

MASTER AGREEMENT

entered into by and between

TRANSNET SOC LTD

and

.....

**FOR THE SALE OF FERROUS SCRAP METAL TO SCRAP DEALERS/RECYCLERS,
PRIMARY STEEL PRODUCERS/SMELTERS AND FOUNDRIES TO BE CONSUMED IN
SOUTH AFRICA "AS AND WHEN REQUIRED" FOR A PERIOD OF FIVE (5) YEARS**

Agreement Number	
Commencement Date	
Expiry Date	

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1. BACKGROUND

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

and

..... [Registration Number] whose registered address is [**the Supplier/Service Provider**].

2. PARTIES

The Parties to this Agreement are as stated below and Party shall mean either of them as the context requires:

2.1. TRANSNET SOC LTD a state-owned company with limited liability duly incorporated in terms of the company laws of South Africa, Registration Number 1990/000900/30, trading through its operating division, TRANSNET FREIGHT RAIL of 15 Girton Road, Parktown, Johannesburg. Hereinafter referred to as Transnet, and

2.2.

3. DEFINITIONS

In this Agreement, unless the contrary intention appears, the following words and expressions shall have the following meanings when such words and expressions are used and cognate expressions shall have corresponding meanings, except where the context otherwise requires:

3.1. "**Assets**" – means any ferrous scrap steel of material value, and includes by-products of normal operations, obsolescence, beyond functional lifespan and damaged beyond repair, which may include Reclaimable Assets, where applicable in the context.

3.2. "**Agreement**" – means this Agreement including all Supplementary Documents for the disposal of Transnet's Assets.

3.3. "**Change**" means the issue of an addendum to this Agreement or any of its Supplementary Document/s agreed to in writing and signed by the authorised representatives of Transnet and the contractor.

- 3.4. **"Commencement Date"** – means the date from which this Agreement becomes operational and all rights and obligations under the Agreement are enforceable, which date is the Signature Date.
- 3.5. **"Day"** – means a calendar day;
- 3.6. **"Date of Signature"** – means the date on which the Agreement is signed by the last Party signing;
- 3.7. **"Permitted Purpose"** – means the provision of Services provided for in this Agreement.
- 3.8. **"Reclaimable Assets"** – means both ferrous and non-ferrous identifiable and separately extractable valuable components of the Assets, as specifically designated by Transnet per a Works Order, that Transnet may retain for reuse from time to time;
- 3.9. **"RFP Document"** – means The Request for Proposal based on the National Treasury single source confinement approval - (RFP Number: HOAC_HO_25370) "FOR THE DISPOSAL OF TRANSNET'S FERROUS SCRAP STEEL TO SOUTH AFRICAN PRE-IDENTIFIED STEEL PRODUCERS WHO CONSUME SCRAP FERROUS STEEL FOR USE IN OWNED FOUNDRIES OR AS FEEDSTOCK IN OWNED PRIMARY STEEL MILLS FOR A FIVE (5) PERIOD;
- 3.10. **"Safety File"** – means the minimum compliance documentation required by Transnet in compliance with Transnet's internal safety, security, confidentiality and access procedures, for the purposes of processing and removal of Assets from any Transnet Site.
- 3.11. **"Services"** – means the procurement of Assets and or provision of Asset disposal, transportation and processing services by THE CONTRACTOR to Transnet, in accordance with this Agreement together with the Supplementary Documents. The Services shall also include but not be limited to the consolidation of material and/or assets to a certain point.
- 3.12. **"Supplementary Documents"** – means the annexures, schedules and other documents and agreements intended to supplement this Agreement, including, specifically and exclusively:
- The RFP Document (April 2017)
 - The Standard Terms And Conditions Of Contract (April 2017)
 - Transnet Letter of Award dated 17 February 2022

- [The Service Level Agreement]
- Transnet Site List
- List of Transnet Sites that shall not require a safety file
- Transnet Security Integrity Assessments
- Policy Standards and Codes of Practice and Transnet Security Requirements
- Transnet's BEE Policy
- Works Order and Works Order Terms and Conditions
- Transnet Enterprise Risk Management Strategy and Framework

3.13. **"Termination Date"** – means the date on which this Agreement ceases to be operational and all rights and obligations under the Agreement are not enforceable, which date is 5 (five) years from the Signature Date.

3.14. **"Transnet Site"** – means any location or facility where any of the Assets are stored or Transnet depots, stations, divisional and subsidiary sites of operations at which, the contractor, from time to time, may be requested to provide the Services. Annexure H sets out the complete list of Transnet Sites and it is expressly agreed that any site not included in the list in Annexure H shall not be a Transnet Site and will require a Safety File.

3.15. **"Works Order"** – means the written document issued by Transnet from time to time requesting the disposal of Assets by the contractor which shall include information of specific Assets to be disposed of and may contain Works Order Terms and Conditions.

3.16. **"Work Order Terms and Conditions"** means specific terms and conditions in addition to the terms and conditions of this Agreement agreed between the Parties that will apply to a particular Works Order to govern unique circumstances relating to the disposal of specific Assets.

4. INTERPRETATION

For the purposes of this Agreement:

- 4.1. clause headings are for convenience and are not to be used in its interpretation;
- 4.2. unless the context indicates a contrary intention;
 - 4.2.1. an expression which denotes:

- 4.2.2. any gender includes the other genders;
- 4.2.3. a natural person includes a juristic person and vice versa;
- 4.2.4. the singular includes the plural and vice versa;
- 4.3. Reference to any Party shall include the legal successors and permitted assigns of such person irrespective of whether such succession or assignment occurred before or after the coming into effect of this Agreement.
- 4.4. Reference in this Agreement to either of the Parties in respect of any obligations or liabilities of that Party, shall, unless expressly otherwise provided, include agents, employees and authorised representatives of that Party, its subsidiaries, divisions and subcontractors.
- 4.5. References to any amount of money to be paid by either Party shall be deemed to be exclusive of VAT and VAT is payable in respect of the goods or services to which the payment relates unless expressly stated to the contrary in this Agreement. The Party obliged to make the payment shall add the amount of any applicable VAT to the payment.
- 4.6. Terms such as "including", "include" and "included" when following a general statement or terms mean "including but not limited to".
- 4.7. The Supplementary Documents are intended to supplement this Agreement to the extent that there is any information, or there are any issues that have not been addressed in this Agreement, or to the extent that they explain or clarify anything in this Agreement; and the Supplementary Documents must be read taking the aforementioned into account. In the event of an irreconcilable conflict or inconsistency arising between this Agreement and the Supplementary Documents, then the terms of this Agreement shall prevail.

5. DISPOSAL OF ASSETS

- 5.1. Request for disposal of Assets.
 - 5.1.1. From time to time during the term of this Agreement, Transnet shall notify the contractor that it wishes to dispose of Assets.
 - 5.1.2. Except as otherwise agreed to in writing by both Transnet and the contractor, the provisions of this Agreement shall govern the disposal of the Assets.

- 5.1.3. Transnet shall submit its request for the disposal of Assets in writing to the contractor in the form of a Works Order.
- 5.1.4. The Works Order shall contain the specific information and may include Works Order Terms and Conditions, including but not limited to:
 - 5.1.4.1. The detail of the Services to be performed;
 - 5.1.4.2. the date by which the Services must commence as agreed to in writing between the Parties and stipulated in the Works Order.
 - 5.1.4.3. the location, either at a specific Transnet Site or the geographic location and where the location is not a Transnet Site ("**External Site**"), the Works Order should also include the name of the entity and / or individuals that are either the owners, tenants, persons responsible for providing access to the External Site and their full contact details;
 - 5.1.4.4. the description of the Assets and estimated volume;
 - 5.1.4.5. an inventory list of all Reclaimable Assets;
 - 5.1.4.6. confirmation, as part of the terms and conditions, that all internal Transnet policies and procedures, including, specifically, the Asset disposal policies and procedures have been complied with and complete such that the Works Order shall constitute sufficient evidence of documentation to commence with the Services and specially, will prohibit additional requirements being levied upon the contractor and / or it's sub-contractors by Transnet and or its employees, divisions, operating entities or subsidiaries that may amend, disrupt, pause and or stop the Works Order and the provision of the Services;
 - 5.1.4.7. Irrespective of whether or not the disposal of the scrap steel is a once off or an ongoing event, the contractor shall be entitled to place vehicle load bins normally used in the scrap recycling industry at strategic places for scrap steel to be loaded into, lifted and carted away.
 - 5.1.4.8. In the event where the Works Order Terms and Conditions impose any obligations upon the contractor which may result in

additional time and cost to dispose of the Assets, the Change control process in accordance with Clause 31 may be activated by either Party. A Works Order shall be suspended once the Change control process has been activated and shall remain suspended. The Parties shall only be obliged to perform the Works Order once the Change has been effected or the Parties agreed in writing that no Change is required.

5.2. The contractor has 21 business days to notify Transnet in writing if there is a need or requirement to amend a Works Order as a result of an operational, legal, security, risk, financial or capacity related constraint or challenge that may, within the contractor's reasonable opinion, impair the contractor's ability to perform the Services in terms of the Works Order.

5.2.1. From time to time during the tenure of this Agreement, The contractor shall be entitled to place at the various Transnet Sites, vehicle load bins normally used in the scrap recycling industry at strategic places for the Assets to be loaded into, lifted and carted away. It is recorded that the replacement cost of these vehicle load bins are, as at the Signature Date, valued at R30,000 (thirty thousand rand) each excluding VAT

5.2.2. From time to time during the tenure of this Agreement, Transnet may notify the contractor in writing of Assets that ought to be disposed of that are not part of the itemised categories of Assets as listed in the initial RFP Document

5.3. Conduct of disposal

5.3.1. The contractor may only procure the Assets for use in a South African foundry or as feedstock in a South African steel mill.

5.3.2. For purposes of this Agreement, the term "**Hazardous Substances**" shall mean, either individually or collectively, any chemical, solid, liquid, gas, or other substance having the characteristics identified in, listed under, or designated pursuant to any Act, legislation, regulation and/or local authority by-law as hazardous, dangerous, or as presenting an imminent and substantial danger to the public health or welfare or to the environment, or as otherwise requiring special handling, collection, storage, treatment, disposal, or transportation.

- 5.3.3. Transnet shall notify the contractor whether there are Hazardous Substances present.
- 5.3.4. In relation to the Service performed at a Transnet Site, Transnet reserves the right to retain Reclaimable Assets, subject to the provisions of clause 5.3.
- 5.3.5. Transnet reserves the right to include semi-precious metals such as copper and aluminium contained in an Asset when it is being disposed from a Transnet Site.
- 5.3.6. In the event that a Works Order includes an Asset that contains Hazardous Substances ("**Hazardous Asset**"), the contractor may in its sole discretion elect to either:
 - 5.3.6.1. partially accept the Works Order to provide the Services to the exclusion of the Hazardous Asset if it is possible to isolate the Hazardous Assets and will notify Transnet in writing of its decision;
 - 5.3.6.2. wholly reject the Works Order that includes a Hazardous Asset, not provide the relevant Services and will notify Transnet in writing of its decision;
 - 5.3.6.3. invoke and apply a deduction to the value of the Assets and / or Hazardous Assets such that any costs of treatment and or disposal of the Hazardous Assets in terms of the contractor's licencing and South African applicable legislation is for the account of Transnet.

5.4. Reclaimable Assets

- 5.4.1. Where Assets contain any valuable components, they will be detailed in the Works Order as Reclaimable Assets and, unless otherwise agreed between the Parties, the contractor shall separate such Reclaimable Assets from the Assets, for an additional processing cost of R4000 (four thousand rand) per bogie and R2 000 (two thousand rand) per component of the Asset, escalating annually on each anniversary of the Commencement Date with a percentage equal to the official inflation rate as published by

Statistics South Africa for the preceding year, which Transnet agrees to pay to THE CONTRACTOR.

5.4.2. Once processed, the separated Reclaimable Asset will be transported by THE CONTRACTOR to a site designated by Transnet in the Works Order, on a 20-ton truck at a cost of R28.00 (twenty-eight rand) excluding VAT, per kilometre (escalating at the SEIFSA index for Road Freight (Table L2A) rate), from the pick-up site to the drop-off site and back to the pick-up site.

5.4.3. THE CONTRACTOR shall be entitled to appoint sub-contractors to assist in the processing/transportation of Reclaimable Assets, and Transnet will be liable for any additional amounts incurred in respect of processing or transporting the Reclaimable Assets.

5.5. Invoicing for disposals

5.5.1. Invoices will be processed by Transnet based on the day/date of removal of the Nett weight of Assets from any of Transnet sites, and the price in terms of the percentage of the Rotterdam price, average rate of exchange as per the tender submission and percentages agreed between the Parties. The prior two weeks published figure is applicable from a pricing perspective. /

5.5.2. Transnet to identify calibrated and operational weighbridges at each Transnet Site to be utilized for Asset weighing and invoicing purposes. Transnet to further provide THE CONTRACTOR with copies of the weighbridge calibration certificates (not older than 6 months) for all selected weighbridges ("**Certified Transnet Weighbridges**").

5.5.3. If, at any Transnet Site or External Site, a weighbridge is either:

5.5.3.1. not identified; or

5.5.3.2. not operational; or

5.5.3.3. not a Certified Transnet Weighbridge; then

THE CONTRACTOR'S weighbridge's nett weight will be used for weighing and invoicing purposes, unless otherwise agreed to in writing.

5.5.4. Under circumstances where vehicle load bins are placed at Transnet sites for Assets to be loaded into the bins by Transnet ("**Bin Assets**"), THE CONTRACTOR'S operational processes with respect to the Bin Assets will apply at the time of offloading at THE CONTRACTOR or at any other designated THE CONTRACTOR processing and storage premises. The Bin Assets will be inspected. In the event that non-ferrous material is present in between the Assets, the applicable waste percentage shall be deducted from the initial nett weight and shown as such on the delivery note, supported by photographic evidence.

5.5.5. The Assets collected by THE CONTRACTOR will be invoiced by the Transnet representative concerned, who will e-mail a copy of a Tax Invoice to THE CONTRACTOR.

5.5.6. Payment of the full value of the Assets plus Value-Added Tax (VAT) must be affected to the designated Transnet bank account by bank deposit or electronic transfer within 7 (seven) days from date of the Tax Invoice. Banking details will be provided to THE CONTRACTOR.

5.5.7. If payment is not received within 7 [seven] days, no further Assets will be made available until the outstanding payment is received.

6. EXPENSES WITH REGARDS TO THE DISPOSAL

6.1. Third Party Contractors

6.1.1. From time-to-time THE CONTRACTOR may employ external contractors to assist in providing the Services. All applicable payment/s will be the responsibility of THE CONTRACTOR, save as specifically provided for herein.

6.2. Insurance

6.2.1. The risk of loss and or damage relating to the Assets shall pass to THE CONTRACTOR as follows:

- 6.2.1.1. With respect to Assets from a Transnet Site: Once the transport vehicle has exited the Transnet Site over a Certified Transnet Weighbridge, subject to Clause [5.3.3] where the applicable assessment of the Assets subject to loss or damage will be based on the contractor's Weighbridge.
- 6.2.1.2. With respect to Bin Assets: Once the transport vehicle has exited the Transnet Site over a Certified Transnet Weighbridge, subject to Clause [5.3.3] where the applicable assessment of the Assets subject to loss or damage will be based on the contractor's Weighbridge.
- 6.2.1.3. With respect to Assets from an External Site: Once the transport vehicle has passed over a contractor's Weighbridge
- 6.2.2. THE CONTRACTOR shall be solely responsible for maintaining adequate insurance cover pertaining to the Assets, once the risk of loss and or damage is passed to THE CONTRACTOR i.e., the transportation and storage thereof.
- 6.2.3. THE CONTRACTOR shall carry all workers' compensation insurance for THE CONTRACTOR'S employees in compliance with all applicable laws and regulations.

7. DESTRUCTION OF THE ASSETS

- 7.1. In the event of any loss, damage, or destruction of any Asset ("**Asset Loss**"), THE CONTRACTOR shall remain liable to Transnet for Transnet's reimbursable expenses in terms of this Agreement. Transnet agrees that, upon collection of any insurance proceeds payable on account of the Asset loss after sale but prior to payment by THE CONTRACTOR, Transnet shall set aside and hold in trust for the benefit of THE CONTRACTOR a portion of such proceeds sufficient to pay THE CONTRACTOR'S reimbursable expenses, and any applicable sales taxes and amounts payable as contractor's premium and commission (collectively, the "**Trust Obligations**"). The trust created pursuant to the preceding sentence shall survive until Transnet has paid to THE CONTRACTOR all amounts owing under the Trust Obligations.

8. USE OF PREMISES

- 8.1. Transnet authorises THE CONTRACTOR and its representatives to enter upon and use the Transnet Site, in compliance with Transnet's internal safety, security, confidentiality and access procedures, for the purposes of providing the Services. Transnet warrants THE CONTRACTOR free, safe and unhindered access to the Transnet Site once a Works Order is issued by Transnet to THE CONTRACTOR.
- 8.2. The Transnet Site in respect of which a Works Order is issued by Transnet shall be inspected simultaneously by Transnet and THE CONTRACTOR to determine that the Transnet Site is safe and to establish a safe operating procedure reduced to writing and signed off by both Parties. Transnet acknowledges and agrees that THE CONTRACTOR shall be responsible for damage to property and / or injury to personnel, resulting from or arising in connection with providing the Services.
- 8.3. Transnet is committed to the maintenance of high levels of integrity and the prevention and disruption of dishonest, unethical, and unprofessional behaviour, and the protection of its information and physical assets.
- 8.4. THE CONTRACTOR and their duly appointed representatives will subject to clause 8.9 undertake the necessary Transnet security integrity assessments, for its employees.
- 8.5. Security integrity refers to the total quality of the character of the person and reflects what the person is or can be. It entails total honesty at all times regardless of consequences and confirming to expected ethical behaviour and work norms.
- 8.6. Protective security refers to a combination of procedural, physical, personnel, and information security measures designed to protect Transnet's Employees, its information and assets from security threats.
- 8.7. THE CONTRACTOR will ensure that its personnel comply with all reasonable requirements made known to them by Transnet concerning conduct at any Transnet Site or External Site upon which the Services are to be performed.
- 8.8. The relevant security regulations as at the Signature Date are:
- 8.8.1. Constitution of the Republic of South Africa, 1996; and
 - 8.8.2. Minimum Information Security Standards (MISS), 1996; and
 - 8.8.3. Minimum Physical Security Standards (MPSS); and
 - 8.8.4. National Key Points Act (Act 102 of 1980), as amended; and
 - 8.8.5. National Strategic Intelligence Act (Act 39 of 1994), as amended; and

- 8.8.6. Promotion of Access to Information Act (Act 2 of 2000), as amended; and
 - 8.8.7. Control of Access to Public Premises and Vehicles Act (Act 53 of 1985), as amended; and
 - 8.8.8. The Prevention and Combating of Corrupt Activities Act (Act 12 of 2004), as amended; and
 - 8.8.9. The Policy Standards and Codes of Practice and Transnet Security Requirements (Transnet Enterprise Risk Management Strategy and Framework).
- 8.9. Transnet reserves the right to refuse to admit or to remove from any Transnet Site occupied by or on behalf of it, any THE CONTRACTOR employees whose admission or presence would, in the reasonable opinion of Transnet, be undesirable or who represents a threat to confidentiality or security, provided that Transnet notifies THE CONTRACTOR in writing of any such refusal (with reasons why, also in writing).
- 8.10. The Parties undertake to co-operate in any investigation relating to security which is carried out by or on behalf of either Party including providing any information or material in its possession or control or implementing new security measures.

9. REPRESENTATIONS AND WARRANTIES

- 9.1. Each Party acknowledges and agrees that the other is relying on the foregoing representations and warranties in proceeding with this Agreement. Each Party agrees to defend and indemnify and hold the other Party harmless from and against any claim, demand, cause of action, liability or expense (including attorney and own client fees, costs and charges) asserted against or incurred by such Party in connection with the other's breach of any of its representations, warranties or obligations in this Agreement. If any action at law or in equity is brought to enforce the terms of this Agreement, the prevailing Party shall be entitled to recover its legal costs as ordered by a court of competent jurisdiction.
- 9.2. No warranties, representations, promises, or undertakings given by either Party, their agents, employees, or representatives shall be binding and enforceable unless reflected herein or reduced to writing and signed by both Parties or their duly authorised representatives or agents.
- 9.3. Each of the persons signing on behalf of the Parties to this Agreement warrants that each Party has the full power, authority, and legal right to execute, deliver and perform

the obligations imposed on it in terms of this Agreement and will be duly authorised by all the necessary action of the Party concerned and its officers and officials and that any obligations arising from this Agreement are valid and binding on the Party concerned.

9.4. Each Party represents and warrants to the other that:

9.4.1. It has the necessary corporate power and authority to enter into this Agreement, to carry out its obligations hereunder and to grant the rights herein granted;

9.4.2. It is and will remain in material compliance with all laws, rules and regulations applicable to its performance under this Agreement;

9.4.3. Its trademarks, marks and trade names/patents relating to the Assets do not and will not infringe the intellectual property rights of any other Party.

9.5. Transnet represents and warrants THE CONTRACTOR that:

9.5.1. Transnet now holds (and, up to the moment of disposal of the Assets provided for under this Agreement, will hold) good and marketable title to all the Assets items free and clear of any lien, security interest, leasehold interest, co-ownership interest or any other type of encumbrance or interest;

9.5.2. none of the Assets infringe or violate (or contain any parts or components which infringe or violate) any third party's copyright, patent, trademark, trade secret or other proprietary rights;

9.6. THE CONTRACTOR represents and warrants to Transnet:

9.6.1. It is authorised to enter into this Agreement and able to perform each of its duties in terms of this Agreement;

9.6.2. Is suitably qualified to provide the Services;

9.6.3. It shall provide the Services:

9.6.3.1. with due care and skill;

9.6.3.2. in accordance with the terms and conditions of this Agreement;
and

9.6.3.3. in compliance with all applicable laws and regulations.

9.6.4. THE CONTRACTOR further warrants and guarantees that the Services shall be rendered and executed in a professional manner in accordance with the industry standards.

10. **B-BBEE**

10.1. It is specifically recorded that this Agreement is entered into with THE CONTRACTOR on the unequivocal understanding by the Parties that:

10.1.1. Black Ownership and the B-BBEE status will remain at least the same for THE CONTRACTOR (as at the commencement date of the Agreement) for the Term of the Agreement;

10.1.2. the contractor has familiarised itself with Transnet's BEE Policy and undertakes to abide by the requirements thereof during the term of this Agreement;

10.2. The above shall be in line with recent developments on national policy and legislation on B-BBEE.

10.3. THE CONTRACTOR is to furnish Transnet with their B-BBEE strategy and plan detailing initiatives and timelines to improve their current B-BBEE status.

10.4. In the event that the percentage of ownership ("**BEE Level**"), at any time after the Date of Signature, changes, which change reflects a decrease from that specified in this clause [10], THE CONTRACTOR shall inform Transnet within 14 calendar days of such change. Transnet shall thereafter have the right to either continue with the Agreement on the same terms and conditions, or to propose such amendments as it may deem fit for the remainder of the Term, including but not limited to, terminating the Agreement if there is no reasonable prospect for THE CONTRACTOR to remedy the decrease in BEE Level within a 365 calendar day period.

10.5. Should the aforesaid percentage BEE Ownership, at any time after the Date of Signature change, which change reflects a decrease from that specified in this clause [10] above, and THE CONTRACTOR fails and/or omits to inform the Transnet thereof in writing within 14 calendar days of becoming aware of such change, such failure on the part of THE CONTRACTOR shall constitute a material breach of the Agreement, which shall entitle Transnet to unilaterally terminate this Agreement immediately and enforce such other rights as it may in law have arising out of such breach.

11. INTELLECTUAL PROPERTY

11.1. Title to Confidential Information

11.1.1. Transnet will retain all right, title and interest in and to its Confidential Information and Background Intellectual Property and THE CONTRACTOR acknowledges that it has no claim of any nature in and to the Confidential Information and Background Intellectual Property that is proprietary to Transnet. For the avoidance of doubt all THE CONTRACTOR'S Background Intellectual Property shall remain vested with THE CONTRACTOR.

11.1.2. Transnet shall grant to THE CONTRACTOR an irrevocable, royalty free, non-exclusive licence to use Transnet's Background Intellectual Property only for the disposal of the Assets or provision of the Services as may be appropriate. This licence shall not permit THE CONTRACTOR to sub-license to other parties.

11.1.3. THE CONTRACTOR shall grant to Transnet an irrevocable, royalty free, non-exclusive licence to use THE CONTRACTOR'S Background Intellectual Property for the Permitted Purpose. This licence shall not permit Transnet to sub-license to other parties.

11.1.4. THE CONTRACTOR shall grant Transnet access to THE CONTRACTOR'S Background Intellectual Property on terms which shall be bona fide negotiated between the Parties for the purpose of commercially exploiting the Foreground Intellectual Property, to the extent that such access is required.

11.1.5. The above shall not pertain to any software licenses procured by THE CONTRACTOR from third parties and used in this Agreement.

11.2. Unauthorised Use of Confidential Information

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

11.3. Unauthorised Use of Intellectual Property

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

12. TERM RENEWAL

- 12.1. The term of this Agreement shall be five (5) years, commencing on the Signature Date (the "**Term**"), and Transnet reserves the right and at sole discretion, that this Agreement may be extended for an additional period upon 30 days written notice by Transnet to THE CONTRACTOR after due compliance by Transnet with its internal governance procedures, provided Transnet has not been in default of its obligations to THE CONTRACTOR hereunder during the initial Term.
- 12.2. Other than in relation to Clause [10.4], either Party may terminate this Agreement for cause if, after receiving written notice of a material breach by the other Party, and after providing 30 days to cure any alleged material breach, the non-performing Party fails to cure such alleged material breach.
- 12.3. Following the expiration or earlier termination of this Agreement, each Party agrees to return to the other all documents received from the other which contain any of either

Party's confidential or proprietary information and shall destroy any other documents that contain the other Party's confidential or proprietary information and certify such return and destruction. Apart from documentation required by law to be retained as per the companies act and SARS regulations.

- 12.4. This Agreement shall operate as an umbrella Agreement, which states the general terms and conditions upon which the Parties will conduct sales. Transnet will issue Works Orders, the Works Order Terms and Conditions of which will be agreed and signed by both Parties which together with this Agreement will constitute a separate Agreement
- 12.5. Transnet reserves the right to review this Agreement at the end of the Term. Following due governance processes, Transnet may elect to extend the Term of this Agreement. The extension of the Term of this Agreement as well as the amendment of any clause thereof shall be subject to review and acceptance in writing by THE CONTRACTOR.

13. NON-SOLICITATION

- 13.1. No Party shall during the performance of any Works Order and or this Agreement, and for a period of 12 (Twelve) months thereafter, without the other Party's prior written permission, employ, canvass or solicit for direct or indirect employment any member of the other Party's personnel (which personnel shall include but not be limited agents, consultants, contractors, sub-contractors), or proceed with any application by or on behalf of that member of personnel for direct or indirect employment nor shall it solicit, entice, encourage or persuade any such member of the other Party's personnel to terminate his/her employment.
- 13.2. If a Party breaches clause 13.1, it will pay to the non-breaching Party a recruitment fee equal to the remuneration paid by the non-breaching Party to the person that is being employed during the previous 12 (twelve) months. The Parties hereby agree that this penalty is adequate compensation for the inconvenience suffered by the non-breaching Party as a result of the loss of its employee and the cost of his/her replacement.
- 13.3. Notwithstanding the provision of clause 13.2, if a Party breaches clause 13.1, such a breach shall be material breach of these Conditions, which shall entitle the non-breaching Party, in its sole discretion, to terminate all unfulfilled Works Orders/this

Agreement and to claim damages from the breaching Party without incurring any liability of whatsoever nature.

14. NO THIRD PARTY ENGAGEMENT

- 14.1. THE CONTRACTOR shall immediately communicate any event that may delay, interrupt, disrupt or prohibit the rendering of the Services at any time.
- 14.2. THE CONTRACTOR shall refrain and under no circumstances be obliged to communicate or engage directly or indirectly with any owner of property, community, or any third Party at any place where a Works Order must be performed in an effort to resolve any event, circumstance or dispute that may delay, interrupt, disrupt or prohibit the rendering of the Services.
- 14.3. In the event where any Services in terms of a Works Order are delayed, interrupted, disrupted or prohibited by Transnet, any owner of property, the community, or any third Party, Transnet shall resolve the situation that caused delay, interruption, disruption or prohibiting and of the Services and grant THE CONTRACTOR extension of time to perform the Services. Where the contractor is delayed, interrupted, disrupted or prohibited to perform the Services, and or required to implement additional security measures to perform the Services, Transnet shall compensate THE CONTRACTOR for all additional costs incurred, including but not limited to standing time.

15. COMPLIANCE WITH THE PROTECTION OF PERSONAL INFORMATION ACT 4 OF 2013

- 15.1. The Responsible Party in terms of the POPI Act will comply at all times with the Protection of Personal Information Act, No 4 of 2013 ('POPI'). In addition, the Responsible Party will take all reasonable steps to ensure its agents and sub-contractors comply with POPI, in particular where the agents or subcontractors are processing Personal Information in terms of this Agreement and on behalf of the Transnet or THE CONTRACTOR.
- 15.2. The Responsible Party specifically acknowledges that POPI has been incorporated in the business model, systems, and operating procedures of the Responsible Party. In this regard, the Responsible Party undertakes to adhere to and apply the conditions contained in POPI at all times and specifically in respect of the services provided.

- 15.3. Where Personal Information of the Parties, their employees or their clients is supplied or disclosed to each other, the receiving Party will:
- 15.3.1. ensure that such Personal Information is only used for purposes authorised by the disclosing Party in terms of this Agreement;
 - 15.3.2. notify the disclosing Party of any request it receives from third parties for access to or changes to the Personal Information;
 - 15.3.3. other than as contemplated by this Agreement, not transfer the Personal Information in any manner to any third party not authorised in writing by the disclosing Party;
 - 15.3.4. only hold and process the Personal Information after having taken appropriate and all reasonable technical and organizational security measures to guard against unauthorised or unlawful processing of the Personal Information and will guard against accidental loss, unauthorised access, unauthorised processing and destruction of or damage to, that Personal Information;
 - 15.3.5. provide a level of security appropriate to the harm that might result from any unauthorised or unlawful processing or accidental loss of, destruction or damage to the Personal Information and also to the nature of the Personal Information being protected and in the event of breach, notify the disclosing Party within one Business Day of identifying the breach.
 - 15.3.6. Ensure, if required, that the necessary audit procedures are in place to deal with the requirements of POPI and this clause;
 - 15.3.7. Ensure that its staff undergo the necessary awareness and training programmes to ensure that the receiving Party's obligations in terms of POPI and this clause are met.
 - 15.3.8. Implement any other measures and procedures to ensure that the receiving Party's obligations in terms of this clause and POPI are met.
- 15.4. The receiving Party indemnifies the disclosing Party against any and all direct losses, costs, demands, claims, liabilities and expenses (including legal expenses) incurred or suffered by the disclosing Party as a result of or in connection with any breach of these provisions by the receiving Party.

- 15.5. The receiving Party undertakes to advise the disclosing Party as soon as reasonably possible of the POPI Regulator (appointed in terms of the POPI ACT) investigating it or ruling against the receiving Party pertaining to a contravention of POPI.
- 15.6. The receiving Party may not send Personal Information outside of South Africa without prior written authorization of the disclosing Party.
- 15.7. The receiving Party undertakes on an annual basis to provide the disclosing Party with information, in a format prescribed by the disclosing Party in order to satisfy the disclosing Party that the receiving Party is complying with POPI.
- 15.8. Upon the reasonable request of the disclosing Party, the receiving Party provide access to its premises for the purposes of an inspection in order to verify compliance with these obligations.

16. RELATIONSHIP BETWEEN THE CONTRACTOR AND TRANSNET

- 16.1. Transnet designates the below listed representatives to serve as the primary points of contact between the Parties, and to address any matters or issues, which may arise under this Agreement.

Transnet Designate Representative 1

Name & Surname	
Title	
Mobile Number	
Email	

Transnet Designate Representative 2

Name & Surname	
Title	
Mobile Number	
Email	

- 16.2. This Agreement is made for the sole benefit of THE CONTRACTOR and Transnet, its successors and assigns, and no other person or persons shall have any benefits, rights or remedies under or by reason of this Agreement, or by reason of any actions taken by any Party pursuant to this Agreement.
- 16.3. Neither Party to this Agreement, by virtue of the Agreement or any action taken in connection therewith, shall be deemed to be a partner or a joint venture with or fiduciary of the other Party.
- 16.4. This Agreement shall not be construed to imply that THE CONTRACTOR is buying any interest in Transnet.

17. **LIABILITY**

- 17.1. THE CONTRACTOR shall also be liable for all claims (including claims instituted by third parties against Transnet) and all costs relating to such claims incurred by Transnet in defending or settling any claim, loss, or damages suffered by Transnet as a result of THE CONTRACTOR's:
- 17.1.1. breach of the terms and conditions of this Agreement;
 - 17.1.2. failure and/or neglect to provide the Services to Transnet in terms of this Agreement;
 - 17.1.3. the acts and omissions relating to gross negligence and misconduct of its employees providing the Services to Transnet in terms of this Agreement;
 - 17.1.4. any direct damages to a third party and/or any vehicles, equipment, property or other material owned by a third party and/or Transnet used by THE CONTRACTOR in providing the Services;
 - 17.1.5. THE CONTRACTOR and its personnel acting beyond the scope and authority of their duties and/or failing to perform their obligations provided for in this Agreement; or
 - 17.1.6. any delay in or failure to provide the Services where such delay or failure is directly attributable to a breach by THE CONTRACTOR of its obligations under this Agreement.
- 17.2. THE CONTRACTOR hereby indemnifies and holds Transnet harmless against all loss, liability, damage or expense of whatsoever nature and howsoever arising which Transnet may suffer as a result of or which may be attributable to any claims or

liabilities which are attributable to or caused by the negligent act/s or omission/s of THE CONTRACTOR in performing (or failing to perform, as the case may be) its duties and rendering the Services (or failing to render the Services, as the case may be) under this Agreement.

17.3. Transnet shall be liable for all claims including claims instituted by third parties and all costs relating to such claims incurred by THE CONTRACTOR in defending or settling any claim, loss, or damages suffered by THE CONTRACTOR and/or any third party as a result of:

17.3.1. its breach of the terms and conditions of this Agreement;

17.3.2. the acts and omissions of Transnet's employees;

17.3.3. any direct damages to a third party and/or any vehicles, equipment, property or other material owned by a third party and/or THE CONTRACTOR used by Transnet while the Services are being provided by THE CONTRACTOR;

17.3.4. Transnet acting beyond the scope and authority of their duties and/or failing to perform their obligations provided for in this Agreement; or

17.3.5. any delay caused by Transnet in the inspection, processing and or the collection of the Assets under a specific Works Order in accordance with the format in Schedule 3, or where such delay or failure is directly attributable to a breach by Transnet of its obligations under this Agreement.

17.4. Transnet hereby indemnifies and holds THE CONTRACTOR harmless against all loss, liability, damage or expense of whatsoever nature and howsoever arising which THE CONTRACTOR or any third party may suffer as a result of or which may be attributable to any claims or liabilities which are attributable to or caused by the negligent act/s or omission/s of Transnet in performing (or failing to perform, as the case may be) its duties and or obligations under this Agreement.

18. **LIMITATION OF LIABILITY**

18.1. Notwithstanding any other provision of this Agreement, THE CONTRACTOR'S liability in connection with this Agreement, shall be limited to direct damages only and in addition shall be limited to the actual loss or damage suffered but shall never exceed

R50,000,000.00 (five million rand) in part or in aggregation of the losses and damages in any twelve (12) month period.

19. BREACH

- 19.1. In the event of either Party to this Agreement committing a breach of a provision of this Agreement and failing to remedy such breach as soon as practically possible, the aggrieved Party shall first seek damages.
- 19.2. In the event of either Party to this Agreement committing a material breach of a provision of this Agreement and failing to remedy such breach as soon as practically possible, the aggrieved Party shall be entitled to cancel the relevant portion or part of the Agreement if it is severable, or the whole Agreement, if it is not severable, immediately by notice in writing to the other Party.
- 19.3. Either Party shall be deemed to have committed a material breach of this Agreement upon committing any of the following events:
 - 19.3.1. committing any act of insolvency, attempting to assign, surrender or assigning or surrendering its estate; or
 - 19.3.2. become the subject of a voluntary or involuntary surrender or any voluntary or involuntary proceeding relating to insolvency, business rescue proceedings, liquidation, or composition for the benefit of creditors, if such petition or proceeding is not dismissed within sixty (60) days of filing.
 - 19.3.3. allowing any default judgement against it to remain unsatisfied for 7 calendar days or if the said judgement is not rescinded within 30 calendar days of the default judgement; or
 - 19.3.4. be placed under business rescue, liquidated, or placed under judicial management or be wound up, whether provisionally or finally; or
 - 19.3.5. make any material incorrect or untrue statement or representation in connection with any information furnished by it in respect of this Agreement; or
 - 19.3.6. should a Party act in conflict with or fail to comply with any statutory provision, regulation, by law, rule or programme that has a direct bearing on the Services in terms of this Agreement.

20. TERMINATION

- 20.1. Notwithstanding anything to the contrary contained in this Agreement, the Parties shall be entitled to cancel any part of this Agreement or the Agreement as a whole on twelve (12) month's written notice.
- 20.2. Termination by a Party in terms of this clause shall not be considered to be a dispute and shall not form the subject of any arbitration.

21. FORCE MAJEURE

21.1. Definition of Force Majeure

- 21.1.1. For the purposes of this Agreement, force majeure ("**Force Majeure**") includes civil strife, riots, strikes, insurrection, sabotage, acts of war or public enemy, flood, storm, fire, any acts or omissions of any government, government agency, provincial or local authority or similar authority, any laws or regulations having the force of Law or any other circumstances beyond the reasonable control of the Party claiming Force Majeure provided that such Party claiming Force Majeure has (where it is within the powers of such Party to do so), in each case, taken reasonable steps to prevent or mitigate the occurrence of such Force Majeure.
- 21.1.2. For the avoidance of doubt, Force Majeure does not include any failure by a third-party supplier of any Party unless the third-party supplier is itself subject to a Force Majeure.

21.2. Notice of force majeure

- 21.2.1. Either Party shall promptly notify the other of the occurrence of a perceived event of Force Majeure and when such event has ceased.

21.3. Continuation of performance

- 21.3.1. Either Party shall take all reasonable steps to prevent, limit and minimise the effect of events of Force Majeure on the performance of its obligations under this Agreement.
- 21.3.2. Decisions concerning Force Majeure and the application of this clause shall be directed toward the performance to the extent possible of all obligations under this Agreement for the term of the Agreement.
- 21.3.3. A Party affected by the occurrence of the Force Majeure shall be excused from performance of its obligations under this Agreement to the extent

that it is unable to perform those obligations as a result of such Force Majeure and neither Party shall be entitled to:

21.3.3.1. Terminate this Agreement on account of such occurrence other than in accordance with the terms of this clause; and/or

21.3.3.2. Claim damages, penalties or other compensation from the other Party as a result of such failure to perform.

21.4. Insured events of Force Majeure

21.4.1. To the extent that the consequences of an event of Force Majeure fall within any insurance cover then the Party who is insured shall forthwith make the appropriate claims thereunder and shall apply the proceeds in rectification of those consequences.

21.5. Consequences of Force Majeure

21.5.1. Should the Parties agree, or it is determined that an event of Force Majeure has occurred, the Parties shall promptly consult to agree to a mutually satisfactory resolution to the changed circumstances resulting from the event of Force Majeure.

21.5.2. If an event of Force Majeure (or its consequences) continues for an aggregate of 60 working or more Days in any 120 working Day period or 120 consecutive working Days and the Parties fail to reach a mutually satisfactory resolution to the changed circumstances and the effect of the Force Majeure is continuing, this Agreement may, upon 14 calendar Days prior written notice, be terminated by either Party.

21.5.3. Neither Party shall be obliged to counter-perform any obligation where performance of the other has not taken place as a result of Force Majeure.

22. CESSION OR DELEGATION

22.1. THE CONTRACTOR shall not cede, assign, pledge or delegate, transfer or alienate any of its rights or obligations under this Agreement without the prior written consent of Transnet, which consent shall not unreasonably be withheld, save as provided for in this Agreement.

22.2. Transnet shall be entitled to cede, assign, pledge or delegate, transfer or alienate any of its rights under this Agreement subject to prior written notice to THE CONTRACTOR.

23. DISPUTE RESOLUTION

- 23.1. Should any dispute of whatsoever nature arise between the Parties concerning this Agreement, the Parties shall try to resolve the dispute by negotiation within 21 (twenty-one) Business Days of such dispute arising and the aggrieved Party having submitted written notice of their grievance.
- 23.2. If the dispute has not been resolved by such negotiation, either of the Parties may refer the dispute to AFSA and notify the other Party accordingly, which proceedings shall be held in Johannesburg.
- 23.3. Such dispute shall be finally resolved in accordance within the rules of AFSA by an arbitrator or arbitrators appointed by AFSA.
- 23.4. 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 [21].
- 23.5. This clause [21] is severable from the rest of this Agreement and shall remain in effect even if this Agreement is terminated for any reason.
- 23.6. This clause [21] shall not preclude either Party from seeking urgent relief in a court of appropriate jurisdiction, where grounds for urgency exist.

24. GOOD FAITH

- 24.1. The Parties agree that they enter into this Agreement on the basis of trust and record that they will observe good faith in contracting and dealing with each other and implementing the provisions hereof.

25. COUNTERPARTS AND FACSIMILE/EMAIL SIGNATURES

- 25.1. This Agreement may be executed in any number of counterparts, each of which, when executed, will be deemed to be an original and all of which, when taken together, will be deemed to be but one and the same instrument. Delivering signatures via e-mail shall be an acceptable means of executing this Agreement, and signatures so delivered shall be fully binding on the signing party.
- 25.2. This Agreement is signed by the Parties on the dates and at the places indicated opposite their respective names.

26. SEVERABILITY

26.1. The provisions of this Agreement shall be severable. Should any part, term or provision of this Agreement be construed by any court of competent jurisdiction to be illegal, invalid, or unenforceable for any reason, the legality, validity and enforceability of the remaining parts, terms and provisions shall not be affected thereby.

27. WHOLE AGREEMENT

27.1. This Agreement together with the Supplementary Documents constitutes the entire agreement between the Parties and replaces any and all prior agreements related to the Tender and the provision of the Services. This Agreement may not be modified or amended except in writing and signed by both Parties.

28. INDULGENCES

28.1. No indulgence granted by either Party to the other or any lenience or failure by either Party to require strict compliance of the terms hereof shall in any manner prejudice such Party, be deemed to be an amendment or novation of the terms hereof and both Parties will be entitled to insist on and to enforce strict compliance with all the terms hereof.

29. NOTICES

29.1. Any notice in terms hereof may be given by either Party to the other by way of hand-delivered letter, pre-paid registered letter and or email, provided that such notice is delivered, posted or emailed to the Domicilium address of the other Party as chosen hereunder.

30. DOMICILLIUM ADDRESS

Transnet

For legal notices:

.....

.....

.....

Fax No.

Attention: Group Legal Department

For commercial notices:

.....

.....

.....

Fax No.

Attention:

The Supplier/Service Provider

For legal notices:

.....

.....

.....

Fax No.

Attention:

For commercial notices:

.....

.....

.....

Fax No.

Attention:

- 30.1. Either Party may, by notice to the other Party, change its Domicilium citandi et executandi address, provided that in so doing such Party may only appoint a physical address within the Republic of South Africa.
- 30.2. All Parties shall be entitled from time to time by written notice to the other, to vary its Domicilium to any other address which is not a post office box.
- 30.3. Any notice given by any Party to the other (the "**Addressee**") which:
- 30.3.1. is delivered by hand during normal business hours of the Addressee at the Addressee's Domicilium shall be deemed, until the contrary is proved by the Addressee, to have been received by the Addressee at the time of delivery;

- 30.3.2. is posted by prepaid registered post to the Addressee at the Addressee's Domicilium shall be deemed, until the contrary is proved by the Addressee, to have been received on the 14th calendar day after the date of posting;
 - 30.3.3. is sent by electronic mail shall be deemed, until the contrary is proved by the Addressee, to have been received at noon on the first business day (excluding Saturdays, Sundays, and Public Holidays) following the date of transmission.
- 30.4. Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen Domicilium citandi et executandi.

31. AMENDMENT AND CHANGE CONTROL

- 31.1. On the occurrence of an event or circumstances which may lead either Party to believe that an amendment or a Change to this Agreement (including any Supplementary Documents) is required, that Party may within a period not exceeding 21 (twenty-one) calendar days of becoming aware of such event or circumstances, issue a notice in writing to the other Party ("Change Notice") activating a change control process.
- 31.2. The Change Notice shall stipulate the event or circumstances that led the Party to believe that a Change is required and shall indicate any time and or cost implication the event or circumstances may have on this Agreement and or Supplementary Document and propose a Change.
- 31.3. The Party receiving the Change Notice shall in a period not exceeding 21 (twenty-one) calendar days consider the content of the Change Notice and issue in writing a response ("Change Response Notice") to the Party that issued the Change Notice either approving the proposed Change, proposing an alternative Change or rejecting the proposed change providing reasons in writing.
- 31.4. The Parties shall at all times negotiate in good faith to reach mutual agreement on a Change.
- 31.5. In the event the Parties cannot agree upon a Change, the Parties shall in good faith seek to agree any Change using the dispute resolution procedures in clause [21].

- 31.6. On formal agreement of the Change, the agreed terms and conditions of the Change will be reduced to writing and be signed by both Parties in the format of an Addendum to this Agreement or Supplementary Document/s.

32. **GENERAL**

32.1. Governing Law

- 32.1.1. This Agreement is exclusively governed by and construed in accordance with the laws of the Republic of South Africa and is subject to the South Gauteng High Court of the Republic of South Africa.

32.2. Change of Law

- 32.2.1. 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, following the change of law, and within a reasonable period of time, the Parties 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 23 above.

33. **CONFIDENTIALITY**

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

- 33.1.1. 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;

- 33.1.2. 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;
- 33.1.3. 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 the disclosing Party, except when reasonably necessary for the purpose of this Agreement, in which case such copies shall be regarded as Confidential Information;
- 33.1.4. 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 the disclosing Party, 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;
- 33.1.5. not to exercise less care to safeguard the disclosing Party's Confidential Information than the receiving Party exercises in safeguarding its own competitive, sensitive or Confidential Information;
- 33.1.6. 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;
- 33.1.7. 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;

- 33.1.8. 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 receiving 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;
 - 33.1.9. 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;
 - 33.1.10. 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
 - 33.1.11. 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.
- 33.2. The duties and obligations with regard to Confidential Information in this clause [31] shall not apply where:
- 33.2.1. 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 sub-contractor; or
 - 33.2.2. was rightfully in a Party's possession prior to receipt from the other Party, as proven by the first-mentioned Party's records, without an infringement of an obligation or duty of confidentiality; or
 - 33.2.3. 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

33.2.4. is independently developed by a Party as proven by its records.

- 33.3. This clause [31] shall survive termination for any reason of this Agreement and shall remain in force and effect from the Commencement Date of this Agreement and 5 (five) years after the termination of this Agreement. Upon termination of this Agreement, all documentation furnished to the receiving Party by the disclosing Party pursuant to this Agreement shall be returned to disclosing Party including, without limitation, all corporate identity equipment including dyes, blocks, labels, advertising matter, printing matter and the like.

34. DATABASE OF RESTRICTED SUPPLIER

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

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 THE CONTRACTOR (PTY) LTD duly authorised hereto
Name:	Name: Doron Barnes
Position:	Position: Chief Executive Officer
Signature:	Signature:
Date:	Date:
Place:	Place:

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