ANNEXURE H

BID RESPONSE FORM

We_____

[name of entity, company, consortium, close corporation or partnership]

Of *[full address]*

_____

_____

_____

carrying on business trading/operating as

_____

_____

_____

represented by

_____

in my capacity as

_____

being duly authorised thereto by a Resolution of the Board of Directors or Members or Certificate of Partners, as per Annex L (*Resolution of Board of Directors*) of this RFP (a certified copy of which is Annexed hereto) hereby offer to undertake the Project at the prices determined in terms of Part III (*Evaluation Criteria*) of this RFP).

1. We agree to be bound by those conditions in TNPA's:

    1.1. terms of this RFP; and

    1.2. any other standard or special conditions mentioned and or embodied in this RFP or Terminal Operator Agreement.

2. We accept that unless TNPA should otherwise decide and so inform us in the letter of appointment, our Bid Response (and, if any, its covering letter and any subsequent exchange of

correspondence), together with TNPA's acceptance thereof shall constitute a binding contract between TNPA and us.

3. Should TNPA decide that the Terminal Operator Agreement should be negotiated and entered into with us, this Bid Response (and, if any, its covering letter and any subsequent exchange of correspondence) together with TNPA's letter of appointment, shall constitute a binding contract between TNPA and us until the formal contract is signed.

4. We further agree that if, after we have been notified of the acceptance of Bid Response, we fail to enter into the Terminal Operator Agreement, or fail to commence the provision of services within 4 (four) weeks thereafter, TNPA may, without prejudice to any other legal remedy which it may have, recover from us any expense to which it may have incurred in calling for Bid Responses afresh and/or having to accept any less favourable Bid Response.

5. We accept that the Terminal Operator Agreement resulting from this offer will be for a period of 5 (five) years only. Furthermore, we agree to the penalty Clauses to be negotiated with TNPA, which will allow TNPA to invoke a penalty against us for non-compliance with material terms of this RFP including the delayed delivery of the services due to non-performance by ourselves, failure to meet Economic Development and/or Black Ownership Improvement Plan commitments. In addition, we agree that non-compliance with any of the material terms of the RFP, including those mentioned above, will constitute a material breach of the Terminal Operator Agreement and provide TNPA with cause for cancellation.

6. **ADDRESS FOR NOTICES**

6.1. The law of the Republic of South Africa shall govern any contract created by the acceptance of this RFP. The *domicilium citandi et executandi* shall be a place in the Republic of South Africa to be specified by the Bidder hereunder, at which all legal documents and notices may be served on the Bidder, who shall agree to submit to the jurisdiction of the courts of the Republic of South Africa. Foreign Bidders shall, therefore, state hereunder the name of their authorised representative in the Republic of South Africa who has the power of attorney to sign the Terminal Operator Agreement, which may have to be entered into in the event of their Bid Response being accepted and to act on their behalf in all matters relating to such Terminal Operator Agreement.

6.2. Bidder to indicate the details of its *domicilium citandi et executandi* hereunder:

Name of Entity:_____

Facsimile:_____

Address:_____

_____

_____

7. **NOTIFICATION OF AWARD OF RFP**

As soon as possible after approval to award the appointment of the Preferred Bidder, the Preferred Bidder will be informed of the acceptance of its Bid Response in writing. Unsuccessful Bidders will be advised in writing of the name of the Preferred Bidder and the reason as to why their Bid Responses was unsuccessful, for example, in the category of administrative responsiveness, technical criteria, B-BBEE status or for any other reason.

8. **VALIDITY PERIOD**

TNPA requires a validity period of 365 (three hundred and sixty five) calendar days from the Bid Submission Date against this RFP.

9. **NAME(S) AND ADDRESS / ADDRESSES OF DIRECTOR(S) OR MEMBER(S)**

9.1. The Bidder must disclose hereunder the full name(s) and address(s) of the director(s) or members of the consortium, company or close corporation on whose behalf the RFP is submitted.

9.2. Registration number of company or close corporation

_____

9.3. Registered name of company, close corporation or consortium

_____

9.4. Full name(s) of director or member(s) Address/Addresses ID Number(s)

_____
_____
_____
_____
_____
_____

10. **CONFIDENTIALITY**

All information related to this RFP is to be treated with strict confidence. In this regard Bidders are required to complete and return a signed copy of Annex L (*Certificate of Acquaintance with RFP Documents*) with Annex I (*Non-Disclosure Agreement*) Annexed to this RFP. All information related to the Terminal Operator Agreement, both during and after completion thereof, will be treated with strict confidence. Should the need however arise to divulge any information gleaned from provision of the services, which is either directly or indirectly related to TNPA's business, written approval to divulge such information must be obtained from TNPA.

11. **DISCLOSURE OF THE CONCESSION TENDERED**

Bidders must indicate below whether TNPA may disclose their tendered concession and conditions to other Bidders:

YES			**NO**	

12. **RETURNABLE DOCUMENTS**

12.1. All sections must be signed, stamped and dated by the Bidder. Bid Returnable Documents means all the documents, sections and Annexes, as listed in the tables below. There are three types of returnable documents as indicated below and Bidders are urged to ensure that these documents are returned with their Bid responses based on the consequences of non-submission as indicated below:

12.1.1 **Mandatory Returnable Documents**

Failure to provide all mandatory Returnable Documents at the closing date and time of this tender will result in a Bidder's disqualification. Bidders are therefore urged to ensure that all these documents are returned with their Bid Responses.

Please confirm submission of the mandatory Returnable Documents detailed below by so indicating 'Yes' or 'No' in the table below:

MANDATORY RETURNABLE DOCUMENTS	**RFP REFERENCE**	**SUBMITTED** **[Yes or No]**
Valid B – BBEE Verification Certificate	Clause 45.3.4.1.	

Bid Response Form		
TNPA Declaration of Bidder		
Non – Disclosure Agreement		
Resolution by Directors		
Certificate of Acquaintance with RFP Documents		
Declaration of Interest		
Breach of Law Form		
Tax Clearance Certificate		
Standard RFP Response		

12.1.2 **Essential Returnable Documents (Used for Scoring Purposes)**

12.1.2.1. Bidders are further required to submit these Essential Returnable Documents with their Bid Responses as detailed in the table below.

Failure to provide all Essential Returnable Documents used for the purpose of scoring a bid, by the closing date and time of this bid will not result in a Bidder's automatic disqualification. However, Bidders will receive an automatic score of zero for the applicable qualification or evaluation criterion. Bidders are therefore urged to ensure that all these documents are returned with their Bid Responses.

12.1.2.2. Please confirm submission of these Essential Returnable Documents by so indicating 'Yes' or 'No' in the table below.

12.1.2.3. Full responses and documentation in respect of each qualification criterion in Part II of the RFP, including the following:

ESSENTIAL RETURNABLE DOCUMENTS & SCHEDULES	RFP REFERENCE	SUBMITTED

(USED FOR SCORING PURPOSES)		[Yes or No]
Valid B-BBEE Verification Certificate		
Experience & Track Record Template & Letters of Reference from Customers		
Safety Health Environment and Quality Certifications		
Audited Annual Financial Statements alternatively Closing Bank Balances, Closing Balance Short Term Investments, Closing Balance of Short Term committed unutilised facilities, long term committed Utilised Facilities		
Business Case		
Concession Fee Offer		
Development Phase Value Summary – Annex K1		
Operational Phase Value Summary – Annex K2		

12.1.3 Essential Returnable Documents <u>(Not For Scoring Purposes)</u>

12.1.3.1 Over and above the requirements of clauses 12.1.1 and 12.1.2 above, Bidders are further required to submit these <u>Essential Returnable Documents (not used for scoring purposes)</u> with their Bid Responses as detailed in the table below.

Failure to provide Essential Returnable Documents (not for scoring purposes) will result in TNPA affording Bidders a further opportunity to submit by a set deadline. Should a Bidder thereafter fail to submit the requested documents, this may result in a Bidder's

disqualification. Bidders are therefore urged to ensure that <u>all</u> these documents are returned with their Bid Responses.

ESSENTIAL RETURNABLE DOCUMENTS & SCHEDULES **<u>(NOT USED FOR SCORING PURPOSES)</u>**	**RFP REFERENCE**

13 **Annexures**

13.1 The Bidder is to ensure that the following documents are completed (where necessary) and attached to this Form.

ANNEXURES	**RFP REFERENCE**	**SUBMITTED** **[Yes or No]**
Annex A – BID NOTICE	N/A	***PROVIDED BY TNPA***
Annex B – BERTH C101 SITE LAYOUT	N/A	***PROVIDED BY TNPA***
ANNEX B1 – PORT DEVELOPMENT FRAMEWORK	N/A	***PROVIDED BY TNPA***
ANNEX D – SCOPE OF SERVICES	N/A	***PROVIDED BY TNPA***
ANNEX ……– SECURITY POLICY	N/A	***PROVIDED BY TNPA***
ANNEX ……– SAFETY, HEALTH, ENVIRONMENT AND QUALITY POLICY	N/A	***PROVIDED BY TNPA***
ANNEX ……– BUSINESS PLAN GUIDELINES	N/A	***PROVIDED BY TNPA***
ANNEX ….. – TNPA DECLARATION OF BIDDER	N/A	
ANNEX ….– NON-DISCLOSURE OF AGREEMENT	N/A	
ANNEX …..– IC MATRIX	N/A	***PROVIDED BY TNPA***

ANNEX …..– RESOLUTION OF DIRECTORS	N/A	
ANNEX ….- CERTFICATE OF ACQUITANCE WITH RFP DOCUMENTS	N/A	
ANNEX ….– DECLARATION OF INTEREST	N/A	
ANNEX ….– BREACH OF LAW FORM	N/A	
ANEEX…. – CERTFICATE OF ATTENDANCE TO RFP BRIEFING SESSION	N/A	
ANNEX … – SUPPLIER INTERGRITY PACT	N/A	***PROVIDED BY TNPA***
ANNEX ….– TAX CLEARANCE REQUIREMENTS	N/A	***PROVIDED BY TNPA***
ANNEX … – STANDARD RFP RESPONSE: BIDDER INFORMATION	N/A	
ANNEX …– DRAFT TOA	N/A	***PROVIDED BY TNPA***
ANNEX …- CONCESSION FEE OFFER	N/A	***PROVIDED BY TNPA***

14. **CONTINUED VALIDITY OF RETURNABLE DOCUMENTS**. The Preferred Bidder will be required to ensure the validity of all returnable documents, including but not limited to its Tax Clearance Certificate and valid B-BBEE verification certificate, for the duration of any contract emanating from this RFP. Should the Preferred Bidder be awarded the Terminal Operator Agreement and fail to present TNPA with such renewals as and when they become due, TNPA shall be entitled, in addition to any other rights and remedies that it may have in terms of the Terminal Operator Agreement, to terminate such Terminal Operator Agreement forthwith without any liability and without prejudice to any claims which TNPA may have for damages against the Bidder.

15. By signing these RFP documents, the Bidder is deemed to acknowledge that it has made itself thoroughly familiar with all the conditions governing this RFP, including those contained in any printed or electronic form stated to form part hereof, and TNPA will recognise no claim for relief based on an allegation that the Bidder overlooked any such condition or failed properly to take it into account any information for the purpose of calculating tendered concession or otherwise.

SIGNED at _____ on this _____ day of _____ 20___

SIGNATURE OF WITNESSES ADDRESS OF WITNESSES

1 _____ _____

Name_____ _____

_____

2 _____ _____

Name_____ _____

_____

SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE:

_____

NAME: _____

DESIGNATION: _____