



MASTER SERVICE AGREEMENT

entered into by and between

TRANSNET SOC LTD

(Registration No. 1990/000900/30)

and

(Registration number:.....)

FOR THE PROVISION OF SECURITY SERVICES AT THE PORT OF NGQURA FOR A PERIOD OF THREE (3) YEARS AND THREE (3) MONTHS

AGREEMENT NUMBER: TNPA/2026/09/0003/114821/RFP

COMMENCEMENT DATE:

EXPIRY DATE:

PORT: PORT OF NGQURA

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1 INTRODUCTION

This Agreement is entered into by and between:

Transnet SOC Ltd (Registration Number 1990/000900/30) whose registered address is eMendi Building, N2 Neptune Road, Off Klub Road, Port of Ngqura, Gqeberha, 6100, Republic of South Africa,

and

(Registration Number) whose address is

NOW THEREFORE, IT IS AGREED:

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

2 DEFINITIONS

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

- 2.1 **AFSA** means the Arbitration Foundation of Southern Africa;
- 2.2 **Agreement** means this Agreement, its Annexures and all its associated schedules and/or appendices, and the technical specifications for the Services and such special conditions as shall apply to this Agreement, together with the General Tender Conditions and any additional provisions in the associated bid documents tendered by the Service Provider [as agreed, in writing, between the Parties], which collectively and exclusively govern the provision of Services and provision of ancillary Services by the Service Provider to Transnet;
- 2.3 **Background Intellectual Property** means all Intellectual Property introduced and required by either Party to give effect to their obligations under this Agreement owned in whole or in part by or licensed to either Party or their affiliates prior to the Commencement Date or developed after the Commencement Date otherwise pursuant to this Agreement;
- 2.4 **Business Day (s)** means Mondays to Fridays between 08:00 and 16:00, excluding public holidays as proclaimed in South Africa;
- 2.5 **Commencement Date** means....., notwithstanding the signature date of this Agreement;
- 2.6 **Confidential Information** means any information or other data, whether in written, oral, graphic or in any other form such as in documents, papers, memoranda, correspondence, notebooks, reports, drawings, diagrams, discs, articles, samples, test results, prototypes, designs, plans, formulae, patents, or inventor's certificates, which a Party discloses or provides to the other Party

[intentionally or unintentionally, or as a result of one Party permitting the representative of the other Party to visit any of its premises], or which otherwise becomes known to a Party, and which is not in the public domain and includes, without limiting the generality of the term:

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

2.7 **Data** means all data, databases, documents, information, graphics, text or other material in an electronic or tangible medium which the Parties to this Agreement generate, collect, process, store or transmit in relation to their business;

2.8 **Expiry Date** means the date as per clause 6.1;

2.9 **Know-How** means all Confidential Information of whatever nature relating to the Intellectual Property and its exploitation as well as all other Confidential Information generally relating to Transnet's field of technology, including technical information, processing or manufacturing techniques, Designs, specifications, formulae, systems, processes, information concerning materials and marketing and business information in general;

2.10 **Parties** mean the Parties to this Agreement together with their subsidiaries, divisions, business units, successors-in-title and assigns;

2.11 **Party** means either one of these Parties;

2.12 **Permitted Purpose** means any activity or process to be undertaken or supervised by a Staff

member of one Party during the term of this Agreement, for which purpose authorised disclosure of the other Party's Confidential Information or Intellectual Property is a prerequisite in order to enable such activity or process to be accomplished;

- 2.13 **Persistent Minor Breach** means 5 (five) consecutive occurrences, over a period of 6 (six) months, in respect of the same or similar minor breaches which relate to non-compliance and/or accumulation of penalties by the Service Provider;
- 2.14 **Price(s)** means the agreed Price(s) for the Services to be purchased from the Service Provider by Transnet, as detailed in the Schedule of Requirements, issued in accordance with this Agreement, as amended by mutual agreement between the Parties and in accordance with the terms and conditions in this Agreement from time to time;
- 2.15 **Purchase Order(s)** means official orders issued by an operating division of Transnet to the Service Provider for the supply of Goods or Services;
- 2.16 **Service(s)** means provision of the physical security services for Transnet National Ports Authority Port of Ngqura for a period of six months, the Service(s) provided to Transnet by the Service Provider as clearly articulated in Annexure A, the Scope of Work and pursuant to the Work Order(s) in terms of this Agreement;
- 2.17 **Service Level Agreement** or **SLA** means the processes, deliverables, key performance indicators and performance standards relating to the Services to be provided by the Service Provider;
- 2.18 **Staff** means any partner, employee, agent, consultant, independent associate or contractor, Subcontractor and the staff of such Subcontractor, or other authorised representative of either Party;
- 2.19 **Schedule of Requirements** means Annexure B hereto;
- 2.20 **Subcontract** means any contract or agreement or proposed contract or agreement between the Service Provider and any third party whereby that third party agrees to provide to the Goods or related Services or any part thereof or material used in the manufacture of the Goods or any part thereof;
- 2.21 **Subcontractor** means the third party with whom the Service Provider enters into a Subcontract with;
- 2.22 **Tax Invoice** means the document as required by Section 20 of the VAT Act, as may be amended from time to time;
- 2.23 **VAT** means Value-Added Tax chargeable in terms of the VAT Act, 89 of 1991, as may be amended from time to time; and
- 2.24 **VAT Act** means the Value Added Tax Act, No. 89 of 1991, as may be amended from time to time.

3 INTERPRETATION

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

4 NATURE AND SCOPE

- 4.1 This Agreement is an agreement under the terms and conditions of which the Service Provider will arrange for the provision to Transnet of the Services which meet the requirements and specifications of Transnet, the delivery of which is controlled by means of Purchase Order(s) to be issued by Transnet and executed by the Service Provider in accordance with this Agreement.
- 4.2 Such Purchase Order(s) and deliveries to Transnet shall be agreed between the Parties from time to time, subject to the terms of the Scope of Work/Work Order.
- 4.3 Each properly executed Purchase Order forms an inseparable part of this Agreement as if it were fully incorporated into the body of this Agreement.
- 4.4 During the period of this Agreement, both Parties can make written suggestions for amendments to the Schedule of Requirements/Work Orders in accordance with procedures set out in clause 36 *[Amendment and Change Control]*. A Party will advise the other Party within fourteen (14) Business Days, or such other period as mutually agreed, whether the amendment is acceptable or not.
- 4.5 Insofar as any term, provision or condition in the Scope of Work/Work Order conflicts with a like term, provision or condition in this Agreement and/or a Purchase Order, the term or provision or condition in this Master Agreement shall prevail, unless such term or provision or condition in this Agreement has been specifically revoked or amended by mutual written agreement between the Parties.
- 4.6 Time will be of the essence and the Service Provider will perform its obligations under this Agreement in accordance with the timeframe(s) [if any] set out in the relevant schedule, save for where the Service Provider will not be liable under this clause if it is unable to meet such obligation within the time required as a direct result of any act or omission by Transnet and it has used its best endeavours to advise Transnet of such act or omission. In the event of such delay, anytime deadlines detailed in the relevant schedule shall be extended by a period equal to the period of that delay.

5 AUTHORITY OF PARTIES

- 5.1 Nothing in this Agreement will constitute or be deemed to constitute a partnership between the Parties or constitute or be deemed to constitute the Parties as agents or employees of one another for any purpose or in any form whatsoever.
- 5.2 Neither Party shall be entitled to, or have the power or authority to:
 - 5.2.1 enter into an agreement in the name of the other; or
 - 5.2.2 give any warranty, representation or undertaking on the other's behalf; or
 - 5.2.3 create any liability against the other or bind the other's credit in any way or for any purpose whatsoever.
- 5.3 The Service Provider acknowledges and agrees that the security officers whom it provides in terms of this Agreement are its own employees and not that of Transnet. The Service Provider further acknowledges and agrees that it does not act as a temporary employment service as contemplated in Section 198 of the Labour Relations Act, 66 of 1995.

6 DURATION/TERM AND CANCELLATION

- 6.1 Notwithstanding the date of signature, this Agreement shall commence on the Commencement Date being and shall endure for a duration of three (3) years and three (3) months, expiring on, unless:
 - 6.1.1 terminated by either Party in accordance with the provisions of clause 24 (Breach and

Termination) of this Agreement or its Annexure or Schedules appended hereto, or otherwise in accordance with law or equity; or

6.1.2 this Agreement is extended at Transnet's option for a further period to be agreed by the Parties.

6.2 Notwithstanding clause 24 [*Breach and Termination*], either Party may cancel this Agreement without cause by giving Sixty (60) calendar days prior written notice thereof to the other Party, provided that in such instance, this Agreement will nevertheless be applicable in respect of all Purchase Orders which have been placed prior to the date of such cancellation.

7 RISK MANAGEMENT

7.1 Where Transnet determines appropriate, within two (2) weeks from the date of contract signature, the Parties are to meet to prepare and maintain a contract Risk Register. The Risk Register shall include a description of the risks and a description of the actions which are to be taken to avoid or reduce these risks which both Parties shall jointly determine.

7.2 Contract progress meetings shall be held monthly, or unless otherwise agreed between the Parties in writing. The purposes of these progress meetings shall be to capture the number of late deliverables against agreed milestones, actual costs against payment plans, performance issues or concerns, contract requirements not achieved, the status of previous corrective actions and risk management. Minutes of meetings shall be maintained and signed off between the Parties throughout the contract period.

8 TRANSNET'S OBLIGATIONS

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

8.2 Transnet agrees to provide the Service Provider or its Personnel such access to and use of its facilities as is necessary to allow the Service Provider to perform its obligations under this Agreement.

8.3 Transnet shall cooperate, in good faith, with the Service Provider in all matters relating to Service Provider's performance of the Services, and provide the Services Provider with accurate information and resource as is necessary for the Service Provider to provide the Services and in a timely manner.

8.4 Transnet shall comply with all applicable laws, including, without limitation its requirements under the Protection of Personal Information Act, 2013, as amended.

9 OBLIGATIONS OF THE SERVICE PROVIDER

9.1 **General obligation of the Service Provider:**

9.1.1 The Service Provider shall, in addition to the requirements of the Scope of Work:

9.1.1.1 respond promptly to all complaints and enquiries from Transnet;

9.1.1.2 inform Transnet immediately of any dispute or complaint arising in relation to the provision of Services;

9.1.1.3 conduct its business in a professional manner which will reflect positively upon the

Service Provider and the Service Provider's Services;

- 9.1.1.3.1 keep full records clearly indicating all transactions concluded by the Service Provider relating to the delivery of the Services and keep such records for at least 5 [five] years from the date of each such transaction;
- 9.1.1.3.2 obtain, and at all times maintain in full force and effect, any and all licenses and permits and any other applicable laws for the provision of the Services and ancillary Services, and the conduct of the business and activities of the Service Provider;
- 9.1.1.3.3 observe and ensure compliance with all requirements and obligations as set out in the labour and related legislation of South Africa, applicable Sectorial Determinations for the Private Security Services, the Occupational Health and Safety Act, 85 of 1993 (as well as Transnet requirements relating to health and safety as per the tender requirements in terms of which this Agreement is concluded), as may be amended from time to time as well as the provisions of the Scope of Work, the none compliance of which shall be breach of this Agreement in terms of clause 24 below;
- 9.1.1.3.4 ensure compliance with all private security sector governing statutory bodies' compliance and legislative requirements for the duration of the contract. Compliance will be monitored for the duration of the contract.
- 9.1.1.3.5 observe and ensure compliance with all requirements and objectives of the Transnet Supplier Integrity Pact as agreed to in response to the RFP. The general purpose of the Supplier Integrity Pact is to agree to avoid all forms of dishonesty, fraud and corruption by following a system that is fair, transparent and free from any undue influence prior to, during and the subsequent procurement event leading to this Agreement and this Agreement itself;
- 9.1.1.3.6 comply with all applicable environmental legislation and regulations, demonstrate sound environmental performance and have an environmental management policy which ensures that its products, including the Services or ancillary Services are procured, produced, packaged, delivered and are capable of being used and ultimately disposed of in a way that is environmentally appropriate; and
- 9.1.1.3.7 ensure the validity of all renewable certifications, including but not limited to its B-BBEE Verification Certificate and Private Security Industry Regulatory Authority Certificates throughout the entire term of this Agreement. Should the Service Provider fail to present Transnet with such renewals as they become due, Transnet shall be entitled, in addition to any other rights and remedies that it may have in terms of the Agreement, to terminate this Agreement forthwith without any liability and without prejudice to any claims which Transnet may have for damages against the Service Provider.

- 9.2 The Service Provider acknowledges and agrees that it shall at all times:
- 9.2.1 render the Services and ancillary Services (if applicable) and perform all its duties with honesty and integrity;
 - 9.2.2 communicate openly and honestly with Transnet regarding the performance of the Services and demonstrate a commitment to effecting and perform ancillary Services timeously, efficiently and at least to the required standards;
 - 9.2.3 endeavour to provide the highest possible standards of service and workmanship, with a reasonable degree of care and diligence;
 - 9.2.4 use its best endeavours and make every diligent effort to meet agreed deadlines;
 - 9.2.5 treat its own Staff, as well as all Transnet's Staff, with fairness and courtesy and respect for their human rights;
 - 9.2.6 practice and promote its own internal policies aimed at prohibiting and preventing unfair discrimination;
 - 9.2.7 treat all enquiries from Transnet in connection with the provision of the Services and/or ancillary Services with courtesy and respond to all enquiries promptly and efficiently. Where the Service Provider is unable to comply with the provisions of this clause, the Service Provider shall advise Transnet of the delay and the reasons therefor and will keep Transnet informed of progress made regarding the enquiry;
 - 9.2.8 when requested by Transnet, provide clear and accurate information regarding the Service Provider's own policies and procedures, excluding Know-How and other Confidential Information, except where a non-disclosure undertaking has been entered into between the Parties;
 - 9.2.9 not allow a conflict of interest to develop between its own interests [or the interests of any of its other customers] and the interests of Transnet;
 - 9.2.10 not accept or offer, nor allow, induce or promote the acceptance or offering of any gratuity, enticement, incentive or gift that could reasonably be regarded as bribery or an attempt to otherwise exert undue influence over the recipient;
 - 9.2.11 not mislead Transnet or its officers, employees and stakeholders, whether by act or omission;
 - 9.2.12 not otherwise act in an unethical manner or do anything which could reasonably be expected to damage or tarnish Transnet's reputation or business image;
 - 9.2.13 immediately report to Transnet any unethical, fraudulent or otherwise unlawful conduct of which it becomes aware in connection with Transnet or the delivery Services or ancillary Services to Transnet;
 - 9.2.14 ensure that at all times, during the currency of this Agreement, it complies with all obligations and commitments in terms of the provisions of the Income Tax Act, No 58 of 1962, the VAT Act or any other tax legislation relating to their liability for Income Tax, VAT, Pay as You Earn or any other tax. The Service Provider shall further ensure Tax Clearance Compliance, for the duration of this Agreement;
 - 9.2.15 not victimise, harass, or discriminate against any employee of either Party to this Agreement or any applicant for employment with either Party to this Agreement due to their gender, race, disability, age, religious belief, sexual orientation or part-time status. This provision applies, but is not limited to employment, upgrading, work environment, demotion, transfer, recruitment, recruitment advertising, termination of employment, rates of pay or other

forms of compensation and selection for training; and

- 9.2.16 shall ensure that its employees, agents, and Subcontractors will not breach any applicable discrimination legislation and any amendments and re-enactments thereof as well as the provisions of this Agreement.

9.3 Remuneration of the security officers

- 9.3.1 The Service Provider shall pay the security officers in terms of the provisions of clause 16 and 17 below.

- 9.3.2 The Service Provider shall ensure that it familiarise itself with the provisions of the applicable Sectorial Determination as determined by the Minister of Labour and shall ensure that it pays its security officers as per the prescribed requirements of such provisions.

- 9.3.3 When called upon to do so by Transnet, the Service Provider shall provide Transnet with proof that all remuneration as well as all benefits due to its security officers as per the provisions of this Agreement as well as the applicable Sectorial Determination, has been paid to its security officers within the timelines provided by Transnet. The Service Provider shall provide Transnet with the required information as requested within five (5) working days of receipt of the said request. The evidence required in term if this clause 9, shall be but not limited to:

- a letter on a letter head of the medical benefit company confirming cover by the said company for the benefit of the Service Provider on behalf of its security officials as contemplated by the Minister in terms of the applicable Sectorial Determination;
- a letter on a letter head of the provident fund company confirming cover by the said company for the benefit of the Service Provider on behalf of its security officials as contemplated by the Minister in terms of the applicable Sectorial Determination; and
- any other document that may be requested by Transnet as evidence of compliance for the above benefits or any other benefit that is contemplated in terms of the applicable Sectorial Determination.

- 9.3.4 Transnet reserves the right to obtain payslips from any of the security officials to confirm whether the Service Provider is making any deductions that is unlawful, that may result in the employees going on strike and therefore causing service disruptions or to confirm deductions for benefits in terms of the applicable Sectorial Determination.

- 9.3.5 Where it is found that the Service Provider is paying its security officers less than the prescribed remuneration, Transnet shall be entitled to terminate this Agreement with immediate effect and shall further be entitled to claim damages suffered as a result of such termination. This shall include but not limited to all monies equal to the amount paid by Transnet to the Service Provider in compliance with the Sectorial Determination which the Service Provider failed to pay to the security officers. Where it is found that the Service Provider is making unlawful deductions from the security officer/supervisor, the Transnet shall be entitled to terminate the Agreement with immediate effect and shall be further entitled to claim damages suffered as a result of such termination.

- 9.3.6 The Service Provider shall remain solely responsible for payment of all costs of the security officers, including but not limited to remuneration, bonuses, pension or provident fund contributions, benevolent fund contributions, medical funds contributions, insurance premiums and licensing and subscriptions; and

- 9.3.7 The Service Provider shall be responsible for the payment of, *inter alia*, all applicable taxes, charges, duties or fees assessed or levied in terms of any legislation e.g. Income Tax Act, 1962, the Compensation for Occupational Injuries and Diseases Act, 1993 and the Private

Security Industry Regulation Act, 2001 in respect of the security officers or as a result of the security officers being provided by the Service Provider in terms of this Agreement and it shall, on request, furnish sufficient documentary proof to Transnet that any of or all of these payments have in fact been made.

- 9.4 The Service Provider undertakes that it shall, as soon as is practically possible, before the commencement of this Agreement, make all the relevant provisions of this Agreement known to all the security officers provided in terms hereof.
- 9.5 The Service Provider shall require its security officers to attend and, if necessary, to testify in court proceedings. The Service Provider shall ensure that its employees are made available to be interviewed in any of the inquiries, hearing and/or line investigation as well as in disciplinary and arbitration proceedings should Transnet deem it necessary, provided that the Transnet has notified the Service Provider within 48 (forty-eight) hours before the start of the proceedings that the presence and co-operation of the Service Provider security officer(s) is required by Transnet. This requirement will survive termination of the Agreement for pending or outstanding cases existing at that time.
- 9.6 Pursuant to clause 9.5 above, should a security officer be required to testify during his/her shift, a replacement security officer of the same grade must be provided by the Service Provider, Transnet shall be liable for the costs of the replacement security officer.
- 9.7 The Service Provider shall ensure that the security officers provided by it in terms of this Agreement:
- 9.7.1 work shifts and/or overtime as and when required by the Service Provider and agreed upon by the Parties from time to time, and in compliance with relevant legislation and/or sectoral determination for the Private Security Sector;
 - 9.7.2 are in a physically fit and mentally sound condition to perform their duties in terms of this Agreement;
 - 9.7.3 are continuously trained and retrained as prescribed by this Agreement or relevant legislation during the term of this Agreement;
 - 9.7.4 are subject to the code of conduct as agreed upon between the Parties on or before the Effective Date. Subject to the agreement of the Parties herein, this code of conduct may be amended from time to time; and
 - 9.7.5 comply with all the requirements of any applicable legislation, including the Code of Conduct for Security Service Providers, 2003 in terms of the Private Security Industry Regulation Act, 56 of 2001.
- 9.8 The Service Provider shall at all times comply with all the terms and conditions of any policy of insurance effected in terms of this clause 9 and that it will not itself act or permit any act or omission that will or may have the effect of voiding or invalidating any policy of insurance or cover thereunder and shall implement the requirements thereof, and in particular (without limiting the generality of the foregoing and notwithstanding anything to the contrary in this Agreement contained), the Service Provider shall:
- 9.8.1 notify the Transnet promptly of the happening of an Incident or event in terms of this Agreement or any event which may give rise to a claim under any such policy of insurance;
 - 9.8.2 render to the Transnet and/or the insurer whatever assistance may be necessary or required in connection with or arising out of any claims; and
 - 9.8.3 notwithstanding anything contained to the contrary in this Agreement, it is specifically recorded that neither the Service Provider nor the Transnet shall be precluded from instituting a claim against each other following an occurrence or event whether or not it is

covered in terms of the insurance policy referred to in this clause ensure that the security officers:

- 9.8.3.1 co-operate with any member of the South African Police Service, the South African National Defence Force, the National Intelligence Agency or any other designated South African Government Security Agency in accordance with the provisions of Co-operation Agreements entered into between such entities and Transnet; and
- 9.8.3.2 where no such Co-operation Agreements exist, the security officer shall allow a member of the security agencies mentioned in paragraph 9.8.3.1 above to enter any Site of the Transnet only when such a member produces valid proof to the satisfaction of the Authorised Officer of such member's official identification documentation.

10 SERVICE PROVIDER'S PERSONNEL

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

11 SUBCONTRACTING

- 11.1 The Service Provider may only enter into a subcontracting arrangement or replace a subcontractor with the prior written approval of Transnet.
- 11.2 If the Service Provider subcontracts a portion of the contract to another person without the prior written approval of Transnet, Transnet reserves the right to penalize the Service Provider up to 10% of the value of the Agreement.

- 11.3 Where the Service Provider seeks to replace a Subcontractor, Transnet shall be entitled to obtain representations or input from the initial Subcontractor who was part of the tender process whose credentials were used in the Service Provider's tender submission. Transnet shall consider input from all parties concerned, in order to take a decision on the proposed replacement of the Subcontractor. The Subcontracting arrangement or contract remains between the Service Provider (main contractor) and the Subcontractor.
- 11.4 Should Transnet approve the Service Provider's subcontracting arrangement, the Service Provider and not the Subcontractor will at all times be held liable for performance in terms of its contractual obligations.
- 11.5 The Service Provider may not subcontract in such a manner that the overall value of the Agreement is reduced to below the stipulated minimum threshold.
- 11.6 The Service Provider is required to subcontract a minimum of 30% of the contract value to South African companies which qualify as Exempted Micro Enterprises (EMEs) and/or Qualifying Small Enterprises (QSEs) that are at least 51% black owned.

12 PAYMENT TO SUB-CONTRACTORS

- 12.1 Transnet reserves the right, in its sole discretion, to make payment directly to the Subcontractor of the Service Provider, subject to the following conditions:
 - 12.1.1 Receipt of an undisputed invoice from the Subcontractor; and
 - 12.1.2 Receipt of written confirmation from the Service Provider that the amounts claimed by the Subcontractor are correct and that the Services for which the Subcontractor has requested payment were rendered to the satisfaction of the Service Provider, against the required standards.
- 12.2 Nothing contained in this clause must be interpreted as bestowing on any Subcontractor a right or legitimate expectation to be paid directly by Transnet. Furthermore, this clause does not bestow any right or legitimate expectation on the Service provider to demand that Transnet pay its sub-contractor directly. The decision to pay any Subcontractor directly, remains that of Transnet alone.
- 12.3 The Service Provider remains liable for its contractual obligations under the Agreement, including all services rendered by the Subcontractor.
- 12.4 This clause does not establish any contractual relationship between Transnet and any Subcontractor of the Service Provider, whatsoever.

13 B-BBEE AND SOCIO-ECONOMIC OBLIGATIONS

- 13.1 **B-BBEE Scorecard**
 - 13.1.1 Transnet fully endorses and supports the Broad-Based Black Economic Empowerment Programme and is strongly of the opinion that all South African business enterprises have an equal obligation to redress the imbalances of the past.
 - 13.1.2 In response to this requirement, the Service Provider shall submit to Transnet's Contract Manager or such other designated person details of its B-BBEE status in terms of the latest Codes of Good Practice issued in terms of the B-BBEE Act and proof thereof at the beginning of March each year during the currency of this Agreement.
 - 13.1.3 The Service Provider undertakes to notify and provide full details to Transnet in the event there is:
 - 13.1.3.1 a change in the Service Provider's B-BBEE status which is less than what it was at the time of its appointment including the impact thereof; and
 - 13.1.3.2 a corporate or internal restructure or change in control of the Service Provider

which has or likely to impact negatively on the Service Provider's B-BBEE status.

13.1.4 Notwithstanding any other reporting requirement in terms hereof, the Service Provider undertakes to provide any B-BBEE data (underlying data relating to the Service Provider which has been relied upon or utilised by a verification agency or auditor for the purposes of issuing a verification certificate in respect of the Service Provider B-BBEE status) which Transnet may request on written notice within 30 (thirty) calendar days of such request, failure to provide such data shall constitute breach of contract in terms of the provisions of clause 24 [Breach and Termination] of this Agreement.

13.1.5 In the event there is a change in the Service Provider's B-BBEE status, then the provisions of clause 24 [Breach and Termination] shall apply.

13.2 **Green Economy/Carbon Footprint**

The Service Provider has in its bid provided Transnet with an understanding of the Service Provider's position with regard to issues such as waste disposal, recycling and energy conservation. The Service Provider therefore commits to adhering to its Policy on the abovementioned during the contract duration.

14 **PENALTIES**

14.1 **Penalties for Non-compliance to Service Level Agreement**

Where the Service Provider fails to provide the Services within the agreed and accepted milestone timelines, the Scope of Work and the Service Level Agreement, and where the cause of the non-compliance was not due to a fault, act or omission of Transnet or any force majeure event, penalties shall be imposed as per the provisions of the Service Level Agreement.

14.2 **Non-compliance penalties for subcontracting**

14.2.1 Breach of subcontracting obligations provides Transnet cause to terminate this Agreement in certain cases where there is a material non-compliance.

14.2.2 If the Service Provider fails to achieve its subcontracting commitments as per their bid submission ("a Non-Compliance"), the Service Provider shall pay a non-compliance penalty ("Non-compliance Penalty") to Transnet in respect of such non-compliance.

14.2.3 Such penalty shall be calculated based on the difference in value between the committed and delivered subcontracting value (i.e. 100% of the undelivered subcontracting value) plus an additional 10% (ten per cent) of such difference.

14.3 **Non-compliance Penalty Certificate:**

14.3.1 If any Non-Compliance Penalty arises, the Supplier Development Manager shall issue a Non-compliance Penalty Certificate ninety (90) business days before the expiry of the contract indicating the Non-compliance Penalties which have accrued during that period.

14.3.2 A Non-compliance Penalty Certificate shall be prima facie proof of the matters to which it relates. If the Service Provider disputes any of the amounts set out in a Non-Compliance Penalty Certificate:

14.3.2.1 the dispute shall be resolved in accordance with the provisions of this Agreement; and

14.3.2.2 if pursuant to that referral, it is determined that the Service Provider owes any amount to Transnet pursuant to the Non-Compliance Penalty Certificate, then the Service Provider shall pay such amount to Transnet within 10 (ten) Business Days of the determination made pursuant to such determination and

an accompanying valid Tax Invoice.

14.4 Payment of Non-Compliance Penalties:

- 14.4.1 Subject to the provisions of clause 14, the Service Provider shall pay the Non-Compliance Penalty indicated in the Non-Compliance Penalty Certificate or such amount as determined within 10 (ten) Business Days of Transnet issuing a valid Tax Invoice to the Service Provider for the amount set out in that certificate. If Transnet does not issue a valid Tax Invoice to the Service Provider for Non-Compliance Penalties accrued during any relevant period, those Non-Compliance Penalties shall be carried forward to the next period.
- 14.4.1 The Service Provider shall pay the amount due within 10 (ten) Business Days after receipt of a valid Tax Invoice from Transnet, failing which Transnet shall, without prejudice to any other rights of Transnet under this Agreement, be entitled to call for payment which may be in any form Transnet deems reasonable and/or appropriate.
- 14.4.2 Should the Service Provider fail to pay any Non-Compliance Penalties within the time indicated above (as applicable), Transnet shall be entitled to deduct (set off) the amount not paid by the Service Provider from the account of the Service Provider in the ensuing month.
- 14.4.3 The Non-Compliance Penalties set forth in this Clause are stated exclusive of VAT. Any VAT payable on Non-Compliance Penalties will be for the account of the Service Provider.

14.5 Non-compliance penalties for Job Creation

- 14.5.1 Breach of job creation obligations provides Transnet cause to terminate this Agreement in certain cases where there is a material non-compliance.
- 14.5.2 If the Service Provider fails to achieve its job creation commitments as per their bid submission ("a Non-Compliance"), the Service Provider shall pay a non-compliance penalty ("Non-Compliance Penalty") to Transnet in respect of such Non-Compliance.
- 14.5.3 Such penalty shall be calculated based on the difference between the committed and delivered jobs. For every job not created a penalty of 2% of the contract value will be applied.

14.6 Non-compliance Penalty Certificate:

- 14.6.1 If any Non-Compliance Penalty arises, the Supplier Development Manager shall issue a Non-Compliance Penalty Certificate ninety (90) business days before the expiry of this Agreement indicating the Non-Compliance Penalties which have accrued during that period.
- 14.6.2 A Non-Compliance Penalty Certificate shall be prima facie proof of the matters to which it relates. If the Service Provider disputes any of the amounts set out in a Non-compliance Penalty Certificate:
 - 14.6.2.1 the dispute shall be resolved in accordance with the provisions of this Agreement; and
 - 14.6.2.2 if pursuant to that referral, it is determined that the Service Provider owes any amount to Transnet pursuant to the Non-Compliance Penalty Certificate, then the Service Provider shall pay such amount to Transnet within 10 (ten) Business Days of the determination made pursuant to such determination and an accompanying valid Tax Invoice.

14.7 Payment of Non-compliance Penalties:

- 14.7.1 Subject to Clause 14.6 above, the Service Provider shall pay the Non-Compliance Penalty indicated in the Non-Compliance Penalty Certificate within 10 (ten) Business Days of Transnet issuing a valid Tax Invoice to the Service Provider for the amount set out in that certificate. If Transnet does not issue a valid Tax Invoice to the Service Provider for Non-

Compliance Penalties accrued during any relevant period, those Non-Compliance Penalties shall be carried forward to the next period.

14.7.2 The Service Provider shall pay the amount due within 10 (ten) days after receipt of a valid Tax Invoice from Transnet, failing which Transnet shall, without prejudice to any other rights of Transnet under this Agreement, be entitled to call for payment which may be in any form Transnet deems reasonable and/or appropriate.

14.7.3 Should the Service Provider fail to pay any Non-Compliance Penalties within the time indicated above (as applicable), Transnet shall be entitled to deduct (set off) the amount not paid by the Service Provider from the account of the Service Provider in the ensuing month.

14.7.4 The Non-Compliance Penalties set forth in this Clause are stated exclusive of VAT. Any VAT payable on Non-Compliance Penalties will be for the account of the Service Provider.

15 FEES AND EXPENSES RELATING TO SERVICES

15.1 In consideration of the provision of the Services, Transnet will pay to the Service Provider the fees detailed in the Pricing Schedule as well as the applicable Work Order.

15.2 Transnet will not be invoiced for materials used in the provision of the Services save for those materials [if any] set out in the Work Order and accepted by Transnet or in any relevant Work Order [which will be invoiced to Transnet at cost].

15.3 Over and above the agreed prices as per the Pricing Schedule or Work Order, Transnet will reimburse to the Service Provider all reasonable and proper expenses incurred directly and solely in connection with the provision of the Services and ancillary Services, provided that all such expenses:

15.3.1 are agreed by Transnet in advance;

15.3.2 are incurred in accordance with Transnet's standard travel and expenses policies;

15.3.3 are passed on to Transnet at cost with no administration fee; and

15.3.4 will only be reimbursed if supported by relevant receipts.

15.4 All Tax Invoices relating to the fees, out of pocket expenses and, if applicable, travel and accommodation costs, will provide the detail for each of the Personnel carrying out the Services and incurring the expenses, and the Tax Invoice will, where appropriate, include VAT as a separate item.

16 INVOICES AND PAYMENT

16.1 Transnet shall pay the Service Provider the amounts stipulated in each Purchase Order/Work Order, subject to the terms and conditions of this Agreement, specifically, the Pricing Schedule.

16.2 Transnet shall pay such amounts to the Service Provider upon receipt of a valid and undisputed Tax Invoice together with the supporting documentation, as determined by Transnet once the valid and undisputed Tax Invoices or such portions of the Tax Invoices which are valid and undisputed become due and payable to the Service Provider for the delivery of the Services ordered, in terms of clause 16.5 below.

16.3 Transnet may, pending an investigation, withhold any payments to the Service Provider, in the case where irregular expenditure has been identified in and that there is reasonable suspicion that the Service Provider is involved or was aware that the contract transgressed any legislation.

16.4 All Prices set out in this Agreement and the Pricing Schedule hereto are to be indicated inclusive and exclusive of VAT, which will be payable at the applicable rate in ZAR.

16.5 Unless otherwise provided for in this Agreement, Tax Invoices shall be submitted together with a month-end statement. Payment against such month-end statement shall be made by Transnet within

30 (thirty) calendar days after date of receipt by Transnet of the Service Provider's statement together with the relevant valid and undisputed Tax Invoice(s) and supporting documentation.

- 16.6 Where the payment of any Tax Invoice, or any part of a Tax Invoice which is not in dispute, is not made in accordance with this clause, the Service Provider shall be entitled to charge interest on the outstanding amount, at The Standard Bank of South Africa's prime rate of interest in force, for the period from the due date of payment until the outstanding amount is paid.
- 16.7 Transnet shall notify the Service Provider of any dispute in regard to the Invoice and the nature of the dispute within ten (10) calendar days of the date of the invoice failing which the invoice shall be deemed to be correct and shall be due for payment in full forthwith. If Transnet disputes any amount, the undisputed amount must be paid on due date in full and the disputed amount must be dealt with in terms of clause 24.
- 16.8 Notwithstanding the provisions of clause 16.1 above, should either of the Parties be of the view that underpayments or overpayments were made in respect of invoices paid in respect of the Services, it shall notify the other in writing of such underpayment or overpayment:
 - 16.8.1 the Parties are entitled to conduct a reconciliation process before any amount is paid to a Party as a result of the underpayment or overpayment; and
 - 16.8.2 the payment or credit note resulting from the underpayment or overpayment shall be made within 30 (thirty) days after the Party has been notified of the underpayment or overpayment.
- 16.9 Should the Transnet require additional Services on an ad hoc basis in terms of this Agreement, the Service Provider shall provide such Services at the rates per shift as specified in the Pricing Schedule and the Work Order requesting such ad hoc services.
- 16.10 The payment by the Transnet of any part of the contract price for any particular Service(s) rendered in respect of any particular Site or during any particular period, does not constitute evidence or an admission by the Transnet that the Services have been satisfactory performed or performed during the required period and in accordance with this Agreement.
- 16.11 Pursuant to clause 16 and clause 17, the Service Provider shall keep full and accurate records of all costs associated with the provision of the Services to Transnet, in a form to be approved in writing by Transnet. The Service Provider shall produce such records to Transnet for inspection at all reasonable times on request and such records may, at Transnet's option, be audited by Transnet or its designated representatives.

17. PRICE ADJUSTMENTS

- 17.1 Prices for Services provided in terms of this Agreement shall be subject to review in alignment with the new main collective Agreement by the Department of Employment notice 1530 of 2022 gazetted document.
- 17.2 TNPA will only allow annual escalation of prices in line with the published PSIRA Sectoral Determination price increase from 01 March 2027, should the bidder price be lower than increased price rate for the security guards.
- 17.3 Transnet shall not be liable to pay the Service Provider any amount that is not provided for in terms of this Agreement, particularly the Pricing Schedule, Work Order for the ad hoc services or a Sectorial Determination.
- 17.4 Should Transnet and the Service Provider fail to reach an agreement on the price adjustment, either Party shall be entitled to submit this matter for dispute resolution in accordance with the provisions of this Agreement.

18 WARRANTIES APPLICABLE TO SERVICES

- 18.1 The Service Provider warrants to Transnet that:
- 18.1.1 pursuant to clause 9 (Obligations of the Service Provider), the Services will be provided in accordance with the specifications as per this Agreement as well as the Scope of Work and Work Order;
 - 18.1.2 the execution and performance of this Agreement by the Service Provider does not infringe any rights of a third party or breach any obligation of the Service Provider to any third party; and
 - 18.1.3 it has taken all reasonable precautions to ensure that, in the event of a disaster, the impact of such disaster on the ability of the Service Provider to comply with its obligations under this Agreement will be reduced to the greatest extent possible, and that the Service Provider shall ensure that it has appropriate, tested and documented recovery arrangements in place.

19 THIRD PARTY INDEMNITY

The Service Provider hereby indemnifies and shall hold Transnet harmless against any direct damages suffered by or claims arising against Transnet in respect of any breach by the Service Provider of clause 18 above, which has not been remedied, save that the Service Provider shall not be liable to the extent that any liability arises as a result of any actions or omissions of Transnet.

20 INSPECTION APPLICABLE TO SERVICES

- 20.1 Transnet reserves the right to arrange for the inspection of all Services forming the subject of any Work Order, at any stage before final acceptance and by any means it may think fit, and when such inspection is to be carried out, the relevant Work Order(s) shall be endorsed accordingly.
- 20.2 When inspection of the Service Provider's works is specified, Transnet's authorised inspector shall have supervised access to the Service Provider works or any documents or applications deemed directly applicable to the Services at all times during working hours on a Business Day, and at a mutually agreeable time and date; shall have liberty to inspect work which is the subject of the Purchase Order, once per annum at a mutually agreeable time and date, or more frequently to the extent that Transnet reasonably believes that the Service provider has breached this Agreement at any stage of rendering, and may reject any Services which are found to be incomplete, defective or in any way not in conformity with the terms and specifications of this Agreement; and the Service Provider shall afford all reasonable facilities for such access and inspection.
- 20.3 Inspection will be arranged by the Staff of Transnet, as indicated in the Work Order(s).
- 20.4 When Services are ready for inspection, the Service Provider shall apply promptly to the appropriate authority for instructions regarding such inspection. All applications for inspection shall quote Transnet's Agreement or Purchase Order number. Seven (7) Business Days' notice of readiness from the Service Provider shall be given to the authorised inspector appointed by Transnet to carry out such inspection.
- 20.5 All inspections shall abide by the Service Provider's security protocols and shall not unreasonably interfere with the normal business operations of the Service Provider.

21 LIABILITY

- 21.1 The Service Provider shall at all times be held strictly liable and accepts responsibility for all damages of whatsoever nature due to any acts or omissions of its security officers, servants, agents, assigns, contractors and sub-contractors in the provision of the Services provided in terms of this Agreement.

- 21.2 The Service Provider shall at all times be held strictly liable and accepts responsibility for all and any loss or damage to or caused by any road motor vehicles, equipment or other material used by the Service Provider in respect of the Service provided in terms of this Agreement.
- 21.3 The Service Provider shall at all times be vicariously and strictly liable for all the acts and/or omissions of security officers whether acting in the course and within the scope of their duties and employment with the Service Provider. The Service Provider shall also be liable for losses or damages arising out of the behaviour or action of the guard dogs and patrol horses being deployed on the Transnet's Site.
- 21.4 The Service Provider irrevocably and unconditionally undertakes to indemnify and keep the Transnet indemnified and holds the Transnet harmless against, and, in respect of, all and any loss or damage incurred by the Transnet as a result of, arising out of or connected with any failure, act or omission or breach of this Agreement by the Service Provider or any of its employees, security officers, employees, servants, agents, assigns, contractors or sub-contractors or occurring during or as a result of the provision by the Service Provider of the Service. The absolute obligation of the Service Provider to indemnify the Transnet on a full indemnity basis against all claims shall include but not be limited to:
- 21.4.1 any damage or loss to the Transnet's property, whether moveable or immovable;
loss of property belonging to the Transnet;
 - 21.4.2 liability in respect of any loss or damage to property, whether movable or immovable,
belonging to third parties;
 - 21.4.3 liability in respect of lost property belonging to third parties;
 - 21.4.4 liability arising out of any unlawful act committed by the Transnet or its employees during
the process of rendering a Service; and
 - 21.4.5 liability in respect of the death, unlawful arrest, injury, illness or disease of any person,
should the damage, loss, unlawful arrest, death, injury, illness or disease referred to above
be attributable to or arise out of the Services that are being or have been rendered by the
Transnet in terms of this Agreement.

22 MONITORING AND TESTING OF SECURITY OFFICERS

- 22.1 Transnet shall be entitled to monitor the movements or activities of the security officers while on duty, either electronically or otherwise, without giving prior notice, written or otherwise, to the security officer or the Service Provider.
- 22.2 The Service Provider shall ensure that security officers to be posted on Sites agree in writing to the right of Transnet to monitor their activities without their knowledge whilst on duty. Such consent shall be made available to Transnet before the security officer commences his/her duties in terms of this Agreement.
- 22.3 Transnet shall be entitled to conduct breathalyser tests or any other tests that may be necessary to establish that the security officers comply with the provisions of this Agreement. The Service Provider shall ensure that the security officers are informed of this clause and that the necessary consents are obtained and provided to the Transnet before any security officer commences his or her duties in terms of this Agreement.

23 RIGHTS ON CANCELLATION

- 23.1 If this Agreement, Work Order or Purchase Order is cancelled in whole or in part, Transnet may execute or complete this Agreement with any other entity and do so on such terms as it may deem proper, or may procure other comparable Services in substitution for those neglected to be provided

or rendered or rejected as aforesaid, and may recover from the Service Provider the difference between the cost of such Services and the Price (if the latter was lower) as determined by arbitration or a court of law as well as any costs and expenses (including any additional transport costs) which Transnet may have had to incur in consequence of the Service Provider's default, as such cost are finally awarded by arbitration or a court of law.

- 23.2 Any amount which may be recoverable from the Service Provider in terms of clause 23.1 above, without prejudice to any other legal remedies available to Transnet, may be deducted in whole or in part from any monies in the hands of Transnet and due for payment to the Service Provider.

24 BREACH AND TERMINATION

- 24.1 Termination in accordance with clause 6 [Duration/Term and Cancellation] shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either Party and all provisions which are to survive this Agreement or impliedly do so shall remain in force and in effect.
- 24.2 On termination of this Agreement or a Work Order, the Service Provider will immediately render up, and procure that its Personnel will immediately deliver up to Transnet, all Deliverables and property belonging to Transnet [or, in the event of termination of a Work Order, such as is relevant to that Work Order] which may be in the possession of, or under the control of the Service Provider, and certify to Transnet in writing that this has been done.
- 24.3 To the extent that any of the Deliverables and property referred to in clause 24.1 above are in electronic form and contained on non-detachable storage devices, the Service Provider will provide Transnet with unencrypted copies of the same on magnetic media and will irretrievably destroy and delete copies so held.
- 24.4 In the event that this Agreement is terminated by the Service Provider under clause 6 (Duration/Term and Cancellation), or in the event that a Work Order is terminated by Transnet under clause 24 (Breach and Termination), Transnet will pay to the Service Provider all outstanding Fees (apportioned on a pro rata basis) relating to the work undertaken by the Service Provider up until the date of such termination. Transnet will also pay the costs of any Services and materials ordered by the Service Provider in relation to such work for which the Service Provider has paid or is legally obliged to pay, in which case, on provision of such services or materials, the Service Provider will promptly provide such Services and materials to Transnet or as it may direct.
- 24.5 If either Party [the Defaulting Party] commits a material breach of this Agreement and fails to remedy such breach within 30 [thirty] calendar days of written notice thereof, the other Party [hereinafter the Aggrieved Party], shall be entitled, in addition to any other rights and remedies that it may have in terms of this Agreement, to terminate this Agreement forthwith without any liability and without prejudice to any claims which the Aggrieved Party may have for damages against the Defaulting Party.
- 24.6 Either Party may terminate this Agreement forthwith by notice in writing to the other Party when the other Party is unable to pay its debts as they fall due or commits any act or omission which would be an act of insolvency in terms of the Insolvency Act, 24 of 1936 [as amended from time to time], or if any action, application or proceeding is made with regard to it for:
- 24.6.1 a voluntary arrangement or composition or reconstruction of its debts;
 - 24.6.2 its winding-up or dissolution;
 - 24.6.3 the appointment of a liquidator, trustee, receiver, administrative receiver or similar officer;
 - 24.6.4 any similar action, application or proceeding in any jurisdiction to which it is subject.
- 24.7 Transnet will terminate this contract to the extent that any change in control affects the ability of

the Service Provider to provide the Services. The Service Provider's shareholding or director changes should not automatically terminate this agreement, unless such change of control affects the ability of the Service Provider to provide the Services under this agreement.

- 24.8 Notwithstanding this clause 24, Transnet may cancel this Agreement without cause by giving 30 [thirty] calendar days prior written notice thereof to the Service Provider.
- 24.9 Without derogating from the provisions of clause 24 and in addition thereto, in the event of the Service Provider committing breach of contract by failing and/or neglects to provide the Service(s) to Transnet as outlined in the Work Order or Scope of Work in respect of specific Sites for any reason that may result in or threaten a strike by the Service Provider's employees or for any reason that may result in or threaten service interruption at that particular site, and failing to remedy such breach within 12 (twelve) hours after having received written notice from Transnet upon it to rectify such breach, Transnet shall be entitled to terminate this Agreement, immediately, by notice in writing to the Service Provider.
- 24.10 Should the Service Provider's PSIRA's or any certificate for any reason whatsoever be suspended, revoked, set aside by an appropriate authority or competent person, for any reason whatsoever, or should the Service Provider's competence to render the Service be terminated, or diminished in a material manner, such suspension, revocation, setting aside, termination or diminution shall be deemed to be a breach of this Agreement and shall entitle Transnet to terminate this Agreement forthwith.
- 24.11 Should the Service Provider's insurance(s) for any reason whatsoever be suspended, revoked, set aside or terminated by its insurance service provider, such suspension, revocation, setting aside or termination shall be deemed to be a breach of this Agreement and shall entitle the Transnet to terminate this Agreement forthwith.
- 24.12 Should the Service Provider act in conflict with or fail to comply with any statutory provision, regulation, by-law, rule or programme or policy or procedure that has a direct bearing on the Service(s), such action or failure shall be deemed to be a breach of this Agreement and shall entitle Transnet to terminate the Agreement forthwith.
- 24.13 Should Transnet incur any losses, including but not limited to theft of Transnet's property, theft of Transnet's third party property, fraud and or any other criminal activities that are to the detriment of the Transnet, at any of the Sites where the Service Provider is performing the Service, such action shall be deemed to be a breach of this Agreement and shall entitle the Transnet to terminate the Agreement forthwith.
- 24.14 Notwithstanding anything contained to the contrary in this Agreement, the Transnet may terminate this Agreement at any time by giving written notice to the Service Provider of such termination if:
- 24.14.1 the Service Provider is, other than for the purposes of reconstruction or amalgamation, placed under voluntary or compulsory liquidation, provisionally or finally, or resolves to begin business rescue proceedings, or is placed under supervision and commencing with business rescue proceedings; or
- 24.14.2 a final and unappealable judgment against the Service Provider remains unsatisfied for a period of twenty-one 21 days or more after it comes to the notice of the board of directors of the Service Provider; or
- 24.14.3 the Service Provider makes any arrangements or composition with all or some of its creditors, or ceases or threatens to cease carrying on business; or
- 24.14.4 the Service Provider makes any material incorrect or untrue statement or representation to the Transnet in connection with any information furnished by it in respect of this Agreement, or, without limitation, in the tender documents preceding the conclusion by the Parties of

this Agreement, then upon the occurrence of any one (1) or more of such events, the Transnet may without prejudice to any other rights it may have against the Service Provider, elect to immediately terminate this Agreement forthwith by written notice of such termination to the Service Provider.

- 24.15 Notwithstanding anything to the contrary contained in this Agreement, and in addition to all of its other rights, Transnet shall also be entitled to cancel this Agreement, if any event or series of events occurs (whether or not caused by any reasons whatsoever outside the control of the Service Provider or Transnet) which, in the reasonable opinion of the Transnet might have a material or adverse effect on the performance of the Security Service or the operations of Client at any Site, whether or not as contemplated in this Agreement.
- 24.16 Notwithstanding anything to the contrary contained in this Agreement, and in addition to all of its other rights, Transnet shall also be entitled to cancel this Agreement, in whole or in part, (as it in its sole discretion may determine) in the event that the Service Provider colludes with any other party in respect of any tender submitted to Transnet.
- 24.17 Notwithstanding anything to the contrary in this Agreement, in the event of security officers and/or employees of the Service Provider being in any way involved in theft, bribery, fraud and/or any other criminal activities or misconduct that are to the detriment of Transnet (e.g. theft of Transnet's property), either while on or off duty, then this shall be considered to be an irremediable breach of this Agreement in which event the Transnet shall have the right to terminate this Agreement with immediate effect. Such termination by Transnet shall not be considered to be a dispute as intended in clause 33 (*Dispute Resolution*) and shall not form the subject of any arbitration.
- 24.18 In the event of strike action being embarked upon by the employees of the Service Provider, the Service Provider shall immediately advise Transnet of the strike action. The employees of the Service Provider shall not be allowed onto the premises of Transnet for any purposes other than the rendering of Services in terms of this Agreement. The Service Provider shall be responsible for the removal of any of its employees from the premises of Transnet, and the costs thereof, in the event of its (the Service Provider's) employees conducting any activities on the premises of Transnet other than the rendering of Services in terms of this Agreement. The Service Provider shall immediately replace any striking employees with suitably qualified employees so that the operations of Transnet are not disrupted in any way. Any additional costs that arise as a result of the aforementioned replacement labour shall be for the Service Provider account. Failure to comply with this provision shall constitute a material breach and Transnet shall be entitled to terminate this Agreement with immediate effect. In the event of Transnet incurring any losses or damages as a result of the strike action, the Service Provider shall be liable for the payment of the aforementioned losses and/or damages.
- 24.19 Notwithstanding anything stipulated under clause 14 (*Penalties*) Transnet reserves the right to terminate this Agreement without notice in the event of a Persistent Minor Breach by the Service Provider.
- 24.20 The provisions of clauses 2 [*Definitions*], 18 [*Warranties*], 23 [*Rights on Cancellation*], 28 [*Confidentiality*], 30 [*Limitation of Liability*], , 33 [*Dispute Resolution*] and 37.1 [*Governing Law*] shall survive termination or expiry of this Agreement.

25 CESSION

- 25.1 The Service Provider may not assign any of its rights and obligations in terms of this Agreement.
- 25.2 The Service Provider may however, cede its right to payment in terms of this Agreement to its financier. The Cession must only be applicable under the following conditions:-
 - 25.2.1 that the written request for cession is submitted by the Services Provider and its financier or

a third party;

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

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

26 FORCE MAJEURE

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

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

27 PROTECTION OF PERSONAL INFORMATION

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

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

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

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

27.3 Transnet agrees that in submitting any information or documentation requested in the Request For Proposal and in this Agreement, the Service Provider consents to the processing of their personal information for the purpose of, but not limited to, risk assessment, contract award, contract management, auditing, legal opinions/litigation, investigations (if applicable), document storage for the legislatively required period, destruction, de-identification and publishing of personal information by Transnet and/or its authorised appointed third parties.

27.4 The Parties agree that they may obtain and have access to personal information for the fulfilment of the rights and obligations contained herein. In performing the obligations as set out in this Agreement, the Parties shall at all times ensure that:

27.4.1 they process personal information only for the express purpose for which it was obtained;

27.4.2 once processed for the purposes for which it was obtained, all personal information will be destroyed to an extent that it cannot be reconstructed to its original form, subject to any legal retention requirements;

27.4.3 Personal information is provided only to authorised personnel who strictly require the personal information to carry out the Parties' respective obligations under this Agreement;

27.4.4 they do not disclose personal information of the other Party, other than in terms of this

Agreement;

- 27.4.5 they have all reasonable technical and organisational measures in place to protect all personal information from unauthorised access and/or use;
- 27.4.6 they have appropriate technical and organisational measures in place to safeguard the security, integrity and authenticity of all information in their possession or under their control in terms of this Agreement;
- 27.4.7 they identify all reasonably foreseeable internal and external risks to personal information in their possession or under their control; establish and maintain appropriate safeguards against the risks identified; regularly verify that the safeguards are effectively implemented; and ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards; and
- 27.4.8 such personal information is protected against unauthorised or unlawful processing, accidental loss, destruction or damage, alteration, disclosure or access.
- 27.5 The Parties agree that if personal information will be processed for additional purposes beyond the original purpose for which it was obtained, explicit consent must be obtained beforehand from those persons whose information will be subject to such processing.
- 27.6 Should it be necessary for either Party to disclose or otherwise make available the personal information to any third party (including sub-contractors and employees) that is not already consented to, it may do so only with the prior written consent of the other Party. The Party requiring such consent shall require of all such third parties, appropriate written undertakings to be provided, containing similar terms to that set forth in this clause, and dealing with that third party's obligations in respect of its processing of the personal information. Following approval by the other Party, the Party requiring consent agrees that the provisions of this clause shall *mutatis mutandis* apply to all authorised third parties who process personal information.
- 27.7 The Parties shall ensure that any persons authorized to process information on their behalf (including employees and third parties) will safeguard the security, integrity and authenticity of all information. Where necessary to meet this requirement, the Parties shall keep all personal information and any analyses, profiles, or documents derived therefrom logically separated from all other information and documentation held by it.
- 27.8 The Parties shall carry out regular assessments to identify all reasonably foreseeable internal and external risks to the personal information in its possession or under its control. The Parties shall implement and maintain appropriate safeguards against the risks which it identifies and shall also regularly verify that the safeguards which it has in place have been effectively implemented.
- 27.9 The Parties agree that they will promptly return, destroy or de-identify any personal information in their possession or control which belongs to the other Party once it no longer serves the purpose for which it was collected in relation to this Agreement, subject to any legal retention requirements. This may be at the request of the other Party and includes circumstances where a person has requested the Parties to delete all instances of their personal information. The information will be destroyed or de-identified in such a manner that it cannot be reconstructed to its original form, linking it to any particular individual or organisation.
- 27.10 Personal Information security breach:
 - 27.10.1 Each Party shall notify the other party in writing as soon as possible after it becomes aware of or suspects any loss, unauthorised access or unlawful use of any personal information and shall, at its own cost, take all necessary remedial steps to mitigate the extent of the loss or compromise of personal information and to restore the integrity of the affected

personal information as quickly as is possible. The Parties shall also be required to provide each other with details of the persons affected by the compromise and the nature and extent of the compromise, including details of the identity of the unauthorised person who may have accessed or acquired the personal information.

27.10.2 The Parties shall provide on-going updates on the progress in resolving the compromise at reasonable intervals until such time as the compromise is resolved.

27.10.3 Where required, the Parties must notify the South African Police Service; and/or the State Security Agency and the Information Regulator and the affected persons of the security breach. Any such notification shall always include sufficient information to allow the persons to take protective measures against the potential consequences of the compromise.

27.10.4 The Parties undertake to co-operate in any investigations relating to security which is carried out by or on behalf of the other including providing any information or material in its possession or control and implementing new security measures.

28 CONFIDENTIALITY

28.1 The Parties hereby undertake the following with regard to Confidential Information:

28.1.1 not to divulge or disclose to any person whomsoever in any form or manner whatsoever, either directly or indirectly, any Confidential Information of the other without the prior written consent of such other Party, other than when called upon to do so in accordance with a statute, or by a court having jurisdiction, or by any other duly authorised and empowered authority or official, in which event the Party concerned shall do what is reasonably possible to inform the other of such a demand and each shall assist the other in seeking appropriate relief or the instituting of a defensive action to protect the Confidential Information concerned;

28.1.2 not to use, exploit, permit the use of, directly or indirectly, or in any other manner whatsoever apply the Confidential Information disclosed to it as a result of this Agreement, for any purpose whatsoever other than for the purpose for which it is disclosed or otherwise than in strict compliance with the provisions in this Agreement;

28.1.3 not to make any notes, sketches, drawings, photographs or copies of any kind of any part of the disclosed Confidential Information without the prior written consent of such other Party, except when reasonably necessary for the purpose of this Agreement, in which case such copies shall be regarded as Confidential Information;

28.1.4 not to de-compile, disassemble or reverse engineer any composition, compilation, concept application, item, component de-compilation, including software or hardware disclosed and shall not analyse any sample provided by Transnet, or otherwise determine the composition or structure or cause to permit these tasks to be carried out except in the performance of its obligations pursuant to this Agreement;

28.1.5 not to exercise less care to safeguard Transnet Confidential Information than the Party exercises in safeguarding its own competitive, sensitive or Confidential Information;

28.1.6 Confidential Information disclosed by either Party to the other or by either Party to any other party used by such party in the performance of this Agreement, shall be dealt with as "restricted" or shall be dealt with according to any other appropriate level of confidentiality relevant to the nature of the information concerned, agreed between the Parties concerned and stipulated in writing for such information in such cases;

28.1.7 the Parties shall not make or permit to be made by any other person subject to their control, any public statements or issue press releases or disclose Confidential Information with

- regard to any matter related to this Agreement, unless written authorisation to do so has first been obtained from the Party first disclosing such information;
- 28.1.8 each Party shall be entitled to disclose such aspects of Confidential Information as may be relevant to one or more technically qualified employees or consultants of the Party who are required in the course of their duties to receive the Confidential Information for the Permitted Purpose provided that the employee or consultant concerned has a legitimate interest therein, and then only to the extent necessary for the Permitted Purpose, and is informed by the Party of the confidential nature of the Confidential Information and the obligations of the confidentiality to which such disclosure is subject and the Party shall ensure such employees or consultants honour such obligations;
 - 28.1.9 each Party shall notify the other Party of the name of each person or entity to whom any Confidential Information has been disclosed as soon as practicable after such disclosure;
 - 28.1.10 each Party shall ensure that any person or entity to which it discloses Confidential Information shall observe and perform all of the covenants the Party has accepted in this Agreement as if such person or entity has signed this Agreement. The Party disclosing the Confidential Information shall be responsible for any breach of the provisions of this Agreement by such person or entity; and
 - 28.1.11 each Party may by written notice to the other Party specify which of the Party's employees, officers or agents are required to sign a non-disclosure undertaking.
- 28.2 The duties and obligations with regard to Confidential Information in this clause 28 shall not apply where:
- 28.2.1 a Party can demonstrate that such information is already in the public domain or becomes available to the public through no breach of this Agreement by that Party, or its Staff; or
 - 28.2.2 was rightfully in a Party's possession prior to receipt from the other Party, as proven by the first-mentioned Party's written records, without an infringement of an obligation or duty of confidentiality; or
 - 28.2.3 can be proved to have been rightfully received by a Party from a third party without a breach of a duty or obligation of confidentiality; or
 - 28.2.4 is independently developed by a Party as proven by its written records.
- 28.3 This clause 28 shall survive termination for any reason of this Agreement and shall remain in force and effect from the Commencement Date of this Agreement and five (5) years after the termination of this Agreement. Upon termination of this Agreement, all documentation furnished to the Service Provider by Transnet pursuant to this Agreement shall be returned to Transnet including, without limitation, all corporate identity equipment including dyes, blocks, labels, advertising matter, printing matter and the like.

29 INSURANCES

- 29.1 Without limiting the liability of the Service Provider under this Agreement, the Service Provider shall take out insurance in respect of all risks for which it is prudent for the Service Provider to insure against, including any liability it may have as a result of its activities under this Agreement for theft, destruction, death or injury to any person and damage to property. The level of insurance will be kept under review by Transnet, on an annual basis, to ensure its adequacy, provided that any variation to the level of such insurance shall be entirely at the discretion of the Service Provider.
- 29.2 The Service Provider shall arrange insurance with reputable insurers and will produce to Transnet evidence of the existence of the policies on an annual basis within thirty (30) calendar days after date of policy renewals.

- 29.3 Subject to clause 29.4 below, if the Service Provider fails to effect adequate insurance under this clause 29, it shall notify Transnet in writing as soon as it becomes aware of the reduction or inadequate cover and Transnet may arrange or purchase such insurance on behalf of the Service Provider. The Service Provider shall promptly reimburse Transnet for any premiums paid provided such insurance protects the Service Provider's liability. Transnet assumes no responsibility for such insurance being adequate to protect all of the Service Provider's liability.
- 29.4 In the event that the Service Provider receives written notice from its insurers advising of the termination of its insurance cover referred to in clause 29.1 above or if the insurance ceases to be available upon commercially reasonable terms, the Service Provider shall immediately notify Transnet in writing of such termination and/or unavailability, whereafter either the Service Provider or Transnet may terminate this Agreement on giving the other Party not less than thirty (30) calendar days prior written notice to that effect.
- 29.5 The said insurance shall not be cancelled or materially changed, without prior written consent from Transnet.
- 29.6 This clause must be read together with paragraph 3.3.10 of the Scope of Work.

30 SERVICE PROVIDER'S LIABILITY AND LIMITATION OF LIABILITY

- 30.1 The Service Provider's liability under this clause 30 shall be in addition to any warranty or condition of any kind, express or implied by law or otherwise, relating to the Services or ancillary Services, including the quality of the Services or ancillary Services or any materials delivered pursuant to this Agreement.
- 30.2 Neither Party excludes or limits liability to the other Party for:
- 30.2.1 death or personal injury caused by its negligence, [including its employees', agents' or Subcontractors' negligence]; or
- 30.2.2 fraud or theft.
- 30.3 The Service Provider shall indemnify and keep Transnet indemnified from and against liability for damage to any Transnet property [whether tangible or intangible] or any other loss, costs or damage suffered by Transnet to the extent that it results from any act of or omission by the Service Provider or its Personnel in connection with this Agreement. The Service Provider's liability arising out of this clause 30.3 shall be limited to direct damages.
- 30.4 Subject always to clauses 30.1 and 30.2 above, the liability of either the Service Provider or Transnet under or in connection with this Agreement, whether for negligence, misrepresentation, breach of contract or otherwise, for direct loss or damage arising out of each Default or series of related Defaults shall not exceed 100% [one hundred per cent] of the Fees paid under the schedule or Work Order to which the Default(s) relates.
- 30.5 Subject to clauses 30.1 to 30.4 above, in no event shall either Party be liable to the other for indirect or consequential loss or damage or including indirect or consequential loss of profits, business, revenue, goodwill or anticipated savings of an indirect nature or loss or damage incurred by the other Party as a result of third party claims.
- 30.6 If for any reason the exclusion of liability in clause 30.5 above is void or unenforceable, either Party's total liability for all loss or damage under this Agreement shall be as provided in clause 30.3 above.
- 30.7 Nothing in this clause 30 shall be taken as limiting the liability of the Parties in respect of clauses 28 [Confidentiality].

31 NON-WAIVER

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

32 PARTIAL INVALIDITY

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

33 DISPUTE RESOLUTION

- 33.1 Should any dispute of whatsoever nature arise between the Parties concerning this Agreement, the Parties shall try to resolve the dispute by negotiation within 10 [ten] Business Days of such dispute arising.
- 33.2 If the dispute has not been resolved by such negotiation, either of the Parties may refer the dispute to AFSA and notify the other Party accordingly, which proceedings shall be held in Port Elizabeth.
- 33.3 Such dispute shall be finally resolved in accordance with the rules of AFSA by an arbitrator or arbitrators appointed by AFSA.
- 33.4 This clause constitutes an irrevocable consent by the Parties to any proceedings in terms hereof, and neither of the Parties shall be entitled to withdraw from the provisions of this clause or claim at any such proceedings that it is not bound by this clause 33.
- 33.5 This clause 33 is severable from the rest of this Agreement and shall remain in effect even if this Agreement is terminated for any reason.
- 33.6 This clause 33 shall not preclude either Party from seeking urgent relief in a court of appropriate jurisdiction, where grounds for urgency exist.

34 ADDRESSES FOR NOTICES

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

34.1.1 Transnet

For legal notices:

eMendi Building, N2 Neptune Road
Off Klub Road
Port of Ngqura, Gqeberha
6100

Attention: Group Legal Department

For commercial notices:

eMendi Building, N2 Neptune Road
Off Klub Road
Port of Ngqura, Gqeberha
6100

Service Provider

For legal notices:

b)

Fax No.

Attention:

For commercial notices:

Fax No.

Attention:

- 34.2 Any notice shall be addressed to a Party at its physical address, or delivered by hand, or sent by fax or email.
- 34.3 Any notice shall be deemed to have been given:
- 34.3.1 if hand delivered, on the day of delivery;
 - 34.3.2 if faxed, on the date and time of sending of such fax, as evidenced by a fax confirmation printout, provided that such notice shall be confirmed by prepaid registered post on the date of dispatch of such fax, or, should no postal facilities be available on that date, on the next Business Day; or
 - 34.3.3 if sent by email, on the date and time received, provided that such notice shall be confirmed by prepaid registered post on the date of dispatch of such email, or, should no postal facilities be available on that date, on the next Business Day.

35 WHOLE AND ONLY AGREEMENT

- 35.1 The Parties hereby confirm that this Agreement together with all its Annexure constitutes the whole and only agreement between them with regard to the subject matter of this Agreement.
- 35.2 The Parties hereby confirm that this Agreement replaces all other agreements which exist or may have existed in any form whatsoever between them, with regard to the subject matter dealt with in this Agreement, any Annexures and the work Orders.

36 AMENDMENT AND CHANGE CONTROL

- 36.1 Any amendment or change of any nature made to this Agreement and its Annexures thereof shall only be valid if it is in writing, signed by both Parties and added to this Agreement as an addendum hereto. In this regard a Change Notice must first be defined and issued by the requesting Party. A Change Notice Response must then be issued by responding Party. A formal approval of the Change Request will then trigger the issue of the addendum to this Agreement.
- 36.2 In the event the Parties cannot agree upon changes, the Parties shall in good faith seek to agree any proposed changes using the dispute resolution procedures in clause 33 [*Dispute Resolution*].

37 GENERAL

37.1 Governing Law

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

37.2 Change of Law

In this Agreement, unless the context otherwise requires, references to a statutory provision include references to that statutory provision as from time to time amended, extended or re-enacted and any regulations made under it, provided that in the event that the amendment, extension or re-enactment of any statutory provision or introduction of any new statutory provision has a material impact on the obligations of either Party, the Parties will negotiate in good faith to agree such amendments to this Agreement as may be appropriate in the circumstances. If, within a reasonable period of time, the Service Provider and Transnet cannot reach agreement on the nature of the changes required or on modification of Prices, delivery schedules, warranties, or other terms and conditions, either Party may seek to have the matter determined in accordance with clause 33 [*Dispute Resolution*] above.

37.3 Counterparts

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

38 DATABASE OF RESTRICTED SUPPLIER

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.

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

For and on behalf of TRANSNET SOC LTD duly authorised hereto	For and on behalf of TRANSNET SOC LTD duly authorised hereto	For and on behalf of duly authorised hereto
Name:	Name:	Name:
Position:	Position:	Position:
Signature:	Signature:	Signature:
Date:	Date:	Date:
Place:	Place:	Place:

AS WITNESS:	AS WITNESS:	AS WITNESS:
Name:	Name:	Name:
Signature:	Signature:	Signature:
Name:	Name:	Name:
Signature:	Signature:	Signature: