



TRANSNET REQUEST FOR PROPOSAL NO TCC/2023/11/0001/50945/RFP

**ANNEXURE E – DRAFT MASTER AGREEMENT IN RESPECT OF FLEET MANAGEMENT FOR
TRANSNET’S LIGHT COMMERCIAL VEHICLE REQUIREMENTS (TO BE FINALISED AFTER
CONTRACT AWARD BASED ON THESE PRINCIPLES)**

entered into between

TRANSNET SOC LTD

and

THE SERVICE PROVIDER

Contract No TCC/2023/11/0001/50945/RFP

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1. INTRODUCTION

- 1.1 Transnet requires Light Commercial Vehicles with a gross vehicle mass of less than 3,500 kilogrammes in the conduct of its business.
- 1.2 Transnet's fleet comprises vehicles that it owns ("**Owned Vehicles**") and vehicles ("**Vehicles**") that it wishes to lease in terms on predominantly a full maintenance lease basis ("**FML Vehicles**") supplemented by short-term rentals which it procures on an "as and when required" basis ("**STR Vehicles**") (Owned Vehicles, FML Vehicles and STR Vehicles collectively being "**Fleet**").
- 1.3 Transnet elected to appoint a third party service provider to render the Services and has undertaken an open, fair, transparent, cost-effective and competitive Tender Process.
- 1.4 Transnet wishes to improve the current processes for providing the Services to its end user community throughout its locations thereby:
 - 1.4.1. reducing the cost of acquisition of Vehicles;
 - 1.4.2. improving Service benefits resulting from the Service Provider's economies of scale and the streamlining of Service processes;
 - 1.4.3. achieving appropriate Availability that meets end user needs whilst reducing costs for both Transnet and the Service Provider; and
 - 1.4.4. strengthening Transnet's overall competitive advantage by the use of the Service Provider's leading edge technology and Service delivery systems.
- 1.5 The Service Provider was awarded the contract for the rendering of the Services throughout South Africa ("**Nationally**"). This Agreement records the terms and conditions upon which the Service Provider was appointed by Transnet.

2. DEFINITIONS

Unless otherwise expressly stated, or the context otherwise requires, the words and expressions listed below shall, when used in this Agreement, including this introduction, bear the meanings ascribed to them:

- 2.1 "**Accessories**" mean all Modifications to a standard Vehicle which have been included to render it fit for purpose and/or to enhance the Vehicle including rail gear, lifting equipment, working platforms, hydraulic manifolds and hose reel fixtures, radio/CD, tow bar, canopy,

rubberising, safety nets, fire extinguisher, racks and decals or such other Modifications as are commonly referred to in the automotive industry which may be required by Transnet generally or any of the Operating Divisions specifically taking into account change in circumstances or conditions of operations as the case may be;

- 2.2 **"Actual Delivery Date"** bears the meaning assigned to that term in clause 34.12;
- 2.3 **"Actual Monthly Mileage"** bears the meaning assigned to that term in clause 21.5;
- 2.4 **"Actual Procurement Spend"** means the actual aggregate amount that Transnet has been invoiced for by the Service Provider and which Transnet has expended in procuring the Services from the Service Provider during the period being measured excluding Make Good Costs and costs incurred as a result of Operator Default, toll fees and fines as well as any repairs, maintenance and Breakdown Services rendered in respect of Owned Vehicles and excluding VAT;
- 2.5 **"Administration Fee"** bears the meaning assigned to that term in clause 54.1;
- 2.6 **"AFSA"** means the Arbitration Foundation of Southern Africa or its successor organisation;
- 2.7 **"Agreement"** means this agreement together with all annexures and/or addenda hereto;
- 2.8 **"Anniversary Date"** means the date of each anniversary of the Commencement Date for the duration of the Contract Period;
- 2.9 **"Applicable Laws"** mean the laws of South Africa in place from time to time including the common law, statutes, regulations and other delegated legislation;
- 2.10 **"Auto Dealers Guide"** means the Auto Dealers Guide published by Transunion Credit Bureau Proprietary Limited (Registration Number 2004/007773/07), a private company incorporated and registered in South Africa, or its successor-in-title;
- 2.11 **"Availability"** means the availability of a Vehicle which is determined with reference to the total amount of time that the Vehicle is available to Transnet, enabling Transnet to use the Vehicle excluding unavailability due to Operator Default, Scheduled Maintenance and the occurrence of insured events;
- 2.12 **"Back-up/Standby Service Provider(s)"** means the Bidder(s) that have been appointed as the Back-up/Standby Service Provider(s) through the tender process. In the event that the primary Service Provider cannot render the Services, or cancels the Agreement or contract, Transnet shall be entitled to approach the appointed Back-up

Service Provider(s) to render the Services to the extent that, and for so long as the Service Provider cannot render the Services in question.

- 2.13 **"Base Vehicle Price"** means the recommended retail price of a Vehicle as published by the OEM of the Vehicle in respect of that model of Vehicle from time to time;
- 2.14 **"BBBEE"** means Broad-Based Black Economic Empowerment;
- 2.15 **"BBBEE Act"** means the Broad Based Black Economic Empowerment Act No. 53 of 2003;
- 2.16 **"BBBEE Contributor Status Level"** means the BBBEE contributor status level of a measured entity (in this case, the Service Provider) as specified in the Codes;
- 2.17 **"BBBEE Improvement Commitments"** mean the commitments made by the Service Provider to improve its Verified BBBEE Score as at the Commencement Date over the Contract Period;
- 2.18 **"BBBEE Improvement Plan (if applicable)"** means the plan to be concluded between the Parties and which details the delivery, implementation and completion by the Service Provider of the improvements made by the Service Provider to its Verified BBBEE Score as specified in that plan in order to give effect to the BBBEE Improvement Commitments;
- 2.19 **"BBBEE Programme"** means the BBBEE programme of Transnet in place from time to time;
- 2.20 **"Breakdown Services"** bears the meaning assigned to that term in clause 48.1;
- 2.21 **"Business Day"** means any day other than a Saturday, Sunday or public holiday declared as such in South Africa;
- 2.22 **"Capital Balance Outstanding"** means the capital liability outstanding on the FML Vehicle at any point in time of the respective FML Vehicle;
- 2.23 **"Call Centre"** means the call centre that shall be established by the Service Provider in terms of this Agreement providing an unique telephone number which is dedicated to Transnet and which will provide Transnet with the support specified in this Agreement 24 (twenty-four) hours a day and 365 (three hundred and sixty-five) days a year;
- 2.24 **"Capital Costs"** bears the meaning assigned to that term in clause 22.3;
- 2.25 **"Codes"** mean the Codes of Good Practice promulgated by the Minister of Trade and Industry (or his successor) from time to time in accordance with the provisions of the BBBEE Act;

- 2.26 **"Commencement Date"** means, notwithstanding the Signature Date, the date of the letter of award, date being XXXX, issued by Transnet to the Service Provider;
- 2.27 **"Compensation Amount"** means, the amount payable by the Service Provider to Transnet which shall be equal to the aggregate of the reasonable costs incurred by Transnet in re-tendering the Services, including the cost of engaging transaction advisors of Transnet's choice. The Compensation Amount shall be limited to an aggregate amount of R5 million (five million Rand) as at the Commencement Date. The Compensation Amount shall be adjusted annually with effect from each Anniversary Date by the CPI Variance;
- 2.28 **"Competition Act"** means the Competition Act No. 89 of 1998;
- 2.29 **"Competition Commission"** refers to the body constituted in terms of the provisions of the Competition Act;
- 2.30 **"Confidential Information"** means all confidential and proprietary information disclosed by the Disclosing Party to the Receiving Party whether prior to or after the Signature Date. **"Confidential Information"** shall include (without limiting its ordinary meaning and in respect of the Parties' respective business affairs and technologies):
- 2.30.1. oral, written, printed, photographically and electronically recorded information of all types;
 - 2.30.2. documents, letters, agreements, undertakings;
 - 2.30.3. messages, codes, data, formulae, specifications;
 - 2.30.4. blueprints, plans, processes;
 - 2.30.5. marketing methods;
 - 2.30.6. know-how, methodology, intellectual property (whether registered and/or not registered), trade secrets;
 - 2.30.7. projects, projections, cash flow charts;
 - 2.30.8. software and copies;
 - 2.30.9. notes and extracts;
 - 2.30.10. strategic plans, financial plans, the financial planning process;
 - 2.30.11. the direction, manner, timing and implementation of any projects to be undertaken; and

- 2.30.12. information (economic as well as financial) regarding the proprietary affairs of the Disclosing Party which comes to the attention of the Receiving Party pursuant to this Agreement;
- 2.31 **"Continuous Improvement"** bears the meaning assigned to that term in clause 10.6;
- 2.32 **"Contract Manager"** means, in the case of:
- 2.32.1. Transnet, the contract manager responsible for the contract management of the Services from the Service Provider for an Operating Division; and
 - 2.32.2. the Service Provider, the contract manager nominated and appointed in writing by the Service Provider with overall management responsibility for the Services;
- 2.33 **"Contract Period"** means the duration of this Agreement determined from the Commencement Date until the Expiry Date (both dates inclusive) unless terminated earlier in accordance with its terms by either Party;
- 2.34 **"Contract Schedule"** means a contract schedule which accords with the *pro forma* contract schedule annexed hereto as ANNEXURE 1;
- 2.35 **"Contract Value"** means the estimated total amount paid by Transnet to the Service Provider or which is due to the Service Provider for the duration of the Contract Period including any VAT;
- 2.36 **"Cost Centre Owner"** means the Transnet employee who is responsible for a cost centre within an Operating Division;
- 2.37 **"CPI"** means the Consumer Price Index (or its successor publication) published by Statistics South Africa (or its successor organisation) from time to time;
- 2.38 **"CPI Variance"** means the percentage difference between CPI as at 4 (four) months prior to the relevant Anniversary Date as compared with 16 (sixteen) months prior to that Anniversary Date;
- 2.39 **"CPK"** means cents per kilometre;
- 2.40 **"CPK Rate"** bears the meaning assigned to that term in clause 23.2;
- 2.41 **"Credit Note"** means the document as required by Section 21 of the VAT Act;
- 2.42 **"Customer Information Schedules"** means the customer information schedules to be provided by the Service Provider to Transnet as specified in ANNEXURE 6;

- 2.43 **"Defective"** means an element of the Vehicle that does not meet the OEM specifications whether such defect is a latent defect or a patent defect;
- 2.44 **"Deficient CPK"** bears the meaning assigned to that term in clause 23.6;
- 2.45 **"Delivery Date"** means the date specified in a quotation issued by the Service Provider in respect of a Vehicle and in respect of which Transnet has issued a purchase order as contemplated in clause 29.13 for the delivery of the Vehicle by the Service Provider to Transnet;
- 2.46 **"Depreciation"** means the value that is deducted from the net purchase price of a Vehicle on a monthly basis. This amount is calculated as the net purchase price of the relevant Vehicle less the Residual Value divided by the Lease Period;
- 2.47 **"Depreciation CPK"** bears the meaning assigned to that term in clause 23.2.2;
- 2.48 **"Designated Area"** means any area or facility as agreed to between the Parties for the delivery and collection of Vehicles;
- 2.49 **"Disclosing Party"** bears the meaning assigned to that term in clause 67.1;
- 2.50 **"Disposal Fees"** bears the meaning assigned to that term in clause 20.2;
- 2.51 **"Due Date"** bears the meaning assigned to that term in clause 16.5;
- 2.52 **"End Date"** means the End Date specified in an Individual Contract, being the date on which that Individual Contract terminates other than if either Party terminates this Agreement in accordance with its terms, in which event the End Date shall be the Termination Date;
- 2.53 **"E-Tag"** means a device which operates to assist SANRAL in the levying of electronic toll collection; a system which collects tolls electronically thereby eliminating the delays occasioned by the collection of tolls at toll plazas;
- 2.54 **"Excess CPK"** bears the meaning as indicated in the relevant Rate Card;
- 2.55 **"Expiry Date"** means the date of expiry of this Agreement due to the effluxion of time, being 5 (five) years after the Commencement Date **XXX**;
- 2.56 **"Fair Wear and Tear"** means fair wear and tear as defined in the applicable fair wear and tear guide published by SAVRALA from time to time, provided that in determining fair wear and tear, reference shall be made to the operating and environmental conditions in which the Vehicle is used for the duration of the Lease Period;

- 2.57 **"Last End Date"** means the date on which the End Date of the last of the Individual Vehicle Contracts fall;
- 2.58 **"Fleet"** bears the meaning assigned to that term in clause 1.2;
- 2.59 **"Fleet Management Meetings"** mean the fleet management meetings contemplated in clause 63;
- 2.60 **"Fleet Manager"** means the fleet manager nominated by Transnet from time to time in writing in respect of a particular Operating Division;
- 2.61 **"FML"** means full maintenance lease;
- 2.62 **"FML Vehicles"** bears the meaning assigned to that term in clause 1.2;
- 2.63 **"Force Majeure Event"** means an event that occurs beyond the reasonable control of either Party and which has the effect of preventing the Party affected by such event from performing its obligations in terms of this Agreement. For the avoidance of doubt a *Force Majeure* Event shall:
- 2.63.1. include war (whether declared or not), revolution, riots, strikes or other protest action, insurrection, civil commotion, invasion, armed conflict, a hostile act of a foreign enemy, act of terrorism, sabotage, radiation or chemical contamination, ionising radiation, act of God, plague or other serious epidemic or pandemic and acts of government and associated regulations (whether National, Provincial or Local);
 - 2.63.2. exclude a labour dispute, strike or lockout which is not industry-wide save that where such labour dispute, strike or lockout occurs at Transnet's premises, it shall constitute a *Force Majeure* Event to the extent that the Supplier is prevented from performing its obligations (including delivery of a Vehicle) at Transnet's premises; and
 - 2.63.3. shall exclude the inability to meet payment obligations because of a lack of funds, unless same is directly occasioned by factors in clause 2.63.1;
- 2.64 **"Government"** means the Government of South Africa;
- 2.65 **"Individual Contract"** refers collectively to the Contract Schedule and the Vehicle Acceptance Form in respect of a particular Vehicle;
- 2.66 **"Initial Phase"** bears the meaning assigned to that term in clause 6.7.1;

- 2.67 **"Intellectual Property Rights"** means all intellectual property rights, whether registrable (including patents and trademarks) or unregistrable (including know-how and methodology) which may exist anywhere in the world, 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 prior to the Commencement Date or developed after the Commencement Date, and includes all further additions and improvements to such intellectual property;
- 2.68 **"KPI"** means a key performance indicator;
- 2.69 **"Labour Relations Act"** bears the meaning assigned to that term in clause 55.3.2;
- 2.70 **"Lease Payment"** means the monthly payment to be made by Transnet to the Service Provider in terms of an Individual Contract in relation to a FML Vehicle;
- 2.71 **"Lease Period"** means the duration of each Individual Contract as specified in the relevant Contract Schedule. Unless otherwise agreed between the Parties in writing, the Lease Period of each FML Vehicle shall be 60 months;
- 2.72 **"Maintenance CPK"** bears the meaning assigned to that term in clause 23.2.1;
- 2.73 **"Maintenance Fund"** means the fixed maintenance fund in respect of a Vehicle specified in an Individual Contract;
- 2.74 **"Make Good Costs"** mean the reasonable costs of effecting repairs to the Vehicle to ensure that the Vehicle is in the same or a similar condition as at the Start Date, Fair Wear and Tear excepted. For the avoidance of doubt, Operator Default should be dealt with during the Lease Period before the return of the Vehicle at the End Date provided that there may be exceptions which shall be dealt with on a case by case basis;
- 2.75 **"Managed Maintenance"** bears the meaning assigned to that term in clause 19.1;
- 2.76 **"Managed Maintenance Fee"** bears the meaning assigned to that term in clause 19.3;
- 2.77 **"Major Component Failure"** means the failure of any of the components specified in ANNEXURE 4;
- 2.78 **"Market Value"** means the average of the retail value and trade value of a Vehicle as specified in the Auto Dealers Guide;

- 2.79 "**Material**" means all printed and electronic material provided by the Service Provider as part of any training or technical assistance provided by the Service Provider as part of the Services;
- 2.80 "**Maximum Vehicle Kilometres**" bears the meaning assigned to that term in clause 21.4;
- 2.81 "**Modifications**" means specialised customisation, adaptation or alteration of a Vehicle as may be required by an Operating Division e.g. homologation;
- 2.82 "**Monthly Contracted Mileage**" bears the meaning assigned to that term in clause 23.1.1 and includes reference (interchangeably) to monthly contracted usage;
- 2.83 "**NADA**" means the National Automobile Dealer Association;
- 2.84 "**Net Book Value**" means the generally accepted accounting definition of net book value, being the cost of a FML Vehicle or a STR Vehicle, as the case may be, less the accumulated Depreciation. The Service Provider, shall appoint an independent accredited auditor to validate the Net Book Value and issue a certificate to that effect. The cost of such validation shall be for the Service Provider's account;
- 2.85 "**OEM**" means an original equipment manufacturer;
- 2.86 "**Operator Default**" means any conduct by a member of Transnet's Personnel which causes damage to a Vehicle;
- 2.87 "**Operational Phase**" bears the meaning assigned to that term in clause 6.7.2;
- 2.88 "**Operational SLA**" means the Operational SLA annexed hereto as ANNEXURE 3;
- 2.89 "**Operational Steercom**" means the operational steering committee constituted in terms of clause 63.2;
- 2.90 "**Operating Division**" means any operating division or business unit of Transnet from time to time which, as at the Signature Date, are:
- 2.90.1. Transnet Corporate Centre (TCC);
 - 2.90.2. Transnet Rail Infrastructure Manager (TRIM);
 - 2.90.3. Transnet Freight Rail Operations (TFR);
 - 2.90.4. Transnet Engineering (TE);
 - 2.90.5. Transnet Port Terminals (TPT);
 - 2.90.6. Transnet National Ports Authority (TNPA);

- 2.90.7. Transnet Pipelines (TPL); and
 - 2.90.8. Transnet Property (TP).
-
- 2.91 **"Owned Vehicles"** bears the meaning ascribed to it in clause 1.2;
 - 2.92 **"Ownership Score"** means the ownership score of the Service Provider as determined in accordance with the requirements of the generic scorecard in the Codes;
 - 2.93 **"Overall BBBEE Score"** means the overall BBBEE score of the Service Provider as reflected in the scorecard of the Service Provider reflecting its Verified BBBEE Score;
 - 2.94 **"Parties"** refers collectively to Transnet and the Service Provider, and **"Party"** shall refer to either of them individually, as the context requires;
 - 2.95 **"Penalty"** bears the meaning assigned to that term in clause 16.2;
 - 2.96 **"Performance Guarantee"** bears the meaning assigned to that term in clause 17.1;
 - 2.97 **"Personal Information"** bears the meaning assigned to that term in the POPIA;
 - 2.98 **"Personnel"** means any employee, agent, consultant, independent contractor or supplier, sub-contractor and the staff or other authorised representative of such independent contractor, supplier or sub-contractor of either Party;
 - 2.99 **"POPIA"** means the Protection of Personal Information Act No. 4 of 2013;
 - 2.100 **"Prime Rate"** means the rate publicly quoted by The Standard Bank of South Africa Limited, from time to time, as being its prime rate (expressed as a nominal annual rate compounded monthly in arrears), calculated at a 365 (three hundred and sixty-five) day a year factor, irrespective as to whether or not the year is a leap year and *prima facie* proven, in the event of there being a dispute in relation thereto, by a certificate by any manager of the aforesaid bank (whose appointment, qualification or authority need not be proven);
 - 2.101 **"Processing"** and any derivatives of the term as used in this Agreement bears the meaning assigned to that term in the POPIA;
 - 2.102 **"Prohibited Act"** means without limitation:
 - 2.102.1. offering, promising, giving or agreeing to give to any person in the service of Transnet any gift or consideration of any kind as an inducement or reward for:

- 2.102.2. doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with Transnet;
- 2.102.3. showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with Transnet;
- 2.102.4. entering into this Agreement or any other contract with Transnet in connection with which commission has been paid or has been agreed to be paid by the Service Provider or on its behalf, or to its knowledge, unless before the relevant contract is entered into, particulars of any such commission and the terms and conditions of any such contract for the payment thereof have been disclosed in writing to Transnet;
- 2.102.5. committing any offence:
 - 2.102.5.1. under the Prevention and Combating of Corrupt Activities Act No. 12 of 2004; or
 - 2.102.5.2. at common law in respect of fraudulent acts in relation to this Agreement or any other contract with Transnet;
- 2.102.6. defrauding or attempting to defraud or conspiring to defraud Transnet;
- 2.102.7. colluding with competitors or bid rigging;
- 2.102.8. carrying out its obligations in terms of this Agreement in an unsatisfactory manner or has breached any condition of this Agreement;
- 2.102.9. acting in a fraudulent or improper manner or in bad faith towards Transnet or any Government department, public body, enterprise or person;
- 2.102.10. making an incorrect statement in a certificate or other communication in regard to its BBBEE commitments made pursuant to the conclusion of this Agreement and being unable to approve to the satisfaction of Transnet that:
 - 2.102.10.1. it has made the statement in good faith honestly believing it to be correct;
 - 2.102.10.2. it took all reasonable steps to satisfy itself as to the correctness of the statement before making such statement;

- 2.102.11. causing Transnet to sustain damage resulting in Transnet being obliged to incur costs in order to meet the Service Provider's obligations, which costs could not be recovered by Transnet from the Service Provider; or
- 2.102.12. litigating against Transnet in bad faith;
- 2.103 "**Projected Procurement Spend**" means the spend that Transnet is projected to spend on Services to be procured from the Service Provider during the period to be measured;
- 2.104 "**Rates**" bears the meaning assigned to that term in clause 69.1;
- 2.105 "**Receiving Party**" bears the meaning assigned to that term in clause 67.1;
- 2.106 "**Required Average Service Level**" means the required minimum average service level (expressed as a percentage) that the Service Provider is required to achieve across all Operational KPIs specified in the Operational SLA;
- 2.107 "**Required Service Levels**" means the requisite minimum level of service that the Service Provider is obliged to achieve in respect of each Operational KPI as specified in the Operational SLA or the Strategic SLA, as the case may be. For the avoidance of doubt, the Required Service Levels in the Operational SLA and the Strategic SLA are weighted and the Parties can agree to change the weighting of the Required Service Levels at the Operational Steercom. Such change in the weighting of the Required Service Levels shall not constitute an amendment of the Operational SLA or the Strategic SLA, as the case may be;
- 2.108 "**Residual Value**" means the anticipated value of a FML Vehicle and/or STR Vehicle at the End Date of that particular Vehicle as recorded in the applicable Individual Contract given the anticipated mileage of the Vehicle at that End Date and taking into account the Monthly Contracted Mileage and the Lease Period, and assuming that the Vehicle is returned in good working order and condition, Fair Wear and Tear excluded. The residual value is based on a percentage of the published new list price of the Vehicle at the time of purchasing the Vehicle;
- 2.109 "**RT57**" bears the meaning assigned to that term in clause 21.2;
- 2.110 "**SAICA**" means the South African Institute of Chartered Accountants or its successor organisation;
- 2.111 "**Salvage Value**" means a percentage of the higher of the Market Value or the Net Book Value of the Vehicle. In determining the applicable percentage that should be assigned to

the Salvage Value of a Vehicle, reference shall be made to a type of loss or damage sustained by that Vehicle, namely:

Code	Description	Damage
2	Accident	40%
3	Stolen and recovered	40%
4	Burnt out	5%

2.112 "**SANRAL**" means the South African National Roads Agency Limited, a public company owned by the Government acting through the Department of Transport;

2.113 "**SAVRALA**" means South African Vehicle Renting and Leasing Association;

2.114 "**Scheduled Maintenance**" means repairs and maintenance that takes place in accordance with the recommendations of the OEM of a Vehicle and includes all repairs and maintenance in relation to Major Component Failure;

2.115 "**Services**" mean the Services as defined in clause 10.2 and as further specified in ANNEXURE 2;

2.116 "**Service Provider**" means SERVICE PROVIDER, ., Registration Number XXX);

2.117 "**Service Provider Representative**" means the representative of the Service Provider nominated and appointed in writing from time to time who will have overall responsibility for the Services across the Transnet Group and who shall constitute the key contact person who shall liaise with the Transnet Group Representative;

2.118 "**Settlement Amount**" means the amount which is calculated in accordance with the provisions of clause 47;

2.119 "**Signature Date**" means the date of signature of this Agreement by the last Party signing;

2.120 "**South Africa**" means the Republic of South Africa;

2.121 "**Standard Mandatory Fitments**" bears the meaning assigned to that term in clause 30.1;

2.122 "**Start Date**" means the Delivery Date specified as such in an Individual Contract;

2.123 "**STR**" means short-term rental;

- 2.124 "**STR Vehicles**" bears the meaning assigned to that term in clause 1.2;
- 2.125 "**Strategic Project**" means a project, identified by the Operational Steercom from time to time, which impacts the rendering of the Services taking into account the overall strategy of Transnet and which shall include projects relating to Continuous Improvement;
- 2.126 "**Strategic KPI**" means a KPI specified in the Strategic SLA;
- 2.127 "**Strategic SLA**" means the strategic service level agreement annexed hereto as ANNEXURE 7;
- 2.128 "**Tax Clearance Certificate**" means a tax clearance certificate issued from time to time by the South African Revenue Service;
- 2.129 "**Tax Invoice**" means the document as required by Section 20 of the VAT Act;
- 2.130 "**Tender Process**" means the tender process undertaken by Transnet pursuant to which the Service Provider has been appointed by Transnet to render the Services on the terms and conditions set out in this Agreement;
- 2.131 "**Termination Date**" means the date of termination of this Agreement for whatever reason as a result of its termination in accordance with its terms by either of the Parties;
- 2.132 "**Threshold**" means the Maximum Vehicle Kilometres applicable to a particular Vehicle as specified in the Contract Schedule relating to such Vehicle;
- 2.133 "**Tolerance**" means a tolerance of 5% (five percent) of the Monthly Contracted Mileage, as the case may be, in respect of the under- or over-utilisation of a Vehicle;
- 2.134 "**Transition Phase**" bears the meaning assigned to that term in clause 6.7.3.3;
- 2.135 "**Transnet**" means Transnet SOC Ltd, Registration Number 1990/000900/30, a state-owned company with limited liability duly incorporated and registered in terms of the laws of South Africa
- 2.136 "**Transnet's Bank Account**" means the bank account nominated by Transnet in any Tax Invoice issued by it to the Service Provider;
- 2.137 "**Transnet Contract Manager**" means a Group Contract Manager nominated and appointed by Transnet in writing from time to time;
- 2.138 "**Transnet Fuel Solutions**" means Transnet Fuel Solutions, a division of Transnet Freight Rail;

2.139 "**Transnet Group**" refers collectively to Transnet head office and the Operating Divisions;

2.140 "**Transnet Group Representative**" means the representative nominated and appointed in writing by Transnet from time to time who shall be responsible for the management of this Agreement on behalf of Transnet from a Transnet Group perspective;

2.141 "**Unscheduled Maintenance**" means maintenance and repairs other than Scheduled Maintenance excluding those due to Operator Default, insurable events not attributable to the Fair Wear and Tear of the Vehicle or the fault of the Service Provider and shall include maintenance and repairs relating to Major Component Failure;

2.142 "**Uptime Target**" means the target of uptime of the Vehicles determined in accordance with the Operational SLA and the Strategic SLA excluding downtime occasioned by Operator Default, Scheduled Maintenance or insurable accidents or incidents not attributable to the fault of the Service Provider and which shall operate as follows:

Year 1	85%
Year 2	90%
Years 3 – 5	95%

2.143 "**VAT**" means Value-Added Tax levied in accordance with the VAT Act;

2.144 "**VAT Act**" means the Value-Added Tax Act No. 89 of 1991;

2.145 "**Vehicle Inspection Form**" bears the meaning assigned to that term in clause 32.6;

2.146 "**Vehicles**" bears the meaning assigned to that term in clause 1.2; and

2.147 "**Verified BBBEE Score**" means the BBBEE score of the Service Provider as verified by an accredited rating agency or any other third party as set out in the Codes from time to time.

3. **INTERPRETATION**

3.1 Headings and sub-headings are inserted for information purposes only and shall not be used in the interpretation of this Agreement.

3.2 Unless the context clearly indicates a contrary intention, any word connoting:

- 3.2.1. the singular shall be deemed to include a reference to the plural and *vice versa*;
 - 3.2.2. any one gender shall be deemed to include a reference to the other genders;
 - 3.2.3. a natural person shall be deemed to include a reference to a legal or juristic person;
 - 3.2.4. a Party includes a reference to that Party's successors-in-title and assigns allowed at law.
- 3.3 Any reference in this Agreement to –
- 3.3.1. "**Business Hours**" shall be construed as being the hours between 07h30 and 17h00 on any Business Day. Any reference to time shall be based upon South African Standard Time;
 - 3.3.2. "**days**" shall be construed as calendar days;
 - 3.3.3. "**law**" means any law of general application and includes the common law and any statute, constitution, decree, treaty, regulation, directive, ordinance, by-law, order or any other enactment of legislative measure of Government (including local and provincial government) statutory or regulatory body which has the force of law;
 - 3.3.4. "**person**" means any person, company, close corporation, trust, partnership or other entity whether or not having separate legal personality; and
 - 3.3.5. "**writing**" means legible writing in English and excludes any form of electronic communication contemplated in the Electronic Communications and Transactions Act (No. 25 of 2002), save insofar as is provided for in clause 78.
- 3.4 Words and expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout this Agreement.
- 3.5 Unless otherwise provided, defined terms appearing in this Agreement in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning.

- 3.6 Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a Business Day, the next succeeding Business Day.
- 3.7 If the due date for performance of any obligation in terms of this Agreement is a day which is not a Business Day then (unless otherwise stipulated) the due date for performance of the relevant obligation shall be the next succeeding Business Day.
- 3.8 This Agreement is the product of negotiation between the Parties. Accordingly, no reference shall be made to prior drafts of this Agreement in its interpretation nor shall such prior drafts be referred to as constituting evidence of any matter relating to this Agreement or its conclusion.
- 3.9 No provision of this Agreement shall (unless otherwise stipulated) constitute a stipulation for the benefit of any person (*stipulatio alteri*) who is not a Party to this Agreement.
- 3.10 The use of any expression in this Agreement covering a process available under South African law, such as winding-up, shall, if any of the Parties to this Agreement is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such other jurisdiction.
- 3.11 Whenever any person is required to act "**as an expert and not as an arbitrator**" in terms of this Agreement, then:
- 3.11.1. the expert shall be entitled to determine such methods and processes as he, in his sole discretion, may deem appropriate in the circumstances provided that the expert may not adopt any process which is manifestly biased, unfair or unreasonable;
 - 3.11.2. the expert shall endeavour to resolve any matter referred to him within 30 (thirty) days of the date of such referral;
 - 3.11.3. the expert shall jointly consult with the relevant Parties (provided that the extent of the expert's consultation shall be in his sole discretion) prior to rendering a determination;
 - 3.11.4. having regard to the sensitivity of any Confidential Information, the expert shall be entitled to take advice from any person considered by him to have expert knowledge with reference to the matter in question;

- 3.11.5. the determination of the expert shall (in the absence of manifest error) be final and binding; and
- 3.11.6. subject to any express provision to the contrary, the expert shall be entitled to make a determination as to the liability for his charges including that a Party is either wholly or partly liable for his charges and, in the latter case, the expert may apportion liability for his charges to each of the Parties.
- 3.12 This Agreement incorporates the annexures which shall have the same force and effect as if set out in the body of this Agreement; provided that to the extent that any conflict arises between the provisions set out in the body of this Agreement and any annexure, the provisions set out in the body of this Agreement shall prevail.
- 3.13 In this Agreement the words "**clause**" and "**annexure**" refer to clauses of and annexures to this Agreement.
- 3.14 The termination of this Agreement shall not affect provisions of this Agreement which expressly provide that they will operate after any such termination or provisions which of necessity must continue to have effect after such termination of this Agreement notwithstanding that the clauses themselves do not expressly provide for this.
- 3.15 The rule of interpretation that a written agreement shall be interpreted against the party responsible for the drafting or preparation of that agreement shall not apply in the interpretation of this Agreement.
- 3.16 Where figures are referred to in numerals and in words and there is any conflict between the two, the words shall prevail.
- 3.17 Any reference to any legislation is a reference to such legislation enacted in South Africa as at the Signature Date and as amended or re-enacted, from time to time.
- 3.18 If any provision in a definition is a substantive provision conferring any rights or imposing any obligations on any Party, then notwithstanding that it is only contained in this clause 2, effect shall be given to that provision as if it were a substantive provision set out elsewhere in this Agreement.
- 3.19 The *eiusdem generis* rule shall not apply and accordingly, whenever a provision is followed by the word "including" (or any similar term) and specific examples, such examples shall not be construed so as to limit the ambit of the provision preceding "including" or such similar term.

4. **GUIDING PRINCIPLES**

- 4.1 In interpreting and implementing this Agreement, reference shall be made to the following guiding principles ("**Guiding Principles**"):
- 4.1.1. security of supply of Vehicles – the Services will be provided in a manner that enhances Transnet's business requirements and in particular the specific requirements of each Operating Division with minimal interruption to and adverse impact on Transnet's operations;
 - 4.1.2. reduced costs – cost reduction is a key objective of Transnet in securing the Services from the Service Provider. The Service Provider will continuously work with Transnet to ensure that all costs associated with this Agreement are kept to a minimum and provide on-going sustainable operational savings to Transnet without materially adversely affecting the sustainability of this Agreement from the Service Provider's perspective. To this end, the Service Provider will at all times take advantage of market cost efficiencies;
 - 4.1.3. focus on core business – by outsourcing the Services to the Service Provider, Transnet will focus its internal resources on delivering on its core mandate while receiving improved levels of service in respect of the Services from the Service Provider, except in a case where there is a change in Transnet's business strategy or business requirements;
 - 4.1.4. commitment to 30% PPPFA sub-contracting – bidders are required to sub-contract 30% of the contract spend to EMEs and QSEs as per the Request for Proposal (RFP) commitment.
- 4.2 If any term or condition of this Agreement is ambiguous or unclear or if the Parties did not anticipate a particular issue, the Parties shall refer to and apply the Guiding Principles to resolve and/or address the ambiguous, unclear or unanticipated issue.

5. **NATURE OF THIS AGREEMENT**

- 5.1 This Agreement shall operate as a master services agreement and accordingly:
- 5.1.1. subject to the provisions of clause 5.1.2, the terms and conditions set out in this Agreement shall be automatically incorporated into each Individual

Contract concluded between Transnet and the Service Provider in respect of any Vehicle forming part of the Fleet;

5.1.2. in certain instances, the terms and conditions contained in this Agreement may be varied by the Parties in an Individual Contract, provided that no such variation shall be permitted unless and until such variation has been approved by the relevant Transnet delegated authority; and

5.1.3. save for where approved in terms of the provisions of clause 5.1.2, to the extent that the provisions of an Individual Contract contradict the provisions of this Agreement, the provisions of this Agreement shall prevail.

5.2 The Service Provider shall render, at a minimum, Breakdown Services, Scheduled Maintenance and Unscheduled Maintenance in respect of the Fleet Nationally.

5.3 During the Tender Process, Transnet supplied the Service Provider with a list of Vehicle types and indicative Vehicle numbers and distribution ("**Vehicle Data**") in order to provide the Service Provider to compile its bid. The Service Provider acknowledges that the Vehicle Data represents Transnet's current Fleet requirements and that these requirements may change over the Contract Period and that Transnet will procure the Vehicles in terms of this Agreement from the Service Provider on an "as and when required" basis.

6. **APPOINTMENT AND DURATION**

6.1 Transnet hereby appoints the Service Provider as an independent contractor to render the Services from the Commencement Date and for the duration of the Contract Period.

6.2 Transnet shall, for the duration of the Contract Period and, save as may be provided to the contrary in this Agreement, exclusively source its Fleet requirements from the Service Provider. To the extent that Transnet places an order with the Service Provider and at the time of placing the order the Service Provider advises Transnet that it will be unable to fulfil Transnet's requirements as stipulated in the order, Transnet shall be entitled to procure the necessary vehicles and/or services contemplated from the preferred Back-up Service Provider, failing which through an order from the open market on a three quote process.

6.3 Notwithstanding the provisions of clause 6.2, Transnet shall:

- 6.3.1. not be obliged to lease any minimum number of Vehicles from the Service Provider in terms of this Agreement, and the total number of Vehicles leased by Transnet at any time in terms of this Agreement shall be determined by Transnet in its sole and absolute discretion; nor
- 6.3.2. be construed to guarantee the Service Provider that Transnet will request any Services or place any orders for a specific number of Vehicles on the Service Provider during the Contract Period.
- 6.4 No relationship of employment, agency, partnership or joint venture shall be created or deemed to be created by this Agreement. Accordingly, neither Party shall be entitled to bind the other Party in any way including by the pledging of the security or the credit of the other Party.
- 6.5 The term of an Individual Contract shall be specified in that Individual Contract. In this regard:
 - 6.5.1. an Individual Contract shall specify the Lease Period; and
 - 6.5.2. to the extent that the Lease Period is stipulated to take place after the Expiry Date, the Individual Contract will continue to survive and be in force and effective in accordance with its terms read with the substantive terms of the Agreement (which terms shall continue to apply until the Last End Date, with no further extension, to the extent necessary despite the Expiry Date having occurred). The Service Provider shall provide the Services in respect of the Vehicle which is subject to such Individual Contract, and Transnet shall pay the relevant Rates applicable thereto, until the End Date of that Individual Contract, consideration being had to clause 42.
- 6.6 An Individual Contract may terminate for whatever reason independently of the termination of this Agreement, and the existence of this Agreement shall not be affected by the termination of an Individual Contract, unless the reason for the termination of the Individual Contract results in a failure to achieve a Strategic KPI; in which event the termination of such Individual Contract may contribute to the termination of this Agreement.
- 6.7 The Contract Period shall comprise three distinct phases:
 - 6.7.1. the period from the Commencement Date until XXX ("**Initial Phase**");

- 6.7.2. the period commencing on the day immediately succeeding the expiry of the Initial Phase and, subject to the provisions of clause 6.7.3, for the remainder of the Contract Period ("**Operational Phase**"); and
- 6.7.3. the period which shall commence:
 - 6.7.3.1. in the case of this Agreement terminating as a result of expiry on the Expiry Date, no more than 120 (one hundred and twenty) days prior to the Expiry Date;
 - 6.7.3.2. in the case of this Agreement terminating in circumstances contemplated in clause 7, on the date of the giving of the notice contemplated in clauses 7.1 and 7.2, as the case may be; or
 - 6.7.3.3. where, due to circumstances contemplated in clause 72 this Agreement is deemed to have terminated ("**Deemed Termination Date**"), the Contract Period shall be notionally extended for a period of 120 (one hundred and twenty) days following the Deemed Termination Date, subject to the provisions of clause 82.3 ("**Transition Phase**").
- 6.8 The provisions of clauses 2, 3, 42, 56, 58.1.5, 61, 66, 67, 68, 72, 72.6, 72, 73, 74, 75, 77, 78, 79, 80 and 82 shall survive the termination of this Agreement for whatever reason.

7. **EARLY TERMINATION**

- 7.1 Notwithstanding the provisions of clause 6.2, Transnet may terminate this Agreement on not less than 180 (one hundred and eighty) Business Days' prior written notice to the Service Provider, and shall, with effect from the date of termination of this Agreement, be entitled to procure the Services from the Back-up Service Provider:
 - 7.1.1. for convenience, without attracting any liability vis-à-vis the Service Provider in this regard but subject to the provisions of clause 74.1;
 - 7.1.2. subject to the provisions of clause 8.3, on Transnet becoming aware of a change in the Ownership Score of the Service Provider which results in a reduction of the Service Provider's Overall BBBEE Score by more than 2 (two) levels, with no illustration on the part of the Service Provider that the reduction of the level is on account of changed laws and regulations, and in

event post the transition period that the laws and regulations may permit persons to comply with such new laws;

- 7.1.3. in the event that Transnet's continued procurement of the Services is prevented or inhibited for whatever reason including due to a change in Government regulatory policy or for Transnet's financial or operational reasons;
 - 7.1.4. in the event that the Service Provider is unable to match the Rates quoted by a third party supplier pursuant to clause 70; or
 - 7.1.5. as a result of a material adverse change to the financial circumstances of the Service Provider preventing it from performing its obligations in terms of this Agreement as contemplated in clause 10.1.5.
- 7.2 The Service Provider may terminate this Agreement on not less than 180 (one hundred and eighty) Business Days' prior written notice to Transnet; provided that the Service Provider shall be liable for the Compensation Amount.
- 7.3 After the expiry of a period of 12 (twelve) months following the Start Date of any Individual Contract, Transnet shall be entitled to terminate such Individual Contract on 30 (thirty) days' prior written notice to the Service Provider, provided that Transnet shall not be entitled to terminate more than 50% (fifty percent) of the Individual Contracts in place at any given time.

8. **BBBEE**

- 8.1 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.
- 8.2 In response to this requirement, the Service Provider shall submit to the Transnet 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 during the currency of the Agreement.
- 8.3 The Service Provider undertakes to notify and provide full details to Transnet in the event there is:

- 8.3.1. a change in the Service Provider's B-BBEE status which is less than what it was at the time of its appointment including the impact thereof; and
- 8.3.2. a corporate or internal restructure or change in control of the Service Provider which has or likely to impact negatively on the Service Provider's B-BBEE status
- 8.4 The Service Provider shall furnish Transnet with its BBBEE certificate reflecting its Verified BBBEE Score together with the underlying scorecard prepared by an accredited verification agency or an auditor on or before the Commencement Date and thereafter on or before the Anniversary Date for the duration of the Contract Period.
- 8.5 The Service Provider undertakes to notify and provide full details to Transnet in writing as soon as is reasonably practicable in the circumstances in the event that:
 - 8.5.1. a change in the Service Provider's Overall BBBEE Score results in a reduction by a single level or more of the Service Provider's BBBEE Contributor Status Level; or
 - 8.5.2. the Service Provider's Ownership Score has or is likely to reduce for whatever reason.
- 8.6 Transnet may, in its sole and absolute discretion, terminate this Agreement in the circumstances contemplated in clause 7.1.2 on the strength of the information provided by the Service Provider to Transnet in terms of clause 8.5.
- 8.7 Notwithstanding any other reporting requirement in terms hereof, the Service Provider undertakes to provide any B-BBEE data (underlying data relating to the 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 Service Provider Default and may be dealt with in accordance with the provisions of the contract.

9. **BBBEE IMPROVEMENT PLAN (IF APPLICABLE)**

- 9.1 Transnet encourages its suppliers to constantly strive to improve and/or at least maintain their B-BBEE levels. To this end, the Service Provider undertakes to provide Transnet with

a B-BBEE Improvement Plan to indicate the extent to which their B-BBEE status will be maintained or improved over the contract period, as per Annexure 15.

- 9.2 The BBBEE Improvement Plan shall reflect the planned interventions that the Service Provider is committed to undertaking during the Contract Period in order to maintain and improve its Verified BBBEE Score as compared with its Verified BBBEE Score as at the Commencement Date.
- 9.3 The Service Provider shall, for the duration of the Agreement, comply with the B-BBEE Improvement Plan.
- 9.4 The terms of the B-BBEE Improvement Plan and monetary value of the commitments thereunder shall not (unless otherwise agreed in writing) be less or less favourable than the commitments made by the Service Provider in such B-BBEE Improvement Plan.
- 9.5 Breach of B-BBEE Improvement Plan obligations also provide Transnet cause to terminate the contract in certain cases where material milestones are not being achieved
- 9.6 The BBBEE Improvement Plan shall reflect the planned interventions that the Service Provider is committed to undertaking during the Contract Period in order to maintain and improve its Verified BBBEE Score as compared with its Verified BBBEE Score as at the Commencement Date.
- 9.7 The achievement of the milestones specified in the BBBEE Improvement Plan is a Strategic KPI and the performance of the Service Provider compared with the BBBEE Improvement Plan shall be monitored by the Transnet Group Representative.
- 9.8 The performance of the Service Provider as compared with the BBBEE Improvement Plan shall be measured on an annual basis within 60 (sixty) days after the Anniversary Date for the duration of the Contract Period. To this end, the Service Provider shall grant Transnet a right of access to the underlying data supporting the achievement by the Service Provider of the targets specified in the BBBEE Improvement Plan.
- 9.9 The Service Provider shall ensure that it has the relevant internal mechanisms and procedures in place to allow Transnet to audit the Service Provider's compliance with the BBBEE Improvement Plan. Without limiting the generality of the foregoing, the Service Provider shall be obliged to provide the Transnet Group Representative with written quarterly status reports specifying the progress made by the Service Provider in relation to the BBBEE Improvement Plan.

- 9.10 To the extent that the Service Provider has not complied with the BBBEE Improvement Plan, with effect from XXX, Transnet shall be entitled to levy Penalties, as was referenced in Section of the RFP, which shall be applied with reference to the Actual Procurement Spend, provided that the Penalty applicable shall relate to the year in which the default occurs only and therefore only the Actual Procurement Spend in the year in which the default occurred shall be considered in determining the Penalty. The Penalty payable by the Service Provider as a result of a failure to materially comply with the BBBEE Improvement Plan in any year during the Contract Period shall be an amount equal to 2.5% of the Actual Procurement Spend during that year.
- 9.11 For the purposes of clarity, once a Penalty has been levied and paid, the agreed milestone set out in the BBBEE Improvement Plan for that particular year shall be deemed to have been met.
- 9.12 During the 12 (twelve) month period immediately preceding the Expiry Date, the Service Provider shall report on a monthly basis to the Strategic Steercom which shall convene specifically for the purpose of reviewing the performance of the Service Provider as against the BBBEE Improvement Plan.
- 9.13 Transnet shall issue a Tax Invoice annually to the Service Provider in respect of Penalties levied by Transnet for non-compliance by the Service Provider of its obligations in terms of the BBBEE Improvement Plan.
- 9.14 If Transnet fails to issue a Tax Invoice in respect of Penalties that should have been levied in respect of a particular 12 (twelve) month period during the Contract Period, it shall not be deemed to have waived its right to claim such Penalties at any other time during the Contract Period.
- 9.15 If the Service Provider disputes the levying of any Penalties by Transnet in accordance with this clause, it shall notify the Transnet Group Representative of such fact in writing whereafter the Transnet Group Representative shall convene a meeting with the Service Provider Representative for the purposes of resolving such dispute through *bona fide* negotiation.
- 9.16 If the Service Provider's dispute is not resolved in terms of the process contemplated in clause 9.15, the dispute shall be referred to an independent BBBEE expert nominated by the chief executive officer of the South African National Accreditation System who shall make a determination in relation to the dispute acting as an expert and not as an arbitrator.

- 9.17 If the determination of the independent BBBEE expert referred to in clause 9.16 is such that he finds in favour of Transnet penalising the Service Provider and has determined the quantum of such Penalty, Transnet shall be entitled to amend (if necessary) the Tax Invoice it has issued in terms of the provisions of clause 9.13.
- 9.18 The Service Provider shall make payment of the Tax Invoice referred to in clause 9.13 or the amended Tax Invoice referred to in clause 9.17 within 10 (ten) Business Days of the receipt by the Service Provider of such Tax Invoice. In the event that the Service Provider fails to make payment of such Tax Invoice within the aforesaid period, Transnet shall, at its sole and absolute discretion, be entitled to:
- 9.18.1. levy interest on such overdue Tax Invoice at the Prime Rate from the due date for such payment until the actual date of payment in full; or
 - 9.18.2. deduct the amount not paid by the Service Provider from the amount due to the Service Provider in the ensuing months.
- 9.19 Transnet shall not be liable to make payment of any Tax Invoices submitted by the Service Provider to Transnet during the period referred to in clause 9.12 up to a maximum value of the aggregate of any Tax Invoices that are due and payable by the Service Provider to Transnet and which remain outstanding.
- 9.20 Should the Service Provider fail to make payment of the Tax Invoice contemplated in clause 9.13 or the amended Tax Invoice contemplated in clause 9.17 within the period stipulated in clause 17.8, Transnet shall be entitled to lodge a claim against the Performance Guarantee in terms of the provisions of clause 17.

10. **THE SERVICES**

- 10.1 During the Contract Period, the Service Provider warrants that:
- 10.1.1. it shall render the Services to Transnet in a professional and proficient manner and in accordance with industry best practice; and
 - 10.1.2. it shall render the Services to Transnet as a minimum in accordance with the Required Service Levels, without limiting the provisions of clause 10.1.1;
 - 10.1.3. it possesses or has access to the requisite suitably-trained Personnel, knowledge, skill, experience and expertise to render the Services; and

- 10.1.4. it will discharge its obligations under this Agreement with due skill, care and diligence;
 - 10.1.5. as at the Commencement Date and the Signature Date it has, and shall continue to maintain throughout the Contract Period, sufficient financial resources to comply with the requirements of this Agreement. If the Service Provider experiences a change in its financial condition that may materially adversely affect its ability to perform in terms of this Agreement, then it shall immediately notify Transnet of such change in writing. In such event, Transnet reserves the right to terminate this Agreement in terms of the provisions of clause 7.1.5; and
 - 10.1.6. as at the Commencement Date and the Signature Date there is no pending or anticipated claim, suit, or proceeding that involves the Service Provider or any of its affiliates that might materially adversely affect the Service Provider's ability to perform its obligations under this Agreement. The Service Provider undertakes to notify Transnet as soon as is reasonably practicable in the circumstances if any legal proceedings are instituted against the Service Provider in relation to the rendering of the Services or the conclusion of this Agreement, and shall send a written notice of such proceedings together with relevant documentation (including correspondence, pleadings, interlocutory applications and any affidavits) to Transnet within 72 (seventy-two) hours of receipt thereof.
- 10.2 With effect from the Commencement Date, and for the duration of the Contract Period the Service Provider shall:
- 10.2.1. be responsible for the management of the maintenance of the Owned Vehicles ("**Managed Maintenance**");
 - 10.2.2. undertake the leasing and maintenance of FML Vehicles;
 - 10.2.3. undertake the leasing and maintenance of STR Vehicles; and
 - 10.2.4. provide other ancillary services related to the Fleet specified in the remainder of this Agreement;
- as set out in this Agreement (collectively "Services").
- 10.3 The Service Provider shall render the Services to Transnet Nationally.

- 10.4 In rendering the Services, the Service Provider shall seek to improve Transnet's current processes in order to improve Service delivery to Transnet's end user community including through:
- 10.4.1. leveraging off the Service Provider's economies of scale; and
 - 10.4.2. managing Service across the Transnet Group.
- 10.5 During the Contract Period the Parties agree that the Service Provider shall be obliged to render the Services stipulated in this Agreement only. In the event that either Party wishes to add additional services to the Services and/or wishes to remove services from the Services, such amendment to the Services shall be done by way of a formal addendum in accordance with the provisions of clause 82.3. No other amendments to the Services of any nature whatsoever shall be permitted or enforceable.
- 10.6 The Service Provider shall, throughout the Contract Period, provide proposals to Transnet in relation to proactive improvements to the rendering of the Services and the processes related to the rendering of the Services ("**Continuous Improvement**").
- 10.7 The Operational Steercom shall meet and agree on the Continuous Improvement deliverables of the Service Provider from time to time which Continuous Improvement deliverables shall constitute a Strategic KPI.
- 10.8 Continuous Improvement shall be deemed to form part of the scope of this Agreement and shall constitute part of the Services.

11. **SERVICE LEVELS**

- 11.1 Required Service Levels specified in the:
- 11.1.1. Operational SLA will be reported on monthly on an Operating Division-by-Operating Division basis; and
 - 11.1.2. Strategic SLA will be reported on quarterly across all of Transnet's operations.
- 11.2 Subject to clause 11.3, the Service Provider's performance shall be measured and monitored in accordance with the provisions of this clause 11 and the Service Provider may be held in breach of its performance obligations in terms of this clause 11 to the extent that the Service Provider fails to achieve the Required Service Levels.

- 11.3 Notwithstanding the commencement of the Agreement, the Service Provider shall only be obliged to comply with the BBBEE Improvement Plan and the Sub-contracting Implementation Plan with effect from **XXX**.
- 11.4 The Operational SLA reflects the Required Service Levels at which the Service Provider is to render the Services on a day-to-day basis and sets out the Required Service Levels against which the performance of the Service Provider in terms of the Individual Contracts shall be measured.
- 11.5 The Service Provider shall provide monthly reports:
- 11.5.1. reflecting its performance as compared with the KPI's specified in the Operational SLA in respect of Individual Contracts in a particular Operating Division to the Fleet Management Meetings, which shall be responsible for monitoring the Service Provider's performance; and
 - 11.5.2. aggregating its performance across all Individual Contracts which are subject to this Agreement as compared with the KPI's specified in the Operational SLA in respect of the performance of the Service Provider across all Individual Contracts across all Operating Divisions Nationally, to the Operational Steercom, which shall be responsible for monitoring the Service Provider's performance.
- 11.6 To the extent that the Operational Steercom is of the view that the Operational SLA should be amended at any time during the Contract Period in order to respond more effectively to issues facing Transnet and the environment in which it operates, these amendments shall be jointly agreed by the Parties at the Operational Steercom. The Operational Steercom shall escalate the amendments required to the Operational SLA to the Transnet Group Representative. The Operational SLA shall then be amended in accordance with the provisions of clause 82.3. In the event that the Parties are unable to agree on any proposed amendments to the Operational SLA, such dispute shall be resolved in accordance with the provisions of clause 79.
- 11.7 In addition, on a quarterly basis, the Service Provider shall aggregate the monthly reports submitted to the Operational Steercom during the previous quarter in accordance with clause 11.5.2 in order to measure the performance of the Service Provider across all KPI's stipulated in the Operational SLA on a quarterly basis.

- 11.8 The Strategic SLA incorporates 2 (two) Strategic KPI's which are to be determined by the Parties and agreed upon at the Strategic Steercom on an annual basis. The performance of the Service Provider shall be measured against the agreed Required Service Levels specified by the Strategic Steercom at the time of agreeing these Strategic KPI's.
- 11.9 Recommendations for the amendment of the Strategic SLA shall be submitted to the Transnet Group Chief Supply Chain Officer for his approval and may then be amended in terms of the provisions of clause 82.3.
- 11.10 To the extent that the Service Provider fails to achieve the Required Average Service Level:
- 11.10.1. in respect of an Individual Contract, the Service Provider shall be obliged to remedy such non-compliance within a reasonable time in the circumstances as specified in the Operational SLA at its cost including the cost of procuring additional resources to assist it in rendering the Services; provided that -
 - 11.10.1.1. if the Service Provider fails to remedy such mal-performance or non-performance, as the case may be, within the time frame stipulated in the Operational SLA, Transnet shall, in its sole discretion, be entitled to claim Penalties from the Service Provider; or
 - 11.10.1.2. if the Service Provider persistently fails to achieve the Required Average Service Level for 3 (three) consecutive months during a rolling 12 (twelve) calendar month period, the Service Provider shall be in material breach of its obligations in terms of the Individual Contract and Transnet shall be entitled to the remedies specified in clause 72 in respect of that Individual Contract only;
 - 11.10.2. in respect of the Agreement as a whole in terms of the Operational SLA, the Service Provider shall have 30 (thirty) days to remedy such default failing which Transnet shall be entitled to claim Penalties from the Service Provider; or
 - 11.10.3. in respect of the Agreement as a whole in terms of the Strategic SLA for more than 3 (three) consecutive months in a rolling 12 (twelve) month period, the Service Provider shall be in material breach of its obligations in terms of this

Agreement and Transnet shall be entitled to the remedies specified in clause 72 in respect of this Agreement as a whole.

11.11 Transnet may, in its discretion, audit compliance with the Required Service Levels provided that any such audit shall be carried out on reasonable prior written notice to the Service Provider and in such reasonable manner so as not to have a material adverse effect on the performance of the Services. The audit may be conducted by Transnet or via any sub-contractor or agent nominated and appointed by Transnet. To the extent that a third party is nominated and appointed, Transnet shall notify the Service Provider Representative in writing of the identity of such third party.

12. STRATEGIC SLA AND STRATEGIC KPI'S

12.1 In addition to the Operational KPI's stipulated in the Operational SLA, the Parties acknowledge that from time to time there may be certain additional specific Strategic KPIs which Transnet would like to achieve during the Contract Period. Any such Strategic KPIs will be agreed between the Parties in writing on an annual basis by no later than each Anniversary Date. In the event that the Parties fail to agree on the Strategic KPIs which the Service Provider is required to achieve during the following year of the Contract Period on or before the Anniversary Date immediately preceding the commencement of such year of the Contract Period, the Service Provider shall not be obliged to achieve any Strategic KPIs during that year of the Contract Period (save as otherwise provided in this clause). Notwithstanding the above, the Parties agree that the Service Provider shall be obliged to meet the Strategic KPIs stipulated in clause 12.1 for the duration of the Contract Period.

12.2 Any Strategic KPIs which are to be achieved by the Service Provider during any year of the Contract Period (save for those Strategic KPIs referred to in clause 9.7, which must be achieved by the Service Provider over the duration of the Contract Period) must be agreed by the Parties and reduced to writing by no later than each relevant Anniversary Date. In agreeing the Strategic KPIs which are to apply for the following year, the Parties shall also agree the manner in which it shall be determined whether the Service Provider achieved or failed to achieve each such Strategic KPI as well as in what intervals the Service Provider's achievement of the Strategic KPIs will be measured.

12.3 From time to time, either Party may wish to amend the document which is agreed pursuant to the provisions of clause 12.2. In the event that a Party is of the view that the aforementioned document should be amended, such Party shall notify the other Party of

such fact in writing which written notification shall stipulate the reasons for such change. As soon as reasonably possible after receipt of such notice by the other Party, the Transnet Group Representative and the Service Provider Representative shall meet to discuss the proposed change. In the event that the Transnet Group Representative and the Service Provider Representative agree to change the aforementioned document, the Parties shall amend the document in accordance with the provisions of clause 82.3. Notwithstanding any other provision of this Agreement to the contrary, neither Party shall be bound by any amendment to the agreed upon Strategic KPIs unless such amendment has been reduced to writing and signed by both Parties.

- 12.4 In the event of a failure by the Service Provider to achieve the agreed upon Strategic KPIs in any year of the Contract Period, Transnet shall be permitted to levy a Penalty in respect of such failure which Penalty shall be equal to 1% (one percent) of the Actual Procurement Spend during the year of the Contract Period in which the Strategic KPIs were not achieved. In the event that the Service Provider fails to achieve the agreed upon Strategic KPIs for three consecutive years during the Contract Period, the Service Provider shall be deemed to be in material breach of its obligations in terms of this Agreement and Transnet shall be permitted to apply the remedies contemplated in clause 72.

13. **REPORTING**

- 13.1 The Service Provider shall provide accurate and relevant information to Transnet in order to enable Transnet to manage its Fleet requirements. Such information shall be provided on a real-time continuous basis or on a periodic basis (depending on the nature of the data) and shall reflect information which is current as at 24 (twenty four) hours prior to the request for such information. All agreed Monthly reports are due by the 10th of each month.
- 13.2 The Service Provider's customer information schedules (cis) shall, for the duration of the Contract Period, be sufficiently scaleable and flexible to accommodate Transnet's changing operational requirements. This is due by the 01st of each month, notwithstanding public holidays and weekends.
- 13.3 The Service Provider shall constantly seek to enhance its systems in order to strengthen Transnet's competitive advantage by evaluating and implementing any new technology and service delivery systems including those designed to curb fraud and abuse.

13.4 The Service Provider shall furnish Transnet with the reports, set out in

13.5 ANNEXURE 8 on the terms and format and within the time frames stipulated therein.

14. **SUB-CONTRACTING**

14.1 The Service Provider will be expected to sub-contract at least 30% of the Services to suitable sub-contractor(s) that are:

14.1.1. EME or QSE which is at least 51% owned by black people;

14.1.2. EME or QSE which is at least 51% owned by black people who are youth;

14.1.3. EME or QSE which is at least 51% owned by black people who are women;

14.1.4. EME or QSE which is at least 51% owned by black people with disabilities;

14.1.5. EME or QSE which is 51% owned by black people living in rural or underdeveloped areas or townships;

14.1.6. a cooperative which is at least 51% owned by black people; or

14.1.7. EME or QSE which is at least 51% owned by black people who are military veterans.

14.2 A suitable sub-contractor is one whose BBBEE Contributor Status Level is not lower than that of the Service Provider, unless it can be reasonably illustrated that no such subcontractor exists.

14.3 The sub-contractor should have the capacity and the requisite skills, expertise and experience to provide the sub-contracted Services.

14.4 The Service Provider shall at all times remain the sole point of contact for Transnet in respect of the procurement of the Services by Transnet.

14.5 Sub-contracting shall not have any effect on the Rates and charges payable by Transnet to the Service Provider in terms of this Agreement.

14.6 The sub-contracted part of the Services to the sub-contractors shall operate in the same manner as if the Service Provider itself had rendered the sub-contracted Services to Transnet. The Service Provider shall remain fully liable for the rendering of the Services (including the sub-contracted Services) as if such sub-contracted Services had been rendered by the Service Provider. Accordingly, the Service Provider indemnifies and holds

Transnet harmless from any loss, damage or liability which Transnet may suffer as a result of the sub-contracting of such Services by the Service Provider to the sub-contractor.

- 14.7 The Service Provider agrees to conclude a written sub-contract agreement with the sub-contractor which effectively mirrors the provisions of this Agreement insofar as is applicable to such sub-contractor. The sub-contractor shall be prohibited from further sub-contracting any of the sub-contracted Services to a third party.
- 14.8 **Bidders must:**
 - 14.8.1. Clearly identify the subcontracted portion and value.
 - 14.8.2. Specify the targeted subcontractor (s) and their compliance with the required ownership criteria.
 - 14.8.3. Submit signed Subcontracting Agreements
 - 14.8.4. Include the CIPC documents, valid B-BBEE certificates or sworn affidavits, and proof of residency/geographical location of subcontractors (if applicable).
- 14.9 As a post-award condition, and prior to the commencement of services, the successful bidder shall identify, formalise, and submit to Transnet the subcontracting arrangements, including: (i) the specific services to be subcontracted, (ii) clearly defined roles and responsibilities of each subcontracting party, and (iii) a comprehensive demonstration of how the contract revenue will be distributed among the subcontracting members.
- 14.10 The total value allocated to subcontractors must constitute no less than 30% of the total contract value and must be fairly distributed in a manner that ensures meaningful participation and value retention by the subcontracted entities. The subcontracted entities should not be related companies or family members companies to the main contractor or its subsidiaries.
- 14.11 The successful bidder may be required to provide its appointed ESD subcontracting partner(s) with support aimed at building long-term capacity and fostering enterprise sustainability. This includes, but is not limited to:
 - 14.11.1. Leasing of premises, access to infrastructure and systems, working capital assistance, and asset financing support.

- 14.11.2. Skills development, operational training, mentorship, fleet technology integration support, and incubation programmes for emerging fleet service providers.
- 14.12 Bidders must clearly demonstrate in their proposal how their subcontracting arrangements will contribute to sustainable transformation and long-term enterprise development in the fleet services value chain.
- 14.13 Transnet will expect that bidders who commit to sub-contracting have ESD and subcontracting plans that are geared towards developing fully-fledged, black-owned fleet management companies that, over the contract period, become competitive and capable of participating meaningfully in the mainstream fleet management economy. The submitted plans will be reviewed and approved/rejected by the B-BBEE and Localisation function before the commencement of contract.
- 14.14 As part of this assessment, Transnet B-BBEE and Localisation function will review the bidder's investment in the overall enterprise capability of the ESD subcontracting partner(s), including the establishment, development and transfer of:
 - 14.14.1. Fleet management systems and technology,
 - 14.14.2. Standardised processes and methodologies,
 - 14.14.3. Human resource capacity across administrative, technical, operational, and financial functions,
 - 14.14.4. Infrastructure such as office space, fleet call centres, and operational support structures, and
 - 14.14.5. Access to markets and business networks.
- 14.15 This review will be guided by the principle that the ESD subcontractor must be enabled to operate and manage the entirety of the contract scope of work, on the same basis and spirit as if they were the main contractor themselves.
- 14.16 All ESD and subcontracting arrangements will be subject to quarterly audits by Transnet B-BBEE and Localisation function to assess compliance, performance, and developmental impact. Penalties will be levied against the main contractor in cases of non-compliance or failure to implement the approved ESD and subcontracting plan. Any form of misrepresentation/fronting picked up in the implementation of any subcontracting responsibilities will result in cancellation of the contract

- 14.17 The main bidder must provide an irrevocable undertaking and written commitment, signed by its duly authorised signatory, confirming that no less than 30% of the total contract value will be subcontracted to one or more Exempted Micro Enterprises (EMEs) or Qualifying Small Enterprises (QSEs) that are at least 51% Black-owned.
- 14.18 Where the main bidder appoints multiple subcontractors, the 30% subcontracting requirement will be measured on a cumulative basis. This means that the combined value of all subcontracted work must amount to no less than 30% of the total contract value, and all subcontracted entities must individually meet the EME or QSE and 51% Black ownership criteria.
- 14.19 This undertaking must specify the scope of services to be subcontracted, the roles and responsibilities of the subcontracting entities, and include a proposed scope distribution model that ensures a fair allocation of at least 30% of the total contract value. This must align with the post-award ESD and subcontracting requirements contained in this RFP.
- 14.20 Transnet will not tolerate any fronting with any 30% sub-contractor. The 30% sub-contractor must provide the service themselves.
- 14.21 The preferred appointed bidder/respondent must not charge the 30% sub-contractor any fees to be recovered from the 30% Sub-Contractor during the term of the contract by the preferred appointed bidder/respondent.

15. **GREEN ECONOMY**

- 15.1 Transnet's contribution to the green economy objectives of:
 - 15.1.1. building a green industrial base in South Africa by increasing investment in the green economy;
 - 15.1.2. enhancing renewable energy procurement;
 - 15.1.3. the development of bio-fuels and clean coal initiatives;
 - 15.1.4. the promotion of energy efficiency across the economy;
 - 15.1.5. waste recycling; and
 - 15.1.6. reducing carbon emissions through improved public transport and a shift in moving freight from road to rail shall be achieved through the concept of

green procurement which is the purchase of environmentally friendly products and services.

- 15.2 The Service Provider shall be required to report, on a quarterly basis, to the Operational Steercom on the green initiatives undertaken by the Service Provider in order to reduce the carbon footprint of Transnet including reporting on waste disposal, recycling and energy conservation.
- 15.3 In addition to the reporting requirements specified in clause 15.1, the Service Provider shall furnish Transnet with CO₂ (carbon dioxide) emission reports for all Vehicles forming part of the Fleet.

16. **PENALTIES**

- 16.1 The Service Provider recognises that its failure to meet Required Service Levels and other obligations in terms of this Agreement will have a material adverse impact on the business and operations of Transnet.
- 16.2 Accordingly, during the Operational Phase, at the option of Transnet and in substitution of all other remedies available to Transnet in cases of breach under this Agreement, Transnet is entitled to impose and levy the Penalties specified in the Operational SLA and/or the Strategic SLA, as the case may be ("**Penalties**") on the Service Provider and may recover the applicable Penalties from the Service Provider, subject to the provisions of clause 11.3.
- 16.3 In no event shall all the Penalties which Transnet is entitled to impose on the Service Provider in terms of this Agreement exceed in aggregate the Contract Value.
- 16.4 Transnet shall on a monthly basis (or as otherwise specified in this Agreement) submit a Tax Invoice to the Service Provider for the aggregate Penalties to be levied by Transnet on the Service Provider. The Tax Invoice shall be accompanied by a schedule itemising the Penalties and the reasons for the raising of such Penalties.

- 16.5 The Service Provider shall make payment of all Tax Invoices rendered by Transnet in terms of clause 16.4 within 30 (thirty) days of receipt by it of the Tax Invoice ("**Due Date**") into Transnet's Bank Account via electronic funds transfer.
- 16.6 To the extent that the Service Provider fails to make payment by the Due Date or at all, Transnet shall be entitled to levy interest on the overdue amount determined at the Prime Rate from the Due Date until date of payment in full.
- 16.7 Within 10 (ten) Business Days of the Due Date, if the Service Provider objects to any item specified in the Tax Invoice or the schedule referred to in clause 16.4, it shall make payment of the balance of the Tax Invoice that it does not dispute and shall notify the Transnet Group Representative of such objection in writing.
- 16.8 Within 10 (ten) Business Days of the date of receipt of the written objection of the Service Provider, the Transnet Group Representative shall convene a meeting with *inter alia* the Service Provider Representative in order to resolve such objection.
- 16.9 To the extent that the Service Provider's objection is warranted, Transnet shall amend the Tax Invoice and such amended Tax Invoice shall become due and payable by the later of the Due Date or 10 (ten) Business Days from the date of the amended Tax Invoice.
- 16.10 If Transnet disputes the Service Provider's objection, the matter shall be referred to an independent chartered accountant nominated by the Chief Executive Officer for the time being of SAICA. In making his determination, the independent chartered accountant shall act as an expert and not as an arbitrator.
- 16.11 **30% Sub-Contracting Commitment:**
- 16.11.1. The Contractor shall ensure that a minimum of 30% of the total contract value is subcontracted to designated groups, in accordance with the Preferential Procurement Regulations and the provisions set out in the tender document.
 - 16.11.2. The Contractor shall submit monthly reports to B-BBEE and Localisation detailing:
 - 16.11.2.1. The value and scope of work subcontracted;
 - 16.11.2.2. The identity and B-BBEE status of subcontractors;
 - 16.11.2.3. Proof of payment to subcontractors.

- 16.11.3. Failure to meet the 30% subcontracting requirement, without prior written approval from the Transnet, shall constitute a material breach of contract. In the event of non-compliance, Financial Penalty equal to 10% of the total contract value may be levied for failure to meet the subcontracting target, unless it can be shown that the failure was due to justifiable and documented circumstances
- 16.11.4. The Contractor may be required to submit and implement a corrective action plan within 14 calendar days of notice of non-compliance.
- 16.11.5. Continued or deliberate non-compliance may result in termination of the contract.
- 16.11.6. Transnet reserves the right to audit all subcontracting arrangements to verify compliance with the 30% requirement.

17. **PERFORMANCE GUARANTEE**

- 17.1 As security for the successful delivery and proper performance of the Services, and the timeous and due fulfilment of its other obligations in terms of the Agreement, the Service Provider undertakes to provide Transnet with a performance guarantee ("**Performance Guarantee**") on the basis recorded in this clause 17.
- 17.2 The Performance Guarantee shall be provided by the Service Provider or ultimate holding company (namely XXX) to Transnet on an annual basis by no later than the relevant Anniversary Date for the 12 (twelve) months following that Anniversary Date only. Failure by the Service Provider to deliver the Performance Guarantee to Transnet shall constitute a material breach by the Service Provider and Transnet shall be entitled to avail itself of the remedies provided for in clause 72.
- 17.3 The Performance Guarantee shall comprise 2 (two) components:
 - 17.3.1. a guarantee in terms whereof Transnet is able to procure the Services and/or a Vehicle and/or Accessories from a third party supplier in the event that the Service Provider fails to achieve any of its obligations in terms of the

Operational SLA. This obligation is in addition to any Penalties specified in the Operational SLA. Transnet shall be entitled to present Tax Invoices submitted by third party suppliers (in instances where the Service Provider has failed to render the Services and/or provide the Vehicles and/or the Accessories on time or at all) to the guarantor for payment without Transnet first having to incur such cost vis-à-vis such third party supplier. This portion of the guarantee shall be equal to 10% of the Projected Procurement Spend;

17.3.2. a guarantee for the achievement by the Service Provider of the B-BBEE Improvement Plan be determined at 100% (one hundred percent) of the Required B-BBEE Improvement Plan target.

17.4 The annual value of the Performance Guarantee shall be determined with reference to the Projected Procurement Spend.

17.5

ANNEXURE 9: PRO FORMA PERFORMANCE GUARANTEE

PERFORMANCE GUARANTEE FOR CONTRACT NO TCC/2023/11/0001/50945/RFP (FLEET MANAGEMENT CONTRACT) (the '*PERFORMANCE GUARANTEE*')

With reference to the above numbered contract made or to be made between:
TRANSNET SOC LTD (Registration No.: 1990/000900/3) (the '*Entity*' and/or '*Transnet*')
and XXX (Registration No.: XXX) (the '*Service Provider*')

PROVISION OF LIGHT COMMERCIAL AND PASSENGER VEHICLES AND COMPREHENSIVE FLEET MANAGEMENT SERVICES FOR TRANSNET FOR A PERIOD OF FIVE (5) YEARS

We, the undersigned, XXX (Registration No.: XXX) of XXX, XX (the '*Guarantor*') provide the following Performance Guarantee to Transnet in regard to the performance by the Service Provider of certain of its obligations (as defined below as the "Secured Obligations") to Transnet under the Master Services Agreement executed between Transnet and the Service Provider on or about XXX ("the **MSA**"), as recorded in clause 17 of the MSA.

All capitalised terms not defined herein shall have the meaning given to them under the **MSA**.

For the purposes of this performance guarantee, the Secured Obligations shall be the following –

- a) Recovery of the costs and expenses incurred by the Entity in procuring Services and/or Vehicles and/or Accessories from a third party in the event that the Service Provider fails to achieve any of its obligations are recorded in the Operational SLA ("the Procurement Guarantee Element"); and
 - b) Achievement by the Supplier of the BBEEE Improvement Plan ("the BBBEE Improvement Plan Element").
1. The Guarantor hereby provides the following Performance Guarantee, as required under the MSA, subject to the following conditions:
 - 1.1 Any reference in this Performance Guarantee to the MSA is made solely for the purpose of convenience and shall not be construed as any intention whatsoever to create an accessory obligation or any intention whatsoever to create a suretyship.

- 1.2 The Guarantor's obligations under the Performance Guarantee are restricted to the payment of money and not to rendering the performance, in terms of the MSA..
- 1.3 All benefit from any legal exception, which could or might be pleaded against the validity of this Performance Guarantee, is hereby renounced.
- 1.4 The Entity has the absolute right to arrange its affairs with the Service Provider in any manner which the Entity deems fit, and without being advised thereof, the Guarantor shall not have the right to claim the release on account of any conduct alleged to be prejudicial to the Guarantor as the result of the arrangement of its affairs by the Entity.
- 1.5 Subject to 1.6, this Performance Guarantee will lapse on:
 - a) Fulfilment of the obligations of the Service Provider under the MSA, i.e. on the Termination Date of the MSA, provided that the MSA is not extended; or
 - b) When for any reason, stipulated in the MSA, early termination is sought by either party to the MSA and the MSA is accordingly terminated.
- 1.6 Notwithstanding 1.5 (a) and (b) above, this Performance Guarantee shall not lapse but shall remain in place in the event that the Guarantor is notified in writing by the Entity, or any person duly authorised to provide such notice, that the Entity has an intention to institute claims against the Guarantor under this Guarantee and the particulars thereof, against the Guarantor, in which event this Performance Guarantee shall remain in force until all such claims are paid and settled or held unenforceable, as the case may be; provided that if the claims noted in the aforementioned written notice are not instituted within 6 (six) months of the date of the relevant notice, the Performance Guarantee shall lapse on the expiry of the aforementioned 6 (six) month period.
- 1.7 Subject to the Guarantor's total liability referred to in clause 1.9 below in regard to each of the Secured Obligations, the Guarantor undertakes to pay Transnet the amount claimed by Transnet as being lawfully due and payable by it under this Guarantee in regard to the relevant Secured Obligation upon the receipt of a first written demand from the Entity to the Guarantor calling up this Performance Guarantee.
- 1.8 The written demand referred to in 1.7 above shall –
 - 1.8.1 record the Secured Obligation in regard to which the Entity is making its demand for payment;
 - 1.8.2 state that the MSA has been terminated due to the Service Provider's failure to fulfil its obligations under the MSA and the Performance Guarantee is called up in terms of this Performance Guarantee.
 - 1.8.3 Enclose a copy of the termination certificate or notice terminating the MSA.
- 1.9 The total liability of the Guarantor under this Guarantee for any and all amounts claimed by Transnet shall not exceed in aggregate in regard to all claims the amount of R50 715 676 or the relevant maximum amount recorded in regard to each Secured Obligation for the relevant period in question below –
- 1.10
- 1.11 This Performance Guarantee is non-negotiable and not transferable.
- 1.12 A signed copy of the Performance Guarantee, accompanied by the required demand notice and termination certificate, shall be regarded as a liquid document for the purpose of obtaining a court order.
2. If the MSA is amended or varied in any manner whatsoever, this Performance Guarantee shall apply in respect of the MSA as amended or varied provided that any amendment which materially

increases or modifies the obligations of the Guarantor under this Performance Guarantee, will require the prior written consent of the Guarantor, failing which the Guarantor's obligations hereunder will remain as if unamended.

3. The Guarantor warrants that:
 - 3.1 it knows and understands the full terms and conditions of the MSA and this Performance Guarantee;
 - 3.2 this Performance Guarantee constitutes legal, valid and binding obligations on it in accordance with its terms.
4. Each warranty, representation and undertaking made by the Guarantor and recorded in this Performance Guarantee shall be a separate warranty, representation and undertaking and shall in no way be limited or restricted by reference to or inference from the terms of any other warranty.
5. The Guarantor waives any rights that it may have to first require Transnet to take action or obtain judgment in any court against the Service Provider, to make, file or prove any claim in the winding-up or dissolution of the Service Provider, or to enforce or seek to enforce any guarantee or security granted by the Service Provider or any third party, before making payment, under this Performance Guarantee.
6. This Performance Guarantee shall be in addition to and not in substitution of any other undertakings, guarantees, suretyships, or other security held or hereafter to be held by the Entity from the Guarantor or any third party in connection with the Secured Obligations or otherwise and the rights of Transnet under this Performance Guarantee will not be affected or diminished thereby. Transnet shall, without prejudice to its rights hereunder, be entitled to release any such additional security held by it.
7. The Guarantor acknowledges and agrees that its obligations under this Performance Guarantee are absolute and, without in any way limiting or derogating from any other provisions of this Performance Guarantee, the Guarantor shall, as from the Effective Date, be and remain bound to the full extent of this Performance Guarantee, which shall at all times, be subject to applicable South African law, be fully enforceable in accordance with its terms, notwithstanding:
 - 7.1 any insolvency, administration, judicial management, reorganisation, arrangement, readjustment of debt, dissolution, liquidation or similar proceedings by or against Transnet or the Service Provider or the Guarantor;
 - 7.2 any invalidity or unenforceability or lack of due authorisation of, or other defect for reasons within the control of the Guarantor or the Service Provider, as applicable, in the Performance Guarantee, the MSA or any other agreement to which Transnet or the Guarantor is a party relating to the subject matter hereof;;
 - 7.3 any failure or delay on the part of the Guarantor duly to comply with any of its obligations under the Performance Guarantee;
 - 7.4 any compromise, settlement, release, change, modification, amendment (whether material or otherwise) or termination of any of the undertakings, terms or conditions imposed on the Service Provider in accordance with the MSA;
 - 7.5 any variation or novation of the Service Provider's obligations, whether by agreement, operation of law or otherwise which does not materially increase the obligations of the Guarantor; or
 - 7.6 any time or other indulgences being granted or agreed to be granted to the Service Provider and/or the Guarantor by Transnet or Transnet not exercising any one or more of its rights hereunder or under the Secured Obligations, either timeously or at all.
8. All payments made by the Guarantor under the Performance Guarantee will be made free of any deductions of whatsoever nature and without set-off or other withholding whatsoever by way of electronic funds transfer into a bank account so designated by Transnet. Any amount due by the Guarantor but unpaid hereunder will bear interest at the Prime Rate per annum and shall be

- calculated from, and including, the date on which the amount became due for payment to, but excluding, the date of actual payment.
9. No representations, promises or warranties have been made or given to the Guarantor by Transnet in connection with the Performance Guarantee.
 10. The Guarantor will not cede, delegate or assign the Performance Guarantee, without the consent of Transnet. The Performance Guarantee will also be for the benefit of and be binding upon the successors in title and permitted assigns of the parties or either of them.
 11. All provisions and the various clauses of the Performance Guarantee are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision or clause of the Performance Guarantee which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever, shall, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as *pro non scripto* and the remaining provisions and clauses of the Performance Guarantee shall remain of full force and effect. The parties declare that it is their intention that the Performance Guarantee would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.
 12. No addition to or variation, deletion, or agreed cancellation of all or any clauses or provisions of the Performance Guarantee will be of any force or effect unless in writing and signed by the parties.
 13. No waiver of any of the terms and conditions of the Performance Guarantee will be binding or effectual for any purpose unless in writing and signed by the party giving the same. Any such waiver will be effective only in the specific instance and for the purpose given. Failure or delay on the part of either party in exercising any right, power or privilege under the Performance Guarantee will not constitute or be deemed to be a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
 14. The parties select their respective physical addresses set forth on page one as their respective *domicilia citandi et executandi*, and for the purposes of giving or sending any notice provided for or required under the Performance Guarantee.
 15. The Performance Guarantee will in all respects be governed by and construed under the laws of the Republic of South Africa. The parties hereby consent and submit to the non-exclusive jurisdiction of the South Gauteng Division of the High Court of the Republic of South Africa in any dispute arising from or in connection with the Performance Guarantee.

Signed at _____ on this _____ day of _____.

For / on behalf _____:

Name:

Designation:

Witnesses:

1. _____

2. _____

- 17.6 , within 60 (sixty) days of the Signature Date, or such other later period as shall be agreed to by the Transnet Group Representative in writing, and in any event by an entity reasonably acceptable to Transnet with a long term national credit rating (by Moody's Investors Service Limited or Fitch Ratings Limited or Standard & Poor's or any successor to their respective ratings business or any other ratings agency approved by the Transnet) of at least A- (in the case of Fitch Ratings Limited) and A3 (in the case of Moody's Investor Services Limited and A- (in the case of Standard & Poor's) ("**Minimum Credit Rating**").
- 17.7 The Service Provider shall ensure that the Performance Guarantee remains valid and enforceable for the duration of the 12 (twelve) months following the Commencement Date or the relevant Anniversary Date, as the case may be ("**Performance Guarantee Period**").
- 17.8 In the event that the credit rating of the issuer of the Performance Guarantee falls below the Minimum Credit Rating at any time during the Performance Guarantee Period, the Performance Guarantee shall be replaced or supplemented by the Service Provider at its cost with an issuer that complies with the Minimum Credit Rating.
- 17.9 To the extent that the Service Provider fails to make payment of a Tax Invoice rendered by Transnet in terms of the provisions of clause 16.5 within 60 (sixty) days of the Due Date, Transnet shall, in its sole and absolute discretion, be entitled either to:
- 17.9.1. deduct the amount unpaid by the Service Provider from the amount due to the Service Provider until the amount of the Tax Invoice issued by Transnet in terms of the provisions of clause 16.4 has been settled in full; or
 - 17.9.2. draw-down the face value of such Tax Invoice from the Performance Guarantee on demand.
- 17.10 For the avoidance of doubt, in no event shall the quantum of the Performance Guarantee limit the liability of the Service Provider to Transnet for the payment of Penalties.

18. **FLEET OPTIMISATION**

- 18.1 The Service Provider shall ensure, that in rendering the Services, its primary focus is to achieve the most optimal and efficient Fleet necessary for the attainment of Transnet's business objectives taking into account prevailing market conditions from time to time.
- 18.2 In optimising the Fleet, the Service Provider shall take the following factors into consideration:
 - 18.2.1. ensuring that Vehicles supplied by the Service Provider to Transnet satisfy the requirements specified in the purchase order so that downtime is reduced;
 - 18.2.2. achieving appropriate Availability of the Vehicles whilst simultaneously reducing costs for both Parties;
 - 18.2.3. conducting Fleet audits to verify:
 - 18.2.3.1. the size of the Fleet; and
 - 18.2.3.2. the rate at which the Fleet is actually clocking mileage as compared to the Monthly Contracted Mileage or usage;
 - 18.2.4. ensuring interchangeability of Vehicles and Accessories insofar as is reasonably practicable;
 - 18.2.5. optimising the mix between long-term and *ad hoc* Vehicle requirements;
 - 18.2.6. achieving the Uptime Target on the Vehicles through the provision of STR Vehicles;
 - 18.2.7. minimizing downtime on maintenance and accident repairs;
 - 18.2.8. arranging Scheduled Maintenance other than during Business Hours; and
 - 18.2.9. completing regular needs analyses to identify the "nice-to-have" versus the "need-to-have".
- 18.3 The composition and utilisation of the Fleet by Transnet shall be monitored and reported on monthly by the Service Provider.
- 18.4 During the Initial Phase, the Service Provider may consider taking over the STR Vehicles contracted by Transnet with the incumbent supplier and to this end, a transition plan shall be formulated to transition the existing demand for such Vehicles from the incumbent supplier to the Service Provider over the period specified in that transition plan.

19. **MANAGED MAINTENANCE**

- 19.1 The Service Provider shall provide the following services ("**Managed Maintenance**") to Transnet in respect of the Owned Vehicles, at the discretion of the Operating Division, on the following basis:
- 19.1.1. the management and scheduling of Scheduled Maintenance and Unscheduled Maintenance in respect of the Owned Vehicle.
 - 19.1.2. Provision of minimum two (2) quotes for all Scheduled Maintenance and Unscheduled Maintenance in respect of the Owned Vehicle, to be approved by Transnet before repairs are carried out.
 - 19.1.3. Transnet shall provide the Service Provider with kilometre/hour readings at the end of the month for such vehicles;
 - 19.1.4. the provision of assistance in cases of breakdowns, accidents and incidents;
 - 19.1.5. the optimisation of the Owned Vehicles across the Operating Divisions so that Owned Vehicles are utilised prior to the procurement of FML Vehicles and STR Vehicles to the extent that this is reasonably operationally viable;
 - 19.1.6. the reporting in respect of the Owned Vehicles to the extent that data has been provided by Transnet to the Service Provider including:
 - 19.1.6.1. the projected time within which the Owned Vehicles will attain the Maximum Vehicle Kilometres taking into account the rate of current utilisation of the Vehicle; and
 - 19.1.6.2. the utilisation of the Owned Vehicles;
 - 19.1.6.3. the details of all Owned Vehicles which formed part of the Fleet and which were disposed of by the Service Provider on behalf of Transnet in accordance with clause 20 including details of the aggregate proceeds of such disposals as compared with the Disposal Fees related to such Vehicles; and
 - 19.1.6.4. such other reports that Transnet may reasonably require as agreed at the Operational Steercom.
- 19.2 The Service Provider shall provide Transnet with assistance in the management of the Owned Vehicles, including *inter alia*, the implementation of best practice controls for the effective management of the Owned Vehicles.

19.3 Transnet shall make payment of a fee for Managed Maintenance for all Owned Vehicles ("**Managed Maintenance Fee**") as at the Commencement Date and for a period of 12 (twelve) consecutive months thereafter, as per the list provided by Transnet from time to time. 120 (one hundred and twenty) days prior to the Anniversary Date, the Service Provider shall furnish Transnet with proposals regarding the adjustment of the Managed Maintenance Fee taking into account the following components and adjustment mechanisms at the following intervals:

Fee	When adjusted	Adjustment mechanism
Managed Maintenance Fee	Anniversary Date	CPI Variance
Licensing	Government regulated	Actual charges The Service Provider shall not be entitled to any margin on the actual charges
Tracking device	Anniversary Date	CPI Variance

19.4 Should Transnet not provide feedback on the approval or rejection of an adjustment to the Managed Maintenance Fee as proposed by the Service Provider no later than 90 (ninety) days prior to the Anniversary Date, the Managed Maintenance Fee shall be adjusted automatically by the CPI Variance, compounded annually.

19.5 The Service Provider shall optimise and manage the costs of Scheduled Maintenance and Unscheduled Maintenance incurred in relation to the Owned Vehicles and shall settle the costs relating to such Scheduled Maintenance and Unscheduled Maintenance directly with the supplier concerned including parts and labour. For the avoidance of doubt, the costs of Scheduled Maintenance and Unscheduled Maintenance shall be obtained on a Three Quote Basis (to the extent that this is practically possible) which shall be submitted to Transnet for approval. Transnet shall approve a quote in writing and the Service Provider shall action such approved quote.

19.6 The Service Provider shall, on a monthly basis, present Transnet with Tax Invoices in respect of each individual Owned Vehicle forming part of the Fleet. In this regard:

- 19.6.1. the Tax Invoices shall be addressed to the Cost Centre Owner responsible for that Owned Vehicle. To the extent that the Vehicle is allocated to a different Cost Centre Owner from time to time, Transnet shall notify the Service Provider in writing of such change within 30 (thirty) Business Days of the date of the change of such Cost Centre Owner; and
- 19.6.2. the Tax Invoice shall reflect the costs incurred by the Service Provider for and on behalf of Transnet on a "pass through" basis following the provision of a purchase order by Transnet in line with the SLA i.e. at cost without the addition of any margin thereon. The Service Provider warrants that it is not entitled to any rebate in respect of any of the third party supplier invoices and to the extent that it is entitled to such rebate, that the Tax Invoice shall reflect the amount of the supplier invoice and thereafter reflect the amount of the rebate granted to the Service Provider by such supplier. To the extent that the Service Provider is entitled to a rebate and has failed to pass such rebate onto Transnet and Transnet subsequently is made aware of this, the Service Provider shall be in material breach and Transnet shall be entitled to avail itself of the remedies provided in clause 72.

19.7 The Service Provider shall submit a monthly Tax Invoice to the Contract Manager of the Operating Division concerned in relation to the Managed Maintenance Fee in respect of each Vehicle forming part of the Owned Fleet operated by that Operating Division.

20. **DISPOSAL OF OWNED VEHICLES**

20.1 Transnet, in its sole and absolute discretion, may require the Service Provider to dispose of Owned Vehicles forming part of the Fleet. Transnet shall provide the Service Provider with the relevant vehicle registration documents to facilitate the disposal process.

20.2 The Service Provider shall be entitled to a fee calculated at 5% (five percent) of the disposal value of the Owned Vehicle ("**Disposal Fee**") upon issuing a valid and undisputed Tax Invoice to Transnet for such Disposal Fee. Subject to the provisions of clause 20.3, other than the Disposal Fee, Transnet shall incur no additional cost in relation to the disposal of

the Owned Vehicle. The costs associated with getting the vehicles to the disposal state should be approved by Transnet prior SERVICE PROVIDER proceeding with the disposal.

- 20.3 Owned Vehicles that are to be disposed of shall be stored at Transnet's premises. To the extent that this is not reasonably practicable, the Owned Vehicle shall be stored by the Service Provider at its premises and in this regard, this shall be subject to the approval by Transnet of the storage costs and towing costs (if applicable) which shall be quoted by the Service Provider prior to such storage (and towing, if applicable).
- 20.4 The proceeds of the disposal of an Owned Vehicle shall be paid by the Service Provider to Transnet within 30 (thirty) days from the date of disposal of such Owned Vehicle upon presentation by Transnet of a Tax Invoice issued to the purchaser of the Owned Vehicle.

21. FML VEHICLES

- 21.1 Where a Vehicle is anticipated to be used for a period that is equal to or less than 12 (twelve) months, an Individual Contract shall not be concluded in respect of a FML Vehicle. Instead a STR Vehicle will be deployed. If Transnet requires a Vehicle for longer than 12 (twelve) consecutive months, Transnet shall conclude an Individual Contract with the Service Provider for the provision of a FML Vehicle, subject to the approval of the delegated person of the Operating Division in question.
- 21.2 The price of all FML Vehicles supplied by the Service Provider to Transnet shall be net of the maximum discounts negotiated between the Service Provider and the OEM in terms of the last issued Government and Vehicle Outsourcing Price List ("RT57"). Accordingly, all such discounts shall be passed directly onto Transnet without the retention of any portion thereof by the Service Provider.
- 21.3 The Residual Value of any FML Vehicle shall be determined with reference to the actual resale values of such FML Vehicles in the used vehicle market and the index published by the Auto Dealers Guide from time to time.
- 21.4 Transnet anticipates that in respect of FML Vehicles, the maximum vehicle kilometres shall be 60 (sixty) months or 180 000 km (One hundred and eighty thousand kilometres) for petrol engines or 220 000 km (Two hundred and twenty thousand kilometres) for diesel engines, provided that the Maximum Vehicle Kilometres may be amended by the Operational Steercom from time to time.

21.5 The actual number of kilometres travelled by a FML Vehicle in any month ("**Actual Monthly Mileage**") will be monitored on a monthly basis (in accordance with the provisions of clause 21.6) for the duration of the Lease Period of each Individual Contract of a FML Vehicle.

21.6 The Actual Monthly Mileage of each FML Vehicle shall be determined on a monthly basis using one of the methods outlined below:

- 21.6.1. a manual odometer reading, provided that the FML Vehicle's odometer has not stopped working or is not defective;
- 21.6.2. satellite tracking-based readings obtained from the FML Vehicle's tracking device using the global positioning system; or
- 21.6.3. automated readings through the use of fuel cards.

For the purposes of determining the Actual Monthly Mileage, the Parties agree that they shall first perform a manual odometer reading in accordance with the provisions of clause 21.6.1. Only if the FML Vehicle's odometer has ceased working or is defective shall the Parties refer to the satellite tracking-based readings from the Vehicle's tracking device in accordance with the provisions of clause 21.6.2. The automated readings through the use of fuel cards in accordance with clause 21.6.3 shall only be used to determine the Actual Monthly Mileage if it is not possible to measure the Actual Monthly Mileage in accordance with the provisions of clauses 21.6.1 and/or 21.6.2.

21.7 Where a manual usage management system has been introduced, then the number of kilometres travelled or hours used during any 1 (one) month by any FML Vehicle determined with reference to the monthly odometer reading shall be deemed to be the difference between the odometer reading of that FML Vehicle as at the 16th (sixteenth) day of the preceding month compared with the 16th (sixteenth) day of the immediately succeeding month. Data in respect of such manual usage management system shall be communicated by Transnet to the Service Provider by no later than the 23rd (twenty-third) calendar day of the month.

21.8 To the extent that Transnet fails to submit the data contemplated in clause 21.7, it shall become liable for usage equal to the average utilisation of that FML Vehicle determined with reference to the historic data submitted by Transnet to the Service Provider for that portion of the Lease Period which has already expired.

22. LEASE PAYMENTS

22.1 The Lease Payment payable by Transnet to the Service Provider shall be specified in each Individual Contract and shall comprise the following elements:

- 22.1.1. the fixed capital cost of the FML Vehicle which shall be determined at the Base Vehicle Price (discounted to the prices for that Vehicle specified in RT 57), amortised over the duration of the Lease Period; and
- 22.1.2. interest;
- 22.1.3. maintenance costs;
- 22.1.4. Administration Fee;
- 22.1.5. tracking device costs; and
- 22.1.6. licensing and registration costs.

22.2 The elements of the Lease Payment shall be adjusted by the changes to the following indices at the following intervals:

Fee	When adjusted	Adjustment mechanism
Interest rate	As and when the Prime Rate is adjusted	Agreed Prime Rate linked percent
Administration Fee	Anniversary of the Start Date, subject to clause 22.4	CPI Variance
Maintenance Fund	Anniversary of the Start Date, subject to clause 22.4	CPI Variance per clause 23

Tracking device	Anniversary of the Start Date, subject to clause 22.4	CPI Variance
Licensing and Registration	As and when Government Gazetted Pricing is amended	As per Government Gazette Amendments

- 22.3 The Lease Payment (including the Base Vehicle Price and the cost of Standard Mandatory Fitments and Accessories) ("**Capital Costs**") shall be negotiated as part of the ordering process contemplated in clause 29 in respect of each Vehicle. The Capital Costs are fixed and shall remain unchanged for the Lease Period, subject to the provisions of clause 23.
- 22.4 No later than 90 (ninety) days prior to the anniversary of the Start Date, the Service Provider shall provide the Transnet Contract Manager with a proposal in respect of the escalation of the variable elements of the Lease Payment. The Parties shall use their reasonable endeavours to agree the escalation of the variable elements of the Lease Payment as soon as is reasonably practicable in the circumstances. To the extent that Transnet fails to provide feedback on the approval or rejection of a proposed adjustment to the variable elements of the Lease Payment within 90 (ninety) days of receipt of such proposal from the Service Provider, the variable elements of the Lease Payment shall escalate by the CPI Variance, compounded annually.
- 22.5 The Service Provider shall determine the Lease Payment for a FML Vehicle on the same basis and taking into account the same cost principles regardless of when the Individual Contract is concluded in respect of the FML Vehicle during the Contract Period. For the avoidance of doubt, the provisions of clause 6.5 shall apply to any Individual Contract where the End Date occurs later in time than the Expiry Date.

23. MAINTENANCE AND DEPRECIATION ELEMENTS OF THE LEASE PAYMENT

- 23.1 In calculating the Lease Payments, the Service Provider has:

- 23.1.1. estimated the quantum of the Maintenance Fund taking into account the Monthly Contracted Mileage which is specified in the Contract Schedule;

- 23.1.2. determined the residual value of the FML Vehicle with reference to:
 - 23.1.2.1. the Monthly Contracted Mileage;
 - 23.1.2.2. the duration of the Lease Period;
 - 23.1.2.3. the potential value of the FML Vehicle given the anticipated mileage of the FML Vehicle at the end of the Lease Period (excluding the Capital Costs of the Vehicle amortised over the Lease Period) ("**Residual Value**"); and
- 23.1.3. determined the depreciation costs associated with the Vehicle based on the Capital Costs amortised over the duration of the Lease Period taking into account the Threshold.
- 23.2 In determining the monthly maintenance and depreciation costs of the Vehicle determined on a CPK basis ("**CPK Rate**"):
 - 23.2.1. the maintenance component is determined by dividing the Maintenance Fund by the Threshold in order to determine the maintenance CPK ("**Maintenance CPK**");
 - 23.2.2. the depreciation component is determined by dividing the Base Vehicle Price (including any finance charges) less the Residual Value of the Vehicle by the Threshold in order to arrive at a fixed depreciation CPK ("**Depreciation CPK**"); and
 - 23.2.3. the Maintenance CPK is then added to the Depreciation CPK.
- 23.3 The CPK Rate is charged on a monthly basis by the Service Provider based on the calculation of the Monthly Contracted Mileage multiplied by the CPK Rate.
- 23.4 The Maintenance CPK and the Depreciation CPK shall be stipulated in each Contract Schedule. Only the Maintenance CPK shall be adjusted in accordance with the provisions of clause 22.2 which shall apply *mutatis mutandis*.
- 23.5 If the Actual Monthly Mileage exceeds the Monthly Contracted Mileage, the Service Provider shall, subject to the Tolerance, be entitled to recover accelerated maintenance and depreciation costs determined by multiplying the difference between the Actual Monthly Mileage and the Contracted Monthly Mileage by the Excess CPK.

- 23.6 Similarly, where Transnet has under-utilised a Vehicle, the Service Provider shall credit Transnet an amount equal to the monthly maintenance CPK for every kilometre less than the difference Monthly Contracted Mileage and multiplying the product of that calculation by the Maintenance CPK ("**Deficient CPK**"),
- 23.7 Subject to the specific agreement being reached between the Service Provider and each Operating Division, the Service Provider shall include the Excess CPK as a debit or the Deficient CPK as a credit on the Tax Invoice rendered by it to Transnet in respect of that FML Vehicle on a quarterly basis. Transnet shall make payment of such Excess CPK as part of the payment of the Tax Invoice raised by the Service Provider for that FML Vehicle.
- 23.8 Transnet and the Service Provider shall embark on a quarterly review of the actual mileage of the FML Vehicles as compared to their Monthly Contracted Mileage, provided that in conducting such quarterly review and will be billed in four Transnet financial quarters (March, June, September and December):
- 23.8.1. the Parties shall take into account the Tolerance; and
 - 23.8.2. should the actual mileage of the FML Vehicle exceed the Tolerance on average over the quarter under review, the Parties shall engage with regards to the restructuring of the Lease Payment in terms of the provisions of clause 27.

24. **PROVISION OF STR VEHICLES**

- 24.1 In the event that Transnet:
- 24.1.1. has a need for vehicles on a temporary basis in order to supplement the Fleet during the Initial Phase pending delivery of FML Vehicles ordered from the Service Provider; or
 - 24.1.2. requires vehicles to be provided by the Service Provider to Transnet on an *ad hoc* basis;
- the Service Provider shall provide Transnet with STR Vehicles on a temporary basis that are reasonably fit for purpose, provided that such STR Vehicles shall be leased for no more than 12 (twelve) months ("**Maximum Rental Period**").
- 24.2 The lead times for the delivery of STR Vehicles that have been ordered by Transnet from the Service Provider shall be determined on a per quotation basis given the availability of the STR Vehicles.

- 24.3 In the event that Transnet leases a STR Vehicle from the Service Provider for more than the Maximum Rental Period, the Service Provider shall convert the STR Vehicle into a FML Vehicle.
- 24.4 In no event shall the Service Provider supply a STR Vehicle which is older than 24 (twenty-four) months or where the odometer reading, at the date of first delivery of the Vehicle to Transnet exceeds 180,000 (one hundred and sixty thousand) kilometres.
- 24.5 In the event that the Actual Monthly Mileage of a FML Vehicle is less than the Monthly Contracted Mileage and the planned usage of the FML Vehicle is less than the Maximum Rental Period:
- 24.5.1. the Service Provider shall notify the relevant Transnet Contract Manager in writing;
 - 24.5.2. the Transnet Contract Manager shall advise the Service Provider in writing that it wishes to terminate the Individual Contract in respect of that FML Vehicle;
 - 24.5.3. within 7 (seven) days of the date of the notice referred to in clause 24.5.2, the Service Provider Contract Manager shall furnish the relevant Transnet Contract Manager with a schedule reflecting the commercial impact of terminating the Individual Contract in respect of the FML Vehicle and concluding a new Individual Contract in respect of a STR Vehicle, subject to the provisions contained in clause 7.3;
 - 24.5.4. if the Transnet Contract Manager accepts the updated schedule, the Individual Contract in respect of the FML Vehicle shall be terminated and shall be replaced with an Individual Contract concluded in respect of a STR Vehicle;
 - 24.5.5. if the Transnet Contract Manager does not accept the updated schedule on reasonable grounds, he shall notify the Service Provider Contract Manager in writing of the grounds for his objection;
 - 24.5.6. if the objection can be resolved by the Service Provider within 7 (seven) days of the date of the written objection, the process referred to in clauses 24.5.4 to this 24.5.6 (both inclusive) shall apply *mutatis mutandis*;
 - 24.5.7. to the extent that the Transnet Contract Manager persists in his objections to the proposed amendments to the Individual Contract, the matter shall be

referred to an independent leasing expert nominated by the chair person for the time being of AFSA (or its successor) or his nominee who shall make a determination acting as an expert and not as an arbitrator.

24.6 Only a Fleet Manager or his nominee may place an order for STR Vehicles in accordance with the provisions of clause 24, which shall only be placed via the Call Centre or by email to the email address nominated by the Service Provider for the placement of orders.

24.7 In the event the Service Provider is unable to meet the request from Transnet for the provision of a STR Vehicle within the Required Service Levels, Transnet may rent a similar vehicle from a third party ("**Rental Vehicle**") for the period required and Transnet shall be entitled to recover and deduct any costs incurred by it in relation to the rental of the Rental Vehicle from the third party supplier for the period until the Service Provider is able to supply Transnet with the STR Vehicle ordered by Transnet. For the avoidance of doubt, when renting the Rental Vehicle, Transnet will make all reasonable effort to acquire a reasonably priced Rental Vehicle but in any event without compromise on safety and efficiency.

24.8 The Service Provider shall provide Transnet with a monthly report specifying:

- 24.8.1. details of the STR Vehicles that are leased by Transnet from the Service Provider;
- 24.8.2. the number of months that the STR Vehicles have been leased by Transnet from the Service Provider as well the balance of the Maximum Rental Period remaining;
- 24.8.3. details of those STR Vehicles in respect of which either:
 - 24.8.3.1. there are less than 4 (four) months remaining until the date of expiry of the Maximum Rental Period; or
 - 24.8.3.2. the STR Vehicles have exceeded the Threshold.

24.9 In the event that Transnet wishes to utilise a STR Vehicle for longer than 12 (twelve) months, that Vehicle shall be converted into a FML Vehicle.

25. **STR RATES**

25.1 Subject to clause 25.2, in respect of the Vehicle types, the STR Rate for such Vehicles shall be limited to **XXX ()** times the FML Rate for the same Vehicle during the Initial Phase ("**FML**

Percentage"); provided that to the extent that Transnet requests Accessories and/or Modifications to the STR Vehicle which unreasonably limits the ability of the Service Provider to either lease that STR Vehicle to a third party or to dispose of that STR Vehicle after the expiry of the Lease Period, the FML Percentage shall be agreed to by the Parties in writing prior to the conclusion of the Individual Contract related to such STR Vehicle.

- 25.2 In respect of Vehicle types not specified in **ANNEXURE**, the FML Percentage shall not exceed the highest FML Percentage specified in **ANNEXURE**, provided that the FML Percentage shall be agreed to by the Parties in writing.
- 25.3 For the avoidance of doubt, the STR Rates shall include the costs of all Standard Mandatory Fitments as well as all costs associated with the delivery and collection of the STR Vehicles at the Start Date and the End Date.
- 25.4 STR Rates to be charged by the Service Provider for STR Vehicles shall be all-inclusive monthly charges but shall exclude costs related to fuel, toll fees, top-up fluids, fines, charges occasioned by Operator Default and charges associated with the provision of drivers. Toll fees and fines shall be billed to Transnet as separate line items on the Tax Invoice related to the specific STR Vehicle at cost without the addition of any margin and shall be substantiated by proof of the incurral of such costs as contemplated in clause 70.7. All STR rates are exclusive of traffic fine administration fees, accident damage and assessor fees, delivery and collection fees. Any additional costs will be agreed between the parties.
- 25.5 The STR Rate shall include the following components and shall be adjusted by the following indices at the following intervals:

Fee	When adjusted	How adjusted
Monthly rental determined at 1.3 (one point three) times to 1.4 (one point four) times the Lease Payment	N/A	N/A

E-tolls	When actual e-toll costs increase	Actual increases in e-tolls as published from time to time
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25.6 STR Vehicles cannot be leased for longer than 12 (twelve) months and, accordingly, there shall be no escalation of any element of the STR Rate during the Lease Period, provided that if the Lease Period is extended with the prior written approval of the Transnet Group Representative for whatever reason, the monthly maintenance fees and the monthly Administration Fee shall escalate as contemplated in clause 22, which shall apply *mutatis mutandis*.

26. MAINTENANCE AND DEPRECIATION CHARGES: STR VEHICLES

26.1 In calculating the STR Rates, the Service Provider has taken into account the factors specified in clause 23.2 which shall apply *mutatis mutandis*.

26.2 The CPK Rate for STR Vehicle is determined solely with reference to the Maintenance CPK.

26.3 The Maintenance CPK shall be stipulated in each Individual Contract. Only the Maintenance CPK shall be adjusted in accordance with the provisions of clause 22.2 which shall apply *mutatis mutandis*.

26.4 If the Actual Monthly Mileage of the Vehicle exceeds the Monthly Contracted Mileage, subject to the Tolerance, the Service Provider shall be entitled to levy an Excess CPK charge.

26.5 Similarly, where Actual Monthly Mileage is less than the Monthly Contracted Mileage, the Service Provider shall credit Transnet an amount equal to the Deficient CPK, subject to the provisions of clause 26.4.

26.6 Subject to the specific agreement being reached between the Service Provider and each Operating Division, the Service Provider shall include the Deficient CPK as a credit or the Excess CPK as a debit on the Tax Invoice rendered by it to Transnet in respect of that STR Vehicle on a monthly basis and Transnet shall make payment of the Excess CPK as a line item on the Tax Invoice related to that STR Vehicle.

26.7 Transnet and the Service Provider shall embark on a monthly review of the average Actual Monthly Mileage of STR Vehicles as compared to their Monthly Contracted Mileage, provided that in conducting such review:

- 26.7.1. the Parties shall take into account the Tolerance; and
- 26.7.2. should the Actual Monthly Mileage of the STR Vehicle exceed the Tolerance on average over the period under review, the Parties shall engage as to the restructuring of the Individual Contract going forward in terms of the provisions of clause 27.

27. RESTRUCTURING OF LEASE PAYMENTS OR STR PAYMENTS

27.1 In the event that a Vehicle exceeds or under utilises the Monthly Contracted Mileage for 2 (two) consecutive quarters notwithstanding the Tolerance ("**Restructure Trigger Event**"), the Lease Payment or STR Payment, as the case may be, shall be adjusted as follows:

- 27.1.1. the Lease Payment or STR Payment shall be restructured in accordance with the payment formula considering that the Vehicle will not exceed the kilometre and period parameters as per the rate card;
- 27.1.2. the finance portion of the Lease Payment or STR Payment is calculated as a set formula where the input fields are as follows:
 - 27.1.2.1. Interest Rate;
 - 27.1.2.2. Period left on the vehicle contract;
 - 27.1.2.3. Capital Balance Outstanding at time of restructure; and
 - 27.1.2.4. Residual Value percentage applicable per the Rate Card.

27.2 In the circumstances contemplated in clause 27.1, the Lease Payment or STR Payment, as the case may be, per the Individual Contract shall be adjusted by the formulae in clause 27.1 provided that to the extent that the difference between the Lease Payments or the STR Payments paid by Transnet to the Service Provider prior to such restructure ("**Original Rates**") and the restructured Lease Payments or STR Payments after such restructure aggregated across the Vehicles ("**Restructure Difference**") exceed 10% (ten percent) of the Original Rate (viewed across the entire Agreement and aggregated in respect of each Operating Division), full details of such restructuring and the impact of such

restructuring shall be reported on to the Operational Steercom and the Strategic Steercom by the Service Provider.

- 27.3 In order to ensure the reasonableness of the restructured Lease Payment or the restructured STR Payment, as the case may be, Transnet shall ensure that the Lease Payment or STR Payment prior to such restructuring together with the CPK Rate (for FML Vehicles) or Maintenance CPK (for STR Vehicles), as the case may be, payable in respect of the Threshold shall be equivalent to the restructured Lease Payment or STR Payment; the intention of the Parties being that the restructuring of the Lease Payment or STR Payment is intended to accelerate the recovery of maintenance and depreciation costs and to provide certainty to both Parties in terms of the Lease Payments or STR Payment, as the case may be, and to try as far as possible to keep the Lease Payment or the STR Payment fixed rather than consistently operating on a variable basis. In no event is the intention of the restructuring to enable the Service Provider to profit from the additional mileage, but rather to compensate the Service Provider from a maintenance and depreciation perspective.

28. OUT OF CONTRACT CHARGE

- 28.1 If the Threshold of a Vehicle has been exceeded prior to the expiry of the Lease Period, the Lease Payment or the STR Payment, as the case may be, shall be adjusted by the formulae set out in clause 28.3 ("**Out of Contract Charge**") only in respect of those kilometres which exceed the Threshold.
- 28.2 Alternatively, in the event that Transnet wishes to increase the Threshold of that Vehicle in excess of the Threshold stipulated in the Contract Schedule pertaining to such Vehicle, provided that the safety and operational requirements of Transnet are not compromised, the Lease Payments or STR Payments, as the case may be, will be amended in accordance with the provisions of clause 28.3
- 28.3 The Out of Contract Charge shall be determined on a CPK basis:
- 28.3.1. the increased Depreciation CPK shall be determined in accordance with the following formula:
- $$a = e + ((b - c) \div d)$$
- where:

A	is the out of contract Depreciation CPK
b	is the original Residual Value of the Vehicle as specified in the Contract Schedule relating to the Vehicle
c	is the revised Residual Value of the Vehicle
d	is the difference between the new Threshold and the old Threshold as specified in the Contract Schedule
E	is the existing Depreciation CPK

28.3.2. the increased depreciation costs of the Service Provider shall be determined by recalculating the Residual Value of the Vehicle provided that the Residual Value shall not be determined over more than an additional 12 (twelve) month period;

28.3.3. the increased Maintenance CPK shall be determined in accordance with the following formula:

$$a = d + (b \div c)$$

where:

A	is the out of contract Maintenance CPK
b	is the difference between the new Maintenance Fund for the new Threshold and the old Maintenance Fund
C	is the difference between the new Threshold and the old Threshold as specified in the Contract Schedule
d	is the original Maintenance CPK

28.3.4. the new Maintenance Fund shall be determined with reference to the maintenance schedule specified by the OEM of the relevant Vehicle and the likelihood of Major Component Failure.

29. ORDERS FOR FML VEHICLES

- 29.1 The Fleet Manager and the Delegated Person shall request a quote from the Service Provider in a request for quote and shall specify:
- 29.1.1. the proposed Lease Period;
 - 29.1.2. the functional requirements for the Vehicle together with details of the Accessories required;
 - 29.1.3. the operating conditions under which the Vehicle is likely to be used; and
 - 29.1.4. where the Vehicle will be located and the Cost Centre Owner to which the Vehicle will initially be allocated;
 - 29.1.5. provided that the Fleet Manager and the Delegated Person shall not be entitled to increase the Threshold to exceed the Maximum Vehicle Kilometres in respect of the type of Vehicle ordered by the Fleet Manager and the Delegated Person, unless this has been approved by the Fleet Management Meeting. To the extent that the Threshold is to exceed the Maximum Vehicle Kilometres by 10% (ten percent) or more, this is to be escalated to the Operational Steercom.
- 29.2 The Vehicle types shall be as specified in **ANNEXURE**. However, the Parties recognise that during the Contract Period, the makes and models shall change given market factors and technology changes. To the extent that the Service Provider supplies Transnet with a Vehicle other than the makes and models specified in **ANNEXURE**, such Vehicle shall, as a minimum, not prejudice Transnet in any way from a safety or operational point of view. In addition, the Vehicle types in **ANNEXURE** may be extended from time to time.
- 29.3 The Service Provider shall provide the Fleet Manager and the Delegated Person with 3 (three) quotes for suitable Vehicles and their prices within 1 (one) Business Day of the request for the quote. The Vehicles shall be fit for purpose and shall include the costs of all Standard Mandatory Fitments.
- 29.4 During the Initial Phase, Transnet shall place orders on the Service Provider either in terms of an individual order per Vehicle or alternatively on the basis of a bulk order in terms whereof multiple Vehicles are included in a single order. For the avoidance of doubt, despite the fact that a Vehicle is ordered as part of a bulk order, an Individual Contract shall be concluded in respect of each Vehicle forming part of such bulk order.

29.5 Upon receipt of the quotations, Transnet shall be entitled, in its sole discretion, either to:

29.5.1. accept a quotation, in which event:

29.5.1.1. Transnet shall furnish the Service Provider with a purchase order. In cases where the Operating Division does not issue a purchase order, the order shall be deemed to have been placed by the Operating Division on the Service Provider once the Contract Schedule has been signed by the relevant Fleet Manager and the Delegated Person;

29.5.1.2. the Service Provider shall furnish the Fleet Manager or the Delegated Person with a further reference number signifying receipt of the acceptance of a quotation;

29.5.1.3. within 3 (three) Business Days of the date of receipt of a reference number as contemplated in clause 29.5.1.2, the Service Provider shall furnish Transnet with a Contract Schedule for signature by the Fleet Manager and Delegated Person of the relevant Operating Division;

29.5.1.4. within 5 (five) Business Days of the date of receipt of the Contract Schedule from the Service Provider, the Fleet Manager and the Delegated Person shall sign the Contract Schedule; or

29.5.2. reject the quotation on the basis of price, in which event:

29.5.2.1. Transnet shall specify the reason in writing for the rejection of the quotations and shall substantiate the reasons for such rejection;

29.5.2.2. within 1 (one) Business Day of the date of rejection of the quotations by Transnet on the basis of price, the Service Provider Contract Manager shall contact the relevant Fleet Manager and the Delegated Person in order to conduct further negotiations, if at all possible, in respect of the quotations to the extent that the Service Provider is able to reduce the price of the required Vehicle and/or Accessories, the Service Provider shall furnish

Transnet with such amended quotations within 2 (two) Business Days of the date of agreement being reached;

29.5.2.3. in circumstances contemplated in clause 29.5.2, Transnet shall be entitled to review the pricing of the Service Provider on average over 10 (ten) or more quotes during the quarter under review and provide the Service Provider with feedback on whether, in respect of the quarter under review, the pricing of the Service Provider exceeds the pricing in the market having regard to the obligations placed on the Service Provider in terms of this Agreement, the Service Levels and Penalties and the National coverage of Services to be provided by the Service Provider; and

29.5.2.4. to the extent that the Service Provider is unable to reduce the price of the Vehicle and/or the required Accessories, Transnet shall be entitled to obtain a Vehicle and the required Accessories from the preferred Back-up Service Provider and, failing which, through an order from the open market on a three quote process, who shall quote having regard to the obligations placed on the Service Provider in terms of this Agreement, the Service Levels and Penalties and the National coverage of Services to be provided by the Service Provider; provided that in either case the prices obtained from the Back-Up Service Provider or from the three quote process, as the case may be, are lower than the prices offered by the Service Provider.

29.6 Within 7 (seven) days of the date that Transnet places an order on the Service Provider for a Vehicle, Transnet shall be entitled to:

29.6.1. cancel an order;

29.6.2. reschedule the Delivery Date of a Vehicle; or

29.6.3. subject to the provisions of clause 29.7, change the place of delivery to another Designated Area within the same province as the original Designated Area, without incurring any additional cost.

- 29.7 If the change in the Designated Area has an impact on the maintenance costs of a Vehicle such that the maintenance costs must increase due to the impact of environmental and/or operational conditions, the Service Provider shall notify the relevant Fleet Manager and Delegated Person in writing of such increase and shall specify the reasons for such increase. If accepted by the Fleet Manager and Delegated Person, the order shall remain in force. However, should the reasons provided by the Service Provider to the Fleet Manager and Delegated Person be rejected by the Fleet Manager and Delegated Person as valid reasons for the increase, the order shall lapse and the Service Provider shall re-quote Transnet and accordingly the provisions of clauses 29.1 until and including clause 29.6 shall apply to such order.
- 29.8 The Service Provider shall acknowledge receipt of the order or any amendments to an order as contemplated in clause 29.6 in writing within 3 (three) Business Hours of the order being placed by Transnet and shall furnish Transnet with a reference number for such order.
- 29.9 If Transnet has amended an order as contemplated in clause 29.6, the provisions of clause 29.4 shall apply mutatis mutandis to such amended order.
- 29.10 All pricing shall be valid for a period of 90 (ninety) days calculated from the date the quotation was accepted by Transnet in terms of clause 29.5.1 ("**Acceptance Date**").
- 29.11 If during the period between the Acceptance Date and the Delivery Date, the price of the Vehicle fluctuates for whatever reason (including on account of exchange rate fluctuations) and such fluctuation constitutes:
- 29.11.1. a decrease in the price of the Vehicle, the Service Provider shall be obliged to supply the Vehicle to Transnet at the reduced price and the Contract Schedule shall be amended accordingly in terms of the provisions of clause 82.3; or
 - 29.11.2. an increase in the price of the Vehicle, the Service Provider shall furnish Transnet with written evidence of such increase and shall pass on all increases which occurred beyond the reasonable control of the Service Provider to Transnet, provided that to the extent that such circumstances were reasonably foreseeable by the Service Provider and the Service Provider should have reasonably been able to mitigate the impact of such increase, Transnet shall not be liable for such additional costs. If such circumstances were not reasonably foreseeable by the Service Provider, the Service Provider

shall notify Transnet of such circumstances in writing for consideration by Transnet. In the event of a dispute arising between the Parties as to the reasonable action that should have been taken by the Service Provider to reduce the impact of such price increase or as to whether the circumstances contributing to such price increase were within the reasonable control of the Service Provider, the matter shall be referred to the chairperson of AFSA who shall appoint an independent motor industry expert who shall make a determination on the matter acting as an expert and not as an arbitrator.

29.12 The provisions of clause 29.5 shall apply *mutatis mutandis* to the inability of the Service Provider to supply Transnet with a Vehicle that is fit for purpose within a reasonable time of Transnet requesting a quotation from the Service Provider.

29.13 The Contract Schedule shall specify the delivery lead time either in terms of a specific Delivery Date or, alternatively, in terms of a number of months until such delivery shall take place. Should the delivery lead time be a number of months specified in the Contract Schedule, the delivery shall be late if the Vehicle is not delivered by the last day of the month in which the delivery lead time ends ("**Deemed Delivery Date**"). For illustrative purposes only, if an order for a Vehicle is placed in September and delivery is specified to take place in 3 (three) months, then if the Vehicle is not delivered by 31 December, the delivery of the Vehicle will be late. If the delivery of a Vehicle is late, Transnet shall be entitled to levy Penalties.

29.14 To the extent that, and for so long as the Service Provider cannot render the Services in question for the orders and the Service Provider is unable to fulfil their penalty obligations within seven (7) days, Transnet will be entitled to approach the preferred Back-up Service Provider, failing which through an order from the open market on a three quote process.

30. **ACCESSORIES, STANDARD MANDATORY FITMENTS AND MODIFICATIONS**

30.1 All Vehicles shall be fitted with the standard mandatory fitments as described in ANNEXURE 5 and as amended from time to time ("**Standard Mandatory Fitments**").

30.2 Subject to agreement between the relevant Operating Division and the Service Provider, a STR Vehicle may not be fitted with driver identification tags or speed limiters where it is

envisaged by the Parties that that Vehicle is to be leased by Transnet for a period of less than 30 (thirty) days.

- 30.3 Transnet undertakes to minimise Modifications and/or the fitment of Accessories to STR Vehicles in recognition of the fact that such fitment of Modifications and Accessories restricts the ability of the Service Provider to rent the STR Vehicles to other clients.
- 30.4 During the Initial Phase, each Operating Division shall develop a list of standard Accessories ("**Accessory List**") which they generally require to be fitted to Vehicles. Each Operating Division shall negotiate with the Service Provider for the optimal pricing of the Accessories listed in the Accessory List. The Accessory List may change from time to time by agreement between the Parties at the Operational Steercom.
- 30.5 During the Operational Phase, the Fleet Managers and the Contract Managers shall share the pricing of the Accessories which they have procured on their Accessory List with the Fleet Managers and Contract Managers of the other Operating Divisions at the Fleet Management Meetings and Operational Steercom meetings; the aim being the consolidation of the Accessory Lists (to the extent reasonably practical) across all Operating Divisions and standardisation of pricing for such Accessories across all Operating Divisions.
- 30.6 The price of the Standard Mandatory Fitments shall be standard in respect of all Operating Divisions. The price of Standard Mandatory Fitments fitted to a Vehicle shall be itemised in the Contract Schedule and shall form part of the Capital Cost of the Vehicle which depreciation charges shall be included in the Rate.
- 30.7 If at any time during the Contract Period, the Service Provider is required to effect any changes to the Standard Mandatory Fitments or Modifications to any Vehicle, whether to add, withdraw, suspend or enhance, so as to comply with any Applicable Laws, it shall inform the Transnet Group Representative of such requirements and provide the Transnet Group Representative with a written commercial motivation itemising the impact of such change in Applicable Laws on the Vehicles which shall include an implementation plan across the Vehicles ("**Implementation Plan**").
- 30.8 The Transnet Group Representative shall refer such matter to the Operating Divisions for their approval within 30 (thirty) Business Days of the date of receipt of the Implementation Plan from the Service Provider.
- 30.9 Within 15 (fifteen) Business Days of the expiry of the period referred to in clause 30.8, the Transnet Group Representative shall in writing advise the Service Provider of the

appropriate course of action to be adopted in order to ensure compliance with the Applicable Laws. Insofar as this course of action contemplates the fitment, refitment or removal of Standard Mandatory Fitments, Accessories or Modifications, the Service Provider shall obtain 3 (three) quotes for the costs associated with such fitment, refitment or removal of Standard Mandatory Fitments, Accessories or Modifications within 10 (ten) Business Days of the date of the notice from the Transnet Group Representative.

- 30.10 The Transnet Group Representative shall then select 1 (one) of the quotations for implementation and the Service Provider shall implement such fitment, refitment or removal of the Standard Mandatory Fitments, Accessories or Modifications, as the case may be, in accordance with the Implementation Plan (subject to any amendments that the Transnet Group Representative may reasonably require).
- 30.11 Failure on the part of the Service Provider to implement the decision of the Transnet Group Representative in accordance with the Implementation Plan shall constitute a material breach by the Service Provider.
- 30.12 The Service Provider shall charge Transnet for the cost of the fitment, refitment or removal of the Standard Mandatory Fitments, Modifications or Accessories, as the case may be, at the cost of the unit plus the associated labour cost and finance charges (if any); provided that in no event shall the Service Provider be entitled to levy any margin on such costs.
- 30.13 If Transnet requires the fitment of any Accessories to any Vehicle, it shall either request such fitment as part of the order for a new Vehicle (as contemplated in clause 29) alternatively such fitment may take place in respect of an existing Vehicle on an *ad hoc* basis. In the latter event, the process specified in clause 29 shall apply to the fitment of such Accessories.
- 30.14 If an Accessory is fitted or a Modification is made to the Vehicle other than by the Service Provider or any third party nominated by the Service Provider, Transnet shall be liable for the costs of removing such Accessory or Modification and for restoring the Vehicle to the same or a similar condition in which it was in prior to the fitment of the Accessory or Modification, Fair Wear and Tear excepted. If Transnet has failed to do so prior to the End Date and returns the Vehicle to the Service Provider with such Accessory or Modification fitted, the Service Provider, at its election, shall either:
- 30.14.1. remove the Accessory or Modification and restore the condition of the Vehicle to the condition it was in prior to the fitment of such Accessory or Modification

(Fair Wear and Tear excepted) and shall be entitled to recoup the reasonable associated costs from Transnet; or

- 30.14.2. shall be able to retain the Accessory or Modification which shall be deemed to have acceded to the Vehicle.

31. **SPEED LIMITERS**

- 31.1 Speed limiters shall not form part of the Standard Mandatory Fitments and shall only be specified in the quotations submitted by the Service Provider to Transnet for all Vehicles should Transnet request it.
- 31.2 An Operating Division must specifically and expressly in writing elect to fit a speed limiter.
- 31.3 Depending on the requirements of the relevant Operating Division, speed limiters may either physically restrict the Vehicle from exceeding the speed limit or shall be in the form of a warning signal to the driver indicating that the speed limit is being exceeded; it being agreed that the default installation shall be a warning signal unless otherwise specifically required.
- 31.4 To the extent that an Operating Division requires the installation of a speed limiter, that Operating Division shall indemnify the Service Provider from claims arising from any losses or damages sustained by any third party (including the employees of Transnet) as a direct result of the installation of the speed limiter whether arising in contract, delict on a strict liability basis or otherwise and including all legal costs and other expenses (determined on an attorney and own client scale) reasonably incurred by the Service Provider in defending any action instituted by any third party (including a Transnet employee) against it, provided that in no event shall Transnet indemnify the Service Provider in the case that the indemnified event occurs as a result of fault on the part of the Service Provider or unit malfunction.

32. **OWNERSHIP AND RISK**

- 32.1 Transnet is the owner of the Owned Vehicles forming part of the Fleet and until such time as such owned Vehicles are disposed of by Service Provider in accordance with the provisions of clause 20, shall remain the property of Transnet.
- 32.2 Pursuant to the conclusion of Individual Contracts in respect of FML Vehicles, in terms of the Road Traffic Act No. 93 of 1996:

- 32.2.1. the Service Provider shall be the "title holder" of the FML Vehicle; and
- 32.2.2. Transnet shall be the "owner" of the FML Vehicle.
- 32.3 Transnet shall be obliged to notify all third parties who may exercise any lien over the Vehicles that the Vehicles remain the property of the Service Provider notwithstanding the fact that they are within the custody and control of Transnet, shall ensure that none of the Vehicles become subject to a lien and shall, at its cost, forthwith procure the release of any Vehicle which becomes subject to a lien.
- 32.4 Transnet shall bear all risk in and to the FML Vehicles and STR Vehicles from the time at which they are delivered to Transnet (as contemplated in clause 33) until such time as they are returned to the Service Provider by Transnet at the end of the Lease Period (to the extent that Transnet is able to do this).
- 32.5 It is anticipated that risk in and to the Vehicles shall transfer from Transnet to the Service Provider on a fluid basis every time that the Vehicle is no longer in the physical custody and control of Transnet or any of its employees including:
 - 32.5.1. Scheduled Maintenance and Unscheduled Maintenance;
 - 32.5.2. during such time as the Service Provider is rendering Breakdown Services to Transnet; and
 - 32.5.3. to the extent that Transnet has been deprived of custody and control of the Vehicles due to accidental damage of the Vehicle subject to the provisions of clause 43.1.
- 32.6 Each time that risk in and to the Vehicle is transferred from Transnet to the Service Provider, a Vehicle inspection form ("**Vehicle Inspection Form**") shall be completed reflecting any damage to the Vehicle that is immediately apparent by visual inspection. It shall be compulsory for both Transnet and the Service Provider to complete a Vehicle inspection form. Should Transnet fail to do so, the Service Provider shall not be obliged to accept risk in and to the Vehicle and accordingly shall be released from any obligation to conduct, for example, Scheduled Maintenance or Unscheduled Maintenance in that instance in respect of that Vehicle.
- 32.7 A copy of all the Vehicle Inspection Forms shall be retained physically and electronically by the Service Provider and Transnet shall be entitled to access the Vehicle Inspection Forms

electronically via the Service Provider's e-portal together with all other relevant documentation relating to that Vehicle.

33. INSURANCE OF THE VEHICLES

- 33.1 Transnet shall ensure that all Vehicles which are delivered to it by the Service Provider pursuant to this Agreement are comprehensively insured, against all risks of loss, damage or destruction (including risk ordinarily covered by Sasria) as Vehicles can be insured, for the duration of the Lease Period and with a reputable insurer for the replacement value of those Vehicles. To this end, on an annual basis for the duration of the Contract Period and within 30 (thirty) days of each Anniversary Date, the Service Provider shall furnish Transnet with a schedule setting out the details of each of the Vehicles, their Individual Contract number and their revised replacement value. Transnet shall submit this schedule to its insurers by no later than 10 (ten) days after the date on which it is received. The Service Provider warrants that this information will be accurate in all material respects and shall indemnify and hold Transnet harmless from any losses or damages that Transnet may sustain as a result of incorrect or inaccurate information contained in such Schedule.
- 33.2 Transnet shall, on an annual basis and no more than 30 (thirty) days following the Signature Date or each Anniversary Date, furnish the Service Provider with confirmation of insurance cover in respect of the Vehicles forming part of the Fleet. Transnet shall ensure that the rights and interests of the Service Provider over the Vehicles shall be noted on any policy of insurance in respect of the Vehicles.
- 33.3 Notwithstanding any other provision of this Agreement to the contrary, the Service Provider shall not be under any obligation whatsoever to deliver any Vehicles to Transnet unless and until Transnet has proven, to the Service Provider's reasonable satisfaction, that such Vehicles are insured in accordance with the provisions of this clause 33. The Service Provider shall in no way be liable for any:
- 33.3.1. Penalties; and/or
 - 33.3.2. losses and/or damages incurred by Transnet,
as a result of a failure to deliver a Vehicle timeously where such failure to deliver the Vehicle arises from Transnet being unable to prove to the satisfaction of the Service Provider that the Vehicle is properly insured.

- 33.4 Transnet warrants that it will not use any Vehicles at any time or permit such Vehicles to be used while they are not insured as provided for in this clause 33.
- 33.5 In the event that Transnet fails in any way to adhere to its obligations in terms of clauses 33.1 and/or 33.4 and/or 33.8, Transnet hereby indemnifies the Service Provider in full against any and all loss and/or damage of any nature whatsoever and howsoever arising suffered by the Service Provider as a result of such failure.
- 33.6 Transnet shall pay all insurance premiums punctually and shall, on request, produce written proof to the Service Provider that the Vehicles are insured and that all premiums have been paid. The Service Provider shall be entitled (but not obliged) to pay any insurance premiums and/or any other monies which may become due on any insurance policy effected in terms of this clause and to recover the cost of same from Transnet. In such circumstances any amounts paid by the Service Provider in terms of this clause shall accrue interest at the Prime Rate plus 2% per annum, compounded monthly, from the date on which such amounts are paid by the Service Provider to the insurer(s) until the date on which such amounts are recovered from Transnet.
- 33.7 If:
- 33.7.1. any insurance referred to in this clause 33 becomes of no force or effect for any reason whatsoever other than as a result of some act or omission by the Service Provider;
 - 33.7.2. Transnet fails to produce proof of insurance in terms of clause 33.6; and/or
 - 33.7.3. Transnet fails to insure the Vehicles and/or requests that the Service Provider procure insurance for the same,
- the Service Provider shall be entitled (but not obliged) to insure and to keep the Vehicles insured for their replacement values for the remainder of their Lease Periods against all or any risks contemplated in clause 33.1, at reasonable and competitive rates of insurance, the costs of such insurance to be for Transnet's account.
- 33.8 Transnet shall comply, and shall ensure that all of its employees comply, with all the terms, conditions and warranties of every insurance policy effected in terms of this Agreement.
- 33.9 Transnet shall, on request, cede to the Service Provider, as security for the due performance of Transnet's obligations in terms of this Agreement, all of Transnet's right to

receive payment under any insurance policy effected in terms of this Agreement and shall deliver copies of such policy to the Service Provider.

33.10 All insurance claims in respect of a Vehicle shall be processed in accordance with the provisions of clause 43.

34. **DELIVERY**

34.1 The Service Provider shall deliver a Vehicle to Transnet on the Delivery Date or the Deemed Delivery Date at the Designated Area and shall furnish Transnet with a Vehicle Acceptance Form.

34.2 Where the delivery of the Vehicle is effected by the OEM on behalf of the Service Provider, the Service Provider shall ensure that one of its duly authorised representatives is present at the time of delivery of the Vehicle to Transnet in order to ensure that the processes set out in this clause 34 are adhered to.

34.3 If the Service Provider makes a Vehicle available for delivery to Transnet as contemplated in clause 34.1 and Transnet fails to accept delivery of same on the relevant date for any reason, the Service Provider shall be entitled to charge the Rates applicable to that Vehicle from the Delivery Date or the Deemed Delivery Date, as the case may be, notwithstanding that Transnet has failed to accept delivery of that Vehicle. Transnet to accept the delivery of the vehicle 5 (five) business days after receiving vehicle information from the Service Provider.

34.4 All costs associated with the delivery of the Vehicle (including licensing and registration) are deemed to be excluded in the Base Vehicle Price.

34.5 It is envisaged that during the Initial Phase, Transnet's demand for Vehicles will be ramped-up to meet its ultimate Fleet requirements. Accordingly:

34.5.1. the Service Provider shall provide Transnet with STR Vehicles for the duration of the period between the date of Transnet placing an order on the Service Provider as contemplated in clause 29.1; and the Delivery Date or Deemed Delivery Date of a FML Vehicle, provided that Transnet shall in writing, at the time of the furnishing of a purchase order by Transnet to the Service Provider, request the Service Provider to furnish it with an STR Vehicle during this period;

- 34.5.2. to the extent that the Service Provider fails to achieve the Delivery Date or Deemed Delivery Date, as the case may be, the Service Provider shall provide the STR Vehicle not at the STR Rate but at the same cost as the Lease Payment from the Delivery Date or Deemed Delivery Date, as the case may be, of the ordered FML Vehicle until the date of actual delivery of the FML Vehicle by the Service Provider to Transnet.
- 34.6 Subject to clause 34.7, if the Service Provider is prevented from delivering a Vehicle to Transnet on the Delivery Date or the Deemed Delivery Date, as the case may be, at the Designated Area, the Service Provider shall provide Transnet with a suitable STR Vehicle until such time as the Service Provider is able to deliver the ordered FML Vehicle to Transnet at the cost of the Service Provider. However, if the non delivery is as a result of to a *Force Majeure* Event, STR Vehicle shall be provided at the price of an STR Vehicle.
- 34.7 Should the Service Provider be unable to deliver a Vehicle to Transnet as a result of the occurrence of a *Force Majeure* Event which affects Transnet's operations and prevents it from taking delivery of the Vehicle, Transnet shall in writing notify the Service Provider of an alternative Designated Area at which the Vehicle is to be delivered to Transnet. In the absence of such notification, the Service Provider's failure to deliver the Vehicle on the Delivery Date or the Deemed Delivery date, as the case may be, shall be excused.
- 34.8 All Vehicles shall be delivered in a clean and presentable condition both in respect of the interior and exterior of the Vehicle.
- 34.9 Prior to taking delivery of a Vehicle, Transnet shall conduct an inspection of the Vehicle at the Designated Area. The inspection shall in no way be deemed to be exhaustive and shall only be in respect of apparent defects or damage to the body and interior of the Vehicle.
- 34.10 To the extent that the Vehicle delivered by the Service Provider to Transnet does not meet the specifications of Transnet as specified in the Contract Schedule, the Service Provider shall bear all costs associated with the return of the Vehicle to the Service Provider's premises as well as additional costs of the provision of a STR Vehicle pending the delivery of a suitable replacement FML Vehicle that does meet Transnet's specifications. This is without prejudice to Transnet's ability to claim Penalties.
- 34.11 Transnet shall complete a Vehicle Inspection Form. By signing the Vehicle Inspection Form, Transnet acknowledges receipt of the Vehicle:
- 34.11.1. in good condition;

34.11.2. free of any apparent defects; and

34.11.3. in compliance with its order.

34.12 Notwithstanding the provisions of clauses 34.6 and 34.10, in the event that Transnet notifies the Service Provider, within 72 (seventy-two) hours of the date of actual delivery of the Vehicle ("**Actual Delivery Date**"), that the Vehicle is Defective where the defect is not as a result of Operator Default or Fair Wear and Tear, and therefore is not in compliance with the order, Transnet shall be entitled to impose and levy Penalties, provided that this clause 34.12 shall not apply in the case of a latent defect.

34.13 Save in the case of Operator Default, in addition to the liability for Penalties, the Service Provider shall deliver a replacement Vehicle within 72 (seventy-two) hours of the collection of the defective Vehicle by the Service Provider from Transnet, except in the case of Vehicles requiring custom-built Vehicles (in which event, the replacement Vehicle shall be delivered within the timeframe agreed between the Service Provider and the relevant Fleet Manager).

34.14 In the 6 (six) month period following the Actual Delivery Date, should the Vehicle on average fail to achieve the Uptime Target due to Unscheduled Maintenance, Transnet shall be entitled to return the Vehicle to the Service Provider who shall then supply Transnet with a new replacement Vehicle at no additional cost to Transnet. Notwithstanding the substitution of the original Vehicle with a new Vehicle, the Individual Contract shall remain unchanged save that the details of the Vehicle including its VIN number and registration number, as reflected on the original Contract Schedule, shall change.

35. **VEHICLE COMPLIANCE AND LICENSING**

35.1 The Service Provider shall, at its cost:

35.1.1. obtain a certificate of fitness in respect of a STR or FML Vehicle which requires same or a roadworthiness certificate in the case of any other STR or FML Vehicle, whenever same are legally required;

35.1.2. be responsible for the first registration of the STR or FML Vehicle;. In instances whereby the Business Register Number (BRN) is/are blocked for any reason whatsoever, the Service Provider shall clear such blocked BRN subject to the Delegated Authority approval from Transnet and onward bill the costs associated with such clearance as a 'pass through' cost to Transnet;

- 35.1.3. ensure that the Vehicle remains licensed with the relevant authorities for the duration of the Lease Period;
 - 35.1.4. ensure that the Vehicle and all Standard Mandatory Fitments, Modifications and Accessories comply with all Applicable Laws;
 - 35.1.5. keep each Vehicle registered and licensed in accordance with all Applicable Laws; and
 - 35.1.6. administer this process on an on-going basis.
- 35.2 To enable the Service Provider to comply with its obligations in terms of clause 35.1, Transnet shall use its reasonable commercial endeavours to:
- 35.2.1. notify the Service Provider if the licence disc becomes dislodged; and
 - 35.2.2. ensure that the Vehicle is made available to the Service Provider at an agreed time in accordance with any request made by the Service Provider for access to the Vehicle, on at least 30 (thirty) Business Days' prior written notice.
- 35.3 The cost of licensing and registration is incorporated into the Lease Payment and the STR Rate, as the case may be, as per the provisions of clause 22 and 25. Actual costs and annual increases in licencing and registration costs are net of any margin thereon
- 35.4 Transnet shall ensure that all Vehicles at all times:
- 35.4.1. are in a roadworthy condition;
 - 35.4.2. display a certificate of fitness or roadworthiness, where required;
 - 35.4.3. display a number plate with the correct specifications;
 - 35.4.4. are registered and licensed with the relevant local authorities; and
 - 35.4.5. affixed with an up to date licence disc.
- 35.5 Transnet shall ensure that processes and procedures are implemented so that drivers of Vehicles are advised to notify the Fleet Manager concerned immediately of any of the requirements in clause 35.4 not being met.
- 35.6 The Fleet Manager shall notify the Service Provider Contract Manager in writing of any issues brought to his attention in terms of the provisions of clause 35.5 and the Service Provider shall ensure that such issues are resolved within the time periods specified in the Operational SLA.

35.7 Nothing in this clause 35 shall derogate from the Service Provider's obligation to inspect a Vehicle during Scheduled Maintenance and Unscheduled Maintenance.

36. DRIVER LICENCE VERIFICATION, OPERATOR DEFAULT AND FRAUD

36.1 The Service Provider shall ensure that:

36.1.1. at the time that Transnet takes delivery of a Vehicle, only appropriately qualified and licensed drivers are permitted to take delivery of and drive that Vehicle; and

36.1.2. Operator Default is monitored and controlled.

36.2 The Service Provider shall ensure that all Vehicles (excluding trailers and cranes) provided to Transnet are fitted with a suitable tracking device (which shall include the ability to provide information on driver identification, theft and hijack recoveries, speeding exceptions, location identification via global positioning systems and accident reconstruction) if such tracking device constitutes a Standard Mandatory Fitment for that Vehicle type.

36.3 At the time of delivery of a Vehicle to Transnet, the Service Provider shall ensure that all employees wishing to drive the Vehicle are in possession of a valid driver's licence and are licensed to drive that particular Vehicle. After the delivery of the Vehicle, Transnet will be responsible for ensuring that only authorised and appropriately licensed drivers drive the Vehicles.

36.4 The relevant Fleet Manager shall supply the Service Provider with a list of authorised drivers on a quarterly basis during the Contract Period, together with a copy of each employee's driver's licence. Should the driver not be on the system, a copy of the driver's license will have to be supplied at the time of request. The Service Provider reserves the right to deny service if such documentation is not produced.

36.5 Transnet shall make use of the Service Provider's technical and fleet advisors to assist in the management and control of Operator Default. Where Operator Default is suspected, Transnet's internal disciplinary policies and procedures will be implemented to address the issues identified. Accordingly, the Service Provider shall ensure that when allegations of Operator Default are made, such allegations are substantiated by evidence supporting Operator Default.

36.6 The Service Provider shall provide Transnet with the reports set out in

36.7 ANNEXURE 8.

37. **TRAFFIC OFFENCES AND FINES**

37.1 Without limiting the obligation of the Service Provider to take reasonable proactive measures in order to check for fines in respect of the Vehicles within 7 (seven) days of the date of receipt by the Service Provider of any fine from any regulatory authority relating to the driving of a Vehicle (including a parking fine or a speeding fine), the Service Provider shall:

37.1.1. Record all received fines

37.1.2. Download trip information from the Tracking system to obtain driver information on the day and time of infringement and forward to relevant Transnet official responsible for the vehicle together with copies of fines.

37.2 If the Service Provider fails to send through the fine within the aforementioned 7 (seven) day period, the Service Provider shall be liable for the face value of that fine without any recourse to Transnet.

37.3 Transnet shall distribute the fine to the driver of the Vehicle at the time of the occurrence of the incident giving rise to the fine and shall require the driver to settle the fine within 21 (twenty-one) days of the date of receipt of the fine from the Service Provider. The employee concerned shall be required to provide proof of payment of such fine which Transnet shall remit to the Service Provider for its record purposes within 7 (seven) days of the date of receipt of such proof of payment from the said employee.

37.4 Transnet shall, within 7 (seven) days of receipt of the fines, confirm driver information to the Service Provider for traffic fine redirection purposes.

37.5 The Service Provider shall, upon receipt of confirmation of driver information from Transnet, within 7 (seven) days of receipt of such confirmation

37.5.1. redirect the fine to the driver and confirm the status of the redirection attempt with Road Traffic Authorities;

37.5.2. provide Transnet with a report of successful redirections.

- 37.6 In the event that a redirection is not successful the Service Provider shall request further information from Transnet to facilitate successful redirection Transnet shall distribute the fines to the driver and shall require the driver to settle the fine within 7 (seven) days and to provide proof of payment which Transnet shall remit to the Service provider for its record purposes.
- 37.7 Should Transnet not remit proof of payment of a fine to the Service Provider within the period stipulated in clause 37.3, the Service Provider shall:
- 37.7.1. first verify with the relevant Delegated Person as to whether the fine has been paid or not; and
 - 37.7.2. in the event that:
 - 37.7.2.1. the fine has been paid, request the Delegated Person to obtain proof of payment from the employee concerned for remittance to the Service Provider which it shall retain for its record purposes;
 - 37.7.2.2. the fine has not been paid, make payment of the face value of the fine and notify the Fleet Manager of the payment of the fine in writing. On a monthly basis, the Service Provider shall render a Tax Invoice to Transnet for all fines paid by it for and on behalf of Transnet. The Tax Invoice shall:
 - 37.7.2.2.1. only reflect the costs of such fines and the Service Provider shall not be entitled to levy any margin on such costs; and
 - 37.7.2.2.2. be accompanied by a schedule indicating:
 - 37.7.2.2.2.1. the details of the Vehicle concerned;
 - 37.7.2.2.2.2. the details of the driver (if known);
 - 37.7.2.2.2.3. the date of the incident giving rise to the fine;
 - 37.7.2.2.2.4. the reference number of the fine;
 - 37.7.2.2.2.5. the face value of the fine; and
 - 37.7.2.2.2.6. the date of payment of the fine by the Service Provider.

38. **SCHEDULED MAINTENANCE**

- 38.1 The Service Provider shall ensure that the Fleet is maintained in a cost-effective manner and is safe and reliable. Without limiting the generality of the foregoing, the Service Provider shall ensure that the Fleet is not maintained in contravention of any Applicable Laws.
- 38.2 The Service Provider shall ensure that for the duration of the Contract Period, it has a presence Nationally for Scheduled Maintenance for all Vehicles forming part of the Fleet. Transnet vehicles must not travel more than a distance of 20km from its base location for maintenance.
- 38.3 Transnet shall ensure that all Scheduled Maintenance is managed and approved by the Service Provider in respect of the Fleet.
- 38.4 It is the responsibility of Transnet to:
 - 38.4.1. ensure the Vehicles and the Owned Vehicles within its possession and under its control are at all times roadworthy, clean and in good condition; and
 - 38.4.2. notwithstanding the provisions of clauses 38.8, 38.10 and 38.11 to book each Vehicle and Owned Vehicle for Scheduled Maintenance at the OEM prescribed intervals.
- 38.5 Subject to the provisions of clause 32.6, the Service Provider shall provide Scheduled Maintenance of the Fleet so as to ensure it is maintained in a satisfactory and safe operating condition as per OEM specifications and that no OEM warranties or maintenance plans (if applicable) are invalidated for any reason.
- 38.6 The cost of all Scheduled Maintenance is included in the Rates.
- 38.7 A Scheduled Maintenance plan/programme for each Vehicle shall be stipulated in a schedule provided and continuously updated by the Service Provider; provided that, as a minimum, the Service Provider shall ensure that the Fleet is maintained in accordance with OEM requirements.
- 38.8 Any maintenance, servicing, repair or other faults not included in the Scheduled Maintenance plan/program shall constitute Unscheduled Maintenance and be dealt with in accordance with the provisions of clause 40.

- 38.9 The Service Provider shall provide the Operating Division with a monthly report as specified in ANNEXURE 8 detailing all Scheduled Maintenance activities due in respect of the forthcoming month, together with details of instances where Scheduled Maintenance is overdue.
- 38.10 The Service Provider shall provide the Fleet Managers, on no less than 30 (thirty) Business Days' prior written notice, of the details of the Vehicles due for Scheduled Maintenance and the closest service facilities in respect thereof. The Fleet Manager shall, subject to the provisions of clauses 5.2 and 32.6, ensure that the Vehicle is made available for Scheduled Maintenance at the service facility designated by the Service Provider which is within the Designated Area and located in close proximity to the Transnet depot at which the Vehicle is based.
- 38.11 Notwithstanding the provisions of clauses 38.8 and 38.10, the Service Provider shall ensure that a further notification is provided to the relevant Fleet Manager at least 2 (two) weeks before anticipated date for Scheduled Maintenance of a Vehicle.
- 38.12 In the event that Scheduled Maintenance is not performed in respect of a Vehicle at the interval prescribed by the OEM, the relevant Fleet Manager will be informed by the Service Provider thereof in writing and, subject to the provisions of clause 32.6, will arrange for delivery of the Vehicle to the service facility or Designated Area within 7 (seven) days of the date of such notice, at the Service Provider's direction. The Service Provider shall maintain full and accurate documentary evidence of such notifications.
- 38.13 Should the Vehicle referred to in clause 38.12 still not be presented to a service facility or Designated Area within the said 7 (seven) day period and, to the extent that this invalidates the OEM warranty or maintenance plan in respect of the Vehicle (if applicable), all costs associated with the repair or maintenance of any elements that would ordinarily be covered by the warranty or the maintenance plan, as the case may be, shall be recoverable by the Service Provider from the relevant Transnet Cost Centre Owner that pays the Rate in respect of that Vehicle.
- 38.14 Subject to the provisions of clause 32.6, the Service Provider shall be responsible for all damage and/or destruction to the Vehicle (save for that occasioned by Operator Default) as well as all liability that related to the driving of the Vehicle (whether for test drive or other purposes) by the Service Provider or anyone for whose conduct it is vicariously liable

at law while the Vehicle is in the possession or under the control of the Service Provider and shall indemnify Transnet accordingly.

- 38.15 Without detracting from the generality of the provisions of clause 38.17, all Scheduled Maintenance shall be completed in accordance with OEM specifications and within the time frame specified in the Operational SLA. To the extent that such timeframes are exceeded, the Service Provider shall furnish Transnet with the same or a similar substitute STR Vehicle which is fit for the purposes of Transnet (taking into account the specifications of the FML Vehicle which is in the Service Provider's workshop for Scheduled Maintenance) provided that, without prejudice to Transnet's rights in terms of clause 38.16, the Service Provider shall be liable for the cost of such replacement STR Vehicle until the FML Vehicle is returned by the Service Provider to Transnet at the Designated Area.
- 38.16 Any Scheduled Maintenance which exceeds the time frames specified in the Operational SLA shall attract Penalties to be levied by Transnet against the Service Provider.
- 38.17 The Service Provider hereby warrants that, as a minimum:
- 38.17.1. all workmanship undertaken during the Scheduled Maintenance of a Vehicle shall be guaranteed for a period of 12 (twelve) months;
 - 38.17.2. all OEM new parts supplied during the repair and/or servicing of a Vehicle (including safety critical parts) shall be guaranteed for a period of 12 (twelve) months subjected to normal wear and tear; and
 - 38.17.3. all approved new parts shall be guaranteed for a period of 6 (six) months, after the date of such Scheduled Maintenance as evidenced by the Vehicle's service log, unless indicated otherwise in writing by the Service Provider.
- 38.18 Details of all completed Scheduled Maintenance shall be recorded by the Service Provider in the Vehicle's service log.
- 38.19 Upon completion of the Scheduled Maintenance of the Vehicle, it shall be tested in accordance with the routine tests specified by the OEM and must withstand those tests before being returned to Transnet.
- 38.20 Transnet shall collect all Vehicles delivered for Scheduled Maintenance from the service facility at which the Vehicle was initially delivered by Transnet. Risk in and to the Vehicle shall transfer from the Service Provider to Transnet upon Transnet conducting an inspection of the Vehicle and recording such inspection on a Vehicle Inspection Form.

38.21 In order to optimise the Scheduled Maintenance of the Fleet, the Service Provider undertakes that it shall investigate the feasibility of:

- 38.21.1. providing on-site and after hours Scheduled Maintenance; and/or
- 38.21.2. implementing a system of mobile workshops to provide Scheduled Maintenance in respect of the Fleet.

38.22 The Service Provider shall not be liable for any of the costs incurred in respect of the matters listed below, all of which shall be for the account of the Transnet –

- 38.22.1. rectification of any damage caused to the Vehicle by one or more of the following –
 - 38.22.1.1. accident or force (unless it is due to the negligence or fault of the Service Provider);
 - 38.22.1.2. the use by Transnet in the Vehicle of parts not approved by its OEM;
 - 38.22.1.3. the use by Transnet in the Vehicle of oils and other service products not approved by its OEM;
 - 38.22.1.4. the failure by Transnet to have the Vehicle maintained timeously, when it is required to do so;
 - 38.22.1.5. the neglect, misuse, abuse or improper handling of the Vehicle or any of its parts by the Transnet or any of its servants, agents or other users, which the Service Provider must provide proof thereof;
 - 38.22.1.6. Transnet allowing persons other than as provided for in this Agreement to perform work on the Vehicle; or
- 38.22.2. repair of damaged glass, including windscreens, lenses, sealed beams and mirrors;
- 38.22.3. any repairs or maintenance which are occasioned or partly occasioned by failure of the Transnet to perform any obligation in terms of or referred to in the Individual Contract and any costs incidental thereto;
- 38.22.4. any alteration to the Vehicle not approved by the Service Provider and any costs incidental thereto; or

38.22.5. any other maintenance and repair which is carried out without the Service Provider's authorisation.

39. **TYRES**

- 39.1 The Lease Payment shall include the supply of 4 (four) sets of tyres (excluding the set of tyres fitted to the Vehicle as at the Actual Delivery Date) for that FML Vehicle.
- 39.2 The costs of all punctures and tyre damage (including side wall cuts, run flats and penetration) resulting in the replacement of tyres in excess of the four (4) sets referred to in clause 39.1 with regard to FML Vehicles and all tyre costs (including repairs and replacements) with regard to the Owned Fleet shall be borne by Transnet.
- 39.3 The tyres referred to in clause 39.1 shall be in accordance with the specifications and/or recommendations of the OEM of the Vehicle.
- 39.4 During Scheduled Maintenance, the Vehicle's tyres shall be checked and rotated if necessary and any problems detected will be rectified or tyres replaced at the same time. For the avoidance of doubt, the checking, rotating and replacement of tyres shall include the costs of all services ancillary to such checking, rotating and replacement of tyres.
- 39.5 Should a problem arise with tyres during intervals between Scheduled Maintenance, the driver of the Vehicle or the relevant Fleet Manager will contact the Service Provider who will direct that driver or Fleet Manager, as the case may be, to the Service Provider's closest tyre supplier where the tyres will be examined. The tyre supplier who will make a recommendation, if required.
- 39.6 Should the Service Provider's tyre supplier recommend replacement of one or more of the Vehicle's tyres, those tyres may only be replaced by the tyre supplier on official authorisation from the Service Provider.
- 39.7 The day-to-day management of the tyres is the Transnet driver's responsibility. If the Transnet driver is not satisfied with the status of the tyres, he shall alert the Fleet Manager who shall notify the Service Provider by logging a call with the Call Centre.
- 39.8 When a tyre reaches the minimum legal limit for wear and tear, it is to be replaced by the Service Provider. It shall be the responsibility of the Fleet Manager to notify the Service Provider of tyre wear and tear as soon as is reasonably practicable in the circumstances.

40. **UNSCHEDULED MAINTENANCE**

- 40.1 The Service Provider shall ensure that for the duration of the Contract Period, it has a presence Nationally for Unscheduled Maintenance for all Vehicles forming part of the Fleet.
- 40.2 No Unscheduled Maintenance of the Fleet shall be managed and effected without the prior approval of the Service Provider.
- 40.3 The Service Provider shall make an electronic fault logging system available. All Vehicle faults will be logged by the relevant Fleet Manager on the electronic fault logging system. Transnet shall be liable for all Vehicle faults occasioned by Operator Default. To the extent that Operator Default results in damage to the Vehicle, the Service Provider shall repair the relevant component prior to replacing the component. Progress to resolve faults shall be tracked on the fault logging system. To the extent that Transnet's operations do not have access to such electronic fault logging system, Transnet shall be entitled to log a fault with the Call Centre.
- 40.4 Where the need for Unscheduled Maintenance arises, the following procedure shall apply:
 - 40.4.1. the Fleet Manager or the driver shall report Vehicle faults and/or breakdowns to the Service Provider via the electronic fault logging system or via the Call Centre;
 - 40.4.2. within the period specified in the Operational SLA for the logging of the fault and/or breakdown and subject to the provisions of clause 43, the Service Provider shall have the Vehicle moved to its nearest service facility;
 - 40.4.3. within 24 (twenty-four) hours of the movement of the Vehicle to the nearest service facility, the Service Provider shall make a STR Vehicle available to Transnet at the Designated Area provided that this has been requested by the relevant Fleet Manager. If the Unscheduled Maintenance was occasioned by:
 - 40.4.3.1. faulty workmanship or the failure of a part or component fitted during Scheduled Maintenance, the costs of the STR Vehicle shall be borne by the Service Provider without any recourse against Transnet until the Vehicle is returned from Unscheduled Maintenance by the Service Provider to Transnet at the Designated Area; or

- 40.4.3.2. accidental damage or damage occasioned due to Operator Default, then, subject to the provisions of clause 29, Transnet shall place an order on the Service Provider for the provision of a STR Vehicle at Transnet's expense.
- 40.4.4. if the Unscheduled Maintenance was occasioned by circumstances contemplated in clause 40.4.3.2, the Service Provider shall furnish the Fleet Manager with a quotation setting out the proposed repair work and repair programme including the proposed costs for labour, parts and components to the Fleet Manager together with the requirements set out in clause 40.6.
- 40.5 Any repairs to the Vehicle that are necessary due to Operator Default (including tyres) by Transnet employees are to be reported to the Service Provider by the relevant Fleet Manager as soon as is reasonably practicable following the relevant Fleet Manager becoming aware of such Operator Default.
- 40.6 The Service Provider will provide the Fleet Manager with the complete relevant reports, including a technical report by an independent third party submitted within 2 (two) Business Days of request of repair, photographs and quotation for the necessary repairs, which may only proceed after the relevant Transnet Contract Manager has inspected the damage. In the event of damage to the Vehicle occasioned by Operator Default, the Service Provider shall repair components first before replacing them. The reasonable costs of the technical report shall be borne by Transnet to the extent that such damage occurred as a result of Operator Default.
- 40.7 The Service Provider shall, where relevant and reasonably practically possible, provide Transnet with 3 (three) quotations which Transnet may in its discretion accept or decline.
- 40.8 On the written approval of the delegated person of the Operating Division in question, and a purchase order, repairs may proceed.
- 40.9 All Unscheduled Maintenance shall be completed within the time frames specified in the Operational SLA and to the extent that such Unscheduled Maintenance is not completed timeously, Transnet shall be entitled to levy Penalties.
- 40.10 All costs relating to the Unscheduled Maintenance of a Vehicle must be included on a separate Tax Invoice for Transnet's account. On completion of the repairs, the associated Tax Invoice must be stamped "**Operator Default**" and processed for payment in accordance with the provisions of clause 70.

41. **CAR WASH**

The Service Provider shall ensure that the interior and exterior of Vehicles are washed:

- 41.1 on delivery;
- 41.2 each time a Vehicle undergoes Scheduled Maintenance and Unscheduled Maintenance;
- 41.3 provide car wash services at an additional cost (two quote process), should any OD requires this service.

42. **TERMINATION OF THE INDIVIDUAL CONTRACTS**

- 42.1 No later than 180 (One hundred and eighty) days prior to the termination of an Individual Contract (save in circumstances contemplated in clauses 7, 43, 44 or 45), the Service Provider shall notify the Fleet Manager in writing that the Vehicle to which such Individual Contract relates is due for return to the Service Provider specifying the due date for such return, or advise the OD to place an order to renew.
- 42.2 Within 72 (seventy-two) hours of the End Date of the Individual contract, The Service Provider must make the necessary arrangements to collect the vehicle from the Transnet Designated Area.
- 42.3 At the Designated Area, the Service Provider Contract Manager and the relevant Fleet Manager shall both a Vehicle Inspection Form. Photographs shall be taken of all aspects of the Vehicle in order to record any patent damage to the Vehicle. These photographs are to be retained by the Service Provider for a period of 3 (three) years following the date of actual return of the Vehicle ("**Return Date**"). Both Parties shall retain a copy of the signed Vehicle Inspection Form and the Vehicle inspection form. To the extent that the Service Provider is not able to provide the evidence specified in this clause 42.3, the Service Provider irrevocably waives any claim it may have against Transnet in this regard.
- 42.4 The Service Provider must collect the expiring/expired Vehicle from the Transnet Designated area, in whatever condition the Vehicle is in:
 - 42.4.1. If roadworthy, once all administrative process has been concluded, the Service Provider must drive the vehicle away from the Transnet Designated area to its designated premises to conclude the return process;

- 42.4.2. If not roadworthy for valid reasons, then the Service Provider must provide Transnet with a quote for the vehicle to be towed away, or put on flat-bed recovery vehicle. This will be for Transnet costs if the vehicle is not roadworthy to be driven away at the time
- 42.5 With effect from the Return Date and assuming that the Vehicle in question is returned on that date, Transnet shall not be obliged to continue making payment of any Lease Payments or STR Rates in respect of that Vehicle, as the case may be, to the Service Provider; provided that this shall not apply to any Lease Payments or STR Rates which arose prior to the Return Date and further provided that Transnet shall continue to pay the Lease Payments or STR Rates in respect of a Vehicle which is not returned by Transnet on the Return Date until such Vehicle is actually returned to the Service Provider.
- 42.6 The Vehicle shall be returned together with all licences, permits, roadworthy certificates, other relevant documentation, keys (including the spare keys), and original vehicle accessories upon delivery.
- 42.7 The calculation of excess costs/under-utilised credits must not prejudice Transnet and the calculation of the allowed kms for the month must be equal to the km reading period. Transnet will not pay any excess costs if the allowed kms calculations is far lower than the km reading period which ends up in excess costs being charged. The Parties must agreed to a fair process which does not prejudice both Parties.
- 42.8 Other than as recorded in clause 42.4, Transnet shall not be liable to pay any costs associated with the use of the Vehicle beyond the Return Date save for any Make Good Costs, subject to clause 42.9. The Service Provider will issue notice to collect the vehicle. Should the Service Provider not be able to collect the vehicle despite numerous attempts, being 90 (ninety) days notice before expiry, 60 (sixty) days notice before expiry, 30 (thirty) days before expiry and weekly notices thereafter, including to duly inform the relevant Operating Division representative; escalate to the Transnet Group Representative and Operational Steercom for intervention.
- 42.9 The Service Provider shall advise Transnet of any Make Good Costs as recorded in 42.3 in sufficient detail to enable Transnet to accurately determine what these Make Good Costs are and shall provide 3 (three) quotes within 3 (three) Business Days of the Return Date which shall specify the turnaround time for the repairs to the Vehicle. No repairs shall be

effected to the Vehicle by the Service Provider without the prior written approval of the relevant Cost Centre Owner.

- 42.10 The Service Provider shall advise Transnet of any ADDITIONAL Make Good Costs **after** as recorded in 42.3, in sufficient detail to enable Transnet to accurately determine what these Make Good Costs are and shall provide 3 (three) quotes within 3 (three) Business Days of the Return Date which shall specify the turnaround time for the repairs to the Vehicle. No repairs shall be effected to the Vehicle by the Service Provider without the prior written approval of the relevant Cost Centre Owner. Transnet reserves the right to inspect these vehicles for the additional make good costs over and above what was recorded in 42.3, within 72 hours of being advised of these additional Make Good costs. The Service Provider must make the vehicle available for all additional make good costs over and above 42.3, giving Transnet sufficient notice to inspect these vehicles for the additional make good costs. Transnet will dispute these additional costs if the Service Provider doesn't make this vehicle available within a reasonable time.
- 42.11 If Transnet disputes its liability to make payment of any Make Good Costs, it shall notify the Service Provider in writing within 5 (five) Business Days thereof specifying in sufficient detail the grounds for its disputing such liability.
- 42.12 If the Parties are unable to agree as to Transnet's liability for Make Good Costs within 5 (five) Business Days, an independent motor industry expert nominated by the director of NADA who shall act as an expert/recommend an expert, and not as an arbitrator, and who shall make a determination as to Transnet's liability for Make Good Costs.
- 42.13 Should the Fleet Manager agree to be held liable for such Make Good Costs in terms of clause 42.9 or should the circumstances contemplated in clause 42.12 arise, Transnet shall furnish the Service Provider with a purchase order for such Make Good Costs. Should Transnet fail to provide the Service Provider with a purchase order for such Make Good Costs within 10 (ten) Business Days from the Return Date, the Service Provider shall proceed to repair the Vehicle on the basis of the lowest reasonable quote provided to Transnet and shall issue a Tax Invoice to the relevant Operating Division for such Make Good Costs either agreed or determined by the Service Provider in terms of the provisions of clause 42.12 and Transnet shall issue a purchase order for the value of such Tax Invoice. Transnet shall make payment of such Tax Invoice within 10 (ten) Business Days of the date of such Tax Invoice.

43. ACCIDENTS / INCIDENTS

- 43.1 If a Vehicle is damaged as a result of any conduct on the part of Transnet's Personnel including any accident or collision:
- 43.1.1. the relevant Fleet Manager or the driver of the Vehicle concerned shall notify the Service Provider of such accident or collision as soon as reasonably possible after the incident, by telephoning the Call Centre and shall obtain a reference number; and
 - 43.1.2. the Service Provider shall manage and provide all necessary assistance to Transnet and/or its Personnel in respect of such incident, including the dispatch of roadside assistance, tow-in services of any vehicle that cannot be driven, and medical and emergency services; provided that to the extent that tow-in services are provided, the tow-in services are rendered by a tow-in service provider that is approved by the Service Provider.
- 43.2 The Service Provider shall be responsible for managing the accident response from the provision of roadside assistance to the provision of a replacement vehicle of the same type, category and cost as the Vehicle involved within the time period stipulated in the Operational SLA.
- 43.3 If the Vehicle is still road-worthy and driveable, then within 48 (forty-eight) hours of the incident, the Fleet Manager shall arrange for Transnet to present the damaged FML or STR Vehicle to the Service Provider's designated workshop for inspection. The Service Provider shall appoint an accredited assessor to conduct an independent assessment of the damage to the FML or STR Vehicle. Quotes for the assessor to be approved in advance by Transnet.
- 43.4 Within 5 (five) Business Days of the date of receipt of the Vehicle for inspection, the Service Provider shall prepare and submit 3 (three) quotations where possible for the necessary repairs to the Fleet Manager for submission to its insurers in order to obtain authorisation from its insurers to proceed with the repairs based on a quotation selected by the assessor appointed by Transnet's insurers, or otherwise, as the case may be.
- 43.5 Within 30 (thirty) days of the date of the accident, the Service Provider shall provide the Fleet Manager with the complete relevant accident reports related to the FML and STR vehicles, including photographs, provided that within 5 (five) Business Days of the accident, the Service Provider shall provide Transnet with reports

regarding the accident that can be easily generated based on data that is readily available including photographs, vehicle telemetry reports and narratives specifying initial findings.

44. WRITE-OFF

- 44.1 If a FML or STR Vehicle is destroyed, damaged beyond repair or written-off, the Fleet Manager shall notify the Service Provider thereof; the provisions of clauses 43.1 to 43.3 applying *mutatis mutandis*.
- 44.2 Within 6 (six) weeks of the date of the aforesaid notification, the Service Provider shall prepare and submit a quotation for the Settlement Amount of the Vehicle. The relevant Operating Division shall make payment of the Settlement Amount in accordance with the provisions of **ANNEXURE**.
- 44.3 Transnet shall decide whether to issue a further purchase order for a new FML Vehicle or a STR Vehicle to replace the written-off Vehicle and, in this regard, shall follow the process contemplated in clause 29.
- 44.4 The Service Provider shall provide de-registration certificate at the time when the Vehicle is written off and Transnet has paid the Settlement Amount.

45. THEFTS OR HIJACKS

- 45.1 The Service Provider shall, in conjunction with Transnet, take all necessary precautions to minimise thefts and hijacks.
- 45.2 Should a Vehicle be stolen or hijacked, Transnet shall notify the Service Provider thereof in terms of the provisions of clauses 43.1 and 43.3 which shall apply *mutatis mutandis*.
- 45.3 In the event the FML or STR Vehicle is stolen or hijacked and cannot be recovered within 6 (six) weeks of the date of the theft or hijacking, as the case may be, the Individual Contract shall terminate on the date of expiry of the aforementioned 6 (six) weeks period and the Service Provider shall furnish Transnet with a Settlement Amount within 2 (two) Business Days of such date.

- 45.4 In the event that a Vehicle is recovered after the Settlement Amount is paid to the Service Provider, the Service Provider shall notify Transnet to collect the Vehicle since it is regarded as a Transnet's asset. All costs related registration, re-registration and licencing will be for Transnet's account.
- 45.5 Should Transnet require a replacement Vehicle, it shall order a Vehicle in terms of the provisions of clause 29.
- 45.6 Transnet reserves the right to hold the Service Provider liable should there be any neglect on the part of the Service Provider in this regard, and reserves the right to dispute the settlement amount, following legal action.
- 45.7 Transnet also reserves the right to hold the Service Provider liable for additional damages to recovered vehicles in storage facilities where theft of parts has occurred due to failure on the part of the Service Provider to move the vehicle to its safe location for storage while the process is concluded.
- 45.8 Transnet reserves the right to take the vehicle back if recovered in time, and still fit for purposes.

46. **INSURANCE CLAIMS PROCESS (IF APPLICABLE)**

To the extent that a FML or STR Vehicle is involved in an accident or incident (including theft and hijacking), the notification of the insurance claim shall be as stipulated in Transnet's insurance claim process specified in **ANNEXURE**.

47. **COMPUTATION OF THE SETTLEMENT AMOUNT**

- 47.1 The Settlement Amount, in the case of total loss, write-off, damage beyond economic repair, theft or destruction of a FML or STR Vehicle, shall be calculated as follows:
 - 47.1.1. in respect of write-off, the Settlement Amount of a Vehicle which is damaged beyond repair or "written off" by the insurers, will be calculated at the higher of the Net Book Value or the Market Value of the Vehicle less the Salvage Value of the Vehicle; or

47.1.2. in respect of theft or loss of a Vehicle, the Settlement Amount of a Vehicle will be calculated at the higher of the Net Book Value or the Market Value of the Vehicle.

47.2 The Settlement Amount is to be calculated as at the earlier of the date of occurrence of the loss, theft or destruction of a Vehicle or the date of receipt of an assessor's report by Transnet providing confirmation of irreparable damages to the Vehicle, provided that in the case of the loss of the Vehicle by means of theft or hijacking, the date of loss shall be deemed to be the date specified in clause 45.3.

48. **BREAKDOWN SERVICES AND ROADSIDE ASSISTANCE**

48.1 The Service Provider undertakes to provide and manage a 24 (twenty-four) hour breakdown and roadside assistance service, 7 (seven) days a week throughout the Contract Period in respect of all Vehicles ("**Breakdown Services**").

48.2 The Service Provider shall ensure that it provides Breakdown Services Nationally.

48.3 The Service Provider shall in the event of a Breakdown Service call, attend on the scene of the breakdown within:

48.3.1. 2 (two) hours of receipt of the notification, where the breakdown occurs within a 20 (twenty) kilometre radius of the Service Provider's workshop (urban);

48.3.2. 3 (three) hours of receipt of the notification, where the breakdown occurs outside a 20 (twenty) kilometre radius of the Service Provider's workshop (rural); and

48.3.3. an additional 30 (thirty) minutes per 50 (fifty) kilometres from the Service Provider nearest technical repair centre.

48.4 In the event of a breakdown, the Service Provider shall use its reasonable endeavours to provide assistance to Transnet Personnel and to transport them to the nearest Transnet premises or the nearest safe place (including their homes).

49. **FUEL MANAGEMENT AND TOLL FEES**

49.1 Notwithstanding the Services that the Service Provider shall provide in terms of this Agreement, and unless otherwise agreed, Transnet Fuel Solutions shall be responsible for:

- 49.1.1. fuel usage and management with regard to the Vehicles and Owned Vehicles; and
 - 49.1.2. subject to the provisions of clauses 49.2 and 49.3, registration of e-Tags and payment of associated toll fees;
 - 49.1.3. provided that the Service Provider shall be responsible for all administration pertaining to e-Tags in respect of the Owned Vehicles.
- 49.2 All STR Vehicles in operation for longer than 30 days must come fitted with e-Tags and the Service Provider shall invoice Transnet for actual toll fees incurred by it in respect of a particular STR Vehicle without being entitled to levy any margin thereon.
- 49.3 In respect of FML Vehicles, Transnet Fuel Solutions shall acquire an e-Tag. Pending receipt of an e-Tag for a particular FML Vehicle, the Service Provider shall make payment of all e-tolls billed to it and shall invoice Transnet for such e-toll costs at cost without levying any margin thereon incurred in respect of that FML Vehicle from the time of delivery of the FML Vehicle on the Delivery Date until the date that Transnet notifies the Service Provider in writing that it has fitted an e-Tag to the FML Vehicle.

50. **TECHNICAL ADVICE AND CONTINUOUS IMPROVEMENT**

- 50.1 The Service Provider shall:
- 50.1.1. provide Transnet with technical and fleet advice to optimise the utilisation and exploitation of the Fleet;
 - 50.1.2. at all times endeavour to identify means including the optimisation of the Fleet and of saving costs in a manner which does not impact Transnet's operations;
 - 50.1.3. at all times during the Contract Period, provide all technical advice, information and assistance to Transnet necessary to render the Services in the most efficient and optimal manner to Transnet. The Service Provider shall ensure that the Service Provider's dedicated key account officers are available to service Transnet's Fleet requirements at all times;
 - 50.1.4. procure that suitably trained and qualified technical consultants are made available to support, assist and consult to Transnet and its Personnel on any technical aspect in respect of the Fleet at all times during the Contract Period. In addition, the Service Provider's fleet managers shall obtain an in-depth

knowledge of Transnet's Fleet operations and requirements, as well as ensuring that regular feedback sessions are held;

- 50.1.5. be responsible for the training of Transnet's Personnel with respect to:
 - 50.1.5.1. the Services and the Required Service Levels;
 - 50.1.5.2. the selection of Vehicles;
 - 50.1.5.3. budgeting for Vehicles;
 - 50.1.5.4. managing the utilisation of Vehicles;
 - 50.1.5.5. inspecting Vehicles;
 - 50.1.5.6. managing Individual Contract obligations; and
 - 50.1.5.7. interpreting and reviewing the Service Provider's Tax Invoices and month-end statements.

51. TECHNICAL TRAINING AND SKILLS TRANSFER

51.1 The Service Provider shall be responsible for the familiarisation training of drivers and other relevant officials with respect the following:

- 51.1.1. the Services and the Required Service Levels;
- 51.1.2. caring for the Vehicles; and
- 51.1.3. the obligations arising from the Individual Contracts specifically highlighting the responsibilities of drivers.

51.2 The Service Provider shall provide training:

- 51.2.1. in accordance with a training plan agreed to between the Parties at Operational Steercom meetings;
- 51.2.2. in addition to training in accordance with the training plan referred to in clause 51.2.1, the Service Provider shall in addition provide *ad hoc* training to Transnet Personnel as determined by the Operational Steercom from time to time or as specifically requested by a Fleet Manager;
- 51.2.3. in groups of not more than 50 (fifty) delegates; and
- 51.2.4. in the English and any other local languages agreed to by Transnet.

- 51.3 All training shall be supported by user-friendly training manuals and operating handbooks.
- 51.4 Training shall be provided at a designated location to be agreed between the Parties and, failing agreement, at each of the Operating Divisions of Transnet or at the head office of Transnet.
- 51.5 The cost of all training, including the costs of the trainer, the venue, the training material and the refreshment costs shall be for the account of the Service Provider.
- 51.6 The costs of travel to and from the venues and, if applicable, accommodation and subsistence allowances for trainees shall be for the account of Transnet.
- 51.7 Training shall be provided initially during the two-week period immediately succeeding the Signature Date or such later date as the Parties may agree and then annually on the Anniversary Date, to any Transnet employees who deal with the Service Provider directly and as soon as possible following any major changes to the Services, the Required Service Levels or the method of accessing the Services.

52. **CALL CENTRE**

- 52.1 The Call Centre shall be equipped with a toll-free number, an automatic call distribution system and automatic call logging facilities.
- 52.2 The Call Centre is intended to:
 - 52.2.1. provide a central facility for the receipt of all Service requests from Transnet;
 - 52.2.2. co-ordinate the provision of the Services;
 - 52.2.3. answer queries and provide specified information to Transnet; and/or
 - 52.2.4. provide feedback regarding the progress of Service requests.
- 52.3 The Call Centre shall:
 - 52.3.1. respond and dispatch Breakdown Services to Transnet employees;
 - 52.3.2. manage and assist Transnet in respect of accidents involving the Vehicles and Owned Vehicles;
 - 52.3.3. respond to requests for the provision of Vehicles and/or replacement Vehicles;
 - 52.3.4. respond to general queries relating to Service requests; and
 - 52.3.5. perform a general help desk or problem reporting function.

52.4 The Service Provider shall ensure that:

- 52.4.1. the Call Centre is operated 24 (twenty-four) hours a day, 7 (seven) days a week, 365 (three hundred and sixty-five) days a year; and
- 52.4.2. sufficient support Personnel are available to accept calls channelled to the Call Centre at all times.

52.5 Complaints or enquiries lodged shall be logged and acknowledged through receipt and the provision of a unique reference number within 24 (twenty-four) hours. Queries shall be resolved in accordance with the Required Service Levels specified in the Operational SLA.

52.6 Transnet reserves the right to inspect the Call Centre at all times, provided that it notifies the Service Provider of such inspection on reasonable prior written notice.

52.7 The Service Provider shall report on the performance of the Call Centre in accordance with the reporting requirements specified in ANNEXURE 8.

53. **USER SATISFACTION SURVEY**

53.1 The Service Provider shall, within 60 (sixty) Business Days of the Signature Date, table for Transnet's approval, a comprehensive user satisfaction survey plan ("**Plan**") aimed at gauging the satisfaction of users of the Services provided by the Service Provider and which shall include a proposed user satisfaction index and a schedule of user satisfaction criteria. For the avoidance of doubt, user satisfaction surveys will be conducted per Operating Division.

53.2 Transnet shall approve the Plan within 30 (thirty) Business Days of receipt thereof.

53.3 The survey will be based on facts and will be supported by relevant evidence and will test the user satisfaction levels in respect of the Services provided via the polling of a representative sample and cross-section of users. The user satisfaction levels will be verified on a random sample basis and in this regard, Transnet users who participate in the user satisfaction survey selected as part of the random sample shall be required to furnish the Operational Steercom with evidence substantiating their rating of the Service Provider.

53.4 The Service Provider shall conduct the approved user satisfaction survey as determined by the Operational Steercom from time to time.

53.5 The Service Provider agrees that it shall achieve at least the following annual satisfaction levels, as defined in the Plan during the Contract Period:

Year 1	Year 2	Year 3 and subsequent
95%	95%	95%

53.6 It is recorded that the user satisfaction survey shall be aligned to the Operational SLA and the satisfaction level shall be measured on data relative to the performance of the Service Provider.

53.7 To the extent that the Service Provider fails to achieve the annual satisfaction levels specified in clause 53.5, the Service Provider shall submit a remediation plan ("**Remediation Plan**") to address the concerns raised following completion of any user satisfaction survey contemplated in the Plan. The Remediation Plan shall be submitted by the Service Provider to the relevant Fleet Management Meeting within 30 (thirty) Business Days of notification by Transnet, or such longer period as Transnet may agree, and shall envisage the remediation of such user satisfaction levels within 3 (three) months of the submission of the Remediation Plan to the Fleet Management Meeting.

53.8 Should the Service Provider fail:

- 53.8.1. to submit the Remediation Plan within the period contemplated in clause 53.7;
or
- 53.8.2. to implement the Remediation Plan approved by Transnet within the 3 (three) month period specified in clause 53.7, the failure of the Service Provider shall be escalated to the Operational Steercom. Failure to resolve matter by Operational Steercom, escalations should be referred to CPO Transnet and an equivalent level at SERVICE PROVIDER.

54. **ADMINISTRATION FEE**

- 54.1 The Service Provider shall be entitled to charge a monthly administration fee which shall be fixed for all Vehicles, provided that this monthly administration fee may be pro-rated in the event that a Vehicle is provided for part of a month only. For the avoidance of doubt, as at the Commencement Date, the monthly administration fee per Vehicle per month shall be as specified in **ANNEXURE 10** ("Administration Fee").
- 54.2 To the extent that a Vehicle is not specified in **ANNEXURE** as at the Signature Date, the Administration Fee in respect of that Vehicle shall not exceed the highest quoted Administration Fee itemised in respect of any Vehicle that is specified in **ANNEXURE**. Without limiting the generality of the foregoing, the Administration Fee shall be negotiated between the Service Provider and the relevant Operating Division on a case-by-case basis.
- 54.3 The Administration Fee shall be the manner in which the Service Provider recoups its administration costs and profits for rendering the Services to Transnet.
- 54.4 The Administration Fee as at the Commencement Date includes the Services. To the extent that Additional Related Services are incorporated, the Administration Fee shall increase; provided that in no event shall the increase in the Administration Fees in aggregate across all Individual Contracts increase by more than 10% (ten percent) of the Contract Value as at the Commencement Date.

55. COMPLIANCE

- 55.1 To the best of the knowledge and belief of the Service Provider:
- 55.1.1. the transaction contemplated in this Agreement does not contravene any provision of the Competition Act nor require any consents or approvals from the competition authorities as contemplated in the Competition Act; and
 - 55.1.2. it has disclosed all correspondence, if any, between itself and the competition authorities in respect of the transaction contemplated in this Agreement.
- 55.2 To the extent that either of the Parties engage with the Competition Commission in relation to this Agreement, they shall jointly engage with the Competition Commission.
- 55.3 The Service Provider warrants that:
- 55.3.1. it shall comply with and enforce all Applicable Laws in the rendering of the Services to Transnet, and that its Personnel, contractors or agents shall be

required at all times to work in accordance with all such Applicable Laws including:

- 55.3.1.1. Public Finance Management Act No.1 of 1999 as amended;
- 55.3.1.2. Occupational Health and Safety Act No. 85 of 1993;
- 55.3.1.3. National Key Point Act No. 102 of 1980; and
- 55.3.1.4. Control of Access to Public Premises and Vehicles Act No. 53 of 1985;

55.3.2. it has full knowledge of all relevant statutory, collective and other stipulations applicable to the relationship with its Personnel, contractors and its relationship with Transnet. This includes, but is not limited to, the Labour Relations Act 66 of 1995 ("**Labour Relations Act**"), the Basic Conditions of Employment Act 75 of 1997, the Employment Equity Act 55 of 1998 and any other applicable employment legislation; and

55.3.3. it is not and will not in future be in contravention of any of the provisions of any Applicable Laws.

55.4 In the event of a contravention of any Applicable Law, the Service Provider shall as soon as is reasonably practicable in the circumstances take all steps to remedy such contravention.

55.5 If Transnet advises the Service Provider of any contravention of any Applicable Law in writing, the Service Provider shall, within 10 (ten) days after receipt of such notice, take all steps necessary to remedy such contravention and shall keep Transnet informed in writing of the steps taken and the implementation and the result thereof.

55.6 The compliance with all Applicable Laws is a material obligation of this Agreement and any breach of this clause 55 shall constitute a material breach of this Agreement on the part of the Service Provider.

55.7 Transnet shall for the duration of the Contract Period comply with all Applicable Laws including the Public Finance Management Act No. 1 of 1999 as amended and the Preferential Procurement Policy Framework Act No. 5 of 2000 together with all schedules and regulations thereto, as amended, in relation to this Agreement and any security relating to this Agreement.

56. **LIABILITY**

- 56.1 The Service Provider's liability under this clause 56 shall be in addition to any warranty or condition of any kind, express or implied by law or otherwise, relating to Services, including the quality of Services or any materials delivered pursuant to this Agreement.
- 56.2 Neither Party excludes or limits liability to the other Party for:
- 56.2.1. death or personal injury caused by its negligence, including its employees', agents' or Subcontractors' negligence; or
 - 56.2.2. fraud or theft.
- 56.3 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 56.3 shall be limited to direct damages.
- 56.4 Subject always to clauses 56.1 and 56.2, 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.
- 56.5 Subject to clauses 56.1 to 56.4, 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.
- 56.6 If for any reason the exclusion of liability in clause 56.5 is void or unenforceable, either Party's total liability for all loss or damage under this Agreement shall be as provided in clause 56.3.
- 56.7 Nothing in this clause 56 shall be taken as limiting the liability of the Parties in respect of clauses 67 [Confidential Information] and 66 [Intellectual Property Rights].
- 56.8 The Service Provider shall not, at any time, be liable for any injury, loss or damage (whether direct or indirect, consequential or otherwise) to person or property suffered by

Transnet, its employees, agents, visitors, any member of the public or any other persons whomsoever, arising out of –

56.8.1. the Service Provider having entered into or implemented the Individual Contract with Transnet; or

56.8.2. Transnet's failure to carry out its obligations under the Lease; or

56.8.3. the operation of the Vehicle by Transnet, its employees or agents.

56.9 Transnet hereby indemnifies the Service Provider against any claims, including costs and expenses (which includes costs on an attorney and own client scale) incurred in connection therewith, arising from any of the matters contemplated in clause 56.8.

57. INSURANCE BY THE SERVICE PROVIDER

57.1 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 insurance against 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.

57.2 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.

57.3 Subject to clause 57.4, if the Service Provider fails to effect adequate insurance under this clause 57, 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.

57.4 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 57.1 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.

58. SERVICE PROVIDER OBLIGATIONS

58.1 The Service Provider shall:

- 58.1.1. employ suitably qualified and trained Personnel;
- 58.1.2. respond promptly to all complaints and enquiries from Transnet;
- 58.1.3. inform Transnet immediately of any dispute or complaint arising in relation to the rendering of the Services;
- 58.1.4. conduct its business in a professional manner that will reflect positively upon the Service Provider and the Services;
- 58.1.5. ensure that a full and accurate set of records is kept of all transactions relating to the performance of the Services for a period of 5 (five) years after the end of the Contract Period or the Last End Date, whichever occurs later;
- 58.1.6. on reasonable prior written notice and in order to enable Transnet to determine whether the provisions of this Agreement are being complied with:
 - 58.1.6.1. provide Transnet with such information relating to the Services as it may reasonably require;
 - 58.1.6.2. allow Transnet or its authorised representatives to conduct interviews with any of the Service Provider's Personnel, subject to reasonable notice being given to the Service Provider;
 - 58.1.6.3. allow Transnet to inspect and take copies of any documents of the Service Provider relating to the Services, including all data, information, procedures, event logs, transaction logs, audit trails, books, records, contracts and correspondence;

- 58.1.6.4. allow Transnet to inspect or take copies of any item of any description (other than software); and
- 58.1.6.5. allow Transnet or its authorised representatives such access to any premises of the Service Provider as is necessary to enable Transnet to inspect or take copies of the items;
- 58.1.7. in respect to any information required to be provided to Transnet pursuant to clause 58.1.16, shall be provided by the Service Provider to Transnet in such form (including a form otherwise than in writing) as Transnet may reasonably specify;
- 58.1.8. where any information required for the inspection is kept by means of a computer, the Service Provider shall give Transnet such reasonable assistance it requires to facilitate inspection and the taking of copies of the information in a visible and legible form or to inspect and check the operation of any computer and any associated apparatus or material that is or has been in use in connection with the keeping of the information;
- 58.1.9. in respect of an inspection, conduct such during the Service Provider's Business Hours and with the minimum of interference in the provision of the Services and the Service Provider's other operations;
- 58.1.10. notwithstanding the foregoing, should Transnet reasonably suspect any fraudulent or other unlawful activity by the Service Provider or its Personnel, Transnet, its inspectors or other authorised agents shall have the right of immediate access to all the records and sites of the Service Provider and the Service Provider agrees to provide reasonable assistance at all times during the Contract Period or at any time thereafter; and
- 58.1.11. not be entitled to receive any remuneration for the time or effort of any of its Personnel complying with the provisions of this clause, provided that should Transnet uncover any Prohibited Act, the Service Provider shall be liable for all reasonable costs reasonably incurred by Transnet in respect of any investigation. Without limiting the generality of the foregoing, the Service Provider shall sign the Service Provider integrity pact set out in ANNEXURE ;

- 58.1.12. 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 Services and the conduct of the business and activities of the Service Provider;
 - 58.1.13. observe and ensure compliance with all requirements and obligations as set out in the labour and related legislation of the Republic, including the Occupational Health and Safety Act No. 85 of 1993;
 - 58.1.14. comply with all Applicable Laws, incidental to the fleet industry and this Agreement in general including the provisions of any report(s) of a regulatory nature which Transnet may specifically require from time to time, and demonstrate sound environmental policies, management and performance;
 - 58.1.15. ensure the validity of all renewable certifications, including but not limited to its Tax Clearance Certificate and its Verified BBBEE Score, for the duration of the Contract Period. Should the Service Provider fail to present Transnet with such renewals as they become due and persist with such failure for a period of more than 30 (thirty) Business Days following notice from Transnet, Transnet shall be entitled, in addition to any other rights and remedies it may have in terms of this Agreement, to terminate this Agreement forthwith, without any liability and without prejudice which Transnet may have for damages against the Service Provider; and
 - 58.1.16. should it encounter any problem or identify any trend in relation to any of the Services or the Vehicles or any component thereof, which could cause, or which indicates the likely occurrence of a disruption to Transnet's business or the Availability of the Services or Vehicles, report such matter to Transnet in writing without delay. Thereafter, the Parties will agree on corrective measures to be taken to address or pre-empt the problem.
- 58.2 The Service Provider acknowledges and agrees that it shall at all times:
- 58.2.1. render the Services and perform all its duties with honesty and integrity;
 - 58.2.2. communicate openly and honestly with Transnet and demonstrate a commitment to performing the Services timeously, efficiently in accordance with the Required Service Levels;

- 58.2.3. use its best endeavours and make every diligent effort to meet agreed deadlines;
- 58.2.4. treat its own Personnel, as well as Transnet's Personnel with fairness, courtesy and respect for their human rights;
- 58.2.5. practice and promote its own internal policies aimed at prohibiting and preventing unfair discrimination;
- 58.2.6. treat all enquiries from Transnet in connection with the 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 58.2.6, the Service Provider shall advise Transnet of the delay and the reasons therefor and will keep Transnet informed of progress made regarding the enquiry;
- 58.2.7. when requested by Transnet, provide clear and accurate information regarding the Service Provider's own policies and procedures;
- 58.2.8. 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;
- 58.2.9. not commit or knowingly allow any of its Personnel to commit a Prohibited Act;
- 58.2.10. not mislead Transnet or its Personnel, by its conduct;
- 58.2.11. 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; and
- 58.2.12. immediately report to Transnet any unethical, fraudulent or otherwise unlawful conduct of which it becomes aware in connection with Transnet or the provision of the Services.

59. **TRANSNET'S OBLIGATIONS**

- 59.1 Transnet shall ensure that any person over which it has direct control performs its duties and functions referred to in this Agreement in a manner which enables the Service Provider to comply with its obligations in terms of this Agreement.

- 59.2 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 Services as may be necessary for the Service Provider to perform the Services and its obligations under this Agreement, but for no other purposes. Transnet's compliance with any request for information under this clause is subject to any internal security rules and requirements and subject to the observance of the Service Provider of its confidentiality obligations under this Agreement or any Applicable Laws.
- 59.3 Subject to compliance with the requirements of **ANNEXURE 11**, Transnet agrees to provide reasonable access to the Service Provider or its Personnel to access and use of its facilities as is necessary to allow the Service Provider to perform its obligations under this Agreement. Such use and access shall be given free of charge to the Service Provider.
- 59.4 Transnet shall be responsible, at its cost for oil and cooling fluid top-up with regards to all Vehicles and the Owned Vehicles and any other cost or issue that is not specifically dealt with in this Agreement.
- 59.5 Furthermore Transnet shall –
- 59.5.1. ensure that all instructions for the use of the Vehicles contained in the owner's manual of the Vehicle, particularly those instructions regarding the running-in of the Vehicle, engine speeds, road speeds and the use of lubricants and other service products shall be carried out accurately and fully;
 - 59.5.2. only permit the Vehicle to be operated by a properly qualified driver having the required valid licence, free of suspension, for the particular class of Vehicle;
 - 59.5.3. not permit any person other than its servants and employees or other individuals specifically authorised by the Transnet to operate the Vehicle;
 - 59.5.4. only use the Vehicle for the purpose for which it was designed, and shall not load the Vehicle in excess of its gross vehicle mass as specified by its OEM;
 - 59.5.5. not permit the Vehicle to be used in breach of any law or regulation or the requirements of any local government or local authority;
 - 59.5.6. not permit the use of the Vehicle for any illegal or hazardous purpose or by a person under the influence of alcohol or narcotics or suffering under a mental or physical disability, or for the unlawful transportation of goods or persons

for hire or remuneration or in any manner that would invalidate any insurance policy relating to the Vehicle;

- 59.5.7. not permit, without the Service Provider's prior written consent, and subject to such additional terms and conditions as the Service Provider may in each instance direct, the operation or removal of the Vehicle outside of the borders of South Africa;
- 59.5.8. ensure that no paint, mark, decal, transfer or other identification is placed on the Vehicle without the Service Provider doing so;
- 59.5.9. not permit the Vehicle to be seized or attached under any legal process and shall keep it free from any lien, hypothec or attachment of whatever nature;
- 59.5.10. keep the Vehicle under its care and control at all times and shall ensure that it is used and operated in such manner so as to ensure that the Vehicle will be returned to the Service Provider on termination of the Individual Contract in the condition referred to in clause.

60. **SERVICE PROVIDER'S PERSONNEL**

60.1 The Service Provider shall:

- 60.1.1. employ suitably qualified and trained Personnel to provide the Services and shall allocate, in its discretion, resources in accordance with the technical skills and knowledge required, provided that any exercise of such discretion by the Service Provider shall not negatively impact on the provision of the Services;
- 60.1.2. ensure that its Personnel are reliable and are sufficiently knowledgeable in order to resolve Service queries as well as to provide Transnet with suitable advice on recommendations and substitutions of Vehicles from time to time given Transnet's relevant operational requirements; and
- 60.1.3. 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, on good cause shown, that such Personnel assigned are in any respect unsatisfactory or undesirable, including where any such Personnel are, or are expected to be or have been

absent for any period, then the Service Provider shall promptly supply a replacement of equivalent calibre and experience.

- 60.2 The Service Provider's Personnel shall be regarded at all times as employees, agents or sub-contractors of the Service Provider and no relationship of employment 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 of the Service Provider by Transnet.
- 60.3 The Service Provider warrants that all its Personnel will be entitled to work in South Africa.
- 60.4 Without derogating from the foregoing, should the Service Provider replace its Contract Manager for any reason whatsoever, it shall notify Transnet thereof in writing and shall ensure, to the greatest extent possible, that a suitable period of handover and overlap, being not less than 15 (fifteen) Business Days, takes place between the new and the incumbent Contract Manager. The costs of such handover shall be borne by the Service Provider.
- 60.5 The Service Provider shall ensure that its Personnel comply with all reasonable requirements made known to the Service Provider by Transnet concerning any conduct at any Transnet premises or any other premises where the Services are to be performed, including but not limited to security regulations, policy standards and codes of practice and health and safety requirements including those specified in **ANNEXURE 11**. The Service Provider shall ensure that such Personnel at all times act in a lawful and proper manner in accordance with these requirements.
- 60.6 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:
- 60.6.1. be undesirable;
 - 60.6.2. represent a threat to confidentiality or security;
 - 60.6.3. whose presence would be in breach of any rules and regulations governing Transnet's Personnel;
 - 60.6.4. provided that Transnet notifies the Service Provider of any such refusal with reasons therefor. The reasonable removal of any such individual from any

such premises shall not relieve the Service Provider of its obligations under this Agreement.

- 60.7 The Service Provider warrants that it is conversant with section 198(4) of the Labour Relations Act and warrants further that any contractor supplied by the Service Provider shall be an independent contractor as defined in the Labour Relations Act and the Occupational Health and Safety Act 85 of 1993 and will render the Services as such.
- 60.8 The Service Provider hereby indemnifies and holds Transnet harmless against any claim or action whatsoever in terms of section 198(4) of the Labour Relations Act, instituted against Transnet by a contractor of the Service Provider. In the event that the Service Provider or any of its contractors rendering the Services to Transnet, become involved in arbitration or other proceedings falling under a collective agreement under a bargaining council, then the Service Provider shall immediately inform Transnet thereof and, on request, supply Transnet with a copy of any award made pursuant to such proceedings or agreement and any documentation that Transnet may request in respect thereof.
- 60.9 The Service Provider will be solely responsible for the payment of remuneration and associated benefits, if any, to its Personnel and shall withhold and remit all statutory deductions in respect of its Personnel in conformance with any Applicable Law.

61. SECTION 197 INDEMNITY

- 61.1 Nothing in this Agreement shall be deemed to constitute the outsourcing of a function within Transnet from Transnet to the Service Provider which in any way could be construed as a standalone business. Instead, the nature of this Agreement relates to the provision of Vehicles and the rendering of Services to Transnet by the Service Provider. Accordingly, upon the termination of this Agreement for whatever reason, no transfer of the employment of the employees employed by the Service Provider and dedicated to this Agreement shall take place from the Service Provider to Transnet.
- 61.2 To the extent that a court determines that the provisions of Section 197 of the Labour Relations Act applies to this Agreement notwithstanding the provisions of clause 61.1, the Parties hereby indemnify each other against all loss, liability, costs, damage and expense of every nature whatever (including, but not limited to, actual reasonable legal costs incurred on the scale as between attorney and own client, disbursements and other charges) incurred by either Party directly or indirectly as a result of and/or attributable to:

- 61.2.1. any employee claiming that his employment contract should transfer from one Party to the other, or
- 61.2.2. the actual transfer of the employment contract of any employee from one Party to the other, whether by order of court or operation of law or for any other reason.

62. **CONTRACT MANAGEMENT**

- 62.1 As soon as reasonably practicable after the Signature Date, each of the Operating Divisions and the Service Provider shall appoint a Contract Manager or delegated person to be responsible for the overall delivery of Services by the Service Provider to Transnet.
- 62.2 Each Party's Contract Managers or delegated persons shall be authorised to manage the operational elements of this Agreement on behalf of the Operating Division and the Transnet Group and the Service Provider respectively and the Parties shall procure that their Contract Managers have the necessary skill, expertise and experience to carry out such responsibility.
- 62.3 Unless otherwise specifically provided in this Agreement or agreed to in writing by a Party, such Party's Contract Manager/s or delegated persons will be entitled to make operational decisions concerning the provision of the Services but shall not be authorised to bind or commit that Party to any amendments to this Agreement.
- 62.4 The Transnet Group Representative and the Service Provider Representative shall manage this Agreement on an overall strategic basis and in line with Transnet's prevailing contract management policies and procedures.
- 62.5 Either Party may replace its Contract Manager/s or delegated persons on written notice to the other Party. Similarly, Transnet shall be entitled to change the identity of the Transnet Group Representative and the Service Provider shall be entitled to change the identity of the Service Provider Representative.
- 62.6 All communications concerning the performance of this Agreement shall, unless otherwise agreed to between the Parties, take place between the Parties' Contract Managers or delegated persons save insofar as specific reference is made in this Agreement to the Fleet Managers or the Transnet Group Representative and the Service Provider Representative, as the case may be.

63. MEETINGS

63.1 Fleet Management Meetings

- 63.1.1. In addition to the meetings of the Operational Steercom contemplated in clause 63.2, monthly Fleet Management Meetings shall be held between the various Fleet Managers and the Service Provider Contract Manager. The time and place of such monthly Fleet Management Meetings shall be agreed between the Parties in writing from time to time and may be held by telephone or another form of electronic communication provided that each participant can hear and speak to all other participants at the same time.
- 63.1.2. The Fleet Management Meetings shall be conducted on an Operating Division per Operating Division basis.
- 63.1.3. An agenda and monthly reporting template for use during the Fleet Management Meetings must be developed and agreed by the Parties as soon as reasonably possible after the Commencement Date.
- 63.1.4. The Fleet Management Meetings shall deal with operational details pertaining to specific issues or incidents relating to that Operating Division on an Individual Contract basis.
- 63.1.5. In addition, the Fleet Management Meetings shall be the forum for:
 - 63.1.5.1. problem solving and generating of savings ideas to reduce the total costs of the Fleet and the related Services including the consideration and/or development of savings ideas for implementation and specific reports submitted by either Party on aspects related to the operation, application and management of the Services as provided for in this Agreement;
 - 63.1.5.2. discussion of all current day-to-day divisional operational reporting aspects relating to this Agreement;
 - 63.1.5.3. identification of cost savings and efficiency improvements on Fleet maintenance and practices as well as general discussions regarding the provision of the Services, including but not limited to:

- 63.1.5.3.1. development of initiative proposals;
 - 63.1.5.3.2. implementation of cost saving initiatives and action plans;
 - 63.1.5.3.3. continuous measuring and benchmarking;
 - 63.1.5.3.4. qualifications of savings, including impact and cost;
 - 63.1.5.3.5. correction of deviations;
 - 63.1.5.3.6. outstanding payments at the Operating Division level;
 - 63.1.5.3.7. delivery of Vehicles;
 - 63.1.5.3.8. adherence by the Service Provider to the Operational SLA; and
 - 63.1.5.3.9. discussion and reconciliation of consumption, supply figures and approval of Tax Invoices and month-end statements, where necessary.
- 63.1.6. Records of action plans developed during the Fleet Management Meetings must be kept as part of the Fleet Management Meetings and shall be included as part of the agenda pack for all Fleet Management Meetings. The Service Provider shall take all minutes of all Fleet Management Meetings and shall furnish the chairperson of the Fleet Management Meetings with a copy thereof within 2 (two) Business Days after the meetings. The Parties agree that the chairperson of all Fleet Management Meetings shall be the Transnet Fleet Manager who is present at those meetings or in the event that more than one Fleet Manager is present, then any one of them (as determined by them). All action items to be discussed during the next Fleet Management Meeting shall be furnished by the Service Provider to the chairperson of the Fleet Management Meetings by no later than 2 (two) weeks prior to the immediately succeeding meeting. All documentation pertaining to the Fleet Management Meetings including the agenda, agenda packs, minutes and other governance documents shall be retained electronically by the Service Provider for the duration of the Contract Period and the Service Provider shall

provide all members of the Fleet Management Meetings and all members of the Operational Steercom with unimpeded access to such documentation.

63.1.7. In the event that the Fleet Management Meetings:

63.1.7.1. require clarity on issues that fall within the scope of the Operational Steercom; or

63.1.7.2. are unable to agree on an issue resulting in a deadlock being reached which results in the Fleet Management Meeting remaining seized with such matters for more than 2 (two) consecutive sessions;

63.1.7.3. such issues or matters shall be referred to the Operational Steercom for resolution.

63.2 Operational Steercom

63.2.1. Management of the overall operational aspects of the Services and the overall operational relationship between the Parties shall vest in the Operational Steercom.

63.2.2. The meetings of the Operational Steercom shall be held on a National basis with attendance by all Operating Divisions.

63.2.3. The functions of the Operational Steercom shall be:

63.2.3.1. to provide a means for the joint review of issues relating to all day-to-day operational aspects of the performance of the Services pursuant to this Agreement;

63.2.3.2. to monitor and manage the performance of the Service Provider at an operational level in relation to each of the Operating Divisions as well as to monitor and manage the performance of the Services by the Service Provider across the Transnet Group Nationally on an aggregated basis and identify trends across the Transnet Group;

- 63.2.3.3. to make joint operational decisions relative to the rendering of the Services to Transnet;
- 63.2.3.4. on an annual basis, to select the Strategic Project that the Service Provider shall undertake based on proposals made in this regard by the Service Provider; and
- 63.2.3.5. to constitute the first port of call for the Parties relative to the resolution of disputes or disagreements arising:
 - 63.2.3.5.1. in terms of the rendering of the Services where this Agreement is silent as to the dispute resolution mechanism in respect of that particular issue; or
 - 63.2.3.5.2. which cannot be resolved by the Fleet Management Meetings and which have been escalated to the Operational Steercom pursuant to clause.
- 63.2.4. The Operational Steercom shall be constituted and shall function in accordance with the following provisions:
 - 63.2.4.1. it shall comprise the Service Provider Contract Manager and the Fleet Managers appointed by Transnet across all Operating Divisions as well as the Transnet Group Representative and the Service Provider Representative;
 - 63.2.4.2. the chairperson of the Operational Steercom shall be the Transnet Group Representative;
 - 63.2.4.3. the Operational Steercom may, from time to time, co-opt additional persons to sit in on or attend meetings of the Operational Steercom, provided that none of such additional persons shall have any right to vote on any matter for and on behalf of the Party that has co-opted that additional person;
 - 63.2.4.4. subject to the provisions of this Agreement, the members of the Operational Steercom may adopt such procedures and practices for the conduct of the activities of the Operational Steercom as they consider appropriate from time to time. Any such procedures and/or practices shall be reduced to writing and

signed by both Parties failing which they shall not become effective;

- 63.2.4.5. it shall meet on at least a quarterly basis during the Contract Period, or at such other intervals as the Operational Steercom may agree. In addition, the Operational Steercom shall meet upon the request, on reasonable notice, of any Party. The time and place for meetings of the Operational Steercom shall be determined by the chairperson of the Operational Steercom for the time being, with due consideration to the availability of the other members of the Operational Steercom;
- 63.2.4.6. duly appointed alternate representatives of both Parties shall be entitled to attend meetings of the Operational Steercom and shall have the right to speak and vote at the Operational Steercom, provided that to the extent that a Contract Manager and/or Fleet Manager and his alternate and/or the Transnet Group Representative and/or Service Provider Representative and his alternate are both present at the same Operational Steercom meeting, only the Contract Manager and/or Fleet Manager and/or Transnet Group Representative and/or Service Provider Representative (as the case may be), shall be entitled to vote on any matter which requires a vote;
- 63.2.4.7. the agenda and reporting templates to be used by the Operational Steercom shall be developed and agreed by the Parties as soon as reasonably possible after the Commencement Date;
- 63.2.4.8. the quorum of all meetings of the Operational Steercom shall be a minimum of the Transnet Group Representative, the Service Provider Representative and at least 3 (three) Fleet Managers;
- 63.2.4.9. the terms of reference for the Operational Steercom shall be determined during the Contract Period by the members of the Operational Steercom as soon as is reasonably practicable after the Signature Date;

- 63.2.4.10. the representatives of each of the Parties are duly authorised to make operational decisions on behalf of that Party at the meetings of the Operational Steercom. Without derogating from the generality of the foregoing, each of the Transnet Fleet Managers for each of the Operating Divisions shall represent the views of the Operating Division that appointed him as a Fleet Manager only;
- 63.2.4.11. all recommendations, agreements and other decisions of the Operational Steercom must be reached by majority vote, it being recorded that each member of the Operational Steercom or his alternate shall be entitled to 1 (one) vote, provided that the chairperson shall not have a casting vote; and
- 63.2.4.12. meetings of the Operational Steercom may be held in person or by telephone or another form of electronic communication provided that each participant can hear and speak to all other participants at the same time.

In the event that the Operational Steercom is unable to adopt a resolution in respect of a particular matter as a result of a deadlock being reached between the Parties, including matters with which the Operational Steercom is seized for more than 2 (two) consecutive sessions, such issues or matters shall be resolved in accordance with the provisions of clause 79.

- 63.2.5. The minutes of the Fleet Management Meetings referred to in clause 63.1.6 shall be noted by the Operational Steercom and any trends identified shall be dealt with by the Operational Steercom.
- 63.2.6. The Operational Steercom may appoint working groups as and when required to investigate and research specific operational matters relating to the Fleet and any other matter arising out of or in connection with this Agreement.
- 63.2.7. All business transacted at meetings of the Operational Steercom shall be recorded by a Transnet representative and approved by the chairperson within 2 (two) Business Days of the date of such meeting. The minutes shall be taken by the Service Provider and circulated to the members of the

Operational Steercom by the Service Provider within 7 (seven) Business Days of each meeting. The minutes of each meeting of the Operational Steercom shall be adopted at the immediately succeeding Operational Steercom meeting as the first agenda item. The minute book recording the meetings of all Operational Steercom meetings shall at all times be available for inspection by the members of the Operational Steercom or their duly authorised agents who shall be entitled to take copies thereof or to make extracts therefrom.

63.2.8. Records of action plans must be developed and tracked as part of the Operational Steercom meetings and shall be included as part of the agenda pack for all Operational Steercom meetings. All documentation pertaining to the Operational Steercom meetings including agenda, agenda packs, minutes and other governance documents shall be retained electronically by the Service Provider for the duration of the Contract Period and the Service Provider shall provide all members of the Operational Steercom with unimpeded access to such documentation.

63.2.9. Disputes between Operational Steercom and SERVICE PROVIDER should be escalated to the Group CPO of Transnet and CEO of SERVICE PROVIDER.

64. CONFLICT OF INTERESTS

64.1 The Service Provider warrants that as at the Commencement Date and the Signature Date, no Transnet employee has any personal interest nor are his or her activities influenced by his or her ability to act in the best interests of Transnet at all times.

64.2 The Service Provider has disclosed in writing any interests which exist between it and any employee of Transnet including any director of Transnet, whether executive or non-executive.

64.3 Should a conflict of interests arise during the Contract Period, the Service Provider shall notify Transnet thereof in writing and Transnet shall then determine the extent and impact of such conflict of interest. To the extent that Transnet determines that the conflict of interest is material, it shall notify the Service Provider in writing of the actions to be taken by the Service Provider in order to remedy such conflict of interest.

64.4 Should there be no reasonable measures that can be taken by the Service Provider in this regard or should Transnet uncover the conflict of interest and not have been notified

thereof by the Service Provider in accordance with clause 64.3, Transnet shall be entitled to terminate this Agreement without any liability (save insofar as the payment of Tax Invoices for Services rendered prior to the notification contemplated in clause 64.3) on 60 (sixty) days' prior written notice; provided that to the extent that Transnet has evidence demonstrating that the Service Provider has attempted to conceal the conflict of interest from Transnet in order to prevent a possible termination by Transnet of this Agreement, Transnet shall not be liable to make any payment that has accrued to the Service Provider as at the date of notification or the discovery of the conflict of interest by Transnet.

65. FORCE MAJEURE

- 65.1 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 the Agreement caused by a *Force Majeure* Event 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.
- 65.2 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 the Agreement in order to accommodate the new circumstances caused by the *Force Majeure* Event. If a Party fails to agree to such modifications proposed by the other Party within 90 (ninety) calendar days of the act of the *Force Majeure* Event first occurring, either Party may thereafter terminate the Agreement with immediate notice.
- 65.3 The Service Provider must provide written confirmation from related parties to substantiate any force majeure related issue to deliver the services.

66. INTELLECTUAL PROPERTY RIGHTS

- 66.1 All Intellectual Property Rights of the Service Provider and/or third party vest in the Service Provider and/or third party, as appropriate.
- 66.2 All rights in the Transnet name and logo remain the absolute property of Transnet.
- 66.3 The Service Provider warrants that no aspect of the Services provided in terms thereof will infringe any third party Intellectual Property Rights.

- 66.4 The Service Provider shall promptly notify Transnet, in writing, of any infringement or apparent or threatened infringement or any circumstances which may potentially give rise to an infringement, or any actions, claims or demands in relation to any Intellectual Property Rights.
- 66.5 In the event Transnet becomes aware of any infringement of its Intellectual Property Rights by any third party as a result of this Agreement or the Services rendered by the Service Provider, the Service Provider shall, at its cost, defend Transnet against any claim that the Services infringe any such third party Intellectual Property Rights, provided that Transnet gives notice to the Service Provider of such claim and the Service Provider controls the defence thereof, subject to the involvement of the relevant Transnet stakeholder. In no event shall the Service Provider be entitled to make any settlement or put forward any version which, in the reasonable discretion of Transnet, constitutes the weakening of Transnet's legal or commercial position in respect of its Intellectual Property Rights.
- 66.6 The Service Provider indemnifies Transnet, and undertakes that it will pay all costs, damages and attorney fees, if any, finally awarded against Transnet in any action which is attributable to such claim and will reimburse Transnet with all costs reasonably incurred by Transnet in connection with any such legal proceedings irrespective of whether any such legal proceedings have *de facto* been launched by a third party.
- 66.7 Should any infringement claim be made against Transnet by any third party pursuant to the Services, Transnet shall give the Service Provider written notice thereof within 3 (three) days of becoming aware of such claim to enable the Service Provider to take steps to contest it.
- 66.8 Should any third party succeed in its claim for the infringement of any third party Intellectual Property Rights, the Service Provider shall, at its discretion and within 30 (thirty) Business days of the Services having been found to infringe such third party Intellectual Property Rights, at its own cost:
- 66.8.1. obtain for Transnet the right to continue using the subject of infringement or the parts thereof which constitute the infringement;
 - 66.8.2. replace the subject of infringement or the parts thereof which constitute the infringement with another product or service which does not infringe and which is materially similar to the subject of infringement;

- 66.8.3. alter the subject of infringement in such a way as to render it non-infringing while still in all respects operating in substantially the same manner as the subject of infringement; or
 - 66.8.4. withdraw the subject of infringement.
- 66.9 The Service Provider warrants that 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.

67. **CONFIDENTIAL INFORMATION**

- 67.1 Each Party ("**Receiving Party**") must treat and hold as confidential the Confidential Information, which it receives from the other Party ("**Disclosing Party**") or which becomes known to it concerning pursuant to this Agreement.
- 67.2 The Receiving Party agrees that in order to protect the proprietary interests of the Disclosing Party in its Confidential Information:
- 67.2.1. it will only make the Confidential Information available to those of its Personnel who are actively involved in the execution of this Agreement and who have signed appropriate non-disclosure agreements;
 - 67.2.2. it will initiate internal security procedures reasonably acceptable to the Disclosing Party to prevent unauthorised disclosure and will take all practical steps to impress upon those Personnel who need to be given access to Confidential Information, of the confidential nature thereof;
 - 67.2.3. subject to the right to make the Confidential Information available to its Personnel under clause 67.2.1, it will not at any time, whether during the Contract Period or thereafter, either use any Confidential Information of the Disclosing Party for its own purposes or directly or indirectly disclose any Confidential Information of the Disclosing Party to third parties;
 - 67.2.4. all written instructions, drawings, notes, memoranda and records of whatever nature relating to the Confidential Information of the Disclosing Party which have or will come into the possession of the Receiving Party and its Personnel, will be, and will at all times remain, the sole and absolute property of the Disclosing Party and shall be promptly handed over to the Disclosing Party

when no longer required for the purposes of this Agreement. In no event shall any proprietary rights in respect of the Confidential Information be transferred in any manner to the Receiving Party by virtue of its access to such Confidential Information. In addition, the disclosure of Confidential Information by the Disclosing Party to the Receiving Party shall not create a right to the Confidential Information of the Disclosing Party in terms of the provisions of any Applicable Laws.

67.3 Save for any documents that should be retained in terms of Applicable Law, within 30 (thirty) days of the later of the Expiry Date, the Termination Date or the Last End Date, as the case may be, the Receiving Party will deliver to the Disclosing Party, or at the Disclosing Party's option, destroy or expunge any electronic copies of documents forming part of the Confidential Information in its possession or under its direct or indirect control and shall confirm under oath that all documents have been returned, destroyed or expunged as the case may be.

67.4 The foregoing obligations shall not apply to any Confidential Information which:

- 67.4.1. is lawfully in the public domain at the time of disclosure;
- 67.4.2. subsequently and lawfully becomes part of the public domain by publication or otherwise;
- 67.4.3. subsequently becomes available to the Receiving Party from a source other than the Disclosing Party, which source is lawfully entitled without any restriction on disclosure to disclose such Confidential Information; or
- 67.4.4. is disclosed pursuant to a requirement or request by operation of Applicable Law or court order; provided that to the extent legally permissible, the Receiving Party shall notify the Disclosing Party in writing as soon as is reasonably practicable in order to allow the Receiving Party to take appropriate legal action to prevent or limit the disclosure of the Confidential Information. To the extent that the disclosure of such Confidential Information is not readily available to the public other than by proving a right to such Confidential Information and initiating a request for such Confidential Information in terms of any Applicable Laws, the Confidential Information shall be deemed not to fall within the exclusion set out in this clause 67.4.4.

- 67.5 Nothing in this clause 67 shall preclude the Parties from disclosing the Confidential Information to their professional advisors in the *bona fide* course of seeking business and professional advice.
- 67.6 Notwithstanding the provisions of clause 56.1, the Receiving Party hereby indemnifies the Disclosing Party against any loss or damage, which the Disclosing Party may suffer as a result of a breach of this clause by the Receiving Party or its Personnel.
- 67.7 The provisions of this clause 67 are severable from the rest of the provisions of this Agreement and shall survive its termination and continue to be of full force and effect for a period of 10 (ten) years after the later of the Termination Date, the Expiry Date or the Last End Date, as the case may be.

68. **PROTECTION OF PERSONAL INFORMATION**

- 68.1 By signing this Agreement, Transnet consents to its Personal Information and that of its Personnel being Processed as contemplated in this Agreement. The Service Provider shall destroy or delete any record of Personal Information of Transnet and/or its Personnel or de-identify it on the expiry of a 5 (five) year period following the later of the Termination Date, the Expiry Date or the Last End Date, as the case may ("**Processing Period**"). During the Processing Period, the Service Provider shall maintain documentation of all Processing operations under its responsibility.
- 68.2 The Service Provider warrants and undertakes to Transnet that it has obtained the prior written consent of its Personnel to collect and disseminate to Transnet or its security Personnel any Personal Information of the Personnel for the purpose of security clearance procedures at Transnet's premises and shall indemnify and hold Transnet, its clients and suppliers and any third party operating any of Transnet's premises on its behalf harmless from any claim that may arise as a result of the furnishing of such Personal Information to Transnet, any of its clients or suppliers or any third party any Transnet premises, as the case may be.

69. **BENCH MARKING**

- 69.1 The Service Provider shall, on an annual basis, submit a review of the Managed Maintenance Fee, the FML Lease Payment and the STR Rates set out in **ANNEXURE** (collectively "**Rates**") against current market rates for comparable services and vehicles.
- 69.2 At Transnet's discretion and direction, each Party shall embark on a benchmarking exercise (following the procedure set out in the remainder of this clause 69) every 24 (twenty-four) months where each Party shall benchmark the Rates against the prevailing market rates at that Party's own cost.
- 69.3 Transnet shall use its internal processes to benchmark the Rates.
- 69.4 In the event it emerges that the Rates are materially higher than the reasonable benchmark ascertained by the Parties or that Transnet can acquire similar Services of a like quality, on like terms and conditions, subject to like service levels and penalties and with like volumes and contract durations as recorded in this Agreement, from another single supplier at a total delivered cost to Transnet that is lower than the total delivered cost of the Services acquired hereunder from the Service Provider, Transnet shall have the right to notify the Service Provider of such total delivered cost and the Service Provider shall have an opportunity, for a period of 30 (thirty) days of the date of such notice ("**Adjustment Period**"), to adjust the Rates in order to result in the same total delivered cost to Transnet. For the purposes of this clause, the Rates shall be "materially higher" if they are more than 5% (five percent) higher than the reasonable benchmark, subject to the provisions of clause 69.6.
- 69.5 The benchmarking exercise referred to in clause 69.4 shall be conducted on a Three Quote Basis.
- 69.6 Should the benchmarking exercise contemplated in clause 69.4 result in what Transnet, exercising its reasonable discretion, determines to be unrealistically low, Transnet shall be entitled to conduct an investigation into the sustainability of any unrealistically low rate. Should Transnet, in its sole and absolute discretion, determine such unrealistically low rate to be unsustainable, it shall take this into account and shall not oblige the Service Provider to reduce the Rates.
- 69.7 To the extent that the benchmarking exercise determines that the Rates are:
- 69.7.1. equal to or lower than benchmarked rates, the Rates shall remain unchanged;
- or

69.7.2. higher than the benchmarked rates, the Service Provider shall be entitled to reduce the Rates to equal the benchmarked rates within the Adjustment Period.

69.8 If the Service Provider fails to match the benchmarked rates or cannot legally do so, before the expiry of the Adjustment Period, Transnet may within 30 (thirty) Calendar Days after the expiry of the Adjustment Period:

69.8.1. acquire the Services from another supplier; or

69.8.2. terminate this Agreement on 60 (sixty) Business Days' notice to the Service Provider, without any Penalty, liability or further obligation.

70. **INVOICING AND PAYMENT**

70.1 Transnet shall make payment for all Services rendered by the Service Provider in terms of this Agreement subject to the remaining provisions of this clause 70.

70.2 Customer Information Schedules must be emailed to each Operating Division on the 2nd (second) business day of each month.

70.3 The Service Provider shall invoice each Operating Division on the basis agreed upon by each Operating Division at the Operational Steercom.

70.4 In the event that the Service provider fails to submit Tax Invoices and month-end statements on the dates agreed upon by the Operational Steercom in terms of clause 70.3, the Service Provider shall not be entitled to levy any interest on such Tax Invoices until the expiry of the period referred to in clause 70.7.

70.5 All amounts and other sums payable in terms of this Agreement are payable in South African Rands and are exclusive of VAT, unless expressly stated otherwise.

70.6 Transnet shall ensure that all electronic bulk approvals and payments are in line with the approval requirements of the South African Revenue Service.

70.7 All payments under this Agreement shall be made by electronic funds transfer within 30 (thirty) days after the date of receipt by Transnet of valid and undisputed Tax Invoices and month-end statements together with the supporting documentation from the Service Provider. The Service Provider's banking details are as follows (which banking details may be changed by notice from time to time):

Account holder	SERVICE PROVIDER
Bank:	
Branch:	
Branch Code:	255005
Account Number:	
Payment reference:	Invoice Number

- 70.8 Subject to the provisions of clause 70.4, should Transnet fail to make payment of any Tax Invoice submitted by the Service Provider within the period stipulated in clause 70.7 ("**Interest-Free Payment Period**"), the Service Provider shall be entitled to levy interest thereon at the Prime Rate determined from the day following the date of expiry of the Interest-Free Payment Period until date of payment in full.
- 70.9 The Service Provider shall be entitled to change its banking details specified in clause 70.7 from time to time on written notice to Transnet in accordance with the provisions of clause 78.
- 70.10 During the Operational Phase, where the payment of any valid and undisputed Tax Invoice is not made by the date specified in clause 70.7, the Service Provider shall be entitled to charge interest on the outstanding amount at the Prime Rate, which interest shall be levied against Transnet with effect from 30 (thirty) days after the due date for payment ("**Due Date**") until the outstanding amount is settled in full.
- 70.11 There shall be no interest levied on a Tax Invoice that is in dispute between the Parties unless it is subsequently found or agreed that the disputed amount was, in fact, due and payable, in which event interest shall be charged on the basis recorded in clause 70.10.

- 70.12 If any undisputed amount is due to Transnet, Transnet may in its sole discretion set off such amount against any amount due by Transnet to the Service Provider.
- 70.13 If Transnet disputes any item on any Tax Invoice, the relevant Fleet Manager shall advise the Service Provider Contract Manager of such dispute and the grounds therefor in writing within 7 (seven) days of the date of receipt of the Service Provider's Tax Invoice and Transnet shall make payment of the undisputed portion of the Tax Invoice.
- 70.14 The Service Provider shall, within 7 (seven) days, consider Transnet's objections to the Tax Invoice and either issue a Credit Note cancelling or amending the disputed Tax Invoice and submit a replacement Tax Invoice (where the Credit Note cancelled the disputed Tax Invoice) to Transnet or shall the Service Provider Contract Manager shall convene a meeting with the relevant Fleet Manager in order to resolve such dispute.
- 70.15 If the dispute is resolved in terms of clause 70.14, the Tax Invoice shall either become undisputed or a replacement Tax Invoice shall be issued to Transnet by the Service Provider; in which event, the remaining provisions of this clause 70 shall apply.
- 70.16 If the Parties are unable to reach agreement with regards to the disputed item, the matter shall be referred to the chief executive officer of SAICA (or its successor organisation) who shall nominate an independent chartered accountant to make a determination with regards to the disputed item. The independent chartered accountant shall, in making his determination, act as an expert and not as an arbitrator.

71. **WITHHOLDING OF PERFORMANCE**

- 71.1 Subject to the provisions of clause 71.4, the Service Provider may not under any circumstances (including non-payment by Transnet), withhold any Services or Vehicles from Transnet during the Contract Period, unless it validly terminates this Agreement in terms of clauses 7 or 72.
- 71.2 Should Transnet, in the absence of any:
- 71.2.1. *bona fide* dispute between the Parties in respect thereof; or
 - 71.2.2. material breach of this Agreement;
- fail to make payment of any amount due to the Service Provider under this Agreement for more than 90 (ninety) days from the date of a statement submitted in terms of clause 70.7 (provided that the requisite documentation has been properly submitted as contemplated

in that clause and further provided that a Tax Invoice submitted in respect of the unpaid portion of that statement is not disputed in terms of the provisions of clause 70.13), the Service Provider shall notify Transnet of such failure in writing and shall copy the Transnet Group Representative on such notification.

- 71.3 The Transnet Group Representative shall use his or her reasonable commercial endeavours to resolve such failure within 30 (thirty) Business Days of the date of receipt of the notice specified in clause 71.2.
- 71.4 If Transnet fails to pay the amount of the demand referred to in clause 71.2 within 14 (fourteen) Business Days of receipt by Transnet of notice referred to in that clause, the Service Provider shall not be obliged to meet any further orders for new FML Vehicles or STR Vehicles received from Transnet. For the avoidance of doubt, in no event shall the Service Provider be entitled to withhold Services in respect of any Individual Contracts concluded before the expiry of the specified 14 (fourteen) Business Day period.
- 71.5 To the extent that the Service Provider withholds the Services in terms of the provisions of clause 71.4 in respect of one of Transnet's Operating Divisions, the Service Provider shall in no way be entitled to withhold the Services from another Operating Division.
- 71.6 In the event that a dispute arises in terms of this clause 70, such dispute shall be resolved in accordance with the provisions of clause 79.

72. **BREACH**

- 72.1 In the event that either Party ("**Defaulting Party**") breaches any of the provisions of this Agreement, the other Party ("**Aggrieved Party**") shall be entitled to require the Defaulting Party, on 30 (thirty) Business Days' prior written notice, to remedy that breach.
- 72.2 If the Defaulting Party fails to remedy the breach within the period stipulated in clause 72.1 and if:
 - 72.2.1. the breach is not a material breach, the Aggrieved Party shall enforce specific performance of this Agreement and, if the Aggrieved Party is Transnet, shall be entitled to levy penalties or to claim damages; provided that in claiming damages, if the Aggrieved Party is Transnet, it shall deduct the amount of any Penalties levied against the Service Provider in respect of that particular breach from the amount of such damages claim; or

- 72.2.2. the breach is a material breach going to the root of this Agreement, the Aggrieved Party shall, in its sole and absolute discretion, either:
- 72.2.2.1. enforce specific performance of this Agreement; or
 - 72.2.2.2. cancel this Agreement;
- in either event without prejudice to the Aggrieved Party's entitlement to either levy penalties or to claim damages; provided that in claiming damages, if the Aggrieved Party is Transnet, it shall deduct the amount of any Penalties levied against the Service Provider in respect of that particular breach from the amount of such damages claim
- 72.3 To the extent that any Operating Division is in breach of any of the obligations of Transnet specified in this Agreement, the Service Provider shall provide the Operating Division concerned with a breach notice and shall similarly provide a copy of the breach notice to the Transnet Group Representative.
- 72.4 Should the Service Provider commit a breach this Agreement and should such breach involve fraud and/or any Prohibited Act, Transnet shall, in addition to the remedies available to it in clause 72.2:
- 72.4.1. report and submit the Service Provider's credit information to a credit bureau in terms of section 70 of the National Credit Act 34 of 2005;
 - 72.4.2. include the Service Provider's details on its list of blacklisted suppliers;
 - 72.4.3. notify the Government's Department of Treasury to blacklist the Service Provider; and
 - 72.4.4. notify the South African Police Service, if applicable.
- 72.5 Should Transnet elect to cancel this Agreement in terms of clauses 72.2.2.2 or 72.3, the Service Provider shall, as part of its damages claim, be entitled to claim an amount equal to the Compensation Amount.
- 72.6 Notwithstanding clause 72.1, either Party shall be entitled to cancel this Agreement and all Individual Contracts on written notice to the other Party ("the Affected Party") if the Affected Party –

- 72.6.1. commits an act which if the Affected Party were a natural person would constitute an act of insolvency;
- 72.6.2. is, or is deemed for the purposes of law, to be unable to pay its debts as they fall due or admits in writing its inability to pay its debts as they fall due and fails to remedy such breach within seven days after receipt of written notice calling upon it to do so;
- 72.6.3. takes any procedural step (including petition, proposal or convening a meeting) with a view to or compromises or attempts to compromise with, or defer payment of any debt owing by the borrower to, any of its creditors and fails to remedy such breach within seven days of receipt of written notice calling upon it to do so;
- 72.6.4. is provisionally or finally liquidated, de-registered, wound-up, or takes any steps in relation to any of the foregoing; or
- 72.6.5. has business rescue proceedings commenced against it or a resolution is passed by its directors or shareholders to commence business rescue proceedings in respect of the Affected Party in terms of Chapter 6 the Companies Act, Act 71 of 2008, as amended.

73. **COMPENSATION AMOUNT**

- 73.1 In circumstances where the Service Provider is in material breach of this Agreement and Transnet has elected to cancel this Agreement, Transnet may elect to retender the Services to a third party service provider.
- 73.2 The objective of the tender process shall be to enter into a new contract with a service provider that offers the best mix of affordability and service in the reasonable discretion of Transnet and who shall be appointed as new service provider ("**New Contract**").
- 73.3 Transnet shall use its reasonable endeavours to complete the tender process as soon as practicable after the Termination Date.
- 73.4 By signing this Agreement, the Service Provider irrevocably and unconditionally authorises the release of any information relating to this Agreement and/or the Services in terms of the envisaged retender process which would otherwise be prevented, but which is reasonably required as part of the tender process notwithstanding the provisions of clause

67 or POPIA, provided that in releasing the Personal Information of the Service Provider, such Personal Information shall be de-identified prior to its release to such third party service provider.

- 73.5 The Service Provider shall be disqualified from retendering for the New Contract.
- 73.6 As soon as is reasonably practicable after the tenders have been received and Transnet's losses have been quantified, Transnet shall (acting reasonably) determine the Compensation Amount and shall notify the Service Provider of the Compensation Amount.
- 73.7 Transnet shall issue a Tax Invoice to the Service Provider for the Compensation Amount accompanied by a schedule setting out how the Compensation Amount was calculated.
- 73.8 The Service Provider shall pay the Tax Invoice by electronic funds transfer into the bank account specified on the Tax Invoice within 60 (sixty) Business Days of the date of the Tax Invoice.
- 73.9 Transnet shall be entitled to levy interest on any outstanding Tax Invoice at the Prime Rate from the due date for payment of the Tax Invoice as specified in clause 73.8 until date of payment in full.

74. TRANSNET'S OPTION

- 74.1 With effect from the Termination Date, Transnet shall immediately stop paying any Rates or other sums payable in terms of this Agreement to the Service Provider arising after the Termination Date; provided that the Service Provider shall continue to recover Rates in regard:
 - 74.1.1. to any Vehicles which are not returned to the Service Provider on or before the Termination Date until the date of actual return of the Vehicle in question to the Service Provider at the Designated Area; and
 - 74.1.2. to any Make Good Costs which are only determined after the Termination Date.
- 74.2 Transnet shall have the option ("Option") either on Termination Date or the Expiry Date:
 - 74.2.1. to purchase the Vehicles still in use at the Termination Date at the Net Book Value of such Vehicles; or

- 74.2.2. to require the Service Provider to sell the Vehicles to a new service provider in order for the Vehicles to be leased back by the new service provider to Transnet, in which event the Vehicles shall be sold at their Net Book Value to the new service provider subject to the new service provider agreeing to purchase the Vehicles.
- 74.3 Transnet shall exercise the Option:
- 74.3.1. within 30 (thirty) days prior to the Expiry Date, or, if the reason for the termination of the Agreement are circumstances other than the expiry of this Agreement, within 30 (thirty) days after the Termination Date; the provisions of this clause 74 surviving the termination of this Agreement; and
- 74.3.2. by giving the Service Provider notice of the exercise of the Option in writing.
- 74.4 Within 7 (seven) days of the date of the exercise of the Option by Transnet, the Service Provider shall meet with Transnet and the Parties shall use their reasonable commercial endeavours to agree on the Net Book Value of the Fleet through bona fide discussion. The Net Book Value of the Fleet shall be audited by independent auditors nominated by Transnet and appointed by the Service Provider at the Service Provider's cost.
- 74.5 If the Parties are unable to agree the Net Book Value of the Fleet, the Net Book Value of the Fleet shall be determined by an independent motor industry expert nominated by the chairperson of AFSA (or its successor organisation) or his nominee, who, in making such determination, shall act as an expert and not as an arbitrator.
- 74.6 Within 7 (seven) days of the Net Book Value of the Fleet being determined by agreement between the Parties or the independent motor industry expert, the Service Provider shall issue a Tax Invoice for the Net Book Value of the Fleet to Transnet or the new service provider as directed by Transnet.
- 74.7 Transnet or the new service provider shall make payment of the Tax Invoice issued by the Service Provider in terms of clause 74.6 within 7 (seven) days of the date of the Tax Invoice, failing which the Service Provider may demand that Transnet or the new service provider effect such payment.
- 74.8 Should Transnet or the new service provider, as the case may be, fail to make payment within a further 7 (seven) days after the date of the demand referred to in clause 74.7,

the sale shall be deemed to not be effective and the Service Provider shall be entitled to dispose of the Fleet in any manner in which it deems fit.

- 74.9 If Transnet or the new service provider have made payment of the Tax Invoice of the Service Provider in accordance with the provisions of clauses 74.7 or 74.8, as the case may be, all risk and ownership in and to the Fleet shall transfer from the Service Provider to Transnet or the new service provider, as the case may be, on the payment clearing the bank account of the Service Provider.
- 74.10 The Vehicles are sold on a voetstoots basis, without any warranties whether express or implied in regard to them other than –
- 74.10.1. those given by the OEMs of the Vehicles, to the extent that same is still current;
 - 74.10.2. ownership in the Vehicles shall pass to Transnet or the new service provider, as the case may, on payment by the relevant purchaser of full purchase price payable for the Vehicles.
- 74.11 In the period between the 7 (seven) days payment requirement following agreement between the Service Provider and purchaser to either purchase or sale and lease back, and for the reason that the Service Provider will not be billing Transnet during this time, all risks of every nature whatever in and to the Vehicles shall pass to the relevant purchaser on the Termination Date or the Expiry Date, as the case may be, on the basis that without derogating from the generality of the foregoing, the purchaser shall be liable for all maintenance, service and repair costs relating to the Vehicles, the insurance of the Vehicles and all fines incurred by any drivers of the Vehicles.
- 74.12 Against payment of the purchase price, the Service Provider shall deliver to the relevant purchaser, such documents as may be necessary to effect transfer of ownership of the Vehicles into the name of the relevant purchaser.
- 74.13 The relevant purchaser shall pay all costs and other amounts necessary to procure the transfer and registration of the Vehicles into its name by no later than 60 (sixty) days after delivery of the aforesaid documents to it. The relevant purchaser shall be responsible for procuring any roadworthy and other necessary certificates and other approvals (and for the payment of all costs payable in order to obtain same) required in order to effect transfer of the Vehicles into its name.

74.14 If the Vehicles are purchased by the new service provider, Transnet shall be liable to ensure that the new service providers complies with the relevant obligations placed on the new service provider in terms of this clause 74. Once the 60 (sixty) days following the payment has expired, Transnet indemnifies the Service Provider against all loss, harm, expense or damage of any nature which the Service Provider may suffer or incur as a result of any failure to comply with such obligations on the part of the new service provider.

74.15 Transnet reserves the right to source the services from the Back-Up/Standby Service Provider in instances where the Service Provider is not able to fulfil the Services once the Service Provider has provided a first right of refusal in any instances where the Service Provider is unable to perform the Services.

75. TRANSITION PHASE

75.1 During the Transition Phase, this Agreement shall operate as it did during the Operational Phase provided that the Service Provider shall be required to conduct, on a project basis, the hand-over of the Services (including all data relating to this Agreement including data per Vehicle and Owned Vehicle and generally pertaining to the Fleet including management information as well as substantiating data relative to the performance of the Service Provider in relation the obligations set out in clause 9 from the Service Provider either to Transnet alternatively to a third party nominated in writing by Transnet.

75.2 For the avoidance of doubt, orders placed on the Service Provider for the provision of Vehicles during the Transition Phase shall take place in accordance with the provisions of clause 29, and Transnet shall be entitled to exercise the option granted to it by the Service Provider in terms of the provisions of clause 74 which shall apply *mutatis mutandis* to FML Vehicles provided during the Transition Phase.

76. WARRANTIES BY TRANSNET

76.1 Transnet warrants as at the Signature Date, the Commencement Date, the Condition Fulfilment Dates and on all days between such dates that:

- 76.1.1. it has complied with the Transnet Supply Chain Management Policy as well as with the provisions of Section 217(1) of the Constitution of the Republic of South Africa;

- 76.1.2. it has complied with all of the provisions of the Public Finance Management Act No. 1 of 1999 and the Preferential Procurement Policy Framework Act No. 5 of 2000 (and all schedules and regulations thereto as amended), in relation to this Agreement and any security relating to this Agreement;
 - 76.1.3. this Agreement has been entered into pursuant to a competitive bidding process whereby the contract for the Services was awarded to the Service Provider pursuant to a request by Transnet for a proposal for the provision of the Services;
 - 76.1.4. this Agreement constitutes and will continue to constitute a valid and binding obligation on Transnet;
 - 76.1.5. this Agreement has been provided for in an approved estimated budget, is properly approved by Transnet and the payment of the amounts due to the Service Provider in terms of this Agreement will, to the best of the knowledge and belief of Transnet, result in the total amount of the estimated budget being exceeded and, subject to the provisions of Applicable Law, Transnet will ensure that the facilities in question will continue to be provided for in its budgets for the duration of the Contract Period; and
 - 76.1.6. provision has been made under the operational expenditure of the estimated budget of Transnet for the amounts due by Transnet to the Service Provider in terms of this Agreement.
- 76.2 The warranties provided by Transnet to the Service Provider as stipulated in clause 76.1 are the sole warranties made by Transnet to the Service Provider in relation to the subject matter thereof.

77. **GOVERNING LAW**

All matters arising from or in connection with this Agreement, its validity, existence, termination or otherwise shall be determined in accordance with the laws of South Africa.

78. **NOTICES AND LEGAL PROCESS**

78.1 The Parties choose as their respective *domicilia citandi et executandi* the physical addresses specified in clause 78.2 for all purposes arising from this Agreement including the giving of any notice or the serving of any process.

78.2 The Parties nominate the following addresses as the addresses at which all notices in terms of this Agreement are to be addressed:

Transnet	Physical	
	Postal	
	Email	N/A
Service Provider	Physical	
	Postal	
	Email	

78.3 Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing.

78.4 All notices given by either Party to the other ("**Addressee**") which:

- 78.4.1. are delivered by hand to the Addressee's physical address, shall be deemed to have been received by the Addressee within 1 (one) Business Day of the date of delivery or transmission, as the case may be; or
- 78.4.2. are sent by courier to the physical address nominated by the Addressee for the time being, shall be presumed to have been received on date of signature of the acknowledgment of receipt document by the recipient; or
- 78.4.3. are sent by email during Business Hours to the Addressee's nominated email address for the time being shall be presumed to have been received on the first Business Day following the date of sending of the email, provided that if an out of office reply is automatically returned to the sender, such notice shall be deemed to have been given on the first Business Day following the date of expiry of the period that is stipulated in the out of office email as being the date of the recipient's return to the office.

78.5 Any Party shall be entitled to change any of its addresses in clause 78.1 by written notice to any other Party which notice shall be effective on the date on which the notice is deemed to have been received by the Addressee in terms of clause 78.4.

79. DISPUTE RESOLUTION

- 79.1 If a dispute arises between the Parties with regards to this Agreement or its interpretation and such dispute has first been referred to the Operational Steercom and has not been resolved as contemplated by the provisions of clause 63.2, either Party may convene a meeting (to be held either in person or via teleconference or video conference) between the Transnet Group's Chief Procurement Officer and the Chief Executive Officer of the Service Provider on 30 (thirty) days' prior written notice in order to resolve such dispute.
- 79.2 If the dispute is not resolved through *bona fide* discussion within 14 (fourteen) days of the date of the meeting contemplated in clause 79.1, either Party shall be entitled to refer such matter to arbitration by giving the other Party a written notice of arbitration ("**Arbitration Notice**").
- 79.3 The Arbitration Notice shall constitute legal process for the purpose of interrupting extinctive prescription as contemplated in the Prescription Act (Act No. 68 of 1969).
- 79.4 The arbitration shall be held in Sandton, Gauteng, South Africa.
- 79.5 The arbitration shall be held in accordance with the Arbitration Act (No. 42 of 1965) utilising the AFSA expedited commercial rules for arbitration ("**AFSA Rules**").
- 79.6 Only the Parties and their legal representatives (or persons agreed to) shall attend the arbitration proceedings and the arbitration proceedings shall be confidential save insofar as a disclosure is necessary in order to obtain an order for interim relief as contemplated in clause 79.11 or to initiate and conduct appeal or review proceedings in terms of clause 79.9.
- 79.7 The Parties shall use reasonable commercial endeavours to expedite the arbitration proceedings; it being the intention of the Parties to dispose of the dispute within 60 (sixty) days of the date of the Arbitration Notice.
- 79.8 The arbitrator shall be an independent party agreed to by the Parties. In the absence of agreement, the arbitrator shall be nominated by the chairperson for the time being of AFSA.
- 79.9 The award of the arbitrator shall be binding on the Parties save that the Parties shall be entitled to appeal or review the decision of the arbitrator in accordance with the AFSA Rules.

- 79.10 The arbitrator shall, as part of his award, make an order an award as to costs within his discretion.
- 79.11 Nothing in this clause 79 shall prevent any Party from seeking urgent interim relief from a court of competent jurisdiction pending the decision of the arbitrator.
- 79.12 By signing this Agreement, the Parties irrevocably and unconditionally agree to the arbitration proceedings contemplated in this clause 79 and the award of the arbitrator contemplated in clauses 79.9 and 79.10. Subject to clauses 79.9 and 79.11, the Parties shall not be entitled to withdraw from such proceedings nor claim at such proceedings that that they are not bound by such proceedings or the provisions of this clause 79.
- 79.13 This clause 79 constitutes a separate agreement which is severable from the remainder of this Agreement and which shall survive the termination of this Agreement for whatever reason.

80. **NON-SOLICITATION**

- 80.1 The Parties agree that for the duration of the Contract Period and for a period of at least 2 (two) years from the later of the Termination Date, the Expiry Date or the Last End Date, as the case may be, neither Party shall:
- 80.1.1. solicit, induce or attempt to induce any person to leave the service of the other Party; or
 - 80.1.2. offer employment or procure an offer of employment of any person, who, at such time or during any 18 (eighteen) month period prior to such time, is or was employed by the other Party in any manner whatsoever (including as an employee, consultant, agent, independent contractor or other representative or advisor) and who dealt directly with the other Party.
- 80.2 If a Party employs an employee of the other Party ("**Solicited Employee**") (contrary to the provisions of clause 80.1) then:
- 80.2.1. the Party prejudiced by the employment of the Solicited Employee ("**Aggrieved Party**"), shall be entitled to invoice the other Party ("**Defaulting Party**") for penalties calculated at 2 (two) times the total annual cost to

company of the Solicited Employee as at the date of termination of the Solicited Employee's service with the Aggrieved Party;

80.2.2. the Parties agree that such penalty is fair and reasonable in the circumstances; and

80.2.3. the Defaulting Party shall be obliged to effect payment of the Tax Invoice submitted by the Aggrieved Party within 30 (thirty) Business Days of date of the invoice referred to in clause 80.2.1.

80.3 In the event that the Aggrieved Party elects to claim penalties from the Defaulting Party as contemplated in clause 80.2, the Aggrieved Party is deemed to have waived its rights to the remedies available to it in terms clause 72.

81. **CESSION AND ASSIGNMENT**

81.1 The Service Provider shall not be entitled to cede its rights, assign its obligations, delegate its rights or obligations or otherwise transfer in any other way and/or alienate its rights and obligations in terms of this Agreement without the prior written consent of Transnet, provided that the Service Provider shall be entitled to cede its right to receive payment to a third party. In the event of the cession of such payment, all rights that Transnet shall have against the Service Provider in terms of the right of set-off or withholding of payment as contemplated in this Agreement, shall apply *mutatis mutandis* to such third party.

81.2 Transnet shall be entitled to freely cede its rights, assign its obligations, delegate its rights or obligations or otherwise transfer in any other way and/or alienate its rights and obligations in terms of this Agreement as part of a corporate restructuring, provided that it shall furnish the Service Provider with 30 (thirty) days' prior written notice thereof.

82. **MISCELLANEOUS**

82.1 Each Party warrants and represents to the other Party that it has full capacity and authority to enter into and perform this Agreement, and that this Agreement is executed by duly authorised representatives of that Party.

82.2 This Agreement constitutes the sole record of the agreement between the Parties with regard to the subject matter hereof. No Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein.

- 82.3 No addition to, variation of or agreed cancellation of this Agreement shall be of any force or effect unless in writing and signed by or on behalf of the Parties.
- 82.4 No relaxation or indulgence which any Party may grant to any other shall constitute a waiver of the rights of that Party and shall not preclude that Party from exercising any rights which may have arisen in the past or which might arise in future.
- 82.5 The fact that a Party has waived its rights on one occasion in respect of any default by another Party ("**Defaulting Party**") of its obligations in terms of this Agreement shall not constitute a precedent upon which the Defaulting Party may rely in respect of future defaults.
- 82.6 No suspension of any right to enforce any term of this Agreement and no *pactum de non petendo* shall be of any force and/or effect unless reduced to writing and signed by or on behalf of all of the Parties.
- 82.7 Any provision of this Agreement which contemplates performance or observance subsequent to the later of the Termination Date, the Expiry Date or the Last End Date, as the case may be shall survive any termination or expiration of this Agreement and continue in full force and effect.
- 82.8 All provisions of this Agreement are severable from each other notwithstanding the manner in which they have been drafted or linked grammatically. Accordingly:
- 82.8.1. the Parties declare that it is their intention that this Agreement would have been executed without such unenforceable provisions has they been aware of their unenforceability as at the Signature Date; and
- 82.8.2. any provision of this Agreement which becomes unenforceable (whether due to voidness, illegality, unlawfulness or for whatever other reason) shall be deemed *pro non scripto* and the remaining provisions of this Agreement shall be of full force and effect.
- 82.9 An approval or consent given by a Party under this Agreement shall only be valid if in writing and shall not relieve the other Party from responsibility for complying with the requirements of this Agreement nor shall it be construed as a waiver of any rights under this Agreement except as and to the extent otherwise expressly provided in such approval or consent, or elsewhere in this Agreement.

- 82.10 The Parties undertake to do all such things, perform all such acts and take all such steps and to procure the doing of all such things and the taking of all such steps as may be necessary or incidental or be conducive to the giving effect of the terms, conditions and import of this Agreement.
- 82.11 Each of the Parties acknowledge that they have been free to secure independent legal and other advice as to the effect and nature of the provisions of this Agreement and confirm that they have either taken such independent advice or have dispensed with the necessity of doing so.
- 82.12 This Agreement may be executed in several counterparts, which shall each be deemed an original, but all of which shall constitute one and the same instrument. A facsimile shall constitute a valid counterpart for all purposes hereunder.
- 82.13 The signatories to this Agreement by their signature warrant their authority to enter into this Agreement and the capacity of their principal, if signing in a representative capacity, to enter into this Agreement.

Signed at _____ on _____ 202X

For and on behalf of **TRANSNET SOC LIMITED:**

Duly authorised thereto

Full names: _____

Designation: _____

Signed at _____ on _____ 202X

For and on behalf of **SERVICE PROVIDER:**

Duly authorised thereto

Full names: _____

Designation: _____

ANNEXURE 1: SPECIMEN CONTRACT SCHEDULE

ANNEXURE 2: SERVICES

BACKGROUND, OVERVIEW AND SCOPE OF REQUIREMENTS

1 BACKGROUND

Transnet utilizes LCV for its daily operations, mainly in Transnet Freight Rail (TFR), Transnet Port Terminals (TPT), Transnet National Ports Authorities (TNPA), Transnet Engineering (TE) Transnet Property (TP), Transnet Corporate Centre (TCC) and Transnet Pipeline (TPL). The coverage of this RFP is for Transnet, nationally.

The successful bidder for LCV emanating from this RFP process is expected to be appointed to provide Full Maintenance Leasing (FML), Short Term Rental (STR) and Managed Maintenance Service (MMS) Fleet Management Services, for Light Commercial Vehicles (LCV) for a period of five (5) years.

2 EXECUTIVE OVERVIEW

Transnet's objective is to source Light Commercial Vehicles (LCV) Fleet Management Services, nationally, through the appointment of a Preferred Service Provider(s) for LCV, capable of servicing all Transnet Operating Divisions in various locations across the country for a maximum period of five (5) years.

Whereas Transnet is seeking a partner(s) to provide solutions for its Light Commercial Vehicles (LCV) Management Services, nationally, it also seeks to improve its current processes for providing these Services to its end user community throughout its locations.

The selected Service Provider(s) must share in the mission and business objectives of Transnet. These mutual goals will be met by meeting contractual requirements and new challenges in an environment of teamwork, joint participation, flexibility, innovation and open communications. In this spirit of partnership, Transnet and its Service Provider(s) will study the current ways they do business to enhance current practices and support processes and systems. Such a partnership will allow Transnet to reach higher levels of quality, service and profitability.

Specifically, Transnet seeks to benefit from this partnership in the following ways:

2.1 Transnet must receive reduced cost of acquisition and improved service benefits resulting from the Service Provider's economies of scale and streamlined service processes.

2.2 Transnet must achieve appropriate availability that meets user needs while reducing costs for both Transnet and the chosen Service Provider(s).

2.3 Transnet must receive proactive improvements from the Service Provider with respect to provision of Services and related processes.

2.4 Transnet's overall competitive advantage must be strengthened by the chosen Service Provider's leading-edge technology and service delivery systems.

2.5 Transnet end users must be able to rely on the chosen Service Provider's personnel for service enquiries, recommendations and substitutions.

2.6 Transnet must reduce costs by streamlining its acquisition of Services, including managed service processes on a Group basis.

3 SCOPE OF REQUIREMENTS

Light Commercial Vehicles Fleet Management Services include generally the Full Maintenance Lease (FML), Short Term Rental (STR), Managed Maintenance of Transnet Owned Vehicles (MM), Sale & Leaseback, 24hr maintenance and roadside assistance, supply of tracking unit for recovery and usage management, driver training, fines & licensing, accident management, disposal of Full Maintenance Leasing and Managed Maintenance vehicles, and comprehensive management information reporting, fleet systems, and dashboard reports (to be integrated into the Transnet Integrated Fuel and Fleet Management System once Transnet implements). Purchase (buy) with or without managed maintenance is only allowed in exceptional circumstances with approval by the Group Chief Executive to deviate.

The Light Commercial Vehicles portfolio is made up of vehicles <3500kg:

- Light Delivery Vehicles (LDVs) including single cabs (petrol and diesel) and double cabs (petrol and diesel)
- Cars (1100cc, 1200cc, 1300cc, 1400cc, 1500cc and 1600cc)
- Recreational/Panel vans (petrol and diesel)
- Minibuses (petrol and diesel)
- Trailers related to LCV vehicles

The Light Commercial Vehicles (LCV) Fleet Management Services Fleet Services includes:

- Full Maintenance Leasing (**FML**) services for its long-term vehicle requirements (initially 5 years)

- Short Term Rental (**STR**) services for its shorter-term requirements up to maximum of 12 months.
- Managed Maintenance (**MM**) for Transnet's currently owned fleet of vehicles (i.e. not leased from a third party)
- Sale and Lease Back (**SLB**):
 - At contracting stage the newly appointed service provider and Transnet will assess any current LCV leased from any other supplier, to analyse the sale and lease back costs to consolidate into the new contract. If economically viable and risks mitigated, the newly appointed service provider will approach the current supplier(s) for the acquisition of any LCV's which could be leased back to Transnet for the proposed initial five (5) years.
 - At contract end stage, the incumbent supplier will provide the settlement values to the newly appointed service provider at the time, for Transnet to consider the sale and lease back of LCVs being used by Transnet, for the newly appointed service providers to lease back to Transnet, if economically viable.
- Purchase (Buy) in exceptional circumstances with signed business cases by the OD Chief Executives and Group Chief Executive:
 - With maintenance
 - Without maintenance

The detailed scope of Fleet Management, maintenance and support services for LCV includes the following as part of the final approved pricing schedule:

- 1) Provide Electronic quotation & approval system for online Schedule 1's orders for FML and STR and MM requirements, taking into account any relevant National Treasury discounted retail pricing, and Transnet tender final approved pricing structures wherever applicable:
 - Provide fit for purpose vehicles as per Transnet specifications to include Transnet mandatory fitments.
 - Quotes must be minimum 3 quotes and must include locally manufactured/assembled vehicles in the options.
 - If possible, also include electric car options, wherever economically viable and operational risks mitigated.

- Diesel options must be priority for wherever there are such options for the relevant vehicle category.
 - Includes 5 sets of tyre options in the Schedule 1's to be capitalised over the lease period.
- 2) Responsible for ordering as per the signed Schedule 1 orders, and as per the lead time of ninety (90) days from date of signed Schedule 1 order. Take into account the Transnet Fleet Policies and Directives.
 - 3) Full delivery (including manuals) and proper hand over of leased vehicle to Transnet at designated sites as per the lead time of ninety (90) days from date of signed Schedule 1 order.
 - 4) Ensure first registration and annual licence renewals for the LCV vehicles. Provide licencing report and all copies of licences renewed
 - 5) Ensure that the new Vehicles at the time of first delivery is clean, including a full tank of fuel.
 - 6) Fitment of Tracking devices and provide access to the online tracking systems (log-on details) to view the detailed tracking management reports per vehicles
 - 7) Provide Driver tags to identify drivers of each vehicle and updating the lists continuously.
 - 8) Provide full Scheduled (routine services and maintenance as per the plans) and Unscheduled (not covered in the service or maintenance plans or warranty, which could be abnormal wear and tear, out of warranty maintenance, driver abuse, etc)) maintenance of leased vehicles for its life of the lease, and also for and Transnet Owned vehicles to ensure minimum ninety-five (95) percentage availability on a monthly basis.
 - 9) Have a 24/7/365 Call Centre with telephone and/or online call logging system, which will generate a service call reference number) and recording facility. Must include Fault logging facility System generated 'reference' number, Call voice logging and follow up and feedback to driver
 - 10) Have a 24/7/365 Breakdown Services whenever required by Transnet.
 - 11) Responsible for Accident repair management and accident reduction processes
 - 12) Ensure Certificate of Fitness (COF) requirements are met, wherever applicable for Leased and Transnet Owned vehicles.
 - 13) Receive Proxy's information from Transnet for licensing purposes to ensure each LCV vehicle is assigned a Transnet proxy
 - 14) Provide statistics and analysis on what is causing increase or high Operator Default costs for abnormal wear and tear maintenance.

- 15) Improve driver and operator safety with awareness campaigns conducted annually.
- 16) Ensure Key Account Managers /Client Liaison Officer are supporting the Operating Divisions (OD's) for an Allocated Region or for Operating Divisions in those areas/regions. Have weekly and monthly meetings with stakeholders
- 17) Conduct annual physical LCV audits to identify damages, and issues that will contribute to the de-fleet process pro-actively. Report issues to the respective OD representatives.
- 18) Provide Technical Services and advice wherever applicable.
- 19) Provide detailed monthly LCV vehicle usage management and reporting.
- 20) Provide Restructuring of Individual Contracts proposal as per the agreed contractual timelines should the FML usage exceed the agreed monthly allocated kms over the agreed period.
- 21) Responsible for the fitment of Accessories to FML LCVs.
- 22) Transfer of Accessories from "old" to "new" FML LCVs, wherever economically viable and risk free.
- 23) Manage the Transnet Owned Maintenance by providing at least 2 quotes, wherever applicable, to fix or repair the Transnet Owned vehicles. The cost of the approved repairs to be invoiced separately to Transnet.
- 24) To purchase critical spares, whenever requested by Transnet, to keep stock in cases of emergencies and to reduce long lead time of repetitive spares for breakdowns. OD will issue Schedule 1 to order critical spares required to reduce lead time to repair crucial LCV vehicles in operations.
- 25) Dispose of Transnet Owned Vehicles and pay Transnet the salvage amounts in line with the contract.
- 26) Dispose of FML units.
- 27) Provide and electronic replacement programme for expiring leases.
- 28) Additional proposal (s) to improve efficiencies.
- 29) Administration of fines and e-tolls
- 30) Provide Monthly variable billing and multiple billing for costs not included in the fixed costs. Rebills for MM maintenance must include supporting documents
- 31) Provide Technical services support Convene monthly technical meetings to provide feedback technical inspections reports on issues
- 32) Efficiency and cost improvement propositions to reduce fleet cost.
- 33) Report Vehicle abuse
- 34) Transnet will require accessory fitments such as, but not limited to:

- a) Dashboard cameras;
- b) tow bars,
- c) roll bars, and
- d) Canopies, etc

The Successful Service Provider/s will need to provide quotes on an "as and when" basis which could be either when a new vehicle is requested, or for any existing vehicle in Transnet's fleet. In the event that an accessory is required with a new vehicle, this will be priced into the lease schedule and a quotation must be submitted to Transnet for approval at the time of request. In the event that an accessory is required for an existing vehicle in Transnet's fleet, then this accessory will be requested by Transnet on a quotation basis, and subject to Transnet approval at the time. However as part of standard fitments where technically possible, all vehicle options to include:

- (a) Radio,
- (b) ABS,
- (c) airbags,
- (d) Air conditioner, and
- (e) 4 replacement sets of tyres included in the fixed basic rental
- (f) Seat belt indicator
- (g) Speed Limitors (as per Operating Divisions directives where implemented).
- (h) Speed Buzzers
- (i) Additional airbags for passengers (wherever applicable)

Additional to the standard fitments, minibuses must have at least one fire extinguisher as per the National Road Traffic Act 93 of 1996.

There may be a requirement for additional vehicles types not specified in this RFP from time to time. In such an event, the successful Service Provider will provide Transnet with pricing on a quotation-by-quotation basis, at the time of the specific request. This quotation will be subject to approval by Transnet.

- 35) Report on Service Level Performance on a monthly basis for the Quarterly Group Operations Steercom
- 36)** Provide Transnet Fleet Management users (about 200 group wide) with online access (included in pricing) to an efficient and effective Fleet Management System with extensive web-based Reporting functionality in the following areas as the minimum, with detailed information management, dashboards and exception reporting, which must be able to

integrate this reporting into the Transnet Integrated Fuel and Fleet management system whenever Transnet implements this:

- Provide Online quotations
- Delivery tracking
- Provide online Vehicle Management Services for:
 - ✓ Scheduled and Unscheduled Maintenance
 - ✓ Repairs
 - ✓ Accident management
 - ✓ Breakdown services
- i) Provide web based monthly multiple parameters automated reports and executive management reports, for the Group and for the individual Operating Divisions for the following reports as the minimum:
 - (1) Debtors ageing
 - (2) Vehicle Availability:
 - (a) Scheduled Services status
 - (b) Unscheduled maintenance status
 - (c) Accident repairs status
 - (d) Time spent at repair centre
 - (3) Breakdown services performance
 - (4) Call Centre services performance
 - (5) Detailed cost breakdown of all fixed and variable costs per vehicle with all individual lease contract information
 - (6) CO2 Emissions
 - (7) Service Level Agreement dashboard
 - (8) Contracts expiring
 - (9) Fines status
 - (10) Savings performance
 - (11) 30% Sub-Contracting performance
 - (12) Fleet size
 - (13) Utilisation performance:
 - (a) Over Utilisation of allocated kms
 - (b) Under Utilisation of allocated kms
 - (14) Annual Licence renewal status

- (15) Order status
 - (16) Delivery status
 - (17) De-fleet /Returns status
 - (18) Restructures status
 - (19) Over Utilisation of allocated kms
 - (20) Under Utilisation of allocated kms
 - (21) Unscheduled maintenance status
 - (22) Rate card
 - (23) Vehicle condition audit
 - (24) Tyre management
- ii) Provide Transnet Fleet Management users (about 200 group wide) with online access (included in pricing) to a 24/7 efficient and effective live Tracking System with extensive web-based Reporting functionality in the following areas as the minimum, with detailed information management, dashboards and exception reporting, which must be able to integrate this reporting into the Transnet Integrated Fuel and Fleet management system whenever Transnet implements this:
- (1) Live real time tracking for recovery of stolen and hijacked incidents
 - (2) Speeding
 - (3) Harsh braking
 - (4) Harsh acceleration
 - (5) Harsh cornering
 - (6) Excessive idling
 - (7) Driving time
 - (8) Geo Fencing:
 - (a) Create vehicle geo-fencing parameters for all vehicles upon request
 - (b) Create service repair centre geo-fencing
 - (c) Create shopping malls and centres geo-fencing
 - (d) Kilometres travelled out of bounds
 - (9) Weekend usage
 - (10) After-hours usage
 - (11) Driver tag identification for incidents
 - (12) Accident reconstruction
 - (13) Battery tampering and disconnect notifications and follow up

- (14) Kilometre travelled
- (15) Impact sensor (Vehicle crash alert)
- iii) Ability to provide Transnet with specific upload files in csv or txt default format transmit or share data via an API or any other system that will ensure live data is received by Transnet as agreed between the parties whenever needed
- iv) Additional cost items to be quoted on three quote system, separately after the award, if requested:
 - (1) Provide drivers if and whenever needed as optional to be quoted separately upon request as a three-quote system.
 - (2) Cleaning and washing services, including mobile services, as optional whenever required by Transnet, at an additional cost to be quoted separately.

ANNEXURE 3: OPERATIONAL SLA

PENALTIES

To the extent that the Service Provider's performance of its obligations in terms of this Agreement occurs after the due date for such performance, Transnet shall be entitled to levy Penalties determined in accordance with the following formula ("**Penalty Formula**"):

$$x = \frac{y}{720} \times z$$

where:

x	is the amount of the Penalty
y	is the monthly STR Rate or the Lease Payment
z	is the number of hours by which the Service Provider's performance is late

FML VEHICLES

ORDERING, PROVISION AND DELIVERY OF NEW VEHICLES

FML VEHICLES				
ORDERING, PROVISION AND DELIVERY OF NEW VEHICLES				
KPI	DESCRIPTION	MEASUREMENT	PENALTIES	REQUIRED SERVICE LEVEL
Provision of quotes	Within 1 (one) day from date of receipt of request from Transnet.	Time elapsed between time of receipt of request from Transnet and time of receipt of a quote from the Service Provider This will be measured per Vehicle quote.	No Penalties.	98%
Provision and delivery of new Vehicles	New Vehicle ordered by Transnet to be delivered within the period specified in	Time elapsed between date of email of the and time of return of the	<u>Penalty Formula</u>	95%



	the quote but not exceeding 90 (ninety) days.	Vehicle to Transnet by the Service Provider	<p>In addition, the Service Provider is to supply a replacement Vehicle at the Service Provider's cost to by the day immediately succeeding the date on which the Vehicle should have been delivered to Transnet until the date of actual delivery of the Vehicle to Transnet.</p> <p>If the Service Provider fails to provide a suitable replacement vehicle, Transnet shall be entitled to rent a</p>	
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			vehicle from a third party supplier until the time that the ordered Vehicle is delivered by the Service Provider to Transnet and Transnet shall be entitled to recoup all such costs from the Service Provider.	
Vehicle not in accordance with Transnet's requirements or specifications	Vehicle to be 100% (one hundred percent) in line with Transnet's requirements / specifications as specified in the Request for Quotation and the quote shall be accompanied by a vehicle specification.	Time elapsed between the agreed delivery date for the Vehicle and the date of delivery of a Vehicle which meets the specifications of Transnet.	<u>Penalty Formula</u> The Service Provider is required to supply a replacement vehicle at the Service Provider's cost from the date that the	95%



	<p>Transnet to specify and approve specifications related to that particular Vehicle. All Accessories fitted to FML vehicles will be done so in relation to a competitive tender process managed and conducted by the service provider on annual basis</p>		<p>delivery of the Vehicle ordered was to have taken place until the date that a Vehicle meeting Transnet's specifications is delivered by the Service Provider to Transnet.</p> <p>Should the Service Provider fail to provide a replacement vehicle at the Service Provider's cost as aforesaid, Transnet shall be entitled to rent a replacement vehicle from a third</p>	
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			party supplier and shall be entitled to recoup all costs incurred in this regard	
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SCHEDULED MAINTENANCE				
KPI	DESCRIPTION	MEASUREMENT	PENALTIES	REQUIRED SERVICE LEVEL
Scheduled Maintenance (Non-Major Components)	Scheduled Maintenance of Vehicles in accordance with timeframes specified by the OEM ¹	Time elapsed between the expiry of the time frame for the finalisation of the Scheduled Maintenance of the Vehicle (per OEM specifications) and the time of actual return of the Vehicle to Transnet by the Service Provider, fully repaired. The Service provider to	The Service Provider is to supply Transnet with a replacement vehicle at the Service Provider's cost in the event that the timeframes for the Scheduled	95%

¹ OEM time lines exclude time provided to complete ancillary services including pre-service washing, inspections, administration work and post-service washing. A reasonable time in the circumstances will be afforded to the Service Provider in addition to the specified OEM requirements to conduct these ancillary services.



		include expected date of completion on the quotation.	<p>Maintenance are exceeded by no later than the day immediately succeeding the day following the date by which the Service Provider should have completed the Scheduled Maintenance until the date that the Scheduled Maintenance is actually completed.</p> <p>Failure on the part of the Service Provider to provide a replacement vehicle at the Service</p>	
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			Provider's cost as specified above shall entitle Transnet to rent a replacement vehicle from a third party supplier and all costs incurred by Transnet in this regard shall be recouped from the Service Provider.	
Scheduled Maintenance (Major Components)	Return of Vehicle to Transnet from Scheduled Maintenance if parts are in stock	Time elapsed between the time that Scheduled Maintenance should have been completed by the Service Provider in accordance with OEM specifications and the time of actual return of the Vehicle to Transnet, fully repaired. The Service provider to include expected date of completion on the quotation.	<u>Penalty Formula</u> The Service Provider is to furnish Transnet with a replacement vehicle at the Service Provider's cost by no later than the day following the date on	95%



	Return of Vehicle from Scheduled Maintenance within the time periods specified by the OEM ²		<p>which the Service Provider should have returned the Vehicle to Transnet following Scheduled Maintenance until the date of actual return of the Vehicle to Transnet.</p> <p>If the Service Provider fails to do so, Transnet shall be entitled to rent a vehicle from a</p>	
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² OEM time lines exclude time provided to complete ancillary services including pre-service washing, inspections, administration work and post-service washing. A reasonable time in the circumstances will be afforded to the Service Provider in addition to the specified OEM requirements to conduct these ancillary services.



			third party supplier and shall be entitled to recoup all costs incurred in this regard from the Service Provider.	
Scheduled repair or replacement of tyres	<p>Replacement of damaged tyres provided sufficient sets of tyres available</p> <p>Medium commercial vehicles – 4 (four) hours</p> <p>Passenger and Light commercial vehicles – 6 (six) hours</p>	Time elapsed between the time that the Vehicle was delivered to the Service Provider for the replacement of the tyres until the time that the Vehicle is returned to Transnet, fully repaired. The Service provider to include expected date of completion on the quotation.	<p><u>Penalty Formula</u></p> <p>The Service Provider shall provide a replacement vehicle at the Service Provider's cost on the day immediately succeeding the date on which the Service Provider should have returned the Vehicle to Transnet.</p>	95%



			If the Service Provider fails to do so, Transnet shall be entitled to recoup all costs incurred in renting a replacement vehicle from a third party supplier at the Service Provider's cost.	
Replacement of windscreen and glass (excluding light covers)	<p>Windscreen and glass must be replaced within 8 (eight) hours of Transnet having notified the Service Provider that such replacement is required</p> <p>Transnet to have provided the required authorisation to the Service Provider</p>	Time elapsed between the expiry of the 8 (eight) hour period and the time that the Vehicle is returned to Transnet by the Service Provider, fully repaired. The Service provider to include expected date of completion on the quotation.	<p><u>Penalty Formula</u></p> <p>The Service Provider shall provide a replacement vehicle at the Service Provider's cost on the day immediately succeeding the date on which the Service</p>	95%



	Transnet to make the Vehicle available promptly		<p>Provider should have returned the Vehicle to Transnet.</p> <p>If the Service Provider fails to do so, Transnet shall be entitled to recoup all costs incurred in renting a replacement vehicle from a third party supplier at the Service Provider's cost.</p>	
Repair or replacement of Accessories	Within time period agreed in writing between Fleet Manager and the Service Provider subject to Transnet making the vehicle available or taking the required vehicle to the allocated dealer or workshop	Time elapsed between the expiry of the period agreed in writing between the Fleet Manager and the Service Provider and the time of return of the Vehicle to Transnet, fully repaired. The Service provider to include	<p><u>Penalty Formula</u></p> <p>The Service Provider shall provide a replacement vehicle at the Service Provider's cost on the day</p>	95%



		expected date of completion on the quotation.	<p>immediately succeeding the date on which the Service Provider should have returned the Vehicle to Transnet.</p> <p>If the Service Provider fails to do so, Transnet shall be entitled to recoup all costs incurred in renting a replacement vehicle from a third party supplier at the Service Provider's cost.</p>	
Quotation for maintenance to	Quotation for all reasonable and necessary repairs to the Vehicle to be provided within 8 (eight) hours of the	Time elapsed between the time of delivery of the Vehicle by Transnet to the Service Provider and the time that	<p><u>Penalty Formula</u></p> <p>The Service Provider shall provide a</p>	95%



Vehicle (Scheduled and Unscheduled)	<p>delivery of the Vehicle by Transnet to the Designated Area, on condition a helpdesk reference number is obtained from SERVICE PROVIDER's customer call centre</p>	<p>the quotation is actually provided by the Service Provider to Transnet. The Service provider to include expected date of completion on the quotation.</p>	<p>replacement vehicle at the Service Provider's cost on the day immediately succeeding the date on which the Service Provider should have provided a quotation to Transnet until the date of actual provision of a quotation.</p> <p>If the Service Provider fails to do so, Transnet shall be entitled to recoup all costs incurred in renting a replacement vehicle from a third party</p>	
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			supplier at the Service Provider's cost.	
UNSCHEDULED MAINTENANCE				
KPI	DESCRIPTION	MEASUREMENT	PENALTIES	REQUIRED SERVICE LEVEL
Unscheduled Repairs (Non-Major Components)	Completion of Unscheduled Maintenance within timeframes agreed between the Service Provider and the	Time elapsed between the expiry of the timeframes agreed between the Fleet Manager and the Service Provider or the expiry of the timeframe specified by the OEM (whichever is the lesser) and the time of actual return of the Vehicle by the Service Provider to Transnet, fully repaired. The Service provider	The Service Provider shall provide a replacement vehicle at the Service Provider's cost on the day immediately succeeding the date on which the Service Provider should have returned the Vehicle to Transnet until	95%



	Fleet Manager but not exceeding timeframes specified by the OEM ³	to include expected date of completion on the quotation.	<p>the date of actual return of the Vehicle to Transnet by the Service Provider.</p> <p>If the Service Provider fails to do so, Transnet shall be entitled to recoup all costs incurred in renting a replacement vehicle from a third party supplier at the Service Provider's cost..</p>	
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³ OEM time lines exclude time provided to complete ancillary services including pre-service washing, inspections, administration work and post-service washing. A reasonable time in the circumstances will be afforded to the Service Provider in addition to the specified OEM requirements to conduct these ancillary services.



<p>Unscheduled Repairs (Major Components)</p>	<p>Completion of Unscheduled Maintenance within 7 (seven) days subject to availability of OEM parts</p>	<p>Time elapsed between the expiry of the 7 (seven) day period and the time that the Vehicle is actually returned by the Service Provider to Transnet, fully repaired. The Service provider to include expected date of completion on the quotation.</p>	<p><u>Penalty Formula</u></p> <p>The Service Provider shall provide a replacement vehicle at the Service Provider's cost on the day immediately succeeding the date on which the Service Provider should have returned the Vehicle to Transnet until the date of actual return of the Vehicle to Transnet by the Service Provider.</p> <p>If the Service Provider fails to do so, Transnet shall be entitled to</p>	<p>95%</p>
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			recoup all costs incurred in renting a replacement vehicle from a third party supplier at the Service Provider's cost.	
Unscheduled Maintenance – Operator Default (Non-Major Components)	Vehicle must be returned in full working condition within the lesser of the quoted hours and/or timeframes or the timeframes specified by the OEM ⁴	Time elapsed between the expiry of the lesser of the quoted hours and/or timeframes or the timeframes specified by the OEM and the return of the Vehicle to Transnet, fully repaired. The Service provider to	<u>Penalty Formula</u> The Service Provider shall provide a replacement vehicle at the Service Provider's cost on the day	95%

⁴ OEM time lines exclude time provided to complete ancillary services including pre-service washing, inspections, administration work and post-service washing. A reasonable time in the circumstances will be afforded to the Service Provider in addition to the specified OEM requirements to conduct these ancillary services.



		include expected date of completion on the quotation.	<p>immediately succeeding the date on which the Service Provider should have returned the Vehicle to Transnet until the Vehicle is.</p> <p>If the Service Provider fails to do so, Transnet shall be entitled to recoup all costs incurred in renting a replacement vehicle from a third party supplier at the Service Provider's cost.</p>	
Unscheduled Maintenance – Operator Default	Vehicle must be returned in full working condition within 7 (seven) days of Transnet having delivered the	Time elapsed between the expiry of the 7 (seven) day period and the return of the Vehicle to Transnet,	<p><u>Penalty Formula</u></p> <p>The Service Provider shall provide a</p>	95%



(Major Components)	Vehicle for repair subject to availability of the necessary OEM parts.	fully repaired. The Service provider to include expected date of completion on the quotation.	replacement vehicle at the Service Provider's cost on the day immediately succeeding the date on which the Service Provider should have returned the Vehicle to Transnet until the time that the Vehicle is returned to Transnet. If the Service Provider fails to do so, Transnet shall be entitled to recoup all costs incurred in renting a replacement vehicle from a third party	
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			supplier at the Service Provider's cost.	
Repairs for mechanical failure (Non-Major Components)	Vehicle must be returned in full working condition within the lesser of quoted hours and/or timeframes or the timeframes specified by the OEM ⁵	Time elapsed between the expiry of the lesser of the quoted hours and/or timeframes and the timeframes specified by the OEM and the return of the Vehicle to Transnet, fully repaired. The Service provider to include expected date of completion on the quotation.	<u>Penalty Formula</u> The Service Provider shall provide a replacement vehicle at the Service Provider's cost on the day immediately succeeding the date on which the Service Provider should have returned the	95%

⁵ OEM time lines exclude time provided to complete ancillary services including pre-service washing, inspections, administration work and post-service washing. A reasonable time in the circumstances will be afforded to the Service Provider in addition to the specified OEM requirements to conduct these ancillary services.



			<p>Vehicle to Transnet until the Vehicle is returned to Transnet.</p> <p>If the Service Provider fails to do so, Transnet shall be entitled to recoup all costs incurred in renting a replacement vehicle from a third party supplier at the Service Provider's cost.</p>	
<p>Repairs for mechanical failure</p> <p>(Major Components)</p>	<p>Vehicle must be returned in full working condition within 7 (seven) days of Transnet having delivered the Vehicle for repair, subject to availability of the necessary OEM parts.</p>	<p>Time elapsed between the expiry of the 7 (seven) day period and the time of return of the Vehicle to Transnet. The Service provider to include expected date of completion on the quotation.</p>	<p><u>Penalty Formula</u></p> <p>The Service Provider shall provide a replacement vehicle at the Service Provider's cost on the day</p>	<p>95%</p>



			<p>immediately succeeding the date on which the Service Provider should have returned the Vehicle to Transnet until the Vehicle is returned to Transnet.</p> <p>If the Service Provider fails to do so, Transnet shall be entitled to recoup all costs incurred in renting a replacement vehicle from a third party supplier at the Service Provider's cost.</p>	
Quotation for maintenance to	Quotation for all reasonable and necessary repairs to the Vehicle to be	Time elapsed between the time of delivery of the Vehicle by Transnet to	<u>Penalty Formula</u>	95%



Vehicle (Scheduled and Unscheduled)	provided within 8 (eight) hours of the delivery of the Vehicle by Transnet to the Designated Area	the Service Provider and the time that the quotation is actually provided by the Service Provider to Transnet. The Service provider to include expected date of completion on the quotation.	<p>The Service Provider shall provide a replacement vehicle at the Service Provider's cost on the day immediately succeeding the date on which the Service Provider should have provided a quote to Transnet until the Vehicle is returned to Transnet.</p> <p>If the Service Provider fails to do so, Transnet shall be entitled to recoup all costs incurred in renting a replacement vehicle from a third party</p>	
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			supplier at the Service Provider's cost.	



ACCIDENTS AND INCIDENTS (THEFT & HIJACKING)

KPI	DESCRIPTION	MEASUREMENT	PENALTIES	REQUIRED SERVICE LEVEL
Accidents (including write-off)	Service Provider to provide a replacement STR Vehicle within 3 (three) working days of the notification of an accident by Transnet to the Service Provider and the provision of a purchase order.	The time of notification is evidenced by the time that a call is logged at the Call Centre as evidenced by the Call Centre software. In the event of a dispute, the time that a call is made by Transnet to the Call Centre shall prevail.	The Service Provider shall provide a replacement vehicle at the Service Provider's cost on the day immediately succeeding the date on which the Service Provider should have returned the Vehicle to Transnet until the date of actual return of the Vehicle to Transnet by the Service	95%



			<p>Provider (specialized equipment - depending on availability).</p> <p>If the Service Provider fails to do so, Transnet shall be entitled to recoup all costs incurred in renting a replacement vehicle from a third party supplier at the Service Provider's cost.</p>	
	New FML Vehicle or new STR Vehicle to replace written-off Vehicle	See <u>Ordering and Provision of new Vehicles</u>	See <u>Ordering and Provision of new Vehicles</u>	



Theft, Hijacking	Service Provider to provide a replacement vehicle within 3 (three) days of the notification of an accident and the provision of a purchase order	The time of notification is evidenced by the time that a call is logged at the Call Centre as evidenced by the Call Centre software. In the event of a dispute, the time that a call is made by Transnet to the Call Centre shall prevail.	<p>The Service Provider shall provide a replacement vehicle at the Service Provider's cost on the day immediately succeeding the date on which the Service Provider should have returned the Vehicle to Transnet until the date of actual return of the Vehicle to Transnet by the Service Provider (specialized equipment - depending on availability).</p> <p>If the Service Provider fails to do so, Transnet shall be entitled to</p>	95%
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			recoup all costs incurred in renting a replacement vehicle from a third party supplier at the Service Provider's cost.	
	Provision and delivery of new FML Vehicle or a STR Vehicle at Transnet's discretion	See <u>Ordering and Provision of new Vehicles</u>	See <u>Ordering and Provision of new Vehicles</u>	
BREAKDOWNS				
KPI	DESCRIPTION	MEASUREMENT	PENALTIES	REQUIRED SERVICE LEVEL
Attendance to a breakdown and roadside assistance	Vehicle to be attended to within 2 (two) hours of call for urban areas (\leq 20 km (twenty kilometre) radius of the Service Provider's workshop),	The time of notification is evidenced by the time that a call is logged at the Call Centre as evidenced by the Call Centre software. In the event of	If breakdown or roadside assistance actually provided, <u>Penalty Formula</u> applies	99%



	Vehicle to be attended to within 3 (three) hours of call for rural areas (> 20 Km (twenty Kilometre) radius of Service Provider's workshop) plus 30 (thirty) minutes for every 50 (fifty)kilometres thereafter	<p>a dispute, the time that a call is made by Transnet to the Call Centre shall prevail.</p> <p>Time that has elapsed between the expiry of the 1 (one) hour period in respect of urban areas and 2 (two) hour period in respect of rural areas and the actual time that breakdown or roadside assistance was actually provided (if at all)</p>	If no breakdown or roadside assistance actually provided, the costs actually incurred by Transnet relative to the procurement of breakdown or roadside assistance from a third party service provider.	
Call Centre	Except in circumstances specifically provided for in the Operational SLA, log and acknowledge receipt of complaints or enquiry within 24 (twenty four) hours	<p>Where the Operational SLA provides for alternative time frames for the response to a call by the Call Centre, such measurements shall apply.</p> <p>In all other instances, the time elapsed between the time of expiry of the 24 (twenty-four) hour period</p>	<u>Penalty Formula</u>	95%



		and the actual time of resolution of the complaint or enquiry of Transnet as evidenced by email correspondence exchanged between the Call Centre and Transnet		
STR VEHICLES				
ORDERING, PROVISION AND DELIVERY OF STR VEHICLES				
KPI	DESCRIPTION	MEASUREMENT	PENALTIES	REQUIRED SERVICE LEVEL
Provision of Quotes	Within 1 (one) day from receipt of request from Transnet	Time elapsed between the time of sending of the request from Transnet (as evidenced by the metadata linked to the email sent by Transnet to the Service Provider) and the time of	No Penalties	95%



		provision of the quote by the Service Provider to Transnet		
Provision and delivery of STR Vehicles	Vehicle must be provided within 3 (three) Business Days from request by Transnet	<p>Time of request determined based on the purchase order provided by Transnet to the Service Provider.</p> <p>Time of expiry of the 3 (three) Business Day period until the time of actual delivery of the STR Vehicle by the Service Provider to Transnet</p>	<p><u>Penalty formula</u></p> <p>The Service Provider shall provide a replacement vehicle at the Service Provider's cost on the day immediately succeeding the date on which the Service Provider should have returned the Vehicle to Transnet until the date of actual return of the Vehicle to Transnet by the Service Provider (specialized equipment -</p>	95%



			<p>depending on availability).</p> <p>If the Service Provider fails to do so, Transnet shall be entitled to recoup all costs incurred in renting a replacement vehicle from a third party supplier at the Service Provider's cost.</p>	
STR Vehicle delivered to meet Transnet's requirements or specifications	<p>Vehicle to be 100% (one hundred percent) in line with Transnet's requirements /specifications.</p> <p>Service Provider penalised on turn-around time of delivery of the Vehicle</p>	<p>Time that elapsed between the time that Transnet sent the purchase order to the Service Provider and the time that the Service Provider has delivered a Vehicle that meets all of the requirements of Transnet</p>	<p><u>Penalty Formula</u></p> <p>The Service Provider shall provide a replacement vehicle at the Service Provider's cost on the day immediately succeeding</p>	<p>95%</p>



	in accordance with stipulated timeframes.		<p>the date on which the Service Provider should have returned the Vehicle to Transnet until the date of actual return of the Vehicle to Transnet by the Service Provider (specialized equipment - depending on availability).</p> <p>If the Service Provider fails to do so, Transnet shall be entitled to recoup all costs incurred in renting a replacement vehicle from a third party</p>	
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			supplier at the Service Provider's cost.	
SCHEDULED MAINTENANCE				
KPI	DESCRIPTION	MEASUREMENT	PENALTIES	REQUIRED SERVICE LEVEL
Scheduled Maintenance (Non-Major Components)	Vehicle must be returned in full working condition within the lesser of the quoted hours and/or timeframes and the timeframes specified by the OEM ⁶	Time elapsed between the time of expiry of the lesser of the quoted hours and/or timeframes and the timeframes specified by the OEM and the time of return of the Vehicle by the Service Provider to Transnet,	<u>Penalty Formula</u> The Service Provider shall provide a replacement vehicle at the Service Provider's	95%

⁶ OEM time lines exclude time provided to complete ancillary services including pre-service washing, inspections, administration work and post-service washing. A reasonable time in the circumstances will be afforded to the Service Provider in addition to the specified OEM requirements to conduct these ancillary services.



		<p>fully repaired. The Service provider to include expected date of completion on the quotation.</p>	<p>cost on the day immediately succeeding the date on which the Service Provider should have returned the Vehicle to Transnet until the date of actual return of the Vehicle to Transnet by the Service Provider (specialized equipment - depending on availability).</p> <p>If the Service Provider fails to do so, Transnet shall be entitled to recoup all costs incurred in renting a replacement vehicle from a third</p>	
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			party supplier at the Service Provider's cost.	
Scheduled Maintenance (Major Components)	Vehicle must be returned in full working condition within 7 (seven) days of Transnet having delivered the Vehicle for repair, subject to availability of the necessary OEM parts.	Time elapsed between the expiry of the 7 (seven) day period and the time of return of the Vehicle to Transnet, fully repaired. The Service provider to include expected date of completion on the quotation.	<u>Penalty Formula</u> The Service Provider shall provide a replacement vehicle at the Service Provider's cost on the day immediately succeeding the date on which the Service Provider should have returned the Vehicle to Transnet until the date of actual return of the Vehicle to Transnet by the Service Provider (specialized equipment -	95%



			<p>depending on availability).</p> <p>If the Service Provider fails to do so, Transnet shall be entitled to recoup all costs incurred in renting a replacement vehicle from a third party supplier at the Service Provider's cost.</p>	
Scheduled Maintenance or replacement of tyres	<p>Tyres must be replaced within 3 (three) hours of Transnet having delivered a Vehicle for repair.</p>	<p>Time elapsed between the expiry of the 3 (three) hour period and the time of actual return of the Vehicle to Transnet, fully repaired. The Service provider to include expected date of completion on the quotation.</p>	<p><u>Penalty Formula</u></p> <p>The Service Provider shall provide a replacement vehicle at the Service Provider's cost on the day immediately succeeding the date on which the</p>	<p>95%</p>



			<p>Service Provider should have returned the Vehicle to Transnet until the date of actual return of the Vehicle to Transnet by the Service Provider (specialized equipment - depending on availability).</p> <p>If the Service Provider fails to do so, Transnet shall be entitled to recoup all costs incurred in renting a replacement vehicle from a third party supplier at the Service Provider's cost.</p>	
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Replacement of windscreen and glass (excluding light covers)	Windscreen and glass must be replaced within 8 (eight) hours of Transnet having notified the Service Provider that such replacement is required and having provided the required authorisation to the Service Provider, provided that the Vehicle is promptly made available to the Service Provider.	Time elapsed between the expiry of the 8 (eight) hour period and the time that the Vehicle is returned to Transnet, fully repaired. The Service provider to include expected date of completion on the quotation.	<u>Penalty Formula</u> The Service Provider shall provide a replacement vehicle at the Service Provider's cost on the day immediately succeeding the date on which the Service Provider should have returned the Vehicle to Transnet until the date of actual return of the Vehicle to Transnet by the Service Provider (specialized equipment - depending on availability).	95%
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			<p>If the Service Provider fails to do so, Transnet shall be entitled to recoup all costs incurred in renting a replacement vehicle from a third party supplier at the Service Provider's cost.</p>	
<p>Repair or replacement of Accessories</p>	<p>Accessories must be repaired or replaced and Vehicle returned within a time period to be agreed to between the Fleet Manager and the Service Provider.</p>	<p>Time elapsed between the expiry of the agreed time period for repair or replacement of the Accessory and the time of actual return of the Vehicle to Transnet. The Service provider to include expected date of completion on the quotation.</p>	<p><u>Penalty Formula</u></p> <p>The Service Provider shall provide a replacement vehicle at the Service Provider's cost on the day immediately succeeding the date on which the Service Provider should</p>	<p>95%</p>



			<p>have returned the Vehicle to Transnet until the date of actual return of the Vehicle to Transnet by the Service Provider (specialized equipment - depending on availability).</p> <p>If the Service Provider fails to do so, Transnet shall be entitled to recoup all costs incurred in renting a replacement vehicle from a third party supplier at the Service Provider's cost.</p>	
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Quotation for maintenance to Vehicle (Scheduled and Unscheduled)	Quotation for all reasonable and necessary repairs to the Vehicle to be provided within 8 (eight) hours of the delivery of the Vehicle by Transnet to the Designated Area	Time elapsed between the time of delivery of the Vehicle by Transnet to the Service Provider and the time that the quotation is actually provided by the Service Provider to Transnet. The Service provider to include expected date of completion on the quotation.	<u>Penalty Formula</u> The Service Provider shall provide a replacement vehicle at the Service Provider's cost on the day immediately succeeding the date on which the Service Provider should have returned the Vehicle to Transnet until the date of actual return of the Vehicle to Transnet by the Service Provider (specialized equipment - depending on availability).	95%
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			If the Service Provider fails to do so, Transnet shall be entitled to recoup all costs incurred in renting a replacement vehicle from a third party supplier at the Service Provider's cost.	
UNSCHEDULED MAINTENANCE				
KPI	DESCRIPTION	MEASUREMENT	PENALTIES	REQUIRED SERVICE LEVEL
Unscheduled Maintenance	Vehicle must be returned in full working condition within the lesser of quoted hours and/or timeframes and	Time elapsed between the expiry of the lesser of the quoted hours and/or timeframes and the timeframes	<u>Penalty Formula</u>	95%



(Non-Major Components)	the timeframes specified by the OEM ⁷ determined from the time that Transnet delivered the Vehicle to the Service Provider	specified by the OEM to the time that the Vehicle is returned to Transnet, fully repaired. The Service provider to include expected date of completion on the quotation.	The Service Provider shall provide a replacement vehicle at the Service Provider's cost on the day immediately succeeding the date on which the Service Provider should have returned the Vehicle to Transnet until the date of actual return of the Vehicle to Transnet by the Service Provider (specialized	
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⁷ OEM time lines exclude time provided to complete ancillary services including pre-service washing, inspections, administration work and post-service washing. A reasonable time in the circumstances will be afforded to the Service Provider in addition to the specified OEM requirements to conduct these ancillary services.



			<p>equipment - depending on availability).</p> <p>If the Service Provider fails to do so, Transnet shall be entitled to recoup all costs incurred in renting a replacement vehicle from a third party supplier at the Service Provider's cost.</p>	
Unscheduled Maintenance (Major Components)	Vehicle must be returned in full working condition within 7 (seven) days of Transnet having delivered the Vehicle for repair subject to availability of the necessary OEM parts.	Time elapsed between the expiry of the 7 (seven) day period and the time that the Vehicle is returned to Transnet, fully repaired. The Service provider to include expected date of completion on the quotation.	<u>Penalty Formula</u> The Service Provider shall provide a replacement vehicle at the Service Provider's cost on the day immediately succeeding	95%



			<p>the date on which the Service Provider should have returned the Vehicle to Transnet until the date of actual return of the Vehicle to Transnet by the Service Provider (specialized equipment - depending on availability).</p> <p>If the Service Provider fails to do so, Transnet shall be entitled to recoup all costs incurred in renting a replacement vehicle from a third party supplier at the Service Provider's cost.</p>	
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Unscheduled Maintenance – Operator Default (Non-Major Components)	Vehicle must be returned in full working condition within the lesser of the quoted hours and/or timeframes and the timeframes specified by the OEM ⁸ determined from the time that Transnet has delivered the Vehicle to the Service Provider and provided a PO for the operator default repairs.	Time elapsed between the expiry of the lesser of the quoted hours and/or timeframes and the timeframes specified by the OEM to the time that the Vehicle is returned to Transnet, fully repaired. The Service provider to include expected date of completion on the quotation.	<u>Penalty Formula</u> The Service Provider shall provide a replacement vehicle at the Service Provider's cost on the day immediately succeeding the date on which the Service Provider should have returned the Vehicle to Transnet until the date of actual return of the Vehicle to	95%
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⁸ OEM time lines exclude time provided to complete ancillary services including pre-service washing, inspections, administration work and post-service washing. A reasonable time in the circumstances will be afforded to the Service Provider in addition to the specified OEM requirements to conduct these ancillary services.



			<p>Transnet by the Service Provider (specialized equipment - depending on availability).</p> <p>If the Service Provider fails to do so, Transnet shall be entitled to recoup all costs incurred in renting a replacement vehicle from a third party supplier at the Service Provider's cost.</p>	
Unscheduled Maintenance – Operator Default	Vehicle must be returned in full working condition within 7 (seven) days of Transnet having delivered the Vehicle for repair subject to availability	Time elapsed between the expiry of the 7 (seven) day period and the time that the Vehicle is returned to Transnet, fully repaired. The Service	<p><u>Penalty Formula</u></p> <p>The Service Provider shall provide a replacement vehicle at</p>	95%



(Major Components)	of the necessary OEM parts and provided a PO for the operator default repairs..	provider to include expected date of completion on the quotation.	<p>the Service Provider's cost on the day immediately succeeding the date on which the Service Provider should have returned the Vehicle to Transnet until the date of actual return of the Vehicle to Transnet by the Service Provider (specialized equipment - depending on availability).</p> <p>If the Service Provider fails to do so, Transnet shall be entitled to recoup all costs incurred in renting a</p>	
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			replacement vehicle from a third party supplier at the Service Provider's cost.	
Warranty repairs (Non-Major components)	Replacement vehicles must be provided within 8 (eight) hours of the elapsed repair times from the time of delivery by Transnet of the Vehicle to the Service Provider and agreed repair time frames between the delegated person within Transnet and the Service Provider. Should the agreed time frame be not met, Service Provider to provide a replacement vehicle.	Time elapsed between the expiry of the 8 (eight) hour period and the time that the Vehicle is returned to Transnet, fully repaired. The Service provider to include expected date of job completion on the quotation.	The Service Provider shall provide a replacement vehicle at the Service Provider's cost on the day immediately succeeding the date on which the Service Provider should have returned the Vehicle to Transnet until the date of actual return of the Vehicle to Transnet by the Service Provider (specialized equipment -	95%



			<p>depending on availability).</p> <p>If the Service Provider fails to do so, Transnet shall be entitled to recoup all costs incurred in renting a replacement vehicle from a third party supplier at the Service Provider's cost.</p>	
	Vehicle must be returned in full working condition within the lesser of the quoted hours and/or timeframes or	Time elapsed between the expiry of the lesser of the quoted hours and/or timeframes and the timeframes specified by the OEM to the time that the Vehicle is returned to Transnet, fully repaired	<p><u>Penalty Formula</u></p> <p>The Service Provider shall provide a replacement vehicle at the Service Provider's cost on the day immediately succeeding</p>	95%



	the timeframes specified by the OEM ⁹ determined from the time that Transnet delivers the Vehicle for repair.		the date on which the Service Provider should have returned the Vehicle to Transnet until the date of actual return of the Vehicle to Transnet by the Service Provider (specialized equipment - depending on availability). If the Service Provider fails to do so, Transnet	
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⁹ OEM time lines exclude time provided to complete ancillary services including pre-service washing, inspections, administration work and post-service washing. A reasonable time in the circumstances will be afforded to the Service Provider in addition to the specified OEM requirements to conduct these ancillary services.



			shall be entitled to recoup all costs incurred in renting a replacement vehicle from a third party supplier at the Service Provider's cost.	
Warranty repairs (Major Components)	Replacement vehicles must be provided within 8 (eight) hours of the elapsed repair times from the time of delivery by Transnet of the Vehicle to the Service Provider and agreed repair time frames between the delegated person within Transnet and the Service Provider. Should the agreed time frame be not met, Service Provider to provide a replacement vehicle.	Time elapsed between the expiry of the 8 (eight) hour period and the time that the Vehicle is returned to Transnet, fully repaired. The Service provider to include expected date of job completion on the quotation.	The Service Provider shall provide a replacement vehicle at the Service Provider's cost on the day immediately succeeding the date on which the Service Provider should have returned the Vehicle to Transnet until the date of actual return of the Vehicle to	95%



			<p>Transnet by the Service Provider (specialized equipment - depending on availability).</p> <p>If the Service Provider fails to do so, Transnet shall be entitled to recoup all costs incurred in renting a replacement vehicle from a third party supplier at the Service Provider's cost.</p>	
	Vehicle must be returned in full working condition within 7 (seven) days of Transnet having delivered the	Time elapsed between the expiry of the 7 (seven) day period and the time that the Vehicle is returned to Transnet, fully repaired	<p><u>Penalty Formula</u></p> <p>The Service Provider shall provide a replacement vehicle at</p>	95%



	Vehicle for repair, subject to availability of the necessary OEM parts.		<p>the Service Provider's cost on the day immediately succeeding the date on which the Service Provider should have returned the Vehicle to Transnet until the date of actual return of the Vehicle to Transnet by the Service Provider (specialized equipment - depending on availability).</p> <p>If the Service Provider fails to do so, Transnet shall be entitled to recoup all costs incurred in renting a</p>	
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			replacement vehicle from a third party supplier at the Service Provider's cost.	
Quotation for maintenance to Vehicle (Scheduled and Unscheduled)	Quotation for all reasonable and necessary repairs to the Vehicle to be provided within 8 (eight) hours of the delivery of the Vehicle by Transnet to the Designated Area provided that a valid booking is made by obtaining a helpdesk reference number from the service provider's Customer Call Centre.	Time elapsed between the time of delivery of the Vehicle by Transnet to the Service Provider and the time that the quotation is actually provided by the Service Provider to Transnet	<u>Penalty Formula</u> The Service Provider shall provide a replacement vehicle at the Service Provider's cost on the day immediately succeeding the date on which the Service Provider should have provided Transnet with a quotation in respect of the Vehicle until the date of actual provision of a quotation	95%



			<p>in respect of the Vehicle to Transnet by the Service Provider.</p> <p>If the Service Provider fails to do so, Transnet shall be entitled to recoup all costs incurred in renting a replacement vehicle from a third party supplier at the Service Provider's cost.</p>	
ACCIDENTS AND INCIDENTS (THEFT AND HIJACKING)				
KPI	DESCRIPTION	MEASUREMENT	PENALTIES	REQUIRED SERVICE LEVEL



Theft, Hijacking, Write-Off	<p>The Service Provider is required to provide Transnet with a replacement vehicle within 8 (eight) hours of the provision of a relevant purchase order</p>	<p>The time of notification is evidenced by the time that a call is logged at the Call Centre as evidenced by the Call Centre software. In the event of a dispute, the time that a call is made by Transnet to the Call Centre shall prevail.</p>	<p>The Service Provider shall provide a replacement vehicle at the Service Provider's cost on the day immediately succeeding the date on which the Service Provider should have returned the Vehicle to Transnet until the date of actual return of the Vehicle to Transnet by the Service Provider (specialized equipment - depending on availability).</p> <p>If the Service Provider fails to do so, Transnet</p>	<p>95%</p>
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			shall be entitled to recoup all costs incurred in renting a replacement vehicle from a third party supplier at the Service Provider's cost.	
	Provision and delivery of new STR Vehicle at Transnet's discretion in event of theft, hijacking or write-off	See <u>Provision and Delivery of STR Vehicles</u>	See <u>Provision and Delivery of STR Vehicles</u>	95%
BREAKDOWNS				
KPI	DESCRIPTION	MEASUREMENT	PENALTIES	REQUIRED SERVICE LEVEL
Attendance to a breakdown and	Vehicle to be attended to within 1 (one) hour of call for urban areas (\leq 20 km (twenty kilometre) radius of	The time of notification is evidenced by the time that a call is logged at the Call Centre as evidenced by the	If breakdown or roadside assistance	99%



roadside assistance	the Service Provider's workshop) and 2 (two) hours for rural areas (>20km (twenty kilometre) radius of the Service Provider's workshop)	<p>Call Centre software. In the event of a dispute, the time that a call is made by Transnet to the Call Centre shall prevail.</p> <p>Time that has elapsed between the expiry of the 1 (one) hour period in respect of urban areas and 2 (two) hour period in respect of rural areas and the actual time that breakdown or roadside assistance was actually provided (if at all)</p>	<p>actually provided, <u>Penalty Formula</u> applies</p> <p>If no breakdown or roadside assistance actually provided, the costs actually incurred by Transnet relative to the procurement of breakdown or roadside assistance from a third party service provider.</p>	
Call Centre	Except in circumstances specifically provided for in the Operational SLA, log and acknowledge receipt of complaints or enquiry within 24 (twenty four) hours	<p>Where the Operational SLA provides for alternative time frames for the response to a call by the Call Centre, such measurements shall apply.</p> <p>In all other instances, the time elapsed between the time of expiry</p>	<u>Penalty Formula</u>	95%



		of the 24 (twenty-four) hour period and the actual time of resolution of the complaint or enquiry of Transnet as evidenced by email correspondence exchanged between the Call Centre and Transnet		
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OWNED FLEET				
SCHEDULED MAINTENANCE				
KPI	DESCRIPTION	MEASUREMENT	PENALTIES	REQUIRED SERVICE LEVEL



Scheduled Maintenance (Non-Major Components)	Vehicle must be returned in full working condition within the lesser of the quoted hours and/or timeframes and the timeframes specified by the OEM ¹⁰	Time elapsed between the time of expiry of the lesser of the quoted hours and/or timeframes and the timeframes specified by the OEM and the time of return of the Vehicle by the Service Provider to Transnet, fully repaired following the provision of a purchase order from Transnet. The Service provider to include expected date of completion on the quotation.	<u>Penalty Formula</u> The Service Provider shall provide a replacement vehicle at the Service Provider's cost on the day immediately succeeding the date on which the Service Provider should have returned the Vehicle to Transnet until the date of actual return of the	95%
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¹⁰ OEM time lines exclude time provided to complete ancillary services including pre-service washing, inspections, administration work and post-service washing. A reasonable time in the circumstances will be afforded to the Service Provider in addition to the specified OEM requirements to conduct these ancillary services.



			<p>Vehicle to Transnet by the Service Provider (specialized equipment - depending on availability).</p> <p>If the Service Provider fails to do so, Transnet shall be entitled to recoup all costs incurred in renting a replacement vehicle from a third party supplier at the Service Provider's cost.</p>	
Scheduled Maintenance (Major Components)	Vehicle must be returned in full working condition within 7 (seven) days of Transnet having delivered the Vehicle for repair, subject to	Time elapsed between the expiry of the 7 (seven) day period and the time of return of the Vehicle to Transnet, fully repaired following the provision of a purchase order from	<u>Penalty Formula</u> The Service Provider shall provide a replacement vehicle at the Service Provider's	95%



Scheduled Maintenance or replacement of tyres	availability of the necessary OEM parts.	Transnet. The Service provider to include expected date of completion on the quotation.	cost on the day immediately succeeding the date on which the Service Provider should have returned the Vehicle to Transnet until the date of actual return of the Vehicle to Transnet by the Service Provider (specialized equipment - depending on availability). If the Service Provider fails to do so, Transnet shall be entitled to recoup all costs incurred in renting a replacement vehicle from a third	
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			party supplier at the Service Provider's cost.	
	<p>Tyres must be replaced within 3 (three) hours of Transnet having delivered a Vehicle for repair.</p> <p>Medium commercial vehicles – 4 (four) hours</p> <p>Heavy commercial vehicles – 6 (six) hours</p> <p>Extra heavy commercial vehicles and forklifts < 10 (ten) tons – 8 (eight) hours</p> <p>Forklifts > 10 (ten) tons – 72 (seventy-two) hours</p>	<p>Time elapsed between the expiry of the 3 (three) hour period and the time of actual return of the Vehicle to Transnet, fully repaired following the provision of a purchase order from Transnet. The Service provider to include expected date of completion on the quotation.</p>	<p><u>Penalty Formula</u></p> <p>The Service Provider shall provide a replacement vehicle at the Service Provider's cost on the day immediately succeeding the date on which the Service Provider should have returned the Vehicle to Transnet until the date of actual return of the Vehicle to Transnet by the Service Provider (specialized equipment</p>	95%



			<p>- depending on availability).</p> <p>If the Service Provider fails to do so, Transnet shall be entitled to recoup all costs incurred in renting a replacement vehicle from a third party supplier at the Service Provider's cost.</p>	
<p>Replacement of windscreen and glass (excluding light covers)</p>	<p>Windscreen and glass must be replaced within 8 (eight) hours of Transnet having notified the Service Provider that such replacement is required and having provided the required authorisation to the Service Provider, provided that the Vehicle is</p>	<p>Time elapsed between the expiry of the 8 (eight) hour period and the time that the Vehicle is returned to Transnet, fully repaired following the provision of a purchase order from Transnet. The Service provider to include expected date of completion on the quotation.</p>	<p><u>Penalty Formula</u></p> <p>The Service Provider shall provide a replacement vehicle at the Service Provider's cost on the day immediately succeeding the date on</p>	<p>95%</p>



	<p>promptly made available to the Service Provider.</p>		<p>which the Service Provider should have returned the Vehicle to Transnet until the date of actual return of the Vehicle to Transnet by the Service Provider (specialized equipment - depending on availability).</p> <p>If the Service Provider fails to do so, Transnet shall be entitled to recoup all costs incurred in renting a replacement vehicle from a third party supplier at the Service Provider's cost.</p>	
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Repair or replacement of Accessories	<p>Accessories must be repaired or replaced and Vehicle returned within a time period to be agreed to between the Fleet Manager and the Service Provider.</p>	<p>Time elapsed between the expiry of the agreed time period for repair or replacement of the Accessory and the time of actual return of the Vehicle to Transnet following the provision of a purchase order from Transnet. The Service provider to include expected date of completion on the quotation.</p>	<p><u>Penalty Formula</u></p> <p>The Service Provider shall provide a replacement vehicle at the Service Provider's cost on the day immediately succeeding the date on which the Service Provider should have returned the Vehicle to Transnet until the date of actual return of the Vehicle to Transnet by the Service Provider (specialized equipment - depending on availability).</p>	<p>95%</p>
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			If the Service Provider fails to do so, Transnet shall be entitled to recoup all costs incurred in renting a replacement vehicle from a third party supplier at the Service Provider's cost.	
Scheduled Maintenance (Major Components)	Vehicle must be returned in full working condition within 7 (seven) days of Transnet having delivered the Vehicle for repair, subject to availability of the necessary OEM parts.	Time elapsed between the expiry of the 7 (seven) day period and the time of return of the Vehicle to Transnet, fully repaired following the provision of a purchase order from Transnet. The Service provider to include expected date of completion on the quotation.	<u>Penalty Formula</u> The Service Provider shall provide a replacement vehicle at the Service Provider's cost on the day immediately succeeding the date on which the Service	95%



			<p>Provider should have returned the Vehicle to Transnet until the date of actual return of the Vehicle to Transnet by the Service Provider (specialized equipment - depending on availability).</p> <p>If the Service Provider fails to do so, Transnet shall be entitled to recoup all costs incurred in renting a replacement vehicle from a third party supplier at the Service Provider's cost.</p>	
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Quotation for maintenance to Vehicle	Quotation for all reasonable and necessary repairs to the Vehicle to be provided within 8 (eight) hours of the delivery of the Vehicle by Transnet to the Designated Area	Time elapsed between the time of delivery of the Vehicle by Transnet to the Service Provider and the time that the quotation is actually provided by the Service Provider to Transnet. The Service provider to include expected date of completion on the quotation.	<u>Penalty Formula</u> The Service Provider shall provide a replacement vehicle at the Service Provider's cost on the day immediately succeeding the date on which the Service Provider should have provided a quote to Transnet until the date of the provision of a quote in respect of the Vehicle to Transnet by the Service Provider (specialized equipment	95%
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			<p>- depending on availability).</p> <p>If the Service Provider fails to do so, Transnet shall be entitled to recoup all costs incurred in renting a replacement vehicle from a third party supplier at the Service Provider's cost.</p>	
UNSCHEDULED MAINTENANCE				
KPI	DESCRIPTION	MEASUREMENT	PENALTIES	REQUIRED SERVICE LEVEL



Unscheduled Maintenance (Non-Major Components)	Vehicle must be returned in full working condition within the lesser of quoted hours and/or timeframes and the timeframes specified by the OEM ¹¹ determined from the time that Transnet delivered the Vehicle to the Service Provider	Time elapsed between the expiry of the lesser of the quoted hours and/or timeframes and the timeframes specified by the OEM to the time that the Vehicle is returned to Transnet, fully repaired following the provision of a purchase order from Transnet. The Service provider to include expected date of completion on the quotation.	<u>Penalty Formula</u> The Service Provider shall provide a replacement vehicle at the Service Provider's cost on the day immediately succeeding the date on which the Service Provider should have returned the Vehicle to Transnet until the date of actual return of the	95%
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¹¹ OEM time lines exclude time provided to complete ancillary services including pre-service washing, inspections, administration work and post-service washing. A reasonable time in the circumstances will be afforded to the Service Provider in addition to the specified OEM requirements to conduct these ancillary services.



			<p>Vehicle to Transnet by the Service Provider (specialized equipment - depending on availability).</p> <p>If the Service Provider fails to do so, Transnet shall be entitled to recoup all costs incurred in renting a replacement vehicle from a third party supplier at the Service Provider's cost.</p>	
Unscheduled Maintenance (Major Components)	Vehicle must be returned in full working condition within 7 (seven) days of Transnet having delivered the Vehicle for repair subject to availability of the necessary OEM parts.	Time elapsed between the expiry of the 7 (seven) day period and the time that the Vehicle is returned to Transnet, fully repaired following the provision of a purchase order from	<u>Penalty Formula</u> The Service Provider shall provide a replacement vehicle at the Service Provider's	95%



		<p>Transnet. The Service provider to include expected date of completion on the quotation.</p>	<p>cost on the day immediately succeeding the date on which the Service Provider should have returned the Vehicle to Transnet until the date of actual return of the Vehicle to Transnet by the Service Provider (specialized equipment - depending on availability).</p> <p>If the Service Provider fails to do so, Transnet shall be entitled to recoup all costs incurred in renting a replacement vehicle from a third</p>	
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			party supplier at the Service Provider's cost.	
Unscheduled Maintenance – Operator Default (Non-Major Components)	Vehicle must be returned in full working condition within the lesser of the quoted hours and/or timeframes and the timeframes specified by the OEM ¹² determined from the time that Transnet has delivered the Vehicle to the Service Provider.	Time elapsed between the expiry of the lesser of the quoted hours and/or timeframes and the timeframes specified by the OEM to the time that the Vehicle is returned to Transnet, fully repaired following the provision of a purchase order from Transnet. The Service provider to include expected date of completion on the quotation.	<u>Penalty Formula</u> The Service Provider shall provide a replacement vehicle at the Service Provider's cost on the day immediately succeeding the date on which the Service Provider should have	95%

¹² OEM time lines exclude time provided to complete ancillary services including pre-service washing, inspections, administration work and post-service washing. A reasonable time in the circumstances will be afforded to the Service Provider in addition to the specified OEM requirements to conduct these ancillary services.



			<p>returned the Vehicle to Transnet until the date of actual return of the Vehicle to Transnet by the Service Provider (specialized equipment - depending on availability).</p> <p>If the Service Provider fails to do so, Transnet shall be entitled to recoup all costs incurred in renting a replacement vehicle from a third party supplier at the Service Provider's cost.</p>	
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Unscheduled Maintenance – Operator Default (Major Components)	Vehicle must be returned in full working condition within 7 (seven) days of Transnet having delivered the Vehicle for repair subject to availability of the necessary OEM parts and Transnet having provided the Service Provider with a purchase order.	Time elapsed between the expiry of the 7 (seven) day period and the time that the Vehicle is returned to Transnet, fully repaired following the provision of a purchase order from Transnet. The Service provider to include expected date of completion on the quotation.	<u>Penalty Formula</u> The Service Provider shall provide a replacement vehicle at the Service Provider's cost on the day immediately succeeding the date on which the Service Provider should have returned the Vehicle to Transnet until the date of actual return of the Vehicle to Transnet by the Service Provider (specialized equipment - depending on availability).	95%
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			If the Service Provider fails to do so, Transnet shall be entitled to recoup all costs incurred in renting a replacement vehicle from a third party supplier at the Service Provider's cost.	
Warranty repairs (Non-Major components)	Replacement vehicles must be provided within 8 (eight) hours of the time of delivery by Transnet of the Vehicle to the Service Provider	Time elapsed between the expiry of the 8 (eight) hour period and the time that the Vehicle is returned to Transnet, fully repaired following the provision of a purchase order from Transnet. The Service provider to include expected date of completion on the quotation.	The Service Provider shall provide a replacement vehicle at the Service Provider's cost on the day immediately succeeding the date on which the Service Provider should have returned the Vehicle to	95%



			<p>Transnet until the date of actual return of the Vehicle to Transnet by the Service Provider (specialized equipment - depending on availability).</p> <p>If the Service Provider fails to do so, Transnet shall be entitled to recoup all costs incurred in renting a replacement vehicle from a third party supplier at the Service Provider's cost.</p>	
	Vehicle must be returned in full working condition within the lesser of	Time elapsed between the expiry of the lesser of the quoted hours	<u>Penalty Formula</u>	95%



	the quoted hours and/or timeframes or the timeframes specified by the OEM ¹³ determined from the time that Transnet delivers the Vehicle for repair.	and/or timeframes and the timeframes specified by the OEM to the time that the Vehicle is returned to Transnet, fully repaired following the provision of a purchase order from Transnet. The Service provider to include expected date of completion on the quotation.	The Service Provider shall provide a replacement vehicle at the Service Provider's cost on the day immediately succeeding the date on which the Service Provider should have returned the Vehicle to Transnet until the date of actual return of the Vehicle to Transnet by the Service Provider	
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¹³ OEM time lines exclude time provided to complete ancillary services including pre-service washing, inspections, administration work and post-service washing. A reasonable time in the circumstances will be afforded to the Service Provider in addition to the specified OEM requirements to conduct these ancillary services.



			<p>(specialized equipment - depending on availability).</p> <p>If the Service Provider fails to do so, Transnet shall be entitled to recoup all costs incurred in renting a replacement vehicle from a third party supplier at the Service Provider's cost.</p>	
Warranty repairs (Major Components)	Replacement vehicles must be provided within 8 (eight) hours of the time of delivery of the Vehicle to the Service Provider for repairs	Time elapsed between the expiry of the 8 (eight) hour period and the time that the Vehicle is returned to Transnet, fully repaired following the provision of a purchase order from Transnet. The Service provider to	The Service Provider shall provide a replacement vehicle at the Service Provider's cost on the day immediately	95%



		include expected date of completion on the quotation.	<p>succeeding the date on which the Service Provider should have returned the Vehicle to Transnet until the date of actual return of the Vehicle to Transnet by the Service Provider (specialized equipment - depending on availability).</p> <p>If the Service Provider fails to do so, Transnet shall be entitled to recoup all costs incurred in renting a replacement vehicle from a third party</p>	
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			supplier at the Service Provider's cost.	
	Vehicle must be returned in full working condition within 7 (seven) days of Transnet having delivered the Vehicle for repair, subject to availability of the necessary OEM parts.	Time elapsed between the expiry of the 7 (seven) day period and the time that the Vehicle is returned to Transnet, fully repaired following the provision of a purchase order from Transnet. The Service provider to include expected date of completion on the quotation.	<u>Penalty Formula</u> The Service Provider shall provide a replacement vehicle at the Service Provider's cost on the day immediately succeeding the date on which the Service Provider should have returned the Vehicle to Transnet until the date of actual return of the Vehicle to Transnet by the Service Provider (specialized equipment	95%



			<p>- depending on availability).</p> <p>If the Service Provider fails to do so, Transnet shall be entitled to recoup all costs incurred in renting a replacement vehicle from a third party supplier at the Service Provider's cost.</p>	
Quotation for maintenance to Vehicle	Quotation for all reasonable and necessary repairs to the Vehicle to be provided within 8 (eight) hours of the delivery of the Vehicle by Transnet to the Designated Area	Time elapsed between the time of delivery of the Vehicle by Transnet to the Service Provider and the time that the quotation is actually provided by the Service Provider to Transnet. The Service provider to	<p><u>Penalty Formula</u></p> <p>The Service Provider shall provide a replacement vehicle at the Service Provider's cost on the day immediately</p>	95%



		<p>include expected date of completion on the quotation.</p>	<p>succeeding the date on which the Service Provider should have provided a quotation in respect of the Vehicle to Transnet until the date of actual provision of a quotation to Transnet by the Service Provider (specialized equipment - depending on availability).</p> <p>If the Service Provider fails to do so, Transnet shall be entitled to recoup all costs incurred in renting a replacement vehicle from a third party</p>	
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			supplier at the Service Provider's cost.	
ACCIDENTS AND INCIDENTS (THEFT AND HIJACKING)				
KPI	DESCRIPTION	MEASUREMENT	PENALTIES	REQUIRED SERVICE LEVEL
Theft, Hijacking, Write-Off	The Service Provider is required to provide Transnet with a replacement vehicle within 8 (eight) hours of the notification of a theft or hijacking and Transnet having provided the Service Provider with a purchase order	The time of notification is evidenced by the time that a call is logged at the Call Centre as evidenced by the Call Centre software. In the event of a dispute, the time that a call is made by Transnet to the Call Centre shall prevail.	The Service Provider shall provide a replacement vehicle at the Service Provider's cost on the day immediately succeeding the date on which the Service Provider should have returned the Vehicle to Transnet until the date of actual return of the	95%



			<p>Vehicle to Transnet by the Service Provider (specialized equipment - depending on availability).</p> <p>If the Service Provider fails to do so, Transnet shall be entitled to recoup all costs incurred in renting a replacement vehicle from a third party supplier at the Service Provider's cost.</p>	
	Provision and delivery of new STR Vehicle at Transnet's discretion in event of theft, hijacking or write-off	See <u>Provision and Delivery of STR Vehicles</u>	See <u>Provision and Delivery of STR Vehicles</u>	95%



BREAKDOWNS				
KPI	DESCRIPTION	MEASUREMENT	PENALTIES	REQUIRED SERVICE LEVEL
Attendance to a breakdown and roadside assistance	Vehicle to be attended to within 2 (two) hour of call for urban areas (\leq 20 km (twenty kilometre) radius of the Service Provider's workshop) and 3 (three) hours for rural areas (>20 km (twenty kilometre) radius of the Service Provider's workshop)	<p>The time of notification is evidenced by the time that a call is logged at the Call Centre as evidenced by the Call Centre software. In the event of a dispute, the time that a call is made by Transnet to the Call Centre shall prevail.</p> <p>Time that has elapsed between the expiry of the 2 (two) hour period in respect of urban areas and 3 (three) hour period in respect of rural areas and the actual time that</p>	<p>If breakdown or roadside assistance actually provided, <u>Penalty Formula</u> applies</p> <p>If no breakdown or roadside assistance actually provided, the costs actually incurred by Transnet relative to the procurement of breakdown or roadside</p>	99%



		breakdown or roadside assistance was actually provided (if at all)	assistance from a third party service provider.	
Call Centre	Except in circumstances specifically provided for in the Operational SLA, log and acknowledge receipt of complaints or enquiry within 24 (twenty four) hours	<p>Where the Operational SLA provides for alternative time frames for the response to a call by the Call Centre, such measurements shall apply.</p> <p>In all other instances, the time elapsed between the time of expiry of the 24 (twenty-four) hour period and the actual time of resolution of the complaint or enquiry of Transnet as evidenced by email correspondence exchanged between the Call Centre and Transnet</p>	<u>Penalty Formula</u>	95%
AVERAGE SERVICE LEVEL TARGET				95%



ANNEXURE 4: MAJOR COMPONENTS (NOT LIMITED TO)

Brakes

Clutch

Engine

Gearbox

Differentials

Computer box

Electrical system

Hydraulic system

ANNEXURE 5: STANDARD MANDATORY FITMENTS

VEHICLE TYPE	SPECIFICATIONS	Radio	ABS	Air/Bags	Air/Con	Additional Airbags for passengers	Seatbelt Indicator	4 replacement sets of tyres	Speed buzzers	Speed limiter (default alarm)
Cars	1100cc to 1600cc	Mandatory	Mandatory	Mandatory	Mandatory	Optional	Optional	Mandatory	Optional	Optional
	Half ton LDV Petrol	Mandatory	Mandatory	Mandatory	Mandatory	Optional	Optional	Mandatory	Optional	Optional
	Half ton LDV Diesel	Mandatory	Mandatory	Mandatory	Mandatory	Optional	Optional	Mandatory	Optional	Optional
	One ton LDV Single Cab Petrol 2000cc to 3000cc	Mandatory	Mandatory	Mandatory	Mandatory	Optional	Optional	Mandatory	Optional	Optional



LDV	One ton LDV Single Cab Diesel 2000cc to 3000c	Mandatory	Mandatory	Mandatory	Mandatory	Optional	Optional	Mandatory	Optional	Optional
	One ton Double Cab Petrol 2000cc to 3000cc	Mandatory	Mandatory	Mandatory	Mandatory	Optional	Optional	Mandatory	Optional	Optional
	One ton Double Cab Diesel 2000cc to 3000cc	Mandatory	Mandatory	Mandatory	Mandatory	Optional	Optional	Mandatory	Optional	Optional
Panel Van	Panel Van (Petrol)	Mandatory	Mandatory	Mandatory	Mandatory	Optional	Optional	Mandatory	Optional	Optional
	Panel Van (Diesel)	Mandatory	Mandatory	Mandatory	Mandatory	Optional	Optional	Mandatory	Optional	Optional
Minibus	Minibus combi 8-14 seater (including driver) petrol	Mandatory	Mandatory	Mandatory	Mandatory	Optional	Optional	Mandatory	Optional	Optional
	Minibus combi 8-14 seater (including driver) diesel	Mandatory	Mandatory	Mandatory	Mandatory	Optional	Optional	Mandatory	Optional	Optional

ANNEXURE 6: CUSTOMER INFORMATION SCHEDULES

The Customer Information Schedule report shall include, but not limited to, the following information per Vehicle:

Operating Division	Region
	Location
	Business unit/ department
	Cost centre
	Account number
Vehicle	Registration number
	Category code
	Category description
	Make and model
	Year of manufacture
	Driver(s)
Monthly costing	Variable costing
	E-tolling
	Cost excluding and including VAT
	Total monthly cost in South African Rand per Vehicle
Monthly statistics	Odometer start and end kilometre readings
	Utilisation for the month (per log book or alternative system)

	Fuel and oil usage (including litres and rand value)
	Tyres
	Tracking report
	Routine servicing schedule
	Average life to date utilisation and estimated replacement date
Other ad hoc matters	Proxy management
	Licensing
	Accessory fitment
	Roadside assistance and/or towing services
	Accident damage
	Operator defaults
	Fines
	Vehicle disposal

ANNEXURE 7: STRATEGIC SLA

KPI	MEASUREMENT	WEIGHTING						
Annual savings reporting	Reporting of actual savings achieved by the Service Provider							
Availability of Vehicles	The Uptime Target should be achieved	80%						
User satisfaction survey	Achievement of an average of the score relative to the year (specified in the adjacent column) measured on an annual basis <table><tr><td>Year 1</td><td>95%</td></tr><tr><td>Year 2</td><td>95%</td></tr><tr><td>Year 3 +</td><td>95%</td></tr></table>	Year 1	95%	Year 2	95%	Year 3 +	95%	20%
Year 1	95%							
Year 2	95%							
Year 3 +	95%							
Strategic KPI 1	Mutually agreed annually at the Operational Steercom and measurement of actual performance as compared with agreed target							
Strategic KPI 2	Mutually agreed at the Operational Steercom and measurement of actual performance as compared with agreed target							
AVERAGE SERVICE LEVEL TARGET		To be specified annually						

ANNEXURE 8: REPORTS AND REPORTING REQUIREMENTS

Fleet Management Automated Dashboard and Reporting (Service Providers to provide following inputs/raw data), BUT NOT LIMITED TO:

- Monthly CUSTOMER INFORMATION SCHEDULES (as per Transnet templates)
- Weekly Ageing per Vehicle (as per Transnet templates)
- Daily Tracking Information (as per Transnet Templates)

Monthly Fleet Management Reports:

- The following monthly reports shall be provided by the Service Provider to Transnet:

Vehicle Management – Customer Information Schedule;

Fleet Management – Management Information Systems;

Budgeting and Statistics – Customer information schedules or fleet statistics, and exception reports including, but not limited to, age analysis, kilometres, usage, cost per kilometre, maintenance programme, driver abuse, excess make-good costs, Vehicle Services schedules (due & overdue), recommended replacement schedules (six months on advance), downtime, returned Vehicles, over and under-utilisation reports, call lodging reports and tyre reports;

A monthly “dashboard report” which shall be provided every 1st (first) week of the following month;

An exception report, as and when applicable;

The Service Provider shall provide to Transnet a multiple-parameter web-based reporting system to which designated users shall have access;

Any additional report that Transnet may require, from time to time, shall be agreed upon in writing by the Parties.

The costs associated with these reports are included in the monthly administration fee charge by the Service Provider to Transnet.

Vehicle Management Reports:

- Customer Information Schedule:

A customer information schedule report shall be generated by the Service Provider for Transnet, and produced monthly reflecting the Fleet’s activity.

Customer information schedule reports shall be e-mailed to the Fleet Manager on the 2nd (second) Business Day of each month.

Both Parties shall peruse the content and make any changes as agreed necessary, which amendments shall be recorded by the Service Provider and included in the following month's Customer information schedule report.

Any financial changes shall be dealt with immediately by the Parties.

Reports for the Operational Steercom

The following fleet management support Services are provided and reviewed at the quarterly fleet review meetings with Transnet:

Fleet Management:

Licensing;

Utilisation;

Vehicle life cycle;

Age profiles;

Disposal;

Statutory issues;

Fines;

Maintenance Management:

Maintenance;

Technical expertise;

Technical inspection and reporting;

Repairs;

Tyres;

Risk Management:

Accidents;

Drivers;

Authorisation;

Insurance claims;

Fines;

Tracking;

Legal;

Operations Management:

Policies and procedures;

Administration management;

Fleet management software;

Customised billing;

Management reporting;

Supplier management;

Debtors management;

Personalised service(NOT LIMITED TO).

SCHEDULED	
<u>GENERAL</u>	
<u>DESCRIPTION</u>	<u>FREQUENCY</u>
Inputs/ Raw Data required for the Automated Dashboard	As agreed
Billing reports for Transnet.	Monthly
Listings of all Vehicles with closing and opening odometer readings.	Monthly
Report analysing vehicle utilisation in terms of kilometres travelled.	Monthly

Vehicles due for maintenance during the next month.	Monthly	
EXCEPTION		
Accident management reports with analytical comments and consolidated for Transnet.	Monthly	
Report of traffic fines with the details (date and time, nature, amount and, where identifiable, the driver) of all fines incurred in respect of Vehicles, irrespective of who is liable for payment of the fine, i.e. the reports shall include details of fines incurred due to the un-roadworthy condition of Vehicles and other causes which are the responsibility of the Service Provider.	Monthly	
Report of Vehicles travelling less than 1500 kilometres per month or more than 7500 kilometres per month.	Monthly	
Report comparing Transnet’s budget and actual expenditure for official transport for a month, with analytical comments, including projected year-end budget variances.	Monthly	
SHORT-TERM RENTALS / AD HOC		
As and when needed, “early warning reports” highlighting any possibility of actual expenditure on official transport exceeding the monthly budgets.		
SERVICE SPECIFIC		
DESCRIPTION	FREQUENCY	REF
Call Centre	Monthly	Clause 52

<p>The Service Provider shall provide Transnet with the following information in respect of the insourced or outsourced Call Centre, namely:</p> <ul style="list-style-type: none"> • With respect to calls received from Transnet or its Personnel: <ul style="list-style-type: none"> ▪ the date and time of each call received in respect of incidents, accidents, thefts, hijackings or breakdowns ("service call"); ▪ the driver and vehicle details in respect of each service call received by the Call Centre; ▪ the date and time that each service call was satisfactorily resolved; • In respect of the Call Centre generally (i.e. in respect of all clients) <ul style="list-style-type: none"> ▪ the number of times all agents were busy; ▪ average call-waiting time; ▪ total calls received; ▪ number of abandoned calls per day per month; <p>This information shall be in the form of a monthly written report provided to Transnet by the Service Provider within 5 (five) days after the end of the immediately preceding calendar month for each calendar month during the currency of this Agreement.</p>		
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BBBEE and 30% PPPFA Sub-contracting Report

Monthly reports setting out the progress made by the Service Provider in respect of its obligations as compared to the BBBEE Improvement Plan and sub-contracting target.

Technical training and skills transfer

The Service Provider shall report on the delivery of training against a training plan approved by the Operational Steercom from time to time.

Other

Any other reports requested by Transnet from time to time

ANNEXURE 9: PRO FORMA PERFORMANCE GUARANTEE

PERFORMANCE GUARANTEE FOR CONTRACT NO TCC/2023/11/0001/50945/RFP (FLEET MANAGEMENT CONTRACT) (the '*PERFORMANCE GUARANTEE*')

With reference to the above numbered contract made or to be made between:
TRANSNET SOC LTD (Registration No.: 1990/000900/3) (the '*Entity*' and/or '*Transnet*')
and XXX (Registration No.: XXX) (the '*Service Provider*')

PROVISION OF LIGHT COMMERCIAL AND PASSENGER VEHICLES AND COMPREHENSIVE FLEET MANAGEMENT SERVICES FOR TRANSNET FOR A PERIOD OF FIVE (5) YEARS

We, the undersigned, XXX (Registration No.: XXX) of XXX, XX (the '*Guarantor*') provide the following Performance Guarantee to Transnet in regard to the performance by the Service Provider of certain of its obligations (as defined below as the "Secured Obligations") to Transnet under the Master Services Agreement executed between Transnet and the Service Provider on or about XXX ("the **MSA**"), as recorded in clause 17 of the MSA.

All capitalised terms not defined herein shall have the meaning given to them under the **MSA**.

For the purposes of this performance guarantee, the Secured Obligations shall be the following –

- c) Recovery of the costs and expenses incurred by the Entity in procuring Services and/or Vehicles and/or Accessories from a third party in the event that the Service Provider fails to achieve any of its obligations are recorded in the Operational SLA ("the Procurement Guarantee Element"); and
- d) Achievement by the Supplier of the BBEEE Improvement Plan ("the BBEE Improvement Plan Element").

16. The Guarantor hereby provides the following Performance Guarantee, as required under the MSA, subject to the following conditions:

- 16.1 Any reference in this Performance Guarantee to the MSA is made solely for the purpose of convenience and shall not be construed as any intention whatsoever to create an accessory obligation or any intention whatsoever to create a suretyship.
- 16.2 The Guarantor's obligations under the Performance Guarantee are restricted to the payment of money and not to rendering the performance, in terms of the MSA..
- 16.3 All benefit from any legal exception, which could or might be pleaded against the validity of this Performance Guarantee, is hereby renounced.
- 16.4 The Entity has the absolute right to arrange its affairs with the Service Provider in any manner which the Entity deems fit, and without being advised thereof, the Guarantor shall not have the right to claim the release on account of any conduct alleged to be prejudicial to the Guarantor as the result of the arrangement of its affairs by the Entity.
- 16.5 Subject to 1.6, this Performance Guarantee will lapse on:
 - a) Fulfilment of the obligations of the Service Provider under the MSA, i.e. on the Termination Date of the MSA, provided that the MSA is not extended; or

- b) When for any reason, stipulated in the MSA, early termination is sought by either party to the MSA and the MSA is accordingly terminated.
- 16.6 Notwithstanding 1.5 (a) and (b) above, this Performance Guarantee shall not lapse but shall remain in place in the event that the Guarantor is notified in writing by the Entity, or any person duly authorised to provide such notice, that the Entity has an intention to institute claims against the Guarantor under this Guarantee and the particulars thereof, against the Guarantor, in which event this Performance Guarantee shall remain in force until all such claims are paid and settled or held unenforceable, as the case may be; provided that if the claims noted in the aforementioned written notice are not instituted within 6 (six) months of the date of the relevant notice, the Performance Guarantee shall lapse on the expiry of the aforementioned 6 (six) month period.
- 16.7 Subject to the Guarantor's total liability referred to in clause 1.9 below in regard to each of the Secured Obligations, the Guarantor undertakes to pay Transnet the amount claimed by Transnet as being lawfully due and payable by it under this Guarantee in regard to the relevant Secured Obligation upon the receipt of a first written demand from the Entity to the Guarantor calling up this Performance Guarantee.
- 16.8 The written demand referred to in 1.7 above shall –
- 16.8.1 record the Secured Obligation in regard to which the Entity is making its demand for payment;
- 16.8.2 state that the MSA has been terminated due to the Service Provider's failure to fulfil its obligations under the MSA and the Performance Guarantee is called up in terms of this Performance Guarantee.
- 16.8.3 Enclose a copy of the termination certificate or notice terminating the MSA.
- 16.9 The total liability of the Guarantor under this Guarantee for any and all amounts claimed by Transnet shall not exceed in aggregate in regard to all claims the amount of R50 715 676 or the relevant maximum amount recorded in regard to each Secured Obligation for the relevant period in question below –
- 16.10
- 16.11 This Performance Guarantee is non-negotiable and not transferable.
- 16.12 A signed copy of the Performance Guarantee, accompanied by the required demand notice and termination certificate, shall be regarded as a liquid document for the purpose of obtaining a court order.
17. If the MSA is amended or varied in any manner whatsoever, this Performance Guarantee shall apply in respect of the MSA as amended or varied provided that any amendment which materially increases or modifies the obligations of the Guarantor under this Performance Guarantee, will require the prior written consent of the Guarantor, failing which the Guarantor's obligations hereunder will remain as if unamended.
18. The Guarantor warrants that:
- 18.1 it knows and understands the full terms and conditions of the MSA and this Performance Guarantee;
- 18.2 this Performance Guarantee constitutes legal, valid and binding obligations on it in accordance with its terms.
19. Each warranty, representation and undertaking made by the Guarantor and recorded in this Performance Guarantee shall be a separate warranty, representation and undertaking and shall

- in no way be limited or restricted by reference to or inference from the terms of any other warranty.
20. The Guarantor waives any rights that it may have to first require Transnet to take action or obtain judgment in any court against the Service Provider, to make, file or prove any claim in the winding-up or dissolution of the Service Provider, or to enforce or seek to enforce any guarantee or security granted by the Service Provider or any third party, before making payment, under this Performance Guarantee.
 21. This Performance Guarantee shall be in addition to and not in substitution of any other undertakings, guarantees, suretyships, or other security held or hereafter to be held by the Entity from the Guarantor or any third party in connection with the Secured Obligations or otherwise and the rights of Transnet under this Performance Guarantee will not be affected or diminished thereby. Transnet shall, without prejudice to its rights hereunder, be entitled to release any such additional security held by it.
 22. The Guarantor acknowledges and agrees that its obligations under this Performance Guarantee are absolute and, without in any way limiting or derogating from any other provisions of this Performance Guarantee, the Guarantor shall, as from the Effective Date, be and remain bound to the full extent of this Performance Guarantee, which shall at all times, be subject to applicable South African law, be fully enforceable in accordance with its terms, notwithstanding:
 - 22.1 any insolvency, administration, judicial management, reorganisation, arrangement, readjustment of debt, dissolution, liquidation or similar proceedings by or against Transnet or the Service Provider or the Guarantor;
 - 22.2 any invalidity or unenforceability or lack of due authorisation of, or other defect for reasons within the control of the Guarantor or the Service Provider, as applicable, in the Performance Guarantee, the MSA or any other agreement to which Transnet or the Guarantor is a party relating to the subject matter hereof;;
 - 22.3 any failure or delay on the part of the Guarantor duly to comply with any of its obligations under the Performance Guarantee;
 - 22.4 any compromise, settlement, release, change, modification, amendment (whether material or otherwise) or termination of any of the undertakings, terms or conditions imposed on the Service Provider in accordance with the MSA;
 - 22.5 any variation or novation of the Service Provider's obligations, whether by agreement, operation of law or otherwise which does not materially increase the obligations of the Guarantor; or
 - 22.6 any time or other indulgences being granted or agreed to be granted to the Service Provider and/or the Guarantor by Transnet or Transnet not exercising any one or more of its rights hereunder or under the Secured Obligations, either timeously or at all.
 23. All payments made by the Guarantor under the Performance Guarantee will be made free of any deductions of whatsoever nature and without set-off or other withholding whatsoever by way of electronic funds transfer into a bank account so designated by Transnet. Any amount due by the Guarantor but unpaid hereunder will bear interest at the Prime Rate per annum and shall be calculated from, and including, the date on which the amount became due for payment to, but excluding, the date of actual payment.
 24. No representations, promises or warranties have been made or given to the Guarantor by Transnet in connection with the Performance Guarantee.
 25. The Guarantor will not cede, delegate or assign the Performance Guarantee, without the consent of Transnet. The Performance Guarantee will also be for the benefit of and be binding upon the successors in title and permitted assigns of the parties or either of them.
 26. All provisions and the various clauses of the Performance Guarantee are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision or clause of the Performance Guarantee which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or

for any other reason whatever, shall, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as *pro non scripto* and the remaining provisions and clauses of the Performance Guarantee shall remain of full force and effect. The parties declare that it is their intention that the Performance Guarantee would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.

27. No addition to or variation, deletion, or agreed cancellation of all or any clauses or provisions of the Performance Guarantee will be of any force or effect unless in writing and signed by the parties.
28. No waiver of any of the terms and conditions of the Performance Guarantee will be binding or effectual for any purpose unless in writing and signed by the party giving the same. Any such waiver will be effective only in the specific instance and for the purpose given. Failure or delay on the part of either party in exercising any right, power or privilege under the Performance Guarantee will not constitute or be deemed to be a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
29. The parties select their respective physical addresses set forth on page one as their respective *domicilia citandi et executandi*, and for the purposes of giving or sending any notice provided for or required under the Performance Guarantee.
30. The Performance Guarantee will in all respects be governed by and construed under the laws of the Republic of South Africa. The parties hereby consent and submit to the non-exclusive jurisdiction of the South Gauteng Division of the High Court of the Republic of South Africa in any dispute arising from or in connection with the Performance Guarantee.

Signed at _____ on this _____ day of _____.

For / on behalf _____:

Name:

Designation:

Witnesses:

1. _____

2. _____

ANNEXURE 10: RATE CARD (FML AND STR)

- The pricing on Rate card is a quoted at Prime minus X%.
- The residual value percentage per monthly usage range will be maintained throughout the contract period and if the vehicle monthly usage kilometres are greater than the highest monthly usage in the Rate Card, the residual value percentage must be atleast that of the highest monthly usage range.
- The maintenance excess CPK is calculated as maintenance CPK plus 15%.
- The STR Rate will be maintained as 135% of FML Rate.

ANNEXURE 11: HEALTH AND SAFETY REQUIREMENTS

SAFETY OBLIGATIONS

The Parties agree on the following arrangements according to section 37(2) of the Occupational Health and Safety Act 85 of 1993 ("**OHSA**") to ensure compliance with the mandatory provisions of the OHSA:

the Service Provider is an "employer" in its own right as defined in section 1 of the OHSA and that it must fulfil its obligations as an employer in terms of the OHSA;

the Service Provider shall comply with the requirements the OHSA in its entirety;

where special permits are required, such as electrical switching, hot work permits etc. the Service Provider shall obtain them from a person designated by Transnet for this purpose, and all requirements of the Service Provider must strictly comply with such permits; and

the Service Provider shall conduct a risk assessment of the work to be performed by a competent person prior to the commencement of work, to identify risks and hazards that persons may be exposed to, and to analyse and evaluate such hazards so identified.

The Service provider shall have a documented Health and Safety Plan based on the risks and hazards identified before commencement of work.

The Health and Safety Plan shall include the following:

the safety management structure to be instituted with all appointments in terms of the OHSA and the regulations promulgated in terms of the OHSA ("**Regulations**");

the safe working methods and procedures to be implemented to ensure work is performed in terms of the OHSA;

the safety equipment, devices and clothing to be made available by the Service Provider to its employees;

the site access control measures pertaining to health and safety to be implemented; and

control measures for ensuring that the Health and Safety Plan is maintained and monitored for the duration of the Agreement.

The Service Provider shall ensure that all work is performed under the close supervision of a person trained to understand the hazards associated with the work performed and who has the authority to ensure that the necessary precautionary measures are implemented.

The Service Provider must appoint the Health and Safety Coordinator to liaise with Transnet on matters pertaining to occupational health and safety.

The appointed Health and Safety Coordinator must liaise at least once a month with Transnet's Health and Safety Section/Risk Manager/Occupational Risk Manager.

The Service Provider shall furnish Transnet's Health and Safety Section/Risk Manager/Occupational Risk Manager immediately with full particulars of any sub-contractor which it may involve in the Agreement in order that the sub-contractor itself can be made aware of all the clauses in this Agreement pertaining to health and safety.

The Service Provider shall stop any sub-contractor from executing work which is not in accordance with the Health and Safety Plan or which poses a threat to health and safety of persons.

The Service Provider shall ensure that all its employees and visitors undergo health and safety induction pertaining to the hazards prevalent. Proof of such training must be kept on file.

In the event where the risk assessment reveals the risk relating to working from an elevated position, the Service Provider shall cause the designation of a competent person, responsible for the preparation of a Fall Protection Plan.

The Fall Protection Plan shall include:

- a risk assessment of all work carried out from an elevated position;
- procedures and methods to address all the identified risks per location;
- evaluation of employees' physical and psychological fitness necessary to work at elevated position;
- and
- a procedure addressing the inspection, testing and maintenance of all protection equipment.

The Service Provider shall advise Transnet's Health and Safety Section/Risk Manager/Occupational Risk Manager of any hazardous situations which may arise from work being performed either by the Service Provider or its sub-contractor.

Copies of all appointments required by the OHSA must be given to Transnet's Health and Safety Section/Risk Manager/Occupational Risk Manager.

The Service Provider shall ensure that a Health and Safety File is available which shall include documentation as required by the OHSA, together with a copy of its and its sub-contractors Risk Assessment and Health and Safety Plan.

All incidents referred to in section 24 of the OHSA, involving the Service Provider and its sub-contractor on Transnet's premises, shall be reported as prescribed. Transnet hereby obtains an interest in the issue of any investigation and the formal inquiry conducted in terms of sections 31 and 31 of the OHSA into any incident involving the Service Provider or its sub-contractor or any person or any machinery under its control, on Transnet's premises.

No alcohol or any other intoxicating substance shall be allowed on Transnet's premises. The Service provider shall not allow anyone under or suspected to be under the influence of alcohol or any other intoxicating substance on Transnet's premises.

The Service Provider must ensure that its employees undergo medical surveillance as required by legislation.

The Service Provider is required to provide monthly safety performance reports and statistics.

A letter of good standing in terms of section 80 of the Compensation for Occupational Injuries and Diseases Act 130 of 1993 must be furnished to Transnet.

A breach of the provisions of this ANNEXURE 11 shall constitute a material breach of this Agreement.

ANNEXURE 12: MM RATES

ANNEXURE 13: SUPPLIER INTEGRITY PACT

INTEGRITY PACT

Between

TRANSNET SOC LTD

Registration Number: 1990/000900/30

("Transnet")

and

[Drafting note: insert name of Bidder / Supplier]

Registration Number: **[Drafting note: insert]**

("Bidder" / "Supplier")

PREAMBLE

Transnet values full compliance with all relevant laws and regulations, ethical standards and the principles of economical use of resources, fairness and transparency in its relations with its Bidders / Suppliers.

In order to achieve these goals, Transnet and the Bidder / Supplier hereby enter into this agreement hereinafter referred to as the "Integrity Pact" which will form part of the Bidder's / Supplier's application for registration with Transnet as a vendor.

The general purpose of this Integrity Pact is to agree on avoiding 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 any procurement and / or reverse logistics event and any further contract to be entered into between the Parties, relating to such event.

All Bidders / Suppliers will be required to sign and comply with undertakings contained in this Integrity Pact, should they want to be registered as a Transnet vendor.

1. Objectives

- Transnet and the Bidder / Supplier agree to enter into this Integrity Pact, to avoid all forms of dishonesty, fraud and corruption including practices that are anti-competitive in nature, negotiations made in bad faith and under-pricing by following a system that is fair, transparent and free from any influence / unprejudiced dealings prior to, during and subsequent to the currency of the contract to be entered into with a view to:
 - 1..1. **Enable Transnet to obtain the desired contract at a reasonable and competitive price in conformity to the defined specifications of the works, goods and services; and**
 - 1..2. **Enable Bidders / Suppliers to abstain from bribing or participating in any corrupt practice in order to secure the contract.**

2. Commitments of Transnet

- Transnet commits to take all measures necessary to prevent dishonesty, fraud and corruption and to observe the following principles:
- Transnet hereby undertakes that no employee of Transnet connected directly or indirectly with the sourcing event and ensuing contract, will demand, take a promise for or accept directly or through intermediaries any bribe, consideration, gift, reward, favour or any material or immaterial benefit or any other advantage from the Bidder, either for themselves or for any person, organisation or third party related to the contract in exchange for an advantage in the bidding process, bid evaluation, contracting or implementation process related to any contract.
- Transnet will, during the registration and bidding process treat all Bidders / Suppliers with equity, transparency and fairness. Transnet will in particular, before and during the registration process, provide to all Bidders / Suppliers the same information and will not provide to any Bidders / Suppliers confidential / additional information through which the Bidders / Suppliers could obtain an advantage in relation to any bidding process.
- Transnet further confirms that its employees will not favour any prospective bidder in any form that could afford an undue advantage to a particular bidder during the tendering stage, and will further treat all Bidders / Supplier participating in the bidding process.
- Transnet will exclude from the bidding process such employees who have any personal interest in the Bidders / Suppliers participating in the bidding process.

3. Obligations of the Bidder / Supplier

- The Bidder / Supplier commits itself to take all measures necessary to prevent corrupt practices, unfair means and illegal activities during any stage of its bid or during any ensuing contract stage in order to secure the contract or in furtherance to secure it and in particular the Bidder / Supplier commits to the following:
 - 3..1. **The Bidder / Supplier will not, directly or through any other person or firm, offer, promise or give to Transnet or to any of Transnet's employees involved in the bidding process or to any third person any material or other benefit or payment, in order to obtain in exchange an advantage during the bidding process; and**
 - 3..2. **The Bidder / Supplier will not offer, directly or through intermediaries, any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any employee of Transnet, connected directly or indirectly with the bidding process, or to any person, organisation or third party related to the contract in exchange for any**

advantage in the bidding, evaluation, contracting and implementation of the contract.

- The acceptance and giving of gifts may be permitted provided that:
 - 3..1. **the gift does not exceed R1 000 (one thousand Rand) in retail value;**
 - 3..2. **many low retail value gifts do not exceed R 1 000 within a 12 month period;**
 - 3..3. **hospitality packages do not exceed R5 000 in value or many low value hospitality packages do not cumulatively exceed R5 000;**
 - 3..4. **a Bidder / Supplier does not give a Transnet employee more than 2 (two) gifts within a 12 (twelve) month period, irrespective of value;**
 - 3..5. **a Bidder / Supplier does not accept more than 1 (one) gift in excess of R750 (seven hundred and fifty Rand) from a Transnet employee within a 12 (twelve) month period, irrespective of value;**
 - 3..6. **a Bidder / Supplier may under no circumstances, accept from or give to, a Transnet employee any gift, business courtesy, including an invitation to a business meal and /or drinks, or hospitality package, irrespective of value, during any bid evaluation process, including a period of 12 (twelve) months after such tender has been awarded, as it may be perceived as undue and improper influence on the evaluation process or reward for the contract that has been awarded; and**
 - 3..7. **a Bidder / Supplier may not offer gifts, goods or services to a Transnet employee at artificially low prices, which are not available to the public at those prices.**
- The Bidder / Supplier will not collude with other parties interested in the contract to preclude a competitive bid price, impair the transparency, fairness and progress of the bidding process, bid evaluation, contracting and implementation of the contract. The Bidder / Supplier further commits itself to delivering against all agreed upon conditions as stipulated within the contract.
- The Bidder / Supplier will not enter into any illegal or dishonest agreement or understanding, whether formal or informal with other Bidders / Suppliers. This applies in particular to certifications, submissions or non-submission of documents or actions that are restrictive or to introduce cartels into the bidding process.
- The Bidder / Supplier will not commit any criminal offence under the relevant anti-corruption laws of South Africa or any other country. Furthermore, the Bidder /Supplier will not use for illegitimate purposes or for restrictive purposes or personal gain, or pass on to others, any information provided by Transnet as part of the business relationship,

regarding plans, technical proposals and business details, including information contained or transmitted electronically.

- A Bidder / Supplier of foreign origin shall disclose the name and address of its agents or representatives in South Africa, if any, involved directly or indirectly in the registration or bidding process. Similarly, the Bidder / Supplier of South African nationality shall furnish the name and address of the foreign principals, if any, involved directly or indirectly in the registration or bidding process.
- The Bidder / Supplier will not misrepresent facts or furnish false or forged documents or information in order to influence the bidding process to the advantage of the Bidder / Supplier or detriment of Transnet or other competitors.
- The Bidder / Supplier shall furnish Transnet with a copy of its code of conduct, which code of conduct shall reject the use of bribes and other dishonest and unethical conduct, as well as compliance programme for the implementation of the code of conduct.
- The Bidder / Supplier will not instigate third persons to commit offences outlined above or be an accessory to such offences.
- The Bidder/Supplier confirms that they will uphold the ten principles of the United Nations Global Compact (UNGC) in the fields of Human Rights, Labour, Anti-Corruption and the Environment when undertaking business with Transnet as follows:

3..1. **Human Rights**

3..2. Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and

3..3. Principle 2: make sure that they are not complicit in human rights abuses.

3..4. **Labour**

3..5. Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;

3..6. Principle 4: the elimination of all forms of forced and compulsory labour;

3..7. Principle 5: the effective abolition of child labour; and

3..8. Principle 6: the elimination of discrimination in respect of employment and occupation.

3..9. **Environment**

3..10. Principle 7: Businesses should support a precautionary approach to environmental challenges;

- 3..11. Principle 8: undertake initiatives to promote greater environmental responsibility; and
- 3..12. Principle 9: encourage the development and diffusion of environmentally friendly technologies.
- 3..13. **Anti-Corruption**
- 3..14. Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery.

4. **Independent Bidding**

- For the purposes of this undertaking in relation to any submitted Bid, the Bidder declares to fully understand that the word "competitor" shall include any individual or organisation, other than the Bidder, whether or not affiliated with the Bidder, who:
 - 4..1. **has been requested to submit a Bid in response to this Bid invitation;**
 - 4..2. **could potentially submit a Bid in response to this Bid invitation, based on their qualifications, abilities or experience; and**
 - 4..3. **provides the same Goods and Services as the Bidder and/or is in the same line of business as the Bidder.**
- The Bidder has arrived at his submitted Bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium will not be construed as collusive bidding.
- In particular, without limiting the generality of paragraph 4.2 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
 - 4..1. **prices;**
 - 4..2. **geographical area where Goods or Services will be rendered [market allocation];**
 - 4..3. **methods, factors or formulas used to calculate prices;**
 - 4..4. **the intention or decision to submit or not to submit, a Bid;**
 - 4..5. **the submission of a Bid which does not meet the specifications and conditions of the RFP; or**
 - 4..6. **bidding with the intention of not winning the Bid.**
- In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the Goods or Services to which his/her Bid relates.

- The terms of the Bid as submitted have not been, and will not be, disclosed by the Bidder, directly or indirectly, to any competitor, prior to the date and time of the official Bid opening or of the awarding of the contract.
- Bidders are aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, Bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and/or may be reported to the National Prosecuting Authority [NPA] for criminal investigation and/or may be restricted from conducting business with the public sector for a period not exceeding 10 [ten] years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

5. Disqualification from Bidding Process

- If the Bidder / Supplier has committed a transgression through a violation of paragraph 3 of this Integrity Pact or in any other form such as to put its reliability or credibility as a Bidder / Supplier into question, Transnet may reject the Bidder's / Supplier's application from the registration or bidding process and remove the Bidder / Supplier from its database, if already registered.
- If the Bidder / Supplier has committed a transgression through a violation of paragraph 3, or any material violation, such as to put its reliability or credibility into question. Transnet may after following due procedures and at its own discretion also exclude the Bidder / Supplier from future bidding processes. The imposition and duration of the exclusion will be determined by the severity of the transgression. The severity will be determined by the circumstances of the case, which will include amongst others the number of transgressions, the position of the transgressors within the company hierarchy of the Bidder / Supplier and the amount of the damage. The exclusion will be imposed for up to a maximum of 10 (ten) years. However, Transnet reserves the right to impose a longer period of exclusion, depending on the gravity of the misconduct.
- If the Bidder / Supplier can prove that it has restored the damage caused by it and has installed a suitable corruption prevention system, or taken other remedial measures as the circumstances of the case may require, Transnet may at its own discretion revoke the exclusion or suspend the imposed penalty.

6. DATABASE OF RESTRICTED SUPPLIERS (BLACKLISTING)

- All the stipulations on Transnet's blacklisting process as laid down in Transnet's Supply Chain Policy and Procurement Procedures Manual are included herein by way of reference. Below follows a condensed summary of this blacklisting procedure.
- Blacklisting is a mechanism used to exclude a company/person from future business with Transnet and other organs of state for a specified period. On completion of the blacklisting

process, the blacklisted entity's details will be placed on National Treasury's Database of Restricted Suppliers for the specified period of exclusion.

- The decision to blacklist is based on one of the grounds for blacklisting. The standard of proof to commence the blacklisting process is whether a "*prima facie*" (i.e. on the face of it) case has been established.
- Depending on the seriousness of the misconduct and the strategic importance of the Goods/Services, in addition to blacklisting a company/person from future business, Transnet may decide to terminate some or all existing contracts with the company/person as well.
- A supplier or contractor to Transnet may not subcontract any portion of the contract to a blacklisted company.
- Grounds for blacklisting include: If any person/Enterprise which has submitted a Bid, concluded a contract, or, in the capacity of agent or subcontractor, has been associated with such Bid or contract:

6..1.1. *Has, in bad faith, withdrawn such Bid after the advertised closing date and time for the receipt of Bids;*

6..1.2. *has, after being notified of the acceptance of his Bid, failed or refused to sign a contract when called upon to do so in terms of any condition forming part of the bid documents;*

6..1.3. *has carried out any contract resulting from such bid in an unsatisfactory manner or has breached any condition of the contract;*

6..1.4. *has offered, promised or given a bribe in relation to the obtaining or execution of the contract;*

6..1.5. *has acted in a fraudulent or improper manner or in bad faith towards Transnet or any Government Department or towards any public body, Enterprise or person;*

6..1.6. *has made any incorrect statement in a certificate or other communication with regard to the Local Content of his Goods or his B-BBEE status and is unable to prove to the satisfaction of Transnet that:*

7. he made the statement in good faith honestly believing it to be correct; and

8. before making such statement he took all reasonable steps to satisfy himself of its correctness;

8..1.1. *caused Transnet damage, or to incur costs in order to meet the contractor's requirements and which could not be recovered from the contractor;*

8..1.2. *has litigated against Transnet in bad faith.*

- Grounds for blacklisting include a company/person recorded as being a company or person prohibited from doing business with the public sector on National Treasury's Register of Tender Defaulters.
- Companies associated with the person/s guilty of misconduct (i.e. entities owned, controlled or managed by such persons), any companies subsequently formed by the person(s) guilty of the misconduct and/or an existing company where such person(s) acquires a controlling stake may be considered for blacklisting. The decision to extend the blacklist to associated companies will be at the sole discretion of Transnet.

9. Previous Transgressions

- The Bidder / Supplier hereby declares that no previous transgressions resulting in a serious breach of any law, including but not limited to, corruption, fraud, theft, extortion and contraventions of the Competition Act 89 of 1998, which occurred in the last 5 (five) years with any other public sector undertaking, government department or private sector company that could justify its exclusion from its registration on the Bidder's / Supplier's database or any bidding process.
- If it is found to be that the Bidder / Supplier made an incorrect statement on this subject, the Bidder / Supplier can be rejected from the registration process or removed from the Bidder / Supplier database, if already registered, for such reason (refer to the Breach of Law Form contained in the applicable RFX document.)

10. Sanctions for Violations

- Transnet shall also take all or any one of the following actions, wherever required to:
 11. Immediately exclude the Bidder / Supplier from the bidding process or call off the pre-contract negotiations without giving any compensation the Bidder / Supplier. However, the proceedings with the other Bidders / Suppliers may continue;
 12. Immediately cancel the contract, if already awarded or signed, without giving any compensation to the Bidder / Supplier;
 13. Recover all sums already paid by Transnet;
 14. Encash the advance bank guarantee and performance bond or warranty bond, if furnished by the Bidder / Supplier, in order to recover the payments, already made by Transnet, along with interest;
 15. Cancel all or any other contracts with the Bidder / Supplier; and
 16. Exclude the Bidder / Supplier from entering into any bid with Transnet in future.

17. Conflicts of Interest

- A conflict of interest includes, inter alia, a situation in which:
 18. A Transnet employee has a personal financial interest in a bidding / supplying entity; and
 19. A Transnet employee has private interests or personal considerations or has an affiliation or a relationship which affects, or may affect, or may be perceived to affect his / her judgment in action in the best interest

of Transnet, or could affect the employee's motivations for acting in a particular manner, or which could result in, or be perceived as favouritism or nepotism.

- A Transnet employee uses his / her position, or privileges or information obtained while acting in the capacity as an employee for:
 20. Private gain or advancement; or
 21. The expectation of private gain, or advancement, or any other advantage accruing to the employee must be declared in a prescribed form.
- Thus, conflicts of interest of any bid committee member or any person involved in the sourcing process must be declared in a prescribed form.
- If a Bidder / Supplier has or becomes aware of a conflict of interest i.e. a family, business and / or social relationship between its owner(s) / member(s) / director(s) / partner(s) / shareholder(s) and a Transnet employee / member of Transnet's Board of Directors in respect of a bid which will be considered for the bid process, the Bidder / Supplier:
 22. must disclose the interest and its general nature, in the Request for Proposal ("RFX") declaration form; or
 23. must notify Transnet immediately in writing once the circumstances has arisen.
- The Bidder / Supplier shall not lend to or borrow any money from or enter into any monetary dealings or transactions, directly or indirectly, with any committee member or any person involved in the sourcing process, where this is done, Transnet shall be entitled forthwith to rescind the contract and all other contracts with the Bidder / Supplier.

24. **Dispute Resolution**

Transnet recognises that trust and good faith are pivotal to its relationship with its Bidders / Suppliers. When a dispute arises between Transnet and its Bidder / Supplier, the parties should use their best endeavours to resolve the dispute in an amicable manner, whenever possible. Litigation in bad faith negates the principles of trust and good faith on which commercial relationships are based. Accordingly, following a blacklisting process as mentioned in paragraph 6 above, Transnet will not do business with a company that litigates against it in bad faith or is involved in any action that reflects bad faith on its part. Litigation in bad faith includes, but is not limited to the following instances:

25. **Vexatious proceedings:** these are frivolous proceedings which have been instituted without proper grounds;
26. **Perjury:** where a supplier make a false statement either in giving evidence or on an affidavit;
27. **Scurrilous allegations:** where a supplier makes allegations regarding a senior Transnet employee which are without proper foundation, scandalous, abusive or defamatory; and
28. **Abuse of court process:** when a supplier abuses the court process in order to gain a competitive advantage during a bid process.

29. General

- This Integrity Pact is governed by and interpreted in accordance with the laws of the Republic of South Africa.
- The actions stipulated in this Integrity Pact are without prejudice to any other legal action that may follow in accordance with the provisions of the law relating to any civil or criminal proceedings.
- The validity of this Integrity Pact shall cover all the bidding processes and will be valid for an indefinite period unless cancelled by either Party.
- Should one or several provisions of this Integrity Pact turn out to be invalid the remainder of this Integrity Pact remains valid.
- Should a Bidder / Supplier be confronted with dishonest, fraudulent or corruptive behaviour of one or more Transnet employees, Transnet expects its Bidders / Suppliers to report this behaviour directly to a senior Transnet official / employee or alternatively by using Transnet's "Tip-Off Anonymous" hotline number 0800 003 056, whereby your confidentiality is guaranteed.

The Parties hereby declare that each of them has read and understood the clauses of this Integrity Pact and shall abide by it. To the best of the Parties' knowledge and belief, the information provided in this Integrity Pact is true and correct.

SIGNED ON BEHALF OF EACH PARTY AS FOLLOWS:

TRANSNET

Signed at: _____ **on** _____ **20**

Signature: _____ **(duly authorised)**

Full name and surname: _____

Position: _____

BIDDER / SUPPLIER

Signed at: _____ **on** _____ **20**

Signature: _____ **(duly authorised)**

Full name and surname: _____

Position: _____

Annexure A**PREVIOUS TRANSGRESSIONS / BREACH OF LAW****(Sample)**

FOR A PERIOD OF: _____

NAME OF ENTITY: _____

I/We _____

do hereby certify that I/we have/have not been found guilty during the preceding 5 (five) years of a serious breach of law, including but not limited to a breach of the Competition Act, 89 of 1998, by a court of law, tribunal or other administrative body. The type of breach that the Respondent is required to disclose excludes relatively minor offences or misdemeanours, e.g. traffic offences.

Where found guilty of such a serious breach, please disclose:

NATURE OF BREACH: _____

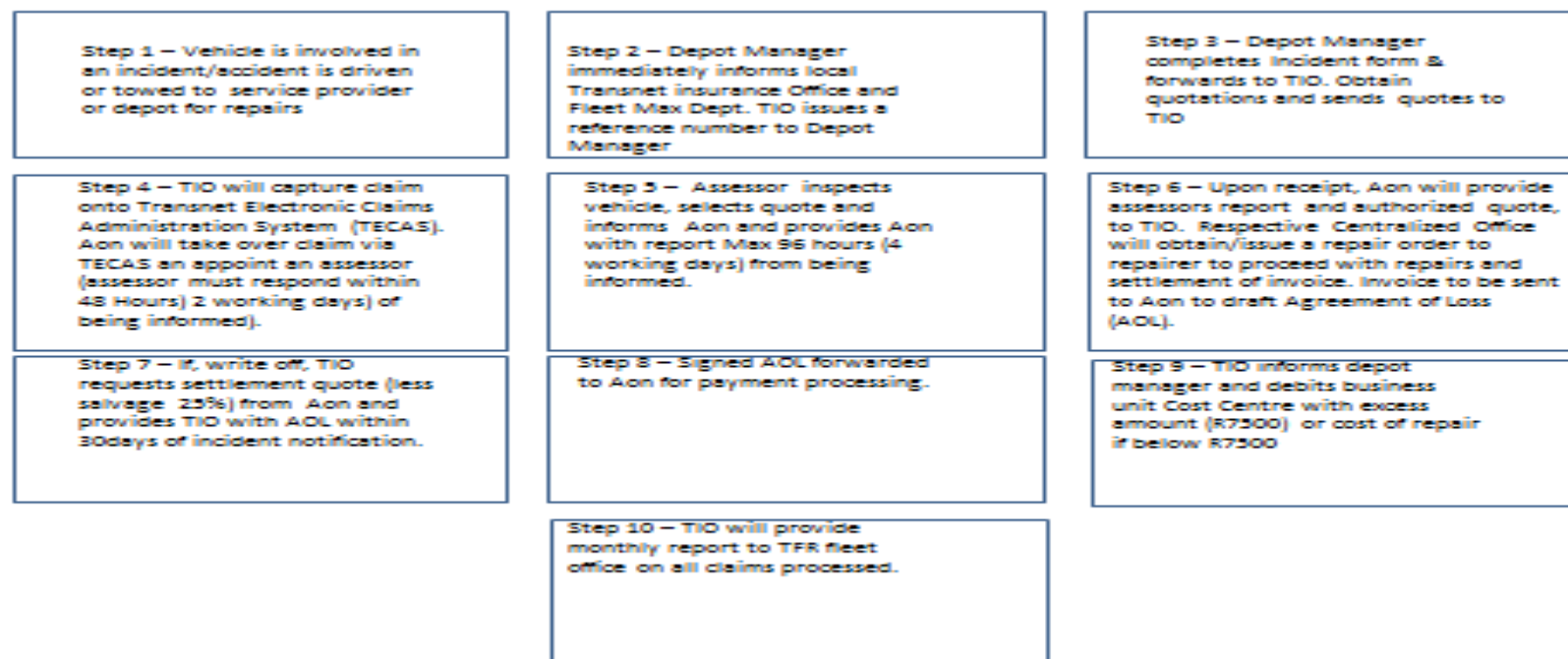
DATE OF BREACH: _____

Furthermore, I/we acknowledge that Transnet SOC Ltd reserves the right to exclude any Respondent from the bidding process, should that person or entity have been found guilty of a serious breach of law, tribunal or regulatory obligation.

SIGNED at _____ on this _____ day of _____ 20__

SIGNATURE OF WITNESS_____
SIGNATURE OF RESPONDENT

ANNEXURE 14: INSURANCE CLAIMS PROCESS (IF APPLICABLE)



ANNEXURE 15: BBBEE IMPROVEMENT COMMITMENTS (IF APPLICABLE)

ANNEXURE 16: 30% SUB-CONTRACTING COMMITMENTS

Service Providers to spend at least 30% of the contract value on EME or QSEs which are at least 51% owned by black people. Monitoring and evaluations of the targets below will be done based on the actual annual spend.

Transnet requires the Respondents to commit to the following:

Transnet fully endorses Government's transformation and empowerment objectives. Transnet has set a mandatory prequalification criteria in Stage 2 of the Evaluation Process for the Bidder (s) to sub-contract 30% of the contract spend to Exempted Micro Enterprises (EMEs) or Qualifying Small Enterprises (QSEs) which met one or more of the following criteria:	Minimum Percentage Commitment on Actual Contract Spend annually				
	Year 1	Year 2	Year 3	Year 4	Year 5
• at least 51% owned by black people;	30%	30%	30%	30%	30%
• at least 51% owned by black people who are youth;					
• at least 51% owned by black people who are women;					
• at least 51% owned by black people with disabilities;					
• at least 51% owned by black people who are living in rural or underdeveloped areas or townships; and/or					
• at least 51% owned by black people who are military veterans.					