

ANNEXURE N: MASTER SERVICES AGREEMENT

between

TRANSNET SOC LIMITED

("Transnet")

and

("Service Provider")

FOR THE PROVISION OF TRANSNET CORPORATE CENTRE END USER
COMPUTING DEVICES (GSM/21/03/2071)

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1 PARTIES

- 1.1. The Parties to this master services agreement are Transnet SOC Limited, a state owned company, with registration number 1990/000900/06 with its registered offices at Trasnet Corporate Centre, Waterfall Business Estate, 9 Country Estate Drive, Midrand, 1662 ("Transnet"). For the avoidance of doubt Transnet includes its Operating Divisions ("OD's") and Affiliates; and
- 1.2. xxxxx, a profit company (private) with registration number xxxx> and with its registered offices at XXXXXXXXXXXXXXXX ("Service Provider"). For the avoidance of doubt, the Service Provider includes Service Provider Affiliates and Subcontractors, who provides any portion or aspect of the Services in accordance with this Agreement.
- 1.3. "Party" means any one of them as the context may require.

2 DEFINITIONS

In this Agreement, the following words shall, unless otherwise stated or inconsistent with the context in which they appear, bear the following meanings:

- 2.1. "**Acceptance Criteria**" means the criteria to be developed and proposed by the Service Provider for review and approval by Transnet and which, if approved in writing by Transnet, is to be used by Transnet for the Acceptance Testing of a Deliverable;
- 2.2. "**Acceptance Testing Procedures**" means in relation to a specific Deliverable or set of Deliverables or a category of Deliverables, Acceptance Testing procedures to be prepared and proposed by the Service Provider for review and approval by Transnet and which, if approved in writing by Transnet, prescribes the methodology for the implementation of Acceptance Testing (including details of how the Acceptance Testing should be performed, test cases and expected results);
- 2.3. "**Acceptance Testing**" means the testing by Transnet of a Deliverable delivered by the Service Provider to Transnet in terms of a Transaction Document for purposes of determining whether such Deliverable complies with the Documentation, the Relevant Specifications and Acceptance Criteria;

- 2.4. **“Affiliate”** means (a): a subsidiary or a holding company or a subsidiary of the holding company of any entity. For purposes of this definition the terms “subsidiary” and “holding company” shall have the meaning assigned thereto in Section 1 of the Companies Act, provided that such terms shall also include any foreign entity which, had it been registered in terms of the Companies Act, would fall within the ambit of either of such terms; and/or (b) as to any entity, any other entity that, now or in the future, directly or indirectly, effectively controls, is effectively controlled by, or is under common effective control by another entity together with, such entity. For the purposes of this definition the term “effective control” shall include control of any entity through any voting pool or other arrangement, the right to the exercise of voting rights, directly or indirectly, resulting in effective control of any entity and/or control of its management, and/or the right to appoint the majority of the members of the board of directors of any entity. For this purpose, and without limiting the foregoing, any entity that owns at least 20% (twenty percent) of the voting rights of any other entity shall be deemed to be in effective control of such other entity. The terms “Transnet Affiliate” and “Service Provider Affiliate” shall have the rational corresponding meanings;
- 2.5. **“AFSA”** means the Arbitration Foundation of Southern Africa, or its successors in title;
- 2.6. **“Agreement”** means this master services agreement for the provision of end-user computing devices and all Attachments and other documents attached thereto or incorporated herein by reference, as amended from time-to-time.
- 2.7. **“Applicable Law”** means, to the extent it applies to a Party (including, as applicable, Affiliates and Subcontractors of a Party), or the Services (including the performance, delivery, receipt or use of the Services, as applicable and wherever occurring), (i) any statute, regulation, notice, policy, directive, ruling or subordinate legislation (including treaties, multinational conventions and the like having the force of law); (ii) the common law; (iii) any binding court order, judgement or ruling; (iv) any applicable industry code, license, policy or standard all of which must be enforceable by law; or (v) any applicable direction, license, policy or order that is given by any regulator, competent

authority or organ of state or statutory industry body, and includes (vi) such Applicable Law as may be changed, enacted or repealed from time to time.

- 2.8. **“B-BBEE”** means broad-based Black Economic Empowerment as set out in the Broad-Based Black Economic Empowerment Act, 53 of 2003 and the 2007 Codes of Good Practice promulgated thereunder, or as amended from time to time.
- 2.9. **“Best Practice”** means a practice that communicates insight on the application of a process or the performance of a task. The Best Practice improves the outcome, diminishes the risk, increases the reliability, or improves the understanding of the process or task.
- 2.10. **“Business Day”** shall bear the meaning given to the term in section 1 of the Companies Act;
- 2.11. **“Change”** means any change to, variation to, substitution to, addition to, or deletion to the Services;
- 2.12. shall be deemed to have occurred in circumstances where, subsequent to the Effective Date, any Person acquires the ability, by virtue of ownership, rights of appointment, voting rights, management agreement, or agreement of any kind, to control or direct, directly or indirectly, the board or executive body or decision making process or management of the relevant Party.
- 2.13. **“Change Management Procedure”** means those procedures relating to the control and management of any operational and technical changes to the Services and/or the Deliverables or the deployment of a new Deliverable, as the case may be to be developed by the Service Provider in consultation with Transnet, as set out in clause 35 of the Agreement.
- 2.14. **“CMDB”** means the configuration management database to be configured and implemented by the Service Provider which shall contain details about the attributes and history of all equipment and each component that and which shall incorporate details of the important relationships between those components, as kept updated by the Service Provider for the Term of this Agreement as part of the Services;

- 2.15. **“Companies Act”** means the Companies Act, 71 of 2008 of the Republic of South Africa;
- 2.16. **“Confidential Information”** means any information or data of any nature, tangible or intangible, oral or in writing and in any format or medium, which by its nature or content is or ought reasonably to be identifiable as confidential and/or proprietary to the Disclosing Party or which is provided or disclosed in confidence, and which shall include:
- 2.16.1 information relating to the Disclosing Party’s business activities, business relationships, products, services, processes, data, and staff, including agreements to which the Disclosing Party is a party;
- 2.16.2 information and data relating to the Disclosing Party’s clients;
- 2.16.3 information contained in or constituting or relating to the Disclosing Party’s systems, machinery, hardware or software, networks, telecommunications services and facilities, including Third Party products, and associated Material, and information or incidents concerning faults or defects therein;
- 2.16.4 the Disclosing Party’s technical, scientific, commercial, financial and market information (including valuations and forecasts), methodologies, formulae and trade secrets;
- 2.16.5 the Disclosing Party’s architectural information, demonstrations, plans, designs, drawings, processes, process maps, functional and technical requirements and specifications and the data relating thereto;
- 2.16.6 Intellectual Property that is proprietary to the Disclosing Party or that is proprietary to a Third Party, including but not limited to Third Party Products and data relating to the customers of the Disclosing Party;
- 2.16.7 The Disclosing Party’s Data;
- 2.16.8 any information that the Disclosing Party identifies as confidential by a stamp or other similar notice; and
- 2.16.9 all other records, data or information collected, received, stored or transmitted in any manner connected with the provision of Services hereunder;

- 2.17. **“Control”** shall have the meaning given in section 2 (2) of the Companies Act;
- 2.18. **“Data”** means the data of either Party, including personal information as defined in the PAI Act, and any other applicable legislation in the jurisdiction where the Services are to be provided, supplied, stored, collected, collated, accessed, retained or processed by the Service Provider, irrespective of the media or form and includes: (a) all data that is in the possession of either Party, and all data concerning or indexing such data (regardless of whether or not owned, generated or compiled by such Party); (b) all other records, data, files, input materials, reports, forms and other such items that may be received, computed, developed, used or stored by either Party or any of such Party’s Employees, contractors (including Subcontractors) or agents from, for or on behalf of such Party, or in connection with the Services, and (c) all Data and Modified Data.
- 2.19. **“Data Subjects”** means either Party’s customers, suppliers, Employees and any other Person/s to whom Personal Information relates.
- 2.20. **“Deficiency”** means with respect to a Deliverable: any (i) failure to meet the relevant specifications; (ii) error, Problem, non-conformity or defect resulting in a deviation from the Documentation, Acceptance Criteria, Acceptance Testing Procedures or specifications for such Deliverable; or (iii) incorrect or incomplete Documentation.
- 2.21. **“Deliverable”** means any tangible or intangible materials that are provided by the Service Provider to Transnet as part of the Services pursuant to this Agreement.
- 2.22. **“Derivative Works”** means a work which embodies existing material but which has sufficient originality to constitute a new work and which, in terms of Derivative Works created during the Term, shall at all times constitute the Intellectual Property of Transnet;
- 2.23. **“Developed Intellectual Property”** means those intellectual property Deliverables which are developed, created and/or prepared by the Service Provider for Transnet at the specific instance and request of Transnet (including as part of a Project) under this Agreement and includes Developed

Software. For the avoidance of doubt, Developed Intellectual Property excludes the Service Provider Platform.

- 2.24. **“Developed Material”** means any material developed by the Service Provider for Transnet at the specific instance and request of Transnet (including as part of a Project) as part of the Services, which for the avoidance of doubt includes training materials, technical and operating manuals, architecture documentation, reports and technical and function specification documentation;
- 2.25. **“Disclosing Party”** means a Party that has disclosed Confidential Information and/or Personal Information to the other Party;
- 2.26. **“Disengagement”** means the complete transition of terminated Services from the Service Provider, its Affiliates and its Subcontractors in respect of Transnet, its Affiliates and any Third Parties as part of the Disengagement Services and in cooperation with Transnet so as to not cause any unnecessary interruption of, or cause any unnecessary adverse impact on the Services, any Other Services and/or services provided by Third Parties;
- 2.27. **“Disengagement Services”** means the provision by the Service Provider of all reasonable information and assistance to Transnet to enable Transnet or a Third Party designated by Transnet to take over the Service Provider’s obligations under this Agreement in the event of termination or expiration of this Agreement.
- 2.28. **“Documentation”** means the documentation that Transnet would reasonably require to be provided by the Service Provider relating to the Services and/or the Deliverables and includes all materials, documentation, specifications, technical manuals, user manuals, flow diagrams, file descriptions and other written information that describes the function and use of the Services and/or Deliverables.
- 2.29. **Effective Date**” means the date on which the Agreement takes effect being the date on which the condition precedent at clause 5 of the Agreement is fulfilled or waived in accordance with its terms. For the avoidance of doubt, this Effective Date applies to the MSA;

2.30. **“End User”** means: (a) all employees of Transnet or any of its Affiliates; and (b) any other Person; designated by Transnet who has access to any of the Services.

2.31. **“End User Computing Devices specification”** means a unit of computing hardware, and/or Equipment and its associated system software, that is used and interacted with by an End-User, including, but not limited to both stationary, mobile, and hand-held computing components, consisting of the desktop or laptop computer itself, as well as the associated peripheral components interconnected electronically via wired or wireless connectivity, including keyboards, mice, monitors, hard drives, CD players, speakers, microphones, scanners, multi-functional devices, smartphones, tablets, and other End-User hardware units as listed in **Annexure B**.

2.32. **“Equipment”** means any hardware supplied to, procured, supported or maintained by the Service Provider for Transnet, including the operating system, all other environmental software components necessary for the proper functioning and operation of the Equipment (including any firmware) installed upon or contained in such hardware and all relevant Documentation pertaining to such hardware and software;

2.33. **“Event of Default”** occurs if the Service Provider:

- a) has an insolvency event;
- b) fails to comply with any material term or condition of this Agreement;
- c) assigns any of its rights or obligations, except as allowed by this Agreement;
- d) is subject to a change in Control;
- e) does not comply with Applicable Law;
- f) breaches any warranty;
- g) fails to comply with the Remedial Notices under clauses 25 & 26; or
- h) is in breach of this Agreement and fails to rectify the breach within 30 (thirty) days of being notified of the breach by the Transnet;

2.17 **“Fees” means** the fees and charges payable by Transnet to the Service Provider in consideration of the Service Provider’s provision of the Services,

Projects and any other performance rendered in respect of this Agreement. Rates, costs, price, pricing and charges shall have the corresponding meaning. For the avoidance of doubt, Fees may include monthly unit costs and individual resource rates as defined in **Annexure “D”**.

- 2.18 **“Intellectual Property”** means any know-how not in the public domain, invention (whether or not patented), design, trade mark (whether or not registered), or Copyright Material (whether or not registered), goodwill, trade or business name, processes, process methodology and all other identical or similar intellectual property as may exist anywhere in the world and any applications for registration of such intellectual property. For the purposes of this definition, “Copyright Material” means any Material in which copyright subsists;
- 2.19 **“Losses”** means all losses, liabilities, costs, expenses, fines, penalties, actions, damage, damages, judgments and claims, and all related costs and expenses, legal fees on the scale as between attorney and own client, tracing and collection charges, costs of investigation, fines, interest and penalties’
- 2.20 **“Maintenance Services”** means the performance of scheduled and/or preventative maintenance services required for the purpose of ensuring the continued functionality of the Equipment in accordance with the relevant Service Levels and specifications set forth in **Annexure C**.
- 2.21 **“Materials”** means the Deliverables, the Service Provider Materials and the Third Party Materials;
- 2.22 **“Measurement Interval”** means the period specified in an **Annexure “A”** over which the Service Provider’s performance of the Service Levels will be measured in order to calculate the Service Credit to which Transnet is entitled in respect of that period. The Measurement Interval shall be a calendar month.
- 2.23 **“OEM”** means original equipment manufacturer;
- 2.24 **“PAI Act”** means the Promotion of Access to Information Act 2 of 2000.
- 2.25 **“Permitted Recipients”** means the representatives of the Receiving Party who are directly concerned with the performance of Services and any other

Person (including Subcontractors and Service Provider Affiliates and their representatives) to whom the Receiving Party discloses Confidential Information with the prior written consent of the Disclosing Party.

2.26 “**Permitted Use**” means any use of property (including the Intellectual Property), information (including the Confidential Information) or other material for the purposes contemplated and intended by the Agreement.

2.27 “**Personal Information**” shall bear the meaning given to the term in the POPI Act.

2.28 “**POPI Act**” means the Protection of Personal Information Act 4 of 2014;

2.29 “**Procured Equipment**” means the list of equipment to be procured by the Service Provider in terms of this Agreement as listed in **Annexure B**.

2.30 “**Processing**”, bears the meaning given to the term in chapter 26 of the POPI Act;

2.31 “**Proposal**” means a written proposal in respect of any new Deliverable or Service which introduces a new service tower, significantly changes the nature or an existing Service Tower or Project.

2.32 “**Quotation**” means a written quotation in respect of any new Deliverable or Service which modifies or expands existing services by introducing an installation, move, addition, change or deletion (IMACD) thereto.

2.33 “**Relevant Specifications**” means in relation to any Equipment and /or End-User Computing Devices, any criteria or standard which applies thereto, whether contained in any Attachment, any Documentation or Deliverables or any business requirements, functional requirements, architecture requirements, design specifications or technical specifications pertaining thereto which have either been agreed between the Parties or which are published by the proprietor, manufacturer or distributor of such Equipment and /or End-User Computing Device.

2.34 “**Root Cause Analysis**” means a Problem analysis process undertaken to identify and quantify the underlying cause(s) of a Problem, and document the necessary corrective actions to be taken to prevent recurring Problem, or as

otherwise defined in **Annexure I** from time to time. Priority Level One Incidents will result in a Root Cause Analysis Report to be generated.

- 2.35 “**Services**” has the meaning described in **Annexures A and J** to the Master Agreement” attached hereto, and includes the procurement on behalf of Transnet, of the Procured Equipment, whether by way of lease of such Procured Equipment or by way of purchase of the Procured Equipment and as they may evolve during the continued duration of this Agreement and includes Disengagement Services as they may be supplemented, enhanced, modified or replaced in accordance with the terms of this Agreement;
- 2.36 “**Service Credit**” means a penalty amount as provided for in clause 12 of the Agreement and which will be credited to Transnet for any failures of the Service Provider to meet a defined Service Level in any Measurement Interval;
- 2.37 “**Service Level**” means a quantitative or qualitative level of service specified in **Annexure I** of this Agreement as to which the Service Provider’s performance of the Services must conform and is a standard for performance of the Services, which sets the Service Provider and Transnet expectations, describes the products or Services to be delivered, and specifies the metrics by which the effectiveness of service activities, functions and processes will be measured, examined, changed and controlled;
- 2.38 “**Service Level Failure**” means anytime that the actual level of performance by the Service Provider of a particular Service Level metric as calculated by that particular metric’s service level calculation is worse than the Service Level;
- 2.39 “**Service Provider Relationship Manager**” means the designated Service Provider employee who shall be the Service Provider’s primary point of contact for all matters relating to the Agreement (move to relevant Attachment);
- 2.40 “**Signature Date**” means the date of signature of this Agreement, which if signed on different dates, shall be the last of such dates;
- 2.41 “**Subcontractor**” means, other than the Service Provider, a person including a Service Provider Third Party, or Service Provider Affiliate, which provides

any portion or aspect of the Services to Transnet pursuant to an agreement entered into with the Service Provider;

- 2.42 “**Taxes**” means all present and future taxes, charges, imposts, duties, levies, deductions, withholdings or fees of any kind whatsoever, or any amount payable on account of or as security for any of the forgoing, by whomsoever and whenever imposed, levied, collected, withheld or assessed, together with any penalties, additions, fines, surcharges or interest relating thereto;
- 2.43 “**Term**” means the duration of the Agreement as described in clause 6 of the Agreement. For the avoidance of doubt, Term shall commence on the Effective Date and shall include the Disengagement Period and any additional period as may be required to transition the Services (TBD);
- 2.44 “**Transnet Authorised Person**” means Transnet's information systems compliance manager or other designated contact person at Transnet and who may or may not be Transnet Relationship Manager;
- 2.45 “**Transnet Relationship Manager**” means the designated Transnet employee who shall be Transnet's primary point of contact for all matters relating to the Agreement;
- 2.46 “**Transnet Sites**” means sites where the Services are to be provided;
- 2.47 “**Transnet Fixed Asset Register**” means the fixed asset register kept, maintained and updated by Transnet from time to time, to ensure that all fixed assets are easily and readily recognizable and located in order to maintain its Procurement Services infrastructure up to date, relevant and complies with Transnet technology and/or asset management and standards and/or Applicable Law;
- 2.48 “**VAT**” means value added tax in terms of the Value Added Tax Act, 89 of 1991 ('the Vat Act');
- 2.49 “**Work Around**” means a temporary solution that the Service Provider or Transnet can implement in the event of an incident as an alternate method of providing full Service or process functionality that allows the affected system(s) and/or process(es) to deliver to Transnet an acceptable level of business

operations functionality until a permanent incident resolution can be implemented. Any such Work Around must be acceptable to and approved by Transnet;

2.50 “**Work Order(s)**” means a detailed scope of work for a Service required by Transnet, including timeframes, Deliverable, Fees and costs for the supply of the Service to Transnet, which may be appended to this Agreement from time to time; and

2.51 “**ZAR**” means the South African Rand, the lawful currency of the Republic of South Africa.

3 INTERPRETATION

3.1. If a definition imposes substantive rights and obligations on a Party, such rights and obligations shall be given effect to and shall be enforceable, notwithstanding that they are contained in a definition.

3.2. Where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is specifically stated in the clause in question that the term so defined has a limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that the term has not been defined in this clause.

3.3. References to any amount shall mean the amount exclusive of VAT, unless the amount expressly includes VAT.

3.4. Where any number of days is prescribed, those days shall be reckoned exclusively of the first and inclusively of the last day unless that day falls on a day which is not a Business Day, in which event the last day shall be the next succeeding Business Day.

3.5. The expiry or termination of this Agreement shall not affect such of the provisions of this Agreement which are expressly provided to operate after any such expiry or termination, or which of necessity must continue to have effect after such expiry or termination, notwithstanding that the relevant clause doesn't provide for this.

- 3.6. As the terms of this Agreement have been negotiated by the Parties and drafted for the benefit of the Parties, the rule of construction that the agreement shall be interpreted against the Party responsible for its drafting or preparation, shall not apply.
- 3.7. In this Agreement, the *eiusdem generis* rule shall not apply and whenever the term "including" is used followed by specific examples, such examples shall not be construed so as to limit the meaning of that term.

4 INTRODUCTION AND APPOINTMENT

4.1. Appointment

4.1.1. On the 13th of April 2021 Transnet issued a request for proposal (RFP no: GSM/20/03/2071) for the provision of services for the procurement and rental of its End User Devices and Equipment ("RFP"). The Service Provider submitted its response on (insert date) ("Service Provider Bid Response").

4.1.2. In consideration of the representations; warranties and undertakings given by the Service Provider, and accepted by Transnet, the Parties wish to enter into this Agreement to specify the terms and conditions under which the Service Provider will provide the Services to Transnet.

4.1.3. This Agreement provides a framework for, and the general terms applicable to the Services that the Service Provider will provide to Transnet under this Agreement.

4.2. As and When Service Requests:

4.2.1. The Service Provider is appointed to provide the Services to Transnet from time to time and as when Services are required and subject to complying with, inter alia, timelines, the requisite skills and capacity, and other relevant criteria as required for the Services.

4.2.2. Nothing contained herein shall in any way be construed to be or constitute a guarantee in favour of the Service Provider that the Service Provider will receive any work or contract for Services for the full duration of the Term under this Agreement.

4.3. Non-Exclusivity:

4.3.1. Transnet reserves the right, to obtain the Services from other Service Providers, subject to the terms of the Agreement. Transnet can exercise such option at any time during the course of this Agreement, provided it notifies the Service Provider of its intention to do so.

4.3.2. Nothing contained herein shall in any way be construed to be or constitute a guarantee in favour of the Service Provider that the Service Provider will receive any work or contract for services in the future, whether under this Agreement or otherwise.

4.4. Purchase Orders

4.4.1. Transnet shall provide to the Service Provider purchase orders or order forms requesting any Services to be provided in accordance with clause 9 of this Agreement.

5 CONDITION PRECEDENT

5.1. Save for clauses 45, 47 and 48, all of which will become effective on the Effective Date, this Agreement is subject to the fulfilment of the condition precedent that, within ten (10) working days from the contract Signature Date, the Service Provider has delivered to Transnet, being a "Condition Precedent" to the reasonable satisfaction of Transnet, a Parent Company or Financial Guarantee in accordance with the provisions of clause 6 which shall in all respects be compliant with the provisions of any and all Applicable Law relating to the Parent Company or Financial Guarantee, including, without limitation, the provisions of the Companies Act, generally and section 39 of the Companies Act in particular, or such other comparable legislation in any applicable jurisdiction.

5.2. The Condition Precedent is included here for the benefit of Transnet and accordingly is capable of being waived or extended in writing by Transnet at its discretion.

5.3. Unless the Condition Precedent has been fulfilled by not later than the relevant date for fulfilment thereof set out in clause 5 (or such later date as may be

agreed to in writing by Transnet) the provisions of this Agreement, save for clauses 45, 47 and 48, which will remain of full force and effect, will never become of any force or effect and the *status quo ante* will be restored as near as may be and neither of the Parties will have any claim against the other in terms hereof or arising from the failure of the Condition Precedent.

6. PARENT COMPANY GUARANTEE OR FINANCIAL GUARANTEE

- 6.1. To the extent that the Service Provider is not its ultimate parent entity, it shall procure that its ultimate parent company provide a guarantee of its performance of this Agreement ("Parent Company Guarantee") in the form acceptable to Transnet. Notwithstanding the Parent Company Guarantee, the Service Provider shall at all times remain liable to Transnet for the performance of the Services in accordance with the terms of this Agreement.
- 6.2. Should the Service Provider not have a parent company such that it is its own ultimate parent company, the Service Provider shall be required to provide Transnet with a Financial Guarantee to present to Transnet on or before the Effective Date, for approval by Transnet, securing performance by the Service Provider of its obligations in this Agreement ("Financial Guarantee"). The Financial Guarantee, shall be held by a reputable financial institution acceptable to Transnet with a long term national credit rating, such as Moody's Investors Service Limited ("Moody's"); Standard & Poor's Rating Services ("Standard and Poor's"); or Fitch Ratings Limited ("Fitch") or any successor to their respective ratings business or any other ratings agency approved by Transnet, of at least A- in the case of Fitch and Standard and Poor, and A3 in the case of and Moody's ("Minimum Credit Rating"). The Financial Guarantee shall be made in favour of Transnet for the Service Provider's obligations in terms of this Agreement, subject to the following:
 - 6.3. This Financial Guarantee shall represent 5 % (five percent) of the full value of the Fees and charges payable under the Agreement in accordance with form and standard acceptable to Transnet, for the duration of the Term; and shall remain in full force and effect for such duration (including any renewal hereof);
 - 6.4. The Service Provider shall not be absolved of any of its obligations and liabilities under this Agreement by virtue of it having obtained a Parent

Company or a Financial Guarantee and shall at all times for the term of this Agreement (and in the case of those obligations which survive the termination, beyond such termination date) retain primary liability to Transnet for the performance of the Services and all of its obligations under this Agreement in accordance with the terms of this Agreement.

6.5. Transnet shall be entitled to encash either the Parent Company Guarantee or the Financial Guarantee if:

6.5.1. an event occurs in respect of which this Agreement permits Transnet to recover a penalty or Service Credit from the Service Provider and the Service Provider fails to pay such penalty or Service Credit when it is due in terms of this Agreement or otherwise upon demand by Transnet; or

6.5.2. the Service Provider materially breaches this Agreement and such breach is reasonably considered by Transnet to be irremediable; or

6.5.3. the Service Provider materially breaches this Agreement, such breach is reasonably capable of being remedied and the Service Provider fails to remedy such breach when called upon by Transnet to do so.

7. TERM

7.1 Notwithstanding the Signature Date hereof, this Agreement will commence on the Effective Date and will subsist for a period of 3 (three) years expiring on, (“the Initial Term”) unless the Agreement:

7.1.1 is terminated by either Party in accordance with the provisions of clause 40; or

7.1.2 is extended at Transnet’s option for a further period of 2 (two) years to be agreed by the Parties (“the Extended Term”).

7.2 Transnet must notify the Service Provider 6 (six) months prior to the expiry of the Initial Term of its intention to proceed with an Extended Term in accordance with clause 7.1.2 above.

8 AFFILIATES

- 8.1. It is recorded that Transnet shall be entitled to procure Services from any Service Provider Affiliate(s) for itself or any of its Affiliates under the terms of this Agreement and the Service Provider agrees that it or its Affiliates may be required to provide the Services to Transnet's Affiliates in accordance with the Agreement.
- 8.2. In the event that an operating division or part thereof, divests itself from Transnet or that an Affiliate of Transnet divests itself from Transnet, the Service Provider, unless agreed to by the Parties, shall continue to provide any Services under this Agreement to the divested operating division or part thereof, or Affiliate.
- 8.3. The Service Provider hereby acknowledges that any Affiliate of Transnet shall be entitled to benefit from the terms and conditions set forth in this Agreement. As such (i) any licence rights granted to Transnet and (ii) any right of use of any Deliverable, shall be deemed to be granted to Transnet's Affiliates unless specifically recorded otherwise in this Agreement.
- 8.4. The Service Provider shall be required to advise Transnet in writing of any request for Services which it receives directly from any Transnet Affiliate. The Service Provider agrees that it shall not enter into any agreements with such Affiliates relating to the subject matter of this Agreement that do not constitute an Attachment to this Agreement, without the prior written consent of Transnet.
- 8.5. The Service Provider hereby acknowledges that to the extent that this Agreement or any Attachment executed under this Agreement regulates the Services to Transnet by the Service Provider and which provides for pricing based upon pricing discounts or rebates or upon preferential pricing arising from the aggregation of supply, procurement or licence volumes by Transnet, then, and to that extent, Transnet shall be entitled to include within its supply, procurement or licensing volumes, any volumes derived from such Affiliates of Transnet.
- 8.6. After the Effective Date and upon Transnet's request, the Service Provider shall, as part of the Services, integrate the ICT operations of any new entities

which become Affiliates with those of Transnet so as to enable the Service Provider to provide some or all of the Services to such new Affiliates. The Parties shall work together and cooperate to incorporate such new Affiliates within the scope of the Agreement including, without limitation, by developing an appropriate transition plan and associated costs; provided that the agreed Fees shall, unless otherwise agreed by the Parties, also apply to such new Affiliates with the Service Provider not having the right to charge higher Fees for the provision of the Services to the new Affiliates.

9 SERVICES

- 9.1. The Service Provider shall provide rental and purchasing of End User Computing Devices as set forth in **Annexures C, B and J** to this Agreement, together with all modifications to such Services, as are applicable from time to time, for the Term.
- 9.2. Service Provider shall provide the Services to Transnet and its Affiliates in accordance with its respective Service Levels in exchange for the Fees, which are set out in the price workbook in **Annexure "D"**.
- 9.3. Without limiting the foregoing, the Service Provider shall provide hardware, software and other items required to provide the Services and otherwise to perform its obligations hereunder, including its obligations under clause 9.1, all of which shall be deemed included in the Fees.
- 9.4. The Service Provider shall be responsible for the provision of all resources, including all hardware, software and Employees required to provide the Services in accordance with the Service Levels, at whatever volumes are from time to time required by Transnet and/or its Affiliates.
- 9.5. The Service Provider is fully responsible for the performance of its obligations under this Agreement with respect to the Services provided by the Service Provider to Transnet and its Affiliates.
- 9.6. The Service Provider shall be entitled to undertake and execute any necessary cost, process and technology optimisations within its own operations in relation to the Services, save that such optimisations shall not lead to an adverse impact with regard to the Fees or Service Levels or any consequent

contravention of any Applicable Law relating to the Services provided to Transnet.

- 9.7. The Service Provider shall provide the Services, lawfully, diligently, and in accordance with Applicable Law, and will not participate in corrupt practices, in contravention of the Prevention and Combating of Corrupt Activities Act 12 of 2004 (the "PCCA Act") and will be required to maintain accurate business records that reflect actual transactions and payments. The Service Provider is expected to report any behaviour or actions that violate the spirit of this clause 9.
- 9.8. The manner in which the Services are developed and provided shall be such that they are easily scalable to support any growth of, or contraction in, Transnet's and/or its Affiliates' businesses for the duration of the Agreement.
- 9.9. All Services shall be provided in compliance with Transnet Integrity Pact, a copy of which shall be provided to the Service Provider, upon request.

10 GOOD FAITH AND BEST PRACTICE

- 10.1 This Agreement will foster a working relationship between the Parties and establish an agreement that is customer-focused and which provides Services that fully support the business requirements of Transnet.
- 10.2 The Service Provider undertakes to act with due skill, care and diligence at all times when implementing this Agreement. Moreover, it shall ensure that it will discharge its duties and obligations in respect of this Agreement professionally and on a standard commensurate with Best Practice.
- 10.3 Except to the extent expressly stated to the contrary, time will be of the essence and the Service Provider will perform its obligations under this Agreement in accordance with the timeframes set out in **Annexure I**, save that the Service Provider will not be liable under this clause if it is unable to meet such obligations within the time required as a direct result of any act or omission by Transnet and it has used its best endeavours to advise Transnet of such act or omission. In the event of such delay, any time deadlines detailed in the relevant schedule shall be extended by a period equal to the period of that delay.

10.4 The Service Provider will promptly notify Transnet upon becoming aware of any problem (including any Problem), incident or circumstances (including Transnet's failure to perform, or to perform on a timely basis, that may reasonably be expected to jeopardise the performance or timely performance of any part of the Services.

10.5 The Service Provider will not take or authorise any action that results in a reduction of the scope of or degradation in the quality and timeliness of the performance of the Services during the term of the Agreement.

11 SERVICE LEVELS

11.1 The Service Provider undertakes to act with due skill, care and diligence at all times when implementing the Services. Moreover, it shall ensure that it will discharge its duties and obligations in respect of this Agreement professionally and on a standard set out in the service and performance measurements levels set out in **Annexure I**.

11.2 In order to achieve and provide the required Service Level and quality of Service, the Service Provider undertakes to:

11.2.1 supply Transnet with all relevant information needed for the implementation of the procured Services; and

11.2.2 adhere to the Service Levels contained in this Agreement and implement the Services subject to the following conditions; namely that the Service Provider:

11.2.2.1 obtains the most favourable price, rates and discounts available;

11.2.2.2 shall be entitled to apply no mark-up to the costs of the Equipment;

11.2.2.3 subject to Applicable Law, shall be responsible for ordering, receiving, warehousing, configuring, installing, and testing, such Equipment;

11.2.2.4 ensures that the Procured Equipment is compatible with

Transnet's network infrastructure, including fibre infrastructure;

11.2.2.5 ensures that all elements of the Services, where applicable, function properly;

11.2.2.6 ensures that the Equipment is tagged; and

11.2.2.7 procures such Equipment in accordance with Transnet's procurement policies.

11.3 Should the Service Provider not be able to procure a EUCD as listed in **Annexure B**, the Service Provider may, upon receipt of Transnet's written approval, procure a replacement of similar functionality and value to the Equipment / Device and immediately reimburse Transnet for the difference in cost, if applicable, between the Equipment / Device as contained in **Annexure B** and the substituted product.

11.4 All the Procured Equipment listed in **Annexure B** and/or purchased in pursuit of this Agreement, shall be procured in Transnet's name and Transnet shall have all right, title and interest to them.

12 SERVICE CREDITS

12.1. The Service Provider recognises that its failure to meet Service Levels may have a material adverse impact on the business and operations of Transnet and that such failure may be deemed an Event of Default. Accordingly, in the event that the Service Provider fails to meet a Service Level, then in addition to all other remedies available to Transnet in law or under this Agreement, Transnet may recover the applicable Service Credit from the Service Provider as specified **Annexure I**.

12.2. In the event that Transnet is entitled to a Service Credit and elects not to enforce the Service Credit, the Service Credit(s) shall accrue to Transnet. If more than one Service Credit has accrued to Transnet in one Measurement Interval, the sum of the corresponding Service Credits shall be credited to Transnet in accordance with clauses 12.1.

12.3. Each month no later than 15 (fifteen) Business Days after the end of the preceding month, Transnet and the Service Provider shall meet to finalise that

preceding month's invoice. At such meetings, the Service Provider shall provide Transnet with a report detailing the Service Level Failures and the Service Credits to which Transnet is entitled.

- 12.4. The Service Provider shall itemise all Service Credits incurred in a Measurement Interval in its monthly invoice relating to the month applicable to the Measurement Interval, and such Service Credits shall be credited as the total amount of Service Credits related to that given month and be set off against the following months invoice.
- 12.5. If the Agreement is terminated prior to the end of a particular month, the Service Provider shall prepare the report referred to in clause 12.3 on the written request of Transnet and the assessment referred to therein shall be undertaken for the portion of the month during which the Agreement was in effect. Notwithstanding the foregoing, upon termination or expiration of the Term, the Service Provider shall pay to Transnet the amount of any Service Credits that are due and outstanding at that time

13 FAILURE TO COMPLY WITH SERVICE LEVELS

- 13.1 The Service Provider's performance of the Service Level shall be measured in terms of the performance matrix set out in **Annexure I**.
- 13.2 If the Service Provider fails to comply with its measurement and reporting obligations with respect to a Service Level as provided in **Annexure I**, it will be deemed to have failed such Service Level.
- 13.3 The Parties shall meet at least monthly, or more frequently as may be agreed, to review the Service Provider's actual performance against the Service Levels and shall collectively recommend remedial actions to resolve any performance Deficiencies.
- 13.4 Notwithstanding the recommended remedial action as stipulated above; the Service Provider shall, at its sole cost and expense, implement appropriate measures to remedy the performance Deficiency.

14 PROPOSALS AND QUOTATIONS

- 14.1 It is recorded that any associated service to the Services which has not

been incorporated into **Annexure A** and **B**, and which service may be necessary for executing the Services, shall be subject to a separate request for a Proposal or Quotation.

14.2 Where Transnet requests the Service Provider to provide a Proposal or Quotation as envisaged in clause 14.1 above, the Service Provider shall furnish Transnet with a detailed written Proposal or Quotation upon which shall be stated an all-inclusive price for such deliverable or service (with the components of the quoted pricing being specified, including with regard to taxation, shipping, foreign exchange and other charges), the technical specifications of the deliverable and the details as to the date until which a Quotation shall be open for acceptance by Transnet, which date shall not be more than 90 (ninety) days.

14.3 No contractual obligation is imposed on Transnet prior to the acceptance of the Service Provider's Quotation. In the absence of the Parties' specific written agreement to the contrary, Transnet shall have a final say with respect to the form or format of the Proposal or Quotation and that the terms and conditions of this Agreement will govern the contractual relationship between the Parties in such respect.

15 USE OF SUBCONTRACTORS

15.6 Subcontractor Approval and Appointment of Key Subcontractors

15.6.1 Subject to clause 15.6.1.2, the Service Provider shall not perform or provide the Services through any Subcontractor, without the prior written consent of Transnet Relationship Manager, which consent may be withheld by Transnet in its sole discretion. Any such consent shall be contingent on compliance by the Service Provider of the following:

15.6.1.1 Provision of the list of identified subcontractors suited for the service to be rendered in terms of this Agreement;

15.6.1.2 the execution by each such Subcontractor(s) of a confidentiality agreement (on substantially the same terms as contained in clause 46, with Transnet prior to such Subcontractor commencing the

provision of any Services to the Service Provider or Transnet;

- 15.6.1.3 written confirmation of the monetary value of the Services that will be sub-contracted as well as the Broad-Based Black Economic Empowerment ("B-BBEE") level ("B-BBEE Rating"), of the Subcontractor/s; and
- 15.6.1.4 that, it has not subcontracted Services comprising more than 25% (thirty twenty five percent) of the value of the annual Fees to a Subcontractor that does not have an equal or higher B-BBEE Rating to the Service Provider, unless the Subcontractor is, in terms of the Broad-Based Black Economic Empowerment Codes of Good Practice ("B-BBEE Codes"), an Exempted Micro Enterprise ("EME") that has the capability and ability to execute the Services as a Subcontractor.

15.7 Subcontractor Agreements

- 15.7.1 The Service Provider shall ensure that its agreement with its Subcontractors will contain materially the same terms and conditions as this Agreement, to the extent such terms and conditions are relevant to the Services to be provided by the Subcontractor.
- 15.7.2 The Subcontractors will not be allowed to further subcontract its obligations without Transnet's prior written consent, and must identify Transnet as the direct and intended third party beneficiary thereof.
- 15.7.3 Upon reasonable notice, at the request of Transnet, the Service Provider will allow Transnet to review the terms of any subcontract for Services.
- 15.7.4 In no event shall the Service Provider be relieved of its obligations under this Agreement as a result of its use of any Subcontractors. The Service Provider shall at all times be fully liable to Transnet for fulfilment of all the Service Provider's obligations under this Agreement and shall remain Transnet's sole point of contact regarding the Services, including with respect to payment.
- 15.7.5 The Service Provider shall supervise the activities and performance of

each Subcontractor and shall have full liability for any act or failure to act by such Subcontractor.

- 15.7.6 If Transnet determines that the performance or conduct of any Subcontractor is unsatisfactory or if it can be reasonably established or determined that reasons exist concerning the Subcontractor's ability to render future performance because of changes in the ownership, management, and/or financial condition of the Subcontractor, or there have been material misrepresentations regarding the Subcontractor, Transnet may notify the Service Provider of its determination in writing, indicating the reasons therefor, in which event the Service Provider promptly shall take all necessary actions to remedy the performance or conduct of such Subcontractor or, subject to the terms of clause 15.6, replace such Subcontractor with another Subcontractor or with the Service Provider Employees.

15.8 Fees

- 15.8.1 In no event shall the Service Provider charge Transnet any additional Fees over and above those contained in **Annexure I** for its use of any Subcontractors. The Service Provider must ensure that the Sub-Contractor's Fees, including additional costs and /or expenses are charged in accordance with the Rates Table contained in **Annexure I**.

15.9 Direct Agreements

- 15.9.1 Upon expiration or termination of this Agreement or any of the Services provided hereunder, for any reason whatsoever, Transnet shall have the right to enter into direct agreements with any Subcontractors. The Service Provider represents, warrants, and undertakes to Transnet that its arrangements with such Subcontractors shall not prohibit or restrict such Subcontractors from entering into direct agreements with Transnet.

16 B-BBEE AND SOCIO-ECONOMIC OBLIGATIONS

B-BBEE Scorecard Pre-Qual

- 16.1 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.

16.2 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.

16.3 The Service Provider undertakes to notify and provide full details to Transnet in the event there is:

16.3.1. 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

16.3.2. 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.

16.3.1 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. In the event that there are changes in the Suppliers B-BBEE status between the commencement of the contract & before expire of the contract. The onus is on the service provider to provide Transnet B-BBEE Representative with a remedial plan of action to improve and recover the yearly B-BBEE certificate remedial requirements.

17 PENALTIES

17.1 Non-compliance Penalty Certificate:

17.1.1 If any Non-compliance Penalty arises, the Supplier Development Manager shall issue a Non-compliance Penalty Certificate on the last day of each month during such Non-compliance indicating the Non-compliance Penalties which have accrued during that period.

17.1.2 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:

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

17.1.4 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.

17.2 Payment of Non-compliance Penalties:

17.2.1 Subject to Clause 17.1.1 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.

17.3 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.

17.4 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.

17.5 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.

18 THE NATIONAL INDUSTRIAL PARTICIPATION PROGRAMME (NIPP)

In terms of SBD 5, the Supplier has undertaken to enter into a NIPP obligation agreement with the DTIC. In consultation with the DTIC, Transnet may monitor compliance to the NIPP obligation agreement and in the event of non-compliance by the Supplier, penalties will be applied as per paragraph 8.3 of the NIPP Guidelines as issued by the DTIC.

19 FEES AND EXPENSES

16.6 In consideration of the provision of the Services, Transnet will pay to the Service Provider the Fees detailed in **Annexure D**.

16.7 Transnet will not be invoiced for materials used in the provision of the Services save for those materials, set out in **Annexure B** or material ordered pursuant to any adhoc request in terms of **Annexure C**.

16.8 Unless otherwise agreed in this Agreement, Transnet will reimburse to the Service Provider all reasonable and proper expenses incurred directly and solely in connection with the provision of the Services, provided that all such expenses:

16.9 are agreed by Transnet in advance;

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

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

16.12 will only be reimbursed if supported by relevant receipts.

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

21. INVOICING AND PAYMENT

20.1 Transnet shall pay the Service Provider the amounts stipulated in the relevant schedule or Work Order, subject to the terms and conditions of this

Agreement.

20.2 Transnet shall pay such undisputed amounts to the Service Provider, upon receipt of a valid and undisputed Tax Invoice together with the supporting documentation as specified in the Work Order appended hereto, once the valid and undisputed Tax Invoices, or such portion of the Tax Invoices which are valid and undisputed become due and payable to the Service Provider for the provision of the Services, in terms of this Agreement.

20.3 All Fees and other sums payable under this Agreement are exclusive of VAT, which will be payable at the applicable rate in ZAR.

20.4 Unless otherwise provided for in the Work Order(s) appended to this Agreement, Tax Invoices shall be submitted together with a month-end statement. Payment against such month-end statement shall be made by Transnet within 30 [thirty] calendar days after date of receipt by Transnet of the statement together with all valid and undisputed Tax Invoices and supporting documentation.

21 FEE AND ADJUSTMENTS

21

16.14 Fees for Services rendered in terms of this Agreement shall be subject to review as indicated in the Pricing Workbook annexed hereto as **Annexure D**, from time to time.

16.15 No less than 2 [two] months prior to any proposed Fee adjustment, the Parties shall commence negotiations for Fees for the next period or as otherwise indicated and appended hereto. The Parties shall have regard for market-related pricing of equivalent goods, continuous improvement initiatives, costs, frequency and changes to the scope of the Services.

16.16 Pursuant to clause 21.1 above, the Service Provider shall keep full and accurate records of all costs with the provision of the Services to Transnet, in a format 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.

16.17 Should Transnet and the Service Provider fail to reach an agreement on Fees for the successive period, either Party shall be entitled to submit this matter to dispute resolution in accordance with clause 52 of this Agreement.

16.18 If during the period of this Agreement Transnet can purchase similar Services of a like quality from another Service Provider at a lower fee than the Service Provider, Transnet may notify the Service Provider accordingly and the Service Provider shall have an opportunity to adjust the Fee of the Services purchased hereunder accordingly within 30 [thirty] calendar days of such notice. If the Service Provider fails to do so or cannot legally do so, Transnet may (i) purchase the Services from such other Service Provider in which case the obligations, including, but not limited to, any purchase and sale requirements and/or commitments, if any, of Transnet and the Service Provider hereunder shall be reduced accordingly; (ii) terminate this Agreement without any penalty, liability or further obligation; or (iii) continue purchases under this Agreement.

16.19 If during the period of this Agreement the Service Provider sells any services which are the same as, equivalent to, or substantially similar to the Services herein to a third party at a lower fee than the fee charged to Transnet, then the Service Provider shall adjust its fees for the Services rendered/sold to Transnet in terms of this Agreement, within 30 [thirty] calendar days, so that the Fee is the same or lower than the fees charged to such third party. If the Service Provider fails to do so or cannot legally do so, Transnet may (i) purchase the Services from such other Service Provider in which case the obligations, including, but not limited to, any purchase and sale requirements and/or commitments, if any, of Transnet and the Service Provider hereunder shall be reduced accordingly; or (ii) terminate this Agreement without any penalty, liability or further obligation. Within 30 [thirty] calendar days of the Commencement Date of this Agreement or at any time Transnet so requests, the Service Provider shall certify in writing to Transnet that it is in compliance with this clause and shall provide all information that Transnet reasonably requests in order to verify such compliance.

16.20 Should Transnet and the Service Provider fail to reach an agreement on Fees for the successive period, either Party shall be entitled to submit this matter to

dispute resolution in accordance with clause 52 of this Agreement.

22 RELATIONSHIP MANAGEMENT AND MEETINGS

16.21 The Parties Shall form a Service Steering Committee, for the purposes of having on-going and regular review of the Services, Service Provider's performance and relationship management by both Parties.

16.22 More specifically, the Parties undertake to hold regular meetings, where applicable, at such times and venues as shall be agreed upon between the Parties in order to discuss:

16.23 compliance with the provision of the Services;

16.24 compliance with the Service Levels;

16.25 quality of the Services with respect to the requirements;

16.26 Problems experienced by either of the Parties and possible solutions;

16.27 any modifications to the Services that are required to facilitate the required Service Level; and

16.28 any other relevant matters.

16.29 The meeting shall be attended by a minimum of 1 (one) nominated person representing each of the Parties.

16.30 Notwithstanding the measurement mechanisms provided in **Annexure D**, it is agreed that where applicable, there shall be 2 (two) mechanisms for monitoring performance in terms of this Agreement, namely:

16.31 monthly general compliance meetings – minutes to be produced within 14 (fourteen) days; and

16.32 fortnightly meetings for performance sign-off – minutes to be produced within 14 (fourteen) days.

23 TECHNOLOGY MANAGEMENT

16.33 General

16.34 The Service Provider shall obtain Transnet's prior written consent before acquiring, maintaining, upgrading or replacing any Transnet asset that is used by the Service Provider to satisfy its obligations hereunder if such acquisition, maintenance, upgrade or replacement could result in any material change in the Fees or Service Levels that are then being provided to Transnet. The Service Provider shall be obliged to provide Transnet with regular written reports at a frequency of at least once a year, or as such change may be required, on all such new equipment acquisitions or upgrades or replacements thereof that has an impact on the Services.

16.35 Technology Upgrades and Enhancements

16.36 The Service Provider will keep all Services under this Agreement current with Best Practice and leading technology standards as relevant and applicable to the Services.

16.37 All hardware used to provide the Services will be kept at levels supported by the respective OEM, and Equipment will be upgraded or replaced as required to meet the Service Levels, OEM end-of-life policies and timelines and OEM-recommended requirements.

16.38 The Service Provider shall schedule all such upgrades and replacements in advance and in such a way as to prevent any interruption or disruption of, or diminution in, the nature or level of any portion of the Services.

16.39 In addition, the Service Provider will apply continuous and regular innovation to the Services in accordance with Best Practice and leading technology standards, including providing for the refresh of its technology with respect to the Services to ensure that they are:

16.40 current and proven;

16.41 supported by the applicable maintenance Service Provider as part of such maintenance Service Provider's standard support and maintenance services; and

16.42 capable of meeting all of maintenance Service Provider obligations under the Agreement (including the Service Levels).

16.43 Technology Refresh

16.44 The Service Provider shall be required to keep Transnet advised of its technology refresh strategy and road map and shall be required to ensure that the Service Provider internal systems and infrastructure and the Service provision at all times remains compatible with Transnet's architectural technology standards and strategies.

16.45 The Service Provider shall also have an on-going responsibility to provide Transnet with information at least twice a year (or more frequently as may be requested by Transnet) regarding any newly improved or enhanced commercially available information technologies that reasonably could be expected to have a positive impact on the Services including, without limitation, in the areas of increased efficiency, increased quality and/or reduced costs ("Enhanced Technology").

16.46 Upon identifying any Enhanced Technology that the Parties believe would materially improve performance or reduce the cost of the Services, the Parties will meet and discuss in good faith the terms upon which such Enhanced Technology may be implemented into the Services, including detailed Service Levels specific to each such enhancement.

24 MAINTENANCE

16.47 As part of the Services and for the Term of this Agreement, the Service Provider shall, where applicable, provide on-site and off-site maintenance and support services in accordance with the Maintenance Schedule to be agreed to between the parties to ensure that the hardware used for the Services are in good operating condition, fair wear and tear excepted.

16.48 The maintenance and support services, including repairs and preventive maintenance must be undertaken in accordance with the applicable OEM's specifications and in accordance with the agreed Maintenance Schedule in referred to in 24.1.

25 PRE-DELIVERY TESTING BY THE SERVICE PROVIDER

26

26.1 Prior to presenting each Deliverable to Transnet for Acceptance, the Service Provider shall perform all pre-delivery functionality testing required in accordance with Transnet's reasonable requirements to the Master Services Agreement.

26.2 The Service Provider's testing shall be sufficiently rigorous to identify any faults or Deficiencies that are reasonably discoverable and the Service Provider shall be required to promptly remedy any faults or Deficiencies identified during such testing and retest the Deliverable in accordance with this clause 25 to verify that the fault or Deficiency has been successfully remedied and that there are no other Deficiencies.

26 REVIEW AND ACCEPTANCE

16.49 Transnet shall have the right to review and accept or reject all Deliverables, components of such Deliverables and any systems (generally comprised of the Deliverables) to be provided by the Service Provider to Transnet under this Agreement, pursuant to the methodology set forth in this clause 26.

16.50 Following the Service Provider's notification to Transnet that it has completed any component or Deliverable in terms of this Agreement, Transnet shall begin testing the component or Deliverable to determine whether such component or Deliverable complies with and conforms to the applicable technical and functional specifications and/or standards, which have been developed by the Service Provider and approved by Transnet (collectively, the "Acceptance Criteria").

16.51 If the component or Deliverable is identified as being part of a larger, integrated system being developed by the Service Provider, then any Acceptance of such component or Deliverables shall constitute conditional acceptance ("Conditional Acceptance") and such component or Deliverable shall be subject to final Acceptance in accordance with clause 26.7 below.

16.52 If Transnet determines that a component or Deliverable does not conform to the applicable Acceptance Criteria, Transnet shall provide the Service Provider with a report describing the defect, nonconformity and/or non-compliance with the Acceptance Criteria (the "Exception Report").

16.53 Within 5 (five) days following receipt of an Exception Report (or such longer

time period as may be agreed with Transnet), the Service Provider shall:

- 16.54 perform a Root Cause Analysis to identify the cause of the nonconformity;
- 16.55 provide Transnet with a written report detailing the cause of, and procedure for correcting, such nonconformity;
- 16.56 provide Transnet with satisfactory evidence that such nonconformity will not recur; and
- 16.57 remedy the nonconformity; provided, however, that if the nonconformity is incapable of remedy within such 5 (five) day period then, within a period of 5 (five) days thereafter, the Service Provider shall present to Transnet a mutually agreeable plan to remedy such nonconformity within a reasonable period of time.
- 16.58 Upon the Service Provider's notice to Transnet that it has remedied any such nonconformity, Transnet shall re-test the defective component or Deliverable and shall use reasonable efforts to complete such testing within a reasonable period of time having regard to the nature of the defect and/or the complexity of the component or Deliverable, at the end of which the process described in clause 26.2 above shall be repeated.
- 16.59 Upon achievement of a Conditional Acceptance for all identified components or Deliverables, Transnet shall begin testing the system that is comprised of such component(s) or Deliverable(s) using the applicable test procedures and standards (including relevant Acceptance procedures and test cases, as are approved by Transnet) to determine whether such system performs as an integrated whole in accordance with the Acceptance Criteria. After Transnet has completed such testing or upon expiration of the agreed-upon testing period (the "Acceptance Testing Period"), Transnet shall notify the Service Provider in writing within 5 (five) Business Days or a longer period as mutually agreed either that:
 - 16.60 the component or Deliverable meets the Acceptance Criteria and that Acceptance of such component or Deliverable has occurred; or
 - 16.61 that the Acceptance Criteria have not been met and provide an Exception

Report in respect of any failures or defects.

16.62 Notwithstanding the above, failure to issue a notice in terms of 26.7.1 and 26.7.2 above, such identified component or Deliverable, shall be deemed accepted by Transnet.

16.63 If Transnet determines that the Acceptance Criteria have not been so met, the process described in clause 26.2 above shall be initiated, with all references to “component” or “Deliverable” being references to the “system”, and all references to the “Acceptance Testing Period” being references to the “Final Acceptance Testing Period”.

16.64 After the Deliverable, component and/or system has been subjected to further Acceptance Testing, as set out in clauses 26.6 through 26.9 as the case may be, if Transnet does not accept the Deliverable, component or system it shall give the Service Provider written notice of its rejection (including a written description of the nonconformity or defects in order to enable the Service Provider to remedy same) and a final period of 14 (fourteen) days in which to correct the defect or nonconformity.

16.65 If the Service Provider is still unable to correct the defect within this period, then Transnet may in its sole discretion elect to:

16.66 direct the Service Provider to continue its efforts to make the Deliverable, component or system comply with the Acceptance Criteria, in which case, the Service Provider shall continue such efforts; or

16.67 accept the Deliverable, component or system with its defects, in which event, the charges with respect to such Deliverable shall be equitably reduced to reflect the presence of such defects.

16.68 It is specifically agreed that in the event that any agreed project plan or time schedule is delayed and/or extended due to a Deliverable not meeting the Acceptance Criteria at any time, the costs of such delay and/or extension shall, unless otherwise agreed, be borne by the Service Provider. the Service Provider shall further not be entitled to charge Transnet for any work done or time spent in ensuring that a Deliverable meets the Acceptance Criteria, save to the extent that it can demonstrably prove that the delay was caused wholly

by Transnet.

27 THIRD PARTY SERVICE COOPERATION AND SERVICE COMPATIBILITY

28.1 As part of the Services, the Service Provider shall work in coordination with, and cooperate with, any and all other Third Party Service Providers providing ICT and any other related services to Transnet so that all Transnet required ICT services are provided seamlessly across all Service Providers (including the Service Provider).

28.2 This coordination and cooperation referred to in this clause shall include

28.2.1 exchanging information with Transnet and such other Third Party Service Providers in connection with the Services and services, but shall exclude any:

28.2.2 financial information;

28.2.3 pricing information;

28.2.4 Intellectual Property;

28.2.5 information in respect of trading terms applicable between Transnet and the Service Provider and Transnet and the Third Party Service Providers generally; and

28.2.6 other information, which if exchanged, could be used by the Service Provider and Third Party Service Providers to fix the prices or to jointly agree to trading terms in respect of their services, or to act anti-competitively in any way.

28.2.7 participating in meetings with such other Third Party Service Providers and Transnet required to manage interfaces between and the interaction of the Services and the services being provided by such other Third Party Service Providers to Transnet; and

28.2.8 working jointly and in good faith with such other Third Party Service Providers required to allocate responsibilities where the services provided by other Third Party Service Providers overlap and with the

Service Provider and the other Third Party Service Providers, to prevent: (i) any failure by the Service Provider and the Third Party Service Providers to provide Transnet with end to end services, and/or (ii) any events, disputes or Problems.

28.2.9 The Service Provider will ensure that all Procured Equipment, enhancements, upgrades, and modifications shall be successfully integrated and interfaced, and shall be compatible with the services, equipment, networks, software, enhancements, upgrades, modifications and other resources that are being provided to or recommended to by Third Party Service Providers (collectively, the "Third Party Resources").

28.2.10 Further, the Service Provider shall use its best endeavours to ensure that none of the Services or other items provided to Transnet by the Service Provider shall be adversely affected by, or shall adversely affect, those of any such Third Party Service Providers, whether as to functionality, speed, service levels, interconnectivity, reliability, availability, performance, response times or similar measures.

28.2.11 To the extent that any interfaces need to be developed or modified in order for the Resources to integrate successfully, and be compatible with, the Third Party Resources, the Service Provider shall develop or modify such interfaces as part of the Services, pursuant to the process set forth in clause (change management).

28.2.12 Where any Problem with respect to the Services is caused by Resources or by the Service Provider, the Service Provider shall be responsible for correcting at its cost, such problem, except to the extent that the Service Provider can demonstrate, to Transnet's satisfaction, by means of a Root Cause Analysis, that the cause was not due to Resources or Third Party Resources.

28.2.13 The Service Provider shall immediately notify Transnet if an act or omission of a Third Party may cause a problem (including a Problem) or delay in providing the Services and shall work with Transnet to prevent or circumvent such problem or delay.

28 ASSET MANAGEMENT AND CONFIGURATION MANAGEMENT DATABASE (CMDB)

16.69 Transnet requires the Service Provider to develop a Configuration Management Database (“CMDB”) to include all the EUCD and to maintain such CMDB for the duration of the Agreement. Such CMDB must be aligned with certain mutually identified fields in Transnetfixed asset register.

16.70 It is recorded that the cost for developing the CMDB is included in the Fees and the Service Provider will within 30 (thirty) days of the Effective Date provide to Transnet proof of development, in a form acceptable to Transnet, including such terms and conditions for developing and maintaining the CMDB.

16.71 The Service Provider shall provide access to such inventory to Transnet upon request by Transnet. This access shall be provided through a portal.

30 ASSET SANITISATION SERVICES

30.1 As part of the Services, for dismantlement, decommissioning and Disengagement, the Service Provider, working together Transnet IT Data Service Provider, shall be required to sanitise Service Provider Equipment containing Transnet Data and Transnet Equipment, in accordance with TransnetDisposal of Electronic Media Standard policy, as managed by the Service Provider in the provision of the Services, and ensure that all Transnet Data is irretrievably removed. The Service Provider shall perform its obligations in a manner that does not adversely impact the environment and shall take such steps as may be reasonably possible to reduce its consumption of electricity and natural resources while at the same time reducing its production of waste materials.

30.2 In providing the asset sanitisation services referred to above, the Service Provider shall, where applicable, be required to adhere to:

30.2.1 environmental laws;

30.2.2 privacy and Data protection laws and policies, including the POPI Act; and

30.2.3 Best Practices.

31 TRANSNET DATA

- 31.1 Transnet shall permit the Service Provider to have access to Transnet Data solely to the extent that the Service Provider requires access to such data to provide the Services in accordance with the terms of this Agreement.
- 31.2 The Service Provider may only access and process Transnet Data in connection herewith or as directed by Transnet in writing and may not otherwise modify Transnet Data, merge it with other data, commercially exploit it or engage in any other practice or activity that may in any manner adversely affect the integrity, security or confidentiality of Transnet Data, other than as specifically permitted herein or as directed by Transnet in writing.
- 31.3 The Service Provider understands and agrees that Transnet owns all right, title and interest in and to Transnet Data and in and to any modification, compilation or Derivative Works therefrom (collectively, "Data and Modified Data"), and also owns all Intellectual Property, and other proprietary rights in and to the Data and Modified Data.
- 31.4 The Parties specifically record that all Transnet Data to which the Service Provider may be exposed, shall constitute Confidential Information and as such, the Service Provider shall comply with all the provisions of clause 46 with regard to Transnet Data.
- 31.5 The Service Provider hereby warrants in favour of Transnet that it shall at all times strictly comply with all Applicable Law relating to data protection and with all the provisions and requirements of Transnet's Data protection policies and procedures (including encryption standards) in force, from time to time, and any further requirements of which Transnet may, from time to time, advise the Service Provider in writing, or which may be required by Applicable Law.
- 31.6 The Service Provider hereby warrants and undertakes that it shall not, at any time copy, compile, collect, collate, process, mine, store, transfer, alter, delete, interfere with or in any other manner use Transnet Data for any purpose other than with the express prior written consent of Transnet, and to the extent necessary to provide the Services to Transnet.
- 31.7 The Service Provider warrants and undertakes that, as part of the Services, it shall take, implement and maintain all such technical and organisational security

procedures and measures necessary or appropriate to preserve the security and confidentiality of Transnet Data processed by it and protect such Transnet Data against unauthorised or unlawful disclosure, access or processing, accidental loss, destruction or damage, including any technical and organisational security procedures and measures as may be required or directed by Transnet from time to time. The Service Provider agrees, at Transnet's request, to provide relevant assistance to Transnet to devise appropriate technical and organisation measures.

31.8 The Service Provider further warrants that it shall ensure that all its systems and operations which it uses to provide the Services, including all systems on which Transnet Data is copied, compiled, collected, collated, processed, mined, stored, transmitted, altered or deleted or otherwise used as part of providing the Services, at all times, comply with Applicable Law and Best Practice for the protection, control and use of such data.

32 CYBER SECURITY LIABILITY RISK

32.1 It is hereby reordereed that cyber-attacks consists of any attack on a computer system or network carried out maliciously by electronic means (usually using another computer system) with the intention of gaining unauthorized access, stealing, monitoring, changing or destroying data.

32.2 Transnet owns and pursuant to this Agreement the Service Provider will have access to Transnet owned networks and systems, which systems often contain some of the most valuable information and if subjected to cyberattacks may expose Transnetto diverse and uncertain regulatory, criminal, civil liabilities, labour litigation, reputational damage and financial loss.

32.3 Pursuant to clause 31.1 and 31.2, the Service Provider hereby warrants that all equipment to be purchased for and rented out to Transnet have been fitted with robust IT mechanisms to prevent cyber loss, data extortion and ward off any cyber-attack against Transnet owned networks and systems

32.4 The Service Provider shall, within 30 days of signing of this Agreement and before delivery of the End User Computing Devices to Transnet, hire a third party auditing firm to perform an audit on internal and external procedures and systems

used by the Service Provider to ensure that the End User Computing Devices comply with clause 31.3.

32.5 The Service Provider will upon Transnet's request, provide Transnet with a copy of the audit results set forth in clause 31.4.

32.6 In the event of any of the events listed in clause 31.3 occurring, the Service Provider shall immediately notify Transnet of a cyber incident and do all that is possibly practical to obtain evidence and implement mitigation strategies to avoid further attacks and losses.

32.7 Within 30 days from the date of signature of this Agreement, the Service Provider shall provide Transnet with proof of insurance from a reputable and recognised insurance to the effect that the Service Provider has taken out an insurance policy to cover Transnet for the following:

16.72 Data loss, and indemnifying Transnet against Loss arising from a Data Breach in or about the course of Transnet business pursuant to this Agreement;

16.73 Data liability, and indemnifying Transnet against Loss arising from any Claim made against Transnet for the duration of this Agreement in respect of a Data Breach pursuant to this Agreement;

16.74 Cyber loss, and indemnifying Transnet against loss arising from cyber-attack on all equipment and computers purchased and rented from the Service Provider in terms of this Agreement; or

16.75 Data extortion in or about the course of Transnet's business for the duration of the Agreement, and indemnifying Transnet in relation thereto.

16.76 Cyber liability and indemnifying Transnet against Loss arising from any Claim made against Transnet during the course of this Agreement in respect of the Service Provider's negligent transmission of a Computer Virus that has emanated from or passed through to Transnet Computers;

16.77 Cyber Attack, or an Incident in or about the conduct of Transnet's business during the course of this Agreement; and

16.78 Network interruption and indemnifying Transnet against Loss incurred during

the course of this Agreement arising from Transnet's Computers being subject to a Cyber Attack.

32.8 Should the Service Provider at any stage fail to comply with clause 30.7 above, Transnet shall have the right to obtain an insurance policy and insure its risk against events listed in clauses 31.4.1 to 31.7 and offset any amount payable as insurance premium from the amount and/or fees payable to the Service Provider in terms of this Agreement.

33 PROTECTION OF PERSONAL INFORMATION

33.1 In this clause, the following expressions shall have the meanings set out hereunder:

33.1.1 "Cloud computing" shall mean the practice of using remote servers on the internet or internet-enabled devices to process data;

33.1.2 "Personal Information" shall mean any information relating to Transnet, its holding company, subsidiaries, associated and affiliated companies, directors, officers, employees, agents, contractors and customers, including (without limitation) information of the nature contemplated in the definition of "personal

information” in POPI and information processed by the Service Provider pursuant to or as a result of this Agreement;

33.1.3 “POPI” shall mean the Protection of Personal Information Act, 2013, including any regulations and amendments thereto from time to time;

33.1.4 “Process” shall mean any operation or activity or any set of operations, whether or not by automatic means, concerning Personal Information, including:

33.1.4.1 the collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consolidation or use;

33.1.4.2 dissemination by means of transmission, distribution or making available in any other form; or

33.1.4.3 merging, linking, as well as restriction, degradation, erasure or destruction of information.

33.2 The Service Provider shall strictly comply with all provisions of POPI relating to the Processing of Personal Information. Failure by the Service Provider to comply with POPI or any of the provisions of this clause shall be deemed to constitute a material breach of this Agreement and shall entitle Transnet, in its sole discretion, to immediately terminate this Agreement.

33.3 The Service Provider shall Process Personal Information only for the purposes relating directly to this Agreement and the rendering of the services in terms hereof. Unless provided for in terms of the provisions of this Agreement or otherwise as may be agreed to by Transnet in writing, the Service Provider shall not modify, merge with other data, commercially exploit or engage in any other practice or activity that may in any manner adversely affect the integrity, security or confidentiality of the Personal Information.

33.4 All Personal Information shared by Transnet with the Service Provider during the subsistence of this Agreement shall constitute confidential information and as such, the Service Provider shall comply with all the confidentiality and/or non-disclosure provisions contained in this Agreement, and as such the Service

Provider shall not disclose any Personal Information to any third party without Transnet's prior written consent.

33.5 The Service Provider shall implement and maintain adequate technical and organisational security and safety measures to protect the integrity of Personal Information Processed by it under this Agreement and to avoid any damage or unauthorised access to or loss of any such Personal Information.

33.6 The Service Provider shall immediately notify Transnet if Personal Information has been lost or damaged, or accessed or acquired by an unauthorised person, and the Service Provider shall comply with any instructions and/or directives which Transnet may issue in the event of any such circumstances.

33.7 Transnet shall be entitled to verify compliance of the technical and organisational security and safety measures implemented by the Service Provider, or appoint auditors to do so, upon reasonable prior notice to the Service Provider. Transnet shall respect the operational sequences of the business of the Service Provider and the Service Provider shall assist Transnet in the execution of the inspections in the best possible way.

33.8 The Service Provider shall provide Transnet upon request with any information required to meet Transnet's obligations in law relating to the processing of Personal Information and make the necessary documentation available within a reasonable time.

33.9 The Service Provider shall ensure that its personnel and /or any other authorised person or entity which processes Personal Information on its behalf receives adequate and appropriate training in the care and handling of Personal Information in terms of POPI and any other applicable data privacy legislation.

33.10 The Service Provider shall maintain adequate records of all processing of Personal Information, including the training of the Service Provider's personnel

with regard to the Protection of Personal Information and any applicable data privacy legislation.

33.10.1 The Service Provider shall not transfer any of the Personal Information across the borders of the Republic of South Africa or use any Cloud computing solutions without Transnet's prior written approval.

33.10.2 In the event that the Service Provider sub-contracts any of its obligations in terms of this clause 15 of this Agreement, it shall do so only by way of a written agreement with the sub-contractor, which agreement, imposes the same obligations relating to the protection of Personal Information on the sub-contractor as are imposed on the Service Provider under this Agreement. Where the sub-contractor fails to fulfil its data protection obligations under such written agreement, the Service Provider shall remain fully liable to Transnet for the performance of the sub-contractor's obligations under such agreement.

33.10.3 The Service Provider confirms that it has met all requirements for registration, if any, in terms of the laws applicable to this Agreement.

33.10.4 Upon this Agreement coming to an end for whatever reason, the Service Provider shall return to Transnet or destroy, if instructed by Transnet to do, all such Personal Information in its possession, or in the possession of its agents, sub-contractors or any third party who may have had access and /or possession of the Personal Information, in accordance with such procedure which Transnet may prescribe from time to time.

33.10.5 The Service Provider shall indemnify and hold Transnet harmless against any claim, loss, damage, cost and expense(including legal fees) relating to or arising from the Service Provider breaching any of the provisions of this clause.

33.10.6 In so far as Transnet processes any Personal Information of the Service Provider, Transnet shall conduct such processing within the

ambit of the prevailing data privacy legislation and shall adhere to such provisions to the fullest extent.

34 DOCUMENTATION

34.1 The Service Provider shall be responsible for developing and/or maintaining up-to-date Documentation. The Service Provider shall provide the Documentation to Transnet electronically (and in a manner such that it can be accessed via either Transnet's intranet or the Internet).

34.2 The Documentation shall describe, inter alia:

34.2.1 the manner in which the Service Provider will provide the Services hereunder, including the Equipment (hardware) to be used (including operations manuals, user guides, specifications and End-User support documentation) that provide further details of such activities and detailed problem and Change Management Procedures; and

34.2.2 the activities the Service Provider will undertake in order to provide the Services including, where appropriate, direction, supervision, monitoring, staffing, quality assurance, reporting, planning and oversight activities, as well as the specific measures taken to comply with all Applicable Laws and regulations including, without limitation, those relating to the privacy and security of Transnet Data and any other laws and regulations applicable to Transnet Data.

34.3 The format of the Documentation must be agreed to between the Parties.

34.4 The Service Provider's responsibilities with respect to Documentation shall include, on an on-going basis, auditing Documentation for completeness and accuracy to ensure that the Documentation is available, organised, readable, and updated. The resulting audit findings will be reported monthly to Transnet in writing. Where it is determined that Documentation is inaccurate, the Service Provider shall promptly correct such Documentation.

35 CHANGE MANAGEMENT /CONTROL

35.1 During the period of this Agreement, Transnet or the Service Provider can make written suggestions for amendments to the Services contained in **Annexure B** and Schedules to this Agreement.

35.2 All changes to Services, as defined and configuration items associated with such Services shall follow the Change Management procedure as set out in **Annexure I**.

35.3 In such an event the Requested party will advise the Requestor within 14 (fourteen) days or such other period as mutually agreed within the said 14 (fourteen) days whether the amendment is possible and what effect it will have on this Agreement. Requests for changes must be sufficiently detailed to enable the other Party to assess, ascertain and evaluate the impact of the requested change on the charges, timetable or any other aspect of the Agreement and the Parties agree to work together to consider, and if appropriate, seek to agree on any changes.

35.4 Unless otherwise agreed, until a change is agreed in writing all Parties will continue to act in accordance with the latest signed version of the Agreement, as the case may be.

35.5 Once agreement has been reached regarding the required amendments, and subject to clause 34.2 (Change Management), the Parties shall amend the Agreement. No change will be affected before agreement has been reached in writing and signed by both Parties.

36 SERVICE PROVIDER EMPLOYEES

36.1 The Service Provider's Employees 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 Employees under any circumstances regardless of the degree of supervision that may be exercised over the Employees by Transnet.

36.2 For purposes of this clause, Service Provider's Employees includes employees of Subcontractors and Service Provider Affiliates who are or may from

time to time be involved in the provision of any component of the Services.

36.3 The Service Provider shall ensure that the its Employees:

36.3.1. have the necessary knowledge in respect of Transnet's and its Affiliates' business, technical and operational requirements and needs in terms of the Agreement;

36.3.2. will be entitled to work in South Africa or any other country in which the Services are to be performed

36.3.3. comply with all reasonable requirements made known to the Service Provider by Transnet concerning conduct at any Transnet Sites 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;

36.3.4. at all times act in a lawful and proper manner in accordance with these requirements and Applicable Law;

36.4. Transnet reserves the right to refuse to admit or to remove from any premises occupied by or on behalf of it, any Service Provider Employees 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 Employees, provided that Transnet notifies the Service Provider of the reasons of such refusal. The exclusion of any such individual from such premises shall not relieve the Service Provider from the performance of its obligations under this Agreement.

36.5. The Service Provider agrees to use all reasonable endeavours to ensure the continuity of its Employees assigned to perform the Services. If any re-assignment by the Service Provider of those Employees is necessary, or if Transnet advises that any such Employees assigned are in any respect unsatisfactory, including where any such Employees are, then

the Service Provider will promptly supply a replacement of equivalent calibre and experience.

37. AUDIT RIGHTS

- 37.1. This Agreement is subject to the provisions of the Public Finance Management Act 1 of 1999 (“the PFMA”).
- 37.2. Transnet, acting through its duly authorised representatives (including without limitation, its external auditors) shall be given reasonable access to inspect, during business hours relevant books, records, and supporting documentation, where applicable, related specifically to the rendering of the Procurement Services and to make copies of such books, records, and supporting documentation for audit purposes.
- 37.3. The Service Provider shall maintain a complete audit trail of all financial and non-financial transactions pertaining to this Agreement and which may be required by Transnet for purposes of clause 36.2 above.
- 37.4. To the extent that any audit reveals a non-compliance on the part of the Service Provider and/or a material inadequacy or deficiency in the Service Provider’s performance, in anticipation of the findings of a follow up audit, the Service Provider shall prepare and deliver to Transnet a detailed plan that is reasonably acceptable to Transnet for promptly correcting such failures and exceptions (“Corrective Plan”).
- 37.5. The Corrective Plan and its timelines must align to Transnet’s Audit and Control Deficiency Correction Methodology.
- 37.6. If any such audit reveals that the Service Provider has overcharged Transnet by any amount during the period to which the audit relates (as determined prior to the commencement of the audit), then the Service Provider shall promptly set off overcharges to Transnet in the following month’s invoice and in addition, shall be liable to pay Transnet an amount equal to 15% (fifteen percent) of the total overcharged amount.
- 37.7. Except as indicated below, Transnet shall bear the costs of the audit of any initial audit and upon reasonable notice to the Service Provider. The

cost of all follow up audits to verify that audit findings have been rectified shall be borne by the Service Provider. The Service Provider may request to appoint an auditor of its choice as long as such appointment does not unduly delay the commencement of the follow up audit. The Service Provider shall also bear all costs and expenses associated with correcting all deficiencies and exceptions identified in the Corrective Plan.

37.8. The audits shall be conducted expeditiously and efficiently and may not unreasonably interfere with the Service Provider's ability to perform the Services in accordance with the Service Levels.

37.9. The auditors shall be obliged to comply with access protocols and control procedures of the Service Provider, which access shall not be unreasonably withheld, but must be maintained by the Service Provider and made available to Transnet for a period of 5 (five) years after the expiry or termination of this Agreement or such other period as is required by Applicable Law in relation to those records, documents or other information.

38. VERIFICATION OF SERVICE PROVIDER'S RECORDS

38.1. Transnet may at its discretion audit the Service Provider's compliance with this Agreement (including verification of the Service Provider's premises and systems) provided that any such verification is carried out with reasonable prior notice and in a reasonable way so as to cause as little disruption as is reasonably possible to the delivery of the Software and the Service Provider's other business. Such verifications will only be done if Transnet has reason to believe that the Service Provider is not carrying out its duties with reasonable care and skill or that it does not have the required staff and equipment in order to provide the services that it is contracted to provide in terms of this agreement.

38.2. The Service Provider shall provide all assistance reasonably requested by Transnet in relation to any verification, including access to the Service Provider's Personnel, records and premises, provided that Transnet or its agents will only be given access to the records that they request in

writing with sufficient prior notice.

38.3. Transnet may engage Third Party advisers to undertake any such verification.

38.4. Transnet may allow any Regulator and any persons appointed by such Regulator to participate in any such verification and to receive the results of that verification.

39. INTELLECTUAL PROPERTY RIGHTS

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39.1 Transnet Intellectual Property

39.1.1 Transnet retains all right, title and interest in and to its Intellectual Property and the Service Provider shall only be permitted to use Transnet's Intellectual Property, without the written consent of Transnet only for the sole purpose of providing the Services and rendering the Deliverables to Transnet and its Affiliates. Except as otherwise requested or approved by the Transnet, which approval shall be in the Transnet's sole discretion, the Service Provider shall cease all use of Transnet Intellectual Property as of the earliest of: (i) termination or expiration date of this Agreement, or (ii) the date of rendering of the last of the Deliverables.

39.1.2 If so required by the Transnet, the Service Provider shall certify in writing to

Transnet that it has either returned all Transnet Intellectual Property to Transnet or destroyed or deleted all other Transnet Intellectual Property in its possession or under its control.

39.2 Intellectual Property developed during the Services:

39.2.1 Transnet shall have all Intellectual Property Rights in all Developed Material and Paper Deliverables, developed or generated for Transnet as part of the Services or Deliverables provided under this Agreement. Notwithstanding the provisions of clause 38.1, the Service Provider hereby irrevocably assigns, transfers and conveys to Transnet without further consideration all of its Intellectual Property Rights in such Paper Deliverables and Developed Material, including where such materials have not yet been created, all future copyright therein (with immediate effect from the date that such copyright comes into existence).

39.2.2 The Service Provider agrees to execute all documents and take all other actions as may reasonably be necessary, or as Transnet may reasonably request in writing, to perfect Transnet's ownership of the Intellectual Property Rights in such Paper Deliverables, and/or Developed Material, and further, hereby irrevocably appoints Transnet as its agent with full power of attorney in rem suam to sign all such deeds and documents and to take all such actions as may be necessary or desirable for Transnet to perfect its proprietary rights in such Intellectual Property should the Service Provider fail to comply with any such written request within 5 (five) days after date thereof.

39.2.3 Unless otherwise agreed in a Transaction Document, where Paper Deliverables, Developed Software or Developed Web Material incorporates Service Provider Intellectual Property, systems, and processes that the Service Provider did not develop in the course of providing Services under the Agreement, the Service Provider hereby grants Transnet and its Affiliates an irrevocable, perpetual, world-wide, fully paid-up, royalty-free, non-exclusive license for Transnet and its Affiliates and their Staff and agents to perform any lawful act, including the right to use, copy, maintain, modify, enhance and create derivative works in connection with such Service Provider Intellectual Property.

39.2.4 The Intellectual Property Rights in and to Data, literary works or other works of authorship generated in the course of performing Services and creating Paper Deliverables under the Agreement, such as manuals, training materials, reports, and other Documentation, shall be owned by the Transnet. For the sake of clarity, it is recorded that Transnet shall have sole and exclusive ownership of the Intellectual Property Rights in all reports generated by the Service Provider under the Agreement and all of the Transnet's Data.

39.3 Service Provider Intellectual Property:

39.3.1 The Service Provider retains all right, title and interest in and to the Service Provider's pre-existing Intellectual Property that is used in connection with the Services to the extent listed in **Annexure B**.

39.3.2 Except as may be expressly provided to the contrary in this Agreement, as of any termination or expiration of this Agreement, the Service Provider shall grant to Transnet the post -termination rights against payment therefor by Transnet at a market related price.

39.4 Third Party Intellectual Property:

39.4.1 The Service Provider shall not introduce into the Transnet's environment any third party Intellectual Property or use any third party Intellectual Property to provide the Services without first obtaining the Transnet's written consent thereto. In the event of such consent, The Service Provider shall be responsible for obtaining a license on behalf of Transnet and in Transnet's name, to use such Third Party Intellectual Property.

39.5 Use of third party Intellectual Property licensed to the Transnet:

39.5.1 The Service Provider shall not, without the Transnet's express prior written consent, use any third party Intellectual Property licensed to Transnet, whether to provide the Services or for any other purpose whatsoever.

39.5.2 The Service Provider acknowledges that such unauthorised use of third party Intellectual Property licensed to Transnet may constitute a breach of the provisions of the license agreement/s in terms of which such third party Intellectual Property is licensed to the Transnet. Should consent be granted to

the Service Provider to use third party Intellectual Property licensed to Transnet, the Service Provider undertakes that it shall only use such Intellectual Property strictly in accordance with the provisions of the relevant consent and the terms of the license rights held by Transnet.

40. REPRESENTATIONS AND WARRANTIES

40.1 The Service Provider warrants to Transnet that:

40.1.1 it has full capacity and authority to enter into and to perform this Agreement and that this Agreement is executed by a duly authorised representatives of the Service Provider;

40.1.2 it will discharge its obligations under this Agreement and any annexure, appendix or schedule hereto with all due skill, care and diligence;

40.1.3 it will be solely responsible for the payment of remuneration and associated benefits, if any, of its Personnel and for withholding and remitting income tax for its Personnel in conformance with any applicable laws and regulations;

40.1.4 it will procure licences for Transnet in respect of all Third Party Material detailed in the Work Order(s), and will procure the right for Transnet to take such copies [in whole or in part] of such Third Party Materials as it may reasonably require for the purposes of back-up for archiving and disaster recovery; and

40.1.5 the use or possession by Transnet of any Materials will not subject Transnet to any claim for infringement of any Intellectual Property Rights of any third party.

40.2 The Service Provider further warrants that it will perform its obligations under this Agreement in accordance with the Service Levels as defined in the relevant schedule. Transnet may at its discretion audit compliance with the Service Levels, provided that any such audit is carried out with reasonable prior notice and in a reasonable way so as not to have an adverse effect on the performance of the Services. Without prejudice to any rights or entitlements applicable to Transnet under this Agreement, in the event that

the Service Provider fails to meet the Service Levels, Transnet may claim appropriate service credits or invoke a retention of Fees as detailed in the relevant schedule and/or Work Order.

40.3 The Service Provider warrants that for a period of 90 [ninety] calendar days from Acceptance of the Deliverables they will, if properly used, conform in all material respects with the requirements set out in the relevant schedule. The Service Provider will at its expense remedy any such non-conformance as soon as possible but in any event within 30 [thirty] calendar days of notification by Transnet. In the event that the Service Provider fails or is unable to remedy such non-conformance within such time-scale, Transnet will be entitled to employ a third party to do so in place of the Service Provider and any excess charges or costs incurred by Transnet as a result shall be paid by the Service Provider.

40.4 The Service Provider will remedy any defect within 30 [thirty] calendar days of being notified of that defect by Transnet in writing.

40.5 The Service Provider will not be liable to remedy any problem arising from or caused by any modification made by Transnet to the Deliverables, or any part thereof, without the prior approval of the Service Provider.

40.6 The Service Provider shall advise Transnet of the effects of any steps proposed by Transnet pursuant to clause 39.5 above, including but not limited to any cost implications or any disruption or delay in the performance of the Services. The Parties agree that any changes to the Services, including the charges for the Services or any timetables for delivery of the Services, will be agreed in accordance with the change management procedures, as set out in clause 34.

41. BREACH AND TERMINATION

41.1 Early Termination

41.2 Termination for Convenience of Services and Agreement

41.2.1 Following the expiry of a period of 24 (twenty four) months after the Effective Date, Transnet shall have the right to terminate for its

convenience (i) all of the Service , orders and other Services; or (ii) this Agreement, in each case by delivering to the Service Provider a Termination Notice at least 60 (sixty) days notice of termination, wherafter this Agreement shall be terminated and be of no further force or effect, subject to any conditions that Transnet may impose in relation to the rental EUCD.

41.2.2 Notwithstanding the notice period set forth in clause 40.1.1.1 and where circumstances permit, Transnet shall have the right to extend, on 60(sixty) days written notice period for an additional period of up to 6 (six) months as Transnet may deem necessary ensure the successful and complete hand over of the Services.

41.2.3 Save as provided for in clause 40.1.1.2 or elsewhere in this Agreement, if Transnet terminates the Services and/or terminates this Agreement in its entirety as provided in clause 40.1.1, upon completion of Service Provider's Disengagement obligations with respect to the terminated Services, Transnet shall pay to Service Provider the Termination Fee.

41.3 Termination for Convenience of Services and Agreement

41.3.1 Subject to the provision of clause 40.1.2.2, Transnet may terminate a this Agreement or Service , in whole or in part, for convenience and without cause at any time by giving the Service Provider at least 60 (sixty) days prior written notice designating the Termination Date.

41.3.2 For the avoidance of doubt, Transnet shall not be entitled to terminate any Services performed by Service Provider as part of the Transition Services and Transformation Services for convenience as specifically detailed in the Transition Plan.

41.3.3 Other than being liable for payment to Service Provider for work completed and Services delivered pursuant to this Agreement prior to its termination and as set forth in clause 40.1. and 40.1.2 Transnet shall have no liability to the Service Provider with respect to such termination.

41.3.4 In the event that this Agreement or Services is terminated for convenience in accordance with clause 40.1.2.1, Transnet will reimburse Service

Provider for:

- 41.3.5 any capital expenditure incurred by Service Provider subject to: (i) Service Provider being able to demonstrate to the Transnet's satisfaction that, despite its best efforts, it is unable to recoup such expenditure; and (ii) ownership of the assets (in respect of which capital was expended) being transferred to Transnet;
- 41.3.6 actual penalties levied against the Service Provider by a Third Party supplier as a result of Service Provider's early termination of a long term supply agreement entered into between the Service Provider and such Third Party supplier, subject to Transnet having provided its prior written approval to Service Provider of the long term supply agreement at the commencement of the Project or the Other Services, as the case may be; and
- 41.3.7 pre-paid support and maintenance fees paid by Service Provider to a Third Party licensor where the Service Provider, despite its best efforts, is unable to recoup such expenditure from the Third Party licensor.

41.4 Reduction in Fees

- 41.4.1 In the case of a termination of the Agreement in part, the charges payable under this Agreement shall be reduced to reflect the partial termination of the Agreement.

41.5 Change in Control of Service Provider

- 41.5.1 In the event of a sale, merger, acquisition or other Change in Control of Service Provider that will adversely and materially affect the provision of Services to the Transnet, then at any time within 60 (sixty) days after the Change in Control, Transnet may terminate the Agreement by giving Supplier at least 30 (thirty) days prior notice and designating a Termination Date.
- 41.5.2 If Transnet terminates the Agreement pursuant to this clause, Service Provider shall be obliged to perform its Disengagement obligations hereunder until such obligations are fulfilled.

41.5.3 Any termination pursuant to this clause 39.2 shall not constitute a termination for convenience and Transnet shall in no event be required to pay a Termination Fee to Service Provider with respect to any such termination and except for those terms that survive any expiration or termination of this Agreement, Transnet shall have no further liability or obligation to Service Provider under this Agreement, including that Transnet shall not be liable to pay for its receipt of Disengagement Services.

41.6 Non Compliance with Applicable Laws

41.6.1 Transnet may terminate this Agreement, in whole or in part, by giving a Termination Notice to Service Provider, specifying the Termination Date in the event that it is advised that the Applicable Laws, as they may be changed, enacted or repealed, prevent the Service Provider from performing its obligations under this Agreement.

41.6.2 Any termination pursuant to this clause 40.3 shall not constitute a termination for convenience and Transnet shall in no event be required to pay a Termination Fee to Service Provider with respect to any such termination and except for those terms that survive any expiration or termination of this Agreement, Transnet shall have no further liability or obligation to Service Provider under this Agreement. Transnet shall however be liable to pay for its receipt of Disengagement Services.

41.7 Termination for Breach

41.7.1 Material Breach

41.7.2 If Service Provider commits a material breach and fails to remedy such material breach within 14 (fourteen) days of notice thereof from Transnet, Transnet shall be entitled, in addition to any other rights and remedies that it may have in terms of the Agreement or otherwise, to terminate this Agreement and/or any or all Schedules and Appendices upon written notice to Service Provider, without prejudice to any claims which Transnet may have for damages against the Service Provider.

41.7.3 Non Material Breaches

41.7.4 If Service Provider commits a breach of any term of this Agreement which constitutes a non-material breach and fails to remedy such breach within 21 (twenty-one) days of notice thereof from Transnet, Transnet shall be entitled (in addition to any other rights and remedies that it may have in terms of the Agreement or otherwise and without prejudice to any claims which Transnet may have for damages against the Service Provider) to terminate this Agreement and/or any or all Schedules and Appendices upon written notice to Service Provider in circumstances where:

41.7.4.1 during the first 6 (six) months following the Effective Date, Service Provider has failed to remedy more than 12 (twelve) non-material breaches within the 21 (twenty one) day notice period in a Three Month Period;

41.7.4.2 after a period of 6 (six) months following the Effective Date, Service Provider has failed to remedy more than 6 (six) non-material breaches within the 21 (twenty-one) day notice period in a Three Month Period.

49.10.1 For the purposes of this clause, the term "Three Month Period" means each consecutive 3 (three) month period calculated as from the Effective Date onwards and where the remedy period extends beyond the Three Month Period in which the breach in question occurred, that breach shall be reckoned in the following Three Month Period.

41.7.4.3 Transnet shall be required to act in terms of clause 40.4.2 within a reasonable period of time of Transnet becoming aware of the breach occurring, provided that it shall forfeit its right to place Service Provider on terms in accordance with the provisions of clause 40.4.2.1 after a period of 18 (eighteen) months has expired following Transnet becoming aware of the breach in question.

41.7.4.4 Further, Service Provider is afforded an opportunity to notify Transnet of any intended remedial action that it wishes to take in order to remedy a non-material breach and to discuss same with the Transnet. Should the Parties have agreed in writing on the appropriate rectification action that Service Provider shall take to remedy any non-material breach, which agreement shall not be unreasonably withheld, the timeous completion of

such rectification in compliance with the agreed rectification action shall constitute a remedy of the non-material breach in question, and consequently such breach shall not be taken into account in calculating the number of non-material breaches which the Service Provider has failed to remedy for the purposes of clause 40.4.2.1.

41.7.4.5 The provisions of this clause 40.4.2 will not apply in circumstances where a non-material breach amounts to a material breach (even in circumstances where the Service Provider has been placed on terms in accordance with the provisions of this clause 40.4.2), in which case Transnet shall be entitled to exercise its rights in terms of clause 40.4.1 above.

41.7.4.6 Transnet accepts that this clause does not provide Transnet with an opportunity to place the Service Provider on terms for a non-material breach for its failure to perform any Services at performance levels or Service Levels other than as contracted for under this Agreement.

41.7.4.7 Should Transnet fail to make any undisputed payment within 60 (sixty) days after the due date specified in this Agreement for such payment, and provided that:

41.7.4.7.1 Transnet fails to remedy such failure within 30 (thirty) days after Transnet has received written notice of such failure from the Service Provider; and

41.7.4.7.2 the undisputed payment is equivalent to an amount greater than the Fees invoiced by Service Provider in the 3 (three) month period preceding the date on which Transnet is placed on notice in terms of clause 40.4.2.6.1;

41.7.4.7.3 Service Provider shall be entitled to terminate the Agreement or the relevant Schedule or Appendix, provided that it is specifically recorded that the withholding of disputed charges in terms of clause 41.3 shall not constitute a breach of the Agreement by the Transnet. Notwithstanding the termination of this Agreement or the applicable Schedule or Appendix by the

Service Provider in terms of this clause, Service Provider shall remain obligated to perform its Disengagement obligations set forth in clause 48 until they are fulfilled. Transnet shall be liable to pay the Termination Fee for any termination pursuant to this clause. In the event that the Service Provider agrees to render Disengagement Services following Termination, Transnet shall be liable to pay for its receipt of Disengagement Services in terms of the provisions of this Agreement.

41.7.4.8 It is agreed that should this Agreement be terminated as a result of the termination of the Share Purchase Agreement, for any reason whatsoever, Transnet shall not be liable to Service Provider for any losses or claims arising from the termination of this Agreement, including for the payment of any Termination Fee.

41.8 Events of Default

41.8.1 The occurrence of any 1 (one) or more of the Events of Default set forth in clause 40.5.2 shall constitute a material breach of this Agreement that shall afford Transnet the right to terminate this Agreement (or any applicable Schedule or Appendix thereto or part thereof), at its option and upon written notice to Service Provider,

41.8.1.1 which termination will be without prejudice to any claims which Transnet may have inter alia for damages against Service Provider, to institute an action for specific performance and/or any additional remedies that may be set forth in this Agreement or in any Schedule, Attachment or Appendix or as it may be entitled to in law; and

41.8.1.2 which right to terminate this Agreement (or any applicable Schedule or Appendix thereto or part thereof), Transnet may exercise within a period of no later than 180 (one hundred and eighty) days from the occurrence of the Event of Default.

41.8.2 The Events of Default are:

41.8.2.1 Service Provider becomes liable for the total annualised At-Risk Amount attributable to the Services or any Service Tower in a consecutive

12 (twelve) month period or less; or Service Provider reaches half of the annualised At-Risk Amount attributable to any Service Tower in a consecutive 6 (six) month period or less.

- 41.8.2.2 a Disaster Event occurs which is not recovered in accordance with the timelines agreed to and/or as set out in the relevant Schedules, Appendices and/or Attachments. For the avoidance of doubt, in the event that a Disaster Event occurs as a result of a Force Majeure Event, the provisions of clause 46 and not this clause 40.5.2.2 shall apply to such Disaster Event;
- 41.8.2.3 the occurrence of 3 (three) or more Priority One Problems affecting the same system, which occurs during 3 (three) or more consecutive Measurement Intervals;
- 41.8.2.4 Service Provider's failure to maintain insurance coverage as specified in clause 49, provided that such failure is not remedied by Service Provider within 30 (thirty) days following receipt of written notice of such failure from Transnet;
- 41.8.2.5 Service Provider carries out a compromise, scheme of arrangement or composition by the Service Provider with any or all of its creditors;
- 41.8.2.6 the liquidation of the Service Provider or placement of the Service Provider in judicial management, whether provisionally or finally;
- 41.8.2.7 a default or cessation, or a reasonable prospect of default or cessation (as the case may be), of the Service Provider's normal line of business relating to the Services;
- 41.8.2.8 the commission of any act or any omission which is an act of insolvency by an individual in terms of the Insolvency Act, 1936, or the existence of circumstances which would allow for the winding up of the Service Provider in terms of section 81 of the Companies Act, 2008;
- 41.8.2.9 the disposal by the Service Provider of a material portion of its undertaking or assets; or
- 41.8.2.10 Service Provider fails, to remediate any internal control deficiencies

and/or exceptions identified in any SAS 70 Type II Reports and/or Transnet's (or its Independent Auditor's) inquiries conducted pursuant to clause 36 within the timelines agreed in the Corrective Plan, or fails to comply with the security assessment pursuant to this Agreement.

41.8.3 Rights and Remedies of Transnet Upon Default of Service Provider

41.8.3.1 Upon the occurrence of an Event of Default with respect to which Transnet exercises a termination remedy as described in clause 40.5.1, Transnet shall effectuate such termination by delivering to Service Provider a Termination Notice specifying the Termination Date; and provided, however, that Service Provider shall remain obligated to perform its Disengagement obligations hereunder until they are fulfilled.

41.8.3.2 Any termination pursuant to this clause 40.5 shall not constitute a termination for convenience, and Transnet shall in no event be required to pay a Termination Fee to Service Provider with respect to any such termination.

41.9 Rights and Remedies of Service Provider upon Default of Transnet

41.9.1 The failure by Transnet to perform any obligation under this Agreement, other than Transnet's obligation to pay undisputed amounts owed to Service Provider under the Agreement as set forth in clause 39.4.2.6, shall not be deemed to be grounds for termination by Service Provider of the Agreement or of any Schedule or Appendix, provided that the Service Provider shall remain entitled to exercise any other rights which it may have with respect to claims for damages, specific performance and/or any additional remedies that may be set forth in this Agreement or in any Schedule or Appendix.

42. FORCE MAJEURE

42.1.1 Neither Party shall have any claim against the other Party arising from any failure or delay in the performance of any obligation of either Party under this Agreement caused by an act of force majeure such as acts of God, fire, flood, war, lockout, government action, laws or regulations, terrorism or civil disturbance, defaults or other circumstances or factors beyond the

reasonable control of either Party, and to the extent that the performance of obligations of either Party hereunder is delayed by virtue of the foregoing, any period stipulated for any such performance shall be reasonably extended. Transnet may however rely on strikes, industrial dispute and riots as a ground of force majeure.

42.1.2 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.

42.1.3 If a Party fails to agree to 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.

43. DISENGAGEMENT SERVICES

44.

General Obligations

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46.

47.

43.1. Upon termination or expiration of this Agreement, the Service Provider shall have completed the Disengagement Services for the Services in full cooperation with Transnet, its Affiliates and/or third parties including as the case may be, any replacement Service Provider(s) that may be designated by Transnet (the "Replacement Service Provider") and

43.2. generally, accomplish a complete handover of the Services from Service Provider to any Replacement Service Provider(s) designated by Transnet without causing any unnecessary interruption of, or causing any unnecessary adverse impact on the Services.

43.3. Clauses 42.4 to 42.13 hereunder sets forth the framework for a Disengagement Plan, which outlines the high level obligations and tasks required to accomplish an orderly transition to Transnet, its Affiliates and/or the Replacement Service Provider.

43.4. The Service Provider's obligation to provide the Services shall not cease until the Disengagement Services have been completed in accordance with this clause 42, to the satisfaction of Transnet.

43.5. Disengagement Period

43.5.1. Commencement of the Disengagement Services shall be on the date stipulated by Transnet in the Termination Notice and for a period to be mutually agreed by the Parties and in accordance with this clause 42.

43.5.2. The Service Provider agrees that the Disengagement Services shall continue for a period of time, which may be for a period of up to 12 (twelve) months, or such longer period as is required by Transnet, (with the applicable date on which the Service Provider's obligation to perform the Services expires being referred to as the "Expiration Date").

43.5.3. If requested by Transnet and agreed by the Service Provider to perform Disengagement obligations on an expedited basis if Transnet terminates this Agreement pursuant to clauses 17 and 40, the Service Provider shall comply with such a requested subject to clause 42.6 hereunder.

43.6. Specific Obligations

43.6.1. The Service Provider shall as soon as reasonably possible following its issuance or receipt of a Termination Notice, but in no event longer than 10 (ten) Business Days thereafter; provide to Transnet a complete and accurate list of all items that will be subject to return to Transnet as provided under this Agreement.

43.6.2. Further to the provisions of clause 15 the Service Provider agrees that its agreements with Subcontractors, shall not include any terms that would prohibit or otherwise restrict such Subcontractors, from entering into agreements with Transnet, its Affiliates and/or the Replacement Service

Provider (whether directly or through an assignment) after Disengagement as provided herein and as it relates to Services.

43.7. Full cooperation, information and knowledge transfer:

43.7.1. During Disengagement, the Parties shall cooperate fully with one another to facilitate a smooth transition of the terminated Services from the Service Provider to Transnet, its Affiliates and/or the Replacement Service Provider.

43.7.2. The Service Provider shall provide full cooperation which shall include provision of full, complete, detailed, and sufficient information (including all information then being utilised by Service Provider with respect to programs, tools, utilities and other resources used to provide the Services) and knowledge transfer with respect to all such information in order to enable Transnet's, its Affiliate's and/or the Replacement Service Provider's Employees (or that of Third Parties) to fully assume, become self-reliant with respect to, and continue without interruption, the provision of the Services.

43.7.3. The Service Provider shall cooperate with Transnet and all of Transnet's other Service Providers, to provide a smooth transition during Disengagement, with no unnecessary interruption of the Services and no unnecessary adverse impact on the provision of the Services or Transnet's activities.

43.8. Third Party authorisations:

43.8.1. Without limiting the obligations of the Service Provider under this Agreement and subject to the terms of any Third Party contracts, if requested by Transnet as part of the Disengagement, the Service Provider shall assist Transnet in procuring, any Third Party authorisations necessary to grant Transnet the use and benefit of any Third Party contracts between the Service Provider and Third Party contractors used to provide the Services, pending their assignment to Transnet pursuant to clause 43.11.

43.9. Licenses to Software:

43.9.1. Without limiting Transnet's rights in and to the lease agreements previously granted to Transnet pursuant to clause 9, which lease agreements Transnet shall have the right to retain following the Expiration Date if and as requested

by Transnet as part of the Disengagement, the Service Provider shall re-assign to Transnet, its Affiliates and/or the Replacement Service Provider any lease agreements assigned to the Service Provider pursuant to clause 42.11 and subject to the OEM licensing regime.

43.10. Transfer of Dedicated Assets

43.10.1. Although Transnet acknowledges that Service Provider does not control Third-Party equipment vendors (if any), if requested by Transnet, the Service Provider shall assist Transnet, its Affiliates, and/or the Replacement Service Provider in securing maintenance (including all enhancements and upgrades) and support with respect to any such assets for so long as Transnet requires at competitive rates.

43.11. Assignment of contracts:

43.11.1. If and as requested by Transnet; and subject to the terms of any Third Party contracts; as part of the Disengagement, the Service Provider shall endeavour to assist Transnet, its Affiliates and/or Transnet's Replacement Service Provider in obtaining an assignment from among those leases, maintenance, support, warranties for the Equipment and other contracts used by the Service Provider, Transnet or any other Person in connection with the Services, such contracts as Transnet might select from the list provided by the Service Provider pursuant to clause 15 of this Agreement.

43.11.2. The Service Provider's obligation under this clause 43.11.2 shall include the Service Provider's performance of all obligations under such leases, maintenance, support and other contracts to be performed by it with respect to periods prior to the date of assignment, and the Service Provider shall reimburse Transnet for any Losses resulting from any claim that the Service Provider did not perform any such obligations.

43.12. Delivery of documentation and data:

43.12.1. The Service Provider shall deliver to Transnet Authorised Person, all Transnet Data and Documents, as well as all procedures, standards, installation guides, user manuals, training material and operating schedules related to the Service Provider's provision of the Services.

43.13. Payment for Disengagement Services:

- 43.13.1. Upon the expiry of this Agreement or if this Agreement, or any portion thereof, is terminated for material breach on the part of the Service Provider or on the occurrence of an Event of Default by the Service Provider or is terminated in accordance with the provisions of clause 40, then the Parties shall agree on the Disengagement Fees for the applicable Disengagement Services, using the baseline to be determined by Transnet for the amount payable.

44. STEP IN RIGHTS

- 44.1. In addition to any other rights and remedies that it may have in terms of the Agreement or otherwise, including the right to terminate this Agreement, Transnet may in its sole discretion elect to (i) call for an urgent senior level meeting with Service Provider; and/or (ii) launch an audit investigation into Service Provider's operations in accordance with the audit provisions detailed in clause 35 above immediately upon Transnet's identification or the Service Provider's notification of the occurrence of any event which Transnet considers, in its sole discretion, to be an event which may affect the continuity of the Services.
- 44.2. For purposes of this clause 42, where Transnet exercises its right to invoke the Parent Company guarantee in accordance with the provisions of clause 6 above and the Parent Company fails to fulfil the terms of the Parent Company guarantee, Transnet may (at its option), either itself or by the procurement of an alternate Third Party Service Provider, temporarily take over the provision of the Services until such time as Transnet is able to make permanent alternate arrangements for the provision of the Services, which right shall apply for a period of no more than 180 (one hundred and eighty) days from the date that Transnet temporarily takes over the provision of the Services.
- 44.3. Service Provider shall, upon the request of Transnet, fully cooperate with and assist Transnet in the performance of the Services during any such temporary take-over of the Services by Transnet.
- 44.4. For the avoidance of doubt, during a temporary take-over of the Services

pursuant to the provisions of this clause 43, Transnet and/or an alternate Third Party Service Provider shall not be entitled to access any equipment, materials, software or data which belong to Service Provider's other clients and in the case of any infrastructure that may be shared with other Service Provider clients, Transnet may only access and use such infrastructure with the consent of the other clients with whom it is sharing such infrastructure.

44.5. To the extent that Transnet exercises its rights to assume the rendering of the Services or part thereof itself, or procures that a Third Party Service Provider renders some or all of the Services pursuant to the provisions of clause 43.2 above, Transnet shall be obliged to also assume, for that period, any direct costs and expenses solely attributed to any such temporary rendering of part or all of the Services, incurred by Transnet in accordance with this clause, including the salary costs for Service Provider Employees that Transnet may require to assist it in so rendering the Services or part thereof, and any relevant software license or hardware maintenance fees.

44.6. Transnet shall not under any circumstances by virtue of such assumption, be obliged or deemed or required to also take over or assume responsibility for the conduct of the Service Provider's business operations or the employment of any Service Provider Employees, in terms of this clause.

45. ASSET TAKE BACK AT TERMINATION OR EXPIRATION OF THE AGREEMENT

45.1. As at the termination of this Agreement by Transnet or at expiration of the Agreement, Transnet may exercise its rights, at its election, in respect of the purchase of any Service Provider Equipment in accordance with the provisions of clause 44.2 below.

45.2. On termination (save in the case where the Agreement is terminated as a result of a breach on the part of the Service Provider and in the case where a Termination Fee is payable in terms of this Agreement) or expiration of the Agreement and in respect of the Service Provider Equipment's which Transnet does not elect to purchase in accordance with this clause and which the Service Provider, acting in good faith and reasonably, is unable to redeploy within its environment, and for which the Service Provider is able to provide

sufficient proof that such Service Provider Equipment has an outstanding net book value as reflected in the Service Provider's books and records (i.e. each with a depreciation period of at least 3 (three) years but longer in respect of certain Service Provider Equipment) (the "Outstanding Net Book Value"), Transnet shall be required to make payment to Service Provider of an amount equal to 15 % (fifteen percent) of the Outstanding Net Book Value to the Service Provider within 30 (thirty) days of the date of the termination or expiration of the Agreement.

- 45.3. The Service Provider is required to furnish Transnet with full written details of the current and projected net book value on all Service Provider Equipment, on an annual basis at the end of each Contract Year.

46. DISCLOSURE AND USE OF CONFIDENTIAL INFORMATION

- 46.1. From time to time during the duration of this Agreement, Confidential Information may be given by one Party to this Agreement ("the Disclosing Party") to the other Party ("the Recipient").
- 46.2. The Receiving Party will treat and keep all Confidential Information as secret and confidential and will not, without the Disclosing Party's written consent, directly or indirectly communicate or disclose (whether in writing or orally or in any other manner) Confidential Information to any other person other than in accordance with the terms of this Agreement.
- 46.3. The Receiving Party will only use the Confidential Information for the sole purpose of complying with its obligations under this Agreement.
- 46.4. Notwithstanding clause 45.2 (Confidential Information) the Receiving Party may disclose Confidential Information:
- 46.4.1. to those of its Agents who strictly need to know the Confidential Information for the sole purpose set out in clause 45.3 (Confidential Information) provided that the Receiving Party shall ensure that such Agents are made aware prior to the disclosure of any part of the Confidential Information that the same is confidential and that they owe a duty of confidence to the Disclosing Party on the same terms as contained in this Agreement. The Receiving Party shall at all times remain liable for any actions of such Agents that would constitute a

breach of this Agreement; or

- 46.4.2. to the extent required by law or the rules of any applicable regulatory authority, subject to clause 45.5 (Confidential Information) below.
- 46.5. If the Receiving Party is required to disclose any Confidential Information in accordance with clause 45.4.2 (Confidential Information) above, it shall promptly notify the Disclosing Party so that the Disclosing Party may have an opportunity to prevent the disclosure through appropriate legal means and the Receiving Party shall co-operate with the Disclosing Party regarding the form, nature, content and purpose of such disclosure or any action which the Disclosing Party may reasonably take to challenge the validity of such requirement.
- 46.6. The contents and the existence and the scope of this Agreement are Confidential Information.
- 46.7. If any Confidential Information is copied, disclosed or used otherwise than as permitted under this Agreement then, upon becoming aware of the same, without prejudice to any rights or remedies of the Disclosing Party, the Receiving Party shall as soon as practicable notify the Disclosing Party of such event and, if requested by the Disclosing Party, take such steps (including the institution of legal proceedings) as shall be necessary to remedy (if capable of remedy) the default and/or to prevent further unauthorised copying, disclosure or use.
- 46.8. Notwithstanding whether the Receiving Party uses the Confidential Information in accordance with this Agreement or not (including modifying or amending the Confidential Information), all Confidential Information shall remain the property of the Disclosing Party and its disclosure shall not confer on the Receiving Party any rights of the Disclosing Party (or its Agents), including Intellectual Property rights, over the Confidential Information whatsoever beyond those contained in this Agreement.
- 46.9. Use by the Receiving Party of any Confidential Information in accordance with the terms of this Agreement will not infringe the Intellectual Property of any other person and no notification of any actual or potential claim alleging such

infringement has been received by the Disclosing Party.

- 46.10. The Receiving Party agrees to ensure proper and secure storage of all Confidential Information and any copies thereof to at least the same standard as the Receiving Party keeps its own Confidential Information. The Receiving Party shall not make any copies or reproduce in any form any Confidential Information except for the purpose of disclosure as permitted in accordance with this Agreement.
- 46.11. The Receiving Party shall keep a written record, to be supplied to the Disclosing Party upon request, of the Confidential Information received and any copies made thereof and, so far as is reasonably practicable, of the location of such Confidential Information and any copies thereof.
- 46.12. Without prejudice to any other rights or remedies of the Disclosing Party, the Receiving Party acknowledges and agrees that damages would not be an adequate remedy for any breach by it of the provisions of this clause 45 (Confidential Information) and that the Disclosing Party shall be entitled to seek the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of any such provision by the Receiving Party or its Agents, and no proof of special damages shall be necessary for the enforcement of the rights under this clause 45 (Confidential Information).

47. LIMITATION OF LIABILITY

- 47.1. Subject to clause 46.3 (Limitation of Liability) the total respective liability of Transnet and the Service Provider in respect of a claim arising in terms of this Agreement (whether arising from negligence, breach of contract or otherwise howsoever) (in this clause, "Default") will be limited to 100% (one hundred percent) of the total Fees paid to the Service Provider in terms of the Equipment provided in question, in the Contract Year immediately preceding that in which the event giving rise to the liability arises (or where such event arises in the first Contract Year of this Agreement, the actual total Fees paid together with the projected Fees for the remainder of the first Contract Year).
- 47.2. Subject to clause 46.3, in no event shall either party be liable to the other party

for indirect or consequential loss or damage, loss of profits, business, revenue, goodwill or anticipated savings suffered by the other party during the term of this Agreement.

47.3. Neither party excludes or limits liability to the other party for death, personal injury caused by its proven gross negligence or that of its employees, for fraud or theft by it or its employees and for a breach of any of the provisions under clause 48 (Intellectual Property Rights Indemnity), clause 44 (Confidential Information) and clause 46 (Regulatory Indemnity).

47.4. The Parties expressly agree that if any limitation or provision contained or expressly referred to in this clause 46 (Limitation of Liability) is held to be invalid under any applicable statute or rule of law it will to that extent be deemed omitted but if any Party becomes liable for loss or damage which would otherwise have been excluded that liability will be subject to the other limitations and provisions set out in this clause 45 (Limitation of Liability).

47.5. Nothing in this clause 46 (Limitation of Liability) will be taken as in any way reducing or affecting a general duty to mitigate loss suffered by a Party.

48. REGULATORY INDEMNITY

48.1. The Service Provider will be solely liable for all losses, damages, costs, expenses and liabilities (including legal fees) incurred by or awarded against Transnet or their respective directors, officers, agents, employees, members, subsidiaries and successors in interest (together the "Indemnified Persons") in connection with any proceedings, claim or action against an Indemnified Person resulting from a breach by the Service Provider of any Regulatory Requirements, where applicable.

48.2. The Service Provider will hold harmless each of the Indemnified Persons and indemnify each Indemnified Person on written demand in respect of all losses, damage, costs, expenses and liabilities (including legal fees) incurred by or awarded against an Indemnified Person in connection with any proceedings, claim or action against an Indemnified Person resulting from a breach by the Service Provider of any Regulatory Requirements.

49. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

- 49.1. The Service Provider shall at all times whether during or after termination or expiry of this Agreement, indemnify and keep indemnified Transnet against all losses, claims, damages, liabilities, additional licence fees and expenses (including all reasonable legal fees) incurred by or awarded against Transnet or which are agreed by Transnet to be paid by way of settlement or compromise arising out of or in relation to any infringement or alleged infringement of any Intellectual Property Rights of any Third Party which is suffered by Transnet as a result of Transnet's receipt of the Services or use or possession of the Supplier Tools, Deliverables, or any part thereof, ("IPR Claim") provided that Transnet shall:
- 49.1.1. allow the Service Provider to conduct all negotiations and proceedings and give the Service Provider all reasonable assistance in relation to the IPR Claim, each at the Service Provider's cost; and
 - 49.1.2. make no admission relating to the IPR Claim.
- 49.2. Transnet shall notify the Service Provider in writing as soon as is reasonably practicable of any IPR Claim of which Transnet has notice.
- 49.3. The Service Provider shall conduct the litigation diligently using competent counsel and in such a way as not to bring the reputation or name of Transnet into disrepute.
- 49.4. The Service Provider shall not be entitled to settle or compromise any IPR Claim made against Transnet without Transnet's prior written consent (not to be unreasonably withheld).
- 49.5. If at any time an IPR Claim is made, the Service Provider may, at its own expense and sole option, either:
- 49.5.1. procure for Transnet the right to continue using the relevant services, Supplier Tools or Deliverables; or
 - 49.5.2. replace or modify the Services, Supplier Tools or Deliverables with non-infringing substitutes, provided that any substitute shall not materially prejudice Transnet's use of the Services, Supplier Tools or Deliverables and

that such substitution will be carried out so as to avoid or reduce insofar as possible any interruption to Transnet's business operations.

49.6. If the Service Provider has availed itself of its rights to modify the Deliverables or to supply substitute item(s) under clause 48.2 or to procure a licence in accordance with clause 48.1 and such exercise of the said rights has not avoided the relevant IPR Claim, then Transnet may:

49.6.1. at its option return the Deliverables to the Service Provider and, without prejudice to the indemnity in clause 48.1 the Service Provider shall refund in full all Fees paid by Transnet under this Agreement in relation to such Deliverables; or

49.6.2. at its option terminate this Agreement by giving the Service Provider 30 (thirty) days written notice.

50. INSURANCE

50.1. The service provider shall, for the continued duration of this agreement, have and maintain sufficient insurance to cover its obligations and liabilities under this agreement. the service provider shall provide Transnet with a certificate of existence of such insurance.

50.2. The terms of any insurance or the amount of cover shall not relieve the supplier of any liabilities under this agreement.

50.3. If the service provider or its personnel are involved in any occurrence which to their knowledge may give rise to a claim under any insurance policy effected by Transnet, the service provider shall without delay:

50.3.1. notify Transnet of the circumstances giving rise to such occurrence, the nature of the occurrence and the estimate of any loss or damage which may be suffered as a result of such occurrence; and

50.3.2. provide Transnet and its insurance brokers with any assistance reasonably required in order to ensure that Transnet is able to successfully prosecute such insurance claim.

51. SERVICE PROVIDER INDEMNITIES

51.1. The Service Provider shall indemnify, defend and hold harmless Transnet from and against, all Losses sustained or incurred by Transnet, based upon or relating to any claim, action or proceeding brought by any Third Party against Transnet for infringement of any Intellectual Property or other proprietary right, including misappropriation of trade secrets, arising out of or relating to the Services, any Deliverable and/or technology provided used by Service Provider to provide the Services (an "Infringement Claim").

Third-Party Claims

51.2. The Service Provider shall indemnify, defend and hold harmless Transnet from and against, and shall pay any and all Losses sustained or incurred by Transnet, based upon or relating to any claim brought by any Third Party (as well as any Service Provider Employee or Subcontractor) against Transnet for:

51.2.1. breach by Service Provider of any agreement with any Third Party; or

51.2.2. breach of an agreement between Service Provider and its Subcontractor or supplier; or

51.2.3. any unlawful activity or any negligent, wilful or fraudulent conduct by Service Provider or Service Provider Employees or its Subcontractors, and claims attributable to errors or omissions; and

51.2.4. the Service Provider shall immediately notify Transnet if an act or omission of a Third Party may cause a problem (including a Problem or Incident) or delay in providing the Services and shall work with Transnet to prevent or circumvent such problem or delay.

52. GIFTS AND FAVOURS

52.1. Transnet shall be entitled to terminate the Agreement forthwith if it is found that (i) gifts and favours (for example business transactions, terms, and/or conditions that are not freely available to the public, entertainment, gifts or otherwise) were given by the Service Provider or any Employee, agent or representative of the Service Provider (or its Subcontractors / suppliers) to any officer or Employee of Transnet or its Affiliates (or family of such an officer or

Employee of Transnet or its Affiliates) with a view toward securing the Agreement or securing favourable treatment or terms by or from Transnet or (ii) the Service Provider contravened Transnet's Integrity Pact, which the Service Provider is obliged to strictly comply with.

52.2. The Service Provider warrants to Transnet that to the best of its knowledge and belief, neither the Service Provider nor any of its Affiliates, nor any Employee of either:

52.2.1. Shall have or shall acquire any direct or indirect contractual, financial, business or other interest or advantage that would conflict in any manner or degree with the Service Provider's performance of its obligations, duties and responsibilities to Transnet under the Agreement or otherwise create an appearance of impropriety with respect to this Agreement and the Service Provider shall promptly inform Transnet of any such interest or advantage that may be incompatible with the interests of Transnet or creates an appearance of impropriety;

52.2.2. has used or shall use the authority provided or to be provided under the Agreement to improperly obtain financial gain, advantage or benefit for the Service Provider, any of its Affiliates, any of their Employees, or any member of the immediate family of any such Employee;

52.2.3. has used or shall use any Transnet Confidential Information acquired in connection with the Agreement to obtain financial gain, advantage or benefit for the Service Provider, any of its Affiliates, any of their Employees or any member of the immediate family of any such Employee;

52.2.4. has accepted or shall accept anything of value or an inducement that would provide a financial gain, advantage or benefit, based on an understanding that the actions of the Service Provider, any such Affiliates or any such Employees on behalf of Transnet would be influenced thereby; and neither the Service Provider nor any of its Affiliates shall attempt to influence any Transnet Employee by the direct or indirect offer of anything of value or an inducement; and

52.2.5. has paid or agreed to pay any Person any fee, commission,

percentage, brokerage fee, gift or any other consideration, that is contingent upon or resulting from the award or execution of this Agreement, save for such remuneration as is paid to bona fide Employees working solely for the Service Provider or such Affiliates or any of the Service Provider's Subcontractors.

- 52.3. The Service Provider warrants to Transnet that to the best of its knowledge and belief, the prices presented in the Service Provider's proposal were arrived at independently, without consultation, communication or agreement with any other Service Provider for the purpose of restricting competition; the prices quoted in the Service Provider's proposal were not knowingly disclosed by the Service Provider to any other Service Provider and no attempt was made by the Service Provider to induce any other Person to submit or not to submit a proposal for the purpose of restricting competition.

53. DISPUTE / PROBLEM RESOLUTION

53.1. Internal Dispute Resolution Procedure

53.1.1. Informal Resolution

53.1.1.1. If any dispute or Problem arises between the Parties, Transnet Relationship Manager and the Service Provider Relationship Manager shall meet and attempt to resolve the Problem. Written minutes of such meetings shall be kept by Service Provider and delivered to Transnet within 5 (five) days after the meeting.

53.1.1.2. If the Parties are unable to resolve the Problem within 10 (ten) days after the initial request for the meeting, then the Parties shall seek to resolve the Problem through the IT Outsourcing Management Committee review as provided in clause 52.1.2.

53.1.2. IT Outsourcing Management Committee Resolution

53.1.2.1. Upon receipt of a written referral from the Parties' representatives as provided in clause 52.1.1, the IT Outsourcing Management Committee shall meet within 5 (five) days of such referral.

53.1.2.2. If the IT Outsourcing Management Committee is unable to resolve the Problem within 10 (ten) days after the Problem was referred to it or 15 (fifteen) days have passed since the Problem resolution process began, then the IT Outsourcing Management Committee shall forward the written Problem referral to the Parties' executives as provided for in clause 52.1.3, along with a statement of any actions taken or recommendation made by the respective members of the IT Outsourcing Management Committee.

53.1.3. Executive Resolution

53.1.3.1. For Problems that are not resolved as described in clause 52.1.2, negotiations shall be conducted by the Chief Information Officer or higher-level officer of Transnet and the Chief Information Officer or higher-level officer of Service Provider.

53.1.3.2. If such representatives are unable to resolve the Problem within 5 (five) Business Days after the Parties have commenced negotiations, or 15 (fifteen) days have passed since the initial request for negotiations at this level, then the Parties shall be entitled to discontinue negotiations and to seek to resolve the Problem through arbitration as hereinafter provided.

53.2. Arbitration

53.2.1. If the Parties are unable to resolve any dispute, other than a dispute described in clause 52.2.8, in the manner contemplated by clause 52.1, then subject to clause 52.2.2, such dispute shall on written demand by either Party to the dispute be submitted to arbitration at AFSA in Sandton and in accordance with the rules thereof by an arbitrator or arbitrators agreed on by the Parties or should the Parties fail to agree on an arbitrator within 10 (ten) days after arbitration has been demanded, the arbitrator shall be nominated by AFSA. The arbitration shall be held in the English language.

53.2.2. The Parties shall request that the arbitrator(s) commence the arbitration within 21 (twenty-one) days and proceed as if time is of the essence in the arbitration

proceeding.

53.2.3. The Parties shall request that the arbitrator render his or her decision within 14 (fourteen) days following the conclusion of the hearing.

53.2.4. Recognising the express desire of the Parties for an expeditious means of dispute resolution, the arbitrator shall limit or allow the Parties to expand the scope of discovery as may be reasonable under the circumstances.

53.2.5. The Parties undertake not to withhold their consent to join another party to the Arbitration.

53.2.6. The Parties irrevocably agree that the submission to arbitration is subject to the Parties' rights of appeal. Any Party may appeal the decision of the arbitrator within a period of 20 (twenty) days after the arbitrator's ruling has been handed down by giving written notice to that effect to the other Party to the arbitration. The appeal shall be dealt with in accordance with the rules of AFSA by a panel of 3 (three) arbitrators appointed by AFSA.

53.2.7. The decision of the arbitrator shall be binding on the Parties to the arbitration after the expiry of the period of 20 (twenty) days from the date of the arbitrator's ruling if no appeal has been lodged by any Party or upon the issue of determination by the appeal panel, as the case may be. A decision, which becomes final and binding in terms of this clause 52.2.7 may be made an order of court at the instance of any Party to the arbitration.

53.2.8. Disputes between the Parties regarding Service Provider's obligations to provide Disengagement Services as contemplated in this Agreement shall not be subject to the provisions of clause 52.2.1 and Transnet may proceed directly to court in these circumstances.

53.2.9. Each Party agrees to continue performing its obligations under the Agreement while any dispute is being resolved except to the extent the issue in dispute precludes performance (dispute over payment shall not be deemed to preclude performance).

53.2.10. The Parties shall use commercially reasonable efforts to resolve disputes arising under the Agreement as rapidly as possible.

53.2.11. This clause shall not preclude (i) either Party from seeking urgent relief; or (ii) Transnet from seeking any relief in relation to any dispute which may be raised by the Service Provider which has the effect of frustrating, delaying or preventing Transnet's expedient exercise or enforcement of its rights in terms of the Parent Company guarantee, from either the High Court of South Africa or any other competent organs of state created for the specific purpose of regulating the business or industry activities in which the Parties are engaged.

53.2.12. Any dispute resolution or arbitration process under this clause shall be conducted in camera and the Parties shall treat as confidential and not disclose to any Third Party the existence of the dispute, details of the dispute, the conduct of the informal or formal dispute resolution proceedings or the outcome of the dispute resolution proceedings, without the written consent of the other Party provided that the Parties shall be entitled to disclose such information to such persons as are necessary to enable them to conduct their case.

53.2.13. Except for the duration of a valid Force Majeure Event, and in accordance with clause 40 herein, the Parties agree to continue performing their obligations under this Agreement while the Problem is being resolved as provided in this clause 60 until the Problem is resolved or until this Agreement is terminated.

54. GENERAL

54.1. Third Party Beneficiaries

54.1.1. This Agreement is an agreement between the applicable Parties and, except for Transnet Indemnitees and the Service Provider Indemnitees, confers no rights upon any of such Parties' Employees, agents, or contractors, or upon any other Person.

54.2. Use of Transnet Name

54.2.1. Except as necessary to deliver the Services in accordance with this Agreement, the Service Provider shall have no right to use, and shall not use, the name of Transnet and/or any of its officials or Employees, or logos or trademarks in any manner, including in any press releases and sales material,

without the prior written consent of Transnet, which consent may be withheld in Transnet's sole discretion.

54.3. Assignment

54.3.1. Except for subcontracting permitted under the terms of clause 15, no Party shall assign, transfer or delegate its rights and duties under this Agreement, in whole or in part, without the prior written consent of the other Party, which shall not be unreasonably withheld.

54.3.2. Subject to all other provisions herein contained, this Agreement shall be binding on the Parties and their successors-in-title and permitted assigns.

54.4. Notices

54.4.1. The Parties select as their respective domicilia citandi et executandi the following physical addresses, and for the purposes of giving or sending any notice provided for or required under this Agreement, the said physical addresses as well as the following e-mail numbers-

Parties	Addresses and e-mail numbers
Transnet	Transnet Corporate Centre, Waterfall Business Estate, 9 Country Estate Drive, Midrand, 1662 Telefax: 011 308 2699 Marked for the attention of: General Manager, Group Legal
Service Provider	xxxx

provided that a Party may change its *domicilium* or its address for the purposes of notices to any other physical address or e-mail number by written notice to the other Party to that effect. Such change of address will be effective 5 (five) Business Days after receipt of the notice of the

change.

54.5. All notices to be given in terms of this Agreement will be given in writing, in English, and will –

54.5.1. be delivered by hand or sent, by e-mail;

54.5.2. if delivered by hand during business hours, be presumed to have been received on the date of delivery. Any notice delivered after business hours or on a day which is not a Business Day will be presumed to have been received on the following Business Day; and

54.5.3. if sent by e-mail during business hours, be presumed to have been received on the date of successful transmission of the e-mail, upon receipt of confirmation of a delivery and read report. Any e-mail sent after business hours or on a day which is not a Business Day will be presumed to have been received on the following Business Day, upon receipt of confirmation of a delivery and read report.

54.5.4. Notwithstanding the above, any notice given in writing in English, and actually received by the Party to whom the notice is addressed, will be deemed to have been properly given and received, notwithstanding that such notice has not been given in accordance with this clause.

54.5.5. The Parties record that whilst they may correspond via email during the currency of this Agreement for operational reasons, no formal notice required in terms of this Agreement, nor any amendment of or variation to this Agreement may be given or concluded via email.

54.6. Relationship between the Parties

54.6.1. The Parties warrant and acknowledge that the relationship between them is not in the nature of a partnership and that neither Party is in any manner entitled to make or enter into binding agreements of any nature on behalf of the other Party.

54.7. Authorised Signatories

54.7.1. The Parties agree that this Agreement and any Attachment, Appendix or Addendum concluded in terms hereof shall not be valid unless signed by an authorised signatory of Transnet and the Service Provider. Transnet's company secretary or the office of the Chief Information Officer shall upon request furnish the Service Provider with such documentation as may reasonably be required by the Service Provider to establish the authority of the proposed authorised Transnet signatories.

54.8. Severability

54.8.1. Should any of the terms and conditions of the Agreement be held to be invalid, unlawful or unenforceable, such terms and conditions shall be severable from the remaining terms and conditions which shall continue to be valid and enforceable. If any term or condition held to be invalid is capable of amendment to render it valid, the Parties agree to negotiate an amendment to remove the invalidity.

54.9. Amendments and Waiver

54.9.1. No addition to or variation, deletion, or agreed cancellation of all or any clauses or provisions of this Agreement will be of any force or effect unless in writing and signed by the Parties.

54.9.2. No waiver of any of the terms and conditions of this Agreement will be binding or effectual for any purpose unless in writing and signed by the Party giving the same. Any such waiver will be effective only in the specific instance and for the purpose given. Failure or delay on the part of either Party in exercising any right, power or privilege hereunder will not constitute or be deemed to be a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

54.10. Counterparts

54.10.1. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the

same Agreement as at the date of signature of the Party last signing one of the counterparts.

54.11. Governing Law and Venue

54.11.1. The Agreement will be governed by and construed in accordance with the law of the Republic of South Africa and all disputes, actions and other matters relating thereto will be determined in accordance with such law. The Parties exclude the application of the United Nations Convention on Contracts for the International Sale of Goods from the Agreement.

54.12. Survival

54.12.1. Any provision of the Agreement, which contemplates performance or observance subsequent to any termination, or expiration of the Agreement shall survive any termination or expiration of the Agreement and continue in full force and effect.

54.13. Expenses

54.13.1. Each Party shall bear all expenses paid or incurred by it in connection with the planning, drafting, negotiation and execution of this Agreement.

54.14. Benefits of Agreement

54.14.1. All rights and benefits granted hereunder to Transnet may be exercised and enjoyed by any Affiliate of Transnet, provided that Transnet shall be and remain responsible for the compliance of the terms and conditions of this Agreement with respect to such Affiliate and will be Affiliate's agent for all purposes of this Agreement and any claims or actions arising from such Affiliate shall be pursued solely by Transnet.

54.15. Entire Agreement

54.15.1. This Agreement and all its Attachments and Appendices must be read and interpreted together with the Agreement as a single document that constitutes the whole of the agreement between the Parties relating to the subject matter herein. Save to the extent otherwise provided herein, no undertaking, representation, term or condition relating to the subject matter

of this Agreement not incorporated in this Agreement, shall be binding on any of the Parties.

54.16. This Agreement, together with all its Attachments, and Appendices, sets forth the entire, final and exclusive agreement between the Parties and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, between the Parties related to the subject matter herein.

Signed by the Parties at the places and dates below - :

SIGNED at _____ on _____ 2021

For and on behalf of

TRANSNET SOC LIMITED

Signature

Name of Signatory

Designation of Signatory

SIGNED at _____ on _____ 2021

For and on behalf of the

SERVICE PROVIDER

Signature

Name of Signatory

Designation of Signatory