writing to the other Party when the other Party is unable to pay its debts as they fall due or commits any act or omission which would be an act of insolvency in terms of the Insolvency Act, 24 of 1936 [as amended from time to time], or if any action, application or proceeding is made with regard to it for:
- a) a voluntary arrangement or composition or reconstruction of its debts;
  - b) its winding-up or dissolution;
  - c) the appointment of a liquidator, trustee, receiver, administrative receiver or similar officer;
  - d) any similar action, application or proceeding in any jurisdiction to which it is subject.
- 22.7 Transnet may terminate this Agreement at any time within 2 [two] months of becoming aware of a change of control of the Service Provider by notice in writing to the Service Provider. For the purposes of this clause, **control** means the right to direct the affairs of a company whether by ownership of shares, membership of the board of directors, agreement or otherwise.
- 22.8 Notwithstanding this clause 22, Transnet may cancel this Agreement without cause by giving 30 [thirty] calendar days prior written notice thereof to the Service Provider, or
- 22.9 The provisions of clauses 2 [Definitions], [Warranties], 21 [Rights on Cancellation], 252 [Confidentiality], 28 [Limitation of Liability], 29 [Intellectual Property Rights], 32 [Dispute Resolution] and 36.1 [Governing Law] shall survive termination or expiry of this Agreement.

## 23 CESSION

- 23.1 Upon written notice to the Service Provider, Transnet shall be entitled:
- a) to appoint Transnet's financier of the Goods/Services as first payer under this Agreement, without transferring the ultimate responsibility for payment which will remain with Transnet; and
  - b) to cede, assign and transfer its right, title and interest in the Goods/Services to such financier as part of the funding consideration for the Goods/Services.
- 23.2 The Service Provider is not entitled to cede, delegate, assign, Subcontract or in any other manner dispose of any of its rights or obligations in terms of this Agreement without the prior written consent of Transnet, which consent shall not be withheld or delayed unreasonably.

## **24 FORCE MAJEURE**

- 24.1 Neither Party shall have any claim against the other Party arising from any failure or delay in the performance of any obligation of either Party under this Agreement caused by an act of force majeure such as acts of God, fire, flood, war, lockout, government action, laws or regulations, terrorism or civil disturbance, defaults or other circumstances or factors beyond the reasonable control of either Party, and to the extent that the performance of obligations of either Party hereunder is delayed by virtue of the foregoing, any period stipulated for any such performance shall be reasonably extended. Transnet may however rely on strikes, industrial dispute and riots as a ground of force majeure.
- 24.2 Each Party will take all reasonable steps by whatever lawful means that are available to resume full performance as soon as practicable and will seek agreement to modification of the relevant provisions of this Agreement in order to accommodate the new circumstances caused by the act of *force majeure*. If a Party fails to agree with such modifications proposed by the other Party within 90 [ninety] calendar days of the act of *force majeure* first occurring, either Party may thereafter terminate this Agreement with immediate notice.

## **25 PROTECTION OF PERSONAL INFORMATION**

- a) The following terms shall bear the same meaning as contemplated in Section 1 of the Protection of Personal Information Act 4 of 2013 ("POPIA"):
- consent; person; personal information; processing; record; Regulator as well as any terms derived from these terms of the POPIA
- b) Transnet will process all information by the Respondent in terms of the requirements contemplated in Section 4(1) of the POPIA:
- Accountability; Processing limitation; Purpose specification; Further processing limitation; Information quality; Openness; Security safeguards and Data subject participation.
- c) Transnet agrees that in submitting any information or documentation requested in the RFP and in this Agreement, the Service Provider consents to the processing of their personal information for the purpose of, but not limited to, risk assessment, contract award, contract management, auditing, legal opinions/litigation, investigations (if applicable), document storage for the legislatively required period, destruction, de-identification and publishing of personal information by Transnet and/or its authorised appointed third parties.
- d) The Parties agree that they may obtain and have access to personal information for the fulfilment of the rights and obligations contained herein. In performing the obligations as set out in this Agreement, the Parties shall at all times ensure that:
- i. they process personal information only for the express purpose for which it was obtained;
  - ii. once processed for the purposes for which it was obtained, all personal information will be destroyed to an extent that it cannot be reconstructed to its original form, subject to any legal retention requirements;
  - iii. Personal information is provided only to authorised personnel who strictly require the personal information to carry out the Parties' respective obligations under this Agreement;
  - iv. they do not disclose personal information of the other Party, other than in terms of this Agreement;
  - v. they have all reasonable technical and organisational measures in place to protect all personal information from unauthorised access and/or use;

- vi. they have appropriate technical and organisational measures in place to safeguard the security, integrity and authenticity of all information in their possession or under their control in terms of this Agreement;
  - vii. they identify all reasonably foreseeable internal and external risks to personal information in their possession or under their control; establish and maintain appropriate safeguards against the risks identified; regularly verify that the safeguards are effectively implemented; and ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards;
  - viii. such personal information is protected against unauthorised or unlawful processing, accidental loss, destruction or damage, alteration, disclosure or access.
- 25.1 The Parties agree that if personal information will be processed for additional purposes beyond the original purpose for which it was obtained, explicit consent must be obtained beforehand from those persons whose information will be subject to such processing.
- 25.2 Should it be necessary for either Party to disclose or otherwise make available the personal information to any third party (including sub-contractors and employees) that is not already consented to, it may do so only with the prior written consent of the other Party. The Party requiring such consent shall require of all such third parties, appropriate written undertakings to be provided, containing similar terms to that set forth in this clause, and dealing with that third party's obligations in respect of its processing of the personal information. Following approval by the other Party, the Party requiring consent agrees that the provisions of this clause shall *mutatis mutandis* apply to all authorised third parties who process personal information.
- 25.3 The Parties shall ensure that any persons authorized to process information on their behalf (including employees and third parties) will safeguard the security, integrity and authenticity of all information. Where necessary to meet this requirement, the Parties shall keep all personal information and any analyses, profiles, or documents derived therefrom logically separated from all other information and documentation held by it.
- 25.4 The Parties shall carry out regular assessments to identify all reasonably foreseeable internal and external risks to the personal information in its possession or under its control. The Parties shall implement and maintain appropriate safeguards against the risks which it identifies and shall also regularly verify that the safeguards which it has in place have been effectively implemented.
- 25.5 The Parties agree that they will promptly return, destroy or de-identify any personal information in their possession or control which belongs to the other Party once it no longer serves the purpose for which it was collected in relation to this Agreement, subject to any legal retention requirements. This may be at the request of the other Party and includes circumstances where a person has requested the Parties to delete all instances of their personal information. The information will be destroyed or de-identified in such a manner that it cannot be reconstructed to its original form, linking it to any particular individual or organisation.
- 25.6 Personal Information security breach:
- a) Each Party shall notify the other party in writing as soon as possible after it becomes aware of or suspects any loss, unauthorised access or unlawful use of any personal information and shall, at its own cost, take all necessary remedial steps to mitigate the extent of the loss or compromise of personal information and to restore the integrity of the affected personal information as quickly as is possible. The Parties shall also be required to provide each other with details of the persons affected by the compromise and the nature and extent of the

compromise, including details of the identity of the unauthorised person who may have accessed or acquired the personal information.

- b) The Parties shall provide on-going updates on the progress in resolving the compromise at reasonable intervals until such time as the compromise is resolved.
- c) Where required, the Parties must notify the South African Police Service; and/or the State Security Agency and the Information Regulator and the affected persons of the security breach. Any such notification shall always include sufficient information to allow the persons to take protective measures against the potential consequences of the compromise.
- d) The Parties undertake to co-operate in any investigations relating to security which is carried out by or on behalf of the other including providing any information or material in its possession or control and implementing new security measures.

## **26 CONFIDENTIALITY**

26.1 The Parties hereby undertake the following with regard to Confidential Information:

- a) not to divulge or disclose to any person whomsoever in any form or manner whatsoever, either directly or indirectly, any Confidential Information of the other without the prior written consent of such other Party, other than when called upon to do so in accordance with a statute, or by a court having jurisdiction, or by any other duly authorised and empowered authority or official, in which event the Party concerned shall do what is reasonably possible to inform the other of such a demand and each shall assist the other in seeking appropriate relief or the instituting of a defensive action to protect the Confidential Information concerned;
- b) not to use, exploit, permit the use of, directly or indirectly, or in any other manner whatsoever apply the Confidential Information disclosed to it as a result of this Agreement, for any purpose whatsoever other than for the purpose for which it is disclosed or otherwise than in strict compliance with the provisions in this Agreement;
- c) not to make any notes, sketches, drawings, photographs or copies of any kind of any part of the disclosed Confidential Information without the prior written consent of such other Party, except when reasonably necessary for the purpose of this Agreement, in which case such copies shall be regarded as Confidential Information;
- d) not to de-compile, disassemble or reverse engineer any composition, compilation, concept application, item, component de-compilation, including software or hardware disclosed and shall not analyse any sample provided by Transnet, or otherwise determine the composition or structure or cause to permit these tasks to be carried out except in the performance of its obligations pursuant to this Agreement;
- e) not to exercise less care to safeguard Transnet Confidential Information than the Party exercises in safeguarding its own competitive, sensitive or Confidential Information;
- f) Confidential Information disclosed by either Party to the other or by either Party to any other party used by such party in the performance of this Agreement, shall be dealt with as "restricted" or shall be dealt with according to any other appropriate level of confidentiality relevant to the nature of the information concerned, agreed between the Parties concerned and stipulated in writing for such information in such cases;
- g) the Parties shall not make or permit to be made by any other person subject to their control, any public statements or issue press releases or disclose Confidential Information

with regard to any matter related to this Agreement, unless written authorisation to do so has first been obtained from the Party first disclosing such information;

- h) each Party shall be entitled to disclose such aspects of Confidential Information as may be relevant to one or more technically qualified employees or consultants of the Party who are required in the course of their duties to receive the Confidential Information for the Permitted Purpose provided that the employee or consultant concerned has a legitimate interest therein, and then only to the extent necessary for the Permitted Purpose, and is informed by the Party of the confidential nature of the Confidential Information and the obligations of the confidentiality to which such disclosure is subject and the Party shall ensure such employees or consultants honour such obligations;
- i) each Party shall notify the other Party of the name of each person or entity to whom any Confidential Information has been disclosed as soon as practicable after such disclosure;
- j) each Party shall ensure that any person or entity to which it discloses Confidential Information shall observe and perform all of the covenants the Party has accepted in this Agreement as if such person or entity has signed this Agreement. The Party disclosing the Confidential Information shall be responsible for any breach of the provisions of this Agreement by such person or entity; and
- k) each Party may by written notice to the other Party specify which of the Party's employees, officers or agents are required to sign a non-disclosure undertaking.

26.2 The duties and obligations with regard to Confidential Information in this clause 26 shall not apply where:

- a) a Party can demonstrate that such information is already in the public domain or becomes available to the public through no breach of this Agreement by that Party, or its Staff; or
- b) was rightfully in a Party's possession prior to receipt from the other Party, as proven by the first-mentioned Party's written records, without an infringement of an obligation or duty of confidentiality; or
- c) can be proved to have been rightfully received by a Party from a third party without a breach of a duty or obligation of confidentiality; or
- d) is independently developed by a Party as proven by its written records.

26.3 This clause 26 shall survive termination for any reason of this Agreement and shall remain in force and effect from the Commencement Date of this Agreement and 5 [five] years after the termination of this Agreement. Upon termination of this Agreement, all documentation furnished to the Service Provider by Transnet pursuant to this Agreement shall be returned to Transnet including, without limitation, all corporate identity equipment including dyes, blocks, labels, advertising matter, printing matter and the like.

## **27 INSURANCES**

27.1 Without limiting the liability of the Service Provider under this Agreement, the Service Provider shall take out insurance in respect of all risks for which it is prudent for the Service Provider to insure against, including any liability it may have as a result of its activities under this Agreement for theft, destruction, death or injury to any person and damage to property. The level of insurance will be kept under review by Transnet, on an annual basis, to ensure its adequacy, provided that any variation to the level of such insurance shall be entirely at the discretion of the Service Provider.

- 27.2 The Service Provider shall arrange insurance with reputable insurers and will produce to Transnet evidence of the existence of the policies on an annual basis within 30 [thirty] calendar days after date of policy renewals.
- 27.3 Subject to clause 27.4 below, if the Service Provider fails to effect adequate insurance under this clause 27, it shall notify Transnet in writing as soon as it becomes aware of the reduction or inadequate cover and Transnet may arrange or purchase such insurance on behalf of the Service Provider. The Service Provider shall promptly reimburse Transnet for any premiums paid provided such insurance protects the Service Provider's liability. Transnet assumes no responsibility for such insurance being adequate to protect all of the Service Provider's liability.
- 27.4 In the event that the Service Provider receives written notice from its insurers advising of the termination of its insurance cover referred to in clause 27.1 above or if the insurance ceases to be available upon commercially reasonable terms, the Service Provider shall immediately notify Transnet in writing of such termination and/or unavailability, whereafter either the Service Provider or Transnet may terminate this Agreement on giving the other Party not less than 30 [thirty] calendar days prior written notice to that effect.

## **28 LIMITATION OF LIABILITY**

- 28.1 The Service Provider's liability under this clause 28 shall be in addition to any warranty or condition of any kind, express or implied by law or otherwise, relating to the Goods/Services or ancillary Services, including the quality of the Goods/Services or ancillary Services or any materials delivered pursuant to this Agreement.
- 28.2 Neither Party excludes or limits liability to the other Party for:
- a) death or personal injury caused by its negligence, [including its employees', agents' or Subcontractors' negligence]; or
  - b) fraud or theft.
- 28.3 The Service Provider shall indemnify and keep Transnet indemnified from and against liability for damage to any Transnet property [whether tangible or intangible] or any other loss, costs or damage suffered by Transnet to the extent that it results from any act of or omission by the Service Provider or its Personnel in connection with this Agreement. The Service Provider's liability arising out of this clause 28.3 shall be limited to direct damages.
- 28.4 Subject always to clauses 28.1 and 28.2 above, the liability of either the Service Provider or Transnet under or in connection with this Agreement, whether for negligence, misrepresentation, breach of contract or otherwise, for direct loss or damage arising out of each Default or series of related Defaults shall not exceed 100% [one hundred per cent] of the Fees paid under the schedule or Work Order to which the Default(s) relates.
- 28.5 Subject to clauses 28.1 to 28.4 above, in no event shall either Party be liable to the other for indirect or consequential loss or damage or including indirect or consequential loss of profits, business, revenue, goodwill or anticipated savings of an indirect nature or loss or damage incurred by the other Party as a result of third party claims.
- 28.6 If for any reason the exclusion of liability in clause 28.5 above is void or unenforceable, either Party's total liability for all loss or damage under this Agreement shall be as provided in clause 28.3 above.
- 28.7 Nothing in this clause 28 shall be taken as limiting the liability of the Parties in respect of clauses 252 [Confidentiality] and 29 [Intellectual Property Rights].

## **29 INTELLECTUAL PROPERTY RIGHTS**

### **29.1 Title to Confidential Information**

- a) Transnet will retain all right, title and interest in and to its Confidential Information and Background Intellectual Property and the Service Provider acknowledges that it has no claim of any nature in and to the Confidential Information and Background Intellectual Property that is proprietary to Transnet. For the avoidance of doubt all the Service Provider's Background Intellectual Property shall remain vested in the Service Provider.
- b) Transnet shall grant to the Service Provider an irrevocable, royalty free, non-exclusive licence to use Transnet's Background Intellectual Property only for the Permitted Purpose. This licence shall not permit the Service Provider to sub-license to other parties.
- c) The Service Provider shall grant to Transnet an irrevocable, royalty free, non-exclusive licence to use the Service Provider's Background Intellectual Property for the Permitted Purpose. This licence shall not permit Transnet to sub-license to other parties.
- d) The Service Provider shall grant Transnet access to the Service Provider's Background Intellectual Property on terms which shall be *bona fide* negotiated between the Parties for the purpose of commercially exploiting the Foreground Intellectual Property, to the extent that such access is required.
- e) The above shall not pertain to any software licenses procured by the Service Provider from third parties and used in the supply of the Goods/Services.

### **29.2 Title to Intellectual Property**

- a) All right, title and interest in and to Foreground Intellectual Property prepared, conceived or developed by the Service Provider, its researchers, agents and employees shall vest in Transnet and the Service Provider acknowledges that it has no claim of any nature in and to the Foreground Intellectual Property. The Service Provider shall not at any time during or after the termination or cancellation of this Agreement dispute the validity or enforceability of such Foreground Intellectual Property, or cause to be done any act or anything contesting or in any way impairing or tending to impair any part of that right, title and interest to any of the Foreground Intellectual Property and shall not counsel or assist any person to do so.
- b) Transnet shall be entitled to seek protection in respect of the Foreground Intellectual Property anywhere in the world as it shall decide in its own absolute discretion and the Service Provider shall reasonably assist Transnet in attaining and maintaining protection of the Foreground Intellectual Property.
- c) Where the Foreground Intellectual Property was created by the Service Provider or its researchers, agents and employees and where Transnet elects not to exercise its option to seek protection or decides to discontinue the financial support of the prosecution or maintenance of any such protection, Transnet shall notify the Service Provider who shall have the right of first refusal to file or continue prosecution or maintain any such applications and to maintain any protection issuing on the Foreground Intellectual Property.
- d) No consideration shall be paid by Transnet to the Service Provider for the assignment of any Foreground Intellectual Property from the Service Provider to Transnet, over and above the sums payable in terms of this Agreement. The Service Provider undertakes to sign all documents and do all things as may be necessary to effect, record and perfect the assignment of the Foreground Intellectual Property to Transnet.

- e) Subject to anything contrary contained in this Agreement and/or the prior written consent of Transnet [which consent shall not be unreasonably be withheld], the Service Provider shall under no circumstances be entitled as of right, or to claim the right, to use Transnet's Background Intellectual Property and/or Foreground Intellectual Property.

#### **29.3 Title to Improvements**

Any improvements, developments, adaptations and/or modifications to the Foreground Intellectual Property, and any and all new inventions or discoveries, based on or resulting from the use of Transnet's Background Intellectual Property and/or Confidential Information shall be exclusively owned by Transnet. The Service Provider shall disclose promptly to Transnet all such improvements, developments, adaptations and/or modifications, inventions or discoveries. The Service Provider hereby undertakes to sign all documents and do all things as may be necessary to effect, record and perfect the assignment of such improvements, developments, adaptations and/or modifications, inventions or discoveries to Transnet and the Service Provider shall reasonably assist Transnet in attaining, maintaining or documenting ownership and/or protection of the improved Foreground Intellectual Property.

#### **29.4 Unauthorised Use of Confidential Information**

The Service Provider shall not authorise any party to act on or use in any way any Confidential Information belonging to Transnet whether or not such party is aware of such Confidential Information, and shall promptly notify Transnet of the information if it becomes aware of any party so acting, and shall provide Transnet the information with such assistance as Transnet reasonably requires, at Transnet's cost and expense, to prevent such third party from so acting.

#### **29.5 Unauthorised Use of Intellectual Property**

- a) The Service Provider agrees to notify Transnet in writing of any conflicting uses of, and applications of registrations of Patents, Designs and Trade Marks or any act of infringement, unfair competition or passing off involving the Intellectual Property of Transnet of which the Service Provider acquires knowledge and Transnet shall have the right, as its own option, to proceed against any party infringing its Intellectual Property.
- b) It shall be within the sole and absolute discretion of Transnet to determine what steps shall be taken against the infringer and the Service Provider shall co-operate fully with Transnet, at Transnet's cost, in whatever measure including legal action to bring any infringement of illegal use to an end.
- c) The Service Provider shall cooperate to provide Transnet promptly with all relevant ascertainable facts.
- d) If proceedings are commenced by Transnet alone, Transnet shall be responsible for all expenses but shall be entitled to all damages or other awards arising out of such proceedings. If proceedings are commenced by both Parties, both Parties will be responsible for the expenses and both Parties shall be entitled to damages or other awards arising out of proceedings.

### **30 NON-WAIVER**

- 30.1 Failure or neglect by either Party, at any time, to enforce any of the provisions of this Agreement, shall not in any manner be construed to be a waiver of any of that Party's rights in that regard and in terms of this Agreement.

- 30.2 Such failure or neglect shall not in any manner affect the continued, unaltered validity of this Agreement, or prejudice the right of that Party to institute subsequent action.

### 31 PARTIAL INVALIDITY

If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, or shall be required to be modified, the validity, legality and enforceability of the remaining provisions shall not be affected thereby.

### 32 DISPUTE RESOLUTION

- 32.1 Should any dispute of whatsoever nature arise between the Parties concerning this Agreement, the Parties shall try to resolve the dispute by negotiation within 10 [ten] Business Days of such dispute arising.
- 32.2 If the dispute has not been resolved by such negotiation, either of the Parties may refer the dispute to AFSA and notify the other Party accordingly, which proceedings shall be held in Johannesburg.
- 32.3 Such dispute shall be finally resolved in accordance with the rules of AFSA by an arbitrator or arbitrators appointed by AFSA.
- 32.4 This clause constitutes an irrevocable consent by the Parties to any proceedings in terms hereof, and neither of the Parties shall be entitled to withdraw from the provisions of this clause or claim at any such proceedings that it is not bound by this clause 32.
- 32.5 This clause 32 is severable from the rest of this Agreement and shall remain in effect even if this Agreement is terminated for any reason.
- 32.6 This clause 32 shall not preclude either Party from seeking urgent relief in a court of appropriate jurisdiction, where grounds for urgency exist.

### 33 ADDRESSES FOR NOTICES

- 33.1 The Parties to this Agreement select the physical addresses and fax numbers, as detailed hereafter, as their respective addresses for giving or sending any notice provided for or required in terms of this Agreement, provided that either Party shall be entitled to substitute such other address or fax number, as may be, by written notice to the other:

a) **Transnet**

- (i) For legal notices: .....
- .....
- .....

Fax No. ....

Attention: Group Legal Department

- (ii) For commercial notices: .....
- .....
- .....

Fax No. ....

Attention: .....

b) **The Service Provider**

- (i) For legal notices: .....

.....

.....

Fax No. ....

Attention: .....

(ii) For commercial notices:

.....

.....

.....

Fax No. ....

Attention: .....

33.2 Any notice shall be addressed to a Party at its physical address, or delivered by hand, or sent by fax or email.

33.3 Any notice shall be deemed to have been given:

- a) if hand delivered, on the day of delivery;
- b) if faxed, on the date and time of sending of such fax, as evidenced by a fax confirmation printout, provided that such notice shall be confirmed by prepaid registered post on the date of dispatch of such fax, or, should no postal facilities be available on that date, on the next Business Day; or
- c) if sent by email, on the date and time received, provided that such notice shall be confirmed by prepaid registered post on the date of dispatch of such email, or, should no postal facilities be available on that date, on the next Business Day.

#### **34 WHOLE AND ONLY AGREEMENT**

34.1 The Parties hereby confirm that this Agreement constitutes the whole and only agreement between them with regard to the subject matter of this Agreement.

34.2 The Parties hereby confirm that this Agreement replaces all other agreements which exist or may have existed in any form whatsoever between them, with regard to the subject matter dealt with in this Agreement, any annexures appended hereto and the Schedule of Requirements/Work Order.

#### **35 AMENDMENT AND CHANGE CONTROL**

35.1 Any amendment or change of any nature made to this Agreement and the Schedule of Requirements thereof shall only be valid if it is in writing, signed by both Parties and added to this Agreement as an addendum hereto. In this regard a Change Notice must first be defined and issued by the requesting Party. A Change Notice Response must then be issued by responding Party. A formal approval of the Change Request will then trigger the issue of the addendum to this Agreement.

35.2 In the event the Parties cannot agree upon changes, the Parties shall in good faith seek to agree any proposed changes using the dispute resolution procedures in clause 32 [*Dispute Resolution*].

#### **36 GENERAL**

##### **36.1 Governing Law**

This Agreement is exclusively governed by and construed in accordance with the laws of the Republic of South Africa and is subject to the jurisdiction of the courts of the Republic of South Africa.

### 36.2 **Change of Law**

In this Agreement, unless the context otherwise requires, references to a statutory provision include references to that statutory provision as from time to time amended, extended or re-enacted and any regulations made under it, provided that in the event that the amendment, extension or re-enactment of any statutory provision or introduction of any new statutory provision has a material impact on the obligations of either Party, the Parties will negotiate in good faith to agree such amendments to this Agreement as may be appropriate in the circumstances. If, within a reasonable period of time, the Service Provider and Transnet cannot reach agreement on the nature of the changes required or on modification of Prices, delivery schedules, warranties, or other terms and conditions, either Party may seek to have the matter determined in accordance with clause 32 [*Dispute Resolution*] above.

### 36.3 **Counterparts**

This Agreement may be signed in any number of counterparts, all of which taken together shall constitute one and the same instrument. Either Party may enter into this Agreement by signing any such counterpart.

## 37 **DATABASE OF RESTRICTED SUPPLIER**

The process of restriction is used to exclude a company/person from conducting future business with Transnet and other organs of state for a specified period. No Bid shall be awarded to a Bidder whose name (or any of its members, directors, partners or trustees) appear on the Register of Tender Defaulters kept by National Treasury, or who have been placed on National Treasury's List of Restricted Suppliers. Transnet reserves the right to withdraw an award, or cancel a contract concluded with a Bidder should it be established, at any time, that a bidder has been restricted with National Treasury by another government institution.

**Thus signed by the Parties and witnessed on the following dates and at the following places:**

For and on behalf of <b>TRANSNET SOC LTD</b> duly authorised hereto	For and on behalf of  duly authorised hereto
Name:	Name:
Position:	Position:
Signature:	Signature:
Date:	Date:
Place:	Place:

<b>AS WITNESS:</b> Name:	<b>AS WITNESS:</b> Name:
Signature:	Signature:

<b>AS WITNESS:</b> Name:	<b>AS WITNESS:</b> Name:
Signature:	Signature:

## **SCHEDULE 1 – SCHEDULE OF REQUIREMENTS**

### **EAST BANK, WEST BANK AND GATELY PRECINCT PLANS**

## **1 PURPOSE**

Transnet National Ports Authority (TNPA), Port of East London invites qualified service providers to submit proposals to develop three individual precinct plans for:

- The East Bank Precinct;
- The West Bank Precinct; and
- Gately Precinct

This project is aligned with the strategic objectives of the Port Development Framework Plans (PDFPs) as outlined in Section 11 of the National Ports Act of 2005. In the tender submission, the Service Provider is required to formally submit:

- A quotation explicitly indicating the cost and time required to undertake the Scope of Work;
- An inception report defining how the specific goals that are set out in this document will be achieved; and
- A mentorship program addressing skills transfer to the TNPA project team that shall consist of engineering staff.
- Provide a vision and framework for co-ordinating both public and private investment and directing the physical development and management.
- Guide on projects to inform on decision making on planning, urban design, architectural and financial levels. To identify model for each capital project which could be accessed for implementation.

## **2 EXECUTIVE SUMMARY**

TNPA has a mandate to plan and remain relevant to the needs of the South African economy to provide infrastructure ahead of demand. The mandate is enforced to ensure the efficient and economic functioning of the ports under its jurisdiction. This includes the provision of a Port Development Framework Plan (PDFP) and Precinct Plans that address port infrastructure, land use in the ports, road and rail access, and other services.

Precinct Plans, additionally, address operational constraints and long-term capacity solutions for the required land and supporting port infrastructure. Precinct Plans are sought to address the rationalisation of the port by providing attractive investments and increasing throughput in the area. Furthermore, Precinct Plans detail a higher level of the PDFP and

ensures that the precinct contributes to the economic functioning of the port by identifying the key development areas for dedicated future land use.

### **3 BACKGROUND AND PROBLEM STATEMENT**

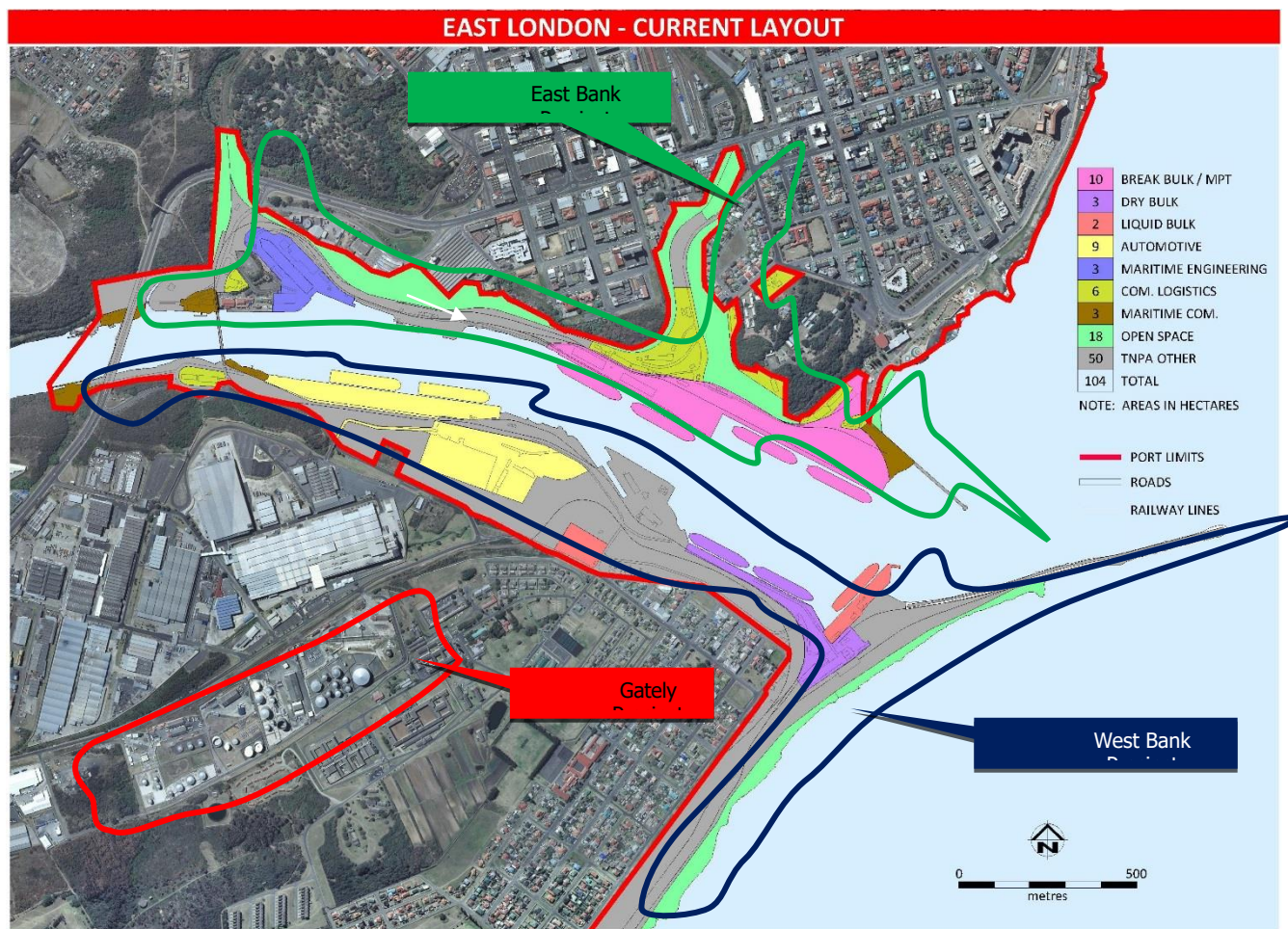
PDFPs are periodically prepared which inform how investments are made at all commercial ports in South Africa and communicate the vision of the ports. The PDFPs cover infrastructure plans over the short term (10 years), medium term (10-30 years), and long-term (beyond 30 years) period. These plans, thus, provide an overall layout of development from a broader perspective.

The objective is to create Precinct Plans to assist the Port of East London to plan a particular geographical area in the port and in so doing, to include detailed traffic management, urban design alignments, and road alignments.

Precinct Planning would offer TNPA Port Management better capacity management and strategic planning across the port system. Benefits for the ports would include better use of terminal capacity, re-rationalisation of redundant spaces in the port, and detailed planning to improve efficiencies.

#### **Site Location:**

The Port of East London is a general cargo port serving the border region and central interior. Currently, the port handles primarily containers, motor vehicles, and liquid bulk. Non-freight traffic and activities in the port include ship repairs, passenger liners, leisure craft, and a small waterfront. Figure 1 below shows the precincts that comprise the port, along with the “use/purpose” of each operational area.



**Figure 1: Port of East London land use layout**

## 3.1 East Bank

### 3.1.1 Precinct Overview

The East Bank has a total quay length of 1288m (including C berth) and an area of approximately 26ha with a total cargo storage area of 8ha. The water depths at berths range from - 8.5m to -10.7m CD. There is road and rail connectivity to this area. The present use of the East Bank is listed below:

- Container terminal.
- Break-bulk terminal
- Port Operational Craft berths and facilities.
- Railway line that runs throughout the entire precinct.
- The recently refurbished customs building which has been registered by the South African Heritage Resource Agency (SAHRA).
- Port Administration Building
- Port Security Offices and Control Room

- The port control building is on the hill above the container terminal.
- Recreational beach (Orient Beach)

### **3.1.2 Container Terminal**

The container terminal is situated on the East Bank along quay 6 (berths K and L). The concrete block quay wall has a total length of 506m and a depth of -10.7m CD. The terminal has an installed capacity of 100 000 TEUs/year. There are no gantry cranes, and all cargo is loaded and unloaded with ships gear. Straddle carriers and a forklift are used to handle the containers in the stacking area. The container stacking area is limited in its total land area and the number of containers that can be stacked vertically (2 high). This subsequently limits the terminal capacity. To compensate for this, the break-bulk storage area behind berth I is often used for stacking containers. The terminal has 52 reefer slots. The terminal has an installed capacity of 100 000 TEUs/year. There is direct rail connectivity, however, containers are transported inland via road through the Central Business District (CBD) which causes significant traffic congestion. Buildings in the container terminal include a combi control tower and a straddle carrier workshop.

### **3.1.3 Break-bulk Terminal**

The break-bulk terminal is along Berths F, G, and I (quays 3 and 4). The concrete block work quay wall has a total length of 488m, and the berth water depths vary between -8.5m and -9.8m CD. Storage space is limited and is often shared with the container terminal. The two storage sheds, F and G, have a total area of 4 000 m<sup>2</sup> and are in poor condition, which requires maintenance. Furthermore, the sheds are elevated from the quayside level and ramps to the sheds restrict the cargo flow. There are no quay cranes and cargo are handled with ships gear. The terminal has an installed capacity of 570 000 tons/year. There is road and rail connectivity to this terminal.

There is also Quay 3, which is a mass concrete structure. This quay includes berths F and G, and is sometimes used to accommodate passenger cruise liners as there is no dedicated passenger terminal at the port. Due to the seasonal and infrequent passenger vessel calls a dedicated passenger terminal is not justifiable.

### **3.1.4 Ship Repair**

Ship repair facilities include a 200m long dry dock on the East Bank that can accommodate vessels up to 160m long and with a beam of up to 25m. The available landside area adjacent to the drydock is approximately 4980 m<sup>2</sup>. The dry dock is operated by TNPA but all

maintenance and repair work is done by private contractors. Buildings in this area include a mechanical workshop (shop 17), which is under-utilised as well as the marine dry dock workshop.

### **3.1.5 Operational Craft**

The port's operational crafts, which consist of 2 tugs and 1 pilot boat, are accommodated at berth C, which is a 192m long concrete caisson quay wall with a depth of -10.7 m CD. The available back of the quay area is 0.8ha in extent.

### **3.1.6 Leisure Craft**

Leisure craft and related facilities are accommodated in different areas around the port. These areas include the National Sea Rescue Institute (NSRI). This volunteer organisation has a base inland of the N2 bridge. Additionally, next to the NSRI, is the East London Ski Boat club. The East London Yacht club has a clubhouse and boat ramp at the root of the northern breakwater.

### **3.1.7 Waterfront**

Latimer's Landing is a waterfront complex situated adjacent to the dry dock and has an area of 1 ha. It previously had a 130m long timber decked wharf along the water's edge. This wharf was condemned and closed in 2010. The timber structure was later demolished in 2020 and it is only a few piles that remain. Several small crafts used to berth along the wharf, which added to the waterfront ambiance. 0.5 ha of parking is available between the waterfront and dry dock.

#### **Specific goals for the East Bank Precinct Plan include but are not limited to:**

- Define baseline characteristics of the existing port by defining all issues relevant to the planning process;
- Undertake a demand forecasting exercise to determine the volumes of cargo traffic likely to pass through the Port of East London;
- Port layout options or berth development plans taking cognisance of the volume forecasts, vessel sizes, and traffic implications;
- Investigate the option of the development of a new container terminal within the port's existing physical boundaries to cater to deeper draft vessels and to provide additional capacity for the port to accommodate the Automotive Industry and other break-bulk commodities;

- Investigate contributing factors (infrastructure, operations, and equipment) that can assist with optimising cargo operations in this precinct;
- The Service Provider is to investigate how international landlord port authorities compare to TNPA in effectively managing break-bulk/container operations to provide high-quality service experience;
- Investigate stack capacity for the container terminal and other options for increasing stacking area;
- Investigate the possibility of the removal of the F and G sheds on the break-bulk terminal and the capacity this would create for open storage;
- Investigate how the Dry Dock area can be developed into a world-class repair area;
- The Service Provider is to undertake a demand forecast for the continuation of the dry dock business, in doing so, a vessel forecast must be conducted to ascertain the size of vessels that will call to the port's dry dock;
- On a global scale, the Service Provider is to investigate the competing business of ship repair and boat building in African ports. In doing so, the service provider is to prepare options for marketing the Port of East London as the preferred port of call for ship repair and building;
- The Service Provider is to determine the dry dock's berthing capacity, frequency of utilisation, and future requirements for the success of the dock.
- Conduct a capacity analysis and investigate the demand for shipbuilding or training facilities;
- The Service Provider is to conduct research to determine what other commodities are best suited to be handled in the respective precincts; and
- Provide a waterfront phased development.

## **3.2 West Bank**

### **3.2.1 Precinct Overview**

The West Bank precinct boasts a multi-level parkade, representing the importance of the motor industry in the port business handling over 100 000 units/year. Adjacent to the motor vehicle terminal is a ship repair yard with an area of 2.5 ha and includes warehouses and a slipway. The infrastructure in this area is in very poor condition and is of historical significance. There is road and rail connectivity to this area. This precinct also includes a dry bulk terminal and a liquid bulk terminal, a Rowing Club, and the Buffalo River Yacht club. The present use of the West Bank is listed below:

- Motor vehicle terminal.
- The Buffalo River Yacht club and small craft moorings.
- Liquid-bulk terminal.
- Dry-bulk (grain) terminal and storage.
- Vacant land (previously used for scrap steel stockpile and handling).
- Rail shunting yard.
- Manufacture and storage of Dolos units before they are placed on the breakwater.

### **3.2.2 Motor Vehicle Terminal**

The motor vehicle terminal is situated on the West Bank along berths R and N. The total quay length is 547m with depths of between -8.5m to -10.7m CD. The car terminal has 2254 ground parking bays. The terminal also has a four-story parking garage with 2 800 parking bays this parking garage can be extended to eight levels with a total storage capacity of 7 000 units. The building also houses offices for the terminal operator. Currently, the Port of East London car terminal has an installed capacity (i.e. the total volume of automotive units the port can handle with its current infrastructure) of 163 200 units/year and its throughput is between 110 000 and 120 000 units/year. The main automotive manufacturer using the port is Mercedes Benz SA (MBSA) who have a dedicated road between the motor vehicle terminal and their factory. This terminal has both road and rail connectivity.

### **3.2.3 Dry-bulk Terminal**

The Dry-bulk terminal is on the West Bank along berths S and T. The quay wall which is a concrete block structure against a rock face is 388m long and has a depth of -10.7m CD. There are silos with a storage capacity of 76 000 tonnes. Terminal equipment includes a conveyor belt and 4 grabs and hoppers for imports. There is rail and road connectivity for transporting goods to and from the terminal. The terminal capacity is 984 000 tons/year.

### **3.2.4 Liquid-bulk Terminal**

Liquid bulk is handled at the Tanker Berth on the West Bank which has a quay length of 259m and depth of -10.7m CD. The tank farm, which forms part of the Gately Precinct, has 17ha of land and the farm is operated by various oil companies. The bulk liquid is pumped from the vessel via pipelines to the tank farm. The installed capacity is 3 000 000 KL/year. The tank farm has both rail and road connectivity however the rail is seldom used.

**Specific goals for the West Bank Precinct Plan include but are not limited to:**

- Desktop investigation of the suitability/assessment of the marine infrastructure to handle the current and future cargo demand destined to this precinct. The marine infrastructure should include quays, channel width, depth, quay furniture, and quay operating equipment. This desktop study shall also include benchmarking against world trends;
- The Service Provider to investigate contributing factors (infrastructure/operations) that can assist with optimising operations in this precinct;
- Rail adequacy and capacity analysis for the possible management of automotives;
- Development of land use options for the area between S berth and R berth to best accommodate imports and exports generated from the Industrial Development Zone (IDZ); and
- Investigate the option of handling coal or any sustainable area thereof.

### **3.3 Gately Precinct**

The tank farm occupies an area of 22ha with a liquid-bulk storage capacity of 207 739 Kl. The tank farm is operated by BPSA, Astron Energy, Engen, and Total SA. The bulk liquid is pumped from the vessel via pipelines to the tank farm. The tank farm has both rail and road connectivity however the rail is seldom used. The present use of the Gately Precinct is singularly for the storage of liquid bulk.

#### **Specific goals for the Gately Precinct Plan include but is not limited to:**

- The Service Provider is to undertake a demand forecast and conduct a capacity analysis over the short, medium, and long-term period;
- Determine the current storage capacity;
- Assess and give recommendations for tank farm improvements and possible expansion; and
- Assess the current pipeline capacity and provide options for increasing the capacity of the line in the future.

### **SCOPE OF WORKS**

The Service Provider shall provide a detailed report, in which they feedback on each precinct is given detailing its strengths, weaknesses, opportunities, and threats. These precincts must not be considered in isolation in order to create a port that allows for optimal operations while also satisfying the "Smart Peoples Port Vision".

The scope covered in the Precinct Plan of the three areas includes the following components:

- Collect and evaluate all relevant information for the study including demand forecasts, port berthing capacity, landside capacity, and requirements and planning for each precinct;
- Evaluate and integrate previously compiled overarching planning documents into this plan;
- Collect and evaluate all relevant information for the study including demand forecasts, port berthing capacity and requirements, and planning for each precinct;
- Conduct a capacity analysis for berth, land, and gate capacity;
- Analyze the current precincts to determine whether the arrangement is suitable for port operations of the specific cargo type.
- Identify the spatial structure and land use, current leases, opportunities/strategy, constraints, and challenges associated with each precinct and provide mitigation measures;
- Evaluate and propose the infrastructural requirements (berth, landside storage, road, rail, water, stormwater, sewer, electricity) for implementing such recommendations and provide budgetary projections based on scenario planning recommendations.
- Research Socio-Economic aspects based on scenario planning recommendations.
- The Precinct Plan must provide conceptual development, spatial development guidelines, principles, parameters, and standards that will allow for sound decision-making on land use management of the port in the short (10 years), medium (10-30 years) and long term (beyond 30 years);
- Formulate an Implementation Plan to guide the development for each area as determined by the Precinct Plan;
- Intergrade and convey all information spatially on one (1) map along with goals and recommendations;
- Traffic analysis and gate capacities.
- The Precinct Plan must be aligned to the Port of East London's Port Development Framework (PDFP).

The following 5 critical milestone/phases shall be achieved in preparing each Precinct Plan:

- **Phase 1:** Inception

- **Phase2:** Situational Analysis
- **Phase 3:** Initial Concept and precinct Plan proposals
- **Phase 4:** Implementation Plan
- **Phase 5:** Finalization and Adoption of each precinct plan

### **Phase 1: Inception**

An inception plan lay the foundation for formulation of the precinct plan must be submitted to TNPA within 30 days from signed agreement and must address the following:

Effect of existing policies, plans, legislation on or affecting the precinct plan:

- Confirmation of the names of the project team members who will be involved in the project;
- Detailed tasks/activities to be carried out and allocation of time per task/activity;
- Confirmation of the project timeframes;
- Stakeholder participation/consultation plan;
- A schedule of project meetings for feedback/progress reporting to TNPA, Project Manager and identified committee structure
- Identification of key risks and proposed mitigation measures

### **Phase2: Situational Analysis**

This section must provide a detailed situational analysis plan of the entire study area. It must provide a detailed spatial analysis and synthesis including, but not limited to the following:

- Effective of existing policies, plans, legislation on or affecting precinct plan
- Existing projects, programmers and initiatives on or affecting the study area
- Socio-economic analysis
- Bio-physical analysis
- Built environment analysis
- The effect and linkages between existing departmental and investment projects, programmes, and plans
- The identification of existing economic linkages

- Detailed GIS analytical analyses, including network analysis

### **Phase 3: Initial Concept and precinct Plan proposals**

This phase should include a detailed indication of land uses and densities, existing and proposed built environment, movement, public spaces, services, public amenities, and infrastructure. A list of key interventions and projects including design interventions should also be part of this stage. Once the Draft Inception Plan is complete, participation and consultation of relevant stakeholders must be undertaken on the Draft Inception Plan.

### **Phase 4: Implementation Plan**

The implementation plan must detail the action plan, process plan, timeframes, implementation model and priority projects. Including priority matrix for future ad hoc projects as and when identified. The action plan should indicate relevant stakeholders for each process of implementation and must include timeframes. The implementation Plan must also indicate areas where proposed infrastructure upgrade will take place with the budget and the phases.

### **Phase 5: Finalization and Adoption of each precinct plan**

Report on amendments that were effected. Information and supporting documentation that may be relevant for development of the precinct plan and to establish and manage the precinct includes amongst other, the identification and/or analysis of:

- Existing precinct character
- Land attributes and constraints
- Geology and geotechnical characteristics
- Tourism
- Environmental hazards
- Public utility network
- Transport network
- Other critical infrastructure
- Relationship to SEZ/IDZ and city
- Proximity of water ways dams and other water resource infrastructure and suppliers
- Land use
- Publicly accessible open space and recreation areas, network/linkages

- Nature conservation areas
- Topography
- Hydrology

## **4 REPORT STRUCTURE**

A well-structured report with a logical sequence describing existing baseline conditions, the methodology, analysis, conclusions, and recommendations, which includes and is not limited to the following deliverables:

- Provide geographical layouts of precincts;
- Unpack terminal leasing arrangements in precinct considering strategic planning issues, including cargo type and forecasted leasing proposals and timeframes;
- Unpack the physical infrastructure implications on Precinct Plans (short, medium, and long term);
- Determine if re-rationalisation or spatial re-layout of the precincts is needed factoring leases and traffic management. This objective must include the provision of financial implications on the changes that are provided as implementable solutions;
- Urban design, signage, traffic management implications on the precincts, road, rail and conveyors, and pipelines. Where necessary, the service provider must make provision in their proposal for physical observations of traffic to enable planning based on recent traffic trends in and around the port;
- Determine outputs for capacity management (short, medium and long term);
- Capital Expenditure (CAPEX) implications in the precincts (short, medium and long term); and
- Action plans for the next 10 years.
- All supporting assumptions, calculations, and source files to be submitted to TNPA in both soft and 2 hard copy formats. Such reports are to be bound.
- Any assumption and decision register are to be submitted to TNPA for approval on a weekly basis or as and when required.
- Summarised Excel calculations of all capacities that enable TNPA to change variables to amend calculations.
- Urban Design Framework (3D Graphic presentation) of the study area and proposed intervention.

- An interim report must be submitted upon completion of each task/milestone, followed by a comprehensive final report upon completion the precinct plan.
- Specialist reports from the relevant project team specialist, reflecting the findings from the following required assessments:
  - Assessment of natural environment constraints and consideration
  - Assessment of Socio-economic profiling of the study area
  - Assessment of the performance of the property market in each precinct as wells as attraction and retention of investment in the area.
  - Assessment of transport network traffic flows (traffic flows and desire lines and capacity of roads and other transportation infrastructure in relation to traffic flows and desire lines)
  - Assessment of all service infrastructure future needs and requirements according to spatial proposals
- GIS data and Shape files of all work completed must at a standard acceptable to TNPA

## **5 DATA PROVIDED BY THE CLIENT**

The client shall provide information as required or requested to further their understanding of the issue. This will include the -:

- Port Development Framework Plan;
- Demand forecast, achieved volumes;
- AutoCAD drawings of the study area, where available; and
- Leasing timeframes, where applicable.

## **6 OUTCOMES**

The deliverables, together with the specific goals covered under sections 5 and 6 of this report, will enable the port to plan and budget for any future work required that will contribute to optimizing the Ports' business, attracting new business, and improving socioeconomic factors in the Eastern Cape. It will assist in planning and managing lease agreements thereby ensuring proper land use management. Dividing the port into precincts will offer better capacity management and strategic planning for the port in the short,

medium, and long term. In addition, the following is anticipated with the development of precinct plans:

- Better use of Terminal Capacity;
- Re-Rationalisation of redundant spaces in the port; and
- Detailed planning to improve efficiency and attract investment in precincts that require rationalisation.

This report will also be shared with Buffalo City Metropolitan Municipality (BCMM), Government Departments, Parastatal and other State-Owned Enterprises for the purpose of general information. TNPA will reserve the right to amend, modify and or withdraw from the document without prior notice and a disclaimer in line with this must be included in the document.

## **7 PRESENTATION & FORMAT OF KEY DELIVERABLES**

The Service Provider responsible for this project must conduct fortnightly meetings (I.e. Conduct meetings every 2 weeks) with the TNPA project team. A draft report and final report will be presented to the TNPA project team and the TNPA Port leadership team. The presentations are to be in the TNPA corporate format.

The Microsoft Word version of the report and PDF report format along with AutoCad drawings and all Excel data sheets that feed into the study must be handed to the Client upon close-off. Additionally, three (3) hard copies of the report and soft copies of the report along with data used/developed are expected to be handed over to the Client on close out of the project.

## **8 SKILLS TRANSFER**

Transnet is highly dedicated to training internal Engineers and has made it a requirement that all external engineering contractors be willing to share their skills and knowledge. This initiative is to ensure that internal capacity is built. It is expected that the Service Provider will train a Transnet Engineer throughout the period of the contract. A detailed training programme must be developed by the Service Provider within the first week of appointment for on-the-job training. This training programme must focus on the fundamentals of port planning, coastal engineering, and traffic management. Cost of the skills transfer must be included when submitting the quotation by the service provider.

## **9 PRELIMINARY MILESTONES FOR THE DEVELOPMENT OF PRECINCT PLANS**

Collection of data, evaluating data, planning, optioneering, drafting, costing and all other milestones leading to the final Precinct Report should be completed within 5 months from the date of acceptance of the contract.

A fixed cost proposal with a detailed cost breakdown structure of the project proposal is required. The project cost must include VAT (Added to the total cost and not per line item), all professional fees, disbursements, and specialist input. A breakdown of the project cost should be provided in phases and payment for each phase will be affected in accordance with the finalization of each phase.

## SCHEDULE 2 – PRICING SCHEDULE

Item No.	Activity Description	Price (Excl VAT)
<b>1</b>	<b>Site Evaluation</b>	
1.1	Site Assessment & status quo report	
1.2	Cargo traffic demand forecast and logistics analysis	
<b>2</b>	<b>Engineering Solution</b>	
2.1	Scenario development and Port layout option analysis (incl. masterplans, cost estimates)	
2.2	Environmental and social evaluation of options	
2.3	Precinct Plan Reporting	
<b>3</b>	<b>Skills Development - Develop a Skills Transfer Plan to be approved by the employer</b>	
3.1	Undertake Skills transfer as per approved plan	
<b>4</b>	<b>Disbursements</b>	
4.1	Travelling	
4.2	Accommodation	
4.3	Other	
<b>SUB TOTAL PRICE (EXCLUSIVE OF VAT &amp; DISBURSMENTS)</b>		
<b>VAT 15% (if applicable)</b>		
<b>TOTAL DISBURSMENTS</b>		
<b>TOTAL INCLUSIVE OF VAT (where applicable)</b>		