TRANSNET NATIONAL PORTS AUTHORITY
an Operating Division of **TRANSNET SOC LTD**
[hereinafter referred to as **Transnet]**
[Registration No. 1990/000900/30]

REQUEST FOR PROPOSAL NO: PEH/12/2024//03

REQUEST FOR PROPOSAL FOR THE LEASING OF PREMISES DESCRIBED AS PEH/12/2024//03 - LAND AND BUILDING 02YP305 LOCATED ON A PORTION OF ERF 1051 IN THE PORT OF PORT ELIZABETH FOR A PERIOD OF UP TO FIVE (5) YEARS.

ISSUE DATE:	**10 December 2024**
NON-COMPULSORY BRIEFING SESSION DATE:	**15 January 2025**
NON-COMPULSORY BRIEFING SESSION TIME:	**12h00**
CLOSURE OF CLARITY SEEKING QUESTIONS:	**07 February 2025**
CLOSING DATE:	**14 February 2025**
CLOSING TIME:	**12h00**
BID VALIDITY PERIOD:	**120 Business Days from Closing Date**

SCHEDULE OF BID DOCUMENTS

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REQUEST FOR PROPOSAL FOR THE LEASING OF PREMISES DESCRIBED AS PEH/12/2024//03 - LAND AND BUILDING 02YP305 LOCATED ON A PORTION OF ERF 1051 IN THE PORT OF PORT ELIZABETH FOR A PERIOD OF UP TO FIVE (5) YEARS.

SECTION 1: STANDARD BIDDING DOCUMENT (SBD)1 FORM

PART A
INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF ENTERING INTO A LEASE WITH TRANSNET NATIONAL PORTS AUTHORITY, A DIVISION TRANSNET SOC LTD ISSUED IN TERMS OF SECTION 11 OF THE NATIONAL PORTS ACT NO.12 OF 2005							
BID NUMBER:	PEH/12/2024//03	ISSUE DATE:	10 December 2024	CLOSING DATE:	14 February 2025	CLOSING TIME:	12h00
DESCRIPTION	**REQUEST FOR PROPOSAL FOR THE LEASING OF PREMISES DESCRIBED AS PEH/12/2024//03 - LAND AND BUILDING 02YP305 LOCATED ON A PORTION OF ERF 1051 IN THE PORT OF PORT ELIZABETH FOR A PERIOD OF UP TO FIVE (5) YEARS.**						
BID RESPONSE DOCUMENTS SUBMISSION							
BIDDERS ARE TO UPLOAD THEIR BID RESPONSE PROPOSALS ONTO THE TRANSNET SYSTEM AGAINST EACH TENDER SELECTED (*please refer to section 2, paragraph 3 for a detailed process on how to upload submissions*): https://transnetetenders.azurewebsites.net							
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO E-MAIL ADDRESS: **POPELEASEAPPLICATIONS@TRANSNET.NET**							
BIDDER INFORMATION							
NAME OF BIDDER							
POSTAL ADDRESS							
STREET ADDRESS							
TELEPHONE NUMBER	CODE			NUMBER			
CELLPHONE NUMBER							
FACSIMILE NUMBER	CODE			NUMBER			
E-MAIL ADDRESS							
VAT REGISTRATION NUMBER							
BIDDER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		**OR**	CENTRAL SUPPLIER DATABASE	UNIQUE REGISTRATION REFERENCE NUMBER: MAAA		
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE	[TICK APPLICABLE BOX] ☐ Yes ☐ No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT	[TICK APPLICABLE BOX] ☐ Yes ☐ No			
[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES & QSEs) MUST BE SUBMITTED FOR PURPOSES OF COMPLIANCE WITH THE B-BBEE ACT]							

1 ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	☐Yes ☐No [IF YES ENCLOSE PROOF]	**2** ARE YOU A FOREIGN BASED BIDDER FOR **THE GOODS /SERVICES /WORKS OFFERED?**	☐Yes ☐No [IF YES, ANSWER QUESTIONAIRE BELOW]

QUESTIONNAIRE TO BIDDING FOREIGN BIDDERS

IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?
☐ YES ☐ NO

DOES THE ENTITY HAVE A BRANCH IN THE RSA?
☐ YES ☐ NO

DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?
☐ YES ☐ NO

DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?
☐ YES ☐ NO

IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?
☐ YES ☐ NO

IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 1.3 BELOW.

PART B

TERMS AND CONDITIONS FOR BIDDING

1. TAX COMPLIANCE REQUIREMENTS

1.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.

1.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VERIFY THE TAXPAYER'S PROFILE AND TAX STATUS.

1.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) PIN MAY BE MADE VIA E-FILING THROUGH THE SARS WEBSITE WWW.SARS.GOV.ZA.

1.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.

1.5 IN BIDS WHERE UNINCORPORATED CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED; EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.

1.6 WHERE NO TCS IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.

NB: FAILURE TO PROVIDE / OR COMPLY WITH ANY OF THE ABOVE PARTICULARS MAY RENDER THE BID INVALID.

SIGNATURE OF BIDDER: .....
CAPACITY UNDER WHICH THIS BID IS SIGNED: .....

(Proof of authority must be submitted e.g., company resolution)

DATE: .....

SECTION 2: NOTICE TO BIDDERS

1 INVITATION TO BID

Responses to this RFP [hereinafter referred to as a **Bid** or a **Proposal**] are requested from persons, companies, close corporations, or enterprises [hereinafter referred to as the **Bidder**].

DESCRIPTION	**REQUEST FOR PROPOSAL FOR THE LEASING OF LAND AND BUILDING 02YP305 LOCATED ON A PORTION OF ERF 1051 IN THE PORT OF PORT ELIZABETH FOR A PERIOD OF UP TO FIVE (5) YEARS.**
TENDER ADVERT	All Transnet tenders are advertised on the National Treasury's e-Tender Publication Portal and the Transnet website.
RFP DOWNLOADING	This RFP may be downloaded directly from National Treasury's e-Tender Publication Portal at www.etenders.gov.za free of charge. To download RFP and Annexures: • Click on "Tender Opportunities"; • Select "Advertised Tenders"; and • In the "Department" box, select Transnet SOC Ltd. Once the tender has been in the list, click on the 'Tender documents" tab and process to download all uploaded documents. The RFP may also be downloaded from the Transnet Portal at https://transnetetenders.azurewebsites.net (please use **Google Chrome** to access Transnet link/site) free of charge (refer to **paragraph 3** below for detailed steps)
COMMUNICATION	Transnet will publish the outcome of this RFP on the National Treasury e-tender portal and Transnet website within 10 days after the award has been finalised, unless otherwise advised. All unsuccessful bidders have a right to request for reasons for their bid not being successful. This request must be directed to the contact person stated in the SBD 1 form. Any addenda to the RFP or clarifications will be published on the e-tender portal and Transnet website. Bidders are required to check the e-tender portal or Transnet website prior to finalising their bid submissions for any changes or clarifications to the RFP. Transnet will not be held liable if Bidders do not receive the latest information regarding this RFP with the possible consequence of either being disadvantaged or disqualified as a result thereof.
NON-COMPULSORY BRIEFING SESSION AND SITE VISIT	**15 January 2025 at 12h00**. Bidders can join the non-compulsory briefing session by using the following Microsoft teams details on: meeting link **Join the meeting now** OR **Meeting ID: 393 069 222 518 Passcode: fS785Ms6.** Upon completion of the non-compulsory briefing session bidders may make arrangements for a site visit at a time to be agreed.
CLOSING DATE **12h00 on 14 February 2025**	Bidders must ensure that bids are uploaded onto the system by the stipulated time. If a bid is late and or loaded correctly by the closing date, it will not be accepted and receive further consideration. Bidders are required to ensure that electronic bid submissions are done at least a day before the closing date to prevent issues which they may encounter due to their

	internet speed, bandwidth, or the size of the number of uploads they are submitting. Transnet will not be held liable for any challenges experienced by bidders as a result of their technical challenges. Please do not wait for the last hour to submit. A Bidder can upload 30mb per upload and multiple uploads are permitted. Bidders may only use alphabetical and/ or numerical characters in the file names of electronic documents which are uploaded. Use of any other characters may result in the documents being corrupted, for which TNPA takes no responsibility.
VALIDITY PERIOD	**One hundred and twenty (120) Business Days from Closing Date** Validity period is the period for which the Bid, remains valid. Bidders are to note that they may be requested to extend the validity period of their bid, at the same terms and conditions, if the internal evaluation process has not been finalised within the validity period. However, once the adjudication body has approved the process and award of the business to the successful bidder(s), the validity of the successful bidder(s)' bid will be deemed to remain valid until a final agreement has been concluded. Should a bidder fail to respond to a request for extension of the validity period before it expires, that bidder will be excluded from the tender process. Bidders who fail to respond to a request for extension of bid validity before the validity lapses, or who declines such a request shall not be considered further in the Tender evaluation process.

Any additional information or clarification will be published on the e-Tender portal and Transnet website, if necessary.

2 FORMAL NON-COMPULSORY BRIEFING SESSION AND SITE VISIT

A non-compulsory RFP briefing session will be conducted online. The briefing session will start punctually, and information will not be repeated for the benefit of Bidders arriving late. Bidders must join the briefing meeting session by using the meeting details link **Join the meeting now** OR **Meeting ID: 393 069 222 518 Passcode: fS785Ms6.**

Despite the briefing session being non-compulsory, Transnet nevertheless encourages all Bidders to attend. Transnet will not be held responsible if any Bidder who did not attend the **non-compulsory** session subsequently feels disadvantaged as a result thereof.

2.1 Bidders are encouraged to bring a copy of the RFP to the RFP briefing.

2.3. Bidders who wish to view the property must make arrangements through the dedicated email address.

3 PROPOSAL SUBMISSION

Transnet has implemented a new electronic bid submission system, the e-Tender Submission Portal, in line with the overall Transnet digitalization strategy where Bidders can view advertised tenders, register their information, log their intent to respond to bids and upload their bid proposals/responses on to the system. The Transnet e-Tender Submission Portal can be accessed as follows:

3.1 Log on to the Transnet eTenders management platform website/ Portal ((transnetetenders.azurewebsites.net) Please use Google Chrome to access Transnet link/site);

3.2 Click on "ADVERTISED TENDERS" to view advertised tenders;

3.3 Click on "SIGN IN/REGISTER – for bidder to register their information (must fill in all mandatory information);

3.4 Click on "SIGN IN/REGISTER" - to sign in if already registered;

3.5 Toggle (click to switch) the "Log an Intent" button to submit a bid;

3.6 Submit bid documents by uploading them into the system against each tender selected; and

No late submissions will be accepted. The bidder guide can be found on the Transnet Portal transnetetenders.azurewebsites.net.

4 RFP INSTRUCTIONS

4.1 Please sign the documents [**sign and date the bottom of each page**] before submission. The person(s) signing the submission/documents must be legally authorised by the Bidder to do so.

4.2 **All returnable documents tabled in the Proposal Form [Section 5] must be returned with proposals.**

4.3 Unless otherwise expressly stated, all Proposals furnished pursuant to this RFP shall be deemed to be offers. Any exceptions to this statement must be clearly and specifically indicated.

4.4 Any additional conditions must be embodied in an accompanying letter. Subject only to clause 15 [Alterations made by the Respondent to Bid Prices] of the General Bid Conditions, paragraph 11 below (Legal Review) and **Section 6** of the RFP, alterations, additions, or deletions **must not** be made by the Bidder to the actual RFP documents.

5 JOINT VENTURES

5.1 Bidders who would wish to respond to this RFP as a Joint Venture [**JV**] with B-BBEE entities, must state their intention to do so in their RFP submission. Such Bidders must also submit a signed JV agreement between the parties clearly stating the percentage [%] split of business and the associated responsibilities of each party. If at the time of the bid submission such a JV agreement has not been concluded, the partners must submit confirmation in writing of their intention to enter into a JV agreement should they be awarded business by Transnet through this RFP process. This written confirmation must clearly indicate the percentage [%] split of business and the responsibilities of each party. In such cases, award of business will only take place once a signed copy of a JV agreement is submitted to Transnet.

5.2 Bidders are to note that for the purpose of evaluation***, a JV will be evaluated based on one consolidated B-BBEE score card*** (a consolidated B-BBEE Status Level verification certificate). Preference points will be awarded to a bidder for attaining the specific goals requirements in accordance with the table indicated in paragraph 4.1 of Section 9 of the specific goals Claim Form.

5.3 The Bid evaluation for stages 1 and 2 of the evaluation methodology (Section 3 of this Bid) will be conducted on the majority shareholder for of the JV. Should a JV become the preferred Bidder, all essential documents of the JV entities will be required to be evaluated as part of the due diligence process.

6 COMMUNICATION

6.1 For specific queries relating to this RFP, an RFP Clarification Request Form should be submitted onto the system before **12h00 on 7 February 2025** substantially in the form set out in **Section 8** hereto. In the interest of fairness and transparency, Transnet's response to such a query will be published on the e-tender portal and Transnet website.

6.2 After the closing date of the RFP, a Bidder may only communicate via email address **POPELEASEAPPLICATIONS@TRANSNET.NET** on any matter relating to its RFP Proposal.

6.3 Bidders are to note that changes to its submission will not be considered after the closing date.

6.4 It is prohibited for Bidders to attempt, either directly or indirectly, to canvass any officer or employee of Transnet in respect of this RFP between the closing date and the date of the award of the business.

6.5 Bidders found to be in collusion with one another will be automatically disqualified and restricted from doing business with organs of state for a specified period.

6.6 Transnet will publish the outcome of this RFP in the National Treasury e-tender portal and Transnet website within 10 days after the award has been finalised. Bidders are required to check the National Treasury e-tender Portal and Transnet website for the results of the tender process. All unsuccessful bidders have a right to request Transnet to furnish individual reasons for their bid not being successful. This request must be directed to the contact person stated in the SBD 1 form.

7 CONFIDENTIALITY

All information related to this RFP is to be treated with strict confidence. In this regard Bidders are required to certify that they have acquainted themselves with the Non-Disclosure Agreement. All information related to a subsequent agreement, both during and after completion thereof, will be treated with strict confidence. Should the need however arise to divulge any information related to this RFP or the subsequent agreement, written approval must be obtained from Transnet.

8 COMPLIANCE

The successful Bidder shall be in full and complete compliance with any and all applicable laws and regulations.

9 EMPLOYMENT EQUITY ACT

Bidders must comply with the requirements of the Employment Equity Act (Act No. 55 of 1998) applicable to it including (but not limited to) **Section 53** of the Employment Equity Act.

10 DISCLAIMERS

Bidders are hereby advised that Transnet is not committed to any course of action as a result of its issuance of this RFP and/or its receipt of Proposals. In particular, please note that Transnet reserves the right to:

10.1 modify the RFP and request Bidders to re-bid on any such changes;

10.2 reject any Proposal which does not conform to instructions and scope of requirements which are detailed herein;

10.3 disqualify Proposals submitted after the stated submission deadline [closing date];

10.4 award an agreement in connection with this Proposal at any time after the RFP's closing date;

10.5 award an agreement for only a portion of the proposed Premises which are reflected in the scope of this RFP;

10.6 split the award of the agreement between more than one Bidder, should it at Transnet's discretion be more advantageous in terms of, amongst others, cost, or developmental considerations;

10.7 cancel the bid process;

10.8 validate any information submitted by Bidders in response to this bid. This would include, but is not limited to, requesting the Bidders to provide supporting evidence. By submitting a bid, Bidders hereby irrevocably grant the necessary consent to Transnet to do so;

10.9 request audited financial statements or other documentation for the purposes of a due diligence exercise;

10.10 not accept any changes or purported changes by the Bidder to the rental offer after the closing date and/or after the award of the business;

10.11 negotiate any aspects of the bid with respect to the salient terms proposed by the Bidder to structure the proposed deal to ensure overall viability of the transaction for both Transnet and the Bidder.

10.12 cancel the agreement and/request that the National Treasury to place the Bidder on its Database of Restricted Bidders for a period not exceeding 10 years, on the basis that an agreement was awarded on the strength of incorrect information furnished by the Bidder or on any other basis recognised in law;

10.13 award the business to the next ranked bidder, provided that he/she is still prepared to provide the required rental offer, should the preferred bidder fail to sign or commence with the agreement within a reasonable period after being requested to do so. Under such circumstances, the validity of the bids of the next ranked bidder(s) will be deemed to remain valid, irrespective of whether the outcome of the bid process has been published on the National Treasury e-tender Portal and Transnet website.

Note that Transnet will not reimburse any Bidder for any preparatory costs or other work performed in connection with its Proposal, whether or not the Bidder is awarded an agreement.

11 LEGAL REVIEW

A Proposal submitted by a Bidder will be subject to evaluation and adjudicated by the relevant governance structures within Transnet. Any changes to the standard terms and conditions of Transnet's lease agreement shall be subject to review and acceptance of Transnet's Legal Counsel, prior to the finalisation of an award of a lease agreement.

12 SECURITY CLEARANCE

Acceptance of this bid could be subject to the condition that the Successful Bidder and personnel must obtain security clearance from the appropriate authorities to the level of **CONFIDENTIAL/ SECRET/TOP SECRET**. Obtaining the required clearance is the responsibility of the Successful Bidder. Acceptance of the bid is also subject to the condition that the Successful Bidder will implement all such security measures as the safe performance of the agreement may require.

13 NATIONAL TREASURY'S CENTRAL SUPPLIER DATABASE

Bidders are required to self-register on the National Treasury's Central Supplier Database (CSD) which has been established to centrally administer supplier information for all organs of state and facilitate the verification of certain key bidder information. Bidders must register on the CSD prior to submitting their bids. Business may not be awarded to a Bidder who has failed to register on the CSD. Only foreign Bidders with no local registered entity need not register on the CSD. Such Bidders should note however, that it will be required to incorporate and register a South African company in accordance with South African company laws for the purpose of concluding a lease agreement.

For this purpose, the attached SBD 1 form must be completed and submitted as an essential returnable document by the closing date and time of the bid.

14 TAX COMPLIANCE

Bidders must be compliant when submitting a proposal to Transnet and remain compliant for the entire agreement term with all applicable tax legislation, including but not limited to the Income Tax Act, 1962 (Act No. 58 of 1962) and Value Added Tax Act, 1991 (Act No. 89 of 1991).

It is a condition of this bid that the tax matters of the successful Bidders be in order, or that satisfactory arrangements have been made with South African Revenue Service (SARS) to meet the Bidders tax obligations.

The Tax Compliance status requirements are also applicable to foreign Bidders/ individuals who wish to submit bids.

Where Consortia / Joint Ventures / Sub-contractors are involved, each party must be registered on the Central Supplier Database and their tax compliance status will be verified through the Central Supplier Database.

Transnet urges its clients, Bidders and the general public to report any fraud or corruption to

TIP-OFFS ANONYMOUS:

Ethics Helpdesk (Pty) LTD.
Ethics Management System ™

You can choose to be Anonymous or Non-Anonymous on ANY of the platforms

PLEASE RETAIN YOUR REFERENCE NUMBER

AI Voice BoT "Jack"
Speak to our AI Voice Chat Bot "JACK", you converse with him like chatting to a human, with the option to record a message and speak to an agent at anytime.

What's App
Speak to an Agent via What's App.

Speak to an Agent
Speak to an Agent via the platform with no call or data charge

Telegram
Speak to an Agent via Telegram

0800 003 056 | **086 551 4153** | **reportit@ethicshelpdesk.com** | ***120*0785980808#**

SECTION 3: EXECUTIVE OVERVIEW AND SCOPE OF REQUIREMENTS

1. EXECUTIVE OVERVIEW

1.1. Transnet National Ports Authority (TNPA) is established through the National Ports Act 12 of 2005 to be a Ports authority and landlord, responsible for the safe, efficient, and economic functioning of the national ports system, which it manages, controls and administers on behalf of the State.

1.2. **Section 11** of the National Ports Act prescribes the core functions of TNPA, to include the following:

1.2.1. to plan, provide, maintain, and improve port infrastructure;

1.2.2. prepare and periodically update a Port Development Framework Plan (PDFP) for each Port;

1.2.3. to promote the use, improvement and development of Ports and control land use within the Ports, having the power to lease Port land under conditions that it determines;

1.2.4. to promote greater representation, in particular to increase participation in Port operations of historically disadvantaged people;

1.2.5. to provide or arrange marine-related services, i.e., pilotage services, tug assistance, berthing services, dredging and hydrographic services;

1.2.6. to ensure that adequate, affordable, and efficient Port services and facilities are provided, including regulatory oversight of all Port activities; and

1.2.7. to provide aids to assist the navigation of vessels within Port limits and along the coast.

1.3. At an operational level, TNPA occupies a strategic position in the country's transport logistics chain, managing South Africa's eight (8) commercial seaports, namely Cape Town, Durban, East London, Mossel Bay, Ngqura, Port Elizabeth, Richards Bay and Saldanha Bay.

1.4. The Ports under the control of the TNPA span the South African coastline, which measures approximately 2 800 km. TNPA's asset base consists of Port land, basic Port infrastructure and marine fleet at the eight (8) commercial ports. TNPA manages Port land of approximately 43,4 million m² across the Port system.

1.5. Operating within the Port industry, TNPA provides its services to Port users, namely terminal operators, shipping lines, shipping agents, cargo owners and the clearing and forwarding industry.

1.6. TNPA also carries a distinctive feature of being self-sustaining, unlike most other landlord Port authorities that rely on National or Provincial governments for financial support.

1.7. This RFP is issued in terms of Section 11 of the Act and specifically does include any operations which are required to be undertaken under conditions determined through the issuance of a license to operate in terms of other provisions of the act pertaining thereto.

2. SCOPE OF REQUIREMENTS

2.1. The objective of this document is to invite interested parties to submit to TNPA RFP responses for the lease of premises at the Port of Port Elizabeth.

2.2. The below property is to be leased on as is basis (voetstoots), as reflected on attached Site/Lease Plan (Annexure 1).

Description	Extent	Proposed Use	Available From	Precinct
PEH/12/2024//03 Land & Building	1, 910m²	Port related commercial activities/ Parking/Storage	Immediately	Southern

2.3. The property is currently vacant and suitable for port related commercial activities, parking, or storage.

2.4. Concrete area directly adjacent to recreational area.

2.5. Includes building measuring approximately 30m².

2.6. Exclusions: Any other use other than that which has been indicated above.

2.7. The Successful/Preferred Bidder must note that it shall be obliged to undertake whatever refurbishment, repairs, upgrades, and capital improvements as may be necessary.

2.8. It may require, at its own costs, to ensure that the leased premises is fit for purpose and that its use complies with all relevant and applicable laws and legislation unless negotiated otherwise and agreed to by the TNPA.

2.9. Depending on the extent of work required, which will be evaluated based on the submission made by the Bidder, beneficial occupation may be considered and negotiated.

2.10. Bidders are to note that should beneficial occupation be required, this must be properly motivated and justified in the Business Plan which will be subject to approval by TNPA Governance structures, in line with policies and procedures. The Bidder will be liable for all property holding costs during the beneficial occupation period.

2.11. Bidders bear the onus to carry out whatever inspections they may deem necessary prior to submitting any RFP Responses. In terms of this RFP, bidders must ensure that an inspection of the property is conducted prior to submitting the applications to ensure a full understanding and appreciation of the condition of the property. TNPA accepts no responsibility or any liability for any failure and or refusal of a prospective applicant to do so. To access the property, enquiries may be directed to **POPELEASEAPPLICATIONS@TRANSNET.NET**

3. GREEN ECONOMY / CARBON FOOTPRINT

Transnet wishes to understand your company's position regarding environmental commitments, including key environmental characteristics such as waste disposal, recycling, and energy conservation.

4. GENERAL BIDDER OBLIGATIONS

4.1. The Bidder shall be fully responsible to Transnet for the acts and omissions of persons directly or indirectly employed by them.

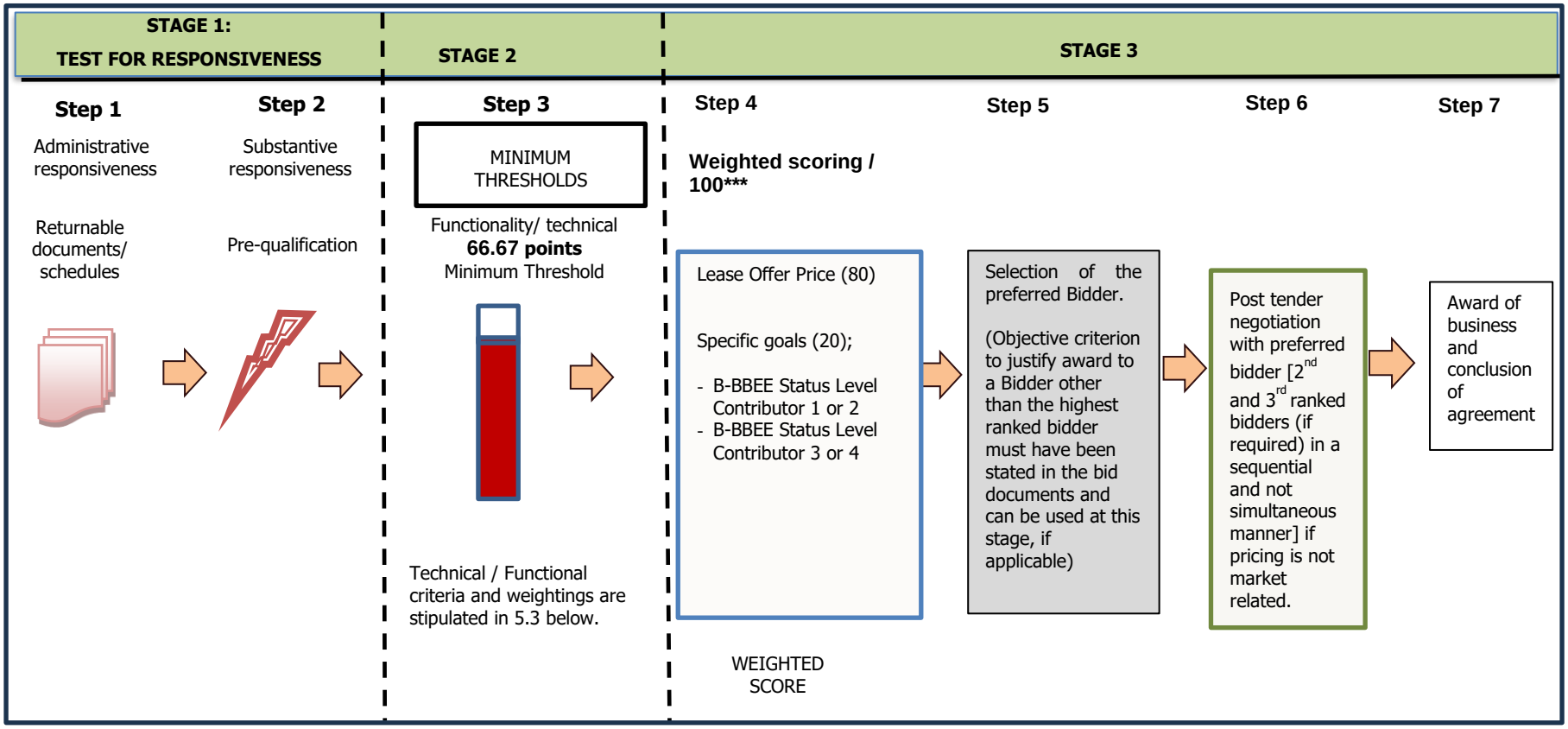
4.2. The Bidder must comply with the requirements stated in this RFP.

5. EVALUATION METHODOLOGY

Transnet will utilise the following methodology as diagram 1 and criteria in selecting a preferred Bidder:

NB: Evaluation of the various stages will normally take place in a sequential manner. However, in order to expedite the process, Transnet reserves the right to conduct the different steps of the evaluation process in parallel. In such instances the evaluation of Bidders at any given stage must not be interpreted to mean that Bidders have necessarily passed any previous stage(s).

Diagram 1 Evaluation Methodology



5.1. **STEP ONE: Test for Administrative Responsiveness**

The test for administrative responsiveness will include the following:

Administrative responsiveness check	RFP Reference
Whether the Bid has been lodged on time	*Section 1*
Verify if the bid document has been duly signed by the authorised Bidder	*All Sections*

The test for administrative responsiveness [Step One] must be passed for a Bidder's Proposal to progress to Step Two for further pre-qualification.

5.2. **STEP TWO: Test for Substantive Responsiveness to RFP**

The test for substantive responsiveness to this RFP will include the following:

Check for substantive responsiveness	RFP Reference
Whether the Bid contains a priced rental offer as prescribed in the schedule	*Section 4*

The test for substantive responsiveness [Step Two] must be passed for a Bidder's proposal to progress to Step Three for further evaluation.

5.3. **STEP THREE: Minimum Threshold 66.67 points for Functionality/Technical Criteria**

5.3.1 Bidders will be evaluated on previous experience and track record as well as the Business Plan. Weighted scores for each criterion will be allocated and bidders are required to achieve a minimum of **66.67/100** in order to progress to the next evaluation stage.

No.	Weight	Criteria	Requirements	Type of Proof / Evaluation Document/s	Scoring Guide	Points
5.3.1.1	10	Previous Experience	A Bidder must have a minimum of 2 years' experience in the proposed use. Bidder must submit a company profile confirming the number of years in proposed operations and also provide supporting evidence confirming the number of years in a form of lease agreement, licence, or any other verifiable document	Company profile with evidence of number of years	>2 years' experience with supporting evidence	3
					2 years' experience with supporting evidence	2
					<2 years' experience with supporting evidence	1
					No submission / company profile without supporting evidence	0
5.3.1.2	15	Previous Experience	Bidder to submit a minimum of 2 Reference Letters in relation to the operations proposed. The Reference Letters must not be older than 5 years for the entity submitting the RFP. ***Format to Include: Customer/ Company Name, Customer/ Company Address, Customer/Company contact details and email address, Project Scope/Services provided and Project Duration***	Reference Letters not older than 5 years	More than 2 reference letters not older than 5 years	3
					2 reference letters not older than 5 years	2
					1 reference letter not older than 5years	1
					No submission or reference letter is older than 5 years	0
5.3.1.3	15	Track Record	Bidder's bank rating issued by a financial institution confirming the rating of the entity as a going concern, which is not older than 3 months	Bank Rating not older than 3 months	Bank Rating A not older than 3 months	3
					Bank Rating B not older than 3 months	2
					Bank Rating C not older than 3 months	1
					No Submission / D rating and below / report older than 3 months	0
5.3.1.4	10	Proposed Bidder's operations to align to Port Development Framework Plan (PDFP) and Port Priority activities as outlined on Annexure 7	The Bidder's operations as a minimum must detail the following details: 1. Use of the premises, 2. Prove the use is Port related, and 3. Use will support the Port business	Business Plan	Proposed operations address all 3 elements with additional benefits and details	3
					Proposed operations address only the 3 elements	2
					Proposed operations address less than 3 elements	1
					No submission / Proposed operations do not align to PDFP	0

No.	Weight	Criteria	Requirements	Type of Proof / Evaluation Document/s	Scoring Guide	Points
5.3.1.5	10	Market Analysis that is a Port Related Commercial Activity	Market Analysis must demonstrate the following: 1. Identification of status quo market and services. Bidder to demonstrate a clear undertaking of business operating environment. 2. Identification of the potential market or segment analysis 3. Gap analysis identification of discrepancy between actual and potential market. 4. Bidder to provide a SWOT analysis. 5. Bidder to identity and illustrate economic spin-offs per market segment.	Business Plan	Market analysis is a Port related commercial activity that addresses all 5 elements or more with substantial detail on each	3
					Market analysis is a Port related commercial activity that addresses only the 5 elements	2
					Market analysis is a Port related commercial activity that addresses less than 5 elements	1
					No submission / market analysis is not a Port related commercial activity	0
5.3.1.6	10	Prospective Bidder's operations must add Value to Port operations	Bidder's operations must add Value to Port operations in the following ways: 1. Vision and Mission statement to clearly articulate major goals and ambitions. 2. Applicant to demonstrate relevant and achievable strategic objectives. 3. Applicant to indicate how they will bring innovation to the fore. 4. Proposed value to Port (short and medium term).	Business Plan	Prospective Bidder's operations will add Value to Port operations by addressing all 4 elements or more with substantial detail on each	3
					Prospective Bidder's operations will add Value to Port operations by addressing only 4 the elements	2
					Prospective Bidder's operations will add Value to Port operations by addressing less than 4 elements	1
					No submission / Prospective Bidder's operations will NOT add Value to Port operations	0
5.3.1.7	10	Bidder must have Capital Expenditure for Refurbishment and or upgrade plans *The plan must be for the duration of the lease term	Bidder to submit a detailed Work Breakdown Structure and Project schedule (clear project scope, measurable deliverables, logical and hierarchical structure, appropriate level of detail and mutual exclusivity of tasks)	Business Plan	Concise WBS and Project Schedule	3
					Good WBS and Project Schedule	2
					Average WBS and Project Schedule	1
					No submission / Inadequate information provided on WBS and Project Schedule	0
5.3.1.8	10			Business Plan	Concise Maintenance Plan	3
					Good Maintenance Plan	2

No.	Weight	Criteria	Requirements	Type of Proof / Evaluation Document/s	Scoring Guide	Points
		Maintenance Expenditure Plan and Cost *The plan must be for the duration of the lease term	Bidder to detailed maintenance plan aligned to the property and proposed use of the property (must show identification and prioritisation, scoping and objectives, allocation of resources, timeframes and cost of the works)		Average Maintenance Plan	1
					No submission / Maintenance plan does not address any element	0
5.3.1.9	10	Financial Viability	Bidder must submit cashflow projections over the proposed lease period, with assumptions where applicable, demonstrating the ability for the entity to remain a going concern. **The cashflows must be signed off by a Finance Professional**	Business Plan	Detailed cash flow	3
					High level/summarised cashflow	1
					No submission / Bidder's Revenue and Cash flow is NOT viable over the lease term	0
	100					

Technical Proposal Guidelines

Capital and Maintenance Cost Methodology

- **Concise** - The schedule is linked to the methodology at every activity level; the applicable activities are detailed to level 3; the representation is calendar and Gantt; the activities are numbered; the sequence of execution is clear from the Gantt chart; activities sequencing is in parallel as far as is practical; the activities are grouped according to best practice.
- **Good -** The schedule is linked to the methodology at every activity level; the applicable activities are detailed to level 3; the representation is calendar and Gantt; the activities are numbered; the sequence of execution is clear from the Gantt chart.
- **Average -** The schedule is linked to the methodology; the high-level activities are represented as a calendar or Gantt chart; the activities are numbered; the sequence of execution is clear from the representation.

Financial Viability

- **Assumptions** – assumptions applied in the cash flow projections must be clearly indicated and rationale must be proven in terms of variable values.
- **Mitigations –** where net cashflows are negative clear mitigations must be put in place to ensure that continued operation of the business.

The minimum threshold for technical/functionality [Step Three] must be met or exceeded for a Bidder's Proposal to progress to Step Four for final evaluation.

5.4. **STEP FOUR: Evaluation and Final Weighted Scoring**

5.4.1 Rental Offer Price Criteria [Weighted score 80/90 points]:

Evaluation Criteria	RFP Reference
Commercial offer (Rental)	*Section 4*

Transnet will utilise the following either of the following formulae in its evaluation of Price which will be **determined by the highest priced bid received** inclusive of all applicable taxes:

$$PS = 80\left(1 + \frac{Pt - Pmax}{Pmax}\right)$$

Where:

Ps = Points scored for the price of Bid under consideration

Pt = Price of Bid under consideration

Pmax = Price of highest acceptable Bid

OR

$$PS = 90\left(1 + \frac{Pt - Pmax}{Pmax}\right)$$

Where:

Ps = Points scored for the price of Bid under consideration

Pt = Price of Bid under consideration

Pmax = Price of highest acceptable Bid

5.4.2 Specific Goals [Weighted score 20/10 points]

5.4.2.1. Specific goals preference points claim form.

5.4.2.2. Preference points will be awarded to a bidder for attaining the specific goals requirements in accordance with the table indicated in Section 4.1 of the specific goals Claim Form (SBD 6.2).

SUMMARY: Applicable Thresholds and Final Evaluated Weightings

Thresholds	Minimum Threshold
Technical / functionality	**66.67**

Evaluation Criteria	Final Weighted Scores
Rental Offer Price	80/90
Specific goals – Scorecard	20/10
TOTAL SCORE:	**100**

5.5. **STEP FIVE: Objective Criteria**

Transnet reserves the right to award the business to the highest scoring Bidder unless objective criteria justify the award to another Bidder as per the requirements of the PPPFA. The objective criteria Transnet may apply in this bid process include:

5.5.1 Rotation of Bidders to promote opportunities for other Bidders including new entrants, by overlooking a Bidder that already holds leases for similar operations in the Port (It is necessary to rotate Lessees to promote opportunities for other lease holders, in circumstances where the bidder has been

awarded business previously and the award of the tender will result in inequitable allocation of business);

5.5.2 Awarding to a bidder whose operations may be deemed as specialised operations.

5.5.3 Transnet may apply the objective criteria in this bid process as follows:

5.5.3.1 Bidder(s) is not in good standing with TNPA due to a poor track record of past performance with Transnet SOC Ltd and or TNPA.

5.5.3.2 There is clear, uncontrived and/or overwhelming evidence and/or facts that the bidder has or continues to be in breach of any of the provisions contained in the Integrity Pact (Annexure 6);

5.5.3.3 The Probity check undertaken by TNPA establishes the existence of any unmitigated risks which would have a negative impact on the agreement.

5.5.3.4 Unless the appointment of the bidder would result in a negative impact on Transnet's Return on Investment;

5.5.3.5 The tenderer or its members, directors, partners:

a) Is under restrictions as contemplated in the Integrity Pact (Annexure 6),

b) Is a subject of a process of restriction by Transnet or other state institution that Transnet may be aware of and there is a clear, uncontrived and/or overwhelming evidence and/or facts in relation to the alleged wrongdoing on the basis of which the restriction process has been initiated;

5.5.3.6. has no legal capacity to enter into the agreement.

5.5.3.7. is insolvent, in receivership, under Business Rescue as provided for in chapter 6 of the Companies Act, 2008, being wound up, has its affairs administered pursuant to a court order, has ceased or suspended their business activities, or is subject to legal proceedings in respect of any of the foregoing;

5.5.3.8. does not comply with the legal requirements, if any, stated in the tender data; and

5.5.3.9. is not able to perform the agreement free of conflicts of interest.

5.5.4. In relation to the proposed agreement, a due diligence exercise to validate the bidder's proposal that demonstrate that it possesses the professional and technical qualifications, professional and technical competence, financial resources, equipment and other physical facilities, managerial capability, reliability, experience and reputation, expertise, and the personnel, to perform the agreement.

5.6. STEP SIX: Post Tender Negotiations (if applicable)

Bidders are to note that Transnet may not enter into a lease if the rental offered is not market related. In this regard, Transnet reserves the right to engage in Post Tender Negotiations (PTN) with a view of achieving a market-related return or to cancel the tender. Negotiations will be done in a sequential manner i.e.:

5.6.1. first negotiate with the highest ranked bidder or cancel the bid, should such negotiations fail, negotiate with the 2nd and 3rd ranked bidders (if required) in a sequential manner.

5.6.2. In the event of any Bidder being notified of such short-listed/preferred bidder status, his/her bid, as well as any subsequent negotiated best and final offers (BAFO), will automatically be deemed to remain valid during the negotiation period and until the ultimate award of business.

5.7. STEP SEVEN: Award of business and conclusion of agreement

Immediately after approval to enter into a lease agreement has been received, the Successful Bidder will be informed of the acceptance of his/their Bid by way of a Letter of Award. Thereafter the final lease agreement will be concluded with the successful Bidder(s).

SECTION 4: PRICING (RENTAL OFFER)

Bidders are required to complete tables below:

RENTAL OFFER SUMMARY					
	Extent (m²)	**Rate Per Square Meter**	**Monthly Rental Offer Excl. VAT**	**Vat @15%**	**Monthly Rental Offer Incl. VAT**
Land Portion (if applicable)	1,880m²				
Building Portion (if applicable)	30m²				
Total Monthly Rental Offer					
Escalation Rate Offer					

Rental Year	**Monthly Rental (Excl. VAT)**	**Period (No. of months)**	**Annual Rental (Excl. VAT)**
Year 1		12	
Year 2		12	
Year 3		12	
Year 4		12	
Year 5		12	
Total (Excl. Vat)			
Add 15% Vat			
TOTAL (Incl. Vat)			

Notes to Pricing (Rental Offer):

a) Bidders must ensure that the annual escalation proposed is included in the overall rental offer submitted.

b) TNPA will verify the correctness of the calculations provided in the above rental offer.

c) TNPA reserves the right to consider the verified rental offer calculations in awarding the lease to the Bidder.

d) Bidders are to note that if the rental offer by the highest scoring bidder is not market-related, Transnet may not award the lease to that Bidder. Transnet may-

   (i) negotiate a market-related rental with the Bidder scoring the highest points or cancel the RFP;

   (ii) if that Bidder does not agree to a market-related rental, TNPA/TSOC may negotiate a market-related rental with the Bidder scoring the second highest points or cancel the RFP;

   (iii) if the Bidder scoring the second highest points does not agree to a market-related rental, TNPA may negotiate a market-related rental with the Bidder scoring the third highest points or cancel the RFP.

   (iv) If a market-related rental is not agreed upon with the Bidder scoring the third highest points, Transnet must cancel the RFP.

e) Rental must be quoted in South African Rand inclusive of VAT.

f) **To facilitate like-for-like comparison bidders must submit rental offers strictly in accordance with this schedule and not utilise a different format. Deviation from this schedule could result in a bid being declared non-responsive.**

1. DISCLOSURE OF AGREEMENT INFORMATION

RENTAL OFFER TENDERED

Bidders are to note that, on award of business, Transnet is required to publish the successful and unsuccessful Bidders *inter alia* on the National Treasury e-Tender Publication Portal, (www.etenders.gov.za), as required per National Treasury Instruction Note (Note 01 of 2015/2016).

JOHANNESBURG STOCK EXCHANGE DEBT LISTING REQUIREMENTS

Transnet may also be required to disclose information relating to the subsequent agreement i.e., the name of the company and lease tenure entered into etc. in compliance with the Johannesburg Stock Exchange (JSE) Debt Listing Requirements.

DOMESTIC PROMINENT INFLUENTIAL PERSONS (DPIP) OR FOREIGN PROMINENT PUBLIC OFFICIALS (FPPO)

Transnet is free to procure the services of any person within or outside the Republic of South Africa in accordance with the applicable legislation. Transnet shall not conduct or conclude business transactions, with any Bidders without having:

- Considered relevant governance protocols;
- Determined the DPIP or FPPO status of that counterparty; and
- Conducted a risk assessment and due diligence to assess the potential risks that may be posed by the business relationship.

As per the Transnet Domestic Prominent Influential Persons (DPIP) and Foreign Prominent Public Officials (FPPO) and Related Individuals Policy available on Transnet website https://www.transnet.net/search/pages/results.aspx?k=FPIDP#k=DPIP, Bidders are required to disclose any commercial relationship with a DPIP or FPPO (as defined in the Policy) by completing the following section:

The below form contains personal information as defined in the Protection of Personal Information Act of2013 (the "Act"). By completing the form, the signatory consents to the processing of her/his personal information in accordance with the requirements of the Act. Consent cannot be unreasonably withheld.					
Is the Bidder *(Complete with a "Yes" or "No")*					
A DPIP/FPPO		**Closely Related to a DPIP/FPPO**		**Closely Associated to a DPIP/FPPO**	

List all known business interests, in which a DPIP/FPPO may have a direct/indirect interest or significant participation or involvement.						
No	**Name of Entity / Business**	**Role in the Entity / Business** (Nature of interest/ Participation)	**Shareholding %**	**Registration Number**	**Status** (Mark the applicable option with an X)	
					Active	**Non-Active**
1						
2						
3						
4						

Bidders declaring a commercial relationship with a DPIP or FPPO are to note that Transnet is required to annually publish on its website a list of all business agreements entered into with DPIP or FPPO. This list will include successful Bidders, if applicable.

SECTION 5: PROPOSAL FORM AND LIST OF RETURNABLE DOCUMENTS

I/We_____

[name of entity, company, close corporation or partnership] of *[full address]*

_____

_____

carrying on business trading/operating as

_____

represented by_____

in my capacity as _____

being duly authorised thereto by a Resolution of the Board of Directors or Members or Certificate of Partners, dated _____to enter into, sign execute and complete any documents relating to this proposal and any subsequent Agreement. The following list of persons are hereby authorised to negotiate on behalf of the abovementioned entity, should Transnet decide to enter into Post Tender Negotiations with highest ranked bidder(s).

FULL NAME(S)	CAPACITY	SIGNATURE
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

I/We hereby offer to enter into a lease at the value quoted in the rental offer schedule in accordance with the terms set forth in the documents listed in the accompanying schedule of RFP documents.

I/We agree to be bound by those conditions in Transnet's:

(i) Standard Lease Agreement (which may be subject to amendment at Transnet's discretion if applicable);

(ii) General Bid Conditions; and

(iii) any other standard or special conditions mentioned and/or embodied in this Request for Proposal.

I/We accept that unless Transnet should otherwise decide and so inform me/us in the letter of award, this Proposal [and, if any, its covering letter and any subsequent exchange of correspondence], together with Transnet's acceptance thereof shall constitute a binding agreement between Transnet and me/us.

Should Transnet decide that a formal lease should be signed and so inform me/us in a letter of award [the **Letter of Award**], this Proposal [and, if any, its covering letter and any subsequent exchange of correspondence] together with Transnet's Letter of Award, shall constitute an intension to enter into a binding agreement between Transnet and me/us until the Lease Agreement is signed.

_____ _____

Respondent's Signature Date & Company Stamp

I/We further agree that if, after I/we have been notified of the acceptance of my/our Proposal, I/we fail to enter into a formal agreement if called upon to do so within 5 [five] business days thereafter, Transnet may, without prejudice to any other legal remedy which it may have, recover from me/us any expense to which it may have been put in calling for Proposals afresh and/or having to accept any less favourable Proposal.

Furthermore, I/we agree to a penalty clause/s which will allow Transnet to invoke a penalty against us for non-compliance with material terms of this RFP etc.

I/we agree that non-compliance with any of the material terms of this RFP, including those mentioned above, will constitute a material breach of agreement and provide Transnet with cause for cancellation.

ADDRESS FOR NOTICES

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

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

Name of Entity:

_____

Email Address: _____

Address: _____

_____

NOTIFICATION OF AWARD OF A LEASE OPPORTUNITY

As soon as possible after approval to enter into a lease, the successful Bidder will be informed of the acceptance of its Proposal. Transnet will also publish the outcome of the tender, including successful and unsuccessful bidders, in the National Treasury e-tender portal. Any unsuccessful bidder has a right to request reasons for the bid not to be successful and Transnet has a duty to provide those reasons on receipt of the request from the bidder.

VALIDITY PERIOD

Transnet requires a validity period of 120 Business Days [from closing date] against this RFP, excluding the first day and including the last day.

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

The Bidder must disclose hereunder the full name(s) and address(s) of the director(s) or members of the company or close corporation [**C.C.**] on whose behalf the RFP is submitted.

(i) Registration number of company / C.C. _____

(ii) Registered name of company / C.C. _____

(iii) Full name(s) of director/member(s) Address/Addresses ID Number(s)

RETURNABLE DOCUMENTS

Returnable Documents means all the documents, Sections and Annexures, as listed in the tables below. There are three types of returnable documents as indicated below and Bidders are urged to ensure that these documents are returned with their bids based on the consequences of non-submission as indicated below:

Mandatory Returnable Documents	***Failure to provide all these Mandatory Returnable Documents on the Closing Date and time of this RFP will result in a Bidder's disqualification.***
Returnable Documents Used for Scoring	***Failure to provide all Returnable Documents used for purposes of scoring a bid, by the closing date and time of this bid will not result in a Bidder's disqualification. However, Bidders will receive an automatic score of zero for the applicable evaluation criterion.***
Essential Returnable Documents	***Failure to provide essential Returnable Documents will result in Transnet affording Bidders a further opportunity to submit by a set deadline. Should a Bidder thereafter fail to submit the requested documents, this may result in a Bidder's disqualification.***

All Returnable Sections, as indicated in the header and footer of the relevant pages, must be signed, stamped and dated by the Bidder.

a) Mandatory Returnable Documents

Bidders are required to submit with their bid submissions, the following **Mandatory Returnable Documents,** and also to confirm submission of these documents by so indicating [Yes or No] in the tables below:

MANDATORY RETURNABLE DOCUMENTS	SUBMITTED [Yes/No]
SECTION 4: Rental Offer Price	

b) Returnable Documents Used for Scoring

In addition to the requirements of section (a) above, Bidders are further required to submit with their Proposals, the following **Returnable Documents Used for Scoring** and also to confirm submission of these documents by so indicating [Yes or No] in the table below:

RETURNABLE DOCUMENTS USED FOR SCORING	SUBMITTED [Yes or No]
Bidder's valid proof of evidence to claim points for compliance with Specific Goals' requirements as stipulated in Section 9 of this RFP	
Valid proof of Bidder's compliance to B-BBEE requirements stipulated in Section 9 of this RFP (Valid B-BBEE certificate or Sworn- Affidavit as per DTIC guidelines)	
Capital Expenditure Plan	
Maintenance Expenditure Plan	
Company Profile and any supporting documents	
Business Plan	
Reference Letters	
Bank Rating	

c) Essential Returnable Documents:

Over and the above the requirements of section (a) and (b) mentioned above, Bidders are further required to submit with their Proposals, the following **Essential Returnable Documents** and also to confirm submission of these documents by so indicating [Yes or No] in the table below:

ESSENTIAL RETURNABLE DOCUMENTS	SUBMITTED [Yes/No]
SECTION 1: SBD 1 Form	
SECTION 6: Certificate Of Acquaintance with RFP, Terms & Conditions & Applicable Documents	
SECTION 7: RFP Declaration and Breach of Law Form	
SECTION 9: Specific Goals Points Claim Form	
SECTION 10: Job Creation and Skills Development	
SECTION 11: Protection of Personal Information	
SECTION 12: Certificate of Attendance of Compulsory/Non-Compulsory RFP Briefing	
Company Resolution	
Tax Pin or Tax Clearance Certificate	
Environmental Management Plan	
In the case of Joint Ventures, a copy of the Joint Venture Agreement or written confirmation of the intention to enter into a Joint Venture Agreement	
Letter of Good Standing	
Traffic Management Plan	
Public Liability Insurance	
Latest Financial Statements signed by your Accounting Officer or latest Audited Financial Statements plus 2 previous years OR projected cashflows for a period of 2 years in the case of a new entity which must be signed by a registered accounting officer.	

CONTINUED VALIDITY OF RETURNABLE DOCUMENTS

The successful Bidder will be required to ensure the validity of all returnable documents, including but not limited to its valid proof of B-BBEE status, for the duration of the Lease Agreement emanating from this RFP. Should the Bidder be awarded the Lease Agreement and fail to present Transnet with such renewals as and when they become due, Transnet shall be entitled, in addition to any other rights and remedies that it may have in terms of the eventual Lease Agreement, to terminate such Lease Agreement immediately without any liability and without prejudice to any claims which Transnet may have for damages against the Bidder.

SIGNED at _____ on this _____ day of _____ 20___

SIGNATURE OF WITNESSES ADDRESS OF WITNESSES

1 _____ _____
Name _____ _____

2 _____ _____
Name _____ _____

SIGNATURE OF BIDDER'S AUTHORISED REPRESENTATIVE: _____
NAME: _____
DESIGNATION: _____

SECTION 6: CERTIFICATE OF ACQUAINTANCE WITH RFP, LEASE AGREEMENT AND APPLICABLE DOCUMENTS

By signing this certificate, the Bidder is deemed to acknowledge that he/she has made himself/herself thoroughly familiar with and agrees with all the conditions governing this RFP. This includes those terms and conditions contained in any printed form stated to form part hereof, including but not limited to the documents stated below. As such, Transnet SOC Ltd will recognise no claim for relief based on an allegation that the Bidder overlooked any such term or condition or failed properly to take it into account for the purpose of calculating tendered rental offer or any other purpose:

1	Transnet's General Bid Conditions
2	Draft Lease Agreement
3	Transnet's Supplier Integrity Pact
4	Non-disclosure Agreement
5	Specifications and drawings attached to this RFP

Should the Bidder find any terms or conditions stipulated in any of the relevant documents quoted in the RFP unacceptable, it should indicate which conditions are unacceptable and offer alternatives by written submission on its company letterhead, attached to its submitted Bid. Any such submission shall be subject to review by Transnet's Legal Counsel who shall determine whether the proposed alternative(s) are acceptable or otherwise, as the case may be. A material deviation from any term or condition may result in disqualification.

Bidders accept that an obligation rests on them to clarify any uncertainties regarding any bid to which they intend to respond on, before submitting the bid. **The Bidder agrees that he/she will have no claim or cause of action based on an allegation that any aspect of this RFP was unclear but in respect of which he/she failed to obtain clarity.**

The bidder understands that his/her Bid will be disqualified if the Certificate of Acquaintance with RFP documents included in the RFP as a returnable document, is found not to be true and complete in every respect.

SIGNED at _____ on this _____ day of _____ 20___

SIGNATURE OF WITNESSES ADDRESS OF WITNESSES

1 _____ _____

Name _____ _____

2 _____ _____

Name _____ _____

SIGNATURE OF BIDDER'S AUTHORISED REPRESENTATIVE: _____

NAME: _____

DESIGNATION: _____

SECTION 7: RFP DECLARATION AND BREACH OF LAW FORM

NAME OF ENTITY: _____

We _____ do hereby certify that:

1. Transnet has supplied and we have received appropriate responses to any/all questions [as applicable] which were submitted by us for RFP Clarification purposes;

2. We have received all information we deemed necessary for the completion of this Request for Proposal [**RFP**];

3. We have been provided with sufficient access to the existing Transnet facilities/sites and any and all relevant information relevant to the Premises as well as Transnet information and have had sufficient time in which to conduct and perform a thorough due diligence of Transnet's operations and business requirements. Transnet will therefore not consider or permit any pre- or post-agreement verification or any related adjustment to rental offer or any other provisions/conditions based on any incorrect assumptions made by the Bidder in arriving at his Rental Offer;

4. At no stage have we received additional information relating to the subject matter of this RFP from Transnet sources, other than information formally received from the designated Transnet contact(s) as nominated in the RFP documents;

5. We are satisfied, insofar as our entity is concerned, that the processes and procedures adopted by Transnet in issuing this RFP and the requirements requested from Bidders in responding to this RFP have been conducted in a fair and transparent manner;

6. We have complied with all obligations of the Bidder as indicated in the Transnet Supplier Integrity which includes but are not limited to ensuring that we take all measures necessary to prevent corrupt practices, unfairness and illegal activities in order to secure or in furtherance to secure a Lease Agreement with Transnet;

7. We declare that a family, business and/or social relationship **exists / does not exist** [delete as applicable] between an owner / member / director / partner / shareholder of our entity and an employee or board member of the Transnet Group including any person who may be involved in the evaluation and/or adjudication of this Bid;

8. We declare that an owner / member / director / partner / shareholder of our entity **is / is not** [delete as applicable] an employee or board member of Transnet;

9. In addition, we declare that an owner / member / director / partner / shareholder/employee of our entity **has / has not been** [delete as applicable] a former employee or board member of Transnet in the past 10 years. I further declare that if they were a former employee or board member of Transnet in the past 10 years that they **were/were not** involved in the bid preparation or had access to the information related to this RFP; and

10. If such a relationship as indicated in paragraph 7, 8 and/or 9 exists, the Bidder is to complete the following section:

FULL NAME OF OWNER/MEMBER/DIRECTOR/
PARTNER/SHAREHOLDER/EMPLOYEE: ADDRESS:

_____

_____

Indicate nature of relationship with Transnet:

_____

_____

[Failure to furnish complete and accurate information in this regard will lead to the disqualification of a response and may preclude a Bidder from doing future business with Transnet. Information provided in

the declarations may be used by Transnet and/or its affiliates to verify the correctness of the information provided]

11. We declare, to the extent that we are aware or become aware of any relationship between ourselves and Transnet [other than any existing and appropriate business relationship with Transnet] which could unfairly advantage our entity in the forthcoming adjudication process, we shall notify Transnet immediately in writing of such circumstances.

BIDDER'S DISCLOSURE (SBD4)

12 PURPOSE OF THE FORM

12.1 Any person (natural or juristic) may make an offer or offers in terms of this invitation to bid. In line with the principles of transparency, accountability, impartiality, and ethics as enshrined in the Constitution of the Republic of South Africa and further expressed in various pieces of legislation, it is required for the bidder to make this declaration in respect of the details required hereunder.

12.2 Where a person/s are listed in the Register for Tender Defaulters and / or the List of Restricted Bidders, that person will automatically be disqualified from the bid process.

13 Bidder's declaration

13.1 Is the bidder, or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest[1] in the enterprise, employed by the state? **YES/NO**

13.1.1. If so, furnish particulars of the names, individual identity numbers, and, if applicable, state employee numbers of sole proprietor/ directors / trustees / shareholders / members/ partners or any person having a controlling interest in the enterprise, in table below.

Full Name	Identity Number	Name of State institution

13.2 Do you, or any person connected with the bidder, have a relationship with any person who is employed by the procuring institution? **YES/NO**

13.2.1. If so, furnish particulars:

…….

…….

13.3 Does the bidder or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest in the enterprise have any interest in any other related enterprise whether or not they are bidding for this agreement? **YES/NO**

[1] the power, by one person or a group of persons holding the majority of the equity of an enterprise, alternatively, the person/s having the deciding vote or power to influence or to direct the course and decisions of the enterprise.

13.3.1. If so, furnish particulars:

…….

…….

14 DECLARATION

I/We, the undersigned, (name)……. in submitting the accompanying bid, do hereby make the following statements that I certify to be true and complete in every respect:

14.1 I/We have read and I understand the contents of this disclosure;

14.2 I/We understand that the accompanying bid will be disqualified if this disclosure is found not to be true and complete in every respect;

14.3 The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However, communication between partners in a joint venture[2] will not be construed as collusive bidding.

14.4 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications, prices, including methods, factors or formulas used to calculate prices, market allocation, the intention or decision to submit or not to submit the bid, bidding with the intention not to win the bid and conditions or delivery particulars of the products or services to which this bid invitation relates.

14.5 The terms of the accompanying bid 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 agreement.

14.6 There have been no consultations, communications, agreements, or arrangements made by the bidder with any official of the procuring institution in relation to this procurement process prior to and during the bidding process except to provide clarification on the bid submitted where so required by the institution; and the bidder was not involved in the drafting of the specifications or terms of reference for this bid.

14.7 I/We am/are aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and agreements, 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 (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 ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act (Act No. 12 of 2004) or any other applicable legislation.

I CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 12, 13 and 14 ABOVE IS CORRECT.

I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME IN TERMS OF PARAGRAPH 6 OF PFMA SCM INSTRUCTION 03 OF 2021/22 ON PREVENTING AND COMBATING ABUSE IN THE SUPPLY CHAIN MANAGEMENT SYSTEM SHOULD THIS DECLARATION PROVE TO BE FALSE.

BREACH OF LAW

We further hereby certify that *I/we* (the bidding entity and/or any of its directors, members or partners)***have/have not been*** [delete as applicable] found guilty during the preceding 5 [five] years of a serious breach of law, including but not limited to a breach of the Competition Act, (Act No.89 of 1998), by a court of law, tribunal or other

[2] Joint venture means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of an agreement.

administrative body. The type of breach that the Bidder is required to disclose excludes relatively minor offences or misdemeanours, e.g. traffic offences. This includes the imposition of an administrative fine or penalty.
Where found guilty of such a serious breach, please disclose:

NATURE OF BREACH:
_____
_____
_____

DATE OF BREACH:_____

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

SIGNED at _____ on this _____ day of _____ 20___

For and on behalf of _____ duly authorised hereto	AS WITNESS:
Name:	Name:
Position:	Position:
Signature:	Signature:
Date:	Registration No of Company/CC
Place:	Registration Name of Company/CC

SECTION 8: RFP CLARIFICATION REQUEST FORM

RFP No: PEH/12/2024//03
RFP deadline for questions / RFP Clarifications: Before **12h00 on 7 February 2025**

TO: Transnet SOC Ltd
EMAIL **POPELEASEAPPLICATIONS@TRANSNET.NET**
DATE: _____
FROM: _____
_____

RFP Clarification No *[to be inserted by Transnet]* .....

REQUEST FOR RFP CLARIFICATION

_____
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SECTION 9: SPECIFIC GOALS POINTS CLAIM FORM – SBD 6.2

This preference form must form part of all bids invited. It contains general information and serves as a claim for preference points for specific goals Contribution. Transnet will award preference points to companies who provide valid proof of evidence of as per the table below.

NB: BEFORE COMPLETING THIS FORM, BIDDERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF SPECIFIC GOALS, AS PRESCRIBED IN THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000.

---

1. GENERAL CONDITIONS

1.1 The following preference point systems are applicable to all bids:

- the 80/20 for tenders to generate income with Rand value equal to or below of R50 million (all applicable taxes included); OR
- the 90/10 for tenders to generate income with Rand value equal to or above R50 million (all applicable taxes included);

1.2 Preference points for this bid shall be awarded for:

(a) Price;

(b) B-BBEE Status Level of Contribution; and

(c) Any other specific goal determined in Transnet preferential procurement policy.

1.3 The maximum points for this bid are allocated as follows:

	Points	Points
PRICE	**80**	**90**
SPECIFIC GOALS	**20**	**10**
BBBEE Level 1 and 2 Contributor	10	5
Non-Compliant and/or B-BBEE Level 3-8 contributors	0	0
Entities +50% black youth owned	5	2
Entities +30% black female owned	3	2
Entities +50% people living with disabilities	2	1
Total points for Price and Specific Goals must not exceed	**100**	**100**

1.4 Failure on the part of a bidder to submit proof of evidence for any of the specific goals together with the bid will be interpreted to mean that preference points are not claimed.

1.5 TNPA reserves the right to require of a bidder, either before a bid is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by TNPA.

2. DEFINITIONS

(a) **"all applicable taxes"** includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies;

(b) **"B-BBEE"** means Broad-Based Black Economic Empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;

(c) "**B-BBEE status level of contributor"** means the B-BBEE status received by a measured entity based on its overall performance using the relevant scorecard contained in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;

(d) **"bid"** means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the lease of premises, through rental offer, advertised competitive bidding processes or proposals;

(e) **"Broad-Based Black Economic Empowerment Act"** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);

(f) **"EME"** means an Exempted Micro Enterprise as defines by Codes of Good Practice under section 9 (1) of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);

(g) **"functionality"** means the ability of a bidder to respond to the RFP in accordance with specification as set out in the bid documents

(h) **"Price/Rental Offer "** includes all applicable taxes less all unconditional discounts.

(i) **"Proof of B-BBEE Status Level of Contributor"**

i) the B-BBBEE status level certificate issued by an authorised body or person;

ii) a sworn affidavit as prescribed by the B-BBEE Codes of Good Practice; or

iii) any other requirement prescribed in terms of the B-BBEE Act.

(j) **"QSE"** means a Qualifying Small Enterprise as defines by Codes of Good Practice under section 9 (1) of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);

(k) **"rand value"** means the total estimated value of an agreement in South African currency, calculated at the time of bid invitations, and includes all applicable taxes and excise duties.

(l) **"Specific goals"** means targeted advancement areas or categories of persons or groups either previously disadvantaged or falling within the scope of the Reconstruction and Development Programme identified by Transnet to be given preference in allocation of procurement agreements in line with section 2(1) of the PPPFA.

(m) **"tender for income-generating contracts"** means a written offer in the form determined by TNPA in response to an invitation for the origination of income-generating contracts through any method envisaged in legislation that will result in a legal agreement between TNPA and a third party that produces revenue for the organ of state, and includes, but is not limited to, leasing and disposal of assets and concession contracts, excluding direct sales and disposal of assets through public auctions; and

(n) **"the Act"** means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000).

3. POINTS AWARDED FOR PRICE/RENTAL OFFER

3.1 THE 80/20 OR 90/10 PREFERENCE POINT SYSTEMS

A maximum of 80/90 points is allocated for rental offer price on the following basis:

$$PS = 80/90 \left(1 + \frac{Pt - Pmax}{Pmax}\right)$$

Where:

Ps = Points scored for the price of Bid under consideration

Pt = Price of Bid under consideration

Pmax = Price of highest acceptable Bid

In terms of Transnet Preferential Procurement Policy (TPPP) and Procurement Manuals, the following preference points must be awarded to a bidder who provides the relevant required evidence for claiming points.

4. EVIDENCE REQUIRED FOR CLAIMING SPECIFIC GOALS

4.1 In terms of Transnet Preferential Procurement Policy (TPPP) and Procurement Manuals, preference points must be awarded to a bidder for providing evidence in accordance with the table below:

Specific Goals	Acceptable Evidence
B-BBEE Level 1 and 2	B-BBEE Certificate / Sworn- Affidavit / B-BBEE CIPC Certificate (in case of JV, a consolidated scorecard will be accepted) as per DTIC guideline
+30% Black Women Owned Entities	B-BBEE Certificate / Sworn- Affidavit / B-BBEE CIPC Certificate (in case of JV, a consolidated scorecard will be accepted) as per DTIC guideline
+50% Black Youth Owned Entities	Certified copy of ID Documents of the Owners and B-BBEE Certificate / Sworn- Affidavit / B-BBEE CIPC Certificate (in case of JV, a consolidated scorecard will be accepted) as per DTIC guideline
Entities Owned by +50% People with Disability (PWD)	Certified copy of ID Documents of the Owners / Doctor's note and /or EEA1 form confirming the disability
South African Enterprises	CIPC Certificate
EME or QSE +51% Black Owned	B-BBEE Certificate / Sworn-Affidavit / CIPC Certificate
Entities that are +51 % Black Owned	CI B-BBEE Certificate / Sworn- Affidavit / B-BBEE CIPC Certificate (in case of JV, a consolidated scorecard will be accepted) as per DTIC guideline

4.2 The table below indicates the required proof of B-BBEE status depending on the category of enterprises:

Enterprise	B-BBEE Certificate & Sworn Affidavit
Large	Certificate issued by SANAS accredited verification agency
QSE	Certificate issued by SANAS accredited verification agency Sworn Affidavit signed by the authorised QSE representative and attested by a Commissioner of Oaths confirming annual turnover and black ownership (only black-owned QSEs - 51% to 100% Black owned) [Sworn affidavits must substantially comply with the format that can be obtained on the DTIC's website at www.dti.gov.za/economic_empowerment/bee_codes.jsp.]
EME[3]	Sworn Affidavit signed by the authorised EME representative and attested by a Commissioner of Oaths confirming annual turnover and black ownership Certificate issued by CIPC (formerly CIPRO) confirming annual turnover and black ownership Certificate issued by SANAS accredited verification agency only if the EME is being measured on the QSE scorecard

4.3 A joint venture (including unincorporated joint ventures) must submit a consolidated B-BBEE Status Level verification certificate for every separate bid.

4.4 Tertiary Institutions and Public Entities will be required to submit their B-BBEE status level certificates in terms of the specialized scorecard contained in the B-BBEE Codes of Good Practice.

4.5 A person will not be awarded points for B-BBEE status level if it is indicated in the bid documents that such a bidder intends sub-contracting more than 25% of the value of the agreement to any other enterprise that does not qualify for at least the points that such a bidder qualifies for, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.

4.6 A person awarded an agreement may not sub-contract more than 25% of the value of the agreement to any other enterprise that does not have an equal or higher B-BBEE status level than the person concerned, unless the agreement is sub-contracted to an EME that has the capability and ability to execute the sub-contract.

4.7 Bidders are to note that the rules pertaining to B-BBEE verification and other B-BBEE requirements may be changed from time to time by Transnet or regulatory bodies such as National Treasury or the DTIC. It is the Bidder's responsibility to ensure that his/her bid complies fully with all B-BBEE requirements at the time of the submission of the bid.

5. BID DECLARATION

5.1 Bidders who claim points in respect of B-BBEE Status Level of Contribution must complete the following:

6. B-BBEE STATUS LEVEL OF CONTRIBUTION CLAIMED IN TERMS OF PARAGRAPHS 1.4 AND 6.1

6.1 B-BBEE Status Level of Contribution: . = …… (maximum of 20/10 points)

(Points claimed in respect of paragraph 6.1 must be in accordance with the table reflected in paragraph 4.1 and must be substantiated by relevant proof of B-BBEE status level of contributor.

WITNESSES 1. …….. 2. ……	…… SIGNATURE(S) OF BIDDERS(S) DATE: …….. ADDRESS……..

SECTION 10: JOB CREATION AND SKILLS DEVELOPMENT

Applicants are required to complete the below Tables which summarises the Bidder's proposed job creation and skills development commitment over the proposed **LEASE TERM** aligned to government's National Development Plan (NDP).

The Bidder hereby certifies that the information completed in this Section 10 commitment is true, aligned to the size of the Bidder's business operations, realistic and implementable over the lease term.

NEW SKILLS DEVELOPMENT			
Description	**Indicator**	**Number**	**Estimated Rand Value**
New skills development initiatives indicating the Bidder's commitment to skills education and how this would match with targeted groups. Consideration needs to be directed towards the adequate quality and value of proposed skills development. **Bidders are to indicate the nature of the training to be provided.**	Number and Rand value of **artisans** and or technicians to be trained over the term of the Lease		
	Number and Rand value of **apprentices** to be trained over the term of the Lease		
	Number and Rand value of **Black People and or Youth** to be trained over the term of the Lease. Is the level of training offered above in compliance with the National Qualification Framework (NQF) Guidelines (indicate YES or NO below) **YES** **NO**		
	Number and Rand value of **higher education bursaries and or scholarships** to be offered by the Applicant, if applicable (specify)		

JOB CREATION AND PRESERVATION			
Description	**Indicator**	**Number**	**Estimated Rand Value**
The potential for job creation and/or preservation as result of the award of the lease to the Bidder, allowing for the assessment of the Bidder's intention to increase labour absorption focusing on skilled and unskilled workers and the Youth. *Skilled jobs refer to jobs for people in a specialised field of work requiring a defines training path and or a requisite level of experience in order for them to perform their role. These people could be in possession of a certificate, diploma or degree from an institute of higher education. **Unskilled jobs refer to jobs for people where the field of work does not require extensive formal training or from whom no minimum level of education is required ***Youth refer to individuals between the ages of 18 and 35.	Number of new ***skilled** jobs to be created due to award of the lease to the Applicant		
	Number of new ****unskilled** jobs to be created due to award of the lease to the Applicant		
	Number of **jobs that would be preserved** due to the award of the contract (includes both skilled and unskilled)		
	Number of jobs to be created for **Black ***Youth, Black Women and Black People Living with Disabilities** due to the award of the lease to the Applicant		

SMALL BUSINESS PROMOTION			
Description	**Indicator**	**Percentage**	**Estimated Rand Value**
These supplier development measurements give an indication of the Bidder's commitment to developing small businesses in line with BBBEE requirements	Percentage of the Bidder's projected procurement spend from small businesses i.e., Emerging Micro Enterprises (EME), Qualifying Small Enterprises (QSE) and Start Ups		
	Percentage of estimated contract value that would be subcontracted to EME's, QSE's and Start Ups		
RURAL DEVELOPMENT AND RURAL INTERGRATION			
Description	**Indicator**	**Number**	**Estimated Rand Value**
These tenant development value measures give an indication of the Bidder's commitment towards rural development and regional integration.	Number of local jobs to be created due to the award of the lease		
	Number of local jobs which would be preserved due to the award of the lease		

WITNESSES

……..

…….

…….

SIGNATURE(S) OF BIDDERS(S)

DATE: ……..

ADDRESS……..

SECTION 11: PROTECTION OF PERSONAL INFORMATION

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

   consent; data subject; electronic communication; information officer; operator; person; personal information; processing; record; Regulator; responsible party; special information; as well as any terms derived from these terms.

2. Transnet will process all information by the Bidder 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.

3. The Parties acknowledge and agree that, in relation to personal information that will be processed pursuant to this RFP, the Responsible party is "Transnet" and the Data subject is the "Bidder". Transnet will process personal information only with the knowledge and authorisation of the Bidder and will treat personal information which comes to its knowledge as confidential and will not disclose it, unless so required by law or subject to the exceptions contained in the POPIA.

4. Transnet reserves all the rights afforded to it by the POPIA in the processing of any of its information as contained in this RFP and the Bidder is required to comply with all prescripts as detailed in the POPIA relating to all information concerning Transnet.

5. In responding to this bid, Transnet acknowledges that it will obtain and have access to personal information of the Bidder. Transnet agrees that it shall only process the information disclosed by Bidder in their response to this bid for the purpose of evaluating and subsequent award of business and in accordance with any applicable law.

6. Transnet further agrees that in submitting any information or documentation requested in this RFP, the Bidder is consenting to the further processing of their personal information for the purpose of, but not limited to, risk assessment, assurances, agreement award, agreement management, auditing, legal opinions/litigations, investigations (if applicable), document storage for the legislatively required period, destruction, de-identification and publishing of personal information by Transnet and/or its authorised appointed third parties.

7. Furthermore, Transnet will not otherwise modify, amend or alter any personal data submitted by the Bidder or disclose or permit the disclosure of any personal data to any third party without the prior written consent from the Bidder. Similarly, Transnet requires the Bidder to process any personal information disclosed by Transnet in the bidding process in the same manner.

8. Transnet shall, at all times, ensure compliance with any applicable laws put in place and maintain sufficient measures, policies and systems to manage and secure against all forms of risks to any information that may be shared or accessed pursuant to this RFP (physically, through a computer or any other form of electronic communication).

9. Transnet shall notify the Bidder in writing of any unauthorised access to information, cybercrimes or suspected cybercrimes, in its knowledge and report such crimes or suspected crimes to the relevant authorities in accordance with applicable laws, after becoming aware of such crimes or suspected crime. The Bidder must 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.

10. The Bidder may, in writing, request Transnet to confirm and/or make available any personal information in its possession in relation to the Bidder and if such personal information has been accessed by third parties and the identity thereof in terms of the POPIA. The Bidder may further request that Transnet correct (excluding critical/mandatory or evaluation information), delete, destroy, withdraw consent or object to the processing of any personal information relating to the Bidder in Transnet's possession in terms of the provision of the POPIA and utilizing Form 2 of the POPIA Regulations.

11. In submitting any information or documentation requested in this RFP, the Bidder is hereby consenting to the processing of their personal information for the purpose of this RFP and further confirming that they are aware of their rights in terms of Section 5 of POPIA

Bidders are required to provide consent below:

YES			**NO**	

12. Further, the Bidder declares that they have obtained all consents pertaining to other data subject's personal information included in its submission and thereby indemnifying Transnet against any civil or criminal action, administrative fines or other penalty or loss that may arise as a result of the processing of any personal information that the Bidder submitted.

13. The Bidder declares that the personal information submitted for the purpose of this RFP is complete, accurate, not misleading, is up to date and may be updated where applicable.

Signature of Bidder's authorised representative: _____

Should a Bidder have any complaints or objections to processing of its personal information, by Transnet, the Bidder can submit a complaint to the Information Regulator on https://www.justice.gov.za/inforeg/, click on contact us, click on complaints.IR@justice.gov.za

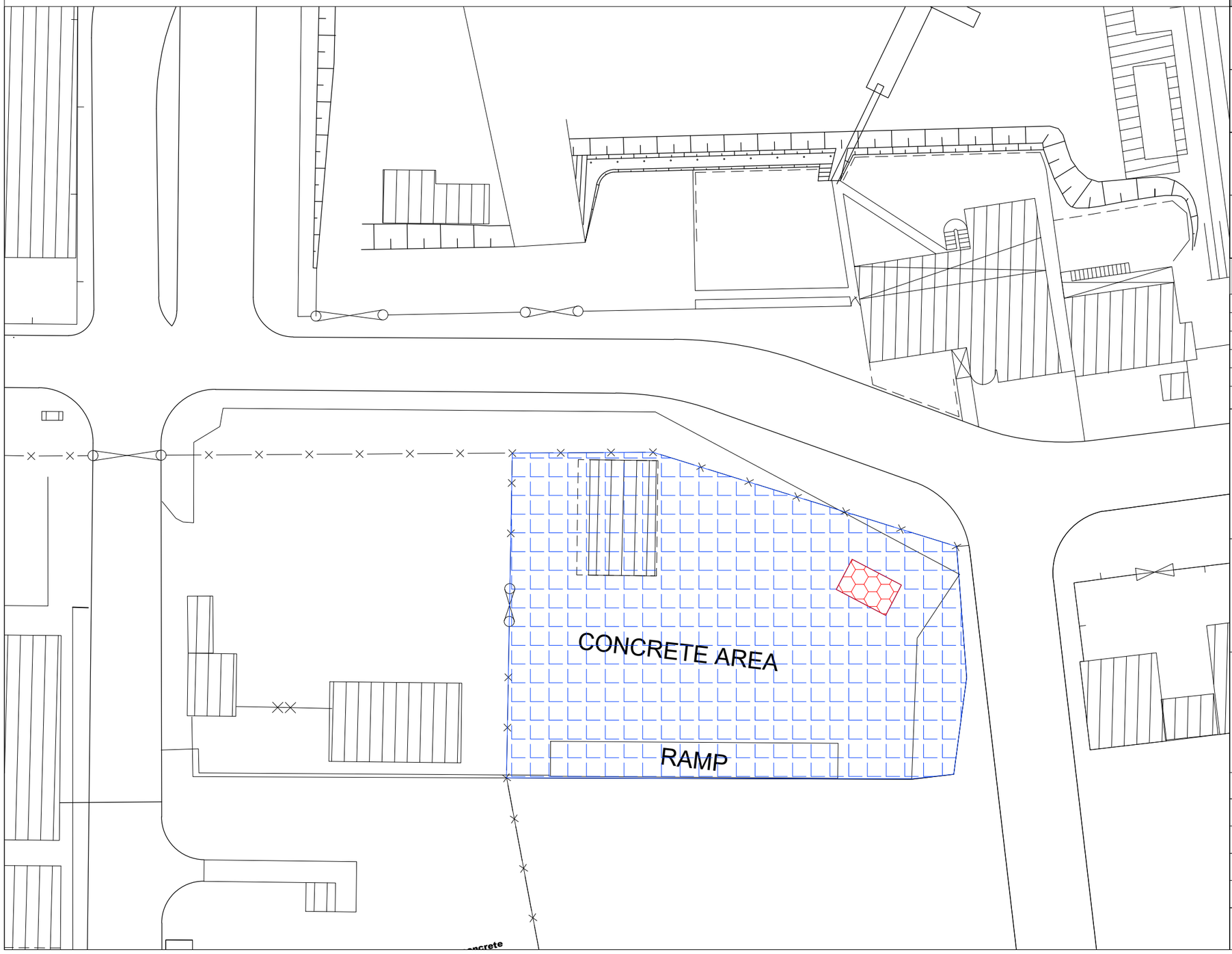
ANNEXURE 1

LEGEND:

EXISTING BUILDINGS

LAND AVAILABLE FOR LEASE

BUILDING AVAILBLE FOR LEASE



NOTES:

1. DEED DESCRIPTION: ERF 1051
2. LEASE PERIOD:
3. AREA OF LAND LEASED:

LAND AREA: 1 880M²
BUILDING: 02YP305= 30M²
TOTAL AREA= 1 910M²

LEASE SIGNATORIES

FOR SIGNATURE DATE	WITNESS 1. SIGNATURE DATE
	WITNESS 2. SIGNATURE DATE
FOR TRANSNET NATIONAL PORTS AUTHORITY SIGNATURE DATE	WITNESS 1. SIGNATURE DATE
	WITNESS 2. SIGNATURE DATE

LEASE AGREEMENT

No.	DESCRIPTION / REVISIONS	DATE

TRANSNET national ports authority

PORT OF PORT ELIZABETH

WORKSHOP 17

LAND AVAILABLE FOR LEASE IN WORKSHOP 17

CONTRACT NO.		FILE	
DESIGNED BY	NN	SCALE	1:500
CHECKED BY	KD	DATE	2022-09-09
DRAWN BY	NN	PEH - PORT ENGINEER	
CHECKED BY	KD	SIGNATURE	DATE

PAPER SIZE	TRANSNET DRW. NO.	SHEET	REV.
A3	PEH51A6769-01-00		

TRANSNET

national ports authority

ANNEXURE 2

ENVIRONMENTAL MANAGEMENT PLAN GUIDELINES FOR PORT USERS & TENANTS

INTRODUCTION

An Environmental Management Plan (EMP) is a tool that can be used to provide the assurance that an organization or entity is aware of the environmental impacts that arise from its operations and has developed plans to mitigate negative impacts. The EMP provides a description of the methods and procedures for mitigating and monitoring impacts. The EMP also contains environmental objectives and targets that the organization or entity needs to achieve in order to reduce or eliminate negative impacts. An EMP, coupled with proper implementation and monitoring, may result in improved environmental performance.

PURPOSE

This document aims to provide an introduction on the purpose, objectives, and content of EMPs. EMPs must outline the environmental impacts resulting from operations, the proposed mitigation measures as well as the roles and responsibilities associated with implementation of the EMP. An EMP should also take into consideration the legal obligations related to the organization or entity's operations.

EMP GUIDELINES

There is no universally accepted standard format for EMPs, however the format needs to be fit for the intended purpose. Circumstances in which the EMP is being developed and the requirements that it is designed to meet. These guidelines aim to provide guidance to all Port users and Tenants operating with Port Limits in developing environmental management plans that speak to their specific operations.

According to the World Bank (1999) EMP should contain the following components

An overview of the responsibilities of the organization/entity relating to environmental management policies and guidelines.

1. A summary of the predicted positive and negative impacts associated with operations
2. The environmental management objectives and targets to enhance the benefits and minimize adverse environmental impacts.

3. A detailed description of the actions required to achieve the objectives including how by whom, by when what resources are required, and what monitoring measures will be implemented.
4. Clearly outline the roles and responsibilities, communication, and reporting processes required for the implementation of the EMP. The EMP must specify responsibilities for the range of actions specified in the EMP.
5. Address applicable legislative requirements for operations

Compliance with environmental legal requirements is an essential aspect of the EMP as the relevant legal requirements must consider the requirements of national, provincial, or local government. Failure to meet legal environmental requirements could result in severe environmental degradation and or transgressions with penalties.

EMP IMPLEMENTATION

Training and environmental awareness are key to the effective implementation of the EMP. All personnel must be trained on the requirements of the EMP and made to fully understand their specific roles and responsibilities. This can result in the reduction of environmental incidents and may improve environmental compliance. This can be achieved through conducting induction for all new employees, scheduling regular awareness sessions, conducting daily toolbox talks, newsflashes, emails, and other applicable internal communication methods.

SUBMISSION OF EMP TO TNPA

The EMP must be submitted for Approval to TNPA 30 days prior to the commencement of the Lease Agreement

SUGGESTED EMP CONTENT (not limited to)

A. Name of the Organisation/ Entity
B. Detailed description/scope of the operations of the organization/ entity, this must include equipment and method statements.
C. Location of business operations within port limits

D. A detailed list of positive and negative impacts associated with operations with suitable controls and mitigation measures in relation to natural resources e.g., waste, water resources, land, air quality, plants, and animals (where applicable)
E. Specific mechanisms for achieving compliance with national, provincial, and local legislation (including municipal by-laws)
F. Environmental Monitoring programme
G. A List of Environmental Permits, licenses, and authorizations specific to business operations within the Port
H. Environmental Incident Management protocol
I. Environmental Awareness Programme designed for employees
J. Roles and responsibilities for specific actions associated with the implementation mitigation, monitoring, and performance assessment of the EMP

Note: It is highly recommended that the Environmental Management Plan be compiled by a qualified Environmental Management Practitioner.

REFERENCES

1. DEAT (2004) Environmental Management Plans, Integrated Environmental Management, Information Series 12, Department of Environmental Affairs and Tourism (DEAT)
2. Lochner, P. 2005. Guideline for Environmental Management Plans. CSIR Report No ENV-S-C 2005-053 H. Republic of South Africa, Provincial Government of the Western Cape, Department of Environmental Affairs & Development Planning, Cape Town.
3. World Bank (1999) Environmental Management Plans, Environmental Assessment Sourcebook Update, November 25. Environment Department, World Bank, Washington D.C.

TRANSNET

national ports authority

ANNEXURE 3

AGREEMENT OF LEASE

between

TRANSNET SOC Ltd

(Registration Number: 1990/000900/30)

a state owned company, duly incorporated in terms of the company laws of the Republic of South Africa and acting through its operating division **Transnet National Ports Authority**

(hereinafter referred to as the "Lessor")

and

THE LESSEE
(Registration Number:_____)

(hereinafter referred to as the "Lessee")

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1. **INTERPRETATION AND PRELIMINARY**

The headings of the clauses in this agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this agreement nor any clause hereof. Unless a contrary intention clearly appears:

1.1. words importing:

1.1.1. any one gender includes the other two genders;

1.1.2. the singular includes the plural and *vice versa*; and

1.1.3. natural persons includes created entities (corporate or unincorporate) and the State and *vice versa*;

1.2. the following terms shall have the meanings assigned to them hereunder and similar expressions shall have corresponding meanings:

1.2.1. "**Administration Fee**" means the amount specified in *Annexure "A"* that is payable by the Lessee to the Lessor in respect of the administrative arrangements attended to by the Lessor in relation to this Lease Agreement;

1.2.2. "**Ancillary Agreements**" means the ancillary agreements listed in *Annexure "A"*, which the Parties may conclude in respect of services that are ancillary to this Lease Agreement;

1.2.3. "**Annexure A**" means *Annexure "A"* to this Lease Agreement, being an annexure containing certain material commercial terms applicable to this Lease Agreement;

1.2.4. "**Annexure B**" means *Annexure "B"* to this Lease Agreement, being the Lessor's Regulatory Universe which is applicable this Lease Agreement;

1.2.5. "**Annexure C**" means *Annexure "C"* to this Lease Agreement, containing a diagram of the Leased Premises, the Surrounding Property and/or the Common Areas, as the case may be;

1.2.6. **"Annexure D"** means, if applicable, the Suretyship attached to this Lease Agreement which must be signed by the surety/ies and marked *"Annexure D"*;

1.2.7. "**Annexure E**" means, if applicable, the Bank Guarantee attached to this Lease Agreement marked *"Annexure E"*;

1.2.8. "**BBBEE**" means broad-based black economic empowerment, as defined in the Broad-Based Black Economic Empowerment Act 53 of 2003;

1.2.9. **Beneficial Occupation Period**" means the beneficial occupation period, if applicable, as defined in *Annexure "A"*;

1.2.10. "**BBBEE Target Plan**" means the plan, (which may form part of the Business Plan) that the Lessee intends implementing in respect of its BBBEE status;

1.2.11. **"BOI"** means a Board of Inquiry, into any incident or occurrence affecting the employees and/or customers of the Lessee or damage in respect of the leased premises;

1.2.12. "**Business Day**" means any day other than a Saturday, Sunday or an officially recognised public holiday in the Republic;

1.2.13. "**Business Plan**" means, if applicable, the business plan described in clause 5 below, containing details regarding the various plans that the Lessor requires or that the Lessee proposes to implement in relation to the Leased Premises, including:

1.2.13.1. the BBBEE Target Plan;

1.2.13.2. the Environmental Plan; and/or

1.2.13.3. any other plan as may be required by the Lessor, from time to time.

1.2.14. "**Commencement Date**" means, notwithstanding the Signature Date, the commencement date stipulated in *Annexure "A"*, being the date on which this Lease Agreement commences, which date coincides with the commencement of the Beneficial Occupation Period, if applicable;

1.2.15. "**Common Areas**" means, if applicable, all amenities provided by the Lessor for the general use of the Lessee and other lessees (and/or their employees, clients, customers and other persons as may be agreed upon by the Parties, from time to time) on the Surrounding Property, as more fully described in *Annexure "A"* and *Annexure "C"* including (but not limited to) the foyers, malls, arcades, passages, parking areas, entrances, exits, loading areas, landscape areas, interior and exterior stairways, toilets, yards, sidewalks, driveways, ramps and other amenities (as may be applicable) having regard to the nature of the Surrounding Property;

1.2.16. "**Confidential Information**" means any information disclosed by either Party to the other Party prior to the conclusion of this Lease Agreement, in terms of this Lease Agreement or otherwise in connection with this Lease Agreement;

1.2.17. "**Deposit**" means the Initial Deposit and, if applicable, the Periodic Deposit;

1.2.18. "**Environmental Plan**" means the plan (which may form part of the Business Plan) in respect of the environmental measures that the Lessee intends implementing in relation to the Leased Premises;

1.2.19. "**Escalation Rate**" means, the rate at which the Rental payable by the Lessee shall be adjusted for the duration of this Lease Agreement and any Rental Review Period, if applicable, as set out in *Annexure "A"*;

1.2.20. "**Expiry Date**" means the date upon which this Lease Agreement shall terminate, as stipulated in *Annexure "A"*;

1.2.21. "**Improvement**" means any addition, alteration or development on the Leased Premises;

1.2.22. "**Initial Deposit**" means the initial deposit specified in *Annexure "A"*;

1.2.23. "**Initial Period**" means, if applicable, the initial period specified in *Annexure "A"*;

1.2.24. "**Law**" means any law applicable in the Republic of South Africa and includes, without limitation, any Act of Parliament, ordinance, by-law, statutory proclamation, regulation, the common law or other enactment, directive, policy or determination having the force of law;

1.2.25. "**Lease Agreement"** means this lease agreement together with any annexures attached hereto, by agreement between the Parties;

1.2.26. **"Lease Period**" means the fixed period commencing on the Commencement Date and expiring on the Expiry Date;

1.2.27. "**Leased Premises**" means the premises forming the subject matter of this Lease Agreement, as more fully described in *Annexure "A"* and illustrated in the diagram attached hereto as *Annexure "C"*, but does not include the Surrounding Property and the Common Areas;

1.2.28. "**Lessee**" means _____ under this Lease Agreement and identified in *Annexure "A"*;

1.2.29. "**Lessee's Domicilium**" means the address nominated by the Lessee for service of all legal documents and notices;

1.2.30. "**Lessor**" means Transnet SOC Ltd (Registration Number: 1990/000900/30), a state owned company, duly incorporated in accordance with the company laws of the Republic, which is represented herein by its operating division, Transnet National Ports Authority as stipulated in *Annexure "A"*;

1.2.31. "**Lessor's Domicilium**" means the address nominated by the Lessor for service of all legal documents and notices;

1.2.32. "**Lessor's Policies**" means, all policies and legislation as contained in TNPA's Regulatory Universe, as may from time to time be prescribed and made available by the Lessor to the Lessee in accordance with this Lease Agreement;

1.2.33. "**Main Agreement"** means this Lease Agreement but excludes the annexures forming part of this Lease Agreement;

1.2.34. "**Notice of Redevelopment Period**" means, if applicable, the notice of redevelopment period stipulated in *Annexure "A"*;

1.2.35. "**Notice of Repossession Period**" means, if applicable, the notice of repossession period stipulated in *Annexure "A"*;

1.2.36. "**Offer Period**" means the offer period stipulated in *Annexure "A"*;

1.2.37. "**Operating Costs**" means the monthly contribution by the Lessee towards the operating and/or maintenance costs of the Leased Premises, as specified in *Annexure "A"*;

1.2.38. "**Periodic Deposit**" means, if applicable, the adjusted Deposit referred to in clause 9.1.2 below, that may become payable by the Lessee to the Lessor upon the commencement of each Rental Review Period and on each occasion when the rental is escalated;

1.2.39. "**Refuse Removal Charges**" means the charges payable in respect refuse removal from the Leased Premises, whether such services have been supplied by the local authority or the Lessor, as specified in *Annexure "A"*;

1.2.40. "**Rental**" means the rental payable by the Lessee to the Lessor, as set out in *Annexure "A"*;

1.2.41. "**Rental Review Periods**" means the rental review periods, if applicable, stipulated in *Annexure "A"*;

1.2.42. "**Parties**" means the Lessor and the Lessee;

1.2.43. "**Party**" means either the Lessor or the Lessee, as the context may indicate;

1.2.44. "**Republic**" means the Republic of South Africa;

1.2.45. "**Sewerage Removal Charges**" means the charges payable in respect of sewerage removal from the Leased Premises, whether such services have been supplied by the local authority or the Lessor, as specified in *Annexure "A"*;

1.2.46. "**Signature Date**" means the date of signing of this Lease Agreement by the Party signing last in time, provided that both Parties sign this Lease Agreement;

1.2.47. "**Specified Purpose**" means the specified purpose for which the Leased Premises may be used as specified in *Annexure "A"*;

1.2.48. "**Surrounding Property**" means the property surrounding the Leased Premises, including (if applicable) the Common Areas, as more fully described in *Annexure "A"* and as illustrated in *Annexure "C"* to this Lease Agreement; and

1.2.49. "**VAT**" means value added tax, as defined in the Value Added Tax Act 89 of 1991;

1.3. any reference to an enactment is to that enactment as at the Signature Date and as amended or re-enacted from time to time;

1.4. if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in this clause 1, effect shall be given to it as if it were a substantive provision in the body of this Lease Agreement;

1.5. when any number of days is prescribed in this Lease Agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday in the Republic, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday in the Republic;

1.6. where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;

1.7. expressions defined in this Lease Agreement shall bear the same meanings in annexures to this Lease Agreement which do not themselves contain their own conflicting definitions;

1.8. reference to day/s, month/s or year/s shall be construed as Gregorian calendar day/s, month/s or year/s;

1.9. the use of any expression in this Lease Agreement covering a process available under the law of the Republic such as a winding-up (without limitation) shall, if any of the Parties to this Lease Agreement is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such defined jurisdiction;

1.10. where any term is defined within the context of any particular clause in this Lease Agreement, the term so defined, unless it is clear from the clause in question that such term has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Lease Agreement, notwithstanding that that term has not been defined in this clause 1;

1.11. the expiration or termination of this Lease Agreement shall not affect such of the provisions of this Lease Agreement which expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this;

1.12. the rule of construction that a contract shall be interpreted against the Party responsible for the drafting or preparation of the contract, shall not apply;

1.13. any reference in this Lease Agreement to a Party shall include a reference to that Party's assigns expressly permitted under this Lease Agreement and, if such Party is liquidated or sequestrated, be applicable to and binding upon that Party's liquidator or trustee, as the case may be;

1.14. the words "**include**", "**including**" and "**in particular**" shall be construed as being by way of example or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding word/s;

1.15. the words "**other**" and "**otherwise**" shall not be construed with any preceding words where a wider construction is possible.

2. LEASED PREMISES

The Lessor hereby lets to the Lessee, who hereby hires, the Leased Premises.

3. LEASE AGREEMENT

3.1. For the sake of clarity, the Parties record that this Lease Agreement comprises of:

3.1.1. the general terms and conditions set out in the Main Agreement;

3.1.2. the key commercial terms set out in *Annexure "A"*; and

3.1.3. such other annexures attached hereto by agreement between the Parties.

3.2. In the event of any conflict with the provisions of the Main Agreement and/or any annexure forming part of this Lease Agreement, the provisions of the Main Agreement shall prevail.

4. DURATION OF LEASE AGREEMENT

This Lease Agreement shall commence on the Commencement Date irrespective of whether the Lessee has taken occupation or not, and shall subsist for the Lease Period unless terminated earlier either by mutual agreement between the Parties, or otherwise in accordance with the provisions of this Lease Agreement.

5. BUSINESS PLAN

5.1. In the event that the Lessee is required to submit a detailed Business Plan, such Business Plan shall be submitted to the Lessor prior to the Signature Date of this Lease Agreement and shall contain such information and documents as may be reasonably required by the Lessor, including:

5.1.1. the full names, identity numbers and residential addresses of the persons exercising management control over the Lessee, structure of the Lessee (including organogram);

5.1.2. the full names, registration or identity numbers and registered business or residential addresses (as the case may be) of the persons or entities who beneficially, directly or indirectly, hold shares in the Lessee;

5.1.3. the Lessee's projected business cash flows, up to date and most recent audited income statement which must be signed by the Lessee's auditors and shareholders, management accounts for the last 6 months, detailed balance sheet of the Lessee, letters of commitment from the bank, the Lessee's long and short term strategy, investments that will be injected into the property and development and/or operational plans;

5.1.4. details of the Lessee's operation methodology including equipment to be used;

5.1.5. any additional information that the Lessor may require, from time to time.

5.2. The Business Plan shall be used by the Lessor to determine whether or not to enter into this Lease Agreement , to monitor the activities of the Lessee and to decide whether or not to renew this Lease Agreement from time to time.

5.3. The terms and conditions applicable to the monitoring of the Lessee's activities in terms of clause 5.2 above shall, if applicable, be contained in an Annnexure to this Lease.

6. **LESSOR'S POLICIES**

6.1. The Lessee acknowledges that:

6.1.1. the Lessor conducts its business in accordance with, *inter alia*, the Lessor's Policies which is aligned to the TNPA Regulatory Universe; and

6.1.2. it is fully aware of and conversant with the legislation which comprises the TNPA Regulatory Universe (*Annexure "B"*) and the implications thereof.

6.2. The Lessee shall conduct its business from the Leased Premises strictly in accordance with such legislation:

6.2.1. if any provision of the Business Plan and/or such legislation imposes obligations or requirements which are more onerous on the Lessee and more beneficial for the Lessor than the corresponding provision contained in the Lessor's Policies, then the provisions of the Business Plan or relevant legislation (as the case may be) shall apply;

6.2.2. if any provision of the Business Plan and/or any legislation imposes obligations or requirements which are less onerous on the Lessee and beneficial to a lesser degree for the Lessor than the corresponding provision contained in the Lessor's Policies, then the relevant provision of the Lessor's Policies shall apply.

6.3. The Lessor shall be entitled from time to time and by written notice to the Lessee to amend all or any of the Lessor's Policies provided that such amendment shall be reasonable, in line with TNPA's Regulatory Universe and shall apply generally to all lessees of land and/or premises (including the Lessee) within the Surrounding Property.

6.4. The Lessee shall, from time to time upon being required to do so by the Lessor, meet with the Lessor and/or its duly authorised representatives for the purpose of reviewing the extent to which the Lessor's Policies are complied with by the Lessee, and shall generally provide the Lessor and its duly authorised representatives with all documentation and with such assistance as they may reasonably require for that purpose. The Lessor shall be entitled to give the Lessee written notice of:

6.4.1. remedial measures to be undertaken by the Lessee in order to ensure that the Lessor's Policies are complied with; and

6.4.2. a reasonable time period within which such remedial measures must commence and/or be completed.

6.5. The failure by the Lessee to timeously implement any remedial measures of which it is notified in writing in accordance with the provisions of clause 6.4 shall constitute a material breach by the Lessee of the provisions of this Lease Agreement entitling the Lessor (in addition and without prejudice to any other remedy available to the Lessor in terms of this Lease Agreement and/or at law) to claim proven damages from the Lessee or a penalty in an amount equal to 50% (fifty percent) of the monthly Rental payable by the Lessee for so long as such breach persists.

6.6. The Lessor shall be entitled (and on reasonable written notice to the Lessee) to require the Lessee to effect and implement such amendments to its Business Plan as may from time to time be reasonably necessary in order to ensure that such Business Plan complies with the Lessor's Policies.

6.7. The Lessee shall have no claim against the Lessor arising from any loss or damage which it may suffer as a consequence of implementing any such amendments to its Business Plan.

7. OCCUPATION OF THE LEASED PREMISES

The Lessee shall be given vacant occupation of the Leased Premises with effect from the Commencement Date.

8. **SPECIFIED PURPOSE**

The Leased Premises is let to the Lessee for the Specified Purpose only. The Lessee shall not use the Leased Premises for any other purpose whatsoever without the prior written consent of the Lessor, which consent may be withheld by the Lessor in its sole discretion.

9. **DEPOSIT**

9.1. The Lessee shall pay to the Lessor, the Deposit comprising:

9.1.1. the Initial Deposit which shall be payable on the Signature Date; and shall escalate as indicated in *Annexure "A"*; and

9.1.2. if applicable, the Periodic Deposit, as agreed upon by the Parties from time to time, which shall be payable upon the commencement of any Rental Review Period.

9.2. The Lessor shall have the right to apply the whole Deposit, or a portion thereof, towards payment of any Rental, Operating Costs, rates, water,sewerage and electricity charges, reinstatement costs and/or any other liability for which the Lessee is responsible in terms of this Lease Agreement. If any portion of the Deposit is so applied, the Lessee shall forthwith reinstate the Deposit to its original amount.

9.3. The Deposit or the balance thereof, as the case may be, shall be refunded by the Lessor to the Lessee:

9.3.1. after the Lessee has vacated the Leased Premises;

9.3.2. after all the Lessee's obligations to the Lessor in terms of this Lease Agreement have been fully discharged; and

9.3.3. once a take back inspection has been conducted between the Lessor and Lessee.

9.3.4. free of interest.

9.4. In lieu of paying the Deposit referred to in clause 9.1 above in cash, the Lessee may submit an unconditional bank guarantee for an equivalent amount in the form and as reflected in *Annexure "E"*, which bank guarantee shall be valid for the duration of this Lease Agreement as well as for at least 6 (six) months after termnation/expiry of this Lease Agreement;

9.5. The deposit referred to in this clause 9 shall not be subject to VAT.

10. RENTAL

10.1. The Lessee shall pay to the Lessor the Rental, which shall increase, from time to time, in the manner contemplated in *Annexure "A"* by the Escalation Rate.

10.2. In addition to, but separately and distinctly from the Rental, the Lessee shall pay, where applicable:

10.2.1. the Operating Costs in respect of the Leased Premises on a monthly basis; and

10.2.2. such additional charges as may be specified in this Lease Agreement.

10.3. The Rental shall be due and payable by the Lessee to the Lessor in accordance with *Annexure "A"*.

10.4. In the event that the Rental and/or any other amounts are payable by the Lessee to the Lessor in terms of this Lease Agreement on a monthly basis, such amounts shall be paid by the Lessee in advance on or before the first Business Day of each calendar month.

10.5. All amounts payable by the Lessee in terms of this clause 10 shall be subject to VAT.

11. METHOD OF PAYMENT

11.1 The Lessor shall be entitled to require the Lessee to effect payments of all amounts due under this Lease Agreement by means of an electronic funds transfer operating on an account held by the Lessee with a financial institution chosen by the Lessee, provided that such financial institution is able to immediately transfer payment to the banking account of the Lessor. The Lessee shall ensure that it completes and signs the EFT Application which is made available by the Lessor to the Lessee, whereafter such Application will be processed by the Lessor.

11.2 The Lessee shall not be permitted under any circumstances to settle any amount due in terms of this Lease Agreement by means of a cash payment at the Lessor's offices.

11.3 Payment of any amount due under this Lease Agreement shall be deemed to have been made only when the relevant amount has been duly credited to the banking account of the Lessor.

11.4 All amounts payable by the Lessee to the Lessor in terms of this Lease Agreement shall be paid free of set-off and/or deduction, whether in respect of any bank or other charges.

11.5 In the event that the Lessee is liable to make payment of any charges to the Lessor in respect of refuse removal, sewerage removal, water and/or electricity, the Lessee acknowledges that such charges levied by the Lessor may vary from time to time and the Lessee shall be bound to pay such variable charges as invoiced by the Lessor.

11.6 In the event of the termination of this Lease Agreement prior to the Expiry Date, or prior to the expiry of any Rental Renewal Period, as the case may be, the Lessor shall have the right to claim immediate payment of all and any outstanding amounts owing to it and the Lessee shall be obliged to effect payment of the amount so claimed.

12 ESCALATION RATE

The Rental payable by the Lessee to the Lessor and the Lessee's contribution to Operating Costs shall increase each year on the anniversary of the Commencement Date by applying the Escalation Rate (as provided for in *Annexure "A"*) to the preceding year's Rental and Operating Costs amount.

13 RENTAL REVIEW

13.1 In the event that a Rental Period is applicable, the Parties agree that, 6 (six) months prior to the expiry of any Rental Review Period, they shall meet and endeavour to agree upon the Rental and Escalation Rate that will apply in that Rental Review Period. In the event that the Lessee is not forthcoming and/or delays and/or refuses to participate in such process and continues to do so for a period of 21 days from the initial request by the Lessor to participate in the Rental Review process, then the Rental and Escalation rate for such period as determined by the Lessor shall be final and binding upon the Lessee.

13.2 Should the Parties not be able to agree upon the Rental and Escalation Rate in terms of clause 13.1 above, the Rental and Escalation Rate shall be determined by a registered Transnet approved valuer or a valuer registered with the South African Council for the Property Valuers Profession ("**SACPVP)**", which shall be determined at the sole discretion of the Lessor.

13.3 In the event that the dispute is referred to the SACPVP, the Council shall provide 3 (three) names of Valuers, each of at least 10 (ten) years standing who are registered with the SACPVP and have been practising in the same locality as the Leased Premises, for the purposes of determining the Rental and Escalation Rate. The Parties would then need to agree on which one of the three Valuers to select. If the parties are unable to agree on which of the 3 (three) valuers to select, then such determination shall be made at the sole discretion of the Lessor.

13.4 Forthwith following the appointment of the SACPVP Valuer, each Party shall submit a written Rental estimate and a written Escalation Rate (both of which shall not be lower than the current rental and Escalation Rate) estimate to such valuer, together with any information supporting such estimate.

13.5 The SACPVP Valuer will act as an expert (and not as an arbitrator) and, within 30 (thirty) days after being appointed, will determine the Rental and the Escalation Rate for the Leased Premises for the relevant Rental Review Period, which determination shall be reduced to writing and shall be binding upon the parties.

13.6 The costs of the SACPVP Valuer shall be borne equally by the Parties.

13.7 Notwithstanding anything to the contrary contained in this Lease Agreement, pending the determination of the Rental and the Escalation Rate applicable during any Rental Review Period, the Lessee shall continue to pay Rental equal to the Rental which prevailed in the month immediately prior to the dispute referred to in this clause 13 arising, escalated at the Escalation Rate stipulated in *Annexure "A"* until such determination is made. Thereafter, if applicable, the Lessee shall on demand pay any additional amount it would have had to pay in respect of the period from the date of the dispute arising to the end of the month during which the determination is made.

13.8 For the sake of clarity, the Rental payable during any period after a dispute has been declared in terms of this clause 13, shall not at any stage be less than the Rental payable prior to such dispute arising.

13.9 Any Rental and Escalation Rate determination in terms of this clause 13 shall, in the absence of manifest error, be final and binding on the Parties and shall apply until the next Rental Review Period, if applicable. In addition, the Lessee shall increase the amount of its Deposit in proportion to the increase in Rental, forthwith following the date of determination of such Rental, the Periodic Deposit.

14 ADDITIONAL CHARGES

14.1 The Lessee shall pay the following additional charges to the Lessor:

14.1.1 in the event that the Lessor supplies water and/or electricity to the Lessee, the applicable water and/or electricity fees that may be charged by the Lessor to the Lessee, from time to time, in accordance with the provisions of clauses 30 *(Services by Lessor or Relevant Authority)*, 31 *(Supply of Electricity by the Lessor)* and 32 *(Supply of Water by the Lessor)* below;

14.1.2 the Sewerage Removal Charges;

14.1.3 the Refuse Removal Charges; and

14.1.4 any other taxes, levies, assessment rates or charges payable by the Lessor or which may hereafter become payable by the Lessor to a local authority or utilities provider in respect of the Leased Premises, whether in accordance with the provisions of this Lease Agreement or otherwise.

14.2 If at any time during the currency of this Lease Agreement, the charges in respect of taxes, levies, assessment rates, sewerage removal, refuse removal or any other charges payable by the Lessor, are increased, the Lessee shall pay an additional amount equal to such increases from the date on which such increases became effective.

15 ADMINISTRATION FEE

The Lessee shall on the Signature Date of the Lease Agreement by the Lessee, pay to the Lessor the Administration Fee as set out in *Annexure "A"*.

16 USE OF LEASED PREMISES

16.1 The Lessee shall not:

16.1.1 vacate the Leased Premises or allow the Leased Premises to remain unused, unless the prior written consent of the Lessor is obtained;

16.1.2 store explosives, flammable goods or toxic substances or liquids on the Leased Premises, except in so far as such storage may be reasonably necessary for the conduct of its business and provided that the Lessee obtains the prior written consent of the Lessor to store such items;

16.1.3 use the Leased Premises for residential purposes or as sleeping quarters, unless the prior written consent of the Lessor is obtained and such consent shall be determined solely at the Lessors discretion;

16.1.4 do anything that detracts from the appearance of the Leased Premises and/or the Surrounding Property;

16.1.5 do or cause anything to be done which may cause a nuisance or inconvenience to the Lessor or to any other lessees or to occupants of adjoining properties; and

16.1.6 install any safe or heavy machinery (including automated teller machines) or heavy equipment or other material on any floor, other than at ground level where there is no basement or parking area below, on or in the Leased Premises without the prior written consent of the Lessor, which consent may, in the Lessor's discretion, contain such conditions as the Lessor may determine. In such cases, the Lessor shall provide the Lessee with the floor loading capacity of the applicable building.

16.2 The Lessee undertakes to obtain, maintain and renew all licenses, permits or other necessary consents to conduct its business on or from the Leased Premises. The Lessor does not warrant that the Leased Premises are fit for the purposes for which it is let or that the Lessee will be granted a license in respect of the Leased Premises for conducting its business, or that any license will be renewed and the Lessor shall not be responsible to do any work or make any alterations or repairs to the Leased Premises to comply with the requirements of any licensing authority.

17 USE OF COMMON AREAS

The Common Areas shall at all times be subject to the exclusive control and management of the Lessor, and the Lessor shall have the right from time to time to establish, modify and enforce by written notice to the Lessee and other lessees on the Surrounding Property rules and regulations with respect thereto and generally to do or perform such other acts in and to the Common Areas as the Lessor, in exercising good business judgement, believes are necessary in order to improve the convenience and manner in which the Common Areas are used by the Lessee and other lessees, their officers, agents, employees and customers.

18 LOADING AND UNLOADING OF GOODS

18.1 All loading, delivery and unloading of goods, merchandise, supplies and fixtures to and from the Leased Premises shall be done only at such times, in such areas and through such entrances as may be designated for the purpose by the Lessor and shall be subject to such rules and regulations as in the discretion of the Lessor are necessary for the proper administration of the Leased Premises and the Surrounding Property.

18.2 The Lessee shall ensure that its vehicles do not obstruct the free flow of traffic, the entrances or exits of any driveway or the pedestrian entrances to the Leased Premises and the Surrounding Property.

18.3 The Lessee shall not:

18.3.1 cause or permit its vehicles to be parked in the parking areas or the driveways on the Surrounding Property designated by the Lessor as customers' parking areas and driveways; and

18.3.2 place or permit any obstruction to be placed in or on the parking areas or driveways on the Surrounding Property designated by the Lessor as customer’s parking areas or driveways.

19 LESSEE’S GENERAL OBLIGATIONS AND RESTRICTIONS

The Lessee:

19.1 shall not contravene or permit the contravention of any law, by-law or statutory regulation or the conditions of any licence relating to or affecting the occupation of the Leased Premises or the carrying on of the Lessee's permitted business therein, or which may expose the Lessor to any claim, action or prosecution;

19.2 shall not contravene any of the conditions of title under which the Lessor holds title to the Property, nor any laws which the Lessor is required to observe by reason of its ownership of the Leased Premises;

19.3 shall not be entitled to withhold or delay payment of any monies due by the Lessee to the Lessor in terms of this Lease Agreement by reason of the Leased Premises or any part thereof being in a defective condition or in a state of disrepair, or for any other reason whatsoever;

19.4 shall have no claims of any nature whatsoever against the Lessor in respect of any damage caused to the Lessee's stock-in-trade, furniture, equipment, installations, books, papers or other articles kept in the Leased Premises or any other damage or loss caused to or sustained by the Lessee in the Leased Premises whatsoever, whether as a result of water seepage or leakage wherever and howsoever occurring in the Leased Premises, or as a result of rain, hail, lightning, fire, riot or civil commotion or by reason of the negligence of the Lessor's employees;

19.5 shall have no claim of any nature whatsoever, whether for damages or a remission of rent, against the Lessor for any interruption in the supply of water, electricity, heating, air conditioning, lifts or any other service;

19.6 shall have no claim of any nature whatsoever against the Lessor for any accident, injury or damage caused to its representatives, employees, customers or invitees through or while using any portion of the Leased Premises, whether arising out of the negligence of the Lessor, the Lessor's servants or any other cause, other than wilful or grossly negligent acts on the part of the Lessor or its servants; and

19.7 undertakes to make timeous application for any licences and/or any renewals thereof that are necessary for the conduct of its business in the Leased Premises and to furnish the Lessor with copies of such licences and/or renewals, as soon as may be reasonably possible thereafter;

19.8 shall ensure that as far as is reasonably possible all vehicles entering and exiting the Leased Premises or the Surrounding Property shall be organised and regulated so as to avoid traffic congestion. In particular, no vehicles shall be permitted to park or queue outside the Leased Premises or the Surrounding Property;

19.9 shall be required to obtain the prior written consent of the Lessor, in the event that it becomes necessary to rezone the Leased Premises in order to enable the Lessee to conduct its business, such consent shall be in the absolute discretion of the Lessor, who may withhold same without giving any reason therefor;

19.10 shall submit an updated and valid BBBEE certificate from an authorised verification agency annually to the Lessor; and

19.11 shall ensure that it maintains at least a Level 4 BBBEE status for the duration of this Lease and must notify the Lessor in the event that its BBBEE status reaches above Level 4 and must provide reasons for the change in BBBEE status. Upon receipt of such notification, the Lessor shall at its sole discretion determine the manner in which the matter shall be dealt with, including termination of Lease due to non-compliance with the Lessor's BBBEE requirements.

20 EMERGENCY PLAN

20.1 In the event that the Lessor requires the Lessee to put in place measures in respect of or in connection with emergencies, the Lessor shall be entitled, upon written notice to the Lessee, to require the Lessee to submit to the Lessor a detailed emergency plan dealing with measures that the Lessee intends proposing in respect of or in connection with emergencies at the Leased Premises, which emergency plan shall be subject to the satisfaction of the Lessor in its sole discretion.

20.2 The Lessee undertakes to comply with the provisions of the emergency plan approved by the Lessor in terms of clause 20.1, including ensuring, *inter alia*, that:

20.2.1 the provisions of the emergency plan are implemented fully;

20.2.2 the emergency plan complies with the provisions of any insurance policies in respect of the Leased Premises;

20.2.3 the Lessor is duly notified of any failure by the Lessee (for whatever reason) to comply with any provision of the emergency plan; and

20.2.4 the Lessor is duly notified of the occurrence of any emergency, whether or not such emergency may fall within the ambit of the emergency plan.

20.3 The Lessee hereby acknowledges that the provisions of this clause 20 shall not in any way derogate from any other duties or responsibilities that the Lessee may, from time to time, incur in respect of emergencies.

20.4 The Lessee shall be obliged to co-operate fully in respect of any BOI instituted by the Lessor, which co-operation shall include but is not limited to:

20.4.1 The submission of all relevant reports and documentation in respect of any incident within the Port as requested by the Lessor;

20.4.2 Ensuring that all relevant personnel attends every session of the BOI which it is required to attend and to which employees are invited.

21 INSURANCE

21.1 The Lessor shall provide insurance cover for damage to the Leased Premises including any Improvement situated thereon, for any perils normally covered by the insurance policies of the South African Special Risk Insurance Association and which the Lessor may, in its discretion, chose to take out insurance in respect of.

21.2 The Lessor shall obtain insurance cover from an insurer of its choice for any and all other reasonable commercial or other risk that many exist or arise in relation to the Leased Premises, or any Improvement to the Leased Premises or any use of the Leased Premises or any Improvement thereto, but which shall not include insurance for any risk in respect of and in connection with any moveables owned by the Lessee situated in, on, or around the Leased Premises.

21.3 The Lessor shall obtain contractors all risk insurance cover for any Improvement that is undertaken by the Lessor or the Lessee on the Leased Premises, in respect of perils that are normally covered by insurance policies of this nature.

21.4 The Lessee shall obtain contractors all risk insurance cover for any Improvement that is undertaken by the Lessee on the Lease Premises, in respect of perils that are normally covered by insurance policies of this nature.

21.5 The Lessee shall take out, at its own cost public liability insurance cover, including an endorsement in respect of the Lessee's liability (which conforms to its activities in or on the Leased Premises) and shall keep the same valid for the duration of this Lease Agreement and for such amounts as will reasonably indemnify the Lessee against all claims arising out of the business which the Lessee conducts on the Leased Premises.

21.6 If applicable, the Lessee shall pay on demand to the Lessor any increase in the insurance policy premiums payable by the Lessor to its insurer which results from any improvements that the Lessee has made to the Leased Premises.

21.7 The Lessee shall furnish the Lessor with proof of any payments that it may have made in respect of the premiums payable under the insurance policies referred to in this clause 21, and proof of any renewal of such insurance policies, as and when such events occur.

21.8 The Lessee warrants that it shall not do, or omit to do, anything or keep in or on the Leased Premises (including any Improvement on the Leased Premises) anything or allow anything to be done in or to the Leased Premises (including any Improvement on the Leased Premises) contrary to any of the terms of the insurance policies taken out in relation to the Leased Premises or which may render such insurance policies void or voidable and the Lessee shall comply in all respects with the terms and conditions of any such insurance policies.

21.9 The Lessee hereby indemnifies the Lessor against any loss or damage that the Lessor may incur (including but not limited to loss as a result of the claims by third parties against the Lessor) due to the Lessee not complying with the provisions of this clause 21.

21.10 Notwithstanding any other provision contained in this Lease Agreement, a failure by the Lessee to comply with any obligation under this clause 21 shall constitute a material breach of this Lease Agreement.

22 MAINTENANCE

22.1 Notwithstanding any additional maintenance obligations that may be imposed on the Lessee in this Lease Agreement:

22.1.1 the Lessee shall keep and maintain the Leased Premises in good order and condition at its own cost to the satisfaction of the Lessor and, upon expiration or earlier termination of this Lease Agreement, shall deliver the Leased Premises to the Lessor in a good order and condition, fair wear and tear excepted;

22.1.2 the Lessee shall exercise great care to prevent any blockage of sewers, water pipes or drains in, on or used in connection with the Leased Premises and shall remove at his own cost any obstruction or blockage in any sewer, water pipe or drain serving the Leased Premises exclusively and, where necessary, repair the sewer, water pipe or drain concerned;

22.1.3 in the event of the Lessee's failure to replace or make good or repair any item for which he is responsible in terms of this Lease Agreement and if it remains in default for a period of 7 (seven) days after written notice has been made or given by the Lessor calling upon it to replace or make good or repair such item, the Lessor shall be entitled, without prejudice to any other rights, to enter upon the Leased Premises and replace or make good or repair such items at the Lessee's cost;

22.1.4 in the event of a burglary or attempted burglary on the Leased Premises, the Lessee shall at his own cost arrange for the repair of any damage to the Leased Premises caused by such burglary or attempted burglary to the satisfaction of the Lessor;

22.1.5 in the event of any damage to the Leased Premises (including any Improvement) the Lessee shall, within 24 (twenty four) hours of it becoming aware of such damage, report such damage to the Lessor, in order to enable the Lessor to seek recourse from the relevant insurer. Notwithstanding the Lessee's compliance with this clause 22.1.5, the Lessee shall be responsible for the payment of any excess amount that may be applicable as the time of the occurrence that resulted in such damage; and

22.1.6 in the event that any civil and/or electrical maintenance is required to be undertaken at the Leased Premises, the Lessee shall, at its own cost,

procure that such maintenance shall be performed by suitably qualified and registered specialists, to the satisfaction of the Lessor;

22.1.7 the Lessee shall be responsible for and shall at its own cost and expense maintain (and where applicable, replace) all airconditioning and heating systems serving the Leased Premises.

22.2 The Lessor shall, subject to the provisions of clause 43 *(Improvements by Lessor)* below, remain responsible for all structural repairs required to be effected to the Leased Premises and for the maintenance and upkeep of all Common Areas and/or Surrounding Property. It is expressly provided that (notwithstanding the aforegoing) all structural repairs required to be effected by reason of:

22.2.1 the failure by the Lessee to comply with its maintenance obligations in terms of this clause 22; or

22.2.2 the improper use of the Leased Premises by the Lessee; or

22.2.3 damage caused by the Lessee and/or third parties,

shall be the responsibility of and shall be paid for by the Lessee.

23 RESPONSIBILITY FOR ELECTRICAL INSTALLATIONS

23.1 Notwithstanding any additional obligations that may be imposed on the Lessee in this Lease Agreement, the Lessee shall be responsible for:

23.1.1 the safety, safe use and maintenance of the electrical installations in the Leased Premises;

23.1.2 the safety of the conductors connecting the electrical installations to the point of supply; and

23.1.3 procuring the issue of a valid certificate of compliance in respect of the electrical installations in the Leased Premises.

23.2 The Lessee shall be responsible to keep and maintain in good order and condition at its own cost the complete electrical installation on the Leased Premises, according to the terms and conditions contained in this Lease Agreement.

23.3 The Lessee hereby indemnifies the Lessor against all claims, damages or losses of any nature whatsoever which the Lessor may sustain as a result of the Lessee failing to comply with any of its obligations under this clause 23.

24 WAYLEAVE

24.1 Wayleaves through the Property for existing and future utilities, such as gas, water, electricity, sewerage and drainage, telecommunications and fuel supply, shall be granted by the Lessee to the Lessor if reasonably required by the Lessor at any stage during the course of this Agreement. Without derogating from the generality of the aforegoing, the Lessee shall allow the Lessor or its subcontractors to lay, maintain, repair and use such underground services on or across the Property as will not interfere with or diminish the Lessee's rights to use the Property, without becoming liable to pay any compensation to the Lessee or to grant any reduction in rent.

24.2 The Lessee shall not interfere with or take any action which is detrimental to the efficient supply of utilities to neighbouring areas or any premises within the Port or do or allow anything to be done that would render the laying, maintenance, repair and use of utilities within the Property or the supply thereof to neighbouring areas or any premises within the Port impracticable.

24.3 In the event that the exercise by the Lessor of its rights in terms of clause 24.1 results in damage to the Terminal Infrastructure or Equipment or any improvements made or assets of the Lessee, then the Lessor undertakes to compensate the Lessee for the reasonable costs of repairing such damage.

24.4 Wayleaves through the Port outside the Property for existing and future utilities, such as gas, water, electricity, sewerage and drainage, telecommunications and fuel supply or piperacks to the Property will be granted by the Lessor to the Lessee, if, in the reasonable discretion of the Lessor, required by the Lessee, necessary at any stage during the course of this Agreement.

25 SIGNAGE

25.1 All signage (including the content, appearance, location and manner in which such signage is affixed) to be displayed by the Lessee on or about the Leased Premises shall be subject (and shall not be displayed without) the prior written approval of the Lessor.

25.2 Without limiting the generality of clause 25.1 the Lessee shall not display any movable signage and/or advertising material on or about the Leased Premises without the prior written approval of the Lessor.

26 ACCESS TO THE LEASED PREMISES

26.1 TSubject to any circumstances in which the Lessor may have to enter the Leased Premises for the purposes of conducting inspections, in an emergency or in terms of an order of court., In that event, the Lessor and/or its duly authorised employees or agents may, upon giving the Lessee reasonable notice, enter upon and inspect the Leased Premises, and do all things necessary in order to enable the Lessor to ascertain, determine and ensure that there is strict compliance with the terms and conditions of this Lease Agreement (including without limitation, any annexure to the Lease Agreement), the policies of the Lessor and any laws or regulatory requirements that may be imposed in respect of the Leased Premises.

26.2 The Lessee undertakes to afford the persons inspecting the Leased Premises in terms of this clause 26 with access to the Leased Premises and the Lessee's facilities for the purposes of such inspections.

26.3 The Lessor undertakes to ensure that the persons inspecting the Leased Premises in terms of this clause 26 will comply with all the safety and security stipulations of the Lessee whilst such persons are on the Leased Premises and/or have access to the Lessee's facilities. The Lessee undertakes in this regard to inform the Lessor of all such safety and security stipulations of the Lessee, within a reasonable period prior to the Lessee inspecting the Leased Premises.

26.4 The Lessee shall, under no circumstances, have any claim against the Lessor and/or the persons inspecting the Leased Premises in terms of this clause 26, for loss of beneficial occupation, loss of profits or otherwise.

26.5 It is specifically agreed that where such damage is caused by the wilful act or gross negligence of the Lessor, its employees or agents, neither the Lessor nor any employee or agent of the Lessor shall be responsible for any loss or damage to any property or for the death or injury of any person arising out of their activities in terms of this clause 26 and the Lessee indemnifies the Lessor and its employees and agents in this regard.

27 SECURITY

27.1 The Lessee shall be entitled to establish and maintain such security measures (including access control) as it may deem necessary to ensure or promote security on or about the Leased Premises. Such security measures shall comply with every applicable law.

27.2 It is expressly provided that the Lessor shall have no responsibility to provide security services in connection with the Leased Premises and the Lessor shall have no liability whatsoever to the Lessee and/or any third party arising from any breach or failure of any security measures implemented by the Lessee.

28 RODENT INFESTATION

28.1 Should any evidence of rodent infestation be found, the Lessee should at its own cost arrange for the proper disinfestation of the Leased Premises.

28.2 The Lessee shall notify the Lessor if and when the Leased Premises are to become unoccupied, and should the Lessor deem it necessary to disinfest the Leased Premises, the Lessee shall render all assistance required by the Lessor to effect such disinfestations, and the Lessee shall be liable for the cost thereof, but only in as much as it relates to the Leased Premises and/or the Lessee's proportional share of the Common Areas, if applicable.

29 ENVIRONMENTAL

Where the Leased Premises are not used for retail or office use:

29.1 The Lessee may immediately after the Signature Date procure that the Leased Premises are inspected by a suitably qualified environmental expert nominated by it (which environmental expert shall be reasonably approved of by the Lessor) in order to determine if any environmental pollution and/or contamination exists on or about the Leased Premises and/or if any remedial measures are to be undertaken in terms of any law relating to the conservation and/or preservation of the natural environment ("**environmental law**") or otherwise ("**baseline study**"). The Lessee shall furnish the Lessor with a copy of the baseline study immediately upon completion thereof.

29.2 If the baseline study reflects the existence of any such pollution or contamination then the Lessor shall be responsible for such remedial measures as are required to be undertaken.

29.3 If the Lessee fails to procure a baseline study to be undertaken within 3 (three) months after the Commencement Date then the land and Leased Premises shall be deemed to have been free of pollution and contamination as at the Commencement Date.

29.4 The Lessee will be responsible for any pollution and contamination which it may cause or effect to the Leased Premises after the Commencement Date, for which purpose the baseline study (if any) shall be prima facie evidence of pollution and/or contamination existing as at the Commencment Date. The Lessee shall:

29.4.1 not later than the Expiry Date cause such remedial measures as may be necessary and/or required in terms of any environmental law to be taken; and

29.4.2 indemnify the Lessor against any loss or damage (including remediation costs, fines, enforcement actions and the like) which the Lessor may suffer as a consequence of the Lessee having polluted or contaminated the Leased Premises and/or any neighbouring properties in any way.

29.5 The Lessee shall immediately after the Signature Date provide the Lessor with and environmental management plan in respect of the Leased Premises and the use thereof by the Lessee. Such Environmental Plan shall comply with every applicable environment law and regulatory standard and shall address the following:

29.5.1 pollution prevention;

29.5.2 waste management;

29.5.3 impact management;

29.5.4 preventative and/or remedial measures to be undertaken;

29.5.5 such other matters as the Lessor may in its discretion direct.

29.6 The Lessor may in its sole and absolute discretion:

29.6.1 upon receipt of an Environmental Plan; and/or

29.6.2 at any time during the Lease Period,

on written notice to the Lessee require a comprehensive environmental site assessment to be undertaken in respect of the Leased Premises and the use thereof by the Lessee ("**site assessment**").

29.7 Such site assessment shall include:

29.7.1 an analyses of the bio-physical, social, cultural, economic, aesthetic and technological impact (including such other impacts as the Lessor may in its sole discretion direct) of the Leased Premises and the use thereof; and

29.7.2 preventative and/or remedial measures to be undertaken to minimise such impacts.

29.8 The site assessment shall be undertaken at the cost and expense of the Lessee by suitably qualified environmental experts and other professional consultants as may be reasonably approved of by the Lessor.

29.9 The Lessee shall, without limiting any other similar or corresponding obligation contained elsewhere in this Lease Agreement, comply strictly with every Environmental Plan and site assessment including in particular all preventative and remedial measures that may be identified therein.

29.10 The Lessee shall allow the Lessor and its duly authorised representatives access to the Leased Premises and shall furnish them with such reasonable assistance as may be necessary to enable them to determine the extent to which the Lessee has complied with its obligations in terms of this clause, or has failed to do so. The Lessor shall be entitled at any time to give the Lessee written notice of:

29.10.1 remedial measures to be undertaken by the Lessee in order to ensure compliance with its obligations in terms of this clause; and

29.10.2 reasonable time periods within which such remedial measures are to be commenced with and/or completed.

29.11 The failure by the Lessee to timeously comply with notice given by the Lessor to the Lessee in terms of clause 29.10 shall constitute a material breach of this Lease Agreement.

29.12 Without limitation by inference from any other provision contained in this Lease Agreement the Lessee shall generally comply with every environmental law and shall not do anything or omit to do anything on or about the Leased Premises and/or its surrounds that will or is likely to pollute or contaminate the environment or any part thereof.

29.13 The Lessor may in its sole and absolute discretion by written notice exempt the Lessee from any or all of the provisions of this clause. Any such exemption shall not be construed as to limit the obligations of the Lessee in terms of any environmental law.

30 SERVICES BY LESSOR OR RELEVANT AUTHORITY

30.1 The Lessee shall, save where the Lessee occupies only a portion of the Property, at his own cost, arrange with any government, regional, local or other lawful authority or any utilities provider for the supply of electricity and water, and of sewerage removal, refuse removal and other services that are not or, at the absolute discretion of the Lessor, will not be rendered by the Lessor to the Lessee, but which may be required in respect of any of the activities which are to be carried out in or on the Leased Premises.

30.2 Where the premises do not comprise the entire Property, the Lessor shall endeavour to supply a metered electrical connection point within the Leased Premises for use by the Lessee.

30.3 Notwithstanding the liability of the Lessee in terms of clause 30.1 above, the Lessee shall be required to make payment to the Lessor in accordance with the provisions of this Main Agreement, which payment shall be in respect of the Lessor's liability to any authority or to any utilities service provider, as the case may be, for the services contemplated in clause 30.1 above.

30.4 In the event that the Lessor elects to supply water, electricity, sewerage removal and/or refuse removal services to the Lessee, the Lessee shall be required to make payment to the Lessor of all costs and/or fees in connection with the availability and consumption of water and electricity, or the provision of sewerage removal and refuse removal services, in accordance with the provisions of this Lease Agreement.

31 SUPPLY OF ELECTRICITY BY THE LESSOR

31.1 In the event that the Lessor supplies electricity in terms of clause 30.4, the Lessor shall endeavour to maintain an efficient and continuous supply of electricity, but does not guarantee continuity of supply and the Lessee acknowledges that interruptions may take place at any time without prior notice to the Lessee.

31.2 The Lessor shall not be liable for any failure or accident or damage that may be caused or sustained directly or indirectly by reason of such failure or generally in relation to supply by the Lessor of electricity.

31.3 The electricity supply may only be used by the Lessee for its own purposes and at the Leased Premises.

31.4 Should the Lessee lease the entire Property, it shall be responsible for the payment of the electricity deposit required by the supply authority and shall pay the same on demand to the supply authority. Should the Lessor be required to pay the deposit, the Lessee shall refund the Lessor on demand.

31.5 Should the electricity installations be damaged as a result of fire or from any other cause, the Lessee must, within 24 (twenty four) hours of it becoming aware of such damage, report such occurrence to the Lessor, irrespective of the nature of the incident and/or the amount involved. The Lessee shall, in addition, be responsible for any excess payable in respect of a claim that may arise in respect of any insurance policy taken out by the Lessor in this regard.

31.6 The Lessee shall pay for electricity in accordance with its consumption as measured by the electricity meter/s installed at the Leased Premises and at the prevailing rates and tariffs applicable from time to time. Should the Leased Premises not have a separate meter and should the Lessee request the installation of a separate meter or should the Lessor deem it necessary to install a separate meter, the installation costs and all other costs associated with the installation of such meter shall be paid by the Lessee.

31.7 If either Party to this Lease Agreement has reason to doubt the accuracy of any meter reading, it shall be entitled to request that the meter be tested. If it is found that the meter is registering correctly, the cost of such test shall be borne by the Party who requested the test to be carried out. For the purpose of this clause 31 the meter shall be deemed to be registering correctly if the relevant meter readings are accurate within a 5% (five percent) tolerance.

31.8 If it is found that the meter is registering incorrectly it shall be assumed that the fault only arose after the last meter reading and the Lessee's account will not be retrospectively adjusted.

31.9 The meter/s recording the electricity consumed in accordance with this Lease Agreement shall be read by an authorised representative of the Lessor, and shall take place at such intervals as may be deemed appropriate by the Lessor. Where the readings are not done monthly the Lessee will be provided with an account based on its estimated consumption, with such account being adjusted from time to time on the basis of actual consumption.

31.10 The meter/s shall be sealed by an authorised representative of the Lessor. If any unauthorised person interferes with such seals, the Lessor shall have the right to disconnect and withhold the electricity supply until such time as the installation is inspected for defects.

31.11 The Lessor reserves the right to reasonably amend the rates and tariffs applicable to the supply of electricity from time to time, provided that the Lessee is given 1 (one) calendar month written notice to this effect and provided that the amended rates and tariffs are within the rates and tariffs set by the relevant authority.

31.12 The Lessee shall not interfere or cause any interruption in the electricity supply to any adjacent premises.

31.13 Should there be no meter installed to register the electricity consumed by the Lessee, the Lessor shall charge the Lessee its Pro-Rata Share of the costs of electricity consumed within the Property.

31.14 The Rental in relation to the Leased Premises shall be inclusive of the Pro-Rata share costs of electricity consumed until such time as a separate meter is installed.

32 SUPPLY OF WATER BY THE LESSOR

32.1 In the event that the Lessor supplies water in terms of clause 30.4 above, the Lessor shall endeavour to maintain an efficient and continuous water supply, but does not guarantee continuity of supply and the Lessee acknowledges that interruptions may take place at any time without prior notice to the Lessee.

32.2 The Lessor shall not be liable for any failure or accident or damage that may be caused or sustained directly or indirectly by reason of such failure or generally in relation to supply by the Lessor of water.

32.3 The water supply supplied by the Lessor may only be used by the Lessee for its own purposes and in relation to the Leased Premises. The Lessee uses the water at its own risk and the Lessor is not responsible should the quality of the water deteriorate, the pressure weakens or become unsuitable for human consumption.

32.4 The Lessee shall pay for water in accordance with its consumption as measured by the water meter/s installed at the Leased Premises and at the prevailing rates and tariffs applicable from time to time. Should the Leased Premises not have a separate meter and should the Lessee request the installation of a separate meter or should the Lessor deem it necessary to install a separate meter, the installation costs and all other costs associated with the installation of such meter shall be paid by the Lessee on demand.

32.5 In the event of any meter at any time registering incorrectly or ceasing to register at all, the consumption of water shall for the period during which the meter was registering incorrectly or not registering, be based on the average consumption recorded for the 3 (three) preceding months.

32.6 If it is found that the meter is registering incorrectly or ceasing to register at all, the consumption of water for the period during which the meter was registering incorrectly or not registering, shall be based on the average consumption recorded for the 3 (three) preceding months.

32.7 If it is found that the meter is registering incorrectly it shall be assumed that the fault only arose after the last meter reading and the Lessee's account will not be retrospectively adjusted.

32.8 If either Party to this Lease Agreement at any time has reason to doubt the accuracy of the meter readings, it shall be entitled to request that the meter be tested. If it is found that the meter is registering correctly, the cost of such a test shall be borne by the Party who requested the test to be carried out. For the purpose of this clause 32 the meter shall be deemed to be registering correctly if the relevant meter readings are accurate within a 5% (five percent) tolerance.

32.9 The meter/s recording the water consumed in accordance with this Lease Agreement shall be read by an authorised representative of the Lessor, which meter readings can take place at such intervals as may be deemed appropriate by the Lessor. Where the readings are not done monthly the Lessee will be provided with an account based on its estimated consumption, with such account being adjusted from time to time on the basis of actual consumption.

32.10 The meter/s shall be sealed by an authorised representative of the Lessor. If any unauthorised person interferes with such seals, the Lessor shall have the right to disconnect and withhold the water supply until such time as the installation is inspected for defects.

32.11 The Lessor reserves the right to reasonably amend the rates and tariffs applicable to the supply of water from time to time, provided that the Lessee is given 1 (one) calendar month written notice to this effect and provided that the amended rates and tariffs are within the rates ad tariffs set by the relevant authority.

32.12 The Lessee shall not interfere or cause any interruption in the water supply to any adjacent premises.

32.13 Should there be no meter installed to register the water consumed by the Lessee, the Lessor shall charge the Lessee its Pro-Rata Share of the costs of water consumed within the Property.

32.14 The Rental in relation to the Leased Premises shall be inclusive of the Pro-Rata Share of water consumed until such time as a separate meter is installed.

33 CESSION, SUBLETTING AND OCCUPATION

33.1 The Lessee shall not:

33.1.1 cede, assign or delegate any of its rights or duties under this Lease Agreement;

33.1.2 sublet the Leased Premises or any part thereof; or

33.1.3 place anyone else in occupation of the Leased Premises or any part thereof, on any conditions whatsoever or for any reason whatsoever, without the Lessor's prior written consent, which consent will be determined by the Lessor in its sole discretion.

34 RELAXATION OR NOVATION OF LEASE AGREEMENT

No relaxation or indulgence which the Lessor may permit the Lessee shall in any way prejudice the Lessor's rights in terms of this Lease Agreement and, in particular, no acceptance by the Lessor of Rental or any other payment after due date (whether on one or more occasions), nor any other act or omission by the Lessor, including the rendering of accounts after due date, shall preclude or stop the Lessor from exercising any of its rights in terms of this Lease Agreement. Unless otherwise notified in writing by the Lessor to the Lessee, receipt of any Rental or other payment by the Lessor shall in no way whatsoever prejudice or operate as a waiver, rescission or abandonment of any cancellation effected or right of cancellation acquired prior to such receipt. The Lessor shall be entitled, in its sole discretion, to apportion any amounts received from the Lessee towards the payment of any cause, debt or amount owing by the Lessee to the Lessor.

35 INDEMNITY

35.1 The Lessee shall not have any right, remedy or claim of any nature whatsoever against the Lessor for any loss, damage (whether general, special or consequential), expense or injury which may be suffered by the Lessee, directly or indirectly, arising out of or relating to this Lease Agreement, irrespective of whether or not such loss, damage, expense or injury shall have been caused by the negligence of the Lessor or any person for whose acts or omissions the Lessor is vicariously liable. Without derogating from the generality of the aforegoing, the Lessor shall have no liability to the Lessee in respect of any such loss, damage, expense or injury which may be suffered by the Lessee by reason of any latent or patent defect in the Leased Premises, or from any fire in or on the Leased Premises, or any theft from the Leased Premises, or by reason of the Leased Premises or any part thereof being in or falling into a defective condition or state of disrepair, or as a result of any particular repair not being effected by the Lessor either timeously or at all, or arising out of *vis major* or *casus fortuitus*, or arising out of any act of omission of any other lessee of premises of which the Leased Premises might form part or due to a change of the Leased Premises' facade, appearance or any other feature thereof, or arising in any manner whatsoever out of the use of the Leased Premises by any person.

35.2 The Lessee hereby indemnifies the Lessor and each of the Lessor's employees and representatives against any claim of any nature whatsoever which may be made against the Lessor or any such employee or representative by any of the Lessee's servants, employees, agents, invitees, customers, dependants and/or contractors arising out of any event or cause of any action referred to in clause 35.1 above.

36 LIMITATION OF LIABILITY

Notwithstanding any other provision contained in the Lease Agreement, the Parties agree that, in the event of the Lessor being liable to the Lessee in terms of this Lease Agreement (for any reason whatsoever) the liability of the Lessor shall be limited to no more than 3 (three) month's Rental, calculated at the time when such liability arose.

37 CHANGE IN LAW

37.1 Notwithstanding any other provision contained in this Lease Agreement, if the coming into force, adoption, amendment or repeal of any Law ("**Legal Event**") shall make it unlawful or impossible for the Lessor to comply with its obligations contained herein or shall result in the continuation of this Lease Agreement being economically unfeasible or imposing unreasonable hardship on the Lessor, then in each such event the Lessor shall be entitled to give the Lessee written notice ("**Specified Notice**") no later than 6 (six) months following the Legal Event, calling on the Lessee to enter into negotiations with the Lessor in terms of clause 37.2.

37.2 Within 7 (seven) days following receipt by the Lessee of the Specified Notice, the Parties shall meet and in good faith endeavour to negotiate terms and conditions to be included in the Lease Agreement in order to accommodate the Law concerned.

37.3 If, within 14 (fourteen) days following receipt by the Lessee of the Specified Notice, the Parties fail to negotiate or are otherwise unable to agree in writing on terms and conditions to accommodate the Legal Event concerned, to the satisfaction of the Lessor, this Lease Agreement shall immediately terminate and the provisions of clause 40.3 (*Termination of Lease Agreement*) shall apply *mutatis mutandis*.

38 BREACH OF CONTRACT

38.1 Should the Lessee:

38.1.1 fail to pay any amount due by the Lessee in terms of this Lease Agreement to the Lessor on due date; or

38.1.2 commit any material breach of this Lease Agreement;

38.1.3 commit any other breach of any term of this Lease Agreement, whether such breach goes to the root of this Lease Agreement or not, and fail to remedy that breach within a period of 7 (seven) Business Days after the giving of written notice to that effect by the Lessor; or

38.1.4 commit 2 (two) or more breaches of any of the terms of this Lease Agreement (whether the same term has been breached or not), within any 3 (three) month period during the term of this Lease Agreement;

38.1.5 commit any act of insolvency; or

38.1.6 fail to co-operate in the BOI by not providing any information as requested by the Lessor and further failing to attend any BOI instituted or commissioned by the Lessor.

then on the happening of any such event, the Lessor shall be entitled, without prejudice to any other rights which he may have under this Lease Agreement or at common law:

38.1.7 to cancel this Lease Agreement on written notice thereof to the Lessee and claim immediate repossession of the Leased Premises; or

38.1.8 to remedy such breach and recover the total cost incurred by the Lessor in doing so from the Lessee, who shall be obliged to pay the amount thereof to the Lessor forthwith; or

38.1.9 to treat the Lessee's tenancy thereafter as a monthly tenancy, terminable by the Lessor on 1 (one) month's prior written notice to the Lessee.

38.2 Should the Lessor be in breach of any of its obligations under this Lease Agreement, the Lessee shall be entitled to deliver written notice to the Lessor to rectify such breach within 10 (ten) Business Days (or such longer period as may be reasonably required) after giving written notice to that effect by the Lessee. Under no circumstances will the Lessee be able to claim cancellation of this Lease Agreement as a remedy for a breach by the Lessor. Furthermore, any claim that may be made by the Lessee against the Lessor in terms of this clause 38.2 shall be limited by the terms of clause 36 *(Limitation of Liability)* of this Lease Agreement.

38.3 While the Lessee remains in occupation of the Leased Premises and irrespective of any dispute between the Parties, including but not limited to, a dispute as to the Lessor's right to terminate this Lease Agreement:

38.3.1 the Lessee shall continue to pay all amounts due to the Lessor in terms of this Lease Agreement on the due dates for such payments;

38.3.2 the Lessor shall be entitled to recover and accept such payments;

38.3.3 the acceptance by the Lessor of such payments shall be without prejudice to and shall not in any manner whatsoever affect the Lessor's right to terminate this Lease Agreement or to any damages whatsoever; and

38.3.4 the Lessee shall, in addition to any other damages or compensation due, be liable for any cost incurred by the Lessor in order to find a new lessee and shall remain liable for the Rental, Operating Costs and all other charges in terms of this Lease until the new lessee's lease agreement commences.

39 INTEREST

39.1 Should the Lessee fail to make any payment due in terms of this Lease Agreement on or before the due date, the Lessee shall be liable for the payment of interest on the outstanding amount, compounded monthly and calculated from the due date at a rate of 100 (one hundred) basis points above the prime rate of the bank designated by the Lessor, in its sole discretion, from time to time ("**the Bank**"). The aforementioned rate shall change, from time to time, on the same date as the prime rate changes. A certificate containing details of the applicable prime rate(s) for any appropriate period, signed by a person professing to be a manager of any branch of the Bank, and submitted by the Lessor during any legal proceedings, shall be accepted as prima facie proof as to the correctness of the contents thereof by the Lessee and it agrees to the submission and admissibility of such certificate during any legal proceedings arising from this Lease Agreement.

39.2 In the event of the Lessee failing to pay any amount due to the Lessor, or committing any other breach of the terms and conditions embodied in this Lease Agreement, which results in the Lessor being obliged to instruct its legal advisors or attorneys to collect any such amount, or call upon the Lessee to rectify such breach, or to proceed against the Lessee for any reason, the Lessee hereby accepts liability for and undertakes to pay on demand to the Lessor all collection charges and other legal costs of the Lessor calculated on an attorney and own client basis.

39.3 A certificate signed by a financial manager, director, company secretary, credit manager or internal accountant of the Lessor shall be prima facie proof of the amount of any indebtedness owing by the Lessee to the Lessor at any time and of the fact that the due date of payment of the whole or, as the case may be, any portion of that amount has arrived.

40 TERMINATION OF LEASE AGREEMENT

40.1 The Lessor shall be entitled to affix on the Leased Premises "TO LET" notices during the 6 (six) month period immediately preceding the Expiry Date of this Lease Agreement.

40.2 The Lessor shall be entitled to exhibit, on behalf of any new lessee of the Leased Premises any notices required in connection with any application for a licence to carry on a business in the Leased Premises during the 1 (one) month period immediately preceding the Expiry Date of this Lease Agreement.

40.3 Upon expiry or earlier termination of this Lease Agreement (for whatever reason) the Lessee shall immediately vacate the Leased Premises and restore possession of the Leased Premises to the Lessor in a good order and condition, fair wear and tear excepted. The costs related to restoring the Leased Premises in terms of this clause 40, shall be for the Lessee's account.

41 VACANT POSSESSION

At the termination of this Lease Agreement the Lessee agrees that it will give up vacant possession of the Leased Premises to the Lessor. Should the Lessee not hand over the Leased Premises in a vacant state, the Lessor shall institute legal proceedings against the Lessee in that regard. The Lessor shall claim all costs incurred by the Lessor in obtaining vacant possession of the Leased Premises which shall be for the account of the Lessee, this includes, but is not limited to eviction proceedings and the recovery of damages for unlawful holding-over of property. ~~shall be for the account of the Lessee.~~

42 IMPROVEMENTS BY LESSEE

42.1 The Lessee shall not be entitled to commence with any Improvement at the Leased Premises unless the Lessee has obtained the necessary regulatory approval, the Lessee has furnished the Lessor with written proof of such approval together with any other information that may be requested by the Lessor and the Lessee has obtained the prior written consent of the Lessor to construct such Improvements, which consent may be given by the Lessor in its sole discretion and may be subject to such conditions that the Lessor may impose, from time to time.

42.2 The Lessee acknowledges and agrees that the Lessor shall accept no responsibility for any Improvement constructed by the Lessee in terms of this clause 42, notwithstanding any consent that the Lessor may grant the Lessee in terms of clause 42.1 above, or any inspection of the Leased Premises by the Lessor in terms of clause 26 (*Access to Leased Premises)* above.

42.3 The Lessee undertakes to abide by all lawful directions of the Lessor relating to precautionary measures that are necessary to protect the Leased Premises and/or Surrounding Property during the construction of any Improvement by the Lessee in terms of this clause 42.

42.4 Unless the Lessor otherwise agrees in writing, the Lessee shall not be entitled to remove any Improvement from the Leased Premises. Notwithstanding the aforegoing the Lessor may require the Lessee to remove, immediately after the Expiry Date, any Improvements effected by the Lessee to the Leased Premises and to reinstate the Leased Premises to its original condition and to make good all damage occasioned by such removal.

42.5 Should the Lessor require the Lessee to leave all Improvements, the parties agree that the Lessor will not compensate the Lessee for the value (if any) of the Improvements undertaken by the Lessee and that the Lessee shall have no lien over the Improvements.

42.6 The Lessee hereby indemnifies and holds the Lessor harmless against any loss or damage, howsoever arising, which the Lessor may suffer (including, but not limited to, any claim made by any third party against the Lessor) arising out of or in connection with any Improvement undertaken in terms of this clause 42.

43 IMPROVEMENTS BY LESSOR

43.1 The Lessor may at any time effect such Improvements to the Leased Premises as it may deem fit provided that it shall use its reasonable endeavors to minimise disruption to the Lessee's business.

43.2 The Lessee shall not be entitled to any damages or compensation for any loss, damage or inconvenience suffered by the Lessee as a result of any Improvements made to the Leased Premises by the Lessor in accordance with the provisions of this clause 43.

44 REPOSSESSION OF LEASED PREMISES

44.1 If at any time after the Initial Period, the Leased Premises or any portion thereof, shall be required for the Lessor for any purpose whatsoever, the Lessor may (notwithstanding any provision in this Lease Agreement to the contrary) after having given the Lessee written notice of not less than the Notice of Repossession Period, enter upon the whole or any portion of the Leased Premises or retake possession of the same for such purposes as aforesaid, free of any right, title or interest which the Lessee may have in respect of the Leased Premises.

44.2 Should the Lessor exercise its right in terms of clause 44.1 the Lessee shall be entitled to remove such machinery, plant and ancillary equipment from the repossessed Leased Premises or portion thereof.

44.3 In the event of the Lessor retaking possession of a portion of the Leased Premises, only the Rental and Operating Costs payable from the date of repossession shall be reduced pro-rata by an amount bearing the same ratio to the Rental and Operating Costs that was payable prior to the repossession as the repossessed area bears to the whole area hereby leased.

44.4 Notwithstanding anything to the contrary in this clause 44 it is agreed that should the Lessor seek to retake possession of a portion only of the Leased Premises, but such repossession interferes substantially with the Lessee's use and enjoyment of the Leased Premises or has the effect of rendering the Leased Premises substantially unsuitable for the purpose of the Lessee's business, the Parties shall:

44.4.1 meet and, in good faith, endeavour to agree upon compensation (if any) that may be payable in respect of such repossession; and

44.4.2 in the event that Parties are unable to reach agreement in terms of clause 44.4.1 above, the dispute shall be resolved in terms of clause 51 (*Dispute Resolution*) below.

44.5 The provisions of this clause 44 shall not be applicable during the Initial Period.

45 REDEVELOPMENT

The Lessor may cancel this Lease Agreement without the payment of any compensation to the Lessee, upon giving notice of not less than the Notice of Redevelopment Period to the Lessee, if the Lessor wishes to redevelop or alter the Surrounding Property or any part thereof or to incorporate it into any scheme of redevelopment involving the Leased Premises, provided that this clause 46 shall not be applicable during the Initial Period.

46 OWNERSHIP OF IMPROVEMENTS FOLLOWING TERMINATION

46.1 Any Improvements made to the Leased Premises shall accede to the land and the ownership thereof shall vest in the Lessor without any compensation whatsoever being payable by the Lessor to the Lessee.

46.2 Notwithstanding the provisions of clause 46.1 above, the Lessor shall have the right to:

46.2.1 either retain or, at its sole and unfettered discretion, to order the Lessee, at the Lessee's sole cost, to remove from the Leased Premises any such Improvement; or

46.2.2 in the event that the Lessee fails to comply with an order from the Lessor to remove (or cause to be removed) from the Leased Premises any such Improvement within a reasonable time period, to effect such removal and to thereafter claim for the cost of such removal from the Lessee.

47 PLANT, MACHINERY AND ANCILLARY EQUIPMENT

47.1 The Lessee may, with the prior written consent of the Lessor, which consent shall not be unreasonably withheld or delayed, install on the Leased Premises all such plant, machinery or ancillary equipment as it may reasonably require in relation to its business.

47.2 The Lessee's plant, machinery or ancillary equipment shall be installed:

47.2.1 in a good, proper and workmanlike manner; and

47.2.2 in accordance with the requirements of every applicable law.

47.3 Should the Lessee fail to remove or to complete the removal of any machinery, plant or ancillary equipment upon expiry or earlier termination of this Lease Agreement, the Lessee shall forfeit the right to undertake such removal and shall have no right to claim compensation in respect of such machinery, plant or ancillary equipment, provided that the Lessor may in its sole discretion require the Lessee to undertake or complete such removal. Should the Lessee fail to comply with this requirement, the Lessor may undertake the removal and may dispose of all machinery, plant or ancillary equipment so removed and may recover the cost of such removal and disposal from the Lessee.

47.4 Should the Lessee remain in occupation of the Leased Premises unlawfully after expiry of this Lease Agreement for the purpose of removing any machinery, plant or ancillary equipment, the Lessee shall be liable for the payment of Rental, Operating Costs and all other charges in terms of this Lease Agreement in respect of such period of occupation as well as compensation for any damage or loss suffered by the Lessor as a result thereof.

48 FIRE PROTECTION MEASURES

48.1 If, in the reasonable discretion of the Lessor, the nature of the Lessee's operations on or about the Leased Premises require specific and/or additional fire protection measures to be undertaken or implemented (which may include Improvements to the Leased Premises) then:

48.1.1 the Lessor shall be entitled, in its sole discretion, to give the Lessee written notification of the measures to be undertaken and implemented; and

48.1.2 the Lessee shall as soon as reasonably possible implement such measures.

48.2 The provisions of this clause 48 are in addition and without prejudice to the requirements of any local or competent authority in terms of any law with regard to fire protection measures.

48.3 The Lessee shall have no claim against the Lessor if it fails to notify the Lessee of any fire protection measures to be undertaken and/or if any such measures, if undertaken, subsequently prove to be inadequate. The provisions of this clause 49 are imposed strictly for the benefit of the Lessor and do not confer any rights of whatever nature upon the Lessee.

48.4 The Lessee indemnifies the Lessor against:

48.4.1 any loss or damage that may be suffered by the Lessor; and/or

48.4.2 any claim of whatever nature that may be brought against the Lessor by any third party,

arising from or in connection with any fire occurring on or about the Leased Premises, whether or not the Lessee has complied with all or any of its obligations arising from this clause 48.

49 DAMAGE AND DESTRUCTION

49.1 Should any damage to, or destruction of, the whole of the Leased Premises take place, the Lessee shall have no claim whatsoever against the Lessor, irrespective of the cause or nature of such damage or destruction. The Lessor shall be entitled, within 30 (thirty) days after such damage or destruction, to decide whether or not to terminate this Lease Agreement and shall notify the Lessee of its decision in writing within such period. Should the Lessor not notify the Lessee of its decision within such period, it shall be deemed to have elected to terminate this Lease Agreement.

49.2 Should the Lessor elect or be deemed to have elected to terminate this Lease Agreement, the Lessee shall have no claim of any nature whatsoever against the Lessor as a result of such termination, but shall not be liable for the payment of Rental, Operating Costs or other charges from the date of such damage or destruction.

49.3 Should the Lessor elect not to terminate this Lease Agreement:

49.3.1 the Lessor shall reinstate the Leased Premises, at its own cost as soon as is reasonably possible;

49.3.2 the Lessee shall not be liable for the payment of Rental, Operating Costs or other charges for as long as it is deprived of beneficial occupation of the Leased Premises;

49.3.3 the Lessee shall re-take beneficial occupation from time to time of any part of the Leased Premises which has been reinstated and the provisions of this Lease Agreement shall *mutatis mutandis* apply to such occupation and the Lessee shall make payment of the Rental, Operating Costs or other charges in terms of this Lease Agreement on a *pro rata* basis; and

49.3.4 the period of this Lease Agreement shall, at the option of the Lessee, be extended by the period during which the Lessee is deprived of beneficial occupation of the whole of the Leased Premises.

49.4 Should any portion (but not the whole) of the Leased Premises be damaged or destroyed by any cause whatsoever, the Lessor shall be entitled within 30 (thirty) days after such damage or destruction, to decide whether or not to terminate this Lease Agreement and shall notify the Lessee of its decision in writing within such period. Should the Lessor not notify the Lessee of its decision within such period, it shall be deemed to have elected to terminate this Lease Agreement.

49.5 Should the Lessor elect not to terminate this Lease Agreement, then

49.5.1 the Rental, Operating Costs or other charges payable by the Lessee shall be reduced *pro rata* to the extent of infringement upon the Lessee's right of beneficial occupation;

49.5.2 the Lessor shall repair the damaged or destroyed portion of the Leased Premises at it's own cost as soon as is reasonably possible; and

49.5.3 the Lessee shall have no claim whatsoever against the Lessor irrespective of the cause or nature of such damage or destruction.

49.6 In the event that the total or partial destruction is caused by any wilful act or omission of the Lessee, then (notwithstanding the provisions of this clause 49) the Lessee shall not be able to invoke the above protections and shall be liable to the Lessor for the full sum of damages sustained by it as a result of the aforesaid wilful act or omission.

50 JURISDICTION OF COURT

The Lessee hereby consents to the jurisdiction of the Magistrates' Court for the purpose of any proceedings in terms of or incidental to this Lease Agreement, provided that either Party, may in its discretion institute proceedings in any division of the High Court having jurisdiction and in that event the costs shall be determined on the scale applicable to the High Court.

51 DISPUTE RESOLUTION

51.1 Subject to any other dispute resolution procedure provided for in this Main Agreement, should any dispute or claim arise between the Parties ("**the Dispute**") concerning this Lease Agreement, the Parties shall endeavour to resolve the dispute by negotiation.

51.2 If the Dispute has not been resolved by such negotiation within 5 (five) Business Days, then the Lessor shall have the right to submit the Dispute to arbitration to be administered by the Arbitration Foundation of Southern Africa ("**AFSA**") or its successor, upon such terms as agreed between the Parties and the secretariat of AFSA, or failing such agreement, upon such terms as determined by the secretariat of AFSA.

51.3 Unless otherwise agreed in writing by both Parties, any such arbitration in terms of this clause 51 shall be held in the magisterial district within which the Leased Premises are situated.

51.4 Notwithstanding anything to the contrary contained in this clause 51, either Party shall be entitled to apply for and if successful, be granted, an interdict from any competent court having jurisdiction.

51.5 This clause 51 constitutes an irrevocable consent by each of the Parties to any proceedings in terms hereof, is severable from the rest of the Lease Agreement and shall, notwithstanding the termination of the Lease Agreement, remain in full force and effect.

52 SURETYSHIP

If required in terms of *Annexure "A"* for the purposes of securing the obligations of the Lessee in terms of this Lease Agreement, the Lessor may require the Lessee, on the Signature Date, to deliver to the Lessor a deed of suretyship which must comply with the provisions of *Annexure "D"*.

53 COSTS

Any incidental and other costs in relation to this Lease Agreement, including costs payable in connection with any renewal or extension of this Lease Agreement, shall be borne by the Lessee and shall be paid upon demand.

54 DOMICILIUM

54.1 For the purposes of this Lease Agreement, including the giving of notices and the serving of legal process:

54.1.1 the Lessor chooses the Lessor's Domicilium as its domicilium citandi et executandi; and

54.1.2 the Lessee chooses the Lessee's Domicilium as its domicilium citandi et executandi.

54.2 A Party may at any time change its domicilium by notice in writing, provided that the new domicilium is in the Republic and consists of, or includes, a physical address at which process can be served.

54.3 Any notice given in connection with this Lease Agreement shall:

54.3.1 be delivered by hand; or

54.3.2 be sent by prepaid registered post; or

54.3.3 be sent by fax or e-mail, to the domicilium chosen by the Party concerned.

54.4 A notice given as set out above shall be deemed to have been duly given, unless the contrary is proved:

54.4.1 if delivered by hand: 1 (one) Business Day after delivery;

54.4.2 if sent by post: 14 (fourteen) Business Days after posting; and

54.4.3 if sent by fax or e-mail: on the Business Day following the day on which it was transmitted.

55 CONFIDENTIALITY

55.1 Notwithstanding the cancellation or termination of this Lease Agreement, neither Party shall, at any time after the conclusion of this Lease Agreement, disclose to any person or use in any manner whatsoever any of the other Party's Confidential Information or disclose the existence or contents of this Lease Agreement, provided that:

55.1.1 the receiving Party may disclose the other Party's Confidential Information and the existence and contents of this Lease Agreement to, and permit the use thereof by, its employees, representatives and professional advisors to the extent strictly necessary for the purpose of implementing or enforcing this Lease Agreement or obtaining professional advice or conducting its business. The Parties agree that any disclosure or use by any such employee, representative or advisor of such Confidential Information for any other purpose shall constitute a breach of this clause 56 by the Lessee;

55.1.2 the provisions of this clause 55 shall cease to apply to any Confidential Information of any Party which:

55.1.2.1 is or becomes generally available to the public other than as a result of breach by either Party of its obligations in terms of this clause 55;

55.1.2.2 is also received by the receiving Party from a third party who did not acquire such Confidential Information subject to any duty of confidentiality in favour of the other Party; or

55.1.2.3 was known to the receiving Party prior to receiving it from the other Party.

56 SEVERABILITY

Should any provision of this Lease Agreement (including any annexures) become unenforceable, such provision shall be severed from this Lease Agreement and the remaining provisions shall be of full force and effect.

57 AGENT'S COMMISSION

The Lessee warrants that no agent was the effective cause of this Lease Agreement and indemnifies the Lessor against any claim for commission by any agent who may claim to have been the effective cause of this Lease Agreement.

58 STIPULATIO ALTERI

No part of this Lease Agreement shall constitute a *stipulatio alteri* in favour of any person who is not a Party to this Lease Agreement.

59 GOVERNING LAW

This Lease Agreement shall be governed by and construed in accordance with the laws of the Republic.

60 SIGNING OF LEASE AGREEMENT

60.1 The signing of this Lease Agreement by or on behalf of the Lessee shall constitute an offer to hire the Leased Premises on the terms and conditions contained in this Lease Agreement, which offer shall remain irrevocable for a period commencing on the date of receipt of the signed offer to hire and shall be available for acceptance by the Lessor for the duration of the Offer Period.

60.2 Signing by or on behalf of the Lessor shall constitute its acceptance of the offer. The Lessor shall, however, notify the Lessee of the acceptance of the offer although such notification shall not be construed as acceptance.

60.3 No lease agreement shall exist between the Lessor and Lessee until this Lease Agreement has been duly signed by or on behalf of the Lessor.

61 ANCILLARY AGREEMENTS

61.1 The Parties wish to record that they intend entering into the Ancillary Agreements listed in *Annexure A* in order to regulate services that are ancillary to this Lease Agreement.

61.2 The Parties agree that the terms and conditions of any Ancillary Agreement shall, in so far as this is possible, correspond with the terms and conditions contained in this Lease Agreement, in particular the provisions dealing with the period of the Ancillary Agreements.

61.3 In the event of any conflict between the provisions of this Lease Agreement and/or any Ancillary Agreement, the provisions of this Lease Agreement shall prevail.

62 WHOLE AGREEMENT

62.1 This Lease Agreement (including all annexures attached to this Lease Agreement) contains the entire agreement between the Parties hereto and no conditions, warranties or representations made by any Party shall be of any force and effect, unless it is in writing and signed by both the Lessee and Lessor.

62.2 No officer, agent or representative of either Party shall have any authority to make representations, statements or warranties that are not expressed herein, unless the same are made in writing and signed by a duly authorised person. No waiver by any Party of any of the terms of this Lease Agreement, or of a breach of any of the provisions thereof, shall be deemed to be a waiver thereafter of any such terms or of any succeeding breach.

62.3 No amendment, addition or cancellation of this Lease Agreement shall be of any force or effect unless it is reduced to writing and signed by the Parties or their duly authorised representatives.

Signed at _____ on this _____ day of _____ 20___

As witnesses:

1. _____

2. _____

For the Lessor

_____

_____

who warrants that he/she is duly authorised to sign this Lease Agreement

Name:

Designation:

Signed at _____ on this _____ day of _____ 20___

As witnesses:

1. _____

2. _____

For the Lessee

_____

_____

who warrants that he is duly authorised to sign this Lease Agreement

Name:

Designation:

TRANSNET

national ports authority

ANNEXURE 4

GENERAL BID CONDITIONS

[June 2022]

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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 **Service Provider or 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.

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 and may also be downloaded from the Transnet website at 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 service providers 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/Service Provider, 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/Services 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/Service Provider 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/Services 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/Service Provider 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/Service Provider in relation to the conditions of this clause 244 will be for the account of the Supplier/Service Provider.

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.

25.2 Respondents must furnish their Bid prices in the Price Schedule of the Bid Documents on the following basis:

a) Local Supplies - Prices for Goods to be manufactured, produced or assembled in the Republic of South Africa, or imported supplies held in South Africa, to be quoted on a Delivered RSA named destination basis.

b) Imported Supplies - Prices for Goods to be imported from all sources to be quoted on a Delivered Duty Paid [latest ICC Incoterms] basis, to end destination in South Africa, unless otherwise specified in the Bid Price Schedule.

26 EXPORT LICENCE

The award of a Bid for Goods to be imported may be subject to the issue of an export licence in the country of origin or supply. If required, the Supplier/Service Provider's manufacturer or forwarding agent shall be required to apply for such licence.

27 QUALITY OF MATERIAL

Unless otherwise stipulated, the Goods offered shall be NEW i.e. in unused condition, neither second-hand nor reconditioned.

28 DELETION OF ITEMS EXCLUDED FROM BID

The Respondent must delete items for which it has not tendered or for which the price has been included elsewhere in its Bid.

29 VALUE-ADDED TAX

29.1 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.

29.2 In respect of foreign Services rendered:

a) the invoicing by a South African Service Provider on behalf of its foreign principal rendering such Service represents a Service rendered by the principal; and

b) the Service Provider's Tax Invoice(s) for the local portion only [i.e. the "commission" for the Services rendered locally] must show the VAT separately.

30 IMPORTANT NOTICE TO RESPONDENTS REGARDING PAYMENT

30.1 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 aforegoing 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 30.1 (a) above. Failure to comply with clause 30.1 (a) above may preclude a Bid from further consideration.

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

30.2 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 Supplier/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.

31 CONTRACT QUANTITIES AND DELIVERY REQUIREMENTS

31.1 Contract Quantities

a) It must be clearly understood that although Transnet does not bind itself to purchase a definitive quantity under any contract which may be entered into pursuant to this Bid, the successful Respondent nevertheless undertakes to supply against the contract such quantities as may be ordered against the contract, which orders are posted or delivered by hand or transmitted electronically on or before the expiry date of such contract.

b) It is furthermore a condition that Transnet will not accept liability for any material/stocks specially ordered or carried by the Respondent with a view to meeting the requirements under any such contract.

c) The estimated planned quantities likely to be ordered by Transnet per annum are furnished in relevant section of the Bid Documents. For avoidance of doubt the estimated quantities are estimates and Transnet reserves the right to order only those quantities sufficient for its operational requirements.

31.2 Delivery Period

a) Period Contracts and Fixed Quantity Requirements

It will be a condition of any resulting contract/order that the delivery period embodied therein will be governed by the provisions of the Terms and Conditions of Contract.

b) Progress Reports

The Supplier/Service Provider may be required to submit periodical progress reports with regard to the delivery of the Goods/Services.

c) Emergency Demands as and when required

If, due to unforeseen circumstances, supplies of the Goods/Services covered by the Bid are required at short notice for immediate delivery, the Supplier/Service Provider will be given first right of refusal for such business. If it is unable to meet the desired critical delivery period,

Transnet reserves the right to purchase such supplies as may be required to meet the emergency outside the contract if immediate delivery can be offered from any other source. The *Total or Partial Failure to Perform the Scope of Supply* section in the Terms and Conditions of Contract will not be applicable in these circumstances.

32 PLANS, DRAWINGS, DIAGRAMS, SPECIFICATIONS AND DOCUMENTS

32.1 Copyright

Copyright in plans, drawings, diagrams, specifications and documents compiled by the Supplier/Service Provider for the purpose of contract work shall be governed by the Intellectual Property Rights section in the Terms and Conditions of Contract.

32.2 Drawings and specifications

In addition to what may be stated in any Bid Document, the Respondent should note that, unless notified to the contrary by Transnet or a designated official by means of an official amendment to the Bid Documents, it is required to tender for Goods/Services strictly in accordance with the drawings and/or specifications supplied by Transnet, notwithstanding that it may be aware that alterations or amendments to such drawings or specifications are contemplated by Transnet.

32.3 Respondent's drawings

Drawings required to be submitted by the Respondent must be furnished before the closing time and date of the Bid. The non-receipt of such drawings by the appointed time may disqualify the Bid.

32.4 Foreign specifications

The Respondent quoting for Goods/Services in accordance with foreign specifications, other than British and American standards, is to submit translated copies of such specifications with the Bid. In the event of any departures or variations between the foreign specification(s) quoted in the Bid Documents, full details regarding such departures or variations must be furnished by the Respondent in a covering letter attached to the Bid. Non-compliance with this condition may result in disqualification.

33 BIDS BY OR ON BEHALF OF FOREIGN RESPONDENTS

33.1 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.

33.2 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.

33.3 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.

33.4 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.*

33.5 If payment is to be made in South Africa, the foreign Supplier/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 Supplier/Service Provider's 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.

33.6 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.

34 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.

35 CONFLICT WITH ISSUED RFX DOCUMENT

35.1 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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TRANSNET

national ports authority

ANNEXURE 5

NON-DISCLOSURE AGREEMENT

[April 2020]

THIS AGREEMENT is made between

Transnet SOC Ltd [**Transnet**] [Registration No. 1990/000900/30]
whose registered office is at 49th 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 Agents 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; and

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 at all times 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 in the event that 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 remain enforceable to the fullest extent 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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TRANSNET

national ports authority

ANNEXURE 6

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 bidders 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 / Suppliers.

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

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

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

1 OBJECTIVES

1.1 Transnet and the Bidder / Supplier agree to enter into this Integrity Pact, to avoid all forms of dishonesty, fraud and corruption including practices that are anti-competitive in nature, negotiations made in bad faith and under-pricing by following a system that is fair, transparent and free from any influence / unprejudiced dealings prior to, during and subsequent to the currency of the contract to be entered into with a view to:

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 / Suppliers to abstain from bribing or participating in any corrupt practice in order to secure the contract.

2 COMMITMENTS OF TRANSNET

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

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 / Suppliers with equity, transparency and fairness. Transnet will in particular, before and during the registration process, provide to all Bidders / Suppliers the same information and will not provide to any Bidders / Suppliers confidential / additional information through which the Bidders / Suppliers could obtain an advantage in relation to any bidding process.

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 / Supplier 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 / Suppliers 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 / Supplier commits itself to take all measures necessary to prevent corrupt practices, unfair means and illegal activities during any stage of its bid or during any ensuing contract stage in order to secure the contract or in furtherance to secure it and in particular the Bidder / Supplier commits to the following:

a) The Bidder / Supplier will not, directly or through any other person or firm, offer, promise or give to Transnet or to any of Transnet's employees involved in the bidding process or to any third person any material or other benefit or payment, in order to obtain in exchange an advantage during the bidding process; and

b) The Bidder / Supplier will not offer, directly or through intermediaries, any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any employee of Transnet, connected directly or indirectly with the bidding process, or to any person, organisation or third party related to the contract in exchange for any advantage in the bidding, evaluation, contracting and implementation of the contract.

3.3 The Bidder / Supplier will not collude with other parties interested in the contract to preclude a competitive bid price, impair the transparency, fairness and progress of the bidding process, bid evaluation, contracting and implementation of the contract. The Bidder / Supplier further commits itself to delivering against all agreed upon conditions as stipulated within the contract.

3.4 The Bidder / Supplier will not enter into any illegal or dishonest agreement or understanding, whether formal or informal with other Bidders / Suppliers. This applies in particular to certifications, submissions or non-submission of documents or actions that are restrictive or to introduce cartels into the bidding process.

3.5 The Bidder / Supplier will not commit any criminal offence under the relevant anti-corruption laws of South Africa or any other country. Furthermore, the Bidder /Supplier will not use for illegitimate purposes or for restrictive purposes or personal gain, or pass on to others, any information provided by Transnet as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.

3.6 A Bidder / Supplier of foreign origin shall disclose the name and address of its agents or representatives in South Africa, if any, involved directly or indirectly in the registration or bidding process. Similarly, the Bidder / Supplier of South African nationality shall furnish the name and address of the foreign principals, if any, involved directly or indirectly in the registration or bidding process.

3.7 The Bidder / Supplier will not misrepresent facts or furnish false or forged documents or information in order to influence the bidding process to the advantage of the Bidder / Supplier or detriment of Transnet or other competitors.

3.8 Transnet may require the Bidder / Supplier 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 / Supplier will not instigate third persons to commit offences outlined above or be an accessory to such offences.

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

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 or not 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 In particular, 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 Goods or 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 Goods or 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 / Supplier has committed a transgression through a violation of paragraph 3 of this Integrity Pact or in any other form such as to put its reliability or credibility as a Bidder / Supplier into question, Transnet may reject the Bidder's / Supplier's application from the registration or bidding process and remove the Bidder / Supplier from its database, if already registered.

5.2 If the Bidder / Supplier has committed a transgression through a violation of paragraph 3, or any material violation, such as to put its reliability or credibility into question, Transnet may after following due procedures and at its own discretion also exclude the Bidder / Supplier from future bidding processes. The imposition and duration of the exclusion will be determined by the severity of the transgression. The severity will be determined by the circumstances of the case, which will include amongst others the number of transgressions, the position of the transgressors within the company hierarchy of the Bidder / Supplier and the amount of the damage. The exclusion will be imposed for up to a maximum of 10 (ten) years. However, Transnet reserves the right to impose a longer period of exclusion, depending on the gravity of the misconduct.

5.3 If the Bidder / Supplier can prove that it has restored the damage caused by it and has installed a suitable corruption prevention system, or taken other remedial measures as the circumstances of the case may require, Transnet may at its own discretion revoke the exclusion or suspend the imposed penalty.

6 DATABASE OF RESTRICTED SUPPLIERS

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 Goods/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 with regard to the Local Content of his Goods or his B-BBEE status and is unable to prove to the satisfaction of Transnet that:

(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 in order 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 / Supplier hereby declares that no previous transgressions resulting in a serious breach of any law, including but not limited to, corruption, fraud, theft, extortion and contraventions of the Competition Act 89 of 1998, which occurred in the last 5 (five) years with any other public sector undertaking, government department or private sector company that could justify its exclusion from its registration on the Bidder's / Supplier's database or any bidding process.

7.2 If it is found to be that the Bidder / Supplier made an incorrect statement on this subject, the Bidder / Supplier can be rejected from the registration process or removed from the Bidder / Supplier database, if already registered, for such reason (refer to the Breach of Law Form contained in the applicable RFX document.)

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 / Supplier from the bidding process or call off the pre-contract negotiations without giving any compensation to the Bidder / Supplier. However, the proceedings with the other Bidders / Suppliers may continue;

b) Immediately cancel the contract, if already awarded or signed, without giving any compensation to the Bidder / Supplier;

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 / Supplier, in order to recover the payments, already made by Transnet, along with interest;

e) Cancel all or any other contracts with the Bidder / Supplier;

f) Exclude the Bidder / Supplier from entering into 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 / supplying 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 / Supplier has or becomes aware of a conflict of interest i.e. a family, business and / or social relationship between its owner(s) / member(s) / director(s) / partner(s) / shareholder(s) and a Transnet employee / member of Transnet's Board of Directors in respect of a bid which will be considered for the bid process, the Bidder / Supplier:

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 has arisen.

9.4 The Bidder / Supplier shall not lend to or borrow any money from or enter into any monetary dealings or transactions, directly or indirectly, with any committee member or any person involved in the sourcing process, where this is done, Transnet shall be entitled forthwith to rescind the contract and all other contracts with the Bidder / Supplier.

10 DISPUTE RESOLUTION

10.1 Transnet recognises that trust and good faith are pivotal to its relationship with its Bidders / Suppliers. When a dispute arises between Transnet and its Bidder / Supplier, the parties should use their best endeavours to resolve the dispute in an amicable manner, whenever possible. Litigation in bad faith negates the principles of trust and good faith on which commercial relationships are based. Accordingly, following a 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 make 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 in order 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 / Supplier be confronted with dishonest, fraudulent or corruptive behaviour of one or more Transnet employees, Transnet expects its Bidders / Suppliers to report this behaviour directly to a senior Transnet official / employee or alternatively by using Transnet's "Tip-Off Anonymous" hotline number 0800 003 056, whereby your confidentiality is guaranteed.

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

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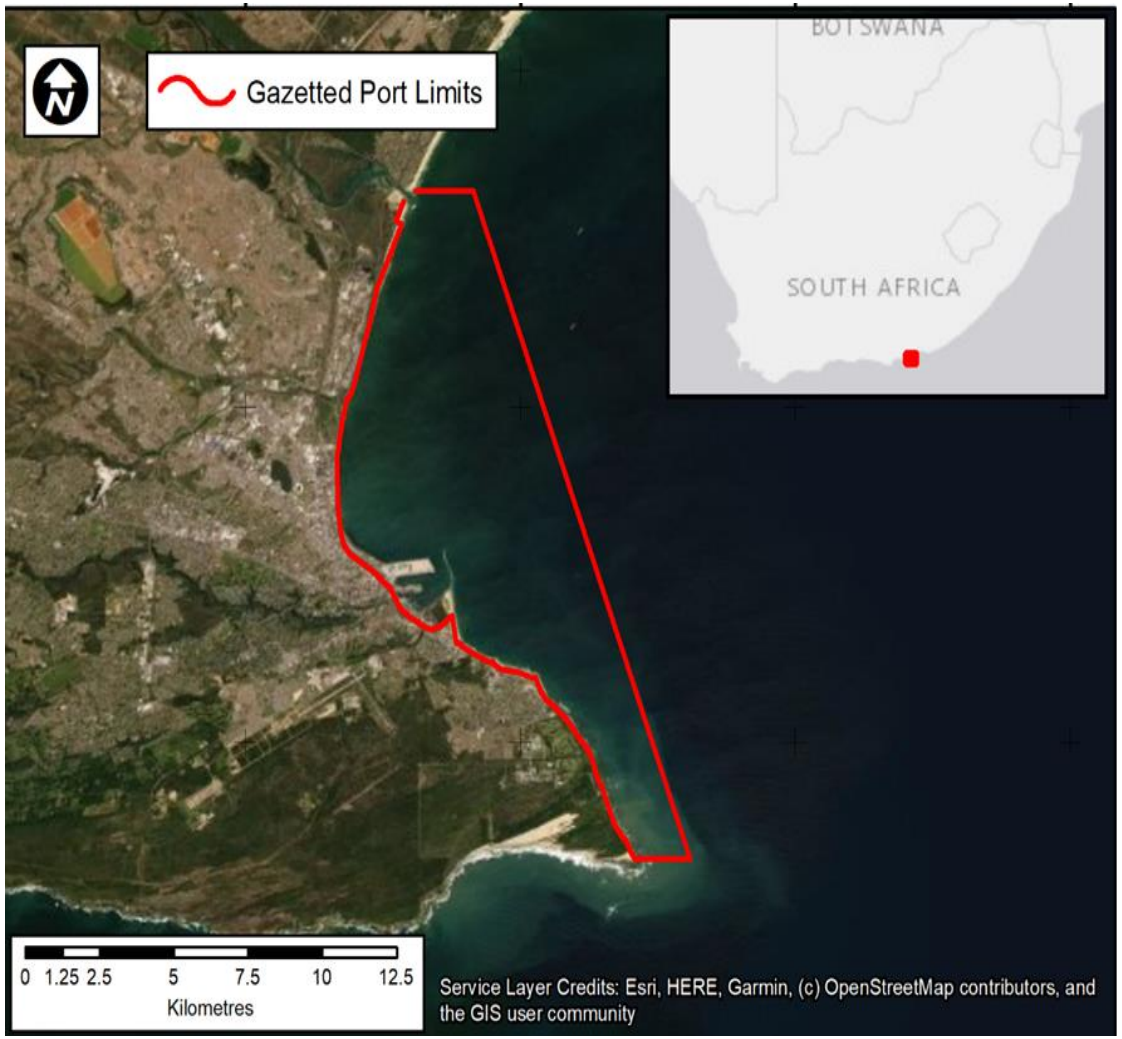
ANNEXURE 7

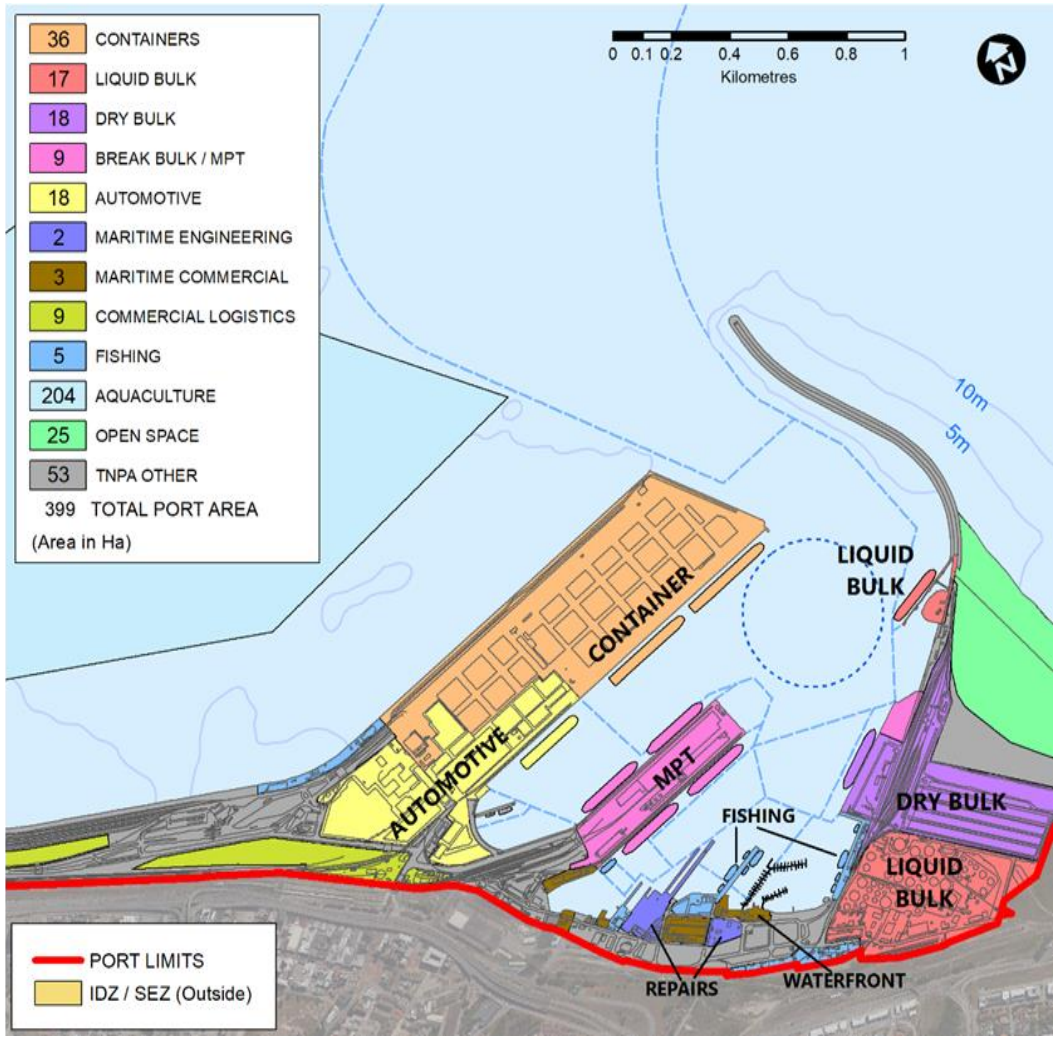
TRANSNET

PDFP 2022
Port of Port Elizabeth

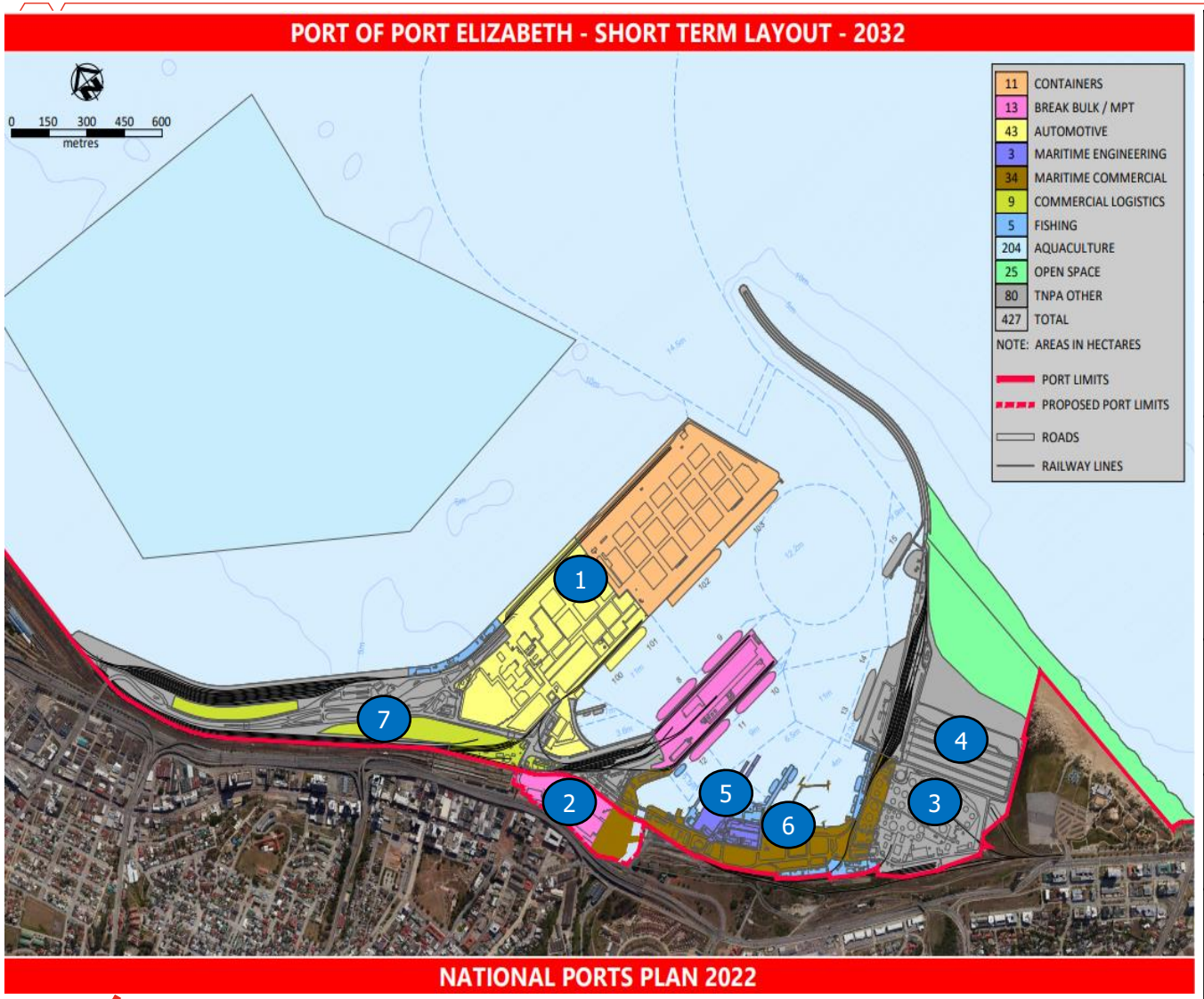
Presented By: Bongumusa Buthelezi

Port Limits Current Layout



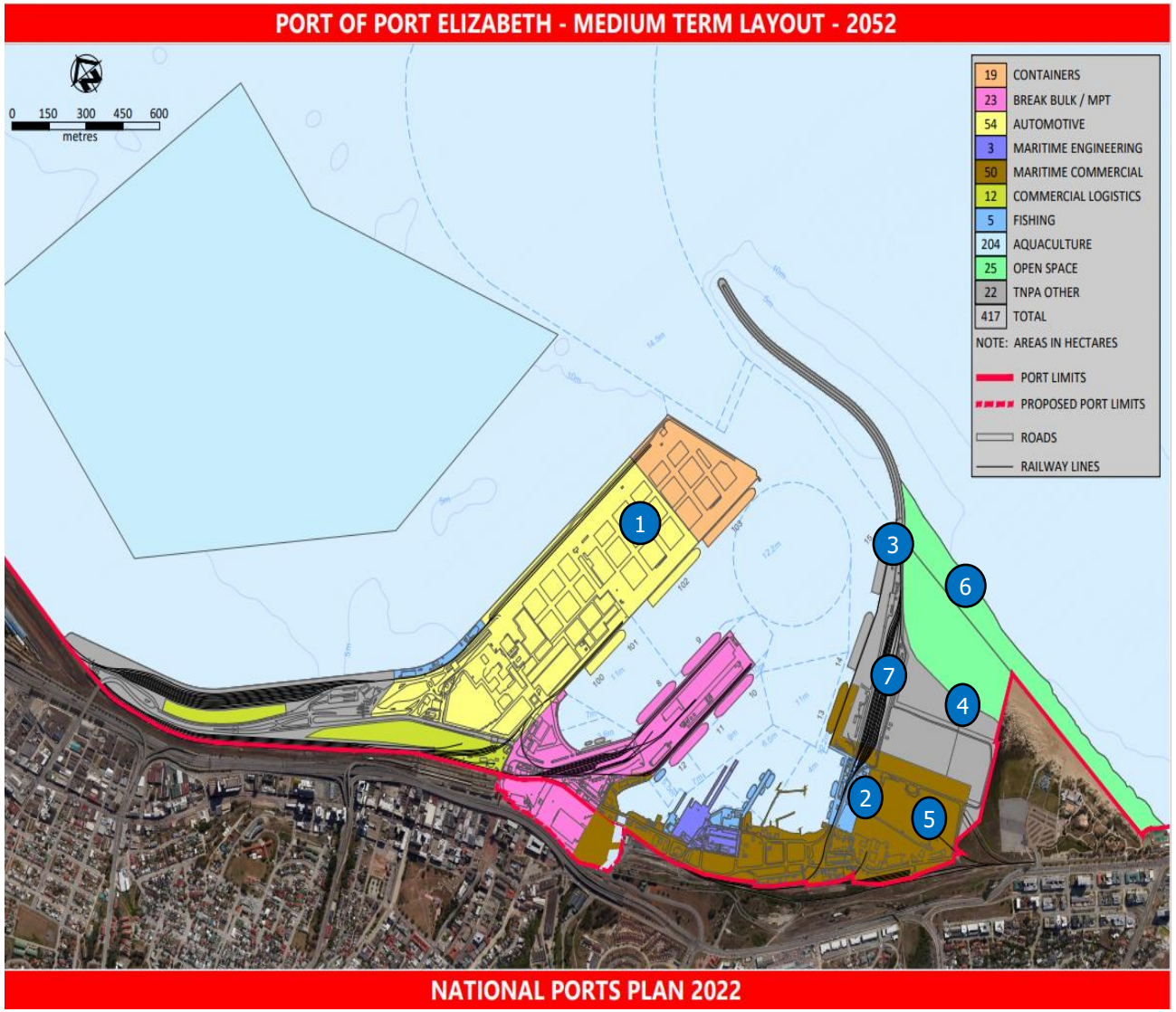


PDFP Short Term Layout 2032



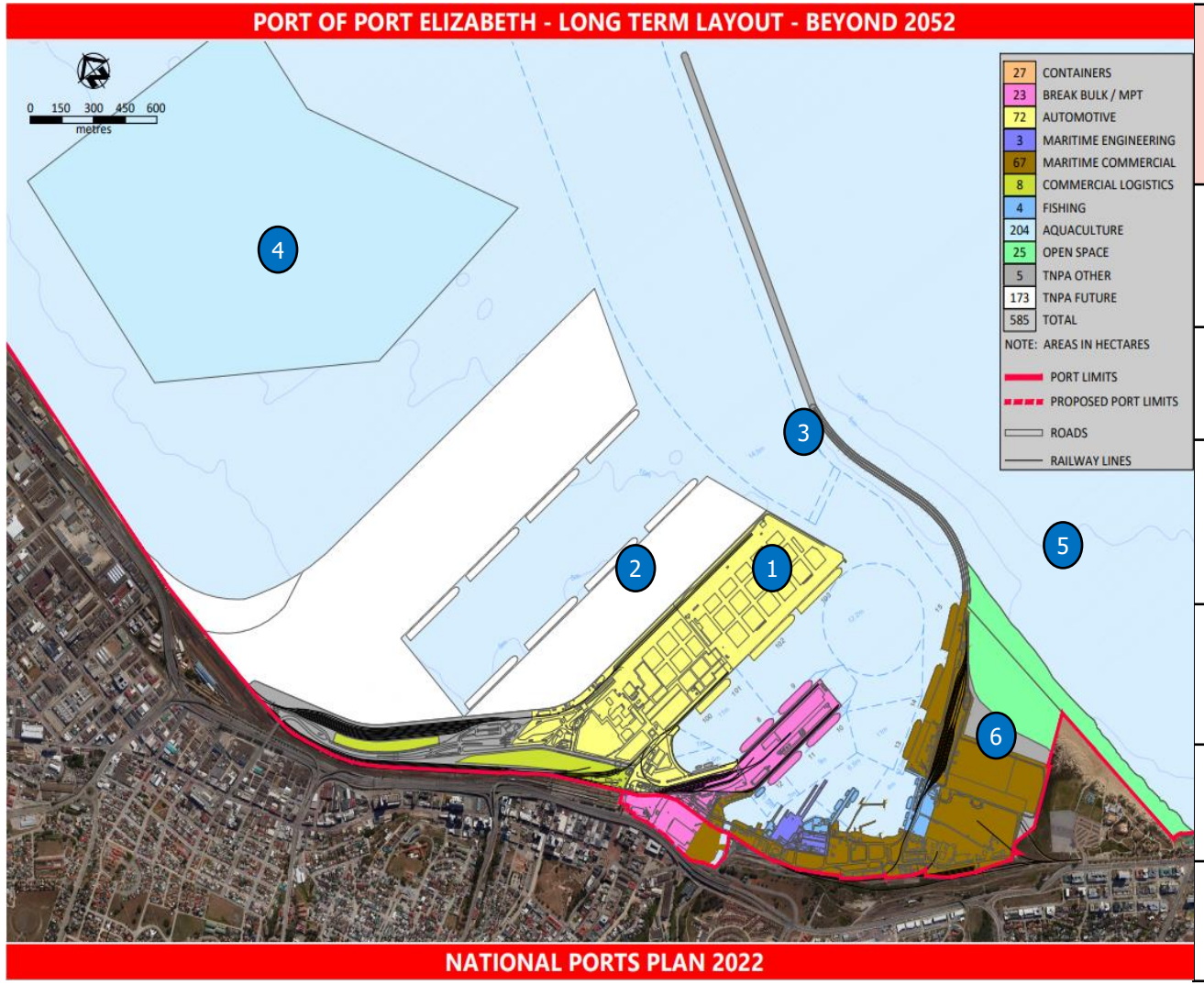
Project #	Project Description	Operational Date
1	Expansion of Automotive Area (Include block 174)	2023
2	Acquisition of 4ha of land outside the port limit	2025
3	Decommissioning of the liquid bulk terminal	2030
4	Decommissioning of the manganese terminal	2030
5	Maritime engineering extension towards the southern side of the port.	2028
6	Maritime commercial increases up to Shop 17 boundary.	2027
7	Commercial Logistic Development	2026

PDFP Medium Term 2032 - 2052



Project #	Project Description	Operational Date
1	Expansion of automotive footprint to include Berth 102	2035
2	Expansion of fishing area by converting a portion of maritime commercial area	2035
3	Re-configuration of berth 15	2040
4	Land earmarked for maritime commercial	2030
5	Maritime development (Leisure and recreational)	2033
6	Recreational beach development and dune stabilization	2040
7	Conversion of berth 13 to be a cruise liner berth	2033

PDFP Long Term Beyond 2052+



Project #	Project Description	Operational Date
1	Expansion of automotive footprint to include Berth 103	2052+
2	Expansion of the port to the northern side	2052+
3	Extension of the breakwater towards the north and realign entrance channel.	2052+
4	Relocate aquaculture to the north due to port expansion project	2052+
5	Develop offshore island for leisure activity.	2052+
6	Further expansion of Maritime Commercial	2052+

Thank you

Theme or title goes here

TRANSNET

national ports authority

ANNEXURE 8

PEH/12/2024//03