

ANNEXURE B

JOINT DEVELOPMENT AGREEMENT FOR THE RICHARDS BAY LNG TERMINAL PROJECT

between

TRANSNET PIPELINES an Operating Division of TRANSNET SOC LTD

[hereinafter referred to as Transnet]

[Registration No. 1990/000900/30]

and

Initial

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PARTIES

This agreement is between:

- A. TRANSNET PIPELINES, an Operating Division of TRANSNET SOC LTD**, a state-owned company under the Department of Public Enterprises, incorporated in the Republic of South Africa under registration number 1945/018672/06, and which is the custodian of South Africa's freight logistics public infrastructure, which supports economic growth and development by providing efficient rail, port and pipeline infrastructure and services (hereinafter referred to as "**Transnet**"); and

RECITALS

- I. **WHEREAS** Transnet National Ports Authority (TNPA) is planning, through the Ports Act Section 56 procurement process, to procure a Terminal operator to design, develop, construct, finance, operate, maintain and transfer a liquefied natural gas (LNG) terminal in the port of Richards Bay. To this end, on 13 February 2022, TNPA issued a Request for Information (RFI) (which is envisaged to be followed by the Request for Proposal (RFP) process) in respect of a possible appointment of this terminal operator with the closing date of 14 April 2022.;
- II. **AND WHEREAS** Transnet and [] (hereinafter referred to as "**the Parties**"), which have unique but complementary Strategies, resources and capabilities, wish to collaboratively (i) assess the viability of, (ii) plan and develop, (iii) participate in the TNPA's section 56 procurement process with the intent to be selected as preferred bidder to construct midstream Liquefied Natural Gas import and bunkering infrastructure, which will enable the importation of Liquefied Natural Gas (LNG), through the Port of Richards Bay; and the distribution thereof to consumers in the natural gas market in region;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

Initial

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, unless the context requires a different interpretation, the words, expressions, and phrases listed hereunder shall bear the meanings assigned to them, and cognate expressions shall take corresponding meanings:
- 1.1.1 **"Affiliate"** means, regarding any Party, a person directly or indirectly Controlling or is Controlled by, or under direct or indirect common Control, with such Party;
- 1.1.2 **"Agreement"** means this joint development agreement for the Richards Bay LNG Terminal , including its annexures;
- 1.1.3 **"Bankability"** means a written indication by a well-established funder or financial institution that it is prepared to provide or arrange the senior debt required to execute the Project; **"Bankable"** has a corresponding meaning;
- 1.1.4 **"Business Day"** means any day other than a Saturday, Sunday or statutory public holiday in South Africa;
- 1.1.5 **"Commencement Date"** means the Signature Date;
- 1.1.6 **"Commercial Operation Date"** means the date when the construction of the Richards Bay LNG Terminal LNG Terminal is complete, with the terminal being commercially operable, as determined by the EPC Contractor and accepted as such by the Project owners, Financiers and O&M Contractor;
- 1.1.7 **"Companies Act"** means the Companies Act, No.71 of 2008 as amended;
- 1.1.8 **"Control"** shall bear the meaning ascribed to it in section 2 (2) (a) - (c) of the Companies Act as amended. **"Controlling"** and **"Controlled"** have corresponding meanings;
- 1.1.9 **"Development Budget"** means an estimated cost required to complete the Planning Phase, prepared by the Parties in collaboration with each other and the further details of which are contained in **Annexure A**, which is prepared *inter alia* (i) to secure management approval to proceed to the Planning Phase;

and (ii) in partial fulfilment of the suspensive conditions provided for in clause 4 (*Suspensive Conditions*);

- 1.1.10 **"Developments Costs"** means costs incurred by the Parties during the Planning Phase, towards the execution of the Scope of Work and achieving the Key Outputs, and duly approved by the Steering Committee per this Agreement;
- 1.1.11 **"Development Fee"** means a fee as further elaborated upon in clause 13 (*Financing and Development Fee*), and the precise details of which the Parties or Financiers shall include in the Financial Model as compensation to the Parties for auditable Development Costs that the Parties have incurred during the Planning Phase per this Agreement;
- 1.1.12 **"Development Programme"** means the programme compiled and agreed to by the Parties, which sets out (i) the roadmap to be followed, (ii) milestones to be achieved and (iii) applicable stages, in developing the Project up to Financial Close; and the further details of which are laid out in **Annexure A**;
- 1.1.13 **"Effective Date"** means the date of fulfilment of the last remaining suspensive condition of this Agreement;
- 1.1.14 **"EPC Contractor"** means an "Engineering, Procurement and Construction contractor" appointed on an arm's length basis as contemplated in **Annexure A** and on such further terms as may in future be agreed upon in writing, to *inter alia* execute the detailed engineering, procurement, and construction of the Project;
- 1.1.15 **"Execution Model"** means a detailed non-binding document, compiled by or on behalf of the Parties during the Planning Phase to provide a framework for the Execution Phase;
- 1.1.16 **"Execution Phase"** means the period following the Planning Phase, commencing at Financial Close and ending on the Commercial Operation Date;

- 1.1.17 **"Feasibility Report"** means a comprehensive document produced as part of the Planning Phase, which, regarding the Project, contains appropriate solutions under key Bankability dimensions as amplified upon in **Annexure A**, including *inter alia* the technical, market, commercial, financial, legal, regulatory, compliance and project management dimensions;
- 1.1.18 **"FEL"** means Front-End Loading, also referred to as "pre-project planning", "early project planning" or "feasibility analysis", a project development stage during which the Parties shall follow a robust project development process to conceptually develop and define the Project to a level of detail that is sufficient to allow for the assessment of risk and deciding whether to commit to the execution of the Project;
- 1.1.19 **"FEL-1"** means "Front-End Loading -1", a stage of the Planning Phase as defined in **Annexure A**;
- 1.1.20 **"FEL-2"** means "Front-End Loading -2", a stage of the Planning phase as defined in **Annexure A**;
- 1.1.21 **"FEL-3"** means "Front-End Loading -3", a stage of the Planning Phase as defined in **Annexure A**;
- 1.1.22 **"Final Investment Decision"** or **"FID"** means a decision taken at the appropriate governance level of an entity, whereby the entity commits in finality, to invest in the Execution Phase of the Project, including but not limited to allocating or committing funds and the conclusion of binding commercial agreements to enable the execution of the Project;
- 1.1.23 **"Financial Close"** means the date on which the Project funding, following the fulfilment of all conditions precedent under the relevant principal funding agreements, becomes unconditional and available; such that the first drawdown under any of the relevant financing sources can be made;
- 1.1.24 **"Financial Model"** means an excel based (or equivalent) model forecasting the Project financial variables amongst others, to be audited and agreed upon

with Financiers, which shall ensure a minimum return above each Party's internal hurdle rate (real after-tax rate over the life of the Project);

- 1.1.25 **"Financier"** means a third-party funder or financial lender to provide debt under a finance agreement towards the execution of the Project;
- 1.1.26 **"Gas Aggregator"** means a player or entity that will toll LNG through the Richards Bay LNG Terminal LNG Terminal or that is holding a portfolio of LNG or Natural Gas supply from different sources to *inter alia* optimise the supply of LNG and use of infrastructure, as well as ensuring the efficient distribution of LNG or Natural Gas to end-users and other participants, as the case may be;
- 1.1.27 **"Heel"** means that residual amount of LNG left in the storage tank;
- 1.1.28 **"Internal Costs"** means, regarding a Party, costs that are internal to the operations of that Party, and which as a consequence of that, such Party will bear independently. Internal Costs include but are not limited to the salaries of the Party's employees engaged in the Planning Phase, office expenses, employees' travel expenses, and other expenses internal to the Party, notwithstanding their being related to or incidental to the performance of this Agreement. Further, Internal Costs include costs incurred by a Party for reasons other than towards the Scope of Work and achieving the Key Outputs, as well as costs not explicitly approved by the Steering Committee per this Agreement before the Party incurs them, regardless of whether or not they are internal to the Party;
- 1.1.29 **"Key Outputs"** means the following discrete outcomes of the Scope of Work:
- 1.1.29.1 Project Charter at FEL-1;
- 1.1.29.2 Business Case at FEL-2;
- 1.1.29.3 Business Plan (FID) at FEL-3; and
- 1.1.29.4 Financial Close;

- 1.1.30 **"Liquefied Natural Gas or 'LNG'"** means Natural Gas that has been cooled to a liquid state, at approximately -162°C (minus one hundred and sixty-two degrees Celsius), enabling storage and transportation thereof by ship, road or rail due to the volume of Natural Gas in the liquid state being significantly lower than its volume in the gaseous state;
- 1.1.31 **"LNGC"** means a Liquefied Natural Gas carrier;
- 1.1.32 **"National Ports Act"** means National Ports Act No. 12 of 2005 as amended;
- 1.1.33 **"Natural Gas"** means hydrocarbon gas generally obtained from underground and undersea porous sedimentary rocks, often together with crude oil, which is a mixture primarily of methane, ethane, and propane with butane, carbon dioxide, hydrogen sulphide, nitrogen, oxygen and other elements comprising the balance of the material;
- 1.1.34 **"Richards Bay LNG Terminal LNG Terminal"** means the proposed marine and onshore infrastructure to be located within the Port of Richards Bay, for receiving and offloading cargo from LNGCs into a floating or onshore storage and regasification facility, including:
- 1.1.34.1 marine reloading infrastructure to transfer LNG into small-scale LNGCs and bunker barges;
- 1.1.34.2 a high-pressure transmission pipeline to convey Natural Gas from the regasification facility to a pipeline off-take station at the Project battery limit; and
- 1.1.34.3 a cryogenic pipeline and road loading facility to transfer LNG into isotainers and road tankers;

the Parties acknowledging that:

- 1.1.34.4 the storage facilities shall have sufficient capacity to receive common-sized LNGCs and shall have an additional buffer volume or heel;

- 1.1.34.5 the regasification facility shall have sufficient capacity to meet customer's peak demands and shall be expandable to support market growth; and
- 1.1.34.6 the pipeline off-take station shall include the necessary metering, pressure reduction, temperature regulation and valve manifold required for connection of each customer;
- 1.1.35 **"O&M Contractor"** means an operations and maintenance contractor appointed on an arm's length basis as contemplated in **Annexure A**, and on such terms, as may in future be agreed upon in writing, to operate and maintain the Richards Bay LNG Terminal LNG Terminal on behalf of the Project Company, from the Commercial Operation date onwards;
- 1.1.36 **"Owner's Engineer"** means the duly appointed representative of Project developers or owners, which may be appointed as a subcontractor, and tasked with protecting the owner's interests by ensuring that the EPC Contractors are adhering sufficiently to Project specification. The Owner's Engineer will, as required, also fill specified gaps in resources and expertise for the Project;
- 1.1.37 **"Parties"** means collectively, Transnet and [] and **"Party"** means any one of them as dictated by the context;
- 1.1.38 **"PFMA"** means Public Finance Management Act No. 1 of 1999 as amended;
- 1.1.39 **"Planning Phase"** means the phase of the Project governed by this Agreement and incorporating FEL-1, FEL-2, FEL-3 and the Pre-implementation Stage, commencing on the Effective Date and ending at Financial Close;
- 1.1.40 **"Pre-Implementation Stage"** means the stage of the Project where negotiations, the fulfilment of conditions precedent in financing agreements, and signatures of all relevant legal, commercial and funding agreements are completed, executed or effected, as the case may be, to achieve Financial Close;

- 1.1.41 **"Project"** means the development of the Richards Bay LNG Terminal LNG Terminal, including as necessary, the development of LNG or Natural Gas supply or sourcing options, as well as downstream market solutions;
- 1.1.42 **"Project Budget"** means, relative to the Development Budget, a more firmed-up and detailed estimate of the costs of the Planning Phase deliverables, covering the period up to Financial Close, and prepared by the Parties in collaboration with each other, to *inter alia* manage and control the Development Costs, and which may be varied from time to time per clause 8.4 (*Scope of Work and Project Budget*);
- 1.1.43 **"Project Charter"** means a document signed by or on behalf of the Parties, subject to this Agreement *inter alia*:
- 1.1.43.1 containing Project objectives;
 - 1.1.43.2 confirming and outlining the extent, nature and parameters of the Parties' support for and commitment to the Project;
 - 1.1.43.3 authorising the completion of the Planning Phase;
 - 1.1.43.4 authorising the allocation of resources as required; and
 - 1.1.43.5 clarifying to the extent necessary, the role of the Project Manager, Workstream and Workstream Team;
- 1.1.44 **"Project Company"** means a company or special purpose vehicle which, subject to the successful conclusion of the Planning Phase, may be incorporated and registered under the laws of South Africa, by the Parties and third parties, who are invited by the Parties, to participate in the Project. For the sake of clarity, the Project Company shall serve as a Project execution vehicle and shall be governed by a shareholders' or similar agreement between subscribers or participants therein;
- 1.1.45 **"Project Manager"** means an individual or individuals selected from among the Parties' employees or a third-party appointment, to manage the conduct of the Planning Phase per this Agreement, subject to Steering Committee

approval and substituted in writing from time to time. The Project Manager shall have the requisite experience to successfully manage the development of the Project per the requirements of the Planning Phase;

- 1.1.46 **"Service Provider"** means any person or legal entity other than the Parties or the Parties' Affiliates providing services to any one of the Parties under a service or supply agreement;
- 1.1.47 **"Scope of Work"** means a document developed by or on behalf of the Parties, with reference being had to the Development Programme in **Annexure A**, which, regarding the Planning Phase, sets out the deliverables required to achieve the Key Outputs. The Scope of Work may be amended in writing from time to time, per the provisions of this Agreement;
- 1.1.48 **"Signature Date"** means the date that the Party signing last signs this Agreement;
- 1.1.49 **"South Africa"** means the Republic of South Africa;
- 1.1.50 **"Specified-Party Led Activities"** means the activities stipulated in clause 7 (*Specified-Party Led Activities*) which, while being required to achieve the Key Outputs, are such that a specified Party, due to its unique combination of mandate, resources and capabilities, is best placed to direct, lead or execute;
- 1.1.51 **"Steering Committee"** means the committee to be established by the Parties under the provisions of clause 10 (*Steering Committee*), which shall be responsible for oversight, governance and control of the Planning Phase activities until Financial Close;
- 1.1.52 **"Termination Date"** means the date upon which this Agreement is cancelled per its provisions, terminated by performance, terminated by discharge, lapses or is novated and superseded by another agreement;
- 1.1.53 **"Workstream"** means a working group to be established by the Parties, notified to the Steering Committee and led by a Workstream lead. The Workstream shall be responsible for a specific deliverable track as determined

in writing by the Parties, examples of a deliverable track including technical, financial, commercial, and legal deliverable tracks. A Workstream may comprise nominated employees of the Parties or Service Providers, and for the avoidance of doubt, each Party has a sole and absolute discretion regarding the personnel to be seconded by it to a Workstream; and

- 1.1.54 **"Workstream Team"** means the team that will, subject to Steering Committee approval, comprise all the individual Workstream leads. The Workstream Team shall be led, directed, and coordinated by a Project Manager and shall have the requisite collective experience to successfully manage the development of the Project per the requirements of the Planning Phase.
- 1.2 Clause headings are for purposes of convenience only and shall not be used in the interpretation of this Agreement.
- 1.3 Unless inconsistent with the context or save where the Agreement expressly indicates the opposite, an expression which denotes:
- 1.3.1 a reference to any gender shall, if appropriate, include a reference to any other gender;
 - 1.3.2 a natural person includes an artificial person and *vice versa*;
 - 1.3.3 the singular includes the plural and *vice versa*;
 - 1.3.4 a Party includes that Party's successors-in-title and permitted assigns; and
 - 1.3.5 **"day"** means a Business Day unless the context indicates otherwise.
- 1.4 Where the Agreement states a number of days, the calculation thereof shall exclude the first and include the last day unless the last day falls on a Saturday, Sunday or public holiday in South Africa. In this case, the last day shall then be the next succeeding day which is not a Saturday, Sunday, or public holiday in South Africa.
- 1.5 Notwithstanding a term's not being defined in this clause 1, where the term is defined in the context of a particular clause, it will have the same meaning ascribed

to it in that clause, unless it is clear from the clause in question that the term's application is relevant only to the clause.

- 1.6 The annexures to this Agreement form an integral part of the Agreement. Accordingly, all words and expressions defined in this Agreement shall, unless the context requires otherwise, bear the same meaning in the annexures as they bear in the main body of the Agreement.
- 1.7 The various documents or annexures forming part of this Agreement are mutually explanatory. If there is a conflict or inconsistency between the provisions contained in the documents or annexures forming part of this Agreement and those contained in the main body of the Agreement, in that case, the provisions contained in the main body of this Agreement shall prevail.
- 1.8 If any definition contained in this clause 1 has the effect of conferring rights, alternatively imposing obligations on either Party, such definition shall be interpreted as if it were a substantive provision of this Agreement.
- 1.9 Since the Parties have settled the provisions of this Agreement by negotiation, the rule of construction that provides that ambiguous provisions must be interpreted against the party principally responsible for drafting such provisions (the *contra proferentem* rule) shall not apply.
- 1.10 A reference to an enactment is to that enactment as at the Commencement Date, and as thereafter amended or re-enacted from time to time.
- 1.11 The words "**include**" and "**including**" mean "**include without limitation**" and "**including without limitation**", unless an exception is expressly indicated. The use of the words "**include**" and "**including**" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.
- 1.12 The words "**clause**" or "**clauses**" refer to clauses of this Agreement.
- 1.13 The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provided that they will operate after any

such termination or which, out of clear necessity, must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

2. OBJECTIVE OF THE AGREEMENT

- 2.1 The objective of this Agreement is for the Parties to jointly assess, plan, develop, and finance the Project from the Effective Date up to Financial Close (viz. during the Planning Phase).
- 2.2 The planning and development of the Project shall be to a sufficient level of detail to allow the Parties, Financiers or potential partners, the list not being exhaustive, to:
- 2.2.1 assess the level of risk associated with the Project,
 - 2.2.2 identify how such risk may be mitigated through appropriate solutions; and to
 - 2.2.3 determine whether to commit to the Execution Phase.
- 2.3 To obtain the level of detail required, the Parties shall conduct the Planning Phase to gain a clear understanding of LNG or Natural Gas supply options, midstream transportation, storage and processing options, and downstream market development options.
- 2.4 In conducting the Planning Phase, the Parties shall be guided *inter alia* by the commercial principles laid out in **Annexure B**.
- 2.5 While they are entities independent of each other, the Parties shall nonetheless collaborate in good faith among themselves and third parties or potential partners who may be invited by the Parties to participate in the Planning Phase, up to Financial Close.
- 2.6 The Parties intend that they shall not be incorporating an entity for the stated objective in this clause 2 (i.e The Planning Phase). Further, the Parties intend that they shall not, for the stated objective in this clause 2, be participating in a significant partnership, unincorporated joint venture or similar arrangement, within

the prescripts of the PFMA. However, a decision as to whether to incorporate any entity or participate in any significant partnership, unincorporated joint venture or similar arrangements to execute the Project, shall be taken at an appropriate time during the Planning Phase.

3. TERM: COMMENCEMENT, DURATION, TERMINATION AND EXTENSION

- 3.1 This Agreement shall commence on the Commencement Date.
- 3.2 If not cancelled prematurely according to its provisions, the Agreement shall endure until the earlier of its termination by not being selected as a preferred bidder in the TNPA's section 56 procurement process, performance on the Financial Close date, or its lapse thirty-six (36) months from the Effective Date, or its termination by discharge or its being novated or superseded by another written agreement.
- 3.3 Notwithstanding clause 3.2, the Parties may by written agreement extend the duration of this Agreement by such period as may be agreed upon, provided that the Parties shall agree to extend three (3) months before the termination of the Agreement.
- 3.4 The expiration or termination of this Agreement shall not detract from either Party's liability or obligations outstanding as at the Termination Date.

4. SUSPENSIVE CONDITIONS

- 4.1 This Agreement shall be subject to the fulfilment of the following suspensive conditions:
- 4.1.1 written confirmation by each Party's legal representative or advisor, that the provisions of the PFMA, where applicable or required prior to this Agreement coming into effect, have been complied with by the Party concerned or that this Agreement does not trigger any such requirements of the PFMA including the *Practice Note on Application under Section 54 of the Public Finance Management Act No.1 of 1999 (as amended)*;

- 4.1.2 written confirmation by the duly appointed representative of each Party, of the ratification or approval of this Agreement by the Parties' respective relevant authority or appropriate structures;
- 4.1.3 written confirmation by the duly appointed representative of each Party, of the approval by the Party concerned, of its monetary contribution towards the Project Budget for the Planning Phase;
- 4.1.4 written confirmation by the duly appointed representative of each Party, of the approval by the Party concerned, of the terms of reference and powers of the Steering Committee to be established per clause 10 (*Steering Committee*); and the details of which are further stipulated in **Annexure C**.
- 4.2 The Parties may not waive the suspensive conditions in clause 4.1.
- 4.3 Notwithstanding the above, this clause 4 and clauses 5 (*Obligation to Work Towards Suspensive Conditions*) and 19 (*Confidentiality*) shall be effective immediately on the Commencement Date.
- 4.4 The Parties shall exercise their most reasonable commercial endeavours to procure the fulfilment of these suspensive conditions within a period of three (3) months, after the Commencement Date or such extended period as may be agreed upon in writing.
- 4.5 Should the suspensive conditions not be fulfilled within the period stipulated in clause 4.4:
 - 4.5.1 the Agreement, save for this clause 4 and clauses 5 (*Obligation to Work Towards Suspensive Conditions*) and 19 (*Confidentiality*), shall never come into effect; and
 - 4.5.2 such failure to fulfil the suspensive conditions shall be a resolute condition in respect of this clause 4 (*Suspensive Conditions*) and clause 5 (*Obligation to Work Towards Suspensive Conditions*). For the avoidance of doubt, clause 19 (*Confidentiality*) shall continue to have effect as intended.

- 4.6 If a suspensive condition is not fulfilled in terms of this clause 4, no Party shall have any claim against any other Party as a result of or in connection with any such nonfulfillment, other than a claim for a breach by a Party of its obligations.

5. OBLIGATION TO WORK TOWARDS SUSPENSIVE CONDITIONS

- 5.1 The Parties shall exercise their most reasonable commercial endeavours and collaborate in good faith to ensure fulfilment of the suspensive conditions stipulated in clause 4 (*Suspensive Conditions*).
- 5.2 Such collaboration shall include but not be limited to:
- 5.2.1 assessing the regulatory requirements for approval of this Agreement as may be applicable;
 - 5.2.2 collaborating on the estimation of the Development Budget for the Planning Phase; and
 - 5.2.3 sharing such information as may be necessary and permissible to be shared to ensure fulfilment of the suspensive conditions.

6. PLANNING PHASE AND KEY OUTPUTS

- 6.1 From the Effective Date, the Parties shall exercise their most reasonable commercial endeavours and collaborate in good faith to advance the Planning Phase and achieve the Key Outputs detailed in the Development Programme in **Annexure A**.
- 6.2 The Parties may, by the consensus reached through the Steering Committee, invite third parties such as technical and strategic partners, the list not being exhaustive, to participate in the Planning Phase, to advance the Planning Phase and achieve the Key Outputs.

7. SPECIFIED-PARTY LED ACTIVITIES

- 7.1 While the Richards Bay LNG Terminal falls within the midstream stage of the gas value chain in that it pertains to the transportation, storage and processing of LNG or Natural Gas, the Parties acknowledge that the success of the Planning Phase

is dependent on a complete appraisal of the upstream, midstream and downstream stages of the gas value chain or “sub-value chains”.

7.2 Accordingly, the Parties shall execute the Project in a manner that incorporates the entire gas value chain or “sub-value chains”, to such extent as may be necessary to ensure the successful completion of the Planning Phase.

7.3 Further to 7.1 and 7.2, the Parties acknowledge that due to their individually unique mandates, resources and capabilities, some of the Parties are more suited, relative to others, to leading specific components of the Project. Therefore, the Parties agree upon the following Specified-Party Led Activities:

7.3.1 **Transnet shall:**

7.3.1.1 take the lead in the development of all port, marine, rail-related, and other infrastructure activities that Transnet is mandated by law to perform, concerning the Project;

7.3.1.2 ;

7.3.1.3 actively assist in securing relevant port authorisations, permits and licenses including securing suitable land, where applicable; and

7.3.1.4 actively assist in logistical arrangements in the port and downstream markets.

The Parties shall jointly with the other Parties, lead the development of the midstream gas value chain of the Project

7.3.2 **[] shall:**

7.3.2.1 .

7.4 Regarding Specified-Party Led Activities, a Party may rely on support from the other Parties and the Project Manager to the extent required.

7.5 A Party’s Specified-Party Led Activities shall be part of its area of accountability under the Agreement.

- 7.6 Specified-Party Led Activities shall be executed subject to Steering Committee approval per this Agreement and in consultation with the Project Manager and the other Parties.
- 7.7 The foregoing may not detract from the Parties' obligation to collaborate in good faith. Therefore, to ensure a collaborative approach, notwithstanding Specified-Party Led Activities, the Parties shall ensure integration of the activities performed in respect of the different stages of the gas value chain, through consultation and collaboration with the Project Manager and Steering Committee, where applicable.

8. SCOPE OF WORK AND PROJECT BUDGET

- 8.1 The Parties shall compile and confirm the Scope of Work and Project Budget; and present these items to the Steering Committee for approval and adoption, at which point the items shall respectively become the formal scope of work and budget supporting the Planning Phase.
- 8.2 In compiling the Scope of Work and Project Budget as aforesaid, each Party shall indicate in writing the activities in the Scope of Work that it shall be responsible for procuring, funding and executing, as provided for in clause 9.3 (*Costs and Expenses*), including Specified-Party Led Activities.
- 8.3 Further, in compiling the Project Budget, the Parties shall determine whether they wish (i) to appoint Service Providers into a Workstream or (ii) to integrate all the Workstreams; and proceed to agree whether the appointment of Service Providers shall, for the purposes of this Agreement, constitute Development Costs. The Steering Committee shall be empowered to make decisions in this regard, having reference, and subject to, the provisions of this Agreement.
- 8.4 The Parties may vary the Scope of Work and Project Budget in writing from time to time, provided that the Steering Committee shall, subject to any limitations of authority that may from time to time be imposed in writing by the Parties, approve such variation before it takes effect.
- 8.5 To the extent possible, the Parties shall include in the Project Budget or Scope of Work, or both, a broad or specific description of Service Providers required to be

appointed, the nature of the services required to be supplied and the budgetary implications thereof, provided always that this shall be at an appropriate level of clarity and detail.

9. COSTS AND EXPENSES

- 9.1 The Parties shall contribute to the Development Costs per this clause 9.
- 9.2 The Parties intend to rely to the fullest extent practicable, on internal resources to limit the exposure to third party external costs. In this regard, each Party shall be responsible for its own Internal Costs.
- 9.3 Notwithstanding 9.2, it may be necessary that from time to time, external costs are incurred as a result of the appointment of Service Providers to provide services towards the advancement of the Scope of Work and the Project. To this end, each Party's proposed external costs in fulfilment of clause 8 (*Scope of Work and Project Budget*) shall in writing be notified to and approved by the Steering Committee; and thereafter be a binding commitment on such Party as its contribution towards Development Costs.
- 9.4 In accordance with its commitment per clause 9.3, the Party concerned shall then be responsible for the procurement and appointment of Service Providers required to provide services and for the timely payment of invoices raised by such Service Providers.
- 9.5 Notwithstanding 9.4, the other Parties shall nonetheless contribute towards the development of the scope of work and evaluation criteria for the procurement of the Service Providers referred to in 9.4 and may be invited to participate in bid evaluations where applicable.
- 9.6 The foregoing does not detract from the procuring Party's obligations as laid out in clause 16 (*Indemnities*).
- 9.7 The commitment contemplated in clause 9.3 shall be represented as a percentage of the total Project Budget as compiled, confirmed or varied from time to time per clause 8 (*Scope of Work and Project Budget*).

- 9.8 The Parties acknowledge that they may not necessarily make equal financial contributions towards the Development Costs. Accordingly, to ensure fair and equitable compensation for financial contributions made during the Planning Phase, each Party's:
- 9.8.1 entitlement to the Development Fee referred to in clause 13 (*Financing and Development Fee*) shall be calculated to be a portion equal, in percentage terms, to its percentage financial contribution towards the Development Costs; and
 - 9.8.2 share subscription rights in the Project Company shall be based on a Party's percentage financial contribution towards the Development Costs.
- 9.9 For the avoidance of doubt, the Party with the highest contribution towards the Development Costs shall, subject to clause 15 (*Project Company*), have the biggest proportion of share subscription rights in the Project Company, and *vice versa*. Accordingly, the share subscription rights shall be calculated based on the ratio of contributions made by the Parties towards the Development Costs.
- 9.10 A non-financial contribution made by a Party towards the Development Costs shall not give rise to an entitlement to a Development Fee or share subscription rights in the Project Company. However if either Transnet or [] makes a non-financial contribution with the Steering Committee's written approval, which when objectively assessed, has commercial value to the Project, such non-financial contribution shall be deemed to be part of Development Costs; and shall accordingly give rise to an entitlement to a Development Fee or share subscription rights. This clause 9.10 shall not detract from the provisions of clause 9.11 below.
- 9.11 Unless expressly agreed otherwise in writing, any third party or potential partner who, after the Signature Date, is invited by the Parties to participate in the Planning Phase or the Project as contemplated in clauses 1.1.44 (*Definitions and Interpretation*) and 2.5 (*Objective of the Agreement*):
- 9.11.1.1 may only make a financial contribution towards the Development Costs; and

9.11.1.2 may not claim entitlement to the Development Fee or share subscription rights in the Project Company on the grounds of having made a non-financial contribution towards the Development Costs.

9.12 Costs incurred independently by the Parties prior to the Commencement Date, and Internal Costs incurred by the Parties towards the Planning Phase, notwithstanding that they may have been incurred towards the Project, shall not be reimbursable. However, costs incurred by a Party or Parties towards the Project, by mutual written agreement prior to the Commencement Date, shall be deemed to be Development Costs, subject to ratification by the Steering Committee.

10. STEERING COMMITTEE

Constitution of the Steering Committee

10.1 The Steering Committee shall have powers and duties stipulated in the Steering Committee terms of reference attached as **Annexure C**, read together with clauses 10.26 to 10.28.

10.2 The Steering Committee shall consist of [] members and a chairperson, nominated as follows:

10.2.1 Transnet shall nominate [] members from among its employees; and

10.2.2 The [] shall nominate [] members from among its employees.

10.3 Each Party may nominate [] additional representatives as permanent invitees to the Steering Committee. Furthermore, each Party's Project sponsor shall be one of the aforementioned permanent invitees to the Steering Committee.

10.4 Each Party shall have the right to remove and replace its appointed members on the Steering Committee at any time upon prior written notice to the other Parties.

Chairperson and Secretariat

10.5 The Steering Committee shall appoint a chairperson from among its [] members. The Party whose member becomes the chairperson shall appoint into the Steering Committee, an additional replacement member.

- 10.6 The chairpersonship shall rotate among the Parties every two (2) quarters, and the provisions of clause 10.5 shall *mutatis mutandis* apply.
- 10.7 The Steering Committee shall also nominate and appoint a secretariat from among the Parties.
- 10.8 The position of the secretariat shall rotate among the Parties every two (2) quarters in line with the chairperson position, such that a Party that holds the chairpersonship shall also hold the secretariat position.

Meetings of the Steering Committee

- 10.9 The Steering Committee shall hold its meetings as often as is necessary. Nonetheless, the Parties shall ensure that there is a Steering Committee meeting at least once a quarter, the exact date, venue, and agenda being as agreed between the Steering Committee members, with the assistance and coordination of the secretariat.
- 10.10 The meetings of the Steering Committee may be held in person, or by telephone, or videoconference. Further, if there are matters that need to be resolved on an urgent basis, such that a timely meeting is not possible in the discretion of the chairperson, such matters may be deliberated and decided upon by round-robin, provided that the resultant resolutions of the Steering Committee are made and recorded in writing.
- 10.11 A *quorum* at Steering Committee meetings shall consist of a minimum of 1 member per Party and the chairperson.
- 10.12 Provided there is a *quorum*, the Steering Committee shall exercise its best endeavours to arrive at its decisions by a unanimous vote of the Parties present. However, if a unanimous vote is not possible due to a lack of agreement, decisions shall be made by a majority vote.
- 10.13 If a *quorum* is not present in respect of a specific meeting of the Steering Committee, the meeting may be postponed by the chairperson to a date in the future. No meeting of the Steering Committee may be postponed more than twice

for lack of *quorum* but shall instead proceed on the date of its second postponement notwithstanding that a *quorum* is not present.

- 10.14 If the chairperson is unable to attend a specific meeting of the Steering Committee, the chairperson shall:
- 10.14.1 inform the secretariat of this fact in writing prior to the meeting; and
 - 10.14.2 in writing nominate from among the members of the Steering Committee, an individual to serve as an acting chairperson for the meeting that the chairperson is unable to attend.
- 10.15 The Steering Committee member nominated per clause 10.14 shall have, with reference to the meeting concerned, the powers and responsibilities associated with the chairpersonship.

Voting, Resolutions and Minutes

- 10.16 Each Party shall have one vote.
- 10.17 If Steering Committee members representing a Party vote in conflict with each other, the Party's vote shall be deemed spoilt and therefore, null. Such null vote shall accordingly not be counted. The remainder of the votes provided they are not spoilt, shall be counted.
- 10.18 The chairperson shall not have a casting vote.
- 10.19 A member of a Steering Committee (hereinafter referred to as the "**Proxy Grantor**") who cannot attend a meeting of the Steering Committee, may by proxy authorise another person (hereinafter referred to as the "**Proxy Grantee**") to attend the meeting on their behalf and vote on all Steering Committee matters in which the Proxy Grantor is entitled to vote.
- 10.20 A Proxy Grantor wishing to give a proxy to a Proxy Grantee shall do so in writing. Further, the Proxy Grantor shall simultaneously inform the chairperson of the proxy, also in writing.
- 10.21 A proxy shall expire upon:

- 10.21.1 the conclusion or cancellation of the Steering Committee meeting in respect of which it was granted; or
- 10.21.2 withdrawal in writing by the Proxy Grantor.
- 10.22 The Proxy Grantor and the Proxy Grantee shall be in the employ of the same Party.
- 10.23 In making its resolutions, the Steering Committee shall balance the best interests of the Project against the best interests of the individual Parties, taking into account, among other things, the objectives of the Project and the statutory or strategic mandate of each Party.
- 10.24 The chairperson shall sign all resolutions of the Steering Committee.
- 10.25 The Steering Committee shall, with the assistance of the secretariat, keep minutes of all its meetings and resolutions. The minutes shall be provided to the members of the Steering Committee as soon as practicable after the meeting in respect of which they relate, provided that such provision of the minutes shall be provided to the members prior to the next meeting of the Steering Committee.

Matters within the Ambit of the Steering Committee

- 10.26 The matters which shall be referred to the Steering Committee for a decision, noting or adoption as the case may be, shall include but not be limited to:
 - 10.26.1 the approval and adoption of the Scope of Work and Project Budget as contemplated in 8 (*Scope of Work and Project Budget*);
 - 10.26.2 the approval of variations to the Scope of Work and Project Budget and noting of costs that have a material impact on the Planning Phase;
 - 10.26.3 the approval of the Project Manager and Workstream Team, or variations to these roles from time to time, as contemplated in clauses 1.1.45 and 1.1.54 (*Definitions and Interpretation*);
 - 10.26.4 the noting of the Workstreams, or variations to that from time to time, as contemplated in clause 1.1.53 (*Definitions and Interpretation*);

- 10.26.5 the noting of expenditure to date against the Project Budget;
- 10.26.6 the approval of the scope of work for the appointment of Service Providers subject to clauses 9 (*Costs and Expenses*) and 16 (*Indemnities*);
- 10.26.7 the recommendation of the early termination of service agreements with Service Providers by any of the Parties, subject to clauses 9 (*Costs and Expenses*) and 16 (*Indemnities*);
- 10.26.8 all activities of the Planning Phase within the funding and scope limitations agreed in writing between the Parties;
- 10.26.9 reports and recommendations affecting the Project during the Planning Phase that require the Steering Committee's decision and specific noting;
- 10.26.10 noting of agreements, terms, or contracts affecting the Project during the Planning Phase, as applicable;
- 10.26.11 approving the Execution Model compiled by or on behalf of the Parties per clause 14 (*Execution Phase and Execution Model*);
- 10.26.12 noting of deliverables and milestone achievements of the Planning Phase;
- 10.26.13 strategic and policy decisions in respect of the Planning Phase as applicable, to the extent necessary for the successful development of the Project;
- 10.26.14 endorsement of any Project Charters, business case reports, business plans, or Feasibility Reports compiled as part of the Planning Phase; and
- 10.26.15 approval of stage-gate (FEL) exit deliverables.
- 10.27 Notwithstanding the above, the Steering Committee may, on its own accord and taking into consideration its powers and duties under the Agreement, require that the Parties refer to the Steering Committee, any matter pertinent to the Planning Phase and the Project subject to:
 - 10.27.1 any limitations of authority that may from time to time be imposed by the Parties in writing; and

10.27.2 any funding and scope limitations agreed upon between the Parties in writing.

10.28 Further, the Steering Committee may designate Workstreams to provide regular reports on the progress made on the Project and matters ancillary to that.

11. PROJECT MANAGER

11.1 Pursuant to clause 1.1.45 (*Definitions and Interpretation*), the Steering Committee may appoint a Project Manager to oversee, facilitate, integrate, coordinate and manage the day-to-day activities forming part of the Scope of Work; including managing the Workstreams Team.

11.2 The Project Manager shall report to the Steering Committee and shall accordingly be accountable to all the Parties. If the Project Manager is appointed from among the personnel in the direct employ of any of the Parties, such Project Manager shall be formally seconded to the Project and the Parties shall, subject to the Steering Committee's written approval, agree upon a mechanism for the remuneration of the Project Manager.

11.3 In addition to its responsibilities as provided for elsewhere in this Agreement, including in clause 1.1.45 (*Definitions and Interpretation*), and with the assistance of the Workstream Team, the Project Manager shall have oversight of the preparation, *inter alia*, of monthly progress reports and statements:

11.3.1 of the actual expenditure versus Project Budget spend during the Planning Phase; and

11.3.2 progress versus the Scope of Work.

11.4 The Project Manager shall exercise his best endeavours, devote his time and apply his skill to the completion of the Planning Phase within the time frame and parameters laid out in the Project Budget and Scope of Work.

11.5 The Project Manager and Workstream Team shall always be responsible for managing and coordinating the Workstreams as per this clause 11 and clause 12 (*Workstreams*) below.

12. WORKSTREAMS

- 12.1 Pursuant to clause 1.1.53 (*Definitions and Interpretation*), the Steering Committee may designate Workstreams to execute specific activities forming part of the Development Programme.
- 12.2 The Workstreams shall, under the direction of the Project Manager:
- 12.2.1 be responsible for the day-to-day implementation of Project-specific activities as set out in the Development Programme and Scope of Work; and
 - 12.2.2 use their best endeavours, devote their time and apply their skill and experience to the completion of the Planning Phase within the time frame and financial parameters laid out in the Scope of Work and Project Budget respectively.
- 12.3 Each Party shall have the right to remove and replace its nominated Workstream members at any time upon written notice to the Project Manager.
- 12.4 To the extent that a Party appoints a third-party service provider or consultant into the Workstreams, the cost associated with such Workstream member shall be borne as agreed upon under clause 8.3 (*Scope of Work and Budget*).

13. FINANCING AND DEVELOPMENT FEE

- 13.1 During the Planning Phase, the Parties shall:
- 13.1.1 ensure that the Project documents, as applicable, shall be based upon an underlying Project business plan and a Financial Model to be agreed with the lenders at Financial Close that will ensure the minimum return stipulated in **Annexure B**. In this context the Development Fee shall be incorporated into the Financial Model, but shall not be considered part of the return on equity;
 - 13.1.2 stipulate the payable Development Fee in the Project Company shareholders' agreement, showing the proportional Development Fee amount due to each Party in line with its *pro-rata* contribution to the total Development Costs. The Parties estimate that the total Development Fee shall be either 3% (three per

cent) of the total project costs or 3 (three) times the total Development Costs. Nonetheless, the Parties shall determine the final amount payable during the Planning Phase; and

- 13.1.3 put in place a competitive financing package, with regard to margins, tenure, ratios and the overall financing plan, given that the Parties intend to finance the Project on a limited-recourse basis, with several banks underwriting the commercial debt requirements of the Project, in a syndicated manner.

14. EXECUTION PHASE AND EXECUTION MODEL

- 14.1 The Parties reiterate and undertake that the objective stated in clause 2 (*Objective of the Agreement*) is to allow the Parties to plan, develop and finance the Project up to Financial Close, so that they may *inter alia* be in a position to decide whether or not to proceed to the Execution Phase.
- 14.2 During the Planning Phase, before Financial Close, each Party shall have the sole and absolute discretion as to whether or not to proceed to the Execution Phase.
- 14.3 Upon deciding to proceed to the Execution Phase, the Parties may continue to collaborate beyond the Planning Phase, which is to say, beyond Financial Close, subject to the Project achieving Bankability; and each Party taking FID under its independent governance and decision-making mechanisms.
- 14.4 To provide a framework for the Execution Phase and their continued collaboration, if any, after Financial Close, the Parties shall during the Planning Phase, compile a detailed non-binding Execution Model and submit the same to the Steering Committee for approval as provided for in clause 10 (*Steering Committee*).
- 14.5 The Execution Model shall include *inter alia*:
- 14.5.1 a Project structure;
 - 14.5.2 an upstream, midstream and downstream value chain integration arrangement;
 - 14.5.3 engineering, procurement, construction, commissioning, and operations arrangements for the Execution Phase; or

- 14.5.4 any details the Parties deem necessary regarding the Project Company, including such other and additional matters as may be deemed by the Parties as necessary to include in the Execution Model to ensure the success of the Project.

15. PROJECT COMPANY

- 15.1 Subject to clause 2.6 (*Objective of the Agreement*), should Bankability be achieved, and approval be obtained by the Parties to proceed beyond Financial Close:
- 15.1.1 the Parties may acquire or cause to be incorporated in time for Financial Close, a Project Company through which the Project will be implemented during the Execution Phase;
- 15.1.2 each Party shall have the right but not the obligation to subscribe for minimum securities in the Project Company in proportion to their contrition to Development Costs pursuant to clause 9.8, at a nominal amount; and
- 15.1.3 accordingly, each Party may elect to exercise its right to acquire shares in the Project Company, subject to statutory approvals relevant to that Party.
- 15.2 If any Party elects not to subscribe for shares in the Project Company or if it otherwise elects to reduce its entitlement to such shares, then the shares shall be made available to the other Parties at nominal value. Should no Party be able or willing to subscribe for or acquire the shares that have been made available, then the shares may be offered to third parties, subject to written consent by the other Parties and Financiers where applicable, which consent shall not be unreasonably withheld.
- 15.3 The Parties acknowledge and agree that the Project Company may be incorporated by those Parties exercising their right to subscribe for shares in the Project Company.

16. INDEMNITIES

- 16.1 Each Party (hereinafter referred to as the "**Indemnifying Party**") shall indemnify the other Parties and their lawful successors, their directors, officers, employees, Representatives, agents, (hereinafter collectively referred to as the "**Indemnified Parties**"), from and against all losses, liabilities, claims, damages, and expenses (including reasonable legal fees and disbursements of counsels in connection with that) which arise from a breach of any of the Indemnifying Party's obligations under this Agreement.
- 16.2 Each Party undertakes to take such steps as may be reasonably necessary to ensure that its directors, officers, employees, representatives, agents act in such manner as may not cause such Party to contravene this Agreement.
- 16.3 This clause shall continue to apply following the expiration or termination of this Agreement, for five (5) years thereafter. For the avoidance of doubt, the indemnities referred to in this clause 16 pertain to losses, liabilities, claims, damages, and expenses concerning the Planning Phase (including reasonable legal fees and disbursements of counsels in connection with that).

Indemnity Concerning the Appointment of Service Providers

- 16.4 For the avoidance of doubt, a Party seeking to appoint a Service Provider as contemplated in clause 9.4 (*Costs and Expenses*), shall do so under a service or supply agreement concluded between such Party and the Service Provider sought to be appointed.
- 16.5 In concluding such services or supply agreement, the Party seeking to appoint a Service Provider may not represent to the Service Provider that it enters into the services or supply agreement on behalf of, or as an agent, of the other Parties. Further, the said services or supply agreement shall adhere to applicable legislation, including as applicable, the Preferential Procurement Policy Framework Act No. 5 of 2000 as amended.
- 16.6 Subject to each Party's governance processes; and solely for the reason of ensuring adherence to the Project Budget, the Steering Committee shall in writing

approve the scope of work for the appointment of Service Providers; and specify the Party in respect of whom the approval relates, which approval may not be unreasonably withheld;

- 16.7 Subject to each Party's governance processes; and solely for the reason of ensuring that the Scope of Work is not unduly disrupted, the Steering Committee shall recommend any contemplated early termination of service agreements with Service Providers;
- 16.8 For the further avoidance of doubt, clauses 16.6 and 16.7 do not detract from each Party's internal governance processes. Therefore, in the event of a conflict between the powers of the Steering Committee and each Party's internal governance processes (in place as at the Signature Date), regarding clauses 16.6 and 16.7, the internal governance processes shall prevail. A party may not, after the Signature Date, adopt internal governance processes solely to circumvent clauses 16.6, 16.7 and this clause 16.8.
- 16.9 Provided that the Party appointing a Service Provider as contemplated herein has complied with the provisions of this clause 16 in respect of the appointment of Service Providers and is otherwise not in breach of this Agreement in this regard, then the other Parties indemnify such Party for claims, damages, costs, expenses, and losses incurred (excluding operational losses) from any claim arising out of the appointment, excluding claims arising out of such Party's negligence and willful misconduct.
- 16.10 The indemnification referred to in clause 16.9 shall be up to an amount equal to an amount that would be payable by each Indemnifying Party if a competent court of law were to hold all the Parties to be jointly and severally liable for the claims, damages, costs, expenses, or losses.
- 16.11 The Parties record that the appointment of Service Providers in contravention of a Party's own internal procurement processes or regulatory requirements shall be treated as negligence or willful misconduct, as the case may be. In this regard, the Parties warrant to each other that in appointing external Service Providers, they

shall observe their internal procurement processes or any applicable regulatory requirements.

17. EXCLUSIVITY

- 17.1 Each Party acknowledges that the other Parties have invested, and will continue to invest substantial resources to pursue the Project. The Parties acknowledge that such investment could be adversely affected should a Party seek to participate in the Project, independently of the other Party or Parties.
- 17.2 Accordingly, each Party undertakes that it shall not participate in any aspect of the Project except as provided for in this Agreement.
- 17.3 The provisions of clauses 17.1 and 17.2 do not detract from the rights of (i) Non-withdrawing Parties within the meaning contemplated in clause 21 : *Unilateral Withdrawal Without Cause*) or (ii) Non-Defaulting Parties (within the meaning contemplated in clause 23 : *Breach, Liquidation, Compelled Withdrawal and Cancellation*), to proceed with the carrying out of this Agreement or the execution of the Project on their own or with any other partners or third parties per clause 21 (*Unilateral Withdrawal Without Cause*) or 23 (*Breach, Liquidation, Compelled Withdrawal and Cancellation*).
- 17.4 Each Party agrees that outside the Project, the other Party or Parties and its or their subsidiaries or Affiliates may engage in and possess an interest in any business venture of any nature or description, independently or with others, for projects, wherever located, similar to the Project, and that it shall not, by virtue of this Agreement, have any right in and to such other business or opportunities or any fees or compensation with respect thereto.
- 17.5 The provisions of this clause 17 shall cease to apply to the Parties if the Project is declared not Bankable by a well-established Financier, funder or financial institution, provided however that the provisions of this clause 17 shall continue to apply to a Withdrawing Party or Defaulting Party or a Liquidating Party, for 2 (two) years following the Termination Date, or the Project being declared not Bankable.

18. ETHICS AND INTEGRITY

- 18.1 The Parties shall base their relationship on mutual respect, honesty, and integrity.
- 18.2 No Party may accept or solicit gifts, entertainment, or other social favours to influence business decisions. Subject to each Parties' internal policies and governance processes, courtesies of nominal value and social invitations customary and proper under the circumstances are not unethical as long as they imply no business obligation whatsoever or do not involve significant or out-of-the-ordinary expense.
- 18.3 Each Party warrants that no part of any consideration paid or shall be paid under this Agreement shall be offered, paid or payable, directly or indirectly, to any Governmental Official, political party or official thereof, or any candidate for political office, to influence any act or decision of such person or party, or to induce such person or party to use his or its influence to affect or influence any act or decision of any national, state or local government or instrumentality thereof.
- 18.4 For the purposes of this clause 18, the term "**Governmental Official**" shall include any officer or employee of a national, state or local government, or any department, agency or instrumentality thereof, or any person acting in an official capacity of or on behalf of such government or department, agency or instrumentality.
- 18.5 Each Party further warrants that neither it nor its subsidiaries or Affiliates have in connection with the Project or to obtain business in respect of the Project, offered to make or caused to permit any payment of money or anything of value, either directly or indirectly, to:
- 18.5.1 a Governmental Official;
 - 18.5.2 a political party or official thereof;
 - 18.5.3 a candidate for a political office or office of a political party; or
 - 18.5.4 a private person or legal entity;

in each case to influence an act or decision in the official capacity or induce to use influence with government or with any other private person or legal entity concerning the Project.

19. CONFIDENTIALITY

Definition of Confidential Information

- 19.1 **"Confidential Information"** shall, regarding a Party, mean all information and material, written or unwritten, that is not readily available or generally known to the public, and which such Party wishes to maintain as confidential. Such information shall include, but shall not be limited to all trade secrets, processes, know-how, technical, financial, legal, business and commercial data, formulae, designs, drawings, specifications, physical samples, which may be disclosed by the disclosing party to the receiving party or which may be developed or borne out of improvements to confidential information as a result of the Parties' cooperation in terms of this Agreement, before or after the Signature Date.

Exclusions from the Definition of Confidential Information

- 19.2 Confidential Information does not include information which:
- 19.2.1 is generally known to the public other than as a result of the dissemination thereof by the receiving Party or its representatives in violation of this Agreement;
 - 19.2.2 comes to the knowledge of the receiving Party as a result of disclosure by a third Party, provided that such third party is not known by the receiving Party to be bound by a contractual, legal, or fiduciary obligation not to disclose the confidential information;
 - 19.2.3 is independently developed or derived by the receiving Party or its representatives from information not otherwise defined as Confidential Information in this Agreement; or
 - 19.2.4 the receiving Party is obligated to disclose through the legal or regulatory process.

- 19.3 In the event of any dispute arising as to whether any information is confidential and constitutes Confidential Information for the purposes hereof, the onus will be on the Party alleging that such information is not confidential or to whom disclosure or dissemination has been made, to prove that such information is not confidential as provided herein.

Disclosure of Confidential Information

- 19.4 The disclosing Party may, but shall not be obligated to disclose to the receiving Party such confidential Information as may be in its possession and which, in the sole and absolute discretion of the disclosing Party, is necessary for performance under this Agreement (hereinafter referred to as "**the Purpose**").
- 19.5 Disclosure of the Confidential Information shall mean communication of the Confidential Information to the receiving Party or the receiving Party's representatives, by the disclosing Party or the disclosing Party's representatives, in any manner, including the dissemination of such information orally, electronically, digitally, graphically or in writing.

General Use and Restrictions

- 19.6 The receiving Party acknowledges that:
- 19.6.1 the Confidential Information is a valuable, special, and unique asset of the disclosing Party;
- 19.6.2 the disclosing Party may suffer irreparable harm or substantial economic and other loss in the event of such Confidential Information being disclosed or used otherwise than per this Agreement; and
- 19.6.3 the disclosing Party's disclosure of the Confidential Information to the receiving Party does not confer any rights of whatsoever nature in such Confidential Information on the receiving Party, save for the rights to use the Confidential Information for the Purpose, as contemplated in this Agreement.
- 19.7 Accordingly, the receiving Party shall:

- 19.7.1 at all times treat and safeguard the Confidential Information as strictly private, secret, and confidential;
- 19.7.2 use all such Confidential Information only for the Purpose;
- 19.7.3 not use the Confidential Information for any other purpose; and
- 19.7.4 disclose any of the Confidential Information solely to its Affiliates, directors, officers, employees and professional advisers, consultants and agents who need to know such Confidential Information for the Purpose (hereinafter referred to as "**Permitted Disclosees**"), provided that the receiving party shall:
- 19.7.4.1 procure that such Permitted Disclosees treat such Confidential Information as confidential and at all times in a manner consistent with this Agreement; and be liable for any loss or damage resulting from any Permitted Disclosee failing to do so; and
- 19.7.4.2 not, save as provided for in this Agreement, disseminate the Confidential Information in any manner without the written consent of the Disclosing Party, which consent may be withheld for any reason including convenience.
- 19.8 For the avoidance of doubt, any use or dissemination of Confidential Information by the receiving Party's Permitted Disclosees that would constitute a breach of this Agreement if done by the receiving Party shall constitute a breach of this Agreement by the receiving Party.

Ownership of Confidential Information

- 19.9 The receiving Party acknowledges that, as between the disclosing Party and the receiving Party, all of the Confidential Information is the exclusive property of the disclosing Party, and that the receiving Party shall not acquire any ownership or proprietary interest, license, or rights to use the Confidential Information except for the Purpose.

Return or Destruction of Confidential Information

- 19.10 At any time during the term of this Agreement and thereafter, if requested in writing by the disclosing Party, the receiving Party shall either promptly return to the disclosing Party all Confidential Information received from the disclosing Party and retain no copies (written, digital or electronic) of such Confidential Information, or promptly destroy, or cause to be destroyed, all Confidential Information in the possession or control of the receiving Party and its Permitted Disclosees; provided, that the foregoing shall not apply to information required to be retained by a Party under applicable law or regulatory requirements and shall not require any action inconsistent with pre-existing internal compliance or document retention policies.
- 19.11 Notwithstanding the foregoing, the receiving Party shall continue to be bound by the confidentiality obligations, use, and disclosure restrictions, and other conditions of this Agreement concerning Confidential Information not returned or destroyed under this clause 19.
- 19.12 The disclosing Party does not make any representation or warranty about the Confidential Information or the accuracy or completeness thereof.
- 19.13 The disclosing Party shall not have any responsibility or liability whatsoever or howsoever arising in respect of, or resulting from the use of any Confidential Information supplied to the receiving Party or any third party under this Agreement.

Media Releases

- 19.14 Each of the Parties undertakes in favour of the others that it will not make any releases or public announcement to the press or other media relating to any of the other Parties' participation in the development of the Project without first having obtained the prior written consent of the others, which consent may be refused on any grounds in the discretion of the other Parties.

Intellectual Property

- 19.15 The intellectual property owned by a Party, which such Party makes available to the other Parties as part of the carrying out of this Agreement will remain the exclusive property of the Party owning it; and the other Parties will have no right,

license, or interest therein, expressly or impliedly, except as provided for in this Agreement.

- 19.16 For the sake of clarity, the owner of the intellectual property shall retain ownership of, and all rights, title and interest in and to, its intellectual property, and no license therein, whether express or implied, is granted by this Agreement or as a result of the actions performed hereunder, except as provided for in this Agreement.
- 19.17 Notwithstanding the foregoing, the other Parties shall nonetheless have the right to use all such intellectual property as part of the carrying out of this Agreement, including designs and specifications necessary or created for this purpose.
- 19.18 Intellectual property created jointly by the Parties as part of carrying out this Agreement, as a result of the actions performed under this Agreement, shall be the joint property of the Parties. Notwithstanding the foregoing, all the Parties shall individually have the right to use such jointly developed intellectual property for the carrying out of this Agreement and the execution of the Project. The Parties may but shall not be obligated to transfer the ownership of such intellectual property to the Project Company.
- 19.19 If a decision is made in writing not to proceed with the Planning Phase or the Project, the intellectual property shall remain the sole and exclusive property of whichever of the Parties developed or owns it. Likewise, the jointly developed intellectual property shall remain the joint property of the Parties.
- 19.20 Subject to clause 19.18, in the event of unilateral withdrawal as contemplated in clause 21 (*Unilateral Withdrawal Without Cause*), the provisions of clause 21.2.4 (*Unilateral Withdrawal Without Cause*) shall apply in respect on Intellectual Property.
- 19.21 Each Party whose intellectual property is lawfully used by the other Parties under this Agreement, shall:
- 19.21.1 at its own expense, defend or settle any third-party suit or proceeding that is submitted against the other Parties, to the extent such suit or proceeding

alleges that any use of the stated intellectual property by the other Parties infringes any third party's intellectual property; and

19.21.2 subject to clause 29 (*No Liability for Indirect Damages*) pay all damages awarded in this regard (in a final non-appealable judgment) against the other Parties.

19.22 The provisions of this clause 19 shall survive the termination of this Agreement.

20. FORCE MAJEURE

20.1 “**Force Majeure**” means the occurrence of an event or circumstance (hereinafter referred to as the “**Force Majeure Event**”) that prevents or impedes a Party from performing one or more of its contractual obligations under the contract, if and to the extent that the Party affected by the impediment (hereinafter referred to as the “**Affected Party**”) proves: that such impediment is beyond its reasonable control; and that it could not reasonably have been foreseen at the time of the conclusion of this Agreement; and that the effects of the impediment could not reasonably have been avoided or overcome by the Affected Party.

20.2 Force *Majeure* events include, but are not limited to:

20.2.1 Civil war, riot, rebellion and revolution, military or usurped power, insurrection, an act of terrorism, sabotage or piracy;

20.2.2 currency and trade restriction, embargo, sanction act of authority whether lawful or unlawful, compliance with any law or governmental order, expropriation, seizure of works, requisition, nationalisation;

20.2.3 plague, epidemic, natural disaster or extreme natural event;

20.2.4 explosion, fire, destruction of equipment, prolonged break-down of transport, telecommunication, information system or energy; and

20.2.5 general labour disturbance such as boycott, strike and lockout, and

20.2.6 go-slow, occupation of factories and premises.

20.3 **Notification:** The Affected Party shall give written notice of the Force Majeure event without undue delay to the other Party.

20.4 **Consequences of Force Majeure:** A Party successfully invoking this clause 20 is relieved from its duty to perform its obligations under this Agreement as affected by the Force Majeure Event; and from any related liability in damages or from any other related contractual remedy for breach of contract, from the time at which the impediment causes an inability to perform, provided that the notice thereof is given without undue delay. If notice thereof is not given without undue delay, the relief is effective from the time at which notice thereof reaches the other Parties. The other Parties may suspend the performance of their obligations, if applicable, from the date of the notice.

21. UNILATERAL WITHDRAWAL WITHOUT CAUSE

21.1 Before Financial Close, any Party (hereinafter referred to as the “**Withdrawing Party**”) may by giving sixty (60) days’ notice to the other Parties, without cause or for convenience, unilaterally withdraw from the Project without incurring any obligation and liability towards the other Parties (hereinafter referred to as the “**Non-withdrawing Parties**”) as a direct consequence of its withdrawal.

21.2 If a Party withdraws according to clause 21.1, then the following shall apply:

21.2.1 The rights and obligations of the Withdrawing Party shall be terminated without any liability to the Non-withdrawing Parties. The Withdrawing Party shall forthwith forfeit any:

21.2.1.1 rights it may have to participate further in this Agreement or the Execution Phase;

21.2.1.2 entitlement to any reimbursement, if applicable, for any costs incurred up to the date of withdrawal; and

21.2.1.3 entitlement it may have to the Development Fee.

21.2.2 Notwithstanding the foregoing, the Withdrawing Party shall not be absolved from:

- 21.2.2.1 liabilities and obligations incurred or accrued up to the date of withdrawal, including:
- 21.2.2.1.1 the Withdrawing Party's commitment to finance activities in the Scope of Work per clause 9.3 (*Costs and Expenses*);
- 21.2.2.1.2 obligations arising out of indemnities given under clause 16 (*Indemnities*), to the extent that the claims, damages, costs, expenses, or losses giving rise to such obligations are attributable to activities pre-dating withdrawal as contemplated herein; and
- 21.2.2.1.3 the obligations and liabilities that survive the termination of this Agreement.
- 21.2.3 The Non-withdrawing Parties may continue with this Agreement, amended in writing as necessary or the Project on their own or with any other partners or third parties.
- 21.2.4 Further, upon the unilateral withdrawal contemplated in this clause 21, the Non-withdrawing Parties may, at Financial Close, reimburse the withdrawing Party's verifiable and reasonable costs of developing any jointly owned intellectual property which is used in the carrying out of this Agreement or the execution of the Project, subject to applicable intellectual property laws and approval by Financiers as incorporated and agreed in the Financial Model.
- 21.2.5 If two Parties withdraw per clause 21.1, then this Agreement shall terminate automatically, subject to the provisions of clause 21.2.2 applying.
- 21.3 In the event of withdrawal per this clause 21, the Parties shall continue to be bound by the provisions of clause 19 (*Confidentiality*).

22. UNANIMOUS AGREEMENT NOT TO ADVANCE TO THE EXECUTION PHASE

- 22.1 If all the Parties decide not to complete the Planning Phase, the parties shall reduce this agreement not to complete the Planning Phase to writing, then the Project shall be deemed abandoned by all the Parties, and this Agreement shall automatically terminate.

23. BREACH, LIQUIDATION, COMPELLED WITHDRAWAL AND CANCELLATION

- 23.1 If a Party (hereinafter referred to as the "**Defaulting Party**"): (i) commits a material breach of this Agreement or defaults in the performance of any material obligation hereof, and if the Defaulting Party does not rectify such default or breach within 10 (ten) Business Days after the default or breach is called to its attention by written notice from the other Parties; or (ii) commits a non-material breach of this Agreement or defaults in the performance of any other obligation hereunder, and if the Defaulting Party does not rectify such default or breach within 20 (twenty) Business Days after the default or breach has been called to its attention by written notice from the other Parties, then the "**Non-Defaulting Parties**" may by mutual agreement and by written notice to the Defaulting Party:
- 23.1.1 terminate this Agreement; or
- 23.1.2 compel the Defaulting Party to withdraw from the Agreement.
- 23.2 If a Party (i) files a bankruptcy petition or (ii) is adjudicated bankrupt, or (iii) a bankruptcy petition is filed against it and is not cancelled within thirty (30) Business Days, or (iv) if the Party generally becomes unable to pay its debts, or (v) unable to fulfil its obligations hereunder, or (vi) if the Party makes an assignment for the benefit of creditors or any arrangement under any bankruptcy law, or (vii) discontinues its business if a receiver is appointed on all or a substantial part of its assets (hereinafter referred to as the "**Liquidating Party**"), the "**Non-Liquidating Parties**" may by mutual agreement and by written notice to the Liquidating Party:
- 23.2.1 terminate this Agreement; or
- 23.2.2 compel the Liquidating Party to withdraw from the Agreement.
- 23.3 Each Party shall immediately advise the other Parties, in writing, upon its being subjected to the occurrence of any event contemplated in clause 23.2 (i) – (vii).
- 23.4 Any termination of this Agreement or compelled withdrawal according to clauses 23.1 and 23.2 shall be without prejudice to any other rights or remedies to which a

Non-Defaulting or Non-Liquidating Party may be entitled to hereunder or at law and shall not affect any accrued liabilities of the Defaulting or Liquidating Party.

- 23.5 In the event of termination or compelled withdrawal per clauses 23.1 or 23.2 respectively, the Defaulting Party or Liquidating Party as the case may be shall continue to be bound by the provisions of clause 19 (*Confidentiality*).
- 23.6 Termination of this Agreement per this clause 23 shall not prohibit the Non-Defaulting Parties from continuing with the Agreement or Project alone or with any partners or a third party.
- 23.7 Where any Party commits fraud, gross negligence or willful misconduct, such Party shall be liable for all their liabilities and obligations incurred before the date of commission of fraud, gross negligence, or willful misconduct.
- 23.8 A Party committing fraud, gross negligence, or willful misconduct hereby indemnifies the other Parties of any damages, losses, expenses (including legal costs on a full indemnity basis), liabilities and costs incurred by the Parties arising out of or in connection with the act or omission by such Party.

24. DISPUTE RESOLUTION

- 24.1 In the event of a dispute arising between any of the Parties in terms of this Agreement or concerning the interpretation of this Agreement, the Parties undertake to try to resolve the dispute amicably amongst themselves, with the support of the Steering Committee as necessary. The Steering Committee shall only have a facilitative role in this regard.
- 24.2 Should the dispute not be resolved in terms of clause 24.1 above, the Parties shall escalate the dispute to their respective Chief Executive Officers, or equivalents for the time being, for resolution. The Chief Executive Officers, or equivalents, for the time being, may in writing delegate their powers under this clause to personnel within their organisations.
- 24.3 Should the dispute not be resolved by the Parties in terms of clause 24.2 within twenty (20) Business Days of its being escalated or such extended period as the

Parties in dispute may in writing agree upon, then the dispute shall be further escalated to the Parties' respective boards.

- 24.4 Should the dispute not be resolved by the Parties in terms of clause 24.3 above within sixty (60) Business Days of its being further escalated, or such other extended period as the Parties in dispute may in writing agree upon, then such dispute shall be resolved by way of arbitration to be conducted by an arbitrator appointed for this purpose by the Arbitration Foundation of Southern Africa.
- 24.5 The Parties shall conduct the arbitration according to the directions of the arbitrator, and the Parties shall comply with all reasonable directions and requests of the Arbitrator. The Arbitrator shall give a written decision, with reasons within the timelines agreed to by the Parties or provided for in the Rules for the Conduct of Arbitrations: 2018 edition, which decision shall be binding on the Parties.
- 24.6 The costs of arbitration shall be shared equally by the Parties unless directed otherwise by the Arbitrator.
- 24.7 Notwithstanding the provisions of this clause 24, any Party may approach a Court of Law for urgent interim relief without first exhausting the mediation or dispute resolution provisions referred to therein.
- 24.8 The provisions of this clause are severable from the rest of the Agreement and will survive the termination of this Agreement.

25. NOTICES AND ADDRESSES FOR SERVICE

- 25.1 Unless otherwise specified, any notice or communication in terms of this Agreement:
- 25.1.1 must be in writing and in the English language to be effective; and
- 25.1.2 must be sent by hand, prepaid registered post to the addresses numbers below, which physical addresses the Parties select as their respective *domicilium citandi et executandi* as follows:

Transnet	

25.2 Any Party may by written notice to the other Parties, change its address/telefax number to any other address/telefax number within South Africa. Such change will only take effect upon receipt or deemed receipt of such notice by the other Party.

25.3 Any notice or communication will:

25.3.1 if delivered by hand during business hours to the person apparently in charge of the premises selected by the addressee for the delivery of notices, be deemed to have been received on the date of delivery;

25.3.2 if sent by prepaid registered post to the selected address, be deemed to have been received six (6) days after posting; and

25.3.3 if telefaxed to the selected telefax number, be deemed to have been received on the first Business Day following the date of transmission.

25.4 Any written notice or communication which has been received by a Party shall be regarded as sufficient notice even if it has not been sent in the manner or to the address/telefax number provided for above.

26. REPRESENTATIONS ON AUTHORITY TO CONTRACT

26.1 Each Party represents and warrants that:

26.1.1 as at the Signature Date, it is a corporate entity, duly organised, validly existing and in good standing under the laws of its place of registration and operation;

26.1.2 save as stated in this Agreement, it has the necessary capacity, power and authority to enter into and deliver its obligations under this Agreement and all

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its obligations hereunder have been approved and authorised by all requisite corporate action;

- 26.1.3 neither the execution of and delivery of this Agreement nor performance by such Party of its obligations hereunder, violates, conflicts with or constitutes a default under (i) any organisational document of such Party, (ii) any applicable law, judgment or order or (iii) any loan, debenture, bond, mortgage, deed or trust or other instrument containing contractual covenants or restrictions to which such Party or its assets are bound;
- 26.1.4 this Agreement contains legally valid and binding obligations to such Party and is enforceable against such Party according to its terms and conditions; and
- 26.1.5 there is no pending or threatened litigation against such Party in any court or before an arbitrator, in which there could be an adverse decision, which could materially, and adversely affect the ability of the Party to perform its obligations under this Agreement.
- 26.2 If a Party breaches its obligations outlined in this clause 26, the provisions of clause 23 (*Breach, Liquidation, Compelled Withdrawal and Cancellation*) shall apply.
- 26.3 The Defaulting Party under this clause 26 shall be liable and shall indemnify the other Parties for all damages, costs, expenses, and losses incurred by the other Parties as a result of such breach, notwithstanding any other provision of this Agreement to the contrary.

27. CESSION AND ASSIGNMENT

- 27.1 No Party may cede, delegate, assign or in any other manner dispose of any of its rights or obligations arising out of this Agreement without the prior written consent of the other Parties.
- 27.2 The other Parties may withhold their consent in their sole and absolute discretion, provided that to the extent that any such cession, delegation, assignment or disposal relates to an amalgamation or genuine restructuring of the first-mentioned

Party or any group of companies of which it is part, then the other Parties' approval shall not be unreasonably withheld.

- 27.3 This clause 27 shall be binding on the liquidator, business rescue practitioner or trustee (whether provisional or final) of each Party.

28. NO OBLIGATION TO ENTER INTO FURTHER AGREEMENTS

- 28.1 Save as expressly stated:

28.1.1 this Agreement does not obligate any Party, its assignees or Affiliates to finance any part of the Execution Phase, and does not bind any Party to enter into any further agreements;

28.1.2 no Party or third party invited by the Parties to participate in the Planning Phase per this Agreement, shall bring any suit or assert any claim against any other Party based on this Agreement as a result of a failure or inability of the Parties to agree on the terms of, or enter into, a subscription and shareholders' agreement or similar document, or proceed with the Execution Phase;

28.1.3 each Party recognises and undertakes that the Parties may not be able to agree on the terms of future agreements and that their efforts to execute the Project may collapse without, save as expressly stated, liability on the part of any Party;

28.1.4 each Party recognises and undertakes that the development and implementation of projects such as the one contemplated in this Agreement is susceptible to numerous risks that affect the likelihood of success and that no Party in any way warrants or predicts that the Planning Phase will be successfully completed, or the Project successfully executed; and

28.1.5 the Parties shall not have the right or authority to assume, create or incur any liability or obligation, express or implied, against, in the name of, or on behalf of any other Party without the prior written consent of such Party.

29. NO LIABILITY FOR INDIRECT DAMAGES

- 29.1 No Party shall be liable in any action initiated by or against the other Parties for special, indirect, or consequential damages resulting from or arising out of the performance or nonperformance of this Agreement, including loss of profit or business interruptions.
- 29.2 This clause shall continue to apply following the expiration or termination in perpetuity. For the avoidance of doubt, the exclusion of indirect damages referred to in this clause 29 pertains to action initiated by or against the other Parties in connection with the Planning Phase.

30. VARIATIONS, WAIVERS AND RELAXATIONS

- 30.1 No variation, modification, consensual cancellation or waiver of any provision of this Agreement, or consent to any departure therefrom, will in any way be of any force or effect unless confirmed in writing and signed by or on behalf of the Parties. Then such variation, modification, cancellation, waiver, or consent will be effective only in the specific instance and for the purpose and to the extent for which it was made or given.
- 30.2 No waiver of any breach of the Agreement shall be deemed to be effective or binding unless the waiver is in writing and signed by an authorised representative of the Party purporting to have waived the breach. Such waiver shall be limited to the specific breach waived and shall not apply to any subsequent or other breach.
- 30.3 A Party's failure to enforce or delay in enforcing any of the terms and conditions of this Agreement shall not constitute or be deemed to constitute a waiver of such terms and conditions.
- 30.4 No relaxation by a Party of any of its rights in terms of this Agreement at any time will prejudice such Party or be a waiver of its rights (unless it is a signed written waiver). Such a Party may exercise its rights thereafter as if such relaxation had not taken place.

31. WHOLE AGREEMENT

- 31.1 This is the whole agreement between the Parties containing all of the express provisions agreed on by the Parties concerning the subject matter hereof. All previous oral and written agreements, understandings, representations, promises, or assurances are declared null and void.
- 31.2 Save for any memorandums of cooperation between any of the Parties, which are not meant to be superseded by this Agreement, any prior commitments, representations, warranties or understandings in relations to each Party's involvement and participation in the activities governed by this Agreement shall be superseded by the terms and conditions of this Agreement.
- 31.3 No Party may rely on any representation, which allegedly induced that Party to enter into this Agreement unless the Parties have recorded the representation.

32. AGREEMENT PREPARATION COSTS

- 32.1 Each Party will bear its own costs for the preparation and execution of this Agreement.

33. COUNTERPARTS

- 33.1 This Agreement may be signed in three or more identical counterparts, all of which together form the agreement between the Parties.

34. APPLICABLE LAW AND JURISDICTION

- 34.1 This Agreement shall be governed, construed, and given effect to per the laws of South Africa. The Parties hereby consent to the non-exclusive jurisdiction of the High Court of South Africa, Eastern Cape Local Division, Makhanda, concerning all matters arising from this Agreement.

SIGNED aton this.....day..... of2022

For **TRANSNET (SOC) LIMITED**
 who hereby warrants that (s) he is duly
 authorised to sign this agreement on its
 behalf

Full names

Designation

Witness 1	Witness 2
Sign:	Sign:
Full names	Full names
Contact Details	Contact Details

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SIGNED aton this.....day..... of2022

For

who hereby warrants that (s) he is duly
authorised to sign this agreement on its
behalf

Full names

Designation

Witness 1	Witness 2
Sign:	Sign:
Full names	Full names
Contact Details	Contact Details

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ANNEXURE A: DEVELOPMENT PROGRAMME AND DEVELOPMENT BUDGET FOR THE PLANNING PHASE

PROJECT PHASE DESCRIPTION	SCOPING/SCREENING (FEL1)	PRE-FEASIBILITY (FEL 2)	BANKABLE FEASIBILITY (FEL 3)	PRE-IMPLEMENTATION (FC)
	Business and Strategic Planning Business and Commercial Planning	Facility and Project Planning Implementation Preparation		
Objectives				
Definitions of project development phases				
Technical				
Market				
Business Plan				
Commercial & Legal				
Financial				
Regulatory & Compliance				
Project Management (All Knowledge Areas of PMBOK)				
KEY OUTPUT	Project Charter (Scoping Report)	Business Case (PFS Report)	Business Plan (FID) (BFS Report)	Financial Close (RFC sign-off)

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	Business Planning
	Facility and Project Planning

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DEVELOPMENT BUDGET

<u>ITEM</u>	<u>DESCRIPTION</u>	<u>BUDGET¹</u>
Pre-feasibility Studies		
Bankable Feasibility Studies		
Pre-Implementation Activities		
SUB-TOTAL		
Contingency (15%)		
TOTAL		

¹The budget excludes internal costs to be incurred by the Parties

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ANNEXURE B: COMMERCIAL PRINCIPLES GUIDING THE PLANNING PHASE**ANNEXURE B: COMMERCIAL PRINCIPLES GUIDING THE PROJECT**

1. Project Requirements:
2. Quantitative parameters: Return
3. Financial assumptions

Debt related:

- Debt interest rate: to be market related;
- Debt Service Coverage Ratio (Minimum): to be market related;
- Debt Tenor: to be market related (>10 years);
- Grace period: minimum construction period;
- Gearing/Leverage: preferably 70% Debt: 30% Equity (minimum 60:40).

ANNEXURE C: STEERING COMMITTEE TERMS OF REFERENCE

To be attached

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