



**MASTER SERVICES AGREEMENT**

entered into by and between

**TRANSNET PROPERTY AN OPERATING DIVISION OF  
TRANSNET SOC LIMITED**

(hereinafter referred to as "the Client")

(Registration No. 1990/000900/30)

and

**(Registration number:.....)**

(hereinafter referred to as "the Service provider")

**FOR THE PROVISION OF SECURITY SERVICES AT SITES (HEREINAFTER REFERRED TO AS "THE SECURITY SERVICES") FOR TRANSNET SOC LIMITED (Registration Number 1990/000900/30) TRADING AS TRANSNET PROPERTY (HEREINAFTER REFERRED TO AS "TP") FOR A PERIOD OF TWELVE (12) MONTHS**

**Agreement Number:**

**Commencement Date:**

**Expiry Date or at depletion of contract value whichever comes first**

FOR THE PROVISION OF SECURITY SERVICES AT VARIOUS SITES (HEREINAFTER REFERRED TO AS "THE SECURITY SERVICES") FOR TRANSNET SOC LIMITED (REGISTRATION NUMBER 1990/000900/30) TRADING AS TRANSNET PROPERTY (HEREINAFTER REFERRED TO AS "TP") FOR A PERIOD OF TWELVE (12) MONTHS

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**WHEREAS** the Client desires to obtain the Security Services of professionally trained and duly qualified security officers from the Service provider to perform Security Services on the property of the Client at its identified sites, and

**WHEREAS** the Service provider is willing and able to render these Security Services to the Client,

**NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:**

## **1 INTERPRETATIONS AND DEFINITIONS**

### **1.1 INTERPRETATIONS**

- a) Headings to clauses are inserted for convenience only and shall not be used in interpreting this Agreement.
- b) Unless the context clearly indicates a contrary intention, an expression which denotes
  - (i) any gender includes the other gender;
  - (ii) a reference to a natural person shall include a legal entity and *vice versa*; and
  - (iii) the singular shall include the plural and *vice versa*.

### **1.2 DEFINITIONS**

- a) **"ad hoc service"** means a temporary Security Service or a Security Service for a specific purpose only which is subject to the Client's internal approvals process;
- b) **"Agreement"** means this document together with all the schedules and annexures hereto, the Tender documents and any Individual Agreement;
- c) **"Authorised Officer"** means any person authorised by the owner of any public premises or any public vehicle to act in terms of the provisions of section 2 of the Control of Access to Public Premises and Vehicles Act, 53 of 1985;
- d) **"Business Unit"** means a Business Unit of Transnet Property as indicated from time to time;
- e) **"Code of Conduct for Security Service Providers"** means the Code of Conduct for Security Providers, 2003 prescribed under the private security industry Regulation Act, 2001 (Act No.56 of 2001);
- f) **"Contract Administrator"** means the person designated by the Contract Manager to perform all administrative functions per the contract;
- g) **"Contract Manager"** means the person designated by the Contract Owner to perform contract management functions to ensure that Service Provider delivers against the key performance indicators in order for Transnet to obtain value for money and cost savings;
- h) **"Contract Owner"** means the Head of Security of Transnet Property who is ultimately responsible for security services within Transnet Property.
- i) **"Declaration Register"** means the written record at a Client Site of any item(s) which a visitor to the Site declares to have on his/her person, including laptops and cell phones, prior to being permitted access to the premises;
- j) **"Deployment Area"** means any area within a Site which is identified and controlled by the Client where security officers will be deployed to render the Security Service(s);
- k) **"Effective Date"** means the commencement date of the Security Service(s);

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- l) **"Incident"** includes but is not limited to:
  - (i) any breach of security;
  - (ii) unauthorised persons gaining access to the Site;
  - (iii) unauthorised third party motor vehicles on the Site;
  - (iv) bomb threats;
  - (v) suspicious persons or activity in or in the immediate vicinity of the Site;
  - (vi) discovery of unattended and / or unknown and / or suspicious packages on the Site;
  - (vii) breach of perimeter fencing at the Site;
  - (viii) evidence of tampering with the Client's equipment and security systems;
  - (ix) theft and pilferage of Client's property and/ or third party property;
  - (x) illegal possession of and/or smuggling of narcotic substances, firearms, counterfeit and any other illegal or contraband goods;
  - (xi) loss or damage to or destruction of Client's assets or property or third party property;
  - (xii) hijacking or seizure of the Client's property including but not limited to facilities, equipment, vehicles and buildings; and
  - (xiii) any death or injury to a person resulting from any action in an attempt to execute an incident.
- m) **"Individual Agreement"** means an Individual Service Level Agreement (SLA) entered into between the Client and the Service provider in respect of the Transnet's Business Unit, which SLA shall be substantially in the form of the Service Level Agreement attached as Schedule 2;
- n) **"ISPS Code"** means the International Ship and Port Facility Security Code, as enacted into South African Law by the Merchant Shipping (Maritime Security). Regulations, 2004;
- o) **"LDV"** means a light delivery vehicle;
- p) **"NKPA"** means the National Key Points Act, 102 of 1980;
- q) **"NQF"** means the National Qualifications Framework;
- r) **"Parties"** mean the Parties to this Agreement together with their subsidiaries, divisions, Business Units, successors-in-title and their assigns;
- s) **"Party"** means either one of these Parties;
- t) **"Persistent Minor Breach"** means 5 (five) consecutive occurrences, over a period of 6 (six) months, in respect of the same or similar minor breaches (as defined in the Individual Agreements) which relate to non-compliance and/or accumulation of penalties by the Service provider;
- u) **"PSIRA"** means the Private Security Industry Regulatory Authority;
- v) **"SASSETA"** means the Safety & Security Sector Education and Training Authority;
- w) **"security officer(s)"** means the Service provider's employees including but not limited to security guards (all grades), security supervisors, security inspectors and area managers;
- x) **"Security Service(s)"** means one or more Security Services or activities as contemplated in the Private Security Industry Regulation Act, 56 of 2001;

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- y) **"Site"** means any Transnet area or premises where Security Services are required as determined by the Client;
- z) **"Supervising Inspector"** means a shift supervisor (who is at least at a level B Grade) appointed by the Service provider as such;
- aa) **"Tax Invoice(s)"** has the meaning given to that term in the Value-Added Tax Act, 89 of 1991;
- bb) **"Termination Date"** means date of expiry of this Agreement;
- cc) **"VAT"** means Value-Added Tax chargeable in terms of the Value-Added Tax Act, 89 of 1991; and
- dd) **"Work Document"** means the Schedule of Quantities attached as "Annexure A" , and which document shall be attached as an annexure to the Service provider's Individual Agreement detailing the Sites and the Deployment Area for which Security Services are required, related Security Services, resources and applicable rates.

## 2 THE SCOPE OF THE AGREEMENT

- 2.1 This Agreement is an umbrella agreement for the provision of the Security Services at the Client Sites to be agreed upon between the Parties. The Service provider and the Client shall hereinafter enter into Individual Agreements in respect of Business Units of the Client for particular individual Sites where Security Services are to be provided under the terms and conditions of this Agreement together with any special conditions required by the Client and included in the Individual Agreement(s).
- 2.2 The Parties will endeavour to have concluded the Individual Agreement(s) by the Effective Date, but no later than 60 (sixty) calendar days after the Effective Date, failing which either Party will be entitled to exercise its right of termination of the contract under the provision of clause 25.2 below (*Breach*).
- 2.3 The Security Services to be provided by the Service provider are as outlined in the Request for Proposal (RFP) issued by the Client, and as specified in the Service provider's Individual Agreement and Work Document, which shall form an integral part of the Individual Agreements.
- 2.4 In the event of any conflict between the provisions of any Individual Agreement and this Agreement, the provisions of this Agreement shall take precedence. However, the Parties may agree that certain provision(s) of the Individual Agreement shall prevail over this Agreement.

## 3 COMMENCEMENT AND TERMINATION DATE

Notwithstanding the date of signature of this Agreement, it shall commence on the Effective Date and shall continue to operate until the Termination Date as stated in Schedule 1 of this Agreement, unless terminated by the Client in terms of Clause 9 (*Remuneration of Security Officers*), Clause 20 (*Penalties*), Clause 16 (*Broad Based Black Economic Empowerment (B-BBEE) and Socio-Economic Obligations*), Clause 25 (*Breach*) or Clause 26 (*Termination and Cancellation*) of this Agreement.

## 4 PRICE AND PAYMENT

- 4.1 The amount payable by the Client to the Service provider in respect of the Security Services shall be in accordance with the Work Document and shall exclude Value-Added Tax which shall be reflected separately on the Tax Invoices.

- 4.2 The service provider shall, in the first week of each calendar month, submit to the Client an original Tax Invoice in respect of each Site, to be certified by both the Service provider and the Client as correct, specifying the Security Service rendered during the previous calendar month and detailing the amount due and payable to the Service provider.
- 4.3 Payment shall not be affected unless the submits credit notes with the Tax Invoices in respect of short-postings or non-compliance with any of the provisions of the Individual Agreement.
- 4.4 Payment for the Security Services shall be made by the Client to the Service provider within 30 (thirty) days from the date that the Tax Invoice is received by the Client, provided that such Tax Invoice is certified as correct, as envisaged in clause 4.2 above. Where a Tax Invoice (or portion thereof) is disputed, the Client shall effect payment of such Tax Invoice to the Service provider within 30 (thirty) days of such Tax Invoice being certified as correct.
- 4.5 Notwithstanding the provisions of clause 4.2 above, should either of the Parties be of the view that underpayments or overpayments were made in respect of invoices paid in respect of the Security Services, it shall notify the other in writing of such underpayment or overpayment:
  - a) The Parties are entitled to conduct a reconciliation process before any amount is paid to a Party as a result of the underpayment or overpayment; and
  - b) The payment or credit note resulting from the underpayment or overpayment shall be made within 30 (thirty) days after the Party has been notified of the underpayment or overpayment.
- 4.6 Should the Client require additional Security Services on an ad hoc basis in terms of this Agreement, the Service provider shall provide such Security Services at the rates per shift as specified in the Work Document subject to due internal TP approvals.
- 4.7 The rates tendered for armed security officers exclude firearms and ammunition but shall include (SABS approved) bullet-proof vests for such security officers.
- 4.8 In the event of an increase in the Service Provider's labour costs resulting from any statutory wage determination or provision binding the Service Provider in respect of wages of security officers: the following shall apply;
  - a) Since 2027 Private Security Industry Regulatory Authority (PSIRA) sectorial determination rates are not yet available, the Client will allow escalation for 2027 in line with the published PSIRA Sectoral Determination price increase at the anniversary of the Contract.

## **5 PROVISION OF SECURITY SERVICE(S)**

- 5.1 The Service provider shall:
- a) provide all security officers and supervision necessary for the proper, efficient and economic performance of the Security Service and shall ensure that such performance is carried out in such a way that it will enable the Client to secure its assets, infrastructure, employees and all the Client's authorised third parties within the Sites, and third party property and information, details of which the Service provider has full knowledge of;
  - b) provide the necessary equipment as agreed to in writing between the Parties in accordance with the Individual Agreement and/or agreed from time to time, which equipment shall at all times be in good condition and working order to enable security officers to perform their duties in terms of this Agreement;
  - c) ensure that all of its security officers comply fully with the prescribed standard terms and conditions for all third parties entering the Client's Sites, the Client's operational and security procedures and policies, as they may be amended from time to time by the Client in its sole discretion, with the details all of which the Service provider hereby confirms that it is fully and effectively acquainted with;
- 5.2 The Service provider shall provide the Security Service(s) to the Client as outlined in the Work Documents in respect of specific Sites referred to in the Individual Agreement(s).
- 5.3 The Service provider shall provide the necessary equipment as specified in an Individual Agreement, or as agreed in writing between the Parties from time to time, which, at all times, shall be clean and in good working order and good condition, including but not limited to firearms, handcuffs, batons, radios, pocket books, visitors' register, Declaration Register, lost and found register, occurrence books, pens, torches, wrist watches, reflector jackets and personal protective equipment to enable security officers to perform their duties in terms of this Agreement.
- 5.4 All original pages of books, registers or other documents used in the supply of the Security Service(s) shall immediately after they are full become the property of the Client, and shall be handed to the Client, against a signature recording receipt, for safe keeping and record purposes. The Client reserves the right to provide its own stationery to the Service provider for such use on its Sites.
- 5.5 The Service provider shall only increase or decrease the number of resources and quantities of equipment provided for in terms of this Agreement with prior written consent of the Contract Owner, failing which the Client shall not be liable to pay the Service provider's costs for additional resources or equipment, and shall impose the necessary penalties resulting from the provision of insufficient resources or equipment as stipulated in clause 20 (*Penalties*) of this Agreement.
- 5.6 The Client may from time to time and in writing require an ad hoc service or additional Security Service(s) from the Service provider under the same terms and conditions of this Agreement and where applicable in terms of the Individual Agreements.
- 5.7 The ad hoc service or additional Security Services required in terms of clause 5.5 shall be provided for a period and within the time agreed upon by the Client and the Service provider.

- 5.8 The Service provider shall provide additional security officers within 2 (two) hours from the time of receipt of a written request for additional Security Services or within such other times as the Parties may agree from time to time.
- 5.9 Should operational requirements require amendments to the Security Services, the Controlling Officer may from time to time request in writing such amendments to the Security Services, as set out in the Work Document, which amendments shall be agreed and signed by both Parties.
- 5.10 The Service provider shall render the Security Service(s) in accordance with relevant legislation and in particular in accordance with the provisions of the Private Security Industry Regulation Act, 56 of 2001 and the Code of Conduct for Security Service Providers, 2003 published in terms of the said Act.
- 5.11 In the event of the Contract Owner not being satisfied with the performance of any of the security officers provided by the Service provider in terms of this Agreement, the Client shall notify the Service provider in writing to forthwith remove that security officer and provide an equivalently qualified and trained substitute. The Client shall furnish the reasons for its dissatisfaction to the Service provider in writing, provided the Parties shall keep these reasons confidential between themselves, unless agreed to the contrary in writing. The security officer so removed and replaced at the Client's request shall thereafter not be used for the provision of further Security Services to any other Business Unit of the Client.

## **6 PROVISION OF SECURITY OFFICERS AND OCCURRENCE OF INCIDENTS**

- 6.1 The security officers provided in terms of this Agreement shall for the duration of this Agreement, be registered with PSIRA and where applicable, with the National Key Points Secretariat in terms of the NKPA, and any other body required by an applicable law.
- 6.2 Certified copies of the relevant certificates shall be submitted by the Service provider to the Client as proof of the security officers' registration with PSIRA and other relevant authorities, on or before the Effective Date.
- 6.3 The Client requires, as mandatory and material to this Agreement, that the Service provider provides current non-criminal clearances (automated fingerprint identification) for each and every security officer to be deployed by the Service provider to all Client Sites. In this regard the Service provider shall provide such certification on the following basis:
  - a) The only acceptable certification will be that which has been issued by an official service provider appointed by the South African Police Services ("SAPS") for the provision of this service or by the SAPS.
  - b) Each certificate is valid for 12 (twelve) months only, whereafter it must be renewed prior to the expiry date of any such existing certification for a security officer.
  - c) All costs for the production of non-criminal clearance certificates shall be borne by the Service provider.
- 6.4 In the event where the Client require a current commercial clearance certificate (credit check), the Service provider shall provide a current commercial clearance certificate to the Client, in respect of all security officer(s) at a specific site. All costs for the production of commercial clearance certificates shall be borne by the Service provider.

- 6.5 The Service provider shall only employ and contract with South African citizens or persons who have permanent residential status in South Africa for the performance of Security Services in terms of this Agreement and in accordance with PSIRA requirements. Security officers employed by the Service provider for deployment to the Client's Site are to have concluded a written contract of employment with the Service provider before the Effective Date, proof of which must be furnished to the Client upon request. Non-compliance with this requirement will entitle the Client to have the Security Officer removed from Site forthwith and a suitably employed Security Officer replaced with immediate effect.
- 6.6 When required to carry firearms by the Client, the Service provider shall only deploy such security officers required to carry firearms who are competent and licensed to do so in terms of the Firearms Control Act, 60 of 2000.
- 6.7 The Service provider is responsible for the cost of the vetting of all its security officers required for duty at National Key Points and must price this Security Service accordingly. The number of security officers required can be found in the Work Document. However, it is the Service provider's responsibility to have sufficient vetted security officers in reserve to replace other vetted security officers on short notice.
- 6.8 The State Security Agency (SSA) may, from time to time, require security officers who are deployed at the South African Ports to undergo a security screening process. In such cases the Service provider will cooperate with the Client to provide the necessary information pertaining to the security officers in question, as required by SSA in order to perform this security screening exercise.
- 6.9 The Service provider is responsible for all its employees to be deployed to the Client's Sites in terms of this Agreement to undergo medical examinations which shall without limitation, include an eye examination by a registered optometrist, audiometric testing by a registered audiologist and communicable disease tests (e.g TB), at the outset of the Agreement. This is to be finalised within the first month of the Agreement. The Client may withhold 10% (ten percent) of the monthly contract value for each month that the medical examinations have not been completed for all the Service provider's employees deployed in terms of this Agreement and the medical certificates/reports have been handed to the Controlling Officer of the Client.
- a) Should the Service provider fail to complete the medical examinations as stipulated above within the first 2 (two) months of the Agreement, the Service provider will be considered in breach of this Agreement, and the provisions of Clause 25 (*Breach*) will apply.
  - b) Between the fourth last month and the second last (penultimate) month of the Agreement, an exit medical examination is to be carried out. The Service provider is to provide the Client with copies of all records (medical certificates/reports) as well as keeping such records for the prescribed period in law. 20% (twenty percent) of the final month's payment will be withheld until the Service provider has complied with this provision.
  - c) The Client reserves the right to monitor this process.
- 6.10 The security officers, at the Service provider's cost, shall be required to attend an induction course, applicable awareness training and any other training required in terms of clause 8 (*Training of Security Officers*) of this Agreement.
- 6.11 The security officers shall perform their duties from Mondays to Sundays from 18:00 to 06:00 and/or from 06:00 to 18:00 or at such other times as may be required by the Client from time to time in respect of any particular Site.

- 6.12 The Service provider shall post the security officers for duty at Sites indicated by the Client. These nominated Sites may vary from time to time according to the operational requirements of the Client.
- 6.13 The Service provider shall ensure that security officers report for duty at the required time, conduct the relevant inspections and that the security officers remain at their posts for the agreed length of time, remaining vigilant, awake and alert whilst on duty. The Service provider shall further ensure that all security officials attend an off-duty parade with the relevant inspections or as agreed to by both Parties in the Individual Agreement.
- 6.14 The Service provider shall take adequate steps to test its security officers in order to ensure that the security officers whom it deploys at the Client's Sites are not under the influence of alcohol or drugs which have a narcotic or other detrimental effect, failing which a penalty in terms of Clause 20 (*Penalties*) of this Agreement shall be levied by the Client against the Service provider.
- 6.15 For the purpose of clauses 6.13 and 6.14 and any other relevant clauses, the Client shall be entitled to monitor the security officers in terms of Clause 24 (*Monitoring and Testing of Security Officers*) of this Agreement.
- 6.16 The Service provider's Supervising Inspector posting the security officers per Site shall make an entry in the relevant Site occurrence book confirming the posting details of each security officer and confirming that the security officers are competent for duty and not under the influence of alcohol or a drug as contemplated in clause 6.14 above and thereafter confirm this in writing by inserting his or her name and surname in block letters and then append his or her signature against such entry. Failure to adhere to this procedure shall be construed as self-posting, and the Client shall be entitled to levy a penalty in accordance with the provisions of Clause 20 (*Penalties*) of this Agreement.
- 6.17 The Service provider shall:
- a) on or before the Effective Date, furnish the Client in writing with the information, as the Client may direct, of all its security officers it intends to deploy at the Client's Sites in terms of this Agreement;
  - b) certify this information as being true and correct and shall, at all times during the term of this Agreement, be kept up to date by the Service provider. The Service provider shall confirm, on a monthly basis, the correctness of the information by issuing a certificate in this regard to the Client. This information shall be furnished both manually and in electronic format to the Client; and
  - c) advise the Client of any changes to the information given to the Client in terms of clause 6.17 (a) above.
- 6.18 Should it be necessary to post a replacement officer onto a Site, the particulars of the security officer in question shall be provided, in writing, to the Client. Such replacement security officer shall comply with all the requirements that security officers are required to comply with, and the associated penalties in terms of Clause 20 (*Penalties*) of this Agreement shall apply in the case of non-compliance.
- 6.19 In the event of an Incident occurring at any Site where security officers are posted as contemplated in this Agreement, the Service provider shall be legally liable for any claims or damages incurred as a consequence of such Incident.

- 6.20 The Service provider shall provide the Client with a correct and accurate daily shift posting sheet, failing which the Client shall be entitled to levy penalties in terms of clause 20 (*Penalties*) of this Agreement. For the purposes of control the Client may register the security officers on its Time and Attendance System.
- 6.21 The Service provider shall be held liable for the loss of or damage to any guard tracking and/or monitoring system, as supplied by the Client, where these are in use.
- 6.22 Pursuant to clause 6.21 above, when such a guard tracking and/or monitoring system is damaged or lost, the Service provider shall immediately report such damage or loss to the Client in writing.

## **7 SUPERVISION OF SECURITY OFFICERS**

- 7.1 The Security Service shall be rendered by the security officers under the supervision of competent and qualified Supervising Inspector(s), whose details shall be provided by the Service provider to the Client on or before the Effective Date of this Agreement or prior to the provision of the Security Service(s), as the case may be.
- 7.2 The Supervising Inspector(s) shall be required to carry out proper supervision of the security officers by means of regular visits during their hours of duty, which shall be a minimum of two visits per Deployment Area per Site per shift. The frequency, purpose and outcome of the visits shall be agreed upon between the Service provider and the Client in the Individual Agreement.
- 7.3 The Service provider's Supervising Inspector shall:
  - a) record such visits with a red ball-point pen in his or her occurrence book as well as in the pocket books of the security officers so visited;
  - b) fully record all the findings made and also the steps taken to ensure compliance with the provisions of this Agreement; and
  - c) ensure that his or her occurrence book is available, at all relevant times at the Site where the Security Service is provided, for purposes of inspection by the Client.
- 7.4 Subject to the requirements of the Client, the Service provider shall take command of as well as control of the deployment of security officers on a daily basis, at the Client's designated Sites, in order to ensure effective and uninterrupted protection of the assets of the Client.

## **8 TRAINING OF SECURITY OFFICERS**

- 8.1 The Service provider shall on or before the Effective Date provide the Client with necessary proof of the qualifications of and the training undergone by all the security officers, before the Client shall permit the Service provider to commence with the Security Service(s) and the deployment of its security officers.
- 8.2 Acceptable proof of qualification referred to in clause 8.1 shall be:
  - a) an NQF or equivalent qualification (as specified by PSIRA) or proof of relevant experience;
  - b) PSIRA training certificate for the Grades A, B and C;
  - c) registration with PSIRA;
  - d) where applicable, NKPA registration;

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- e) proof of SASSETA training relating to firearms to be provided to the Client upon its specific request; and
  - f) proof that the security officer has undergone ISPS Code training from an accredited or reputable institution, where applicable.
- 8.3 The Service provider shall ensure that its security officers undergo retraining/refresher training as may be required by applicable legislation and/or every 6 (six) months in a particular year or at such intervals as may be agreed upon between the Service provider and the Client, from time to time.
- 8.4 All training and re-training requirements associated with this Agreement shall be for the account of the Service provider and shall be conducted by accredited training institutions.
- 8.5 Before any security officer commences with his or her duties in terms of this Agreement, he or she must attend an induction course, arranged by the Client, which is intended to acquaint each security officer with the safety requirements and operational environment at the Sites of the Client. The Service provider shall be responsible for the remuneration of its security officers during their attendance of such an induction course.
- 8.6 The Service provider shall, at its own cost, and as often as it is reasonable and necessary, but at least once a year, ensure that training is provided to all its security officers to enable them to have a sufficient understanding of the essence of the applicable legal provisions regarding the regulation of the private security industry and the principles of the Code of Conduct for Security Service Providers, 2003, as contemplated in regulation 11(7) of the Code.

## **9 REMUNERATION OF SECURITY OFFICERS**

- 9.1 The Service provider shall acquaint itself with and shall give full effect to the provisions of all sectoral determinations made by the Minister of Labour for the Private Security Sector and/or statutory enactments which may be in force, affecting conditions of employment of the security officers during the term of the Agreement. The Service provider shall, when called upon to do so by the Client, produce proof showing that the provisions of such determinations are being complied with. Failure to comply with the above requirements will result to the termination of this Agreement.
- 9.2 Where any sectoral determination for the Private Security Sector or statutory enactment in operation at the Effective Date ceases to apply before the expiry of this Agreement and is not extended or substituted by another sectoral determination or statutory enactment, the Service provider shall continue to conform to the conditions of employment laid down in such lapsed sectoral determination or statutory enactment, unless otherwise agreed to by the Client in writing.
- 9.3 Where no sectoral determination for the Private Security Sector or statutory enactment exist at the Effective Date of this Agreement, the remuneration to be paid and the other terms and conditions to be provided by the Service provider to the security officers shall be fair and reasonable, provided that should a sectoral determination for the Private Security Sector or statutory enactment come into operation at any time during the term of the Agreement, the remuneration and conditions of employment stipulated under such sectoral determination for the Private Security Sector or statutory enactment shall apply to this Agreement from the date that such determination or enactment comes into operation.

- 9.4 When called upon to do so by the Contract Owner, the Service provider shall produce proof that all remuneration due to its security officers has been paid and that all benefits, in accordance with any sectoral determination for the Private Security Sector, have been provided.
- 9.5 Where it is found that a Service provider is paying its security officers less than the prescribed remuneration, the Client shall be entitled to terminate this Agreement with immediate effect, and shall further be entitled to claim damages suffered as a result of such termination. Where it is found that the Service provider is making unlawful deductions from the security officer/supervisor, the Client shall be entitled to terminate the Agreement with immediate effect and shall be further entitled to claim damages suffered as a result of such termination.
- 9.6 The Service provider undertakes that:
- a) it shall remain solely responsible for payment of all costs of the security officers, including but not limited to remuneration, bonuses, pension or provident fund contributions, benevolent fund contributions, medical funds contributions, insurance premiums and licensing and subscriptions; and
  - b) it shall be responsible for the payment of, *inter alia*, all applicable taxes, charges, duties or fees assessed or levied in terms of any legislation e.g. Income Tax Act, 1962, the Compensation for Occupational Injuries and Diseases Act, 1993 and the Private Security Industry Regulation Act, 2001 in respect of the security officers or as a result of the security officers being provided by the Service provider in terms of this Agreement and it shall, on request, furnish sufficient documentary proof to the Client that any of or all of these payments have in fact been made.
- 9.7 On the anniversary of this Agreement, where applicable, the costs for the provision of transport will be reviewed, based on the average petrol price for the year in question, and any proposed adjustment in such costs shall be agreed by the Contract Owner in writing. This will apply to the fuel portion only and the Service provider must identify this cost separately.
- 9.8 The Service provider acknowledges and agrees that the security officers whom it provides in terms of this Agreement are its own employees and not that of the Client. The Service provider further acknowledges and agrees that it does not act as a temporary employment service as contemplated in Section 198 of the Labour Relations Act, 66 of 1995.

## **10 IDENTIFICATION REQUIREMENTS**

- 10.1 The security officers shall at all relevant times comply with the identification requirements of the Client, i.e. full names and surname, identity number, full colour photograph and the Business Unit of the Client where deployed. This includes the stipulations by PSIRA to carry an identification card issued in terms of the Private Security Industry Regulation Act, 2001 including the display of an identity disc (with PSIRA registration number), tag or other device as agreed upon between the Parties.
- 10.2 Identification for the purpose of this Agreement shall include amongst others:
- a) a standard uniform, as agreed upon between the Parties, which shall consist of at least the following:
    - (i) In the case of male security officers:

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- security wear includes cap / beret, shirt, pants, socks, shoes / safety boots, belt, whistle, baton, handcuffs, the Service provider's insignia and adequate clothing for protection against inclement or cold weather, which includes a jersey, warm weather coat and a full-length rain suit, as and when required; and
  - corporate wear of the Service provider, if so required by the Client, must include a blazer, tie, shirt, trousers, jersey, socks, shoes, belt, handcuffs, adequate clothing for protection against inclement weather and the Service provider's insignia, which must appear on the uniform as specified by the Client.
- (ii) In the case of female security officers:
- security wear includes hat / cap / beret, blouse, skirt or trousers, stockings, shoes / safety boots, whistle, baton, handcuffs, the Service provider's insignia and adequate clothing for protection against inclement or cold weather, which includes a jersey, warm weather coat and a full-length rain suit as and when required; and
  - corporate wear of the Service provider, if so required by the Client, must include a blazer, tie, skirt, blouse, jersey, trousers, stockings, shoes, handcuffs, adequate clothing for protection against inclement weather and the Service provider's insignia, which must appear on the uniform as specified by the Client;
- b) a reflector jacket with the Service provider's name on the front and back, which is to be issued to all security officers, unless otherwise specified by the Client; and
- c) bullet-proof vests (SABS approved) whenever security officers are issued with firearms, or if otherwise directed to do so by the Client.

The uniform of the security officers must comply with the requirements in terms of regulation 13 of the Private Security Industry Regulations, 2002.

10.3 For the purpose of clause 10.1, an identity disc, tag or other equipment prescribed by the Client shall at least contain the following information in respect of the Service provider's security officers:

- a) a recent colour photograph of the relevant security officer;
- b) the name of the security officer on the identification badge must be visible and legible;
- c) the identity number, PSIRA registration number and grade of the security officer;
- d) the name and logo of the Service provider; and
- e) the name of the Business Unit of the Client, where deployed.

The security officers must, in terms of regulation 9 of the Private Security Industry Regulations, 2002, carry his/her PSIRA ID card.

## **11 PROVISION OF HAND HELD TWO-WAY RADIO SETS**

11.1 The Service provider shall provide hand held two-way radio sets which shall have an adequate range to ensure, as far as is practically possible, good communications between any two points within an area on the Site of the Client where the Security Service is provided.

11.2 The Service provider shall provide the Contract Owner or his delegate on or before the Effective Date with a diagram indicating the local communication network and call signs used by the Service provider

during the term of this Agreement. Any changes in these networks or call signs shall forthwith be brought to the attention of the Contract Owner in writing.

- 11.3 The hand held two-way radios shall at all times be in a good working condition and any dysfunctional or faulty radios shall be replaced at the Service provider's costs within 2 (two) hours of the security officer having reported the dysfunction or fault or the Service provider having discovered the fault or dysfunction. Failure to do so shall entitle the Client to impose a penalty against the Service provider as stipulated in clause 20 (*Penalties*) of this Agreement.
- 11.4 The Service provider shall at its own cost supply a radio base set, to be installed in the Security Control Room / Nerve Centre of the Client, as well as a diagram of the call signs, which shall enable direct communication between the Service provider's security officers and the Service provider's Radio Control Room.
- 11.5 The Service provider shall take the necessary steps to prevent radio transmissions on or near the Client's premises to cause interference with, or block reception by, radio systems used by the Client or any other division or Business Units of the Client.
- 11.6 Under no circumstances shall the Service provider operate any radio equipment on the Client's premises without obtaining the prior written authority from the Clients Signal Departments, as appropriate, details of which shall be provided to the Service provider upon request.
- 11.7 Should the Service provider or any of its employee's use any radio equipment on the Client's premises without written authority, the Service provider shall be liable for any damage or loss suffered by the Client or any third party which is indirectly or directly attributable to the use of the radio equipment.
- 11.8 All radio equipment used by the Service provider in the performance of the Security Service must be licensed in terms of the provisions of the Electronic Communications Act, 36 of 2005.

## **12 HIGH LEVEL SCOPE OF WORK/REQUIREMENTS**

- 12.1 Physical access and egress control at all Transnet Property sites across five (5) regions — Inland, Northern, Western Cape, KZN, and Eastern Cape — on a 24-hours-a-day, 7-days-a-week basis, including public holidays.
- 12.2 Deployment of security personnel in the following grades:
  - a) Grade A Site Controllers (Monday to Friday, dayshift).
  - b) Grade B Site Supervisors and Roving Supervisors (dayshift and nightshift).
  - c) Grade C unarmed and armed Security Officers (dayshift and nightshift).
  - d) Grade C Dog Handlers DH2 with Level 2 trained dogs.
- 12.3 Provision and maintenance of security equipment including:
  - a) Push-to-Talk radios with patrol monitoring, 4G video, location sharing, and 24-hour battery life.
  - b) Push-over Cellular smartphones supporting PoC calls, Android apps, and LTE/Wi-Fi switching.
  - c) Access Control Scanners compliant with POPIA for real-time ID/barcode scanning.
  - d) Single-cab vehicles (branded), quad bikes, and motorcycles for roving patrols — maintained, roadworthy, comprehensively insured, and exclusively used for TP security operations.
  - e) SABS-approved handcuffs, batons, torches/spotlights, pepper spray, and breathalysers.

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- f) Guard houses, base radios, and portable toilets where applicable.
- 12.4 Conduct of quarterly site-specific security risk assessments across all regions, inclusive of risk identification, mitigation measures, probability and consequence ratings, and tolerance matrix reporting.
- 12.5 Submission of monthly written reports, flash/incident reports (within the same shift), and detailed investigative reports within 12 hours of each incident.
- 12.6 Off-site supervisor visits at a minimum frequency of two (2) visits per shift (before noon and after 15:00 for day shifts; before 00:00 and after 03:00 for night shifts).
- 12.7 Provision of ad hoc security services as and when required due to emergency, operational needs, or unforeseen circumstances, subject to Employer approval. The service will be needed when there is an end to a lease agreement and tenants vacating buildings without notice and evictions due to nonpayment. Task orders are issued, by the building supervisors and approved by the operational manager which will be issued to the Security supervisors to be issued to the supplier.

### **13 DUTIES OF THE SERVICE PROVIDER**

- 13.1 The Service provider shall exercise the necessary care and diligence in fulfilling its obligations and rendering its Security Services in terms of this Agreement.
- 13.2 The Service provider shall ensure that the security officers provided in terms of this Agreement observe the Client's safety rules and regulations, operating methods, policies and procedures whilst providing the Security Services under this Agreement.
- 13.3 The Service provider undertakes that it shall, as soon as is practically possible, before the commencement of this Agreement, make all the relevant provisions of this Agreement known to all the security officers provided in terms hereof.
- 13.4 The Service provider shall require its security officers to attend and, if necessary, to testify in court proceedings. The Service provider shall ensure that its employees are made available to be interviewed in a Transnet Property Board Of Inquiries hearing and/or line investigation as well as in disciplinary and arbitration proceedings should the Client deem it necessary, provided that the Client has notified the Service provider within 48 (forty-eight) hours before the start of the proceedings that the presence and co-operation of the Service provider's security officer(s) is required by the Client. This requirement will survive termination of the Agreement for pending or outstanding cases existing at that time.
- 13.5 Pursuant to clause 13.4 above, should a security officer be required to testify during his/her shift, a replacement security officer of the same grade must be provided by the Service provider. The Client shall be liable for the costs of the replacement security officer.
- 13.6 The Service provider shall ensure that the security officers provided by the Service provider in terms of this Agreement:
  - a) work shifts and/or overtime as and when required by the Client and agreed upon by the Parties from time to time, and in compliance with relevant legislation and/or sectoral determination for the Private Security Sector;
  - b) are in a physically fit and mentally sound condition to perform their duties in terms of this Agreement;

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- c) are continuously trained and retrained as prescribed by this Agreement or relevant legislation during the term of this Agreement;
- d) are subject to the code of conduct as agreed upon between the Parties on or before the Effective Date. Subject to the agreement of the Parties herein, this code of conduct may be amended from time to time; and
- e) comply with all the requirements of any applicable legislation, including the Code of Conduct for Security Service Providers, 2003 in terms of the Private Security Industry Regulation Act, 56 of 2001.

13.7 The Service provider shall ensure that the security officers deployed at the Client's Sites in terms of this Agreement:

- a) daily sign on and off duty as required by the Parties in the Site's occurrence book and the security officer's pocket book. The pocket book must be signed by the Service provider's Supervising Inspector parading the security officers;
- b) when on duty and where the use of a firearm is required, be in possession of a bullet-proof vest, a certified copy of the firearm licence and a firearm permit issued in terms of the Firearms Control Act, 60 of 2000, as amended, and the Firearms Control Regulations issued in terms thereof;
- c) when issued with a firearm, comply with the Firearms Control Act, 60 of 2000 and the Firearms Control Regulations issued in terms thereof;
- d) when on duty, wear the uniform clothing in accordance with the provisions of this Agreement or Individual Agreement, including personal protective equipment as agreed upon between the Parties, which shall be provided by the Service provider at its own cost; and
- e) are fully aware of the Service provider's obligations with regard to the provision of Security Services in terms of this Agreement.

13.8 The Service provider shall on or before signature of this Agreement provide the Client with certified copies of its current grievance and disciplinary procedures.

13.9 The Service provider will be required to accept responsibility in writing for the facilities and/or assets at a particular Site for which it has been contracted to provide Security Services in terms of this Agreement. It is therefore incumbent on the Service provider to survey (inspect) the respective Sites for which it has been contracted to provide Security Services in order to identify any existing damage ("Current Damage") prior to accepting responsibility for such a Site. This record of Current Damage (two originals) must be signed by the Service provider as well as by the Client. The one signed original should be handed to the Client's Controlling Officer. The Service provider shall be liable for any subsequent loss or damage to such facilities or assets.

13.10 The Service provider shall, before the commencement of this Agreement, and throughout the existence of this Agreement obtain and maintain at its own expense, insurances with an insurer approved in writing by the Client insuring itself against any and all loss which it may suffer arising out of or connected with the implementation of this Agreement. The Service provider shall obtain Public Liability Insurance, Security Liability insurance and Third Party Liability insurance cover for not less than R5,000,000.00 (five million South African Rand) in respect of one Incident or a series of Incidents arising from the

same cause and with an annual limit of cover not less than R30 000 000 (thirty million South African Rand).

- 13.11 The Client reserves the right to inspect the Service provider's insurance policy documents, in relation to its obligations under clause 13.10 above and shall exhibit the relevant policies and premium receipts in respect of the insurance to the Controlling Officer, and shall provide copies of such policies and receipts to the Client, and, in the event of a dispute, shall bear the onus to prove that it has done so.
- 13.12 Should any single claim by any party exceed the amount of R5 000 000 (five million) covered by the Service provider's Liability Insurance Policy(s), the Service provider shall be liable for the difference between the actual amount claimed and the amount insured. Likewise it is recorded that in the event that the annual limit of cover is exceeded the Service provider shall be fully liable for any claims above those applicable limits.
- 13.13 The said insurance shall not be cancelled or materially changed, without prior written consent from the Controlling Officer.
- 13.14 The Service provider shall at all times comply with all the terms and conditions of any policy of insurance effected in terms of 13.10 and that it will not itself act or permit any act or omission that will or may have the effect of voiding or invalidating any policy of insurance or cover thereunder and shall implement the requirements thereof, and in particular (without limiting the generality of the foregoing and notwithstanding anything to the contrary in this Agreement contained), the Service provider shall:
- a) notify the Client promptly of the happening of an Incident or event in terms of this Agreement or any event which may give rise to a claim under any such policy of insurance;
  - b) render to the Client and/or the insurer whatever assistance may be necessary or required in connection with or arising out of any claims; and
  - c) notwithstanding anything contained to the contrary in this Agreement, it is specifically recorded that neither the Service provider nor the Client shall be precluded from instituting a claim against each other following an occurrence or event whether or not it is covered in terms of the insurance policy referred to in this clause.
- 13.15 The Service provider shall ensure that the security officers:
- a) co-operate with any member of the South African Police Service, the South African National Defence Force, the National Intelligence Agency or any other designated South African Government Security Agency in accordance with the provisions of Co-operation Agreements entered into between such entities and the Client; and
  - b) where no such Co-operation Agreements exist, the security officer shall allow a member of the security agencies mentioned in 13.15a) above to enter any Site of the Client only when such a member produces valid proof to the satisfaction of the Authorised Officer of such member's official identification documentation.

#### **14 COMPLIANCE WITH STATUTES**

- 14.1 The Service provider shall comply with all relevant legislation as amended from time to time, including, but not limited to:
- a) the Private Security Industry Regulation Act, 56 of 2001;

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- b) the Private Security Industry Levies Act, 23 of 2002;
- c) the National Key Points Act, 102 of 1980;
- d) Basic Conditions of Employment Act, 75 of 1997;
- e) the Compensation for Occupational Injuries and Diseases Act, 130 of 1993;
- f) provincial ordinances and local authority by-laws, including all relevant regulations promulgated in terms thereof;
- g) the Occupational Health and Safety Act, 85 of 1993. The Service provider specifically undertakes to carry out its obligations in accordance with the requirements of and to comply with all requirements of the relevant legislation, including the appointment of officials. This will include monthly minutes of Health and Safety meetings that were conducted or a certification in which the Service provider confirms that such meetings did take place as per specific Sites in question;
- h) any other legislation and regulations and/or in-house specific policies, procedures, NOSA guidelines that govern some of the Client's Business Units;
- i) any other regulatory obligation such as the Railway Safety Regulation Act, 16 of 2002;
- j) the National Ports Act, 12 of 2005 and all enabling legislation;
- k) the Firearms Control Act, 60 of 2000.
- l) Criminal Procedure Act, 51 of 1977;
- m) Control of Access to Public Premises and Vehicles Act, 53 of 1985;
- n) Codes of Good Practice issued under the Broad Based Black Economic Empowerment Act, 53 of 2003;
- o) Independent Communications Authority of South Africa Act, 13 of 2000;
- p) Security Officers Act, 1987;
- q) Legal Succession to the South African Transport Services Act, 1989 (but excluding any tariff provided for in such Regulations);
- r) the Income Tax Act, 58 of 1962;
- s) the Value-Added Tax Act, 89 of 1991;
- t) Electronic Communications Act, 36 of 2005; and
- u) the Tax Administration Act, 28 of 2011.

14.2 Compliance with all applicable legislation shall be entirely at the Service provider's cost.

14.3 The Service provider shall be liable for any breach by any one or more of its security officers, employees, servants, permitted agents, and service providers (independent or otherwise) of the provisions of clause 18 and hereby indemnifies and holds the Client harmless against all claims, loss or damage which the Client may suffer arising out of all such breaches.

## **15 ACCESS CONTROL**

15.1 In respect of Security Services provided on the property (Sites) of the Client that has been declared as National Key Points by the Minister of Defence, the Service provider shall at all times comply and enforce the provisions of the National Key Points Act, 102 of 1980, and its directive as well as the provisions of

the Control of Access to Public Premises and Vehicles Act, 53 of 1985, as amended, and all other applicable legislation.

- 15.2 Where Security Services provided on the property of the Client that has been declared as a port in terms of the National Ports Act, 12 of 2005, the Service provider shall at all times comply and enforce the provisions of the Port Rules as well as the provisions of the Merchant Shipping (Maritime Security) Regulations, 2004 or any legislation that may replace it.
- 15.3 The Service provider must ensure that no person shall, without the permission of the Authorised Officer, enter any premises or any vehicle in respect of which a directive has been issued by the Client in terms of section 2(1)(b) of the Control of Access to Public Premises and Vehicles Act, 53 of 1985, as amended.
- 15.4 For the purpose of the granting of that permission an Authorised Officer may require that the person concerned shall:
  - a) furnish his name, address and any other relevant information required by the Authorised Officer;
  - b) produce proof of his identity to the satisfaction of the Authorised Officer;
  - c) declare whether he has a firearm or any potential dangerous object in his possession, custody or under his control;
  - d) declare what the contents are of any vehicle, suitcase, attaché case, bag, handbag, folder, envelope, parcel or container of any nature which he has in his possession or custody or under his control, and show those contents to the Authorised Officer;
  - e) subject himself and anything which he has in his possession or custody or under his control to an examination by an electronic or other apparatus in order to determine the presence of any potential dangerous object; and
  - f) in the case of premises or a vehicle or a class of premises or vehicles determined by the Minister of Police by notice in the Gazette, be searched by an Authorised Officer.
- 15.5 Where the Contract Owner grants permission in terms of this clause, he may do so subject to conditions regarding the carrying or displaying of proof that the necessary permission has been granted, to visit a specific person, office or area, the duration of his presence on or in the premises or vehicle, the escorting of the person concerned while he is on or in the premises or vehicle, and such other requirements as he may consider necessary.
- 15.6 Subject to the provisions of the Trespass Act, 6 of 1959, an Authorised Officer shall at any time remove any person from any premises or vehicle if:
  - a) that person enters or enters upon the premises or vehicle concerned without the permission contemplated in this clause;
  - b) that person refuses or fails to observe a condition contemplated in this clause; or
  - c) the Authorised Officer considers it necessary for the safeguarding of the premises or vehicle concerned or the contents thereof or for the protection of the people therein or thereon.
- 15.7 The search of a female shall only be carried out by a female security officer in private, and should at all times be done in a courteous and dignified manner.
- 15.8 The security officers shall:

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- a) co-operate with any member of the South African Police Service, the South African National Defence Force, the National Intelligence Agency or any other designated South African Government Security Agency in accordance with the provisions of Co-operation Agreements entered into between such entities and the Client; and
- b) where no such Co-operation Agreements exist, the security officer shall allow a member of the security agencies mentioned in 15.8a) above to enter any Site of the Client only when such a member produces valid proof to the satisfaction of the Contract Owner of such member's official identification documentation.

## **16 BROAD BASED BLACK ECONOMIC EMPOWERMENT ("BBBEE") & SOCIO-ECONOMIC OBLIGATIONS**

### **16.1 B-BBEE Scorecard**

- a) The Client fully endorses and supports the Broad-Based Black Economic Empowerment Programme and is strongly of the opinion that all South African business enterprises have an equal obligation to redress the imbalances of the past. It is also a fundamental requirement of the RFP that the Service provider also contributes to the Supplier Development Programme, as applied by Transnet.
- b) In response to this requirement, the Service provider shall submit to the Contract Manager or such other designated person details of its B-BBEE status in terms of the latest Codes of Good Practice issued in terms of the B-BBEE Act and proof thereof at the beginning of March each year during the currency of this Agreement.
- c) The Service provider undertakes to notify and provide full details to the Client in the event there is:
  - (i) a change in the Service provider's B-BBEE status which is less than what it was at the time of its appointment including the impact thereof; and
  - (ii) a corporate or internal restructure or change in control of the Service provider which has or is likely to impact negatively on the Service provider's B-BBEE status.
- d) Notwithstanding any other reporting requirement in terms hereof, the Service provider undertakes to provide any B-BBEE data (underlying data relating to the Service provider which has been relied upon or utilised by a verification agency or auditor for the purposes of issuing a verification certificate in respect of the Service provider's B-BBEE status) which the Client may request on written notice within 30 (thirty) calendar days of such request. A failure to provide such data shall constitute a breach and may be dealt with in accordance with the provisions of clause 25 (*Breach*) of the Agreement.
- e) In the event there is a change in the Service provider's B-BBEE status, the Service provider will be considered in breach of this Agreement and the provisions of clause 25 (*Breach*) will apply.

### **16.2 B-BBEE Improvement Plan (for Large Enterprises Only)**

- a) Transnet encourages its Service Providers to constantly strive to improve their B-BBEE levels. To this end, the Service provider undertakes to provide the Client with a B-BBEE Improvement Plan

to indicate the extent to which their B-BBEE status will be maintained or improved over the contract period.

- b) The Service provider shall, for the duration of this Agreement, comply with the B-BBEE Improvement Plan.
- c) The terms of the B-BBEE Improvement Plan and monetary value of the commitments thereunder shall not (unless otherwise agreed in writing) be less or less favourable than the commitments made by the Service provider in such B-BBEE Improvement Plan.

#### 16.3 **Supplier Development Implementation Plan (for Large Enterprises Only)**

- a) In addition to the Supplier Development Plan which the Service provider provided as part of its bid, the Service provider undertakes, as stipulated in the RFP, to provide the Client with a Supplier Development Implementation Plan [**the Implementation Plan**] setting out the nature, extent and monetary value of the Service provider's commitments which the Service provider shall undertake, as well as mechanisms and procedures to allow for access to information and verification of the Service provider's compliance with the Implementation Plan, as shall be agreed with the Client but in any event no later than 15 (fifteen) calendar days from the signature date of this Agreement.
- b) The Parties undertake to negotiate in good faith with a view to agreeing the content of the Implementation Plan by no later than 15 (fifteen) calendar days as aforesaid (or such later date as the Client may consent to in writing).
- c) If the Parties (acting reasonably and in good faith with due consideration to the Supplier Development Plan proposed by the Service provider in response to the RFP) fail to reach agreement on the Supplier Development Implementation Plan within the time limit stipulated in clause 16.3b) above, the Service provider will be considered in breach of this Agreement and Clause 25 (*Breach*) will apply.
- d) The terms of the Implementation Plan's and the monetary value of the commitments thereunder shall not (unless otherwise agreed in writing) be less or less favourable than the commitments made by the Service provider in the Supplier Development Implementation Plan.

#### 16.4 **Green Economy/Carbon Footprint**

- a) In addition to the Supplier Development and B-BBEE commitments that the Service provider makes, the Service provider has in its bid provided the Client with an understanding of the Service provider's position with regard to issues such as waste disposal, recycling and energy conservation.

#### 16.5 **Reporting**

- a) The Service provider shall monitor, audit, and record in an auditable manner, its own implementation and compliance with the B-BBEE Improvement Plan and the Supplier Development Implementation Plan and provide the Contract Manager with such information as the Contract Manager may reasonably request concerning the implementation of the B-BBEE Improvement Plan and the Supplier Development Implementation Plan.
- b) The Service provider shall, on a monthly basis from the Commencement Date and within 7 (seven) calendar days of the end of the previous calendar month, provide the Client with a report

(for monitoring purposes only) in respect of each of the undertakings stipulated in this clause 16.5

- c) The Client, through its Supplier Development division, shall, every 6 (six) months from the Commencement Date, review and verify the Service provider's undertakings stipulated in this clause 16 with respect to B-BBEE and Supplier Development commitments based on the Service provider's report.
- d) The Service provider shall attach adequate proof to enable the Client to verify compliance with the B-BBEE Improvement Plan and the Supplier Development Implementation Plan.
- e) Post verification of the submitted report to the Client, the Client shall engage with the Service provider on the findings. The Contract Manager, assisted by the relevant specialist from the Client's Supplier Development division, must report to the Service provider at the end of every 6 (six) months as to whether or not the Contract Manager and/or the Supplier Development specialist reasonably considers, based on the information available to her/him, that the Service provider has during such time complied with the B-BBEE Improvement Plan attached as Schedule 4 to this Agreement and the Supplier Development Implementation Plan and the extent, if any, to which the Service provider has not so complied.
- f) Without prejudice to the Client's rights under this Agreement:
  - (i) If the Contract Manager and/or the Client's Supplier Development specialist reasonably considers that the Service provider is not at any time complying with B-BBEE Improvement Plan and/or the Supplier Development Implementation Plan, the Contract Manager and/or the Supplier Development specialist may make such recommendations as is considered reasonably appropriate to the Service provider as to the steps she/he reasonably considers should be taken by the Service provider in order for the Service provider to remedy such non-compliance and the time period within which such steps must be taken;
  - (ii) If such recommendations are not implemented by the Service provider in accordance with such recommendations, then the provisions of clause 25 shall apply; and
  - (iii) the Client may at any time request a meeting with the Service provider to consider any non-compliance reported to it by the Supplier Development specialist of the Client and/or the Contract Manager or which otherwise comes to its attention. Both Parties must attend such a meeting and negotiate in good faith with a view to reach agreement on the steps or actions that the Service provider must undertake in order to remedy that non-compliance.
- g) In the event the Service provider is found not to have met the B-BBEE and Supplier Development requirements agreed upon in the B-BBEE Improvement Plan and the Supplier Development Implementation Plan and/or is found to be fraudulent in submitting the reports, then the Client shall impose a non-compliance penalty that will be negotiated or shall be entitled to terminate this Agreement in terms of clause 25 (*Breach*) or clause 26 (*Termination and Cancellation*).
- h) For the sake of completion of its contractual obligations, the Service provider shall be obliged to complete all the undertakings made under the B-BBEE Improvement Plan and the Supplier Development Implementation Plan, 3 to 6 months before the Termination Date.

## **17 MEETINGS**

- 17.1 The Service provider shall assign officers to attend weekly meetings with the Client's Contract Owner or his delegate at the Sites agreed upon between Parties to discuss the matters relating to the provision of the Security Service(s), including but not limited to performance related matters on the dates agreed to between Parties from time to time.
- 17.2 The members of the Service provider who attend the weekly meetings must have the delegated power to make decisions and sign off deviations which will have financial implications for the Service provider. The Service provider shall be bound by such decisions agreed upon with the assigned officer(s) of the Service provider.
- 17.3 A managing member or director of the Service provider shall be required to attend monthly meetings with the Client's Contract Owner or his delegate on the date to be agreed on between the Parties, to discuss matters relating to the execution of Security Services and the administration of the Agreement, including but not limited to the performance by the Service provider of the Security Service(s) in terms of this Agreement.
- 17.4 The Client shall take and retain the minutes of these meetings, which shall be signed by both Parties and made available to the Service provider. In recording these minutes, the Client may make use of a recording device.

## **18 REPORTING OF INCIDENTS AND WEEKLY REPORTS**

- 18.1 All Incidents, events or accidents involving the death of or injury to any person or loss of or damage to any of the Client's property, including any criminal offence committed on the premises of the Client, shall forthwith be reported by the Service provider to the local police station and the Client after each Incident, event or accident has come to the attention of the Service provider. A detailed written report of all such Incidents, events or accidents shall be presented to the Client within 12 (twelve) hours after the Incident, event or accident.
- 18.2 A list of names and contact details of the Client's Contract Owner to whom the said Incidents, events or accidents shall be reported, shall be furnished to the Service provider on or before the commencement of this Agreement.
- 18.3 Salient facts of all incidents, events or accidents on the Client's premises shall be recorded immediately after the occurrence thereof in the occurrence book. Subject to the provisions of clause 5.3 (*Provision of Security Services*), occurrence books for this purpose shall be made available by the Service provider at its own cost for the premises and shall remain available for inspection by the Client at any time in a prearranged office or enclosure on the premises.
- 18.4 The pages of the occurrence book and the security officer's pocket-book shall be numbered consecutively by the Service provider when implemented, and no pages shall be removed by any person for any reason whatsoever.
- 18.5 A weekly detailed written report in respect of each Site shall be submitted to the Client's Contract Owner or his delegate during the agreed weekly meetings. The report shall include full details of any Incidents, events or accidents, which occurred during the preceding week; reports as may be requested by the

Client in the duty list; details of routine inspection visits, and any other information relating to the security situation on the Site(s).

- 18.6 Notwithstanding anything to the contrary in this Agreement, the Client may also, should it deem it necessary, request the Service provider to submit a detailed written report in respect of any Incident.

## **19 TELEPHONES AND HOUSING OF SERVICE PROVIDER'S EMPLOYEES**

- 19.1 The Client shall, where applicable, make arrangements for the housing of the Service provider's security officers at offices or suitable structures at all Sites. Under no circumstances shall the housing for the Service provider's security officers be provided or erected on the property of the Client by the Service provider, unless the Client has expressly requested this and the Contract Manager's prior written approval has been obtained. The Service provider may enter into a lease agreement with the Client for the leasing of accommodation for the security officers for purposes of rendering the Security Services.
- 19.2 Should the Client at any time during the term of this Agreement make available to the Service provider any facility to house security officers, horses and/or guard dogs, the Service provider shall, at its own cost maintain and keep such facility during the term of this Agreement in a clean, tidy and sanitary condition and shall at the termination of this Agreement for whatsoever reason, reinstate any such facility to the same condition in which it was when handed to the Service provider, fair wear and tear excepted.

## **20 PENALTIES**

- 20.1 The Client shall be entitled to impose/levy penalties against the Service provider should the Service provider be in breach of certain provisions of this Agreement. Such penalties shall be deducted from the monthly amount due to the Service provider by the Client, after the Service provider has been notified of such penalties.
- 20.2 Notwithstanding the provision of this penalty clause, the Client shall:
- a) not be precluded from exercising its right to terminate the Agreement in the event of Persistent Minor Breach; and
  - b) shall not be precluded from claiming damages from the Service provider, should damages be suffered by the Client or any third party as a result of any conduct or failure on the part of the Service provider or any of its employees.
- 20.3 Should it at any time during the term of this Agreement or at any time thereafter be determined that security officers of a lower grade than required, or with inadequate training, or with no training at all, or with no PSIRA registration, are being provided:
- a) all payments in respect of such lower graded security officers made to the Service provider shall forthwith be recovered from the time the lower grade or untrained/unregistered security officers was/were supplied; and
  - b) the Client shall be entitled to terminate the Agreement forthwith: and
  - c) the Client shall not remunerate the Service provider for the time the inadequately trained or unregistered security officers were deployed on the Client's premises.
- 20.4 In the event of security officers being provided without standard uniform or such standard uniform is incomplete and / or unclean or is in a deteriorating condition:

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- a) 1 (one) shift penalty for the security officer will be deducted per security officer per such Incident; and
  - b) repeat or persistent breach of this clause shall entitle the Client to terminate this Agreement.
- 20.5 The Client shall conduct a risk assessment and rate the likelihood of Incidents, events or accidents, the consequences of Incidents, events or accidents at all Sites and allocate a rating of "L" (low risk Site), "M" (medium risk Site) or "H" (high risk Site).
- a) Such ratings shall be recorded in the Individual Agreement not later than during the first month of the Agreement.
  - b) These risk ratings will remain constant during the term of this Agreement unless a new risk assessment has been conducted that results in the rating to change. Any such change must be endorsed by the Controlling Officer and communicated to the Service provider in writing with the necessary amendment being made to the Individual Agreement and signed off by both Parties.
- 20.6 Notwithstanding any other provision of this Agreement, the penalty deduction shall be limited to a maximum of 50% (fifty percent) of the monthly contract value payable to the Service provider in respect of any particular Site.
- 20.7 The Parties may identify additional breaches in the Individual Agreement and determine applicable penalties.
- 20.8 Any penalty imposed in terms of this clause 20 shall be offset against the invoiced (vatable) amount, as declared in the Service provider's Tax Invoice, to which the penalty has attached, and the VAT payable by the Client to the Service provider shall be calculated on the invoiced amount less the service-related penalty imposed.

## **21 LIABILITY**

- 21.1 The Service provider shall at all times be held strictly liable and accepts responsibility for all damages of whatsoever nature due to any acts or omissions of its security officers, servants, agents, assigns, service providers and sub-service providers in the provision of the Security Services provided in terms of this Agreement.
- 21.2 The Service provider shall at all times be held strictly liable and accepts responsibility for all and any loss or damage to or caused by any road motor vehicles, equipment or other material used by the Service provider in respect of the Security Service provided in terms of this Agreement.
- 21.3 The Service provider shall at all times be vicariously and strictly liable for all the acts and/or omissions of security officers whether acting in the course and within the scope of their duties and employment with the Service provider. The Service provider shall also be liable for losses or damages arising out of the behaviour or action of the guard dogs and patrol horses being deployed on the Client's Site.
- 21.4 The Service provider irrevocably and unconditionally undertakes to indemnify and keep the Client indemnified and holds the Client harmless against, and, in respect of, all and any loss or damage incurred by the Client as a result of, arising out of or connected with any failure, act or omission or breach of this Agreement by the Service provider or any of its employees, security officers, employees, servants, agents, assigns, service providers or sub-service providers or occurring during or as a result of the

provision by the Service provider of the Security Service. The absolute obligation of the Service provider to indemnify the Client on a full indemnity basis against all claims shall include but not be limited to: -

- a) any damage or loss to the Client's property, whether moveable or immovable;
- b) loss of property belonging to the Client;
- c) liability in respect of any loss or damage to property, whether movable or immovable, belonging to third parties;
- d) liability in respect of lost property belonging to third parties;
- e) liability arising out of any unlawful act committed by the Service provider or its employees during the process of rendering a Security Service; and
- f) liability in respect of the death, unlawful arrest, injury, illness or disease of any person, should the damage, loss, unlawful arrest, death, injury, illness or disease referred to above be attributable to or arise out of the Security Services that are being or have been rendered by the Service provider in terms of this Agreement.

## **22 ADVERTISING AND TRADING**

- 22.1 The Service provider is prohibited from advertising or publishing in any of its promotional documents or brochures the fact that it is a Service provider to the Client, unless the prior written authority of the Client's Chief Officer of Corporate Communication is obtained. The Client reserves all advertising rights on its own premises.
- 22.2 Neither the Service provider nor any of the security officers provided by it in terms of this Agreement shall during the term of this Agreement be entitled to conduct any business or to offer any article for sale or distribute any article free of charge on premises of the Client.

## **23 INTIMIDATION**

- 23.1 It is the intention of both Parties that the security officers provided in terms hereof shall, as far as practically possible, not fail to carry out their duties as a result of any form of intimidation. Should the Service provider suspect intimidation of its security officers, it shall take prompt action in conjunction with the South African Police Service to remedy the situation.
- 23.2 Such action shall, if deemed necessary by the Client, include immediate replacement of the security officers involved.
- 23.3 The Service provider shall forthwith notify the Client of any form of intimidation to which its security officers may be subjected.

## **24 MONITORING AND TESTING OF SECURITY OFFICERS**

- 24.1 The Client shall be entitled to monitor the movements or activities of the security officers while on duty, either electronically or otherwise, without giving prior notice, written or otherwise, to the security officer or the Service provider.
- 24.2 The Service provider shall ensure that security officers to be posted on Sites agree in writing to the right of the Client to monitor their activities without their knowledge whilst on duty. Such consent shall be made available to the Client before the security officer commences his/her duties in terms of this Agreement.

- 24.3 The Client shall be entitled to conduct breathalyser tests or any other tests that may be necessary to establish that the security officers comply with the provisions of this Agreement. The Service provider shall ensure that the security officers are informed of this clause and that the necessary consents are obtained and provided to the Client before any security officer commences his or her duties in terms of this Agreement.

## **25 BREACH**

- 25.1 In the event of the Service provider failing to promptly commence performance of any obligation for which it is liable, or failing to carry out such obligation, partially or fully, without delay, the client shall be entitled to appoint an alternate Service provider to perform such obligation. Should the Client exercise the right to do so at any stage, it shall also be entitled to claim and recover all damages and costs incurred thereby (directly or indirectly) from the Service provider, who hereby undertakes to pay such damages and costs to the Client upon demand.
- 25.2 In the event of either Party to this Agreement committing a breach of any provision of this Agreement ("the defaulting Party"), excluding clause 5.1, and the defaulting Party fails to remedy such breach within 48 (forty-eight) hours after having received written notice from the other Party ("the aggrieved Party") to remedy such breach, the aggrieved Party shall be entitled to terminate this Agreement, immediately, by notice in writing to the defaulting Party.
- 25.3 Without derogating from the provisions of clause 25.2, and in addition thereto, in the event of the Service provider for any reason committing a breach of the provisions of clauses 5.1 of this Agreement and failing to remedy such breach within 12 (twelve ) hours after having received written notice from the Client calling upon it to rectify such breach, the Client shall be entitled to terminate this Agreement, immediately, by notice in writing to the Service provider.
- 25.4 Should the Service provider's PSIRA's certificate for any reason whatsoever be suspended, revoked, set aside by an appropriate authority or competent person, for any reason whatsoever, or should the Service provider's competence to render the Security Service be terminated, or diminished in a material manner, such suspension, revocation, setting aside, termination or diminution shall be deemed to be a breach of this Agreement and shall entitle the Client to terminate the Agreement forthwith.
- 25.5 Should the Service provider's firearm licence and competency certificate for any reason whatsoever be suspended, revoked or set aside by an appropriate authority or competent person or should the Service provider's competence to render the Security Services for any reason whatsoever be diminished in a material manner, such suspension, revocation, setting aside or diminution shall be deemed to be a breach of the Agreement and shall entitle the Client to terminate the Agreement forthwith.
- 25.6 Should the Service provider's insurance(s) for any reason whatsoever be suspended, revoked, set aside or terminated by its insurance service provider, such suspension, revocation, setting aside or termination shall be deemed to be a breach of this Agreement and shall entitle the Client to terminate the Agreement forthwith.
- 25.7 Should the Service provider act in conflict with or fail to comply with any statutory provision, regulation, by-law, rule or programme or policy or procedure that has a direct bearing on the Security Service(s), such action or failure shall be deemed to be a breach of this Agreement and shall entitle the Client to terminate the Agreement forthwith.

- 25.8 Should the Client incur any losses, including but not limited to theft of the Client's property, theft of the Client's third party property, fraud and or any other criminal activities that are to the detriment of the Client, at any of the Sites where the Service provider is performing the Security Service, such action shall be deemed to be a breach of this Agreement and shall entitle the Client to terminate the Agreement forthwith.
- 25.9 Notwithstanding anything contained to the contrary in this Agreement, the Client may terminate this Agreement at any time by giving written notice to the Service provider of such termination if:
- a) the Service provider is, other than for the purposes of reconstruction or amalgamation, placed under voluntary or compulsory liquidation, provisionally or finally, or resolves to begin business rescue proceedings, , or is placed under supervision and commencing with business rescue proceedings; or
  - b) a final and unappealable judgment against the Service provider remains unsatisfied for a period of 21 (twenty-one) days or more after it comes to the notice of the board of directors of the Service provider; or
  - c) the Service provider makes any arrangements or composition with all or some of its creditors, or ceases or threatens to cease carrying on business; or
  - d) the Service provider makes any material incorrect or untrue statement or representation to the Client in connection with any information furnished by it in respect of this Agreement, or, without limitation, in the tender documents preceding the conclusion by the Parties of this Agreement, then upon the occurrence of any 1 (one) or more of such events, the Client may without prejudice to any other rights it may have against the Service provider, elect to immediately terminate this Agreement forthwith by written notice of such termination to the Service provider.
- 25.10 Notwithstanding anything to the contrary contained in this Agreement, and in addition to all of its other rights, the Client shall also be entitled to cancel this Agreement, if any event or series of events occurs (whether or not caused by any reasons whatsoever outside the control of the Service provider or the Client) which, in the reasonable opinion of the Client might have a material or adverse effect on the performance of the Security Service or the operations of Client at any Site, whether or not as contemplated in this Agreement.
- 25.11 Notwithstanding anything to the contrary contained in this Agreement, and in addition to all of its other rights, the Client shall also be entitled to cancel this Agreement, in whole or in part, (as it in its sole discretion may determine) in the event that the Service provider colludes with any other party in respect of any tender submitted to the Client.
- 25.12 Notwithstanding anything to the contrary in this Agreement, in the event of security officers and/or employees of the Service provider being in any way involved in theft, bribery, fraud and/or any other criminal activities or misconduct that are to the detriment of the Client (e.g. theft of the Client's property), either while on or off duty, then this shall be considered to be an irremediable breach of this Agreement in which event the Client shall have the right to terminate this Agreement with immediate effect. Such termination by the Client shall not be considered to be a dispute as intended in clause 29 (*Dispute Resolution*) and shall not form the subject of any arbitration.
- 25.13 In the event of strike action being embarked upon by the employees of the Service provider, the Service provider shall immediately advise the Client of the strike action. The employees of the Service provider

shall not be allowed onto the premises of the Client for any purposes other than the rendering of Security Services in terms of this contract. The Service provider shall be responsible for the removal of any of its employees from the premises of the Client, and the costs thereof, in the event of its (the Service provider's) employees conducting any activities on the premises of the Client other than the rendering of Security Services in terms of this Agreement. The Service provider shall immediately replace any striking employees with suitably qualified employees so that the operations of the Client are not disrupted in any way. Any additional costs that arise as a result of the aforementioned replacement labour shall be for the Service provider account. Failure to comply with this provision shall constitute a material breach and the Client shall be entitled to terminate this Agreement with immediate effect. In the event of the Client incurring any losses or damages as a result of the strike action, the Service provider shall be liable for the payment of the aforementioned losses and/or damages.

25.14 Notwithstanding anything stipulated under clause 20 (*Penalties*) the Client reserves the right to terminate this Agreement upon 30(thirty) days written notice in the event of a Persistent Minor Breach by the Service provider.

## **26 TERMINATION AND CANCELLATION**

Notwithstanding anything to the contrary contained in this Agreement, and in addition to all of its other rights, the Client shall also be entitled to cancel this Agreement, in whole or in part, (as it in its sole discretion may determine) upon 30 (thirty) days' written notice given by the Client to the Service provider, without assigning any reason for such action. Such termination by the Client shall not form the subject of any arbitration or review and shall be binding upon the Service provider who shall have no claim of any nature, howsoever arising, against the Client out of such termination.

## **27 FORCE MAJEURE**

27.1 Neither Party shall have any claim against the other Party arising from any failure or delay in the performance of any obligation of either Party under this Agreement caused by an act of force majeure such as acts of God, fire, flood, war, lockout, government action, laws or regulations, terrorism or civil disturbance, defaults or other circumstances or factors beyond the reasonable control of either Party, and to the extent that the performance of obligations of either Party hereunder is delayed by virtue of the a foregoing, any period stipulated for any such performance shall be reasonably extended. The Client may however rely on strikes, industrial dispute and riots as a ground of force majeure.

27.2 Each Party will take all reasonable steps by whatever lawful means that are available to resume full performance as soon as practicable and will seek agreement to modification of the relevant provisions of this Agreement in order to accommodate the new circumstances caused by the act of *force majeure*. If a Party fails to agree with such modifications proposed by the other Party within 90 [ninety] calendar days of the act of *force majeure* first occurring, either Party may thereafter terminate this Agreement with immediate notice.

## **28 SERVICE PROVIDER'S EMPLOYEES / NO EXPECTATION OF EMPLOYMENT**

28.1 The Service provider undertakes irrevocably in favour of the Client that it will do whatever is necessary to ensure that none of its employees who are employed in any way, directly or indirectly in connection with the performance of the Security Service, will have any entitlement to, or expectation of, further

employment on or in connection with any of the work which forms the subject matter of this Agreement beyond the termination (for any reason whatsoever) of this Agreement.

- 28.2 In addition to the recourse that the Client has against the Service provider for a breach of any one or more of the provisions of this Agreement by the Service provider, the Client shall also have a claim against the Service provider for any breach by it of the provisions of clause 25. The Service provider accordingly hereby indemnifies the Client and holds it harmless against all claims, of whatever nature and howsoever arising, as well as all legal costs incurred as a result of such claims (including all costs incurred on the scale as between attorney and client ), which may be made against the Client by any one or more of the Service provider's employees and/or independent service providers, and specifically, but without derogating from the generality thereof, any and all claims made against the Client arising from or connected with the employment of such of the Service provider's employees and/or independent service providers who were employed by the Service provider immediately prior to the termination, for any reason whatsoever, of this Agreement, or the termination of such employment at any stage for any reason.

## **29 DISPUTE RESOLUTION**

Subject to any other provision in this Agreement to the contrary, should any dispute arise between the Parties in connection with or which in any way relates to:

- 29.1 the implementation of this Agreement;
- 29.2 the interpretation or application of the provisions of this Agreement;
- 29.3 the respective rights and obligations of the Parties in terms of or arising out of this Agreement or its breach or termination;
- 29.4 the rectification, termination or cancellation, whether in whole or in part of this Agreement;
- 29.5 any documents furnished by the Parties pursuant to the provisions of this Agreement; or
- 29.6 any matter affecting the interests of the Parties in terms of this Agreement, that dispute may, upon the agreement by both Parties, be referred to and be determined by arbitration in terms of this clause, provided that a cancellation of the Agreement as provided for in clause 26 (*Termination and Cancellation*) shall not be considered to be a dispute for the purpose of this clause and shall not form the subject of any arbitration; then the dispute shall be resolved in accordance with the rules of the Arbitration Foundation of South Africa ("AFSA") by a single arbitrator agreed between the Parties.
- 29.7 This clause constitutes an irrevocable consent by the Parties to any proceedings in terms hereof, and neither of the Parties shall be entitled to withdraw from the provisions of this clause or claim at any such proceedings that it is not bound by this clause.
- 29.8 This clause 29 is severable from the rest of this Agreement and shall remain in effect even if this Agreement is terminated for any reason.
- 29.9 This clause 29 shall not preclude either Party from seeking urgent relief in a court of appropriate jurisdiction, where grounds for urgency exist.

## **30 NOTICES AND DOMICILIUM**

- 30.1 The Client chooses as its *domicilium citandi et executandi* the address in Schedule "1", for all purposes arising out of or in connection with this Agreement at which address all processes and notices arising

out of or in connection with this Agreement, its breach or termination may validly be served upon or delivered.

- 30.2 The Service provider chooses as its *domicilium citandi et executandi* the address in Schedule "1" (which shall not be a post office box or *poste restante*) for the same purposes.
- 30.3 A Party may change the addresses referred to above by giving the other Party notice in writing of the new address (which shall not be a post office box or *poste restante*).
- 30.4 Any notice given in terms of this Agreement shall be in writing and shall:
- a) if delivered by hand, be deemed to have been received by the addressee 1 (one) day after the date of delivery;
  - b) if posted by prepaid registered post, be deemed to have been received by the addressee 10 (ten) days after dispatch; or
  - c) if transmitted by facsimile or electronic mail, be deemed to have been received by the addressee 1 (one) day after dispatch.
- 30.5 Notwithstanding anything to the contrary contained in this Agreement, a written notice or communication actually received by one of the Parties from the other, including by way of electronic media, shall be adequate written notice or communication to such Party.

### **31 WHOLE AGREEMENT**

This Agreement shall constitute the whole Agreement between the Parties as to the subject matter hereof and no agreement, representation or warranty between the Parties other than set out herein shall be binding on the Parties.

### **32 VARIATION**

No addition to, amendment, consensual cancellation or novation of this Agreement and no waiver of any right arising from this Agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by the Parties.

### **33 RELAXATION**

No latitude, extension of time or other indulgence which may be given or allowed by one Party to the other Party in respect of the performance of any obligation hereunder or the enforcement of any right arising here from and no single or partial exercise of any right by such former Party shall under any circumstance be construed to be an implied consent by such Party or operate as a waiver of, a novation of, or otherwise affect any of that Party's rights in terms of or arising from this Agreement or stop such Party from enforcing, at any time and without notice, strict and punctual compliance with each and every provision thereof.

### **34 IMPOSSIBILITY OF PERFORMANCE**

- 34.1 Should any of the obligations of either Party become objectively impossible of performance, such Party shall be exempted from its obligations under this Agreement if the circumstance that renders performance impossible was unforeseeable with reasonable foresight at the time of contracting and unavoidable with reasonable care at the time of its occurrence by the Party concerned and such Party displays reasonable care and diligence in attempting to avoid the consequences thereof.

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34.2 Such exemption shall however operate only to the extent that the performance of the obligations of such Party is rendered objectively impossible and only for the period during which the relevant circumstance prevails. Notice of such circumstances shall be given to the other Party in writing without delay.

### **35 CESSION OR DELEGATION**

35.1 The Service Provider may not assign any of its rights and obligations in terms of this Agreement.

35.2 The Service Provider may however, cede its right to payment in terms of this Agreement to its financier. The Cession must only be applicable under the following conditions:-

35.3 that the written request for cession is submitted by the Services Provider and its financier or a third party;

35.4 that the written request by the Service Provider is accompanied by the Cession Agreement between the Service Provider and its financiers; and

35.5 that the Service Provider's financier is not restricted from conducting business with the state.

### **36 INSOLVENCY**

Should the Service provider commit any act of insolvency or being a natural person be sequestrated or assign, surrender or attempt to assign or surrender his estate or being a partnership be dissolved, or be liquidated or placed under judicial management or be wound up (whether provisionally or finally), no payments due and payable from that date shall be made by the Client to the Service provider directly, but only to the liquidator, trustee or judicial manager of the estate, as the case may be.

### **37 REPRESENTATION OR AGENCY**

Notwithstanding the provisions of this Agreement, the security officers and other Service provider's representatives shall not for any purpose be deemed to be the employees of the Client.

### **38 RULE OF CONSTRUCTION**

A rule of construction may not disadvantage a Party just because that Party was responsible for the preparation of this Agreement or any part of it.

### **39 CONFIDENTIALITY**

39.1 The Parties undertake that all information which each has or obtains at any time relating to the other, including but not limited to technical, commercial and security-related information, which is not available on request to the general public or to which they become privy to in the course of the exercise:

- a) shall be kept confidential and shall not be disclosed by such Party, or by its officers, employees, independent service providers or agents, to any third party; and
- b) shall not directly or indirectly be used by such Party, or by its officers, employees and agents for its own benefit or the benefit of any third party.

39.2 The Service provider shall, on demand from the Client, use its best endeavours to obtain written secrecy undertakings in the form reasonably specified by the Client, from any approved agent or subservice provider of the Service provider or any employee of the Service provider.

39.3 The provisions of this confidentiality clause shall survive the cancellation or termination of this Agreement for any reason, and shall remain binding on the Parties for a period of 5 (five) years after termination of this Agreement for any reason whatsoever.

#### **40 DATABASE OF RESTRICTED SUPPLIER**

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

#### **41 SIGNATURE**

The signatories to this Agreement hereby warrant that they have the proper and full authority to sign this Agreement on behalf of the Parties and each shall without delay produce an appropriate resolution to such effect, if and when called upon to do so by the other.

#### **42 SEVERABILITY**

Each clause of this Agreement shall be severable, the one from the other, and if any clause is found to be defective or unenforceable for any reason by any competent court, then the remaining clauses shall be and continue to be of full force and effect and binding upon the Parties.

#### **43 WAIVER**

No waiver on the part of either Party of any rights arising from a breach of any provision of this Agreement will constitute a waiver by the indulgent Party of its rights in respect of any subsequent breach of any other provision of this Agreement by the other Party.

#### **44 GENERAL**

##### **44.1 Governing Law**

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

##### **44.2 Change of Law**

In this Agreement, unless the context otherwise requires, references to a statutory provision include references to that statutory provision as from time to time amended, extended or re-enacted and any regulations made under it, provided that in the event that the

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amendment, extension or re- enactment of any statutory provision or introduction of any new statutory provision has a material impact on the obligations of either Party, the Parties will negotiate in good faith to agree such amendments to this Agreement as may be appropriate in the circumstances. If, within a reasonable period of time, the Service Provider and The Client cannot reach agreement on the nature of the changes required or on modification of Prices, delivery schedules, warranties, or other terms and conditions, either Party may seek to have the matter determined in accordance with clause 29 [*Dispute Resolution*] above.

#### 44.3 Counterparts

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

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**IN WITNESS WHEREOF** this Agreement has been duly executed by the Parties.

For and on behalf of <b>TRANSNET PROPERTY AN OPERATING DIVISION OF TRANSNET SOC LTD</b> duly authorised thereto	For and on behalf of <b>XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX</b> duly authorised thereto
Name:	Name:
Position:	Position:
Signature:	Signature:
Date:	Date:
Name: Adv. Kapei Phahlamohlaka	
Position: Chief Executive	
Signature:	

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

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

FOR THE PROVISION OF SECURITY SERVICES AT VARIOUS SITES (HEREINAFTER REFERRED TO AS "THE SECURITY SERVICES")  
FOR TRANSNET SOC LIMITED (REGISTRATION NUMBER 1990/000900/30) TRADING AS TRANSNET PROPERTY (HEREINAFTER  
REFERRED TO AS "TP") FOR A PERIOD OF TWELVE (12) MONTHS

**Schedule 1: Service provider's details, address, commencement date & duration**

Full name of the Service provider (Company):

Registration Number of the Service provider (Company):

Commencement Date and time of this Agreement (Effective Date/Time):

Duration of this Agreement:

**(12) twelve months**

Expiry date and time of this Agreement:

Physical Address of the Service provider:

(which shall also be the *domicilium citandi et executandi* of the Service provider)

Physical Address of Transnet:

(which shall also be the *domicilium citandi et executandi* of the Client)

**Annexure for : Work Documents (Pricing and Quantities Schedules) – attached**