

# **ANNEXURE B:**

**PROVISION OF CONDITION MONITORING SERVICES ON PORT OPERATION EQUIPMENT AT TPT  
EASTERN CAPE TERMINALS (NCT, PECT, PE BOT & EL MPT) FOR A PERIOD OF TWO (2) YEARS.**

## NGQURA CONTAINER TERMINAL

Vibration analysis						
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Equipment	Interval	Number of Equip (A)	Occurrence (B)	Cost/equip /occurrence (C)	adhoc call outs (One call out per equipment per year for 2 years) (D)	Total (A*B*C)+D
Ship to Shore Cranes (STS's)	3 monthly	8	8			
Rail Mounted Gantry Cranes (RMG's)	3 monthly	2	8			
Rubber Tyred Gantry Cranes (RTG's)	3 monthly	32	8			
Analysis and report compilation	3 monthly	1	8			

Thermography/Infrared analysis						
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Equipment	Interval	Number of Equip (A)	Occurrence (B)	Cost/equip /occurrence (C)	adhoc call outs (One call out per equipment per year for 2 years) (D)	Total (A*B*C)+D
Ship to Shore Cranes (STS's)	4 monthly	8	6			
Rail Mounted Gantry Cranes (RMG's)	4 monthly	2	6			
Rubber Tyred Gantry Cranes (RTG's)	4 monthly	32	6			
Substations	4 monthly	4	6			
Analysis and report compilation	4 monthly	1	6			

Oil						
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Equipment	Interval	Number of Equip (A)	Occurrence (B)	Cost/equipment /occurrence (C)	adhoc call outs (One call out per equipment per year for 2 years) (D)	Total (A*B*C)+D
Ship to Shore Cranes (STS's)	3 monthly	8	8			
Rail Mounted Gantry Cranes (RMG's)	3 monthly	2	8			
Rubber Tyred Gantry Cranes (RTG's)	3 monthly	32	8			
Substation Transformers	6 monthly	12	4			
Analysis and report compilation	3 monthly	1	8			

<b>Cost for report compilation</b>						
<b>Total Cost For Contract</b>						
<b>Average Monthly Fee</b>						

## PORT ELIZABETH CONTAINER TERMINAL

## Vibration analysis

Equipment	Interval	Number of Equip (A)	Occurrence (B)	Cost/equip/occurrence (C)	adhoc call outs (One call out per equipment per year for 2 years) (D)	Total (A*B*C)+D
Ship to Shore Cranes (STS's)	3 monthly	2	8			
Mobile Harbour Cranes (MHC's)	3 monthly	1	8			
Straddle Carriers	3 monthly	15	8			
Analysis and report compilation	3 monthly	1	8			

### Thermography/Infrared analysis

Equipment	Interval	Number of Equip (A)	Occurrence (B)	Cost/equip/occurrence (C)	adhoc call outs (One call out per equipment per year for 2 years) (D)	Total (A*B*C)+D
Ship to Shore Cranes (STS's)	4 monthly	2	6			
Straddle Carriers	4 monthly	15	6			
Mobile Harbour Cranes (MHC's)	4 monthly	1	6			
Substations	4 monthly	5	6			
Analysis and report compilation	4 monthly	1	6			

## Oil

Equipment	Interval	Number of Equip (A)	Occurrence (B)	Cost/equip/occurrence (C)	adhoc call outs (One call out per equipment per year for 2 years) (D)	Total (A*B*C)+D
Ship to Shore Cranes (STS's)	3 monthly	2	8			
Straddle Carriers	3 monthly	15	8			
Mobile Harbour Cranes (MHC's)	3 monthly	1	8			
Substation transformers	6 monthly	10	4			
Analysis and report compilation	3 monthly	1	8			

<b>Cost for report compilation</b>					
<b>Total Cost For Contract</b>					
<b>Average Monthly Fee</b>					

EL MULTI-PURPOSE TERMINAL						
Vibration analysis						
Equipment	Interval	Number of Equip (A)	Occurrence (B)	Cost/equip/occurrence (C)	adhoc call outs (One call out per equipment per year for 2 years) (D)	Total (A*B*C)+D
Conveyors	3 monthly	15	8			
Straddle Carriers	3 monthly	4	8			
Analysis and report compilation	3 monthly	1	8			
Thermography/Infrared analysis						
Equipment	Interval	Number of Equip (A)	Occurrence (B)	Cost/equip/occurrence (C)	adhoc call outs (One call out per equipment per year for 2 years) (D)	Total (A*B*C)+D
Conveyors	4 monthly	15	6			
Straddle Carriers	4 monthly	4	6			
Substations	4 monthly	3	6			
Mini sub	4 monthly	1	6			
Analysis and report compilation	4 monthly	1	6			
Oil analysis						
Equipment	Interval	Number of Equip (A)	Occurrence (B)	Cost/equip/occurrence (C)	adhoc call outs (One call out per equipment per year for 2 years) (D)	Total (A*B*C)+D
Conveyors	3 monthly	15	8			
Straddle Carriers	3 monthly	4	8			
Substation transformers	6 monthly	3	4			
Mini sub transformer	6 monthly	1	4			
Analysis and report compilation	3 monthly	1	8			
Cost for report compilation						
Total Cost For Contract						
Average Monthly Fee						

## PE BULK OPERATIONAL TERMINAL

Vibration analysis						
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		Number of Equip (A)	Occurrence (B)	Cost/equipment /occurrence (C)	adhoc callouts (One call out per equipment per year for 2 years) (D)	Total (A*B*C)+D
Equipment	Interval					
Conveyors	3 monthly	18	8			
Chargers	3 monthly	2	8			
Tipplers	3 monthly	2	8			
Reclaimers	3 monthly	2	8			
Stackers	3 monthly	2	8			
Shiploader	3 monthly	2	8			
Analysis and report compilation	3 monthly	1	8			

		Number of Equip (A)	Occurrenc e (B)	Cost/equip /occurrenc e (C)	adhoc call outs (One call out per equipment per year for 2 years) (D)	Total (A*B*C)+D
Equipment	Interval					
Conveyor 1 A&B Tail Pulley	3 monthly	4	8			
Conveyor 2 A&B Tail Pulley	3 monthly	4	8			
Conveyor 4 A&B Counterweight & Tail Pulley	3 monthly	8	8			
Reclaimer B Boom Non-Drive end Pulley	3 monthly	2	8			
Conveyor 7 A&B Tail Pulley	3 monthly	4	8			
Conveyor 8 A&B Tail & Counterweight	3 monthly	8	8			
Conveyor 9 A&B Tail	3 monthly	4	8			
<b>Analysis and report compilation</b>	3 monthly	1	8			

Thermography/Infrared analysis						
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		Number of Equip (A)	Occurrenc e (B)	Cost/equip /occurrenc e (C)	adhoc call outs (One call out per equipment per year for 2 years) (D)	Total (A*B*C)+D
Equipment	Interval					
Conveyors	4 monthly	18	6			
Chargers	4 monthly	2	6			
Tipplers	4 monthly	2	6			
Reclaimers	4 monthly	3	6			
Shiploader	4 monthly	2	6			
Stackers	4 monthly	2	6			
MCC T8	4 monthly	1	6			
Ore berth East Substation LV	4 monthly	1	6			
MCC T9	4 monthly	1	6			
Container Substation	4 monthly	1	6			
Analysis and report compilation	4 monthly	1	6			

Oil analysis						
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		Number of Equip (A)	Occurrence (B)	Cost/equip /occurrence (C)	ad hoc call outs (One call out per equipment per year for 2 years) (D)	Total (A*B*C)+D
Equipment	Interval					
Conveyors	3 monthly	18	8			
Tipplers	3 monthly	2	8			
Reclaimers	3 monthly	3	8			
Shiploader	3 monthly	2	8			
Chargers	3 monthly	2	8			
Stackers	3 monthly	2	8			
Substation transformers	6 monthly	9	4			
Analysis and report compilation	3 monthly	1	8			

Motor circuit analysis						
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		Number of Equip (A)	Occurrence (B)	Cost/equipment /occurrence (C)	ad hoc call outs (One call out per equipment per year for 2 years) (D)	Total (A*B*C)+D
Equipment	Interval					
Tipplers	6 monthly	2	4			
Analysis and report compilation	6 monthly	1	4			

<b>Total Cost For Contract</b>					
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<b>Total Cost For Contract</b>					
<b>Average Monthly Fee</b>					

<b>Notes to Pricing :</b>						
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Bidder is required to price each and every line item, failure to do so will result in disqualification.

Please note that all overheads must be included in your costs above and no additional costs

Deviation from this pricing schedule could result in a bid being disqualified.			
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Prices must be quoted in South African Rand, exclusive of VAT.



## Annexure C

**MASTER AGREEMENT**

entered by and between

**TRANSNET SOC LTD**

and

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**PROVISION OF CONDITION MONITORING SERVICES ON PORT OPERATION EQUIPMENT FOR TRANSNET SOC LTD (REG. NO. 1990/000900/30) OPERATING AS TRANSNET PORT TERMINALS (HEREINAFTER REFERRED TO AS "TPT") TPT EASTERN CAPE TERMINALS (NGQURA CONTAINER TERMINAL, PORT ELIZABETH CONTAINER TERMINAL, PORT ELIZABETH BULK OPERATING TERMINAL & EAST LONDON MULTI-PURPOSE TERMINAL) FOR A PERIOD OF TWO (2) YEARS.**

**Agreement Number** iCLM PE 807/TPT**Commencement Date** .....**Expiry Date** .....

## TABLE OF CONTENTS

1	INTRODUCTION .....	3
2	DEFINITIONS.....	3
3	INTERPRETATION .....	6
4	NATURE AND SCOPE .....	7
5	AUTHORITY OF PARTIES .....	7
6	DURATION/TERM AND CANCELLATION .....	7
7	RISK MANAGEMENT .....	8
8	TRANSNET'S OBLIGATIONS.....	8
9	GENERAL OBLIGATIONS OF THE SERVICE PROVIDER .....	8
10	SERVICE PROVIDER'S PERSONNEL .....	11
11	B-BBEE AND SOCIO-ECONOMIC OBLIGATIONS.....	11
12	PENALTIES .....	12
13	FEES AND EXPENSES RELATING TO SERVICES .....	13
14	INVOICES AND PAYMENT.....	14
15	PRICE ADJUSTMENTS .....	14
16	WARRANTIES APPLICABLE TO SERVICES .....	14
17	THIRD PARTY INDEMNITY .....	16
18	NON-CONFORMANCE OF SERVICES PROCURED .....	16
19	RIGHTS ON CANCELLATION .....	16
20	BREACH AND TERMINATION .....	17
21	CESSIONS AND ASSIGNMENTS AS PER NT INSTRUCTION NOTE 08 OF 2022/2023 .....	18
22	FORCE MAJEURE .....	18
23	PROTECTION OF PERSONAL INFORMATION .....	18
24	CONFIDENTIALITY .....	21
25	INSURANCES .....	22
26	LIMITATION OF LIABILITY .....	23
27	INTELLECTUAL PROPERTY RIGHTS.....	23
28	NON-WAIVER.....	25
29	PARTIAL INVALIDITY .....	26
30	DISPUTE RESOLUTION .....	26
31	ADDRESSES FOR NOTICES.....	26
32	WHOLE AND ONLY AGREEMENT .....	27
33	AMENDMENT AND CHANGE CONTROL .....	27
34	GENERAL.....	27
35	DATABASE OF RESTRICTED SERVICE PROVIDER .....	28

## 1 INTRODUCTION

This Agreement is entered into by and between:

**Transnet SOC Ltd** [Registration Number 1990/000900/30] whose registered address is , Republic of South Africa [**Transnet**]

and

..... [Registration Number .....] whose registered address is  
..... [**the Service provider**].

### NOW THEREFORE, IT IS AGREED:

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

the Service provider hereby undertakes to provide the Services provided for herein, as formally agreed between the Parties and in accordance with the Schedule of Requirements issued as a schedule to this Agreement.

## 2 DEFINITIONS

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

- 2.1 **AFSA** means the Arbitration Foundation of South Africa.
- 2.2 **Agreement** means this Agreement and its associated schedules and/or annexures and/or appendices, and/or schedules, including the Schedule of Requirements/Work Orders, the technical specifications for the Services and such special conditions as shall apply to this Agreement, together with the General Tender Conditions and any additional provisions in the associated bid documents tendered by the Service provider [as agreed, in writing, between the Parties], which collectively and exclusively govern the provision of Services and provision of ancillary Services by the Service provider to Transnet;
- 2.3 **Assignment** refers to the transfer of rights and obligations in a contract from an assigner to an assignee.
- 2.4 **Background Intellectual Property** means all Intellectual Property introduced and required by either Party to give effect to their obligations under this Agreement owned in whole or in part by or licensed to either Party or their affiliates prior to the Commencement Date or developed after the Commencement Date otherwise pursuant to this Agreement.
- 2.5 **Business Day(s)** means Mondays to Fridays between 07:30 and 16:00, excluding public holidays as proclaimed in South Africa.
- 2.6 **Cession** refers to the transfer of only the rights a Service provider has in terms of a contract from it to a third party.
- 2.7 **Commencement Date** means ....., notwithstanding the signature date of this Agreement.
- 2.8 **Confidential Information** means any information or other data, whether in written, oral, graphic or in any other form such as in documents, papers, memoranda, correspondence, notebooks,



reports, drawings, diagrams, discs, articles, samples, test results, prototypes, designs, plans, formulae, patents, or inventor's certificates, which a Party discloses or provides to the other Party [intentionally or unintentionally, or as a result of one Party permitting the representative of the other Party to visit any of its premises], or which otherwise becomes known to a Party, and which is not in the public domain and includes, without limiting the generality of the term:

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

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

- 2.10 **Data** means all data, databases, documents, information, graphics, text, or other material in an electronic or tangible medium which the Parties to this Agreement generate, collect, process, store or transmit in relation to their business.
- 2.11 **Designs** mean registered Designs and/or Design applications and will include the monopoly right granted for the protection of an independently created industrial design including designs dictated essentially by technical or functional considerations as well as topographies of integrated circuits and integrated circuits.
- 2.12 **Expiry Date** means ..... ;
- 2.13 **Foreground Intellectual Property** means all Intellectual Property developed by either Party pursuant to this Agreement.
- 2.14 **ICC Incoterms** means the latest version of commercial trade terms as published by the International Chamber of Commerce, Paris [ICC], which are otherwise referred to as purchase terms and which precisely define the responsibilities, costs, and risks of the buyer [**Transnet**] and the seller [**the Service provider**]. Incoterms are only applicable to contracts involving the import or export of Goods from one country to another and for the purpose of this Agreement, if applicable, shall mean the designated Incoterm as stipulated in Schedule 1 hereto. Further details of the Incoterm [purchase terms] for this Agreement, if applicable, can be viewed at the International Business Training website - <http://www.i-b-t.net/incoterms.html>;
- 2.15 **Intellectual Property** means Patents, Designs, Know-How, Copyright and Trademarks and all rights having equivalent or similar effect which may exist anywhere in the world and includes all future additions and improvements to the Intellectual Property.
- 2.16 **Know-How** means all Confidential Information of whatever nature relating to the Intellectual Property and its exploitation as well as all other Confidential Information generally relating to Transnet's field of technology, including technical information, processing or manufacturing techniques, Designs, specifications, formulae, systems, processes, information concerning materials and marketing and business information in general.
- 2.17 **Parties** mean the Parties to this Agreement together with their subsidiaries, divisions, business units, successors-in-title, and assigns.
- 2.18 **Party** means either one of these Parties.
- 2.19 **Patents** mean registered Patents and Patent applications, once the latter have proceeded to grant, and includes a right granted for any inventions, products, or processes in all fields of technology.
- 2.20 **Permitted Purpose** means any activity or process to be undertaken or supervised by a Staff member of one Party during the term of this Agreement, for which purpose authorised disclosure of the other Party's Confidential Information or Intellectual Property is a prerequisite to enable such activity or process to be accomplished.
- 2.21 **Price(s)** means the agreed Price(s) for the Services to be purchased from the Service provider by Transnet, as detailed in the Schedule of Requirements, issued in accordance with this Agreement, as amended by mutual agreement between the Parties and in accordance with the terms and conditions in this Agreement from time to time.
- 2.22 **Purchase Order(s)** means official orders issued by an operating division of Transnet to the Service provider for Services.

- 2.23 **Service(s)** means the Supply and delivery of log travel mechanical drives, the Service(s) provided to Transnet by the Service provider, pursuant to the Work Order(s) in terms of this Agreement.
- 2.24 **Service Level Agreement** or **SLA** means the processes, deliverables, key performance indicators and performance standards relating to the Services to be provided by the Service provider.
- 2.25 **Service provider Materials** means all works of authorship, products and materials [including, but not limited to, data, diagrams, charts, reports, specifications, studies, inventions, software, software development tools, methodologies, ideas, methods, processes, concepts and techniques] owned by, or licensed to, the Service provider prior to the Commencement Date or independently developed by the Service provider outside the scope of this Agreement at no expense to Transnet, and used by the Service provider in the performance of the Services
- 2.26 **Staff** means any partner, employee, agent, consultant, independent associate or contractor, Subcontractor and the staff of such Subcontractor, or other authorised representative of either Party.
- 2.27 **Schedule of Requirements.**
- 2.28 **Subcontract** means any contract or agreement or proposed contract or agreement between the Service provider and any third party whereby that third party agrees to provide to the Service provider of the related Services or any part thereof.
- 2.29 **Subcontractor** means the third party with whom the Service provider enters a Subcontract.
- 2.30 **Tax Invoice** means the document as required by Section 20 of the VAT Act, as may be amended from time to time.
- 2.31 **Trademarks** mean registered Trademarks and Trademark applications and include any sign or logo, or combination of signs and/or logos capable of distinguishing the goods or services of one undertaking from those of another undertaking.
- 2.32 **VAT** means Value-Added Tax chargeable in terms of the VAT Act, 89 of 1991, as may be amended from time to time; and
- 2.33 **VAT Act** means the Value Added Tax Act, no 89 of 1991, as may be amended from time to time.
- 2.34 **Work Order(s)** means a detailed scope of work for a Service required by Transnet, including **timeframes**, Deliverable, Fees, and costs for the supply of the Service to Transnet, which may be appended to this Agreement from time to time.

### 3 INTERPRETATION

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

3.5 A reference to a particular gender incorporates a reference to the other gender.

#### **4 NATURE AND SCOPE**

- 4.1 This Agreement is an agreement under the terms and conditions of which the Service provider will arrange for the provision to Transnet of the Services which meet the requirements and specifications of Transnet, the delivery of which is controlled by means of Purchase Orders to be issued by Transnet and executed by the Service provider in accordance with this Agreement.
- 4.2 Such Purchase Orders and deliveries to Transnet shall be agreed between the Parties from time to time, subject to the terms of the Schedule of Requirements/Work Order.
- 4.3 Each properly executed Purchase Order forms an inseparable part of this Agreement as if it were fully incorporated into the body of this Agreement.
- 4.4 During the period of this Agreement, both Parties can make written suggestions for amendments to the Schedule of Work Orders in accordance with procedures set out in clause 33 [*Amendment and Change Control*]. A Party will advise the other Party within 14 [fourteen] Business Days, or such other period as mutually agreed, whether the amendment is acceptable.
- 4.5 Insofar as any term, provision, or condition in the Schedule of Work Order conflicts with a like term, provision, or condition in this Agreement and/or a Purchase Order, the term or provision or condition in this Master Agreement shall prevail, unless such term or provision or condition in this Master Agreement has been specifically revoked or amended by mutual written agreement between the Parties.
- 4.6 Time will be of the essence and the Service provider will perform its obligations under this Agreement in accordance with the timeframe(s) [if any] set out in the relevant schedule, save that the Service provider will not be liable under this clause if it is unable to meet such obligation within the time required as a direct result of any act or omission by Transnet and it has used its best endeavours to advise Transnet of such act or omission. In the event of such delay, any time deadlines detailed in the relevant schedule shall be extended by a period equal to the period of that delay.

#### **5 AUTHORITY OF PARTIES**

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

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

- 6.1 Notwithstanding the date of signature hereof, the Commencement Date if this Agreement is for once off purchase unless:

- a) this Agreement is terminated by either Party in accordance with the provisions incorporated herein or in any schedules or annexures appended hereto, or otherwise in accordance with law or equity; or
- b) this Agreement is extended at Transnet's option for a further period to be agreed by the Parties.

6.2 Notwithstanding clause 20 [*Breach and Termination*], either Party may cancel this Agreement without cause by giving 30 [thirty] calendar days prior written notice thereof to the other Party, provided that in such instance, this Agreement will nevertheless be applicable in respect of all Purchase Orders which have been placed prior to the date of such cancellation.

## **7 RISK MANAGEMENT**

- 7.1 Where Transnet determines appropriate, within 2 weeks from the date of contract signature, the Parties are to meet to prepare and maintain a contract Risk Register. The Risk Register shall include a description of the risks and a description of the actions which are to be taken to avoid or reduce these risks which both Parties shall jointly determine.
- 7.2 Contract progress meetings shall be held monthly, or unless otherwise agreed between the Parties in writing. The purposes of these progress meetings shall be to capture the number of late deliverables against agreed milestones, actual costs against payment plans, performance issues or concerns, contract requirements not achieved, the status of previous corrective actions and risk management. Minutes of meetings shall be maintained and signed off between the Parties throughout the contract period.

## **8 TRANSNET'S OBLIGATIONS**

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

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

- 9.1 The Service provider shall:
  - a) respond promptly to all complaints and enquiries from Transnet.
  - b) inform Transnet immediately of any dispute or complaint arising in relation to the storage or delivery of the Goods.
  - c) conduct its business in a professional manner which will reflect positively upon the Service provider and the Service provider's products.

- d) keep full records clearly indicating all transactions concluded by the Service provider relating to the delivery of the Services and keep such records for at least 5 [five] years from the date of each such transaction.
- e) obtain, and always maintain in full force and effect, all licences, permits and the like required under applicable laws for the provision of the Services and ancillary Services and the conduct of the business and activities of the Service provider.
- f) observe and ensure compliance with all requirements and obligations as set out in the labour and related legislation of South Africa, including the Occupational Health and Safety Act, 85 of 1993, as may be amended from time to time.
- g) observe and ensure compliance with all requirements and objectives of the Transnet Service provider Integrity Pact as agreed to in response to the RFP. The general purpose of the Service provider Integrity Pact is to agree to avoid all forms of dishonesty, fraud, and corruption by following a system that is fair, transparent, and free from any undue influence prior to, during and after the currency of the procurement event leading to this Agreement and this Agreement itself.
- h) comply with all applicable environmental legislation and regulations, demonstrate sound environmental performance, and have an environmental management policy which ensures that its products, including the Services or ancillary Services are procured, produced, packaged, delivered and are capable of being used and ultimately disposed of in a way that is environmentally appropriate; and
- i) ensure the validity of all renewable certifications, including but not limited to its B-BBEE Verification Certificate, throughout the entire term of this Agreement. Should the Service provider fail to present Transnet with such renewals as they become due, Transnet shall be entitled, in addition to any other rights and remedies that it may have in terms of the Agreement, to terminate this Agreement forthwith without any liability and without prejudice to any claims which Transnet may have for damages against the Service provider.

9.2 The Service provider acknowledges and agrees that it shall always:

- a) render the provision Services and ancillary Services (if applicable) and perform all its duties with honesty and integrity.
- b) communicate openly and honestly with Transnet regarding the supply and performance of the Services and demonstrate a commitment to affecting the supply and performing ancillary Services timeously, efficiently, and at least to the required standards.
- c) endeavour to provide the highest possible standards of service and workmanship, with a reasonable degree of care and diligence.
- d) use its best endeavours and make every diligent effort to meet agreed deadlines.
- e) treat its own Staff, as well as all Transnet's Staff, with fairness and courtesy and respect for their human rights.
- f) practice and promote its own internal policies aimed at prohibiting and preventing unfair discrimination.

- g) treat all enquiries from Transnet in connection with the supply of the Services and/or ancillary Services with courtesy and respond to all enquiries promptly and efficiently. Where the Service provider is unable to comply with the provisions of this clause, the Service provider will advise Transnet of the delay and the reasons therefor and will keep Transnet informed of progress made regarding the enquiry.
  - h) when requested by Transnet, provide clear and accurate information regarding the Service provider's own policies and procedures, excluding Know-How and other Confidential Information, except where a non-disclosure undertaking has been entered into between the Parties.
  - i) not allow a conflict of interest to develop between its own interests [or the interests of any of its other customers] and the interests of Transnet.
  - j) not accept or offer, nor allow, induce, or promote the acceptance or offering of any gratuity, enticement, incentive, or gift that could reasonably be regarded as bribery or an attempt to otherwise exert undue influence over the recipient.
  - k) not mislead Transnet or its officers, employees, and stakeholders, whether by act or omission.
  - l) not otherwise act in an unethical manner or do anything which could reasonably be expected to damage or tarnish Transnet's reputation or business image.
  - m) immediately report to Transnet any unethical, fraudulent, or otherwise unlawful conduct of which it becomes aware in connection with Transnet or the provision of Services or ancillary Services to Transnet.
  - n) ensure that at all times, during the currency of this Agreement, it complies with all obligations and commitments in terms of the provisions of the Income Tax Act, No 58 of 1962, the VAT Act or any other tax legislation relating to their liability for Income Tax, VAT, Pay as You Earn or any other tax. The Service provider shall further ensure Tax Clearance Compliance, for the duration of this Agreement.
  - o) not victimise, harass, or discriminate against any employee of either Party to this Agreement or any applicant for employment with either Party to this Agreement due to their gender, race, disability, age, religious belief, sexual orientation, or part-time status. This provision applies, but is not limited to employment, upgrading, work environment, demotion, transfer, recruitment, recruitment advertising, termination of employment, rates of pay or other forms of compensation and selection for training.
  - p) shall ensure that its employees, agents, and Subcontractors will not breach any applicable discrimination legislation and any amendments and re-enactments thereof.
- 9.3 In compliance with the National Railway Safety Regulator Act, 16 of 2002, as may be amended from time to time, the Service provider shall ensure that the Services and ancillary Services, to be supplied to Transnet under the terms and conditions of this Agreement, comply fully with the Specifications as set forth hereto, and shall thereby adhere [as applicable] to railway safety requirements and/or regulations. Permission for the engagement of a Subcontractor by the Service provider, as applicable, shall be subject to a review of the capability of the proposed Subcontractor to comply with the specified railway safety requirements and/or regulations. The Service provider and/or its Subcontractor shall grant Transnet access, during the term of this Agreement, to review

any safety-related activities, including the coordination of such activities across all parts of its organisation.

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

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

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

### **11.1 B-BBEE Scorecard**

- a) Transnet fully endorses and supports the Broad-Based Black Economic Empowerment Programme and is strongly of the opinion that all South African business enterprises have an equal obligation to redress the imbalances of the past.
- b) In response to this requirement, the Service provider shall submit to Transnet's Contract Manager or such other designated person details of its B-BBEE status in terms of the latest Codes of Good Practice issued in terms of the B-BBEE Act and proof thereof at the beginning of March each year during the currency of this Agreement.
- c) The Service provider undertakes to notify and provide full details to Transnet in the event there is:



- (i) a change in the Service provider's B-BBEE status which is less than what it was at the time of its appointment including the impact thereof; and
  - (ii) a corporate or internal restructure or change in control of the Service provider which has or likely to impact negatively on the 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 utilized by a verification agency or auditor for the purposes of issuing a verification certificate in respect of the Service provider B-BBEE status) which Transnet may request on written notice within 30 (thirty) calendar days of such request. A failure to provide such data shall constitute a Service provider Default and may be dealt with in accordance with the provisions of clause 20.
- e) In the event there is a change in the Service provider's B-BBEE status, then the provisions of clause 20 shall apply.

#### 11.2 Green Economy/Carbon Footprint

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

## 12 PENALTIES

Notwithstanding the provision of this penalty clause, TPT shall not:

be precluded from exercising its right to terminate the Agreement; and/or

be in anyway prevented from exercising any or all its rights in terms of the Agreement.

The following penalties shall be levied upon the Service Provider for non-compliance by the Service Provider of its specified obligations as set out below:

Penalty description Frequency	Risk Rating	First occurrence	Second occurrence	Frequency
Employee under the influence of alcohol or drugs	Medium	Suspended from the terminal	n/a	Per occurrence
Employee sleeping whilst on duty	Medium	NCR	R2000	Per occurrence
Non-attendance of monthly meetings (SLA) by the Supervisor and or Project manager or designated representative of the Service Provider.	High	NCR	R5000	Per occurrence
Use of unroadworthy; inoperable or unavailable vehicle	High	R5000	R5000	Per occurrence
Service provider employee in possession of firearm or illegal substance or illegal items onsite.	High	R5000	R5000	Per occurrence
Misconduct by service provider such as stealing, fighting, and as defined in terms of Transnet rules.	High	Suspended from the terminal	n/a	Per occurrence

Failure to conduct the drives vibration analysis, Vibration and temperature analysis, Oil Analysis, Motor circuit analysis and the Electrical Panel and Engines Thermographic Scanning and Analysis for all the equipment listed in the scope of work	High	R5000	R5000	Per maintenance schedule
Failure to collect samples and render service as per prescribed by the maintenance schedules and intervals as per scope of work.	High	R5000	R5000	Per maintenance schedule
Failure to provide adequate number of staff to compliment the scope of work	High	NCR	Suspend the contract	Per occurrence
Failure to provide staff that is qualified and experienced on the specified field of work according to the scope of work.	High	NCR	Suspend the contract	Per occurrence
Failure to submit a written report and presentation of the analysis conducted and Conclusions drawn from the results.	High	R5000	R5000	Per occurrence
Late submission report as prescribed in the scope of work within 1 week or 5 working days.	High	R5000	R5000	Per occurrence
Component damages on the Service Provider in the case where improper fitment or poor workmanship by the service provider can be proven.	High	100% liability of costs incurred	100% liability of costs incurred	Per occurrence
Failure to be available within 4 hours after receiving a notification from TPT for call out as described in the scope of work.	High	R5000	R5000	Per occurrence

### 13 FEES AND EXPENSES RELATING TO SERVICES

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

## 14 INVOICES AND PAYMENT

- 14.1 Transnet shall pay the Service provider the amounts stipulated in each Purchase Order/Work Order, subject to the terms and conditions of this Agreement.
- 14.2 Transnet shall pay such amounts to the Service provider upon receipt of a valid and undisputed Tax Invoice together with the supporting documentation, as specified in the Schedule of Requirements appended hereto, once the valid and undisputed Tax Invoices or such portions of the Tax Invoices which are valid and undisputed become due and payable to the Service provider for the delivery of the Services ordered, in terms of clause 14.5 below.
- 14.3 Transnet may, pending an investigation, withhold any payments to the Service provider, in the case where irregular expenditure has been identified in the particular contract and that there is reasonable suspicion that the Service provider is involved or was aware that the contract transgressed any legislation.
- 14.4 All Prices set out in this Agreement and the Schedule of Requirements hereto are to be indicated inclusive and exclusive of VAT, which will be payable at the applicable rate in ZAR.
- 14.5 Unless otherwise provided for in the Schedule of Requirements appended to this Agreement, Tax Invoices shall be submitted together with a month-end statement. Payment against such month-end statement shall be made by Transnet within 30 [thirty] calendar days after date of receipt by Transnet of the Service provider's statement together with the relevant valid and undisputed Tax Invoice(s) and supporting documentation.
- 14.6 Where the payment of any Tax Invoice, or any part of a Tax Invoice which is not in dispute, is not made in accordance with this clause, the Service provider shall be entitled to charge interest on the outstanding amount, at The Standard Bank of South Africa's prime rate of interest in force, for the period from the due date of payment until the outstanding amount is paid.
- 14.7 The Service provider shall remain the owner of all plant, material, machinery, equipment, and the like [collectively, **the Service provider's Goods**] provided to Transnet until Transnet has paid in full for the Service provider's Goods, it being specifically agreed that Transnet shall acquire no rights [including liens] of whatsoever nature in such Service provider's Goods until date of final payment by Transnet. Subject to the foregoing, all risk and benefit to the Service provider's Goods shall pass from the Service provider to Transnet on delivery of the Service provider's Goods by the Service provider to Transnet.

## 15 PRICE ADJUSTMENTS

- 15.1 Prices for services rendered in terms of this Agreement shall be as quoted and be firm for the duration of the contract.

## 16 WARRANTIES APPLICABLE TO SERVICES

- 16.1 The Service provider warrants to Transnet that:
  - a) it has full capacity and authority to enter and to perform this Agreement and that this Agreement is executed by a duly authorised representatives of the Service provider.
  - b) it will discharge its obligations under this Agreement and any annexure, appendix, or schedule hereto with all due skill, care, and diligence.

- c) it will be solely responsible for the payment of remuneration and associated benefits, if any, of its Personnel and for withholding and remitting income tax for its Personnel in conformance with any applicable laws and regulations.
  - d) it will procure licences for Transnet in respect of all Third-Party Material detailed in the Work Order(s), and will procure the right for Transnet to take such copies [in whole or in part] of such Third-Party Materials as it may reasonably require for the purposes of back-up for archiving and disaster recovery; and
  - e) the use or possession by Transnet of any Materials will not subject Transnet to any claim for infringement of any Intellectual Property Rights of any third party.
- 16.2 The Service provider warrants that it will perform its obligations under this Agreement in accordance with the Service Levels as defined in the relevant schedule. Transnet may at its discretion audit compliance with the Service Levels, provided that any such audit is carried out with reasonable prior notice and in a reasonable way so as not to have an adverse effect on the performance of the Services. Without prejudice to clause 16.3 below, in the event that the Service provider fails to meet the Service Levels, Transnet may claim appropriate service credits or invoke a retention of Fees as detailed in the relevant schedule and/or Work Order.
- 16.3 The Service provider warrants that for a period of 30 [thirty] calendar days from Acceptance of the Deliverables they will, if properly used, conform in all material respects with the requirements set out in the relevant schedule. The Service provider will at its expense remedy any such non-conformance as soon as possible but in any event within 30 [thirty] calendar days of notification by Transnet. If the Service provider fails or is unable to remedy such non-conformance within such timescale, Transnet will be entitled to employ a third party to do so in place of the Service provider and any excess charges or costs incurred by Transnet as a result shall be paid by the Service provider.
- 16.4 The Service provider will remedy any defect within 30 [thirty] calendar days of being notified of that defect by Transnet in writing.
- 16.5 The Service provider will not be liable to remedy any problem arising from or caused by any modification made by Transnet to the Deliverables, or any part thereof, without the prior approval of the Service provider.
- 16.6 The Service provider shall advise Transnet of the effects of any steps proposed by Transnet pursuant to clause 16.5 above, including but not limited to any cost implications or any disruption or delay in the performance of the Services. The Parties agree that any changes to the Services, including the charges for the Services or any timetables for delivery of the Services, will be agreed in accordance with the change control procedure, as set out in clause 33 [*Amendment and Change Control*].
- 16.7 The Service provider warrants that:
- a) it has, using the most up-to-date software available, tested for [and deleted] all commonly known viruses in the Materials and for all viruses known by the Service provider at the date of the relevant Work Order; and
  - b) at the time of delivery to Transnet, the Materials do not contain any trojan horse, worm, logic bomb, time bomb, back door, trap door, keys, or other harmful components.

The Service provider agrees that, if a virus is found, it will at its own expense use its best endeavours to assist Transnet in reducing the effect of the virus and, particularly if a virus causes loss of operational efficiency or loss of data, to assist Transnet to the same extent to mitigate such losses and to restore Transnet to its original operating efficiency.

- 16.8 The Service provider undertakes to comply with South Africa's general privacy protection in terms of Section 14 of the Bill of Rights in connection with this Agreement and shall procure that its Personnel shall observe the provisions of Section 14 [as applicable] or any amendments and re-enactments thereof and any regulations made pursuant thereto.
- 16.9 The Service provider warrants that it has taken all reasonable precautions to ensure that, in the event of a disaster, the impact of such disaster on the ability of the Service provider to comply with its obligations under this Agreement will be reduced to the greatest extent possible, and that the Service provider shall ensure that it has appropriate, tested, and documented recovery arrangements in place.
- 16.10 In compliance with the National Railway Safety Regulator Act, 16 of 2002, the Service provider shall ensure that the Services, to be supplied to Transnet under the terms and conditions of this Agreement, comply fully with the specifications, and shall thereby adhere [as applicable] to railway safety requirements and/or regulations. Permission for the engagement of a Subcontractor by the Service provider [as applicable] shall be subject to a review of the capability of the proposed Subcontractor to comply with the specified railway safety requirements and/or regulations. The Service provider and/or its Subcontractor shall grant Transnet access, during the term of this Agreement, to review any safety-related activities, including the coordination of such activities across all parts of its organisation.

## 17 THIRD PARTY INDEMNITY

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

## 18 NON-CONFORMANCE OF SERVICES PROCURED

- 18.1 In the case of services manufactured for and procured by Transnet from the Service provider in terms of this Agreement, being found not to conform to the Transnet standards, specifications and requirements, Transnet at any time may be entitled to raise a Non Conformance Report (NCR) against a Service provider whose Services do not conform to Transnet standards, specifications and requirements directing the Service provider to investigate and remedy the non-conformance within the stipulated time frame as may be determined by Transnet at its discretion.
- 18.2 Failure by the Service provider to fully comply with NCR within the period stated in sub-clause 18.1 above, shall entitle Transnet to further conditions to which the Service provider must discharge to close the NCR or to terminate the order without giving the Service provider written notice of termination in terms of this Agreement.

## 19 RIGHTS ON CANCELLATION

- 19.1 If this Agreement or Purchase Order is cancelled in whole or in part in terms of clause **Error! Reference source not found.** *[Total or Partial Failure to Perform]*, Transnet may execute or complete this Agreement with any other entity and do so on such terms as it may deem proper, or

may procure other comparable Services in substitution for those neglected to be manufactured or supplied or rejected as aforesaid, and may recover from the Service provider the difference between the cost of such Services and the Price [if the latter was lower] as well as any costs and expenses [including any additional transport costs] which Transnet may have had to incur in consequence of the Service provider's default.

- 19.2 Any amount which may be recoverable from the Service provider in terms of clause 19.1 above, without prejudice to any other legal remedies available to Transnet, may be deducted in whole or in part from any monies in the hands of Transnet and due for payment to the Service provider.

## 20 BREACH AND TERMINATION

- 20.1 Termination in accordance with clause 6 [Term and Cancellation] shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either Party and all provisions which are to survive this Agreement or impliedly do so shall remain in force and in effect.
- 20.2 On termination of this Agreement or a Work Order, the Service provider will immediately deliver up, and procure that its Personnel will immediately deliver up to Transnet, all Deliverables and property belonging to Transnet [or, in the event of termination of a Work Order, such as is relevant to that Work Order] which may be in the possession of, or under the control of the Service provider, and certify to Transnet in writing that this has been done.
- 20.3 To the extent that any of the Deliverables and property referred to in clause 20.2 above are in electronic form and contained on non-detachable storage devices, the Service provider will provide Transnet with unencrypted copies of the same on magnetic media and will irretrievably destroy and delete copies so held.
- 20.4 If this Agreement is terminated by the Service provider under clause 19 [Rights on Cancellation], or if a Work Order is terminated by Transnet under clause 27 [Limitation of Liability], Transnet will pay to the Service provider all outstanding Fees [apportioned on a pro rata basis] relating to the work undertaken by the Service provider up until the date of such termination. Transnet will also pay the costs of any goods and materials ordered by the Service provider in relation to such work for which the Service provider has paid or is legally obliged to pay, in which case, on delivery of such goods or materials, the Service provider will promptly deliver such goods and materials to Transnet or as it may direct.
- 20.5 If either Party [**the Defaulting Party**] commits a material breach of this Agreement and fails to remedy such breach within 30 [thirty] calendar days of written notice thereof, the other Party [hereinafter **the Aggrieved Party**], shall be entitled, in addition to any other rights and remedies that it may have in terms of this Agreement, to terminate this Agreement forthwith without any liability and without prejudice to any claims which the Aggrieved Party may have for damages against the Defaulting Party.
- 20.6 Either Party may terminate this Agreement forthwith by notice in writing to the other Party when the other Party is unable to pay its debts as they fall due or commits any act or omission which would be an act of insolvency in terms of the Insolvency Act, 24 of 1936 [as amended from time to time], or if any action, application or proceeding is made with regard to it for:
- a) a voluntary arrangement or composition or reconstruction of its debts.
  - b) its winding-up or dissolution.

- c) the appointment of a liquidator, trustee, receiver, administrative receiver, or similar officer.
- d) any similar action, application or proceeding in any jurisdiction to which it is subject.

20.7 Transnet may terminate this Agreement at any time within 2 [two] months of becoming aware of a change of control of the Service provider by notice in writing to the Service provider. For the purposes of this clause, **control** means the right to direct the affairs of a company whether by ownership of shares, membership of the board of directors, agreement or otherwise.

20.8 Notwithstanding this clause 20, Transnet may cancel this Agreement without cause by giving 30 [thirty] calendar days prior written notice thereof to the Service provider, or

20.9 The provisions of clauses 2 [Definitions], 16 [Warranties], 19 [Rights on Cancellation], 24 [Confidentiality], 26 [Limitation of Liability], 28 [Intellectual Property Rights], 30 [Dispute Resolution] and 35 [General] shall survive termination or expiry of this Agreement.

## 21 CESSIONS AND ASSIGNMENTS AS PER NT INSTRUCTION NOTE 08 OF 2022/2023

21.1 The Service provider is not allowed to cede its rights for payment in terms of this Agreement without prior written approval from Transnet. Cession shall only be applicable as follows:

- a) Cession must only be applicable to the transfer of right to payment for services delivered/rendered by a Service provider to an FSP or State Institutions.
- b) The written request for cession must be by the Service provider and not a third party; and
- c) The written request by the Service provider must be accompanied by the cession agreement.

21.2 The Service provider is prohibited from transferring its rights and obligations to perform under this contract. Assignments are against the principles of section 217 of the Constitution mainly, fairness, transparency, and competitiveness.

## 22 FORCE MAJEURE

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

22.2 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 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.

## 23 PROTECTION OF PERSONAL INFORMATION

- a) The following terms shall bear the same meaning as contemplated in Section 1 of the Protection of Personal Information Act 4 of 2013 ("POPIA"):

consent; person; personal information; processing; record; Regulator as well as any terms derived from these terms of the POPIA.

- b) Transnet will process all information by the Respondent in terms of the requirements contemplated in Section 4(1) of the POPIA:

Accountability; Processing limitation; Purpose specification; Further processing limitation; Information quality; Openness; Security safeguards and Data subject participation.

- c) Transnet agrees that in submitting any information or documentation requested in the RFP and in this Agreement, the Service provider consents to the processing of their personal information for the purpose of, but not limited to, risk assessment, contract award, contract management, auditing, legal opinions/litigation, investigations (if applicable), document storage for the legislatively required period, destruction, de-identification and publishing of personal information by Transnet and/or its authorized appointed third parties.
- d) The Parties agree that they may obtain and have access to personal information for the fulfilment of the rights and obligations contained herein. In performing the obligations as set out in this Agreement, the Parties shall always ensure that:
- i. they process personal information only for the express purpose for which it was obtained.
  - ii. once processed for the purposes for which it was obtained, all personal information will be destroyed to an extent that it cannot be reconstructed to its original form, subject to any legal retention requirements.
  - iii. Personal information is provided only to authorized personnel who strictly require the personal information to carry out the Parties' respective obligations under this Agreement.
  - iv. they do not disclose personal information of the other Party, other than in terms of this Agreement.
  - v. they have all reasonable technical and organizational measures in place to protect all personal information from unauthorized access and/or use.
  - vi. they have appropriate technical and organizational measures in place to safeguard the security, integrity, and authenticity of all information in their possession or under their control in terms of this Agreement.
  - vii. They identify all reasonably foreseeable internal and external risks to personal information in their possession or under their control; establish and maintain appropriate safeguards against the risks identified; regularly verify that the safeguards are effectively implemented; and ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards.
  - viii. Such personal information is protected against unauthorized or unlawful processing, accidental loss, destruction or damage, alteration, disclosure, or access.

- 23.1 The Parties agree that if personal information is processed for additional purposes beyond the original purpose for which it was obtained, explicit consent must be obtained beforehand from those persons whose information will be subject to such processing.



- 23.2 Should it be necessary for either Party to disclose or otherwise make available the personal information to any third party (including sub-contractors and employees) that is not already consented to, it may do so only with the prior written consent of the other Party. The Party requiring such consent shall require of all such third parties, appropriate written undertakings to be provided, containing similar terms to that set forth in this clause, and dealing with that third party's obligations in respect of its processing of the personal information. Following approval by the other Party, the Party requiring consent agrees that the provisions of this clause shall *mutatis mutandis* apply to all authorized third parties who process personal information.
- 23.3 The Parties shall ensure that any person authorized to process information on their behalf (including employees and third parties) will safeguard the security, integrity, and authenticity of all information. Where necessary to meet this requirement, the Parties shall keep all personal information and any analyses, profiles, or documents derived therefrom logically separated from all other information and documentation held by it.
- 23.4 The Parties shall carry out regular assessments to identify all reasonably foreseeable internal and external risks to the personal information in its possession or under its control. The Parties shall implement and maintain appropriate safeguards against the risks which it identifies and shall also regularly verify that the safeguards which it has in place have been effectively implemented.
- 23.5 The Parties agree that they will promptly return, destroy or de-identify any personal information in their possession or control which belongs to the other Party once it no longer serves the purpose for which it was collected in relation to this Agreement, subject to any legal retention requirements. This may be at the request of the other Party and includes circumstances where a person has requested the Parties to delete all instances of their personal information. The information will be destroyed or de-identified in such a manner that it cannot be reconstructed to its original form, linking it to any individual or organization.
- 23.6 Personal Information security breach:
- a) Each Party shall notify the other party in writing as soon as possible after it becomes aware of or suspects any loss, unauthorised access or unlawful use of any personal information and shall, at its own cost, take all necessary remedial steps to mitigate the extent of the loss or compromise of personal information and to restore the integrity of the affected personal information as quickly as is possible. The Parties shall also be required to provide each other with details of the persons affected by the compromise and the nature and extent of the compromise, including details of the identity of the unauthorised person who may have accessed or acquired the personal information.
  - b) The Parties shall provide on-going updates on the progress in resolving the compromise at reasonable intervals until such time as the compromise is resolved.
  - c) Where required, the Parties must notify the South African Police Service; and/or the State Security Agency and the Information Regulator and the affected persons of the security breach. Any such notification shall always include sufficient information to allow the persons to take protective measures against the potential consequences of the compromise.
  - d) The Parties undertake to co-operate in any investigations relating to security which is carried out by or on behalf of the other including providing any information or material in its possession or control and implementing new security measures.

## 24 CONFIDENTIALITY

24.1 The Parties hereby undertake the following regarding Confidential Information:

- a) not to divulge or disclose to any person whomsoever in any form or manner whatsoever, either directly or indirectly, any Confidential Information of the other without the prior written consent of such other Party, other than when called upon to do so in accordance with a statute, or by a court having jurisdiction, or by any other duly authorised and empowered authority or official, in which event the Party concerned shall do what is reasonably possible to inform the other of such a demand and each shall assist the other in seeking appropriate relief or the instituting of a defensive action to protect the Confidential Information concerned;
- b) not to use, exploit, permit the use of, directly or indirectly, or in any other manner whatsoever apply the Confidential Information disclosed to it because of this Agreement, for any purpose whatsoever other than for the purpose for which it is disclosed or otherwise than in strict compliance with the provisions in this Agreement.
- c) not to make any notes, sketches, drawings, photographs, or copies of any kind of any part of the disclosed Confidential Information without the prior written consent of such other Party, except when reasonably necessary for the purpose of this Agreement, in which case such copies shall be regarded as Confidential Information.
- d) not to de-compile, disassemble or reverse engineer any composition, compilation, concept application, item, component de-compilation, including software or hardware disclosed and shall not analyse any sample provided by Transnet, or otherwise determine the composition or structure or cause to permit these tasks to be carried out except in the performance of its obligations pursuant to this Agreement.
- e) not to exercise less care to safeguard Transnet Confidential Information than the Party exercises in safeguarding its own competitive, sensitive or Confidential Information.
- f) Confidential Information disclosed by either Party to the other or by either Party to any other party used by such party in the performance of this Agreement, shall be dealt with as "restricted" or shall be dealt with according to any other appropriate level of confidentiality relevant to the nature of the information concerned, agreed between the Parties concerned and stipulated in writing for such information in such cases.
- g) the Parties shall not make or permit to be made by any other person subject to their control, any public statements or issue press releases or disclose Confidential Information regarding any matter related to this Agreement, unless written authorisation to do so has first been obtained from the Party first disclosing such information.
- h) each Party shall be entitled to disclose such aspects of Confidential Information as may be relevant to one or more technically qualified employees or consultants of the Party who are required in the course of their duties to receive the Confidential Information for the Permitted Purpose provided that the employee or consultant concerned has a legitimate interest therein, and then only to the extent necessary for the Permitted Purpose, and is informed by the Party of the confidential nature of the Confidential Information and the obligations of the confidentiality to which such disclosure is subject and the Party shall ensure such employees or consultants honour such obligations;

- i) each Party shall notify the other Party of the name of each person or entity to whom any Confidential Information has been disclosed as soon as practicable after such disclosure.
- j) each Party shall ensure that any person or entity to which it discloses Confidential Information shall observe and perform all the covenants the Party has accepted in this Agreement as if such person or entity has signed this Agreement. The Party disclosing the Confidential Information shall be responsible for any breach of the provisions of this Agreement by such person or entity; and
- k) each Party may by written notice to the other Party specify which of the Party's employees, officers or agents are required to sign a non-disclosure undertaking.

24.2 The duties and obligations regarding Confidential Information in this clause 24.1 shall not apply where:

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

24.3 This clause 24.3 shall survive termination for any reason of this Agreement and shall remain in force and effect from the Commencement Date of this Agreement and 5 [five] years after the termination of this Agreement. Upon termination of this Agreement, all documentation furnished to the Service provider by Transnet pursuant to this Agreement shall be returned to Transnet including, without limitation, all corporate identity equipment including dyes, blocks, labels, advertising matter, printing matter and the like.

## 25 INSURANCES

- 25.1 Without limiting the liability of the Service provider under this Agreement, the Service provider shall take out insurance in respect of all risks for which it is prudent for the Service provider to insure against, including any liability it may have because of its activities under this Agreement for theft, destruction, death or injury to any person and damage to property. The level of insurance will be kept under review by Transnet, on an annual basis, to ensure its adequacy, provided that any variation to the level of such insurance shall be entirely at the discretion of the Service provider.
- 25.2 The Service provider shall arrange insurance with reputable insurers and will produce to Transnet evidence of the existence of the policies on an annual basis within 30 [thirty] calendar days after date of policy renewals.
- 25.3 Subject to clause 25.4 below, if the Service provider fails to effect adequate insurance under this clause 25.4, it shall notify Transnet in writing as soon as it becomes aware of the reduction or inadequate cover and Transnet may arrange or purchase such insurance on behalf of the Service provider. The Service provider shall promptly reimburse Transnet for any premiums paid provided such insurance protects the Service provider's liability. Transnet assumes no responsibility for such insurance being adequate to protect all the Service provider's liability.

- 25.4 In the event that the Service provider receives written notice from its insurers advising of the termination of its insurance cover referred to in clause 25.1 above or if the insurance ceases to be available upon commercially reasonable terms, the Service provider shall immediately notify Transnet in writing of such termination and/or unavailability, whereafter either the Service provider or Transnet may terminate this Agreement on giving the other Party not less than 30 [thirty] calendar days prior written notice to that effect.

## **26 LIMITATION OF LIABILITY**

- 26.1 The Service provider's liability under this clause 26 shall be in addition to any warranty or condition of any kind, express or implied by law or otherwise, relating to the Services or ancillary Services, including the quality of the Services or ancillary Services or any materials delivered pursuant to this Agreement.
- 26.2 Neither Party excludes or limits liability to the other Party for:
- a) death or personal injury caused by its negligence, [including its employees', agents', or Subcontractors' negligence]; or
  - b) fraud or theft.
- 26.3 The Service provider shall indemnify and keep Transnet indemnified from and against liability for damage to any Transnet property [whether tangible or intangible] or any other loss, costs or damage suffered by Transnet to the extent that it results from any act of or omission by the Service provider or its Personnel in connection with this Agreement. The Service provider's liability arising out of this clause 26.3 shall be limited to direct damages.
- 26.4 Subject always to clauses 26.1 and 26.3 above, the liability of either the Service provider or Transnet under or in connection with this Agreement, whether for negligence, misrepresentation, breach of contract or otherwise, for direct loss or damage arising out of each Default or series of related Defaults shall not exceed 100% [one hundred per cent] of the Fees paid under the schedule or Work Order to which the Default(s) relates.
- 26.5 Subject to clauses 26.1 to 26.4 above, in no event shall either Party be liable to the other for indirect or consequential loss or damage or including indirect or consequential loss of profits, business, revenue, goodwill or anticipated savings of an indirect nature or loss or damage incurred by the other Party as a result of third party claims.
- 26.6 If for any reason the exclusion of liability in clause 26.5 above is void or unenforceable, either Party's total liability for all loss or damage under this Agreement shall be as provided in clause 26.3 above.
- 26.7 Nothing in this clause 27 shall be taken as limiting the liability of the Parties in respect of clauses 24 [Confidentiality] and 27 [Intellectual Property Rights].

## **27 INTELLECTUAL PROPERTY RIGHTS**

- 27.1 **Title to Confidential Information**
- a) Transnet will retain all right, title and interest in and to its Confidential Information and Background Intellectual Property and the Service provider acknowledges that it has no claim of any nature in and to the Confidential Information and Background Intellectual Property

that is proprietary to Transnet. For the avoidance of doubt all the Service provider's Background Intellectual Property shall remain vested in the Service provider.

- b) Transnet shall grant to the Service provider an irrevocable, royalty free, non-exclusive licence to use Transnet's Background Intellectual Property only for the Permitted Purpose. This licence shall not permit the Service provider to sub-license to other parties.
- c) The Service provider shall grant to Transnet an irrevocable, royalty free, non-exclusive licence to use the Service provider's Background Intellectual Property for the Permitted Purpose. This licence shall not permit Transnet to sub-license to other parties.
- d) The Service provider shall grant Transnet access to the Service provider's Background Intellectual Property on terms which shall be *bona fide* negotiated between the Parties for the purpose of commercially exploiting the Foreground Intellectual Property, to the extent that such access is required.
- e) The above shall not pertain to any software licenses procured by the Service provider from third parties and used in the supply of the Services.

## 27.2 Title to Intellectual Property

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

### **27.3 Title to Improvements**

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

### **27.4 Unauthorised Use of Confidential Information**

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

### **27.5 Unauthorised Use of Intellectual Property**

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

## **28 NON-WAIVER**

- 28.1 Failure or neglect by either Party, at any time, to enforce any of the provisions of this Agreement, shall not in any manner be construed to be a waiver of any of that Party's rights in that regard and in terms of this Agreement.
- 28.2 Such failure or neglect shall not in any manner affect the continued, unaltered validity of this Agreement, or prejudice the right of that Party to institute subsequent action.

## 29 PARTIAL INVALIDITY

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

## 30 DISPUTE RESOLUTION

- 30.1 Should any dispute of whatsoever nature arise between the Parties concerning this Agreement, the Parties shall try to resolve the dispute by negotiation within 10 [ten] Business Days of such dispute arising.
- 30.2 If the dispute has not been resolved by such negotiation, either of the Parties may refer the dispute to AFSA and notify the other Party accordingly, which proceedings shall be held in Johannesburg.
- 30.3 Such dispute shall be finally resolved in accordance with the rules of AFSA by an arbitrator or arbitrators appointed by AFSA.
- 30.4 This clause constitutes an irrevocable consent by the Parties to any proceedings in terms hereof, and neither of the Parties shall be entitled to withdraw from the provisions of this clause or claim at any such proceedings that it is not bound by this clause 30.
- 30.5 This clause 30 is severable from the rest of this Agreement and shall remain in effect even if this Agreement is terminated for any reason.
- 30.6 This clause 30 shall not preclude either Party from seeking urgent relief in a court of appropriate jurisdiction, where grounds for urgency exist.

## 31 ADDRESSES FOR NOTICES

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

### a) **Transnet**

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

.....

.....

Fax No. ....

Attention: Group Legal Department

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

.....

.....

Fax No. ....

Attention: .....

### b) **The Service provider**

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

.....

.....

Fax No. ....

Attention: .....

(ii) For commercial notices:

.....

.....

.....

Fax No. ....

Attention: .....

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

31.3 Any notice shall be deemed to have been given:

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

## 32 WHOLE AND ONLY AGREEMENT

32.1 The Parties hereby confirm that this Agreement constitutes the whole and only agreement between them regarding the subject matter of this Agreement.

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

## 33 AMENDMENT AND CHANGE CONTROL

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

33.2 In the event the Parties cannot agree upon changes, the Parties shall in good faith seek to agree any proposed changes using the dispute resolution procedures in clause 30 *[Dispute Resolution]*.

## 34 GENERAL

34.1 **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.

#### 34.2 **Change of Law**

In this Agreement, unless the context otherwise requires, references to a statutory provision include references to that statutory provision as from time to time amended, extended or re-enacted and any regulations made under it, provided that in the event that the amendment, extension or re-enactment of any statutory provision or introduction of any new statutory provision has a material impact on the obligations of either Party, the Parties will negotiate in good faith to agree such amendments to this Agreement as may be appropriate in the circumstances. If, within a reasonable period of time, the Service provider and Transnet cannot reach agreement on the nature of the changes required or on modification of Prices, delivery schedules, warranties, or other terms and conditions, either Party may seek to have the matter determined in accordance with clause 30 [*Dispute Resolution*] above.

#### 34.3 **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.

### 35 **DATABASE OF RESTRICTED SERVICE PROVIDER**

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

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

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

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

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

**Provision of condition monitoring services on port operation equipment at TPT EASTERN CAPE TERMINALS (NCT, PECT;PE MPT & EL MPT) for a period of two (2) years SERVICE LEVEL AGREEMENT**

No.	Task	PARTY		FREQUENCY	KPI	MEASUREMENT	COMMUNICATION MODE / FORMAT	SENT TO	MEASUREMENT	
		Service Provider	TPT						Weight	Monthly Rating
Service Delivery	Attendance of monthly meetings (SLA) by the Supervisor and or Project manager or designated representative	X	X	Monthly	Attendance	100% attendance	Email/Meeting	Engineering Manager		
	Provide site access for the service provider		X	Once off	Gate access	Issued access card by TNPA				
	Provide maintenance schedules to the service provider		X	Monthly	Provide maintenance schedule 30 days prior	Maintenance schedules provided				
	Release or avail equipment to the service provider		X	As and when required	Equipment availability	Condition monitoring not conducted due non released equipment.				
	Collect samples and render service as per prescribed by the maintenance schedules and intervals as per scope of work.	X		As per maintenance schedules	Conduct service as per scope of work and maintenance schedule	100% adherence to the SOW and maintenance schedule				
	Conduct the drives vibration analysis, Vibration and temperature analysis for all the equipment listed in the scope of work	X		As per maintenance schedules						
	Conduct equipment Oil Analysis on r all the equipment listed in the scope of work	X		As per maintenance schedules						
	Conduct equipment Motor circuit analysis on all the equipment listed in the scope of work.	X		As per maintenance schedules						
	Conduct the Electrical Panel and Engines Thermographic Scanning and Analysis for all the equipment listed in the scope of work	X		As per maintenance schedules						
	Provide adequate number of staff to compliment the scope of work	X		As and when required according to the SOW	Full complement of staff to cover the SOW requirements	100% adherence to the service as per scope of work				
	Provide staff that is qualified and experienced on the specified field of work according to the scope of work.	X		As and when required according to the SOW	Qualified and experienced staff to cover the SOW requirements	100% adherence to the service as per scope of work				
	Ensure compliance to quality/safety/environmental standards, policies, regulations and laws .	X		As and when required according to the SOW	Compliance	100% adherence				
	All electrical tools shall be safety checked, calibrated and certified on a regular basis.	X		As and when required according to the SOW	Safe tools	100% adherence and submission of calibration certificates and inspections				
	Contractor shall practice 'good housekeeping' and leave the site clean and tidy	X		As and when required	House keeping	100% adherence				
	Service provider to be available within 4 hours after receiving a notification from TPT for call out as described in the scope of work.	X		As and when required	Arrival time	Estimated time of arrival				
5 Reporting	Submit a written report and presentation of the analysis conducted and Conclusions drawn from the results.			As and when required according to the SOW	Report	Submitted reports	E-Mail	Engineering Manager		
	Report to be submitted as prescribed in the scope of work within 1 week or 5 working days.			As and when required according to the SOW	Report	Number of days report submitted after condition monitoring assessment is conducted.	E-Mail	Engineering Manager		
4 Invoicing and Payments	Invoice TPT and submit with supporting documentation for all activities undertaken to execute agreed services	X		Monthly	Submit accurate invoice(s) with clear item details, and supporting documentation. Provide a monthly statement to reflect all payments made and outstanding.	100% on time submission of invoices with accurate and reconciled supporting documents. Monthly statement to support invoices.	Monthly statement and hard copy of invoice(s) with supporting documentation hand delivered monthly.	Finance Department		
	Receive and check documentation, arrange electronic payment, and TPT Finance to advise SP via remittance advice of payment details.		X	Monthly	Authorisation of invoices for payment within 30 days.	Monthly statement to confirm payment of invoices.	Telephonic and e-mail to facilitate payment queries.	Service Provider's Finance Dept		
9 Continuous Improvement	Provide TPT with ideas and best practices w.r.t. the provision of equipment condition monitoring service	X		Ongoing	Submit reports with recommendations	100% submission of recommendations reports	E-Mail	Engineering Manager		
8 Accidents & Incidents	Report any accidents and incidents.	X		As and when required	Timeous notification of details of damages and/ or incidents	100% notification of damages and incidents	E-Mail	SHEQ Manager		
<b>Legends : 1= Poor      2= Requires improvement      3= Acceptable      4= Excellent</b>										
<b>Notes:</b>										
									0	

Annexure D

**GENERAL BID CONDITIONS**

## TABLE OF CONTENTS

1	DEFINITIONS .....	3
2	GENERAL .....	3
3	SUBMITTING OF BID DOCUMENTS.....	3
4	USE OF BID FORMS .....	3
5	BID FEES .....	4
6	VALIDITY PERIOD.....	4
7	SITE VISITS / BRIEFING SESSIONS .....	4
8	CLARIFICATION BEFORE THE CLOSING DATE .....	4
9	COMMUNICATION AFTER THE CLOSING DATE .....	4
10	UNAUTHORISED COMMUNICATION ABOUT BIDS.....	4
11	RETURNABLE DOCUMENTS .....	4
12	DEFAULTS BY RESPONDENTS .....	4
13	CURRENCY .....	5
14	PRICES SUBJECT TO CONFIRMATION .....	5
15	ALTERATIONS MADE BY THE RESPONDENT TO BID PRICES .....	5
16	EXCHANGE AND REMITTANCE.....	5
17	ACCEPTANCE OF BID.....	6
18	NOTICE TO UNSUCCESSFUL RESPONDENTS.....	6
19	TERMS AND CONDITIONS OF CONTRACT .....	6
20	CONTRACT DOCUMENTS .....	6
21	LAW GOVERNING CONTRACT.....	6
22	IDENTIFICATION .....	7
23	RESPONDENT'S SAMPLES .....	7
24	SECURITIES.....	7
25	PRICE AND DELIVERY BASIS FOR GOODS .....	7
26	VALUE-ADDED TAX .....	8
27	IMPORTANT NOTICE TO RESPONDENTS REGARDING PAYMENT .....	8
28	BIDS BY OR ON BEHALF OF FOREIGN RESPONDENTS .....	8
29	DATABASE OF RESTRICTED SUPPLIERS .....	9
30	CONFLICT WITH ISSUED RFX DOCUMENT .....	10

## 1 DEFINITIONS

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

- 1.1 **Bid** shall mean a Respondent's tendered response / proposal to a Transnet RFP or RFQ;
- 1.2 **Bid Document(s)** shall mean a reference to a Request for Proposal or Request for Quotation;
- 1.3 **Business Day** shall mean any day other than a Saturday, Sunday or public holiday;
- 1.4 **Goods** shall mean the goods required by Transnet as specified in its Bid Document;
- 1.5 **Parties** shall mean Transnet and the Respondents to a Bid Document;
- 1.6 **Respondent(s)** shall mean a respondent/bidder to a Bid Document;
- 1.7 **RFP** shall mean Request for Proposal;
- 1.8 **RFQ** shall mean Request for Quotation;
- 1.9 **RFX** shall mean RFP or RFQ, as the case may be;
- 1.10 **Services** shall mean the services required by Transnet as specified in its Bid Document;
- 1.11 **Supplier** shall mean the successful Respondent;
- 1.12 **Tax Invoice** shall mean the document as required by Section 20 of the Value-Added Tax Act, 89 of 1991, as may be amended from time to time;
- 1.13 **Transnet** shall mean Transnet SOC Ltd, a State Owned Company; and
- 1.14 **VAT** shall mean Value-Added Tax in terms of the Value-Added Tax Act, 89 of 1991, as may be amended from time to time.

## 2 GENERAL

All Bid Documents and subsequent contracts and orders shall be subject to the following general conditions as laid down by Transnet and are to be strictly adhered to by any Respondent to this RFX.

## 3 SUBMITTING OF BID DOCUMENTS

- 3.1 A Bid, which shall hereinafter include reference to an RFP or RFQ, shall be submitted to Transnet no later than the closing date and time specified in accordance with the directions issued in the Bid Documents. Late Bids will not be considered.
- 3.2 The Bid Documents must be completed in their entirety and Respondents are required to complete and submit their Bid submissions by uploading them into the system against each tender selected. The bidder guide can be found on the Transnet Portal [transnetetenders.azurewebsites.net](https://transnetetenders.azurewebsites.net).

## 4 USE OF BID FORMS

- 4.1 Where special forms and/or formats are issued by Transnet for the submission of Bids, Respondents are required to submit their Bids by completion of the appropriate sections on such official forms and/or formats and not in other forms and/or formats or documents bearing their own terms and conditions of contract. Non-compliance with this condition may result in the rejection of a Bid.
- 4.2 Respondents must note that the original Bid forms and/or formats must be completed for submission.
- 4.3 Only if insufficient space has been allocated to a particular response may a Respondent submit additional information under separate cover using the Company's letterhead. This must be duly cross-referenced in the RFX.

## **5 BID FEES**

A bid fee is not applicable. The Bid Documents may be downloaded directly from National Treasury's e-Tender Publication Portal at [www.etenders.gov.za](http://www.etenders.gov.za) and may also be downloaded from the Transnet website at [www.transnet.net](http://www.transnet.net) free of charge.

## **6 VALIDITY PERIOD**

- 6.1 The Respondents must hold their Bid valid for acceptance by Transnet at any time within the requested validity period after the closing date of the bid.
- 6.2 Respondents may be requested to extend their validity period for a specified additional period. In such instances, Respondents will not be allowed to change any aspect of their Bid, unless they are able to demonstrate that the proposed change/s is as a direct and unavoidable consequence of Transnet's extension of the validity period.

## **7 SITE VISITS / BRIEFING SESSIONS**

Respondents may be requested to attend a site visit or briefing session where it is necessary to view the site in order to prepare their Bids, or where Transnet deems it necessary to provide Respondents with further information to allow them to complete their Bids properly. Where such visits or sessions are indicated as compulsory in the RFX Document, Respondents are obliged to attend these meetings as failure to do so will result in their disqualification.

## **8 CLARIFICATION BEFORE THE CLOSING DATE**

Should clarification be required on any aspect of the Bid before the closing date, the Respondent must upload questions onto the Transnet e-Tender Submission Portal or direct such queries to the contact person listed in the RFX Document in the stipulated manner.

## **9 COMMUNICATION AFTER THE CLOSING DATE**

After the closing date of a Bid (i.e. during the evaluation period) the Respondent may only communicate with the contact person listed in the RFX Document.

## **10 UNAUTHORISED COMMUNICATION ABOUT BIDS**

Respondents may at any time communicate with the contact person listed in the RFX Document on any matter relating to its Bid but, in the absence of written authority from the delegated individual (BEC chairperson), no communication on a question affecting the subject of a Bid shall take place between Respondents or other potential Supplier or any member of the Bid Adjudication Committee or official of Transnet during the period between the closing date for the receipt of the Bid and the date of the notification of the successful Respondent(s). A Bid, in respect of which any such unauthorised communication has occurred, may be disqualified.

## **11 RETURNABLE DOCUMENTS**

All returnable documents listed in the RFX Documents must be submitted with Respondent's Bid. Failure to submit mandatory returnable schedules / documents will result in disqualification. Failure to submit other schedules / documents may result in disqualification.

## **12 DEFAULTS BY RESPONDENTS**

If the Respondent, after it has been notified of the acceptance of its Bid fails to:

- 12.1 enter into a formal contract when called upon to do so within such period as Transnet may specify; or
- 12.2 accept an order in terms of the Bid;
- 12.3 furnish satisfactory security when called upon to do so for the fulfilment of the contract; or
- 12.4 comply with any condition imposed by Transnet,

Transnet may, in any such case, without prejudice to any other legal remedy which it may have, proceed to accept any other Bid or, if it is necessary to do so, call for Bids afresh, and may recover from the defaulting Respondent any additional expense incurred by Transnet in calling for new offers or in accepting a less favourable offer.

### **13 CURRENCY**

All monetary amounts referred to in a Bid response must be in Rand, the currency of the Republic of South Africa [**ZAR**], save to the extent specifically permitted in the RFP.

### **14 PRICES SUBJECT TO CONFIRMATION**

Prices which are quoted subject to confirmation will not be considered.

### **15 ALTERATIONS MADE BY THE RESPONDENT TO BID PRICES**

All alterations made by the Respondent to its Bid price(s) prior to the submission of its Bid Documents must be done by deleting the incorrect figures and words where required and by inserting the correct figures and words against the items concerned. All such alterations must be initialled by the person who signs the Bid Documents. Failure to observe this requirement may result in the particular item(s) concerned being excluded in the matter of the award of the business.

### **16 EXCHANGE AND REMITTANCE**

- 16.1 The Respondent should note that where the whole or a portion of the contract or order value is to be remitted overseas, Transnet shall, if requested to do so by the Supplier, effect payment overseas directly to the foreign principal or manufacturer of such percentage of the contract or order value as may be stipulated by the Respondent in its Bid Documents.
- 16.2 It is Transnet's preference to enter into Rand-based agreements. Transnet would request, therefore, that the Respondent give favourable consideration to obtaining forward exchange cover on the foreign currency portion of the Agreement at a cost that is acceptable to Transnet to protect itself against any currency rate fluctuation risks for the duration of any resulting contract or order.
- 16.3 The Respondent who desires to avail itself of the aforementioned facility must at the time of bidding furnish the information called for in the Exchange and Remittance section of the Bid Documents and also furnish full details of the principals or manufacturer to whom payment is to be made.
- 16.4 The South African Reserve Bank's approval is required before any foreign currency payments can be made to or on behalf of Respondents.
- 16.5 Transnet will not recognise any claim for adjustment of the order and/or contract price if the increase in price arises after the date on which the Goods were to be delivered, as set out in the order and/or contract, or any subsequent agreement between the parties.
- 16.6 Transnet reserves the right to request a pro-forma invoice/tax invoice in order to ensure compliance with the contract and Value-Added Tax Act no. 89 of 1991 [VAT Act].



## **17 ACCEPTANCE OF BID**

- 17.1 Upon the acceptance of a Bid by Transnet, the parties shall be bound by these General Bid Conditions and any contractual terms and/or any schedule of "Special Conditions" or otherwise which form part of the Bid Documents.
- 17.2 Where the Respondent has been informed by Transnet of the acceptance of its Bid, an email communication that has been successfully sent to the Respondent shall be regarded as proof of delivery to the Respondent 1 day after the date of submission.

## **18 NOTICE TO UNSUCCESSFUL RESPONDENTS**

- 18.1 Unsuccessful Respondents shall be advised in writing that their Bids have not been accepted as soon as possible after the closing date of the Bid. On award of business to the successful Respondent all unsuccessful Respondents must be informed of the name of the successful Respondent and of the reason as to why their Bids had been unsuccessful.

## **19 TERMS AND CONDITIONS OF CONTRACT**

- 19.1 The Supplier shall adhere to the Terms and Conditions of Contract issued with the Bid Documents, together with any schedule of "Special Conditions" or otherwise which form part of the Bid Documents.
- 19.2 Should the Respondent find any conditions unacceptable, it should indicate which conditions are unacceptable and offer amendments/ alternatives by written submission on a company letterhead. Any such submission shall be subject to review by Transnet's Legal Counsel who shall determine whether the proposed amendments /alternative(s) are acceptable or otherwise, as the case may be. Respondents will be afforded an opportunity to withdraw an unacceptable deviation, failing which the respondent will be disqualified.

## **20 CONTRACT DOCUMENTS**

- 20.1 The contract documents will comprise these General Bid Conditions, the Terms and Conditions of Contract and any schedule of "Special Conditions" which form part of the Bid Documents.
- 20.2 The abovementioned documents together with the Respondent's Bid response will constitute the contract between the parties upon receipt by the Respondent of Transnet's letter of acceptance, subject to all additional amendments and/or special conditions thereto as agreed to by the parties.
- 20.3 Should Transnet inform the Respondent that a formal contract will be signed, the abovementioned documents together with the Respondent's Bid response [and, if any, its covering letter and any subsequent exchange of correspondence] as well as Transnet's Letter of Acceptance, shall constitute a binding contract until the final contract is signed.

## **21 LAW GOVERNING CONTRACT**

The law of the Republic of South Africa shall govern the contract created by the acceptance of a Bid. The *domicilium citandi et executandi* shall be a place in the Republic of South Africa to be specified by the Respondent in its Bid at which all legal documents may be served on the Respondent who shall agree to submit to the jurisdiction of the courts of the Republic of South Africa. A foreign Respondent shall, therefore, state in its Bid the name of its authorised representative in the Republic of South Africa who is empowered to sign any contract which may be entered into in the event of its Bid being accepted and to act on its behalf in all matters relating to the contract.

## **22 IDENTIFICATION**

If the Respondent is a company, the full names of the directors shall be stated in the Bid. If the Respondent is a close corporation, the full names of the members shall be stated in the Bid. If the Respondent is a partnership or an individual trading under a trade name, the full names of the partners or of such individual, as the case may be, shall be furnished.

## **23 RESPONDENT'S SAMPLES**

- 23.1 If samples are required from Respondents, such samples shall be suitably marked with the Respondent's name and address, the Bid number and the Bid item number and must be despatched in time to reach the addressee as stipulated in the Bid Documents on or before the closing date of the Bid. Failure to submit samples by the due date may result in the rejection of a Bid.
- 23.2 Transnet reserves the right to retain samples furnished by Respondents in compliance with Bid conditions.
- 23.3 Payment will not be made for a successful Respondent's samples that may be retained by Transnet for the purpose of checking the quality and workmanship of Goods delivered in execution of a contract.
- 23.4 If Transnet does not wish to retain unsuccessful Respondents' samples and the Respondents require their return, such samples may be collected by the Respondents at their own risk and cost.

## **24 SECURITIES**

- 24.1 The successful Respondent, when called upon to do so, shall provide security to the satisfaction of Transnet for the due fulfilment of a contract or order. Such security shall be in the form of a Deed of Suretyship [Deed of Suretyship] furnished by an approved bank, building society, insurance or guarantee corporation carrying on business in South Africa.
- 24.2 The security may be applied in whole or part at the discretion of Transnet to make good any loss or damage which Transnet may incur in consequence of a breach of the contract or any part thereof.
- 24.3 Such security, if required, shall be an amount which will be stipulated in the Bid Documents.
- 24.4 For the purpose of clause 24.124.1 above, Transnet will supply a Deed of Suretyship form to the successful Respondent for completion and no guarantee in any other form will be accepted. A copy of such form will be supplied to Respondents on request. For this purpose a Deed of Suretyship form will be provided which shall be completed and returned to Transnet or a designated official by the successful Respondent within 30 [thirty] calendar days from the date of the letter of acceptance. No payment will be made until the form, duly completed, is delivered to Transnet. Failure to return the Deed of Suretyship within the prescribed time shall, save where prior extension has been granted, entitle Transnet without notice to the Supplier to cancel the contract with immediate effect.
- 24.5 Additional costs incurred by Transnet necessitated by reason of default on the part of the Supplier in relation to the conditions of this clause 244 will be for the account of the Supplier.

## **25 PRICE AND DELIVERY BASIS FOR GOODS**

- 25.1 Unless otherwise specified in the Bid Documents, the prices quoted for Goods must be on a Delivered Duty Paid [latest ICC Incoterms] price basis in accordance with the terms and at the delivery point or points specified in Transnet's Bid Documents. Bids for supply on any other basis of delivery are liable to disqualification. The lead time for delivery stated by the Respondent must be inclusive of all non-

working days or holidays, and of periods occupied in stocktaking or in effecting repairs to or overhauling plant, which would ordinarily occur within the delivery period given by the Respondent.

## **26 VALUE-ADDED TAX**

- 26.1 In respect of local supplies, i.e. Goods to be manufactured, produced or assembled in the Republic of South Africa, or imported supplies held or already in transit to South Africa, the prices quoted by the Respondent are to be inclusive of VAT which must be shown separately at the standard rate on the Tax Invoice.
- 26.2 In respect of foreign Services rendered:
- a) the invoicing by a South African supplier on behalf of its foreign principal rendering such Service represents a Service rendered by the principal; and
  - b) the Supplier's Tax Invoice(s) for the local portion only [i.e. the "commission" for the Services rendered locally] must show the VAT separately.

## **27 IMPORTANT NOTICE TO RESPONDENTS REGARDING PAYMENT**

### **27.1 Method of Payment**

- a) The attention of the Respondent is directed to the Terms and Conditions of Contract which set out the conditions of payment on which Bid price(s) shall be based.
- b) However, in addition to the foregoing the Respondent is invited to submit offers based on alternative methods of payment and/or financing proposals.
- c) The Respondent is required to give full particulars of the terms that will be applicable to its alternative offer(s) and the financial merits thereof will be evaluated and taken into consideration when the Bid is adjudicated.
- d) The Respondent must, therefore, in the first instance, tender strictly in accordance with clause 27.1 (a) above. Failure to comply with clause 27.1 (a) above may preclude a Bid from further consideration.

NOTE: The successful Respondent [the **Service provider**] shall, where applicable, be required to furnish a guarantee covering any advance payments.

### **27.2 Conditional Discount**

Respondents offering prices which are subject to a conditional discount applicable for payment within a specific period are to note that the conditional period will be calculated as from the date of receipt by Transnet of the Service Provider's month-end statement reflecting the relevant Tax Invoice(s) for payment purposes, provided the conditions of the order or contract have been fulfilled and the Tax Invoice is correct in all respects as referred to in the contract or order. Incomplete and/or incorrect Tax Invoices shall be returned and the conditional period will be recalculated from the date of receipt of the correct documentation.

## **28 BIDS BY OR ON BEHALF OF FOREIGN RESPONDENTS**

- 28.1 Bids submitted by foreign principals may be forwarded directly by the principals or by its South African representative or agent to the designated official of Transnet according to whichever officer is specified in the Bid Documents.

- 28.2 In the case of a representative or agent, written proof must be submitted to the effect that such representative or agent has been duly authorised to act in that capacity by the principal. Failure to submit such authorisation by the representative or agent shall disqualify the Bid.
- 28.3 When legally authorised to prepare and submit Bids on behalf of their principals not domiciled in the Republic of South Africa, representatives or agents must compile the Bids in the names of such principals and sign them on behalf of the latter.
- 28.4 South African representatives or agents of a successful foreign Respondent must when so required enter into a formal contract in the name of their principals and must sign such contract on behalf of the latter. In every such case a legal Power of Attorney from their principals must be furnished to Transnet by the South African representative or agents authorising them to enter into and sign such contract.
- a) Such Power of Attorney must comply with Rule 63 (Authentication of documents executed outside the Republic for use within the Republic) of the Uniform Rules of Court: Rules regulating the conduct of the proceedings of the several provincial and local divisions of the Supreme Court of South Africa.
  - b) The Power of Attorney must be signed by the principal under the same title as used in the Bid Documents.
  - c) If a Power of Attorney held by the South African representative or agent includes matters of a general nature besides provision for the entering into and signing of a contract with Transnet, a certified copy thereof should be furnished.
  - d) The Power of Attorney must authorise the South African representative or agent to choose the *domicilium citandi et executandi*.
- 28.5 If payment is to be made in South Africa, the foreign service provider [i.e. the principal, or its South African agent or representative], must notify Transnet in writing whether, for payment by electronic funds transfer [EFT]:
- a) funds are to be transferred to the credit of the foreign service providers account at a bank in South Africa, in which case the name and branch of such bank shall be furnished; or
  - b) funds are to be transferred to the credit of its South African agent or representative, in which case the name and branch of such bank shall be furnished.
- 28.6 The attention of the Respondent is directed to clause 24 above [Securities] regarding the provision of security for the fulfilment of contracts and orders and the manner and form in which such security is to be furnished.

## **29 DATABASE OF RESTRICTED SUPPLIERS**

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

**30 CONFLICT WITH ISSUED RFX DOCUMENT**

- 30.1 Should a conflict arise between these General Bid Conditions and the issued RFX document, the conditions stated in the RFX document shall prevail.

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## Annexure E

**Important Note: All potential bidders must read this document and certify in the RFX Declaration Form that they have acquainted themselves with and agree with the content. The contract with the successful bidder will automatically incorporate this Integrity Pact as part of the final concluded contract.**

### **INTEGRITY PACT**

Between

**TRANSNET SOC LTD**

Registration Number: 1990/000900/30

("Transnet")

And The Bidder / Supplier/ Service Provider / Contractor (hereinafter referred to as the "Bidder / Supplier")

## PREAMBLE

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

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

The general purpose of this Integrity Pact is to agree on avoiding all forms of dishonesty, fraud, and corruption by following a system that is fair, transparent and free from any undue influence prior to, during and subsequent to the currency of any procurement and / or reverse logistics event and any further contract to be entered into between the Parties, relating to such event.

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

## 1 OBJECTIVES

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

## 2 COMMITMENTS OF TRANSNET

Transnet commits to take all measures necessary to prevent dishonesty, fraud, and corruption and to observe the following principles:

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

## 3 OBLIGATIONS OF THE BIDDER / SUPPLIER

- 3.1 Transnet has a '**Zero Gifts**' Policy. No employee is allowed to accept gifts, favours, or benefits.
  - a) Transnet officials and employees **shall not** solicit, give or accept, or from agreeing to solicit, give, accept or receive directly or indirectly, any gift, gratuity, favour, entertainment, loan, or anything of monetary

value, from any person or juridical entities in the course of official duties or in connection with any operation being managed by, or any transaction which may be affected by the functions of their office.

- b) Transnet officials and employees **shall not** solicit or accept gifts of any kind, from vendors, suppliers, customers, potential employees, potential vendors, and suppliers, or any other individual or organisation irrespective of the value.
  - c) Under **no circumstances** should gifts, business courtesies or hospitality packages be accepted from or given to prospective suppliers participating in a tender process at the respective employee's Operating Division, regardless of retail value.
  - d) Gratuities, bribes, or kickbacks of any kind must never be solicited, accepted, or offered, either directly or indirectly. This includes money, loans, equity, special privileges, personal favours, benefit, or services. Such favours will be considered to constitute corruption.
- 3.2 The Bidder commits itself to take all measures necessary to prevent corrupt practices, unfair means, and illegal activities during any stage of its bid or during any ensuing contract stage to secure the contract or in furtherance to secure it and the Bidder commits to the following:
- a) The Bidder will not, directly or through any other person or firm, offer, promise, or give to Transnet or to any of Transnet's employees involved in the bidding process or to any third person any material or other benefit or payment, to obtain in exchange an advantage during the bidding process; and
  - b) The Bidder will not offer, directly or through intermediaries, any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any employee of Transnet, connected directly or indirectly with the bidding process, or to any person, organisation or third party related to the contract in exchange for any advantage in the bidding, evaluation, contracting and implementation of the contract.
- 3.3 The Bidder will not collude with other parties interested in the contract to preclude a competitive bid price, impair the transparency, fairness, and progress of the bidding process, bid evaluation, contracting and implementation of the contract. The Bidder further commits itself to delivering against all agreed upon conditions as stipulated within the contract.
- 3.4 The Bidder will not enter into any illegal or dishonest agreement or understanding, whether formal or informal with other Bidders. This applies to certifications, submissions or non-submission of documents or actions that are restrictive or to introduce cartels into the bidding process.
- 3.5 The Bidder will not commit any criminal offence under the relevant anti-corruption laws of South Africa or any other country. Furthermore, the Bidder will not use for illegitimate purposes or for restrictive purposes or personal gain, or pass on to others, any information provided by Transnet as part of the business relationship, regarding plans, technical proposals, and business details, including information contained or transmitted electronically.
- 3.6 A Bidder of foreign origin shall disclose the name and address of its agents or representatives in South Africa, if any, involved directly or indirectly in the registration or bidding process. Similarly, the Bidder of South African nationality shall furnish the name and address of the foreign principals, if any, involved directly or indirectly in the registration or bidding process.
- 3.7 The Bidder will not misrepresent facts or furnish false or forged documents or information to influence the bidding process to the advantage of the Bidder or detriment of Transnet or other competitors.
- 3.8 Transnet may require the Bidder to furnish Transnet with a copy of its code of conduct. Such code of conduct must address the compliance programme for the implementation of the code of conduct and reject the use of bribes and other dishonest and unethical conduct.
- 3.9 The Bidder will not instigate third persons to commit offences outlined above or be an accessory to such offences.



3.10 The Bidder confirms that they will uphold the ten principles of the United Nations Global Compact (UNGC) in the fields of Human Rights, Labour, Anti-Corruption, and the Environment when undertaking business with Transnet as follows:

- a) Human Rights
  - Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and
  - Principle 2: make sure that they are not complicit in human rights abuses.
- b) Labour
  - Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining.
  - Principle 4: the elimination of all forms of forced and compulsory labour.
  - Principle 5: the effective abolition of child labour; and
  - Principle 6: the elimination of discrimination in respect of employment and occupation.
- c) Environment
  - Principle 7: Businesses should support a precautionary approach to environmental challenges.
  - Principle 8: undertake initiatives to promote greater environmental responsibility; and
  - Principle 9: encourage the development and diffusion of environmentally friendly technologies.
- d) Anti-Corruption
  - Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery.

#### 4 INDEPENDENT BIDDING

4.1 For the purposes of this undertaking in relation to any submitted Bid, the Bidder declares to fully understand that the word "competitor" shall include any individual or organisation, other than the Bidder, whether affiliated with the Bidder, who:

- a) has been requested to submit a Bid in response to this Bid invitation.
- b) could potentially submit a Bid in response to this Bid invitation, based on their qualifications, abilities, or experience; and
- c) provides the same Goods and Services as the Bidder and/or is in the same line of business as the Bidder.

4.2 The Bidder has arrived at his submitted Bid independently from, and without consultation, communication, agreement, or arrangement with any competitor. However, communication between partners in a joint venture or consortium will not be construed as collusive bidding.

4.3 Without limiting the generality of paragraph 4.2 above, there has been no consultation, communication, agreement, or arrangement with any competitor regarding:

- a) prices.
- b) geographical area where Services will be rendered [market allocation].
- c) methods, factors or formulas used to calculate prices.
- d) the intention or decision to submit or not to submit, a Bid.
- e) the submission of a Bid which does not meet the specifications and conditions of the RFP; or
- f) bidding with the intention of not winning the Bid.

4.4 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the Services to which his/her Bid relates.

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

## 5 DISQUALIFICATION FROM BIDDING PROCESS

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

## 6 DATABASE OF RESTRICTED SUPPLIERS

- 6.1 The process of restriction is used to exclude a company/person from conducting future business with Transnet and other organs of state for a specified period. No Bid shall be awarded to a Bidder whose name (or any of its members, directors, partners or trustees) appear on the Register of Tender Defaulters kept by National Treasury, or who have been placed on National Treasury's List of Restricted Suppliers. Transnet reserves the right to withdraw an award, or cancel a contract concluded with a Bidder should it be established, at any time, that a bidder has been restricted with National Treasury by another government institution.
- 6.2 All the stipulations on Transnet's restriction process as laid down in Transnet's Supply Chain Policy and Procurement Procedures Manual are included herein by way of reference. Below follows a condensed summary of this restriction procedure.
- 6.3 On completion of the restriction procedure, Transnet will submit the restricted entity's details (including the identity number of the individuals and registration number of the entity) to National Treasury for placement on National Treasury's Database of Restricted Suppliers for the specified period of exclusion. National Treasury will make the final decision on whether to restrict an entity from doing business with any organ of state for a period not exceeding 10 years and place the entity concerned on the Database of Restricted Suppliers published on its official website.
- 6.4 The decision to restrict is based on one of the grounds for restriction. The standard of proof to commence the restriction process is whether a "*prima facie*" (i.e., on the face of it) case has been established.

- 6.5 Depending on the seriousness of the misconduct and the strategic importance of the Services, in addition to restricting a company/person from future business, Transnet may decide to terminate some or all existing contracts with the company/person as well.
- 6.6 A supplier or contractor to Transnet may not subcontract any portion of the contract to a restricted company.
- 6.7 Grounds for restriction include: If any person/Enterprise which has submitted a Bid, concluded a contract, or, in the capacity of agent or subcontractor, has been associated with such Bid or contract:
- a) Has, in bad faith, withdrawn such Bid after the advertised closing date and time for the receipt of Bids.
  - b) has, after being notified of the acceptance of his Bid, failed, or refused to sign a contract when called upon to do so in terms of any condition forming part of the bid documents.
  - c) has carried out any contract resulting from such bid in an unsatisfactory manner or has breached any condition of the contract.
  - d) has offered, promised, or given a bribe in relation to the obtaining or execution of the contract.
  - e) has acted in a fraudulent or improper manner or in bad faith towards Transnet or any Government Department or towards any public body, Enterprise, or person.
  - f) has made any incorrect statement in a certificate or other communication regarding the Local Content of his Goods or his B-BBEE status and is unable to prove to the satisfaction of Transnet that:
    - (i) he made the statement in good faith honestly believing it to be correct; and
    - (ii) before making such statement, he took all reasonable steps to satisfy himself of its correctness.
  - g) has submitted false information regarding any other matter required in terms of the Preferential Procurement Regulations, 2017 issued in terms of the Preferential Procurement Policy Framework Act which will affect the evaluation of a Bid or where a Bidder has failed to declare any subcontracting arrangements.
  - h) caused Transnet damage, or to incur costs to meet the contractor's requirements and which could not be recovered from the contractor.
  - i) has litigated against Transnet in bad faith.

## **7 PREVIOUS TRANSGRESSIONS**

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

## **8 SANCTIONS FOR VIOLATIONS**

- 8.1 Transnet shall also take all or any one of the following actions, wherever required to:
- a) Immediately exclude the Bidder from the bidding process or call off the pre-contract negotiations without giving any compensation to the Bidder. However, the proceedings with the other Bidders may continue.
  - b) Immediately cancel the contract, if already awarded or signed, without giving any compensation to the Bidder.

- c) Recover all sums already paid by Transnet.
- d) Encash the advance bank guarantee and performance bond or warranty bond, if furnished by the Bidder, to recover the payments, already made by Transnet, along with interest.
- e) Cancel all or any other contracts with the Bidder.
- f) Exclude the Bidder from entering any bid with Transnet and other organs of state in future for a specified period; and
- g) If the Supplier subcontracted a portion of the bid to another person without declaring it to Transnet, Transnet must penalise the Supplier up to 10% of the value of the contract.

## 9 CONFLICTS OF INTEREST

- 9.1 A conflict of interest includes, inter alia, a situation in which:
- a) A Transnet employee has a personal financial interest in a bidding entity; and
  - b) A Transnet employee has private interests or personal considerations or has an affiliation or a relationship which affects, or may affect, or may be perceived to affect his / her judgment in action in the best interest of Transnet or could affect the employee's motivations for acting in a particular manner, or which could result in, or be perceived as favouritism or nepotism.
- 9.2 A Transnet employee uses his / her position, or privileges or information obtained while acting in the capacity as an employee for:
- a) Private gain or advancement; or
  - b) The expectation of private gain, or advancement, or any other advantage accruing to the employee must be declared in a prescribed form.
- Thus, conflicts of interest of any bid committee member or any person involved in the sourcing process must be declared in a prescribed form.
- 9.3 If a Bidder has or becomes aware of a conflict of interest i.e., a family, business and / or social relationship between its owner(s) / member(s) / director(s) / partner(s) / shareholder(s) and a Transnet employee / member of Transnet's Board of Directors in respect of a bid which will be considered for the bid process, the Bidder:
- a) must disclose the interest and its general nature, in the Request for Proposal ("RFX") declaration form; or
  - b) must notify Transnet immediately in writing once the circumstances have arisen.
- 9.4 The Bidder shall not lend to or borrow any money from or enter any monetary dealings or transactions, directly or indirectly, with any committee member or any person involved in the sourcing process, where this is done, Transnet shall be entitled forthwith to rescind the contract and all other contracts with the Bidder.

## 10 DISPUTE RESOLUTION

- 10.1 Transnet recognises that trust and good faith are pivotal to its relationship with its Bidders. When a dispute arises between Transnet and its Bidder, the parties should use their best endeavours to resolve the dispute in an amicable manner, whenever possible. Litigation in bad faith negates the principles of trust and good faith on which commercial relationships are based. Accordingly, following a restriction process as mentioned in paragraph 6 above, Transnet will not do business with a company that litigates against it in bad faith or is involved in any action that reflects bad faith on its part. Litigation in bad faith includes, but is not limited to the following instances:
- a) **Vexatious proceedings:** these are frivolous proceedings which have been instituted without proper grounds.

- b) **Perjury:** where a supplier makes a false statement either in giving evidence or on an affidavit.
- c) **Scurrilous allegations:** where a supplier makes allegations regarding a senior Transnet employee which are without proper foundation, scandalous, abusive, or defamatory; and
- d) **Abuse of court process:** when a supplier abuses the court process to gain a competitive advantage during a bid process.

## 11 GENERAL

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

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

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Annexure F

**NON-DISCLOSURE AGREEMENT**

**THIS AGREEMENT is made between.**

**Transnet SOC Ltd [Transnet]** [Registration No. 1990/000900/30]

whose registered office is at 49<sup>th</sup> Floor, Carlton Centre, 150 Commissioner Street, Johannesburg 2001,

**and**

**the Company as indicated in the RFP bid response hereto.**

**WHEREAS**

Transnet and the Company wish to exchange Information [as defined below] and it is envisaged that each party may from time to time receive Information relating to the other in respect thereof. In consideration of each party making available to the other such Information, the parties jointly agree that any dealings between them shall be subject to the terms and conditions of this Agreement which themselves will be subject to the parameters of the Bid Document.

**IT IS HEREBY AGREED**

**1. INTERPRETATION**

In this Agreement:

- 1.1 **Agents** mean directors, officers, employees, agents, professional advisers, contractors or sub-contractors, or any Group member.
- 1.2 **Bid or Bid Document** means Transnet's Request for Information [**RFI**] Request for Proposal [**RFP**] or Request for Quotation [**RFQ**], as the case may be.
- 1.3 **Confidential Information** means any information or other data relating to one party [the **Disclosing Party**] and/or the business carried on or proposed or intended to be carried on by that party and which is made available for the purposes of the Bid to the other party [the **Receiving Party**] or its Agents by the Disclosing Party or its Agents or recorded in agreed minutes following oral disclosure and any other information otherwise made available by the Disclosing Party or its Agents to the Receiving Party or its Agents, whether before, on or after the date of this Agreement, and whether in writing or otherwise, including any information, analysis or specifications derived from, containing or reflecting such information but excluding information which:
  - 1.3.1 is publicly available at the time of its disclosure or becomes publicly available [other than as a result of disclosure by the Receiving Party or any of its Agent's contrary to the terms of this Agreement]; or
  - 1.3.2 was lawfully in the possession of the Receiving Party or its Agents [as can be demonstrated by its written records or other reasonable evidence] free of any restriction as to its use or disclosure prior to its being so disclosed; or

- 1.3.3 following such disclosure, becomes available to the Receiving Party or its Agents [as can be demonstrated by its written records or other reasonable evidence] from a source other than the Disclosing Party or its Agents, which source is not bound by any duty of confidentiality owed, directly or indirectly, to the Disclosing Party in relation to such information.
- 1.4 **Group** means any subsidiary, any holding company, and any subsidiary of any holding company of either party; or
- 1.5 **Information** means all information in whatever form including, without limitation, any information relating to systems, operations, plans, intentions, market opportunities, know-how, trade secrets and business affairs whether in writing, conveyed orally or by machine-readable medium.

## 2. CONFIDENTIAL INFORMATION

- 2.1 All Confidential Information given by one party to this Agreement [the **Disclosing Party**] to the other party [the **Receiving Party**] will be treated by the Receiving Party as secret and confidential and will not, without the Disclosing Party's written consent, directly or indirectly communicate or disclose [whether in writing or orally or in any other manner] Confidential Information to any other person other than in accordance with the terms of this Agreement.
- 2.2 The Receiving Party will only use the Confidential Information for the sole purpose of technical and commercial discussions between the parties in relation to the Bid or for the subsequent performance of any contract between the parties in relation to the Bid.
- 2.3 Notwithstanding clause 2.1 above, the Receiving Party may disclose Confidential Information:
- 2.3.1 to those of its Agents who strictly need to know the Confidential Information for the sole purpose set out in clause 2.2 above, provided that the Receiving Party shall ensure that such Agents are made aware prior to the disclosure of any part of the Confidential Information that the same is confidential and that they owe a duty of confidence to the Disclosing Party. The Receiving Party shall always remain liable for any actions of such Agents that would constitute a breach of this Agreement; or
- 2.3.2 to the extent required by law or the rules of any applicable regulatory authority, subject to clause 2.4 below.
- 2.4 In the event that the Receiving Party is required to disclose any Confidential Information in accordance with clause 2.3.2 above, it shall promptly notify the Disclosing Party and cooperate with the Disclosing Party regarding the form, nature, content and purpose of such disclosure or any action which the Disclosing Party may reasonably take to challenge the validity of such requirement.
- 2.5 In the event that any Confidential Information shall be copied, disclosed or used otherwise than as permitted under this Agreement then, upon becoming aware of the same, without prejudice to any rights or remedies of the Disclosing Party, the Receiving Party shall as soon as practicable notify the Disclosing Party of such event and if requested take such steps [including the institution of legal proceedings] as shall be necessary to remedy [if capable of remedy] the default and/or to prevent further unauthorised copying, disclosure or use.
- 2.6 All Confidential Information shall remain the property of the Disclosing Party and its disclosure shall not confer on the Receiving Party any rights, including intellectual property rights over the Confidential Information whatsoever, beyond those contained in this Agreement.



### **3. RECORDS AND RETURN OF INFORMATION**

- 3.1 The Receiving Party agrees to ensure proper and secure storage of all Information and any copies thereof.
- 3.2 The Receiving Party shall keep a written record, to be supplied to the Disclosing Party upon request, of the Confidential Information provided and any copies made thereof and so far as is reasonably practicable, of the location of such Confidential Information and any copies thereof.
- 3.3 The Company shall, within 7 [seven] days of receipt of a written demand from Transnet:
  - 3.3.1 return all written Confidential Information [including all copies]; and
  - 3.3.2 expunge or destroy any Confidential Information from any computer, word processor or other device whatsoever into which it was copied, read, or programmed by the Company or on its behalf.
- 3.4 The Company shall on request supply a certificate signed by a director as to its full compliance with the requirements of clause 3.3.2 above.

### **4. ANNOUNCEMENTS**

- 4.1 Neither party will make or permit to be made any announcement or disclosure of its prospective interest in the Bid without the prior written consent of the other party.
- 4.2 Neither party shall make use of the other party's name, or any information acquired through its dealings with the other party for publicity or marketing purposes without the prior written consent of the other party.

### **5. DURATION**

The obligations of each party and its Agents under this Agreement shall survive the termination of any discussions or negotiations between the parties regarding the Bid and continue thereafter for a period of 5 [five] years.

### **6. PRINCIPAL**

Each party confirms that it is acting as principal and not as nominee, agent, or broker for any other person and that it will be responsible for any costs incurred by it or its advisers in considering or pursuing the Bid and in complying with the terms of this Agreement.

### **7. ADEQUACY OF DAMAGES**

Nothing contained in this Agreement shall be construed as prohibiting the Disclosing Party from pursuing any other remedies available to it, either at law or in equity, for any such threatened or actual breach of this Agreement, including specific performance, recovery of damages or otherwise.

### **8. PRIVACY AND DATA PROTECTION**

- 8.1 The Receiving Party undertakes to comply with South Africa's general privacy protection in terms Section 14 of the Bill of Rights in connection with this Bid and shall procure that its personnel shall observe the provisions of such Act [as applicable] or any amendments and re-enactments thereof and any regulations made pursuant thereto.
- 8.2 The Receiving Party warrants that it and its Agents have the appropriate technical and organisational measures in place against unauthorised or unlawful processing of data relating to the Bid and against accidental loss or destruction of, or damage to such data held or processed by them.

**9. GENERAL**

- 9.1 Neither party may assign the benefit of this Agreement, or any interest hereunder, except with the prior written consent of the other, save that Transnet may assign this Agreement at any time to any member of the Transnet Group.
- 9.2 No failure or delay in exercising any right, power or privilege under this Agreement will operate as a waiver of it, nor will any single or partial exercise of it preclude any further exercise or the exercise of any right, power, or privilege under this Agreement or otherwise.
- 9.3 The provisions of this Agreement shall be severable if any of its provisions are held by a court of competent jurisdiction or other applicable authority to be invalid, void or otherwise unenforceable, and the remaining provisions shall fully remain enforceable permitted by law.
- 9.4 This Agreement may only be modified by a written agreement duly signed by persons authorised on behalf of each party.
- 9.5 Nothing in this Agreement shall constitute the creation of a partnership, joint venture, or agency between the parties.
- 9.6 This Agreement will be governed by and construed in accordance with South African law, and the parties irrevocably submit to the exclusive jurisdiction of the South African courts.

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