



EXHIBIT BB 7 (c)

**SUPPLEMENTARY
STATEMENT**

FOR

**GERHARDUS
JOHANNES
JACOBUS
VAN DER
WESTHUIZEN**



**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE**

2nd floor, Hillside House
17 Empire Road,
Parktown
Johannesburg
2193
Tel: (010) 214-0651
Email:

inquiries@sastatecapture.org.za

Website: www.sastatecapture.org.za

INDEX: EXHIBIT BB7(c)

Description	File	Pages
Supplementary statement of Gerhardus Johannes Jacobus van der Westhuizen	(c)	001 to 002
Annexure "V4"	(c)	003 to 178
Annexure "W6"	(c)	179 to 180

SUPPLEMENTARY STATEMENT

I, the undersigned,

Gerhardus Johannes Jacobus Van der Westhuizen

do hereby state that:

1. I have already submitted a statement to the Commission on 25 April 2019.
2. The facts contained in this supplementary statement are both true and correct, and within my personal knowledge, unless the context provides otherwise. Where facts were provided by third parties, they are presented in the belief that they are true and correct.
3. The purpose of this supplementary statement is to correct errors in my signed statement.
4. For ease of reference, I will identify the specific paragraph and line in the statement to which the correction is to be effected and I will set out the nature of the correction.
5. **Ad paragraph 33**
 - 5.1. At line 4, reference to “14 October 2010” to read **“14 October 2014”**.
6. **Ad paragraph 49.4**
 - 6.1. At line 1, reference to “stale mate” to read **“stalemate”**.
7. **Ad paragraph 56.4**
 - 7.1. At line 7, include the following after “See Annexure V3” to read **“In any event, the negotiated and signed MSA, clause 65.6 prohibits the Service Provider from paying a third party any sort of fee, gift or any other**

consideration, that would result from the award or execution of the agreement. See Annexure V4. Therefor Neotel would have been in breach of the clause and MSA agreement.”

8. **Ad paragraph 68**

- 8.1. At line 3, delete the words that were crossed out “Was this not a confinement since it had to be procured from Neotel”.

Gerhardus Johannes Jacobus Van der Westhuizen

Date: _____

MASTER SERVICES AGREEMENT

between

TRANSNET SOC LIMITED

and

NEOTEL PROPRIETARY LIMITED

hm HARRIS
NUPEN
MOLEBATS!



TABLE OF CONTENTS

1	INTRODUCTION.....	8
2	GUIDING PRINCIPLES, RELATIONSHIP MANAGEMENT AND INTERPRETATION.....	9
3	ORDER OF PRECEDENCE	11
4	SCOPE AND STRUCTURE OF AGREEMENT	12
5	CONDITION PRECEDENT.....	13
6	TERM	14
7	FINANCIAL GUARANTEE.....	15
8	AFFILIATES.....	16
9	SERVICES	18
10	SERVICE LEVELS	23
11	CRITICAL DELIVERABLES.....	28
12	THIRD PARTY SERVICE COOPERATION	28
13	USE OF SUBCONTRACTORS	31
14	TRANSNET SITES	34
15	PROJECTS	34
16	BENCHMARKING	35
17	ANNUAL EXECUTIVE COMMITTEE REVIEW.....	40
18	B-BBEE REQUIREMENTS	40
19	SUPPLIER DEVELOPMENT	43
20	TRANSITION SERVICES	47
21	FINANCIAL RESPONSIBILITY.....	49
22	TECHNOLOGY PROCUREMENT.....	50
23	TECHNOLOGY MANAGEMENT.....	51
24	ASSET MANAGEMENT AND CMDB	56
25	ASSET TAKE BACK AT TERMINATION OR EXPIRATION OF THE AGREEMENT.....	56
26	ASSET SANITISATION SERVICES.....	57
27	SHARED RESOURCES	58
28	TRANSNET DATA.....	60
29	PERSONAL INFORMATION.....	61
30	DOCUMENTATION	64
31	STANDARDS AND PROCEDURES MANUAL.....	65
32	SERVICE COMPATIBILITY	67
33	CHANGE MANAGEMENT	67
34	IN SCOPE SERVICES	68
35	OUT OF SCOPE SERVICES.....	69

36	REPORTS AND OTHER RESOURCE MATERIALS.....	69
37	RETAINED AUTHORITIES	70
38	SERVICE PROVIDER EMPLOYEES	74
39	FEES AND PAYMENT TERMS.....	79
40	INVOICING REQUIREMENTS	84
41	AUDIT RIGHTS.....	87
42	NON-PERFORMANCE EVENTS – EXCUSED PERFORMANCE	94
43	SERVICE PROVIDER DISASTER RECOVERY	95
44	CONTRACTED DISASTER RECOVERY SERVICES	96
45	SECURITY REQUIREMENTS AND ISO COMPLIANCE	96
46	ASSETS AND INTELLECTUAL PROPERTY	97
47	PRE-DELIVERY TESTING BY SERVICE PROVIDER	109
48	REVIEW AND ACCEPTANCE	110
49	SERVICE PROVIDER REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS	112
50	TRANSNET REPRESENTATIONS AND WARRANTIES.....	124
51	BREACH AND TERMINATION.....	126
52	FORCE MAJEURE	134
53	STEP IN RIGHTS.....	136
54	DISENGAGEMENT SERVICES	139
55	LIMITATION OF LIABILITY	146
56	SECURITY	146
57	DISCLOSURE AND USE OF CONFIDENTIAL INFORMATION.....	149
58	COMPLIANCE WITH APPLICABLE LAW	153
59	PUBLIC ANNOUNCEMENTS AND PUBLICITY	155
60	SERVICE PROVIDER INDEMNITIES	156
61	TRANSNET INDEMNITEES	159
62	INDEMNIFICATION PROCEDURE	160
63	INSURANCE.....	161
64	DISPUTE RESOLUTION.....	166
65	GIFTS AND FAVOURS	169
66	BUSINESS ETHICS AND OTHER CONFLICTS OF INTEREST	171
67	GENERAL.....	171

ATTACHMENTS

ATTACHMENT A –	Definitions specific to the MSA
ATTACHMENT B –	Guiding Principles
ATTACHMENT D1 –	Relationship Management Service Tower
ATTACHMENT D2 -	Cross Functional Service Tower
ATTACHMENT D3 -	Voice Service Tower
ATTACHMENT D4 -	Wide Area Network Service Tower
ATTACHMENT D5 -	Local Area Network Service Tower
ATTACHMENT D6 -	Help Desk and Service Desk Service Tower
ATTACHMENT D7 -	Internet Service Tower
ATTACHMENT D8 -	Mobility Service Tower
ATTACHMENT D9-	Wimax Service Tower
ATTACHMENT D10-	Video Conferencing Service Tower
ATTACHMENT D11	Project Service Tower
Appendix 1 -	Definitions specific to the technical Service Towers
Appendix 2 -	Technology Refresh Guide
ATTACHMENT E1	List of Transnet Facilities Used Exclusively for Services
ATTACHMENT E2	List of Transnet Facilities that are Multi-tenanted
ATTACHMENT F –	Form of Financial Guarantee
ATTACHMENT G1 –	Pricing Methodology
ATTACHMENT G2 –	Pricing Workbook
ATTACHMENT G3 -	Financial Responsibility Matrix
ATTACHMENT H –	Change Management Procedure
ATTACHMENT I –	List of Policies
ATTACHMENT J –	Service Credit Methodology
ATTACHMENT K –	Critical Deliverables
ATTACHMENT L –	Approved Subcontractors



ATTACHMENT M –	Form of Proposals and Form of Quotations
ATTACHMENT N1 –	B-BBEE Improvement Plan
ATTACHMENT N2 –	B-BBEE Penalties
ATTACHMENT N3 –	Transnet Standard Reporting Format on B-BBEE
ATTACHMENT O1 –	Transition Plan
ATTACHMENT O2 –	Transition Service Levels
ATTACHMENT P –	List of Assets
ATTACHMENT Q1 –	SD Value Summary Date
ATTACHMENT Q2 –	SD Implementation Plan Date
ATTACHMENT Q3 –	SD Penalties
ATTACHMENT S –	Approved Service Provider Insurance Cover
ATTACHMENT U–	Key Employee Functions
ATTACHMENT V –	Contracted Disaster Recovery Plan
ATTACHMENT W –	Termination Fee Schedule
ATTACHMENT X1 –	Framework for Disengagement Plan
ATTACHMENT X2 –	Disengagement Plan
ATTACHMENT Z1 –	Assigned Contracts
ATTACHMENT Z2 –	Managed Contracts



1 INTRODUCTION

This master services agreement for network outsource services is entered into with effect from the Effective Date by and between Transnet SOC Limited, with registration number 1990/000900/30 with its registered offices at 47th Floor, Carlton Centre, 150 Commissioner Street, Johannesburg, 2001 ("**Transnet**"), and Neotel Proprietary Limited a limited liability company with registration number 2004/004 6 19/07 and with its registered offices at 44 Old Pretoria Main Road, Midrand (the "**Service Provider**"). For the avoidance of doubt, Transnet includes all its operating divisions.

- A. On 14 June 2013, Transnet issued a request for proposals for the provision of network services for a period of 3 (three) years with an option to extend for and additional 2 (two) calendar years (the "**RFP**") in terms of which it invited technology service providers to submit an offer for the provision of the Services.
- B. The Service Provider submitted a response to the RFP to Transnet dated 13 August 2013 (the "**Service Provider Bid**"), in terms of which it represented to Transnet that it had the expertise, personnel, products, services and skills required to meet the requirements of Transnet as reflected in the RFP.
- C. In reliance on the representations made by the Service Provider in the Service Provider Bid and subsequent discussions between the Parties, Transnet accepted the Service Provider Bid thereby selecting the Service Provider over other technology providers to provide Transnet with the Services.
- D. Transnet, and the Service Provider accordingly wish to specify the terms and conditions under which Service Provider will provide the Services to Transnet, and in consideration of the representations, warranties and undertakings contained herein, the Parties, being duly authorised and intending to be legally bound, agree to the foregoing as follows:



2 GUIDING PRINCIPLES, RELATIONSHIP MANAGEMENT AND INTERPRETATION

2.1 Guiding Principles

2.1.1 The Guiding Principles identified in **Attachment B** ("**Guiding Principles**") are those principles that the Parties have determined to be of importance in ensuring the success of their relationship. The Guiding Principles reflect the business objectives of the Parties in entering into this Agreement and are detailed in **Attachment B** hereto.

2.1.2 If any term or condition of this Agreement is ambiguous or if the Parties did not anticipate a particular issue, the Parties shall refer to and apply the Guiding Principles contained in **Attachment B** to resolve and/or address the ambiguous, unclear and/or unanticipated issue.

2.2 Relationship Management

2.2.1 The relationship between the Parties shall be managed as described below and in **Attachment D1** hereto.

2.3 Interpretation

2.3.1 This Agreement incorporates the attachments to which it refers and which shall have the same force and effect as if set out in the body of this Agreement (each, an "**Attachment**").

2.3.2 Unless the context indicates a contrary intention, the capitalised words and expressions shall throughout this Agreement bear the meanings in **Attachment A**.

2.3.3 Words and expressions defined and used in the Service Towers in **Attachment D** shall bear the meanings in **Appendix 1** of **Attachment D**.

2.3.4 Section and clause headings are for convenience only and are not to be used in its interpretation.

2.3.5 The rule of construction that a contract shall be interpreted against the



Party responsible for the drafting or preparation of the Agreement, shall not apply.

- 2.3.6 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 2.3.7 Reference to "days" shall be construed as calendar days unless referred to as Business Days. Any reference to time shall be based upon South African Standard Time.
- 2.3.8 Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day.
- 2.3.9 Terms other than those defined in the Agreement will be given their plain English meaning, and those terms, acronyms, and phrases known in the information and communication technology industry will be interpreted in accordance with their generally accepted meanings.
- 2.3.10 Any substantive provision, notwithstanding that it is only in the Definitions (**Attachment A**) or elsewhere in this Agreement, conferring rights or imposing obligations on a Party, shall be given effect to as if it were a substantive provision in the body of this Agreement or of an Attachment concerned.
- 2.3.11 The words "include" and "including" mean "include without limitation" and "including without limitation". The application of the *eiusdem generis* (same kind) rule is excluded.
- 2.3.12 A reference to any statutory enactment shall be construed as a reference to that enactment of the Republic of South Africa as at the date of signature hereof, and as amended or substituted from time to time.
- 2.3.13 The use of any expression in this Agreement covering a process available under South African law, such as winding-up, shall, if either of the Parties to this Agreement is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such other jurisdiction.



2.3.14 Whenever any person is required to act "*as an expert and not as an arbitrator*" in terms of this Agreement, then –

2.3.14.1 the determination of the expert shall (in the absence of manifest error) be final and binding;

2.3.14.2 subject to any express provision to the contrary, the expert shall determine the liability for his or its charges, which shall be paid accordingly by the Parties jointly;

2.3.14.3 the expert shall be entitled to determine such methods and processes as he or it may, in his or its sole discretion, deem appropriate in the circumstances provided that the expert may not adopt any process which is manifestly biased, unfair or unreasonable;

2.3.14.4 the expert shall consult with the relevant Parties (provided that the extent of the expert's consultation shall be in his or its sole discretion) prior to rendering a determination; and

2.3.14.5 having regard to the sensitivity of any confidential information, the expert shall be entitled to take advice from any person considered by him or it to have expert knowledge with reference to the matter in question.

3 ORDER OF PRECEDENCE

3.1 If there is a conflict among the terms in this Agreement, and/or any Attachments, and/or any Appendices:

3.1.1 subject to clause 3.1.3, to the extent the conflicting terms can reasonably be interpreted so that such terms are consistent with each other, such consistent interpretation shall prevail;

3.1.2 to the extent clause 3.1.1 does not apply and subject to clause 3.1.4, any conflict between the provisions of the various sections of this Agreement and the Attachments and the Appendices will be resolved in accordance with the following order of precedence (in descending



order of priority): (a) the Agreement; (b) its Attachments; and (c) the Appendices, and/or Annexures to the foregoing documents ("**Annexures**") in the same order of precedence attaching to the documents to which they are annexed;

3.1.3 conflicting terms within various clauses of the Agreement, within or between Attachments, within or between Annexure(s), shall be interpreted by giving priority to the term whose application to the issue at hand will most fully effectuate and advance the Guiding Principles, it being the intention of the Parties that in resolving such conflicts, the terms of any Attachment or Annexure shall not apply to any other Attachment or Annexure, as the case may be; and

3.1.4 an Attachment or Annexure may amend the terms and conditions of this Agreement only with respect to the subject matter of such Attachment or Annexure. Insofar as any Attachment or Annexure specifically amends the provisions of this Agreement, such amendment shall prevail in respect of that Attachment or Annexure only. It is recorded that, the terms of one Attachment or Annexure shall not apply to any other Attachment or Annexure.

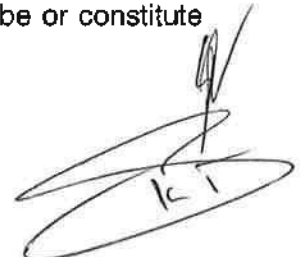
4 SCOPE AND STRUCTURE OF AGREEMENT

4.1 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 This Agreement is supplemented with Attachments that form a part thereof.

4.3 The Service Provider is appointed to provide the Services to Transnet on an exclusive basis subject to complying with, inter alia, timelines, the requisite skills and capacity, and other relevant criteria as required for In Scope Services under clause 34 and Quotations and Proposals in **Attachment M**. Transnet shall not be precluded from obtaining services from other service providers.

4.4 Nothing contained herein shall in any way be construed to be or constitute

A handwritten signature and the initials 'K T' are present in the bottom right corner of the page.

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.

- 4.5 The Service Provider undertakes to implement the relevant control mechanisms after the Effective Date to ensure that all future agreements entered into between the Parties are concluded under and in terms of this Agreement and that they are not concluded as standalone agreements, unless specifically and expressly agreed as such by the Parties.

4.6 **Purchase Orders**

- 4.6.1 It is agreed that Transnet may at its discretion provide to the Service Provider purchase orders or order forms requesting any Services to be provided in accordance with **Attachment M**, where applicable.

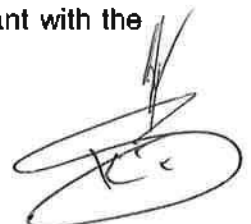
- 4.6.2 Such purchase orders or forms constitute a contract document in terms of this Agreement.

4.7 **Existing agreements and transitional matters**

- 4.7.1 At the Effective Date, the terms and conditions of this Agreement will take precedence over any existing agreements that the Service Provider has with Transnet with respect to any of the Services as listed in **Attachment D**. All the transitional matters will form part of this Agreement.

5 CONDITION PRECEDENT

- 5.1 Save for clauses 2, 3, this clause 5, 7, 47, 57, 59, 64, 66 and 67, all of which will become effective immediately on the Effective Date, this Agreement is subject to the fulfilment of the condition precedent that, by no later than 17h00 on Signature Date, the Service Provider has delivered to Transnet, being a "**Condition Precedent**" to the reasonable satisfaction of Transnet, a Financial Guarantee in accordance with the provisions of clause 7.1, which shall in all respects be compliant with the



provisions of any and all Applicable Law relating to the Financial Guarantee, including, without limitation, the provisions of the Companies Act, generally and section 45 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 5.1 (or such later date as may be agreed to in writing by Transnet) the provisions of this Agreement, save for clauses 2, 3, this clause 5, 7, 47, 57, 59, 64, 66 and 67, 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 TERM

- 6.1 The Agreement shall commence on the Effective Date and, unless it is terminated in accordance with clause 51, shall end at 12:01 AM after 5 (five) years from the Effective Date (the "**Term**").
- 6.2 In the event that Transnet requires the Service Provider to continue to provide the Services following the expiration of the Term, the Parties agree that the terms and conditions of this Agreement, shall be as follows:
- 6.2.1 where Transnet extends the Term by more than 12 (twelve) months but less than 24 (twenty four) months, the pricing shall be based at the ruling price in accordance with **Attachment G2** immediately prior to the expiration of the Agreement, plus a 12% (twelve percent) increase; or
- 6.2.2 where Transnet extends the Term by less than 12 (twelve) months, the pricing shall be based at the ruling price in accordance with **Attachment G2** immediately prior to the expiration of the Agreement, plus a 20%



(twenty percent) increase.

7 FINANCIAL GUARANTEE

7.1 The Service Provider shall provide to Transnet on or before the Effective Date, a Financial Guarantee in the form agreed to and included in **Attachment F**. This Financial Guarantee shall be for R79 000 000.00 (seventy nine million rands) and shall remain in full force and effect for the duration of the Agreement (including any renewal hereof).

7.2 The Service Provider may, with prior notification to Transnet, substitute the form of Financial Guarantee provided to Transnet with a Parent Guarantee in a form agreed to and included in **Attachment F**. For the avoidance of doubt, Transnet must remain in an equal or better position by such substitution. The Service Provider shall not be entitled to substitute the form of Financial Guarantee after any event envisaged in clause 7.4 has occurred giving Transnet the right to encash the Financial Guarantee and Transnet has given the Call Notice envisaged in clause 7.4 to the Service Provider.

7.3 The Service Provider shall not be absolved of any of its obligations and liabilities under this Agreement by virtue of it having obtained a Financial Guarantee or Parent Guarantee, as applicable, and shall at all times remain liable to Transnet for the performance of the Services described herein in accordance with the terms of this Agreement.

7.4 Transnet shall be entitled on not less than 21 (twenty one) days written notice (the Call Notice) to the Service Provider to encash the Financial Guarantee or Parent Guarantee, as applicable, in accordance with the terms and conditions set out in **Attachment F** if:

7.4.1 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 30 (thirty) days after having received written a demand from Transnet; or



7.4.2 the Service Provider materially breaches this Agreement and such breach is irremediable; or

7.4.3 the Service Provider materially breaches this Agreement, such breach is reasonably capable of being remedied and the Service Provider fails to remedy such breach in accordance with clause 51.2.

7.5 In the event that the Service Provider is unable to furnish the Financial Guarantee on the Effective Date in accordance with clause 7.1, Transnet shall withhold an amount of R79 000 000.00 (seventy nine million rands) due to the Service Provider from the mobilization costs for Transition as detailed in Attachment G2.

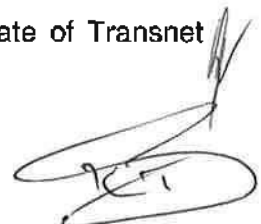
7.6 The amount in clause 7.5 shall be retained solely in lieu of the Financial Guarantee and will be released to the Service Provider within 30 (thirty) days from presentation of the Financial Guarantee by the Service Provider to Transnet.

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 not continue to provide any Services under this Agreement to the divested operating division or part thereof, or Affiliate and shall commence with Disengagement Services for the divested operating division or part thereof, or an Affiliate in accordance with clause 54, **Attachments G1, G2 and W**, where applicable.

8.3 The Service Provider hereby acknowledges that any Affiliate of Transnet

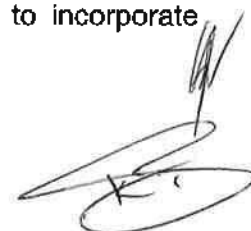


shall be entitled to benefit from the terms and conditions set forth in this Agreement. As such (i) any licence rights granted to Transnet and (ii) any right of use of any Deliverable, shall be deemed to be granted to Transnet's Affiliates unless specifically recorded otherwise in this Agreement.

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 supply, procurement or licensing of any hardware, software, telecommunications facilities, network facilities and/or internet facilities 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. This clause is subject to the qualification that, where an Affiliate of Transnet or an operating division or part thereof, which has benefited from such pricing discounts or rebates or preferential pricing, ceases to be an Affiliate of Transnet or an operating division or part thereof, then Transnet shall not continue to be entitled to include volumes derived from such former Affiliate of Transnet or an operating division or part thereof in any further supply, procurement or licensing volumes following the cessation of the former Affiliate's status as an Affiliate of Transnet or an operating division or part thereof, as provided in **Attachment "G2"**.

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 Services provided by the Service Provider are set forth in this Agreement, including the applicable Attachments and any Annexure thereto, together with all modifications to such Services, as are applicable from time to time, for the Term.

9.2 Notwithstanding Transnet's exercise of its management and oversight functions as identified in clause 37 or elsewhere in this Agreement, the Services and their respective Service Levels shall be provided by the Service Provider to Transnet and its Affiliates in accordance with the Service Tower for that Service and in exchange for the Fees.

9.3 The total cost of provision of all Services to be provided by the Service Provider, in terms of this Agreement, is included in the Fees unless expressly provided otherwise. Without limiting the foregoing:

9.3.1 the Service Provider shall procure or otherwise provide all hardware, software, network facilities and other items required to provide the Services and otherwise to perform its obligations hereunder, including its obligations under clause 22, all of which shall be deemed included in the Fees; and

9.3.2 save for Retained Responsibilities, 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.

9.4 The Service Provider is fully responsible for the performance of its obligations under the Agreement with respect to the Services provided by



the Service Provider and any of its Affiliates to Transnet and its Affiliates, including those responsibilities that are listed in the roles and responsibilities set forth in the Service Towers.

- 9.5 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.
- 9.6 The Service Provider shall for the duration of the Agreement and in accordance with clause 10.12, (a) use commercially reasonable efforts to improve the quality and efficiency of the provision of the Services, and (b) reduce the cost to Transnet of the Services (including reductions in Transnet's retained costs), in accordance with the agreed plans and procedures set forth in this Agreement. Service Provider shall be required to implement all necessary formal processes to facilitate improvement of the Services and a reduction in the Fees, it being agreed that the Service Provider shall ensure that the Fees are reduced on a year on year basis in accordance with **Attachment G1 and G2**.
- 9.7 The Service Provider shall commence providing the Services to Transnet as from the Effective Date, in accordance with the Transition Service Levels at **Attachment O2** and all other terms and conditions of this Agreement for the duration of the Transition Period. Thereafter for the remainder of the Term, the Services will be performed in accordance with the Service Levels agreed in **Attachment D** and all other terms and conditions of this Agreement.
- 9.8 The Service Provider shall, and it shall procure that any Subcontractors, provide the Services, lawfully, diligently, and in accordance with the laws of the Republic of South Africa 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 9.8.

- 9.9 Without limiting any other provision of this Agreement, the Service Provider shall perform the Services with promptness, diligence and courtesy. The Service Provider shall execute the Services in a professional manner and in accordance with the practices and professional standards commensurate with Best Practice used in well-managed operations performing services similar to the Services.
- 9.10 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, any Retained Responsibility) that may reasonably be expected to jeopardize the performance or timely performance of any part of the Services. 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, except as provided in terms of clause 33 and **Attachment H**.
- 9.11 All functions, responsibilities or tasks in this Agreement that are required for the proper performance of the Services and are an inherent part of such Services, shall be deemed to be implied by and included within the scope of the Services to the same extent and in the same manner as if specifically described in this Agreement. Save for the before mentioned, any new functions, responsibilities or tasks required for the Services, shall be incorporated in accordance with clause 33 and **Attachments H and M**.
- 9.12 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.
- 9.13 Should Transnet require that the Service Provider to provide the Services to any Transnet Sites outside of the Republic of South Africa, the Service Provider agrees that it shall provide such Services to such sites unless prohibited from doing so under Applicable Law save that the Service Provider may need to agree reasonable amended Service Levels and Fees



with Transnet. In circumstances where the Service Provider does not have a local presence in the country in which such Transnet Site is located, the Parties will address such issues relating to the provision of such Services in accordance with **Attachment M**. In the event that Transnet elects not to accept the Proposal, the Service Provider shall be entitled to claim proven sunken costs related to such Proposal as explicitly outlined in the Proposal.

9.14 From the Effective Date onwards, any new and additional Services, which Transnet may wish to procure from the Service Provider, shall be governed by this Agreement and specifically the relevant Service Tower or any Attachment executed between the Parties in terms thereof.

9.15 All Services shall be provided in compliance with the Transnet Integrity Pact, a copy of which is attached hereto as part of **Attachment I**.

9.16 **Proposals and Quotations**

9.16.1 Over and above the Services set forth in the Service Towers and as provided in clause 9.17, where Transnet requests the Service Provider to provide a Proposal or Quotation in respect of any proposed Deliverable or Services, 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 Services (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.

9.16.2 Where a written Quotation does not state a date of expiry, it shall be open for acceptance by Transnet for a reasonable period, which period shall not be more than 90 (ninety) days following receipt by Transnet of such Quotation.

9.16.3 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, it is the intention of the



Parties that the Form of Proposal or Form of Quotation at **Attachment M** will be used in respect of any Proposal or Quotation and that the terms and conditions of this Agreement will govern the contractual relationship between the Parties in such respect.

9.17 **Service Towers**

9.17.1 As at the Effective Date and as part of the Services, the Service Provider will provide the Services in respect to the relevant Services Towers set out below and which will be attached to this Agreement as the Service Towers at **Attachment D**:

- 9.17.1.1 Relationship Management Services (**Attachment D1**)
- 9.17.1.2 Cross-Functional Services (**Attachment D2**);
- 9.17.1.3 Voice Services (**Attachment D3**);
- 9.17.1.4 Wide Area Network Services (**Attachment D4**);
- 9.17.1.5 Local Area Network Services (**Attachment D5**);
- 9.17.1.6 Help and Service Desk Services (**Attachment D6**);
- 9.17.1.7 Internet Services (**Attachment D7**);
- 9.17.1.8 Mobility Services (**Attachment D8**);
- 9.17.1.9 Wimax Services (**Attachment D9**);
- 9.17.1.10 Video Conferencing Services (**Attachment D10**); and
- 9.17.1.11 Project Management Services (**Attachment D11**)

9.17.2 The Service Provider shall, subject to clause 9.7 above, perform the Services as contained in **Attachment D**, and in such a manner so as to meet the Transition Service Levels in **Attachment O2** and subsequently the agreed Service Levels in **Attachment D**.



10 SERVICE LEVELS

- 10.1 The Service Levels by which the Service Provider's performance of the Services are to be measured are set forth in the Service Towers at **Attachment D**.
- 10.2 The Service Provider shall be responsible for monitoring and measuring its performance against the Service Levels in accordance with the methodology in the Service Towers.
- 10.3 The Service Provider shall be required to provide a detailed, comprehensive report of its performance against all agreed Service Levels ("**Service Level Reports**") by no later than the 5th (fifth) Business Day following the end of the applicable Measurement Interval. Any changes to the formats for such Service Level Reports shall be mutually agreed between the Parties, and may attract additional costs to be agreed, and which will be borne by Transnet. The Service Level Reports shall be created on actual performance data and not merely a sampling thereof. All data provided in this manner shall be Confidential Information belonging to Transnet and freely accessible by Transnet as required whether online (via Service Provider portal) and / or in real time, in accordance with the relevant Service Tower.
- 10.4 The Service Provider shall meet with Transnet in respect of all Service Towers at least monthly, or more frequently as may be requested by Transnet, to review the Service Provider's actual performance against the Service Levels and shall recommend remedial actions to resolve any performance deficiencies.
- 10.5 If the Service Provider fails to comply with its measurement and reporting obligations with respect to a Service Level for a Measurement Interval, Service Provider will be deemed to have failed such Service Level for such Measurement Interval.
- 10.6 By no later than any handover date (being the date on which a Service is handed over from a test or quality control environment to a production environment, whether inside or outside the Transition Period), the Service



Provider shall, at its sole cost and expense, implement appropriate measurement and monitoring tools and methodologies that are sufficient to establish whether the Service Provider has met each Service Level during the Measurement Interval. Such tools and methodologies must be:

- 10.6.1 automated wherever possible; and
 - 10.6.2 compatible with, interface to and integrate with those toolsets used by Transnet and if required, any Third Party service providers who provide services to which the Services interface as described in **Attachment D and mutually agreed in Attachment O1**, subject to detailed scoping for such Projects and the provisions of **Attachments D, H and M**, as applicable. For the purposes of clarity, the Service Provider shall not be responsible for the costs of those automated tools, processes and interfaces specifically required to be implemented by the Third Party service providers but will be required to pay for all costs for those automated tools, processes and interfaces that are specifically required to be implemented by the Service Provider in providing the Services.
- 10.7 The Service Provider shall update the tools and methodologies it uses to monitor its performance of the Services from time to time for the duration of the Agreement so that at all times the Service Provider only uses tools and methodologies which are sufficient to meet its obligations under the Agreement. Transnet reserves the right to review and approve any such updated tools and methodologies.
- 10.8 Within the time periods set forth in **Attachment D** after the Service Provider's discovery of, or if earlier, the Service Provider's receipt of a notice from Transnet regarding Service Provider's failure to provide any of the Services in accordance with the Service Levels, which results in a Priority Level 1 Incident, the Service Provider shall, as applicable under the circumstances:
- 10.8.1 perform a Root Cause Analysis to identify the cause of such failure/Problem;
 - 10.8.2 advise Transnet, as and to the extent requested by Transnet, of the



status of remedial efforts being undertaken with respect to such Service Level Failure ("Failure") and to provide Transnet with a written report detailing the cause of and procedure for correcting such Failure/Problem; and/or

10.8.3 take the appropriate preventive measures to prevent the recurrence of such failure/Problem or Service Level Failure and provide Transnet with satisfactory evidence thereof.

10.8.4 This clause 10.8 shall *mutatis mutandis* apply in respect of any Service Level Failure other than a Priority Level 1 Incident, as may be reasonably requested by Transnet in writing but not exceeding 5 (five) Root Cause Analyses in a month.

10.9 The correction of any such Failure/Problem shall be performed in accordance with the time frames set forth in the Annexures to the Service Towers at **Attachment D** or in any other applicable Attachment, entirely at the Service Provider's expense, unless it has been determined, by mutual agreement by the Parties or through the dispute resolution process specified in clause 64, that Transnet (or one of its subcontractors, agents or Third Parties provided by Transnet and not managed by Service Provider) was the primary cause of the Failure/Problem and Service Provider could not have worked around the Failure/Problem without expending a material amount of additional time or cost. In such event:

10.9.1 The Service Provider shall be entitled to temporary relief from its obligation to timely comply with the affected Service Level, but only to the extent and for the duration so affected; and

10.9.2 Transnet shall reimburse the Service Provider for the Service Provider's proven additional expenses to correct such Failure/Problem and to continue to perform in the instance of Transnet's failure to rectify despite giving the required notification in accordance with **Attachment D1**, but only to the extent Transnet caused such Failure/Problem, unless the Parties otherwise mutually agree, provided however that the Service Provider:



- 10.9.2.1 gives Transnet prompt notice of Transnet's failure to perform such retained services and the resulting consequences of such performance failure;
- 10.9.2.2 uses commercially reasonable efforts to continue to perform despite Transnet's failure to perform retained services; and
- 10.9.2.3 uses commercially reasonable efforts to mitigate any adverse consequences of Transnet's failure to perform such retained services.

10.10 **Service Credits**

- 10.10.1 The Service Provider recognises that its failure to meet Service Levels may have a material adverse impact on the business and operations of Transnet. Accordingly, in the event that the Service Provider fails to meet a Primary 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 in **Attachment J** subject to the provisions of the Conventional Penalties Act 15 of 1962 (the "**Conventional Penalties Act**").
- 10.10.2 In any one Measurement Interval, the Service Credit in respect of any particular Service Level with which the Service Provider has not complied during that Measurement Interval shall be the product of the Weighting Factor and the Monthly Service Credit Pool in respect of that Service Level and the At Risk Amount in terms of the particular Service Tower to which the Service Level relates. Notwithstanding anything else in this Agreement, the Service Credit in respect of any particular Service Level shall be calculated as required by the provisions of **Attachment J**.
- 10.10.3 It is recorded that, while the Service Provider is required to comply with all Service Levels, only (i) Primary Service Levels; and (ii) those Secondary Service Levels which the Service Provider fails to meet on a cumulative basis within a Measurement Interval pursuant to **Attachment J**, (which for purposes of this clause 10.10.3 will be deemed to be



Primary Service Levels) shall be included in the calculation of any Service Credit.

10.10.4 In the event that Transnet is entitled to a Service Credit and elects 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 10.10.6 and 10.10.7 and the provisions of **Attachment J**.

10.10.5 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.

10.10.6 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.

10.10.7 If the Agreement is terminated prior to the end of a particular month, the Service Provider shall prepare the report referred to in clause 10.10.5 on the written request of Transnet and the assessment referred therein shall be undertaken for the portion of the month period 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.

10.11 **New Service Levels**

10.11.1 Transnet shall have the right, not more often than once quarterly, to add new Service Levels and establish Weighting Factors for each new Service Level on 30 (thirty) days written notice to Service Provider. Such new Service Levels shall be agreed and governed by clause 33,



Attachments D, H, J and M, as applicable.

10.12 Review of and Improvement of Service Levels over duration of this Agreement

10.12.1 The Service Levels shall be reviewed by the Parties on an on-going basis annually for the duration of the Agreement. During such reviews, Transnet may, pursuant to **Attachments D, J and M**:

10.12.1.1 change the Weighting Factors assigned to any Service Levels; and

10.12.1.2 remove Service Levels; and

10.12.2 the Parties shall, pursuant to clause 33, **Attachments D, H, J and M** mutually agree to amend Service Levels, which are subject to Service Credits. Implementation of which changes shall in each case be put in effect by the Service Provider within 30 (thirty) days of such mutual agreement unless otherwise agreed by the Parties in writing.

10.12.3 Unless requested by Transnet, in no event will the Service Levels be made less favourable to Transnet as a result of any reviews or changes.

11 CRITICAL DELIVERABLES

11.1 Transnet has designated certain milestones, activities, actions and/or projects under this Agreement as being Critical Deliverables, including those in relation to a Project, which shall be recorded in **Attachment K**.

11.2 The Service Provider's failure to meet any Critical Deliverable will result in a monthly penalty on the Service Provider in accordance with **Attachment K**.

12 THIRD PARTY SERVICE COOPERATION

12.1 As part of the Services, the Service Provider shall use its best efforts to work in coordination with, and to cooperate with, any and all other Third Party service providers providing or who may provide ICT and any other services to Transnet so that all Transnet required ICT services are provided seamlessly across all service providers (including the Service Provider).



12.2 This coordination and cooperation referred to in clause 12.1 shall include:

12.2.1 exchanging information with Transnet and such other Third Party service providers in connection with the Services. The information exchanged by the Service Provider and the Third Party service providers shall not include information in respect of services provided to any party other than Transnet (and its Affiliates) and shall further exclude any:

12.2.1.1 financial information;

12.2.1.2 pricing information;

12.2.1.3 information in respect of trading terms applicable between Transnet and the Service Provider and Transnet and the Third Party service providers generally, information relating to this Agreement except where required and with Transnet's written consent; and

12.2.1.4 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;

12.2.2 if required, providing such other Third Party service providers reasonable access to any Service Provider facilities being used to provide the Services;

12.2.3 providing such other Third Party service providers reasonable access to hardware, the equipment (including Service Provider Equipment) and Software being used to provide the Services; provided that the Service Provider shall not be held responsible in the event that it can demonstrate that the Third Party service providers are the sole cause of an incident and/or Problem impacting the provision of the Services,



- 12.2.4 if required by Transnet and where possible, integrating the Service Provider processes and procedures with those of such other Third Party service providers, in accordance with clause 33 and **Attachments D, H and/or M**;
- 12.2.5 if required by Transnet and where possible, providing, implementing and maintaining the interfaces between the software that the Service Provider uses and the software that such other Third Party service providers use at the cost of the Third Party service provider, in accordance with clause 33 and **Attachments D, H and/or M**;
- 12.2.6 participating in meetings with such other Third Party service providers reasonably required to manage the interfaces between and the interaction of the Services and the services being provided by such other Third Party service providers to Transnet. Transnet may participate in such meetings at its election;
- 12.2.7 working jointly and in good faith with such other Third Party service providers as reasonably 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, by using commercially reasonable efforts to not avoid any responsibility in connection: (i) with any failure by the Service Provider and the Third Party service providers to provide Transnet with end to end services, and/or (ii) with any events, disputes or Problems;
- 12.2.8 attempting to resolve disputes regarding responsibility for the provision of services where the Services and services other Third Party service providers' provide to Transnet overlap and working directly with such other Third Party service providers before escalating the dispute to Transnet; and



12.2.9 immediately notifying Transnet if an act or omission of such a Third Party service provider may cause a delay in, or an Incident or safety, health or environmental incident with, the Services.

12.3 For the sake of clarity it is recorded that 'reasonable access', for the purposes of this clause 12, shall not preclude the Service Provider from implementing and enforcing reasonable safeguards, policies and protocols governing such access and the protection of its proprietary interests, including its Confidential Information, its assets, and other property, provided that such safeguards, policies and protocols are effected after consultation with Transnet.

13 USE OF SUBCONTRACTORS

13.1 Subcontractor Approval and Appointment of Key Subcontractors

13.1.1 The Service Provider shall not perform or provide the Services through any subcontractor (including Service Provider Affiliates), without the prior written consent of the Transnet Authorised Person, which consent may not be unreasonably withheld or delayed in accordance with the reasonably requested timeline. Any such consent shall be contingent on the execution by each such Subcontractor(s) of a confidentiality agreement (on substantially the same terms as contained in clause 57) with Service Provider prior to such Subcontractor commencing the provision of any Services to the Service Provider or Transnet.

13.1.2 Transnet consents to the Subcontractors identified in **Attachment L**, provided that each such Subcontractor shall be required to execute a confidentiality agreement with Service Provider (on substantially the same terms as contained in clause 57 in favour of Transnet.

13.1.3 The Service Provider shall at all times be responsible for ensuring that each Subcontractor has obtained and maintains all licenses required in connection with the Services.

13.2 Emergency Subcontractors

13.2.1 In the case where the Service Provider is required to use a new



Subcontractor for the purpose of assisting with a material Service outage or Service failure on an emergency basis and in circumstances where the Service Provider is able to demonstrate that it is unable to deal with the Service outage or Service failure without the use of such Subcontractor, the Service Provider shall be entitled to use such Subcontractor in order to resolve such emergency.

13.3 **Subcontractor Agreements**

13.3.1 The Service Provider shall not materially alter any subcontractor agreements, without the prior written consent of Transnet, which consent shall not be unreasonably withheld or delayed in accordance with the reasonably requested timeline.

13.3.2 The Service Provider will ensure that its contracts with its Subcontractors will contain provisions requiring compliance by such Subcontractors with legislation generally, and in particular with legislation governing health and safety, environmental laws, and such other laws that apply to companies providing services similar to the Services.

13.3.3 Notwithstanding any other provision in the Agreement, the intent and purport of clause 13.3.2 shall prevail over all other provisions in the Agreement relating to the Service Provider's Subcontractors.

13.4 **Liability and Replacement**

13.4.1 In no event shall the Service Provider be relieved of its obligations under this Agreement as a result of its use of any Subcontractors and it shall at all times be responsible to Transnet for the fulfilment of its obligations under this Agreement. The Service Provider shall at all times for the Term of this Agreement remain Transnet's sole point of contact regarding the Services, including with respect to payment. The Service Provider shall supervise the activities and performance of each Subcontractor and shall have full liability for each such Subcontractor for any act or failure to act by such Subcontractor.



- 13.4.2 Transnet shall have the right to direct the Service Provider to replace an approved Subcontractor upon 30 (thirty) calendar days notice or such other time as may be mutually agreed, if (i) any acts or omissions of the Subcontractor cause a material breach of the confidentiality or infringement provisions of the Agreement, (ii) the Subcontractor's performance is materially deficient, (iii) there are repeated non-material service delivery failures by the Subcontractor which in the aggregate could reasonably be considered material, (iv) material misrepresentations were made concerning the Subcontractor at the time of Transnet's approval, or (v) Transnet, on any other reasonable grounds, requires such Subcontractor to be replaced, including, but not limited to the following reasons: the Subcontractor is declared a security risk by the State Security Agency; failure to provide a valid tax clearance certificate; the Subcontractor is convicted of violating any Applicable Law, including the PCCA Act.

13.5 **Direct Agreements**

- 13.5.1 Transnet shall at anytime have the right to enter into direct agreements with any Subcontractors for services.

- 13.5.2 The Service Provider warrants and undertakes to Transnet that its arrangements with the Subcontractors do not, and for the duration of this Agreement shall not, prohibit or restrict such Subcontractors from entering into direct agreements with Transnet for services. The Service Provider further agrees not to include any form of restraint (of any nature whatsoever) on any Subcontractor (including any Employee of a Subcontractor) precluding such Subcontractor (or Employee of such Subcontractors) from providing any services directly to Transnet either during the term of this Agreement or after the expiry or termination hereof and any form of restraint included in any such subcontract will be null and void and Service Provider shall be required to uplift same upon written demand of either Transnet or such Subcontractor. Each Party hereby provides consent to the other Party to disclose the content of this clause 13 to any Subcontractors or potential subcontractors.



13.6 Service Provider Affiliates

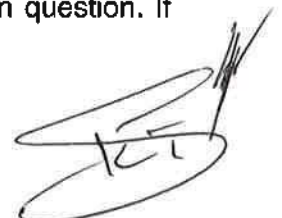
- 13.6.1 The provisions of this clause 13 shall apply *mutatis mutandis* in respect of any Service Provider Affiliates which the Service Provider uses to provide any of the Services.

14 TRANSNET SITES

- 14.1 The Service Provider shall be required to provide the Services in respect of the Transnet Sites, as communicated to the Service Provider by Transnet from time to time.
- 14.2 Transnet may, on written notice to Service Provider, add to, Change or remove any facilities or sites at any time during the course of this Agreement and in accordance with clause 33, **Attachments G2, H and/or M.**

15 PROJECTS

- 15.1 The Service Provider shall perform Projects upon request by Transnet, from time to time.
- 15.2 In respect of Projects, Transnet may decide to (i) perform any of these itself, or (ii) award these to the Service Provider subject to complying with, inter alia, timelines, the requisite skills and capacity, and other relevant criteria as required in **Attachment M.**
- 15.3 For purposes of clarity, the fact that any one or both of the Parties may refer to an aggregation of work as a project shall not cause such aggregation to be treated as a Project. Such an aggregation shall only be treated as a Project if it is a Project as defined in **Attachment A.**
- 15.4 The Service Provider shall charge for Projects as provided in **Attachment M.**
- 15.5 In the event that Transnet requests any Project, the Service Provider shall quote to Transnet a reasonable fee for such Project in accordance with clause 15.4 and **Attachment M**, and the Parties shall promptly meet to discuss such quote and to negotiate the scope of the work in question. If



the Parties reach agreement on all aspects of the Project save for pricing, Transnet may elect in its sole discretion to have the Service Provider perform the Project on a time and materials basis at the Services Rates as provided in **Attachment G2**. In such event, the Parties shall record the terms of the Project (including the aforementioned basis of pricing) in a Form of Proposal or Form of Quotation under this Agreement, as provided under **Attachment M**.

- 15.6 No additional expenses or costs of hardware or materials used by the Service Provider as part of any Project shall be chargeable to Transnet in respect of any Project, save that any such costs shall only be payable in accordance with **Attachment M**.

16 BENCHMARKING

- 16.1 Transnet shall be entitled to, by written notice to the Service Provider, request that a Benchmark Review of any or all of the Service Towers be carried out in order to establish whether a Benchmarked Service Tower is and/or the Benchmarked Services as a whole are Good Value. Such written notice shall specify which of the Service Towers are to be benchmarked. Both Parties shall appoint the Benchmarking Company. Transnet shall not be entitled to carry out a Benchmark Review within 24 (twenty four) months of the Effective Date. Subsequent Benchmark results of the same Services shall be applied at intervals of not less than 12 (twelve) months after the implementation of the preceding same Services Benchmark results.
- 16.2 For the avoidance of doubt, the Benchmark process may commence within 24 (twenty four) months of the Effective Date, however, the results of the Benchmark Review shall only be applied 30 (thirty) days from acceptance by both Parties, which acceptance shall not be unreasonably withheld or delayed, or from the beginning of the 30th (thirtieth) month of the Effective Date, whichever is the later. For subsequent Benchmark Reviews, the results of the Benchmark Review shall only be applied 30 (thirty) days from acceptance by both Parties, which acceptance shall not be unreasonably withheld or delayed, or from the beginning of the 13th (thirteenth) month of



the last Benchmark results implementation, whichever is the later.

- 16.3 Each Party shall bear its own costs (other than the costs of the Benchmarking Company) relating to a Benchmark Review. The costs and expenses of the Benchmarking Company shall be borne equally by Transnet and the Service Provider unless the Benchmark Review finds that the Benchmarked Services are not Good Value, in which case these costs shall be borne by the Service Provider.
- 16.4 The Parties shall require the Benchmarking Company to provide it with a plan, for both Parties' approval, which shall include (a) a proposed timetable for the Benchmark Review; (b) a description of the information that the Benchmarking Company requires each Party to provide; (c) a description of the benchmarking methodology to be used; (d) details of any entities which the Benchmarking Company proposes to include within the Comparison Group; and (e) details of the methodology to be used in arriving at a market based comparison of the Services. Neither Party may unreasonably withhold or delay its approval of the plan and any suggested amendments that either Party may propose must be reasonable.
- 16.5 Once the plan is approved by both Parties, the Benchmarking Company will carry out the Benchmark Review in accordance with it. The Service Provider shall fully co-operate with the Benchmarking Company and shall (at its own cost) provide any information relating to the Services which may reasonably be requested by the Benchmarking Company as well as providing access to records, technical documentation, premises, equipment, systems and its employees as and when reasonably requested by the Benchmarking Company, subject to the Benchmarking Company agreeing to comply with the Service Provider's reasonable confidentiality restrictions.
- 16.6 The selection of the Comparison Group (both in terms of number and identity of entities) and Comparable Services shall be a matter for the Benchmarking Company's professional judgment.
- 16.7 The Benchmarking Company shall by applying the adjustment factors listed in clause 16.9 and from an analysis of the Comparable Services derive



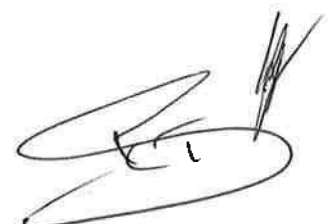
equivalent services data (the "Equivalent Services Data"), and to use such Equivalent Services Data to:

- 16.7.1 calculate the Upper Quartile and/or average service levels;
- 16.7.2 compare the Fees attributable to the Benchmarked Services (having regard to the agreed Service Levels and Service Credits regime under this Agreement) with the Upper Quartile; and
- 16.7.3 compare the Service Levels attributable to the Benchmarked Services (having regard to the Fees and Service Credits regime under this agreement) with the average service levels.
- 16.8 The results pursuant to clause 16.7 and the subclauses thereunder, will determine whether or not each Benchmarked Service Tower is, and/or the Benchmarked Service Towers as a whole are, Good Value.
- 16.9 The Benchmarking Company shall have regard to the following matters when performing a comparative assessment of the Benchmarked Services and the Comparable Services in order to derive Equivalent Services Data:
 - 16.9.1 the contractual and business environment under which the Services are being provided (including the scope, scale, complexity and geographical spread of the Services);
 - 16.9.2 any relevant and applicable investment and development costs of the Service Provider;
 - 16.9.3 the Service Provider's risk profile including the financial, performance or liability risks associated with the provision of the Services as a whole;
 - 16.9.4 the extent of the Service Provider's management and contract governance responsibilities; and
 - 16.9.5 any other factors reasonably identified by the Service Provider, which, if not taken into consideration, could unfairly cause the Service Provider's pricing to appear inflated or non-competitive.
- 16.10 The Benchmarking Company shall be required to prepare a report setting



out its findings ("**Benchmarking Report**"), within the time period specified in the plan referred to in clause 16.4. The Benchmarking Report shall:

- 16.10.1 include finding as to whether or not the relevant Benchmarked Service Tower as a whole is, Good Value;
 - 16.10.2 include other findings (if any) regarding the quality and competitiveness or otherwise of those Services; and
 - 16.10.3 indicate if the relevant Benchmarked Service Tower is not Good Value, or the Benchmarked Services as a whole are not Good Value, specify the changes that would be required to the Services, and in particular to the Fees or Service Levels, that would be required to make the relevant Benchmarked Service Tower or those Benchmarked Services as a whole is Good Value.
- 16.11 Benchmark Reviews shall not result in any increase to the Fees or any decrease in the required performance of any Services or Service Levels.
- 16.12 If the Benchmarking Report states that any Benchmarked Service Tower is not Good Value, then the Service Provider shall:
- 16.12.1 implement the changes set out in the Benchmarking Report as soon as reasonably practicable within a timescale agreed with Transnet; and/or
 - 16.12.2 adjust the Fees downwards where the Benchmark Review reveals that:
 - 16.12.2.1 the Service Provider's Fees are above the Upper Quartile value plus 5% (five percent), which adjusted Fees will then be the Upper Quartile value plus 2% (two percent); or
 - 16.12.2.2 the Service Provider's Fees are above the Upper Quartile value plus 5% (five percent), and based on Transnet's requirements and prior approval, to provide additional Services equivalent in value to the differential costs between the Upper Quartile value plus 2% (two percent) and the Fees charged by the Service Provider prior to the Benchmark Review; and



16.12.2.3 will be come into effect as defined in clause 16.1 above.

16.13 For the avoidance of doubt, the Fees payable by Transnet will be the lesser of the Benchmarked Upper Quartile plus 2% or the applicable Service Tower year-on-year reduced Fee as contained in **Attachment G2**.

16.14 **Below is an illustration of how clause 16.7. above will apply using the following assumptions:**

16.14.1 In the event that The Service Provider Fee is R106.00; and

16.14.2 Benchmark Upper Quartile fee for example is R100.00; and

16.14.3 If the year-on-year cost reduction in terms of **Attachment G2**, is for example 3% (R106.00 less 3%) = R3.18.

16.14.4 then applying the year-on-year reduction, the Service Provider would have had to reduce the Fees by 3% = R3.18. Therefore R106 – R3.18 = R102.82.

16.14.5 Based on clause 16.7 above, (in accordance with clauses 16.14.1 and 16.14.2 above) if the Service Provider's Fees exceed the Upper Quartile by more than 5%, then the Service Provider would have to reduce its Fees to the value equal to the Upper Quartile plus 2% = R102.00

16.14.6 Thus, based on clause 16.13, the price going forward would be R102.00 as it is the lesser of R102.00 and R102.82.

16.14.7 For the avoidance of doubt, the year-on-year reduction will not be applied on the already adjusted Fees pursuant to clause 16.14.2 as this would then mean "a possible double reduction" i.e. R102.00 less 3% .

failing which Transnet will have the right, in addition to any remedies it may have in terms of this Agreement, to terminate the Agreement for convenience without any

liability, on providing a Termination Notice to Service Provider setting forth the applicable termination date.

17 ANNUAL EXECUTIVE COMMITTEE REVIEW

- 17.1 The Executive Committee shall meet on an annual basis at least 60 (sixty) days prior to each anniversary of the Effective Date of this Agreement to review the status of the Services provided under this Agreement as part of relationship management in **Attachment D1**.

18 B-BBEE REQUIREMENTS

- 18.1 The Service Provider represents, warrants and undertakes that as at the Effective Date its Broad-Based Black Economic Empowerment ("B-BBEE") compliance level is a Level 3 Contributor as measured and determined in accordance with the current criteria in terms of the Broad-Based Black Economic Empowerment Codes of Good Practice ("B-BBEE Codes") applicable as at the Effective Date (the "Current B-BBEE Codes"), published under section 9 of the Broad-Based Black Economic Empowerment Act (Act No. 53 of 2003) and hence has a B-BBEE recognition level of 110% (one hundred and ten percent) (the "B-BBEE Rating").
- 18.2 The Parties record that new BEE Codes were published in the Government Gazette on 11 October 2013 (the "New B-BBEE Codes") and have a transitional period for compliance by no later than 30 April 2015, which when they come into force may in and of themselves result in a change to the B-BBEE Rating of the Service Provider (the "New B-BBEE Rating") (in this clause 18 reference to "Equivalent B-BBEE Rating" shall mean the New B-BBEE Rating that the Service Provider would have had at the Signature Date determined in accordance with the New B-BBEE Codes).
- 18.3 Transnet encourages its service providers to constantly strive to improve their B-BBEE rating and may, in its sole discretion, require that the Parties submit quarterly status reports in respect of the Service Provider's B-BBEE improvement plan (the "**B-BBEE Improvement Plan**") on a standard



Transnet format attached hereto as “**Annexure N3**” and updated from time to time. A copy of the Service Provider's initial B-BBEE Improvement Plan is attached to this Agreement as “**Attachment N1**”. Subject to terms of this clause 18, it is recorded that **Attachment N1** constitutes a binding undertaking and commitment on the part of the Service Provider in terms of this Agreement.

18.4 Without limiting the Service Provider's obligations in terms of clause 18.1, the Service Provider shall:

18.4.1 throughout the Term and on an ongoing basis, ensure that it shall retain and/or improve its B-BBEE Rating in accordance with clause 18.3;

18.4.2 advise Transnet in writing within a period of 1 (one) calendar month if the Equivalent B-BBEE Rating changes, which change was not occasioned by changes in the Applicable Law;

18.4.3 within 30 (thirty) days of each anniversary of the Effective Date or within 30 (thirty) days of receipt of its New B-BBEE Rating certificate following each anniversary of the Effective Date, whichever shall occur last, provide to Transnet a certified copy of such verification certificate confirming its B-BBEE rating issued by an accredited verification agency;

18.4.4 ensure that it has at all times a current and valid B-BBEE rating certificate issued by an accredited verification agency; and

18.4.5 save for instances due to changes in the Current B-BBEE Codes or Applicable Law, in the event of an adverse change to its B-BBEE Rating, advise Transnet in writing within a period of 3 (three) calendar months of receipt of the new B-BBEE rating certificate, what steps have been and/or will be taken by the Service Provider to restore its B-BBEE status to the level of the B-BBEE Rating or the Equivalent B-BBEE Rating (as the case may be).



- 18.5 If the Service Provider fails to restore its B-BBEE status to the level of the B-BBEE Rating or the Equivalent B-BBEE Rating (as the case may be) as aforesaid within 180 (one hundred and eighty) Business Days after the notice contemplated in clause 18.4.2 above, then Transnet shall have a right to terminate the Agreement for cause on the basis of such failure, provided that such right shall not be exercisable where the changes to the B-BBEE status were solely occasioned by Changes in the Applicable Law.
- 18.6 In the event that the B-BBEE Rating of the Service Provider has been changed due to Change in Applicable Law, the Service Provider shall have a Remedial Period, which shall be no later than 6 (six) months after 30 April 2015, to fully restore such B-BBEE Rating to the Equivalent B-BBEE Rating. Failure to restore the B-BBEE Rating or the Equivalent B-BBEE Rating after the expiration of the Remedial Period, shall be deemed to be a material breach of this Agreement.
- 18.7 In the event that the Service Provider misrepresents its B-BBEE contributor level, or if the Service Provider's B-BBEE contributor level changes during the duration of the Agreement to a level lower than what it was as on the Effective Date of the Agreement, or if the Service Provider fails to provide the B-BBEE verification certificate, as contemplated in clause 18.4.3, without prejudice to any other right or remedy available to Transnet, then Transnet may serve a notice on the Service Provider requiring the Service Provider (at its own cost and expense) to remedy such failure and for the avoidance of doubt, a failure to perform shall include a failure to remedy as required by this clause 18.7 ("**Remedial Notice**"). Any such notice shall state on its face that it is a "Remedial Notice" and shall be signed by or on behalf of Transnet.
- 18.8 Failure to comply with the Remedial Notice after the expiration of the Remedial Period as provided for in clauses 18.6 and 18.7 above, shall entitle Transnet to a non-compliance penalty as contained in **Attachment N2** or to terminate the Agreement in terms of clause 51.2. No failure, refusal or neglect by Transnet to exercise any right hereunder or insist upon strict compliance with any provision in this clause 18, or performance



by Service Provider of its obligations under this clause 18, shall constitute a waiver by Transnet of the provisions hereof and Transnet may at any time require strict compliance with the B-BBEE provisions set out in this clause 18.

- 18.9 Transnet reserves the right to amend the B-BBEE commitments provided for in this Agreement, in the event that it is obliged to do so as a consequence of any change in Applicable Law.

19 SUPPLIER DEVELOPMENT

19.1 Supplier Development Commitments

- 19.1.1 The Service Provider undertakes to deliver on its supplier development commitments as recorded in the supplier development value summary ("**SD Value Summary**") in **Attachment Q1**. The Service Provider's SD commitments as contained in **Attachment Q1** is calculated at 38,9% (thirty eight, and nine percent) of its estimated total value of the Agreement). Subject to terms of this clause 19, it is recorded that **Attachment Q1** constitutes a binding undertaking and commitment on the part of the Service Provider in terms of this Agreement.

- 19.1.2 The Service Provider shall be obliged, within 60 (sixty) days of the Effective Date, to prepare (or procure the preparation of) and submit a supplier development implementation plan setting out how and when each of the elements of the SD Value Summary is to be achieved (the "**SD Implementation Plan**") to the Transnet Relationship Manager, on acceptance of which such SD Implementation Plan will be annexed hereto as **Attachment Q2**.

- 19.2 The SD Implementation Plan shall include:

- 19.2.1 supplier development obligations (being new skills development, job creation, job preservation, small business promotion, and rural integration and regional development);
- 19.2.2 a committed rand value for each supplier development obligation deliverable stated on a contract quarterly basis; and



19.2.3 committed numbers for each supplier development obligation deliverable, stated on a contract quarterly basis.

19.3 Monitoring And Reporting

19.3.1 The Service Provider shall, quarterly, in accordance **Attachment Q2** provide a report to Transnet through the Transnet Relationship Manager on the following:

19.3.1.1 the number of individuals that have received skills training, stating the areas of competence where such individuals were trained, and compliance thereof with the minimum performance standards outlined in **Attachment Q2**;

19.3.1.2 together with the number of individuals, the Rand Value of all spend as reflected in **Attachment Q2**;

19.3.1.3 the number of jobs created in relation to the commitments set out in the **Attachment Q2**;

19.3.1.4 together with the number of created jobs, the Rand Value of all spend as reflected in **Attachment Q2**;

19.3.1.5 the performance and progress of small business promotion initiatives commissioned as set out in **Attachment Q2**;

19.3.1.6 together with the number of small business promotion, the Rand Value of all spend as reflected in **Attachment Q2**;

19.3.1.7 its performance with respect to rural integration and regional development, made in compliance with **Attachment Q2**; and

19.3.1.8 together with the number of rural integration and



regional development, the Rand Value of all spend as reflected in **Attachment Q2**.

- 19.3.2 Transnet shall be entitled, on a quaterly basis, to inspect any of the initiatives implemented by the Service Provider in complying with **Attachment Q2**. Transnet may, at its election and cost, appoint an independent entity to conduct an assessment on any of the initiatives or deliverables of the Service Provider in respect of supplier development undertakings. The Service Provider shall procure that the independent assessor conducting such review shall be provided with all such assistance and access to facilities, records and assets (including the provision of copies of documents) as they may reasonably require in order to discharge their audit function in a proper manner.

19.4 **Consequences of non-compliance**

19.4.1 **Remedial Action**

- 19.4.1.1 Without prejudice to any other right or remedy available to Transnet, if at any time Transnet is of the opinion that the Service Provider has failed to perform any of its obligations under **Attachment Q2** and such failure is capable of remedy, then Transnet may serve a notice on the Service Provider requiring the Service Provider (at its own cost and expense) to remedy such failure (and any damage resulting from such failure) and for the avoidance of doubt, a failure to perform shall include a failure to remedy as required by this clause 19.4.1.1 ("**Remedial Notice**"). Any such notice shall state on its face that it is a "Remedial Notice" and shall be signed by or on behalf of Transnet.

- 19.4.1.2 Within 14 (fourteen) days of receipt of a Remedial Notice, the Service Provider shall put forward to



Transnet a reasonable and appropriate programme for the remedying of such failure, such programme to specify in reasonable detail the manner in which such failure is proposed to be remedied and the latest date by which it is proposed that such failure shall be remedied ("**Remedial Programme**"). If the Service Provider takes issue with all or any part of a Remedial Notice and the Parties are unable to resolve such dispute, then such dispute may be referred by either Party for resolution by expert determination.

19.4.1.3 If the Parties fail to agree the Remedial Programme within 7 (seven) days of its finalisation, the dispute may be referred by either Party for resolution in accordance with clause 64.2.

19.4.1.4 Upon acceptance of the Remedial Programme by Transnet or resolution by the dispute resolution process, the Service Provider shall forthwith implement the steps and actions detailed in the Remedial Programme.

19.5 **Penalty for Non-Compliance and Payment Thereof**

19.5.1 On any failure by the Service Provider to implement or carry-out any step and/or action in the Remedial Programme, or having taken such step and/or action, the Service Provider fails to remedy the non-compliance in question, then Transnet shall be entitled to levy penalties on the Service Provider for non-compliance in accordance with **Attachment Q3** (the "**SD Penalties**").

19.5.2 On the occurrence of any failure under a Remedial Programme, Transnet shall be entitled, within 60 (sixty) days of learning of such failure, to issue and serve on the Service Provider a notice of non-compliance stating the SD Penalties levied for such non-compliance ("**Non-Compliance Penalty Notice**"). If the Service Provider takes



issue with all or any part of a Non-Compliance Penalty Notice and the Parties are unable to resolve such dispute, then such dispute may be referred by either Party for resolution in accordance with clause 64.2. Upon acceptance of a Non-Compliance Penalty Notice, or determined acceptance thereof by the Service Provider, Transnet shall be entitled within 30 (thirty) days thereof to issue a Tax Invoice to the Service Provider for the payment of the levied SD Penalties.

19.5.3 Any and all SD Penalties which may become due and payable by the Service Provider:

19.5.3.1 will become due and payable by the Service Provider within 30 (thirty) days of receipt of the Tax Invoice therefor by the Service Provider; and

19.5.3.2 if the Service Provider fails to pay such SD Penalties within the 30 (thirty) day period, then such unpaid SD Penalties shall be settled by Transnet deducting same from payments due from time to time by Transnet to the Service Provider under this Agreement.

19.6 Termination

19.6.1 If within 6 (six) months of the acceptance of the Remedial Programme the Service Provider has failed to fully comply therewith, then notwithstanding anything else in this Agreement, such failure shall be deemed a material breach of this Agreement and, Transnet shall be entitled to terminate this Agreement in accordance with clause 51.2.1.

20 **TRANSITION SERVICES**

20.1 Transition Plan

20.1.1 The Service Provider is required to complete the Transition Services within the Transition Period and in accordance with the agreed Transition Plan to be attached to this Agreement as **Attachment O1** that



outlines the tasks, timelines, responsibilities, Dependencies, major milestones, Deliverables, and acceptance testing procedures for each Service Tower.

20.1.2 In accordance with the terms contained in the Transition Plan, the Service Provider shall be required to carry out a transparent, seamless, orderly and uninterrupted transition, from the services being received by Transnet prior to the Effective Date, to the provision of the Services following completion of the Transition Services in accordance with the relevant Service Tower.

20.1.3 Notwithstanding the foregoing, the Transition period will not exceed a period of 12 (twelve) months from the agreed commencement date of Transition in accordance with **Attachment O1**. In the event that the Transition period exceeds 12 (twelve) months, the full mode of operation Service Levels will apply in accordance with the applicable **Attachment D**, unless the Service Provider can demonstrate that the Transition period has exceeded the 12 (twelve) month period for reasons solely attributable to Transnet or as mutually agreed by the Parties. In the latter instance, the applicable Transition Service Levels shall continue to apply in accordance with the agreed timelines for a revised Transition period.

20.1.4 For the avoidance of doubt costs associated with mobilisation and Transition Services, as per scope of Services in Attachment D, are included in Attachment G2.

20.2 **Phased Approach to Transition Services**

20.2.1 It is recorded that the Transition Services shall be carried out in respect of each and every identified Service component of each Service Tower separately, with each Service component having differing milestone dates for completion of the Transition Services relating to such Service component, as recorded in the Transition Plan.

20.3 **Transition Service Levels**

20.3.1 Until achievement of full mode of operation for each Service Tower,



interim Service Levels (as agreed between the Parties in terms of the Transition Plan at **Attachment O1**) will govern the provision of the Transition Services.

20.4 Progress Reports

- 20.4.1 The Service Provider shall provide to Transnet a monthly written report as to the progress of completion of the Transition Services contained in the Transition Plan until each and every Service Provider responsibility thereunder has been successfully completed.

21 FINANCIAL RESPONSIBILITY

- 21.1 The financial responsibilities shall be as set out in **Attachment G3**.
- 21.2 Notwithstanding the foregoing nor that any handover and/or Transition Services may not have been completed, Service Provider shall be required to assume financial responsibility for the provision of the Services as of the Effective Date, except for Transnet Retained Responsibilities.
- 21.3 If the Service Provider is unable to provide all or part of the Services solely for reasons attributable to the Service Provider in accordance with the Transition Plan at **Attachment O1** (as applicable), the term "assume financial responsibility" means that the Service Provider shall reimburse Transnet for the differential costs and expenses incurred by Transnet to provide the Services or, in Transnet's sole discretion, request a credit note on the subsequent invoice to set-off any such reimbursements against the Fees due under the Agreement.
- 21.4 The Service Provider shall not be required to assume financial responsibility as described in the foregoing clause 21.3 to the extent that the Service Provider's performance is excused in accordance with the provisions of clause 42 below or due to a Force Majeure Event or to the extent that the delay may be demonstrably caused by Transnet and/or its Third-Parties.



22 TECHNOLOGY PROCUREMENT

- 22.1 On request from Transnet, the Service Provider shall procure hardware and software on Transnet's behalf (the "**Procured Technology**"), provided such technology is compatible and relevant to the Services and in accordance with Transnet's procurement policy principles and **Attachment G1**.
- 22.2 The Service Provider's procurement responsibilities in this clause 22 shall include, without limitation:
- 22.2.1 evaluating and presenting the qualifications and independence of the relevant service provider for Transnet's benefit;
 - 22.2.2 negotiating favourable pricing (including obtaining the most favourable prices, rates and discounts available);
 - 22.2.3 ordering, receiving, warehousing, configuring, installing, testing, maintaining and distributing all Procured Technology and ensuring and maintaining software license compliance;
 - 22.2.4 ensuring that Procured Technology is authorised only through the Transnet Authorised Person; and
 - 22.2.5 provide a suitable Quotation or Proposal for Transnet's consideration in respect of any Procured Technology request from Transnet, subject to acceptance by Transnet and in accordance with **Attachments G1** and **M**.
- 22.3 As between Transnet and the Service Provider, all right, title and interest in and to each item of Procured Technology shall vest in Transnet unless otherwise agreed between the Parties, and Transnet shall reimburse the Service Provider for the purchase price for such Procured Technology, with the Service Provider being entitled to apply a mark up to the purchase price of the Procured Technology in accordance with **Attachment G1**, on the



procurement of such Procured Technology commensurate with the effort expended by the Service Provider in effecting the procurement. For the avoidance of doubt, the mark up on the Procured Technology will include all administration and management fees and shall not include applicable taxes and pre-approved disbursements.

- 22.4 The Service Provider agrees that to the extent that it provides the service of sourcing the Procured Technology on Transnet's behalf in terms of this clause 22, it shall be precluded from bidding to supply any of the Procured Technology to Transnet itself on cases where the Service Provider was involved in the scoping of the technology procurement request and was first approached by Transnet to provide a quote and Transnet did not accept their quote due to pricing considerations. This clause will apply including in circumstances where the Service Provider is a value added reseller, original equipment manufacturer or original software licensor of the Procured Technology in question.

23 TECHNOLOGY MANAGEMENT

23.1 General

- 23.1.1 The Service Provider shall provide the technology management and security Services described in this clause 23.
- 23.1.2 The Service Provider shall obtain Transnet's prior written consent before acquiring, maintaining, upgrading or replacing any 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 Services 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 new Service Provider Equipment acquisitions or upgrades or replacements thereof that has an impact on the Services.

23.2 Technology Upgrades and Enhancements

- 23.2.1 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.

23.2.2 All hardware and software used to provide the Services will be kept at levels supported by the respective manufacturers, and equipment will be upgraded or replaced as required to meet the Service Levels, manufacturer end-of-life policies and timelines and manufacturer-recommended requirements. 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. 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 and Services as contemplated in clauses 23.3 and 23.4 and subject to **Attachment H**.

23.2.3 Provided that Service Provider gives Transnet reasonable prior written notice of any upgrades or replacements which it intends to effect, the Service Provider shall be responsible for the upgrading of and replacing of those items of Service Provider Equipment, software, hardware and equipment and other items which Service Provider has responsibility so that they are each:

23.2.3.1 Current and proven;

23.2.3.2 supported by the applicable maintenance provider as part of such provider's standard support and maintenance services;

23.2.3.3 capable of meeting all of the Service Provider's obligations under the Agreement (including the Service Levels).

23.2.4 Any Changes to the Service Provider Equipment shall be made in accordance with **Attachment H**, subject to the following:

23.2.4.1 in the event that any such Change materially disrupts



Transnet business, then the Service Provider will roll back the Change as soon as practically possible; and

23.2.4.2 the Parties shall have 7 (seven) Business Days, or such mutually agreed period to resolve the material disruption; and

23.2.4.3 the Parties will test the resolution within the period stated in clause 23.2.4.2 above, after which the Service Provider will then schedule and re-apply the Change in accordance with **Attachment H**; and

23.2.4.4 the applicable Service Levels which are negatively impacted will be given Excused Performance for the period provided for in clause 23.2.4.2 above, provided that the Service Provider complies with the provisions of clause 42.

23.3 **Technology Refresh**

23.3.1 As further detailed in clause 23.4 below, the Service Provider shall be required to keep Transnet advised of their 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 the architectural technology standards and strategies per **Appendix 2 of Attachment D**.

23.3.2 The Service Provider will, at its own cost, refresh all Service Provider Equipment used to provide the Services in accordance with the terms of the Agreement, the relevant Service Tower at **Attachment D**, and to meet the Service Levels.

23.4 **Technology Planning and Innovation**

23.4.1 The Service Provider shall, as part of the Services and as part of the Continuous Service Improvement Plan ("**CSIP**") , prepare for Transnet's review, comments and approval, a technology plan (the "**Technology Plan**") within 6 (six) months of the Effective Date, and thereafter in



accordance with the agreed upon Transition Plan.

23.4.2 The Technology Plan shall include a CSIP detailing the steps that the Service Provider will take and the timeline for taking such steps to further improve the Services and which CSIP shall be prepared twice in each Contract Year and at no additional cost to Transnet.

23.4.3 CSIP shall comprise both short-term and long-term plans that directly relate to Transnet's business goals and business strategies. The short-term plan will include information technology budget development for the next Contract Year including identification of software and hardware for which a technology refresh may be needed in the next Contract Year, and a projected time schedule for procuring the necessary software, hardware and services and implementing the proposed changes. The long-term plan will include strategic and flexible use of information technology systems in light of Transnet's anticipated business goals, current mission, objectives, priorities and strategies.

23.4.4 Prior to preparing any updated CSIP, the Service Provider shall:

23.4.4.1 identify Service Provider and non-Service Provider products and technology services that may benefit Transnet and support the business and technology strategies and objectives of Transnet;

23.4.4.2 identify Service Provider or Transnet resources required to complete the short-term and long-term plans; and

23.4.4.3 investigate the requirements, costs and benefits of new technology.

23.4.5 such CSIP shall be implemented on approval by Transnet.

23.4.6 Notwithstanding the responsibility of preparing regular CSIP, 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**").

23.4.7 Upon identifying any Enhanced Technology that the Parties believe would materially improve performance, capacity, bandwidth 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.

23.4.8 The Service Provider shall be required to ensure that any technology or software upgrades that it proposes to Transnet for the purposes of the Continuous Service Improvement Plan obligations under this clause 23.4 will support, and ensure that Service Provider is able to continue to exceed, the Service Levels and that it is able to continue to deliver all Deliverables and Services.

23.4.9 The Service Provider shall ensure that it has the required skill levels and competencies to continue to provide the Services following the implementation of any technology or software in terms of any Continuous Service Improvement Plan.

23.4.10 Transnet may elect in its sole discretion but after consultation with the Service Provider and on a case-by-case basis to defer any upgrade or replacement of any software, hardware or equipment. If Transnet makes such an election, the Service Provider will use commercially reasonable efforts to perform the Services using the then-existing equipment hardware and software; provided, however, Service Provider will be relieved of its responsibility to meet any Service Level to the extent it can demonstrate, to the satisfaction of Transnet, that the Service Provider's failure to meet any such Service Level was directly and solely caused by Transnet's election to defer any upgrade or replacement of any software or hardware or equipment.

23.4.11 The Service Provider will at all times adhere to the Operational



Standards and Procedures Manual described at clause 31.1.1, as well as any other policies and procedures which may be communicated to Service Provider from time to time, in its provision of the Services.

24 ASSET MANAGEMENT AND CMDB

- 24.1 The Service Provider shall develop, within 6 (six) months of the Effective Date, and thereafter maintain, for the duration of this Agreement, a comprehensive, up to date Configuration Management Database ("CMDB"). The development of such CMDB shall be a Critical Deliverable.
- 24.2 Within 30 (thirty) days after integration and customer sign off has been received, of all (a) equipment, software network connections and infrastructure used by the Service Provider to provide the Services; (b) equipment, software, network connections and infrastructure owned by Transnet, provided by the Service Provider in connection with the Services; and (c) Procured Technology provided it is procured and managed through the Service Provider, shall be incorporated into the CMDB.
- 24.3 The Service Provider shall provide access to such inventory to Transnet upon request by Transnet. This access shall be provided through a portal.
- 24.4 If, and as requested by Transnet and agreed to by the Service Provider, Transnet wishes to procure any dedicated assets used by Service Provider to provide the Services (including Service Provider Equipment), the Service Provider shall provide Transnet a price for each such asset that does not exceed the fair market value price determined by a mutually agreed Third Party.
- 24.5 In accordance with **Attachment K**, the Service Provider shall have developed and thereafter maintain, for the duration of this Agreement, a fully populated and accurate CMDB that is aligned with certain mutually identified fields in the Transnet Fixed Asset Register.

25 ASSET TAKE BACK

- 25.1 At the termination or expiration of this Agreement, Transnet may exercise its rights, at its election, in respect of the purchase of any Service Provider



Owned Equipment dedicated to the provision of the Services in accordance with the provisions of clause 54.3.6 and subject to the OEM licensing regime.

- 25.2 At Transnet's request and election, which may be no more than once a year the Service Provider shall be required to furnish Transnet with full written details of the fair market value on all Service Provider Equipment dedicated to the provision of the Services as determined by a mutually agreed Third Party. The cost of such valuation shall be borne by Transnet.
- 25.3 With respect to those assets on a lease-to-own model, as provided in **Attachment G2**, such assets will transfer to Transnet at its residual value applicable at the time of transfer. In the event that those assets on a lease-to-own model are fully paid up at the time of transfer, Transnet shall take ownership of such assets at no cost to Transnet.
- 25.4 It is recorded that as part of the Agreement, the Service Provider shall sell to Transnet assets as set out in **Attachment P** owned by the Service Provider and used exclusively to provide Services to Transnet and physically held within Transnet premises, including rights of use and servitudes, subject to certain mutually agreed exclusions for an amount of R200 000 000.00 (two hundred million Rand) excluding VAT. The sale will be effective from the Signature Date.
- 25.5 The amount in clause 25.4 shall be paid by Transnet, to the Service Provider within 7 (seven) days of the Signature Date.
- 25.6 Transnet may also procure customer premises equipment leased from the Service Provider at a cost equal to the value of all outstanding payments due for the lease residual period
- 25.7 The Parties shall conclude an operational agreement for the assets referred to in clause 25.4 by no later than 16 March 2015.

26 ASSET SANITISATION SERVICES

- 26.1 As part of the Services, for dismantlement, decommissioning and Disengagement, the Service Provider shall be required to sanitise Service



Provider Owned Equipment containing Transnet Data and Transnet Owned Equipment 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. The Service Provider shall be required to provide written confirmation that the sanitisation has been fully complied with, within 5 (five) days of instruction from Transnet.

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

- 26.2.1 Environmental Laws;
- 26.2.2 Privacy and Data Protection Laws and policies; and
- 26.2.3 Best Practices.

27 SHARED RESOURCES

27.1 The Service Provider may use Shared Resources provided that:

- 27.1.1 Shared Resources shall be partitioned in such a manner that Transnet Data remains separated from data of Third Parties utilising such Shared Resources;
- 27.1.2 All sensitive data or Personal Information must be stored and protected on such Shared Resources in accordance with applicable Transnet information management policies as contained in **Attachment I**; and
- 27.1.3 The Service Provider shall be required to implement all relevant Transnet security policies and mechanisms as contained in **Attachment I**, in force from time to time in respect of the Shared Resources.

27.2 If the Service Provider wishes to make changes to the Shared Resources



which may have an impact on the applicable Services, the Service Provider will notify Transnet in advance, but no less than 2 (two) weeks of such planned change. To the extent that Transnet is not able to co-ordinate its business activities in relation to the Services to the proposed change, then Transnet shall communicate to Neotel within 48 (forty eight) hours of such notification to request changes to the planned implementation date of such change. In this instance Neotel will make reasonable efforts to accommodate such request and will coordinate with Transnet to implement such change.

27.2.1 In the event that any such change materially disrupts Transnet business, then the Service Provider will roll back the change as soon as practically possible; and

27.2.1.1 the Parties shall have 7 (seven) Business Days, or such mutually agreed period, to resolve the material disruption; and

27.2.1.2 the Parties will test the resolution within the period stated in clause 27.2.1.1 above; and

27.2.1.3 notwithstanding that the Parties are unable to resolve the material disruption in terms of clause 27.2.1.1 above, the Service Provider shall proceed with the scheduled change; and

27.2.1.4 the applicable Service Levels which are negatively impacted will be given Excused Performance in accordance with clause 42.

27.3 To the extent there are emergency changes to the Shared Resources, Service Provider will use its best efforts to inform Transnet as early as possible of such change.

27.4 As part of the Disengagement Services and where required by Transnet, the Service Provider will use its reasonable endeavour to assist Transnet with procuring suitable, functionally equivalent replacements for any Shared



Resources used to provide the Services.

28 TRANSNET DATA

- 28.1 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.
- 28.2 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 the Transnet Data, other than as specifically permitted herein or as directed by Transnet in writing.
- 28.3 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.
- 28.4 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 57 with regard to the Transnet Data.
- 28.5 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.
- 28.6 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.

28.7 The Service Provider warrants and undertakes that, as part of the Services provided to Transnet, 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.

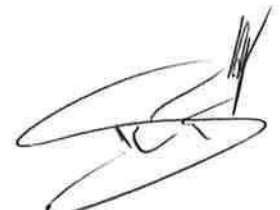
28.8 The Service Provider further warrants that it shall ensure that all its systems and operations which it uses to provide the Services, including all systems on which Transnet Data is copied, compiled, collected, collated, processed, mined, stored, transmitted, altered or deleted or otherwise used as part of providing the Services, shall at all times be of a minimum standard required under Applicable Law and shall in no event be of a standard less than the standards which are in compliance with the Best Practice for the protection, control and use of such data.

29 PERSONAL INFORMATION

29.1 Without limiting the generality of the provisions of clause 28, the following provisions, where applicable apply specifically with regard to all Personal Information which is processed by the Parties.

29.2 Processing of Personal Information

29.2.1 The Parties acknowledge that they will have access to Personal Information relating to the Data Subjects. The Receiving Party agree that it shall only store, copy or use Personal Information disclosed by the Disclosing Party under this Agreement and that they will not otherwise modify, amend or alter the contents of the Personal Information or



disclose or permit the disclosure of any of the Personal Information to any Third Party (save as set forth in clause 29.2.3 hereunder and shall treat the Personal Information as strictly confidential, in compliance with the provisions of clause 57.

29.2.2 The Receiving Party shall only process the Personal Information of Data Subjects in accordance with any Applicable Law and for a specific, lawful purpose strictly in accordance with the Disclosing Party's express written instructions and shall not carry out any related or further processing activities for any other reason whatsoever.

29.2.3 Other than in respect of authorised Employees who require access to Personal Information strictly in order for the Parties to carry out their respective obligations under this Agreement, the Parties shall not disclose or otherwise make available the Personal Information to any Third Party (including sub-contractors and Employees), unless the Disclosing Party has been provided with prior written permission to do so. The Disclosing Party shall require of all such Third Parties, appropriate written undertakings to be provided, containing similar terms to that set forth in this clause 29, and dealing with that Third Party's obligations in respect of its processing of the Personal Information. Following approval by the Disclosing Party, the Receiving Party agrees that the provisions of this clause 29 shall mutatis mutandis apply to all authorised Third Parties who process Personal Information of Data Subjects.

29.2.4 Each Party shall keep all Personal Information and any analyses, profiles or documents derived therefrom logically separated from all other data and documentation held by it.

29.2.5 The Parties shall implement appropriate, reasonable technical and organisational measures to ensure that the integrity of the Personal Information in its possession or under its control is secure and that such Personal Information is protected against unauthorised or unlawful



processing, accidental loss, destruction or damage, alteration, disclosure or access by having regard to any requirement set forth in law, stipulated in industry rules or in codes of conduct or by a professional body and/or generally accepted information security practices and procedures which apply to the Parties.

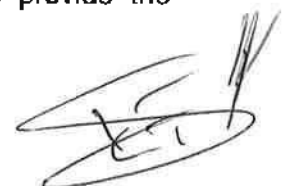
29.2.6 Each Party shall also be required to carry out regular assessments to identify all reasonably foreseeable internal and external risks to the Personal Information in its possession or under its control, at least once in every 12 (twelve) month period and to provide the other Party with a written report in this regard. Each Party shall be required to implement and maintain appropriate safeguards against the risks which it identifies and shall also regularly verify that the safeguards which it has in place and has been effectively implemented.

29.2.7 Subject to the provisions of the PAI Act, the Parties are not permitted to disclose to any Data Subject that it is processing, has processed or intends to process the Personal Information of such Data Subject unless it has obtained the prior written consent of the Disclosing Party.

29.2.8 The Receiving Party shall promptly return or destroy any Personal Information that belong to the Disclosing Party, in its possession or control, at the request of and on instruction from the Disclosing Party (including in circumstances where a Data Subject has requested the Disclosing Party to delete all instances of their Personal Information) in accordance with any specific retention, destruction and purging requirements as may be prescribed by Applicable Law.

29.3 Personal Information security breach

29.3.1 The Receiving Party shall notify the Information Officer of the Disclosing Party, in writing as soon as possible after it becomes aware of or suspects any loss, unauthorised access or unlawful use of any Personal Information and shall, at its own cost, take all necessary remedial steps to mitigate the extent of the loss or compromise of Personal Information and to restore the integrity of the affected Service(s) as quickly as is possible. The Receiving Party shall also be required to provide the



Disclosing Party with details of the Data Subjects who are affected by the compromise and the nature and extent of the compromise, including details of the identity of the unauthorised person who may have accessed or acquired the Personal Information.

- 29.3.2 The Parties shall provide ongoing updates on its progress in resolving the compromise at reasonable intervals until such time as the compromise is resolved.
- 29.3.3 Where required by law, the Parties may be required to notify the South African Police Service; and/or the State Security Agency and where applicable, the relevant regulator and/or the affected Data Subjects of the security breach. Any such notification shall always include sufficient information to allow the Data Subjects to take protective measures against the potential consequences of the compromise.
- 29.3.4 Each Party undertakes to co-operate in any investigation relating to security which is carried out by or on behalf of the other Party including providing any information or material in its possession or control and implementing new security measures

30 DOCUMENTATION

- 30.1 The Service Provider shall be responsible for developing and/or maintaining up-to-date Documentation according to Best Practice. The form and substance of the Documentation shall be specified in the applicable Attachments and shall be subject to Transnet's approval, which approval shall not be unreasonably withheld. Where the Service Provider is obliged to provide continuous updates thereto, the details thereof shall be specified in the applicable Attachment.
- 30.2 The Service Provider's responsibilities with respect to Documentation shall include, on an ongoing basis, auditing Documentation for completeness and accuracy in order to ensure that the Documentation is available, organised, readable and updated. The resulting audit findings will be promptly reported to Transnet in writing. Where it is determined that Documentation is inaccurate, the Service Provider shall promptly correct



such Documentation.

31 STANDARDS AND PROCEDURES MANUAL

31.1 Development of Standards and Procedures Manual

- 31.1.1 The Service Provider shall develop a comprehensive operational standards and procedures manual specific to this Agreement and which shall, at a minimum, include the contents specified in clause 31.2 (the "**Operational Standards and Procedures Manual**"), which it shall be required to keep continuously updated for the duration of this Agreement.
- 31.1.2 The Service Provider shall deliver the first draft of the Operational Standards and Procedures Manual to Transnet for its review, comments and approval within 120 (one hundred and twenty) days of the Effective Date and shall, with respect to each draft of the Operational Standards and Procedures Manual, incorporate all of Transnet's comments and suggestions thereto.
- 31.1.3 Not later than 30 (thirty) days following completion of all activities under the Transition Plan, the Service Provider shall deliver an updated draft of the Operational Standards and Procedures Manual to Transnet for its review, comments and approval and thereafter shall periodically (but not less often than on a quarterly basis) update the Operational Standards and Procedures Manual to reflect changes in the operations or procedures described therein. All such updates to the Operational Standards and Procedures Manual shall be provided to Transnet for its prior review, comments and approval. For the avoidance of doubt, the Service Provider shall submit the final and comprehensive Operational Standards and Procedures Manual no later than 90 (ninety) days following the completion of the Transition Services.
- 31.1.4 Delivery of the Operational Standards and Procedures Manual as provided herein shall constitute a Critical Deliverable.
- 31.1.5 Prior to completion of the Operational Standards and Procedures Manual, the Service Provider shall provide the Services in accordance



with the standards and procedures generally agreed to by the Parties.

- 31.1.6 The Operational Standards and Procedures Manual shall in no event be interpreted as an amendment to this Agreement or to relieve Service Provider of any of its performance obligations under this Agreement.

31.2 **Operational Standards and Procedures Manual**

- 31.2.1 The Service Provider shall provide the Operational Standards and Procedures Manual to Transnet electronically (and in a manner such that it can be accessed via either Transnet's intranet or the Internet) and, at Transnet's option, the Service Provider shall be required to communicate to the Transnet Authorised Person the availability of and methodology for accessing the Operational Standards and Procedures Manual.

- 31.2.2 The Operational Standards and Procedures Manual shall describe, *inter alia*, the manner in which the Service Provider will provide the Services, including the equipment and software being used and to be used, the documentation (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. The Operational Standards and Procedures Manual also shall describe the activities that 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 Law 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.

- 31.2.3 The Operational Standards and Procedures Manual shall describe how the Services will be performed and act as a guide to authorised End-Users seeking assistance with respect to the Services offered hereunder.

- 31.2.4 In the event of a conflict between the terms of the Operational Standards



and Procedures Manual and this Agreement, the terms of this Agreement shall prevail.

32 SERVICE COMPATIBILITY

- 32.1 Subject to detailed scoping for Projects and the provisions of **Attachments D, H and/or M**, as applicable, the Service Provider shall ensure that all services, equipment, networks, software, enhancements, upgrades, modifications and other resources, including those provided by Transnet (collectively, the "**Resources**") utilised or approved by the Service Provider in connection with the Services, shall be successfully integrated and interfaced, and be compatible with the services, equipment, networks, software, enhancements, upgrades, modifications and other resources that are being provided to, recommended to and/or approved for use by Third Party service providers (collectively, the "**Third-Party Resources**"). Further, the Service Provider shall proactively endeavour to rectify any Service interruptions resulting from a failure to successfully comply with the above.

33 CHANGE MANAGEMENT

- 33.1 No Change or purported Change shall be valid and/or effective unless made in accordance with this clause 33 together with **Attachment H**, where applicable.
- 33.2 In the event that either Party requests a Change to the scope or execution of the Services, the Parties shall agree, through the procedures established in **Attachment H**, the timeframes in which the Service Provider must provide a written document to Transnet comprising:
- 33.2.1 the likely time required to implement the Change;
 - 33.2.2 any variations defined in detail to the Service Provider's charges arising from the Change or the reasonable and final cost to make the Change, as may be applicable;
 - 33.2.3 the likely effect of the Change on any timetable or milestones; and
 - 33.2.4 any other impact of the Change on the terms of this Agreement.



- 33.3 If Transnet authorises the Service Provider to proceed with the Change, the Changes envisaged in clause 33.2 above will be agreed in writing between the Parties acting reasonably and following the procedures identified in **Attachment H** and in any event before the Service Provider is obliged to commence with the Change.

34 IN SCOPE SERVICES

- 34.1 If Transnet requires the performance of work that is not being performed at a particular time but that is within the scope of the Services, Transnet shall deliver an In Scope Service Request to the Service Provider specifying the proposed work.
- 34.2 With respect to In Scope Service Requests, unless the Parties mutually agree in writing to proceed otherwise, within 10 (ten) Business Days following the date of Service Provider's receipt of such In Scope Service Request, the Service Provider shall provide Transnet with a written Proposal in terms of **Attachment M** in response to the In Scope Service Request that contains the following: (a) a detailed description of the Services to be performed; (b) specifications (if applicable) of the In Scope Request; and (c) an implementation plan, and any price impact, with implementation to commence not later than thirty (30) days after approval thereof, unless otherwise mutually agreed.
- 34.3 Within thirty (30) days of receipt of the Proposal in clause 34.2 from the Service Provider and in accordance with clause 9.16, Transnet shall notify the Service Provider in writing whether to proceed with the In Scope Service Request on such terms, and the Service Provider shall take no further action with respect to the In Scope Service Request until it receives approval from the Transnet Authorised Person.
- 34.4 Once approved by the Transnet Authorised Person in the form of a purchase order, the terms of such In Scope Request shall be binding on Transnet.
- 34.5 The Service Provider shall update **Attachment D** to record the details of such In Scope Services and furnish the relevant Attachment to Transnet for



approval.

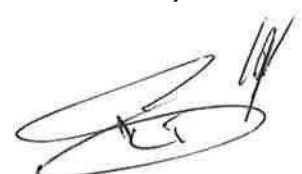
- 34.6 The Service Provider shall not make any Change except as provided for under clause 33 and **Attachment H**.

35 OUT OF SCOPE SERVICES

- 35.1 From time to time, Transnet may require services from the Service Provider that are outside the scope of the Service Towers contracted for under the Agreement ("**Out of Scope Services**" and "**Out of Scope**" shall have a corresponding meaning). Such Out of Scope Services shall be prepared in line with existing Transnet procurement policy in force at such time.
- 35.2 For any services required by Transnet for which the Service Provider wishes to tender or bid and which are the subject of Transnet's general tender or procurement procedures, the Service Provider shall be required to comply with the specific requirements in respect of such tender or procurement procedure and general procurement policy requirements, notwithstanding anything to the contrary set out in this Agreement.
- 35.3 If the Service Provider, under the terms of this Agreement or through the performance of tasks thereto, develops specifications or statements of work, and such specifications or statements of work are to be incorporated into a request for proposal or expression of interest, the Service Provider may be ineligible to bid on and perform the work described within that request for proposal or expression of interest, as a prime contractor or subcontractor under a future Transnet contract.
- 35.4 In the event that the Service Provider is awarded the contract for the provision of Out of Scope Services, the Parties shall mutually agree to incorporate such Out of Scope Services within the scope of this Agreement.
- 35.5 Transnet does not in any way guarantee or otherwise represent that the Service Provider will be the successful bidder should it in fact be eligible to bid for the work in question.

36 REPORTS AND OTHER RESOURCE MATERIALS

- 36.1 The Service Provider shall furnish reports to Transnet in the manner,



format, and frequency reasonably requested by Transnet and agreed to by the Service Provider.

36.2 In addition to reports relating to the Service Provider's performance of the Services in accordance with the Service Levels and reports relating to amounts invoiced to Transnet and those reports specified in the Attachments or the Annexures, the Service Provider shall be required to furnish regular security assessment reports (*inter alia*, on unauthorized system access incidents) as well as reports relating to cost-management, Subcontractor relationships, End-User satisfaction, human resources matters and any other pertinent data requested by Transnet and agreed to by the Parties in accordance with clause 33 and **Attachment H**.

36.3 The Service Provider shall also be required to provide to Transnet, *ad hoc* reports, as may be agreed by the Parties in accordance with clause 33 and **Attachment H**.

36.4 The Service Provider shall promptly, and in no event more than 5 (five) Business Days after gaining knowledge thereof inform Transnet of any deficiencies, omissions or irregularities in Transnet's requirements or in the Service Provider's compliance or performance of the Services that come to the Service Provider's attention.

36.5 The Service Provider shall share with Transnet information and knowledge gained from any existing resources or published materials such as existing and future research and development resources, and industry studies conducted for or by Service Provider, that pertain to the Services and that may assist Transnet in setting its own IT policies or requirements. The Service Provider Relationship Manager shall also advise Transnet of all other matters of significance which will assist Transnet in setting or revising its IT policies or requirements relevant to the Services.

37 RETAINED AUTHORITIES

37.1 General

37.1.1 If the Service Provider can demonstrate that a particular exercise of Transnet's rights and authorities as stated in this clause 37 may interfere

with or degrade the Service Provider's provision of the Services or have a materially detrimental impact on the Service Provider's cost of providing the Services or time for delivery of the Services, the Parties shall meet to agree on the best approach with regard to Transnet's exercise of such right or authority pursuant to clause 33 and **Attachment H**, prior to the exercise of such rights.

- 37.1.2 Transnet may consult with the Service Provider and inform the Service Provider of significant changes in Transnet's IT strategy and changes in its requirements and business processes relating to the Services. The Service Provider shall actively participate in and assist Transnet, where requested, and shall provide Transnet with advice, information and assistance in identifying and defining IT projects and future IT requirements to meet Transnet's objectives.

37.2 **Specific Retained Authorities**

- 37.2.1 Notwithstanding anything to the contrary stated in this Agreement, Transnet shall retain the exclusive right, discretion and authority with respect specifically to the activities described in this clause 37.2 and the Service Provider shall obtain Transnet's prior written approval before undertaking any such activities.

37.2.2 **Strategic and Operational Planning**

Transnet shall at all times retain sole and exclusive authority, discretion and rights of approval with respect to its IT strategy, architecture and IT investment portfolio management and to determine, alter and define any or all of Transnet's requirements and operational and/or business processes and procedures, which shall include but not be limited to:

- 37.2.2.1 developing a series of comprehensive standards and planning guidelines pertaining to the development, acquisition, implementation, and oversight and management of IT systems;
- 37.2.2.2 approving or disapproving, in accordance with guidelines established by Transnet, each proposed



acquisition of Procured Technology;

37.2.2.3 approving or disapproving, in accordance with guidelines established by Transnet, all requests or proposed contracts for consultants for IT systems;

37.2.2.4 performing validation and verification activities in relation to key projects and operational processes;

37.2.2.5 defining and evaluating IT services, including service availability and minimum acceptable service levels, service specifications, standards, and benchmarking; selection of suppliers; security requirements; scheduling and prioritization, service conflict resolution among End-Users; help desk rules and general operational management guidelines; and

37.2.2.6 supplier strategy, including selection of service providers; specialised service provider relationships (including telecommunications); and quality assurance standards.

37.2.3 Service Design and Delivery

Transnet shall retain sole and exclusive authority, discretion and rights of approval with respect to service design and delivery as applicable to the Services, which shall include but not be limited to:

37.2.3.1 selecting designs of specific technologies and services from alternatives suggested by the Service Provider;

37.2.3.2 selecting specific technologies, hardware and software from alternatives suggested by the Service Provider for the implementation of such designs;

37.2.3.3 selecting service providers of specific technologies, hardware and software from alternatives suggested by the Service Provider; and



37.2.3.4 selecting implementation schedules and activities from alternatives suggested by the Service Provider.

37.2.4 Moves, Adds and Changes

Transnet shall retain exclusive authority, discretion and rights of approval in respect of the requesting of any move, add and change activities in respect of the Services.

37.2.5 Business Process Re-engineering

The Parties shall mutually agree to business process reengineering opportunities identified by the Service Provider and related to the Services. The Parties shall ensure that performance metrics related to any business process reengineering are accurately and appropriately developed.

37.2.6 Architectural planning, development and design

The Parties shall mutually agree to approve or reject any or all proposed decisions regarding infrastructure design, design requirements, technical platform, architecture and standards and strategies suggested by the Service Provider, subject to **Attachment H**.

37.2.7 Audits

Transnet shall have the right to perform (i) operational (including any regulatory audits required by a regulator or required to verify either the Service Provider's, the Subcontractor(s)' or Transnet's compliance with any legislative, judicial or regulatory provision to the extent applicable to this Agreement); (ii) financial; (iii) technical; and (iv) Type II Audits in terms of this clause 37, and in accordance with clause 41 with respect to the Service Provider's or the Subcontractor(s)' performance hereunder and to ensure the Service Provider's compliance with the Agreement.



38 SERVICE PROVIDER EMPLOYEES**38.1 Application to Subcontractor Employees and Service Provider Affiliates**

This clause 38 shall apply *mutatis mutandis* to all 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.

38.2 Service Provider Employees

38.2.1 As part of its provision of the Services, the Service Provider shall at all times ensure that all Service Provider Employees (and the employees of any Subcontractors) (i) are appropriately qualified, trained, experienced and available to render the Services in terms of this Agreement and (ii) that, where applicable, such Employees have the relevant certifications required to provide specialised aspects of the Services (including health, regulatory, security or safety-related expertise; and/or as is required by the original equipment manufacturer or software licensor). The Service Provider Employees (and employees of any Subcontractor) shall in any event possess such levels of experience, training, certifications and expertise to provide the Services.

38.2.2 The Service Provider shall ensure that the Service Provider Employees have the necessary knowledge in respect of Transnet's and its Affiliates' business, technical and operational requirements and needs in terms of the Agreement.

38.2.3 If Transnet acting reasonably can demonstrate that the performance or conduct of any Service Provider Employee is unsatisfactory, it shall be entitled, by giving no less than 48 (forty-eight) hours written notice thereof to the Service Provider, to require the Service Provider to address the issue or remove that Service Provider Employee and the Service Provider shall take such steps as may be necessary to give effect to the requirement contained in such notice, including promptly addressing the performance or conduct of the Service Provider Employee or, at Transnet's request, immediately replacing such Service



Provider Employee with another employee with sufficient knowledge and expertise to perform the Services in accordance with this Agreement.

- 38.2.4 Transnet shall not be responsible for any relocation expenses arising from any relocation activities relating to the Service Provider's compliance with this clause 38 or any other term or condition of this Agreement.

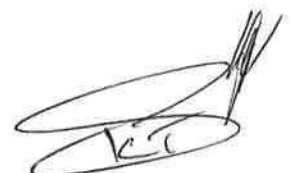
38.3 **Key Employee Functions**

- 38.3.1 Transnet, in agreement with the Service Provider, may designate any role or function provided by a Service Provider Employee a Key Employee Function and such designations will be recorded at **Attachment U**. Key Employee Functions shall generally be those in terms of which key elements of the Services are rendered under the Agreement.

- 38.3.2 The Service Provider shall ensure that Employees rendering Key Employees Functions are assigned to perform the Services in terms of this Agreement in an efficient and timely manner.

- 38.3.3 The Service Provider shall not appoint, assign, designate or subsequently re-assign any employee to occupy a Key Employee Function in terms of this Agreement without first notifying Transnet. Before assigning an Employee to a Key Employee Function, the Service Provider shall notify Transnet of the proposed assignment, and introduce the individual to the appropriate Transnet Authorised Person(s).

- 38.3.4 In the event that an individual in a Key Employee Function resigns or is temporarily or permanently incapacitated or his or her employment is terminated, the Service Provider shall immediately appoint and deploy, for a period no longer than 12 (twelve) months, unless mutually agreed by the Parties, a suitably qualified and trained replacement and shall then immediately commence with the process of finding a suitable permanent replacement for the Employee in the Key Employee Function by following the procedure as set out in this clause 38 for the replacement of a Key Employee Function.



38.4 Key Roles and Responsibilities

- 38.4.1 The Service Provider shall be required to ensure that it at all times has a succession plan per Key Employee Function so as to carry out the relevant functions in providing the Services, each successor with the requisite skill levels and/or qualifications required for fulfilling the requirements of that Key Employee Function.

38.5 Transitioning of Employees

- 38.5.1 If an Employee is replaced, reassigned or re-appointed, the replacement Employee shall be required to work with the Employee to be replaced for a transition period, where reasonably possible.
- 38.5.2 All costs associated with training the replacement Employee shall be borne by the Service Provider.

38.6 Health and Safety and Security

- 38.6.1 The Service Provider's Employees shall comply with the safety, health and environment and security requirements and regulations of Transnet as per **Attachment I**, as amended from time to time.
- 38.6.2 The Service Provider's Employees shall be required to undergo safety induction programmes provided and undertaken by Transnet, where applicable. Costs associated with attendance at such induction programmes, (for example, travel costs, time spent, etc.) shall be at the expense of the Service Provider and the Service Provider will not bill Transnet for the attendance of such Employees.
- 38.6.3 The Service Provider's Employees shall, as soon as is reasonably possible after discovery, report all unsafe acts, injuries and conditions to the safety officer of Transnet, who shall then inform the Service Provider accordingly.
- 38.6.4 The safety officer of Transnet will be available for consultation on any safety related matter and will make periodic visits to the site where work is being performed.



38.6.5 The Service Provider shall insure Employees against injury at work and further ensure that the Employees are fully covered as is required by the Compensation for Occupational Injuries and Diseases Act 130 of 1993 (the "**COIDA**"). Documentary proof of such cover shall be made available to Transnet upon request.

38.6.6 Transnet has the right to refuse admittance to, or to remove from its premises any Employee of the Service Provider whose presence has a material adverse effect on the performance by Transnet of its statutory duties or which poses a threat to the health and safety of other people.

38.7 **Security Requirements**

38.7.1 The Employees shall, in the performance of the Services at all times comply with the security requirements and regulations of Transnet, as per **Attachment I** as amended from time to time.

38.7.2 Should the Service Provider Employee contravene any health, safety and security requirements and regulations, Transnet shall be entitled to deny such Employee access to any or all of Transnet's premises.

38.7.3 Transnet's security requirements and regulations include, *inter alia*, the right to search the person of the Employees and any container in the possession of the Employees and any vehicle driven by the Employees, whilst the Employees are on-site at premises of Transnet.

38.7.4 The Service Provider shall obtain an undertaking from its Employees irrevocably agreeing to submit to such searches and consents to such searches by Transnet or any person duly appointed by Transnet to undertake such searches.

38.8 **Criminal Checks**

38.8.1 As at the Effective Date, the Service Provider undertakes to have conducted standard criminal checks and/or assessments on all Employees and undertakes to provide Transnet with a criminal clearance certificate in respect of the Service Provider Employees, on request by Transnet.



- 38.8.2 In the event that any of those Employees are found to have a criminal record, the Service Provider must inform Transnet immediately. Transnet reserves the right to deny such Employee access to any or all of Transnet's premises and require the Service Provider to replace such Employees as may be required without delay.

38.9 **Status of the Service Provider's Employees**

- 38.9.1 None of the Service Provider, Employees, Subcontractors or agents is or shall be deemed to be employees of Transnet, as defined in the Labour Relations Act 66 of 1995 (the "LRA"). The Service Provider and its Employees and their Affiliates are expressly excluded from making any claims for a transfer to Transnet in terms of section 197 of the LRA at the expiry or termination of this Agreement.
- 38.9.2 The Service Provider shall be required to comply with all Applicable Law, including in relation to employment and tax laws as they relate to and apply in respect of its Employees.

38.10 **Solicitation of Employees**

For a period of 12 (twelve) months after the Term, neither Party shall, without prior consultation and the prior written consent of the other Party, directly or indirectly solicit for employment any employee of the other Party, who at any time during the duration of this Agreement is a member of such Party's staff and who is involved in the performance of this Agreement, provided that the provisions of this clause 38.10 shall not apply in circumstances where an employee of either Party responds to a general, non-targeted for employment issued by the other Party, such as a newspaper advertisement.

38.11 **Key Employee Function Turnover**

If Transnet notifies the Service Provider that its Key Employee Function staff turnover is excessive and such turnover affects the quality of the Service Provider's Service delivery, the Service Provider shall promptly prepare, after consultation with Transnet, a recovery plan (as part of the Services) to reduce the Key Employee Function turnover to levels that are



acceptable in order to ensure that the Service Provider meets its obligations under this Agreement.

39 FEES AND PAYMENT TERMS

39.1 Fees

39.1.1 General

39.1.1.1 The Parties acknowledge that the Fees specified in this Agreement are intended to compensate the Service Provider fully for all Services to be performed and Deliverables to be provided by the Service Provider pursuant to this Agreement (including all other tasks, services and obligations of the Service Provider hereunder). Transnet will not be obligated to pay the Service Provider any amounts in addition to those specifically described in this Agreement as detailed in **Attachment G2** or any other Attachment to this Agreement, including any additional fees, assessments, reimbursements or expenses for labour and general business expenses (including travel, meals and overhead expenses) for the Services and other obligations of the Service Provider hereunder, unless otherwise agreed to in writing between the Parties.

39.1.1.2 The Parties agree that, subject to the provisions of clause 15.4, **Attachment G2** shall, where applicable, be amended upon conclusion of any Benchmarking Review to reflect the Fees that will apply as a result of such Benchmarking Review.

39.1.2 Transition Services

For and in consideration of Service Provider's provision of the Transition Services pursuant to the terms of the Transition Plan, Transnet shall pay the Service Provider the Fees for the Transition Services as are



specified in **Attachment G2** in accordance with the payment terms set forth therein. In respect of the Transition Services, Transnet shall not be obligated to pay the Service Provider any amounts in addition to those specified in **Attachment G2**.

39.1.3 Volume Adjustments

39.1.3.1 While volume adjustments are catered for in **Attachment G2**, it is acknowledged that the actual volumes relating to the Services will be verified by the Service Provider during the Benchmarking Review with the result thereof to be agreed with Transnet and taken into consideration in the Benchmarking Review.

39.1.3.2 On a monthly basis, the Service Provider shall undertake an assessment of any volume adjustments and the Fees will be adjusted for any such volume changes provided that increases or decreases in volumes shall only result in a corresponding Fee increase or decrease, as the case may be, in instances where the volume increase or decrease is more than 5% (five percent) higher than the Agreed Volume Baseline.

39.1.4 Annual Services Fees

The "**Annual Services Fees**" for the Services are set forth in **Attachment G2** of this Agreement.

39.1.5 Service Rates

39.1.5.1 Certain Services shall be provided by the Service Provider at rates not exceeding the Service Rates set forth at **Attachment G2**.

39.1.5.2 The Service Provider shall not increase the billing rate, contained in the Service Rates, for any particular Service Provider staff member assigned to a Project as



a result of a promotion, change in job classification or otherwise without Transnet's prior written consent.

39.1.6 Tax

39.1.6.1 All Fees payable to the Service Provider hereunder shall be inclusive of all Taxes imposed by any domestic or foreign taxing authority.

39.1.6.2 Every invoice shall clearly identify the portion of the Fees that are allocated to Taxes.

39.1.7 Currency

All Fees for the Services and Deliverables shall be expressed in South African Rand.

39.2 Other Charges

39.2.1 Fixed price basis

Where the Service Provider is being compensated on a fixed price basis, such fixed price shall be set in reference to **Attachment G2**, or otherwise in agreement with the Parties.

39.2.2 Incidental expenses

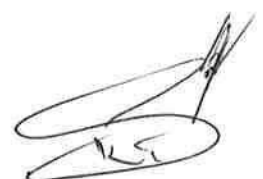
Unless specifically agreed otherwise by Transnet in the applicable Attachment or otherwise, incidental expenses shall be included as part of the Fees and Service Rates and are not separately chargeable.

39.2.3 Pass-through expenses for Required Items

39.2.3.1 With respect to services, materials, goods, equipment or rights ("Required Items") purchased or procured by the Service Provider from a Third Party on behalf of Transnet not as part of the Services for which Transnet agrees to pay in accordance with **Attachment G1**, Transnet shall always have the right to:



- 39.2.3.1.1 obtain such Required Items directly from a Third Party;
- 39.2.3.1.2 designate the Third Party source for Required Items;
- 39.2.3.1.3 designate the specifications (including where applicable, brand and model) of the Required Items the Service Provider shall obtain;
- 39.2.3.1.4 require the Service Provider to identify and consider multiple sources for the Required Items or to conduct a competitive procurement process in accordance with the instructions of Transnet;
- 39.2.3.1.5 review and approve the pass-through expense for the Required Items before entering into a contract for any Required Items; and
- 39.2.3.1.6 negotiate the terms of any contract with the Third Party directly itself or require the Service Provider to negotiate such terms on its behalf in accordance with its directions.
- 39.2.3.2 Except to the extent expressly provided to the contrary in writing by Transnet, Required Items procured on a pass-through basis shall be acquired by the Service Provider in Transnet's name and Transnet shall have all right, title and interest in Required Items.
- 39.2.3.3 In respect of all amounts which may be identified in an Attachment as a pass-through expense:



39.2.3.3.1 the Service Provider may apply a mark up as set out in **Attachment G1**. For the avoidance of doubt, the mark up will include all administration and management fees and shall not include applicable taxes and pre-approved disbursements;

39.2.3.3.2 the Service Provider shall use reasonable efforts to minimise the cost of Required Items provided to Transnet on a pass-through expense basis;

39.2.3.3.3 Transnet shall be entitled (but not obliged) to stipulate a maximum amount, which it is willing to pay for any Required Items (in which event the Service Provider shall not acquire any such item at an amount in excess thereof unless agreed to in writing by Transnet).

39.2.4 Transnet shall always have the right to obtain any services, materials, goods, equipment or rights purchased or procured by the Service Provider from a Third Party on behalf of Transnet not as part of the Services and for which Transnet agrees to pay on a pass-through expense basis directly from a Third Party or as provided for in **Attachment G2**.

39.3 **Pricing Review**

39.3.1 The Service Provider agrees that the Fees in accordance with **Attachment G2**, will subject to an annual review, in accordance with **Attachment D1**, but the Parties agree that such review will not occur earlier than 24 (twenty four) months from the Effective Date,

39.3.2 Pursuant to Clause 39.3.1 above and within 60 (sixty) days prior to the



year-on-year fee reduction implementation date, the Parties shall meet to:

39.3.2.1 formally review the unit rates in year-on-year reduction as per **Attachment G2**;

39.3.2.2 discuss changes in the market as it relates to the Services and assess the impact of the changes on the Services and the Fees charged by the Service Provider.

39.3.3 In the event the Service Provider provides any adjustment to the Fees pursuant to clause 39.3.2.2 and same is accepted by Transnet, the Parties agree that such adjustment will be applicable 30 (thirty) days from the date of such agreement and shall remain in effect until the commencement of the following Contract Year. It is further agreed that Benchmarking pursuant to clause 16, shall not apply to the relevant Service Tower(s) for the following 12 (twelve) month period of such adjustment.

39.4 **Adjustments to Fees**

39.4.1 **Terminated Services**

If, in accordance with clause 51, Transnet terminates this Agreement or reduces any portion of the Services provided hereunder, then the Fees relating to such terminated Services shall be appropriately reduced in accordance with **Attachments G1, G2** and where applicable **Attachment W**, and such reduction shall apply from the applicable Termination Date(s).

40 **INVOICING REQUIREMENTS**

40.1 The Service Provider shall be required to submit monthly tax invoices to Transnet in respect of the Services provided hereunder and in a form to be mutually agreed. Unless otherwise agreed in writing invoices shall be



rendered monthly in arrears. Transnet shall pay to the Service Provider all valid invoices for the provision of the Services, including the disputed amount, within 30 (thirty) days of signed receipt or electronic delivery thereof to the Transnet Authorised Person. The Parties shall endeavour to resolve the dispute within 10 (ten) days of such dispute being raised, failing which such dispute shall automatically be referred to dispute resolution in terms of clause 64. This clause 40.1 precludes any disputed invoicing for Projects, which is dealt with in clause 40.8.1.

- 40.2 All invoices are subject to Transnet's review and approval prior to payment.
- 40.3 Invoices must provide detailed and customised information as requested by Transnet. Such detailed and customised information may include, without limitation, general fee visibility and billing requirements that are consistent with Transnet's specific financial requirements, policies, and practices.
- 40.4 The Service Provider shall maintain complete and accurate records of all amounts billed to and payments made by Transnet under this Agreement in accordance with generally accepted accounting principles applied on a consistent basis. Service Provider agrees to provide Transnet with any information with respect to each invoice as may be requested by Transnet to verify accuracy and compliance with the provisions of this Agreement.
- 40.5 All invoiced amounts must be charged in a timely manner, meaning no later than 120 (one hundred and twenty) days after the invoiced Service has been performed, and the Service Provider shall be required to ensure that all invoices or expected invoice amounts are furnished to the Transnet Authorised Person by no later than the 11th month of Transnet's fiscal year. In the event that the Service Provider fails to charge Transnet within the agreed timelines provided above, the Service Provider agrees to reduce the amount invoiced late by 10% (ten percent) as a penalty for the late



submission thereof.

- 40.6 Subject to clause 41.15, the Service Provider shall be required to credit Transnet any overcharges with respect to any invoice at any time, but will make such refund within 30 (thirty) days from the date that Service Provider discovers or is advised of such overcharge.

40.7 **Projects**

- 40.7.1 The Scheduled Amounts and retained amounts applicable for Projects will be determined by the Parties on a case-by-case basis and recorded in **Attachment M**.

- 40.7.2 The Service Provider's invoices for Projects shall include supporting documentation that references Transnet's approved Proposal or Quotation, Transnet's order number, charges and description.

40.8 **Disputed Amounts**

- 40.8.1 Subject to and in accordance with the provisions of this clause 40 Transnet may withhold payment in respect of any disputed amounts of any Service Provider invoice with respect to Projects and/or Out of Scope Services, but not for Services, that Transnet in good faith disputes as due or owing. Should such dispute not be resolved as between the Parties within 21 (twenty one) days of the dispute being raised, such dispute shall automatically be referred to dispute resolution in terms of clause 64. Notwithstanding the above, Transnet shall pay the portion of the amount that is not disputed upon the submission of the revised invoice excluding the disputed amount.

- 40.8.2 The failure of Transnet to pay a disputed invoice, or to pay the disputed part of an invoice, shall not constitute a breach or default by Transnet, so long as Transnet complies with the provisions of this clause 40.

- 40.8.3 All of the Service Provider's obligations under this Agreement shall continue to apply during the dispute resolution process.



41 AUDIT RIGHTS

41.1 All audits under this clause 41 shall be conducted subject to the following:

41.1.1 the auditors shall be suitably qualified auditors or Transnet's internal auditors;

41.1.2 the auditors shall be required to sign confidentiality agreements with the Service Provider.

41.2 Until such time as the Service Provider obtains certification of a Type II audit, Transnet will exercise its rights to conduct operational and financial audits as provided under clauses 41.14.2 and 41.15. Where the Service Provider fails to obtain certification or the Service Provider intends not to maintain the certification, the Service Provider shall inform Transnet within a reasonable time so as to allow Transnet to conduct operational and financial audits. In the instance where the Service Provider furnishes a valid Type II audit certificate, Transnet shall not conduct operational and financial audits as provided under clauses 41.14.2 and 41.15.

41.3 Except as indicated below, Transnet shall bear the costs of the audit of any initial audit. 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, 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 the audit. The Service Provider shall also bear all costs and expenses associated with correcting all deficiencies and exceptions identified in the Corrective Plan.

41.4 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.

41.5 The auditors shall be obliged to comply with access protocols and control procedures of the Service Provider, which access shall not be unreasonably withheld.



- 41.6 Except where specifically identified, all audits under this clause 41 shall be completed within a time frame to be agreed between the Parties (the **"Completion Date"**). The Service Provider is required to agree to such audit and also prepare a draft of any Corrective Plan (as defined below) required thereunder within 10 (ten) days of the completion date.
- 41.7 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 all such failures and exceptions (**"Corrective Plan"**).
- 41.8 The Corrective Plan and its timelines must align to Transnet's Audit and Control Deficiency Correction Methodology, which requires that corrective action be taken in accordance with standard control remediation periods, or for the avoidance of doubt, as follows:
- 41.8.1 Level 1 audit finding within 30 (thirty) days or such longer period to be mutually agreed to resolve the Corrective Plan. Should this be the case, then interim mitigation processes must be implemented, so that the risks identified in the findings can be deemed to have been mitigated until the final Corrective Plan is implemented;
- 41.8.2 Level 2 audit finding within 90 (ninety) days or such longer period to be mutually agreed; to resolve the Corrective Plan. Should this be the case, then interim mitigation processes must be implemented, so that the risks identified in the findings can be deemed to have been mitigated until the final Corrective Plan is implemented; and
- 41.8.3 Level 3 audit finding within 120 (one hundred and twenty) days or such longer period to be mutually agreed to resolve the Corrective Plan. Should this be the case, then interim mitigation processes must be implemented, so that the risks identified in the findings can be deemed to have been mitigated, until the final Corrective Plan is implemented.
- 41.8.4 In the event that all the findings above as contained in the Corrective



Plan are Transnet findings and are documented as such in the audit report, then Transnet shall be responsible for these failure findings and will not hold the Service Provider accountable for the rectification.

41.9 In the event that the Service Provider fails to comply with the timelines of the Corrective Plan, Transnet shall be entitled to recover the applicable penalties from the Service Provider in accordance with **Attachment K**.

41.10 For the purposes of this clause 41, references to Transnet shall include any internal auditors, external independent auditors, required regulators or other professionals as may be required in order to complete the relevant audit.

41.11 For the avoidance of doubt, follow-up audits are not considered to be audits, but are merely a verification exercise to resolve the initial audit. Prior to the commencement of the audit, the engagement protocols shall be agreed between the appointed auditors and the Parties.

41.12 **SSAE 16 and/or ISAE 3402**

41.12.1 At the intervals set forth herein and/or on Transnet's request and at the cost and expense of the Service Provider, the Service Provider shall cause a reputable independent auditor to conduct a Type II Audit (or any replacement or successor audit standard or process).

41.12.2 If requested by Transnet and prior to the commencement of the first Type II Audit, the Service Provider shall cause its independent auditor to timeously prepare and submit to Transnet for its review a detailed description of the scope of the first Type II Audit to be conducted by the Service Provider hereunder that specifically identifies therein, *inter alia*, any limitations which may apply to the scope of the audit. Once agreed by the Parties, such scope description shall be used for all Type II Audits to be conducted by Service Provider in terms of this clause 41.

41.12.3 Using the agreed upon SSAE 16 and/or ISAE 3402 standards, each Type II Audit shall be required to describe the Service Provider's organisational controls at a specific point in time and would also include detailed testing and the agreed upon procedures describing such testing



of those controls over a full and complete written report to be compiled on completion of a Type II Audit (a **"Type II Report"**).

- 41.12.4 Following completion of the Type II Audit, the Service Provider shall procure that the auditor prepares and delivers to Transnet all Type II Reports.
- 41.12.5 The Type II Audit and Type II Report arising therefrom should, at a minimum be provided to Transnet no less often than on an annual basis, with each such Type II Report due to Transnet by no later than 15 January of each year or such later date as agreed with Transnet's external auditors and covering, at a minimum, the months between 1 April to 30 September of the relevant previous year (the **"Type II Period"**).
- 41.12.6 All Type II Audits conducted by the Service Provider pursuant to this clause 41.12 shall be applicable to all of the Service Provider facilities and Services provided hereunder and shall include: (a) a review of all of the Service Provider's internal controls as they relate to Service Provider's customers generally, (b) the relevant information processing objectives and completeness, accuracy, validity and restricted access ("CAVR"), that are addressed by the Service Provider and (c) the processing location(s) where the Services are provided.
- 41.12.7 In addition, the Service Provider shall ensure that the Type II Report shall contain the opinion of a reputable independent auditor that, for the duration of the Type II Period, (a) the Service Provider has presented, and continues to present, a fair description of the relevant aspects of the Service Provider's controls placed into operation by the Service Provider (b) the controls placed in operation by the Service Provider were suitably designed to achieve the specified control objectives, (c) the controls placed in operation by Service Provider were tested by the auditor, (d) such testing by the auditor revealed that the controls placed in operation by the Service Provider were operated by the Service Provider with sufficient effectiveness such that Transnet has reasonable assurance that the control objectives were achieved during the Type II Report Period.



41.13 Type II Report

41.13.1 Delivery of Corrective Plans:

41.13.1.1 The Service Provider shall deliver such Corrective Plan to Transnet within 10 (ten) days following: (a) the Service Provider's delivery to Transnet of the Type II Report containing the deficiencies and/or exceptions, if the deficiencies and/or exceptions were identified in a Type II Report prepared pursuant to clause 41.12 or (b) the Service Provider's receipt of written notice from Transnet that contains a description of such deficiencies and/or exceptions, if the deficiencies and/or exceptions were identified by Transnet through the exercise of the rights described in clause 41.14.

41.13.1.2 The Service Provider shall, pursuant to the Corrective Plan, remediate the internal control deficiencies identified in the Type II Report prior to Transnet's fiscal year-end.

41.13.2 Co-operation and corrective measures

41.13.2.1 The Service Provider shall provide Transnet such assistance and cooperation as they may reasonably require to conduct any and all audits under this clause 41.

41.13.2.2 The Service Provider shall grant Transnet full and complete access to its facilities, books, records and other documents as they relate to this Agreement, and obtain Subcontractors' documents and/or evidence on behalf of Transnet as required for the performance of audits. The Service Provider undertakes to immediately notify Transnet of any adverse findings from its internal audits or assessments that may have a material impact on the Services together with the



remedial plan.

- 41.13.2.2.1 Save in respect of a Type II Report dealt with in clause 41.12 above, promptly after the issuance of any audit report or findings issued following an audit referred to in this clause 41, the Parties shall meet to review such audit report or findings and to mutually agree upon the appropriate manner in which to address the risks raised in the audit report or findings.

41.14 **Transnet Audits**

- 41.14.1 Subject to clause 41.2 above, Transnet shall have the right, no more than once annually and with reasonable notice, to perform an operational assessment and/or financial audits with respect to the Service Provider's performance under this Agreement.

41.14.2 **Operational Assessments**

- 41.14.2.1 The Service Provider shall grant Transnet full and complete access to its facilities, books, records and other documents as they relate to this Agreement, and obtain Subcontractors' documents and/or evidence on behalf of Transnet as required for the performance of audits. The Service Provider undertakes to immediately notify Transnet of any adverse findings from its internal audits or assessments that may have a material impact on the Services together with the remedial plan.

- 41.14.2.2 The Parties shall endeavour to arrange such assistance in such a way that it does not interfere with Service Provider's performance of the Services.



41.15 Financial Audits

- 41.15.1 The Service Provider shall allow Transnet to fully audit the Service Provider's books and records to the extent necessary to verify any amounts paid or payable in terms of this Agreement. Such auditors shall be provided with full access to such information, books and records as may be necessary to confirm the accuracy of the Service Provider's invoices, documents, and other information supporting such invoices, and any pricing adjustment computations.
- 41.15.2 All such audits shall include access to all proprietary and confidential information of the Service Provider to the extent necessary to comply with the provisions of this clause 41.15.
- 41.15.3 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 promptly shall 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.

41.16 Additional audits

- 41.16.1 In addition to the above, where Transnet has reasonable grounds to believe that the Service Provider is not complying with its obligations under this Agreement, it shall, at its cost, be entitled to carry out further audit exercises relating to the Services, to verify compliance with the terms of the Agreement.
- 41.16.2 The Service Provider shall grant Transnet full and complete access to its facilities, books, records and other documents as they relate to this Agreement, and obtain Subcontractors' documents and/or evidence on behalf of Transnet as required for the performance of audits.
- 41.16.3 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 promptly shall 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.

41.16.4 Records retention

The Service Provider shall maintain a complete audit trail of all financial and non-financial transactions resulting from the Agreement as is reasonably necessary to give effect to the provisions of this clause 41. The Service Provider will maintain and provide Transnet access upon request to the records, documents and other information that make up such audit trail 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.

42 NON-PERFORMANCE EVENTS – EXCUSED PERFORMANCE

42.1 The Service Provider shall promptly notify Transnet upon becoming aware that Transnet or Transnet's Third Party has failed to perform a specifically identified Dependency or Retained Responsibility, as set out in this Agreement or any Attachment hereto. It is recorded that such notification must be effected in accordance with the following procedure, without exception:

42.1.1 The Service Provider must immediately advise the Transnet Authorised Person (or his/her nominee) telephonically of the failure of Transnet or Transnet's Third Party to perform;

42.1.2 Service Provider must, within 1 (one) hour of such telephonic notice, provide written confirmation to the Transnet Authorised Person (or his/her nominee); and

42.1.3 no later than 5 (five) hours, or as mutually agreed of such written notice, Service Provider must provide Transnet with a fix plan (for approval by Transnet) setting out, *inter alia*, the requisite steps to be taken in order to alleviate the impact of such failure or in order to prevent any impending failure as well as any Work Arounds.



42.2 The Service Provider's failure to perform any of its obligations under the Agreement (including a failure to perform an obligation within the timeframes required under this Agreement and the relevant Service Towers in **Attachment D**) shall be excused only if and to the extent:

42.2.1 it is excused due to a Force Majeure Event (subject to clause 52);

42.2.2 the Service Provider can demonstrate that such failure would not have occurred but for Transnet's or Transnet's Third Party's failure to perform any Dependency and the Service Provider provides Transnet with prompt notice of such non-performance in accordance with clause 42.1 and uses commercially reasonable efforts (as detailed in the fix plan) to perform notwithstanding Transnet's failure to perform, including by way of Work Arounds or other means. Transnet shall issue a Purchase Order within 3 (three) Business Days of receiving the fix plan; and

42.3 To the extent that any delay in performance by Service Provider is excused under this clause 42;

42.3.1 the deadlines for its performance shall be extended for a reasonable period of time to accommodate the delay actually and reasonably caused by Transnet's or Transnet's Third's Party's failure to perform a Retained Responsibility in accordance with this Agreement; and

42.3.2 the Service Provider shall be entitled to compensation for proven sunken costs due to any delay caused by Transnet or its Third Party.

42.4 Subject to this Agreement and specifically in respect of this clause 42, the Service Provider will not; save for instituting Work Arounds; take or authorize any action that results in a reduction of the scope of, or degradation in the quality and timeliness of the performance of, the Services for the duration of the Agreement.

43 SERVICE PROVIDER DISASTER RECOVERY

43.1 The Service Provider shall be required to ensure that it timeously addresses any Disaster Event in accordance with the Service Provider Disaster Recovery Plan.



- 43.2 The Service Provider Disaster Recovery Plan for the Shared Resources will be reviewed by Transnet to ensure alignment with Transnet's Disaster Recovery Plan.
- 43.3 The Service Provider shall be required to keep its Disaster Recovery Plan continually updated and to advise Transnet of all changes thereto within 10 (ten) days of effecting such changes to ensure that such changes do not adversely affect Transnet's Disaster Recovery Plan.
- 43.4 The Service Provider shall periodically (not less than twice in every Contract Year or on a more frequent basis where agreed between the Parties) test the procedures set forth in the Disaster Recovery Plan to ensure that the Service Provider is capable of promptly and successfully executing it and to promptly provide Transnet with a written report of the results.
- 43.5 A failure on the part of the Service Provider to successfully restore the Affected Services based on the Service Provider Disaster Recovery Plan shall be considered a material breach of this Agreement.

44 CONTRACTED DISASTER RECOVERY SERVICES

- 44.1 Transnet may (at any time during the Term) in accordance with **Attachment M**, require the Service Provider to provide Contracted Disaster Recovery Services in respect of Transnet's disaster recovery requirement as it relates to the Services. The details of such Contracted Disaster Recovery Services shall be incorporated as **Attachment V** hereto.
- 44.2 In the event that the Parties have agreed the terms of the Contracted Disaster Recovery Services, the Service Provider shall, in accordance with **Attachment M**, implement the Contracted Disaster Recovery Services.

45 SECURITY REQUIREMENTS AND ISO COMPLIANCE

- 45.1 Within 12 (twelve) months from the Effective Date, and at all times thereafter, the Service Provider undertakes that it shall, in providing the Services:
- 45.1.1 be fully ISO 20000-1 (2010) certified and utilise procedures and



processes that are consistent with ISO 20000-1 (2010) certification (or such certification class as shall succeed ISO 20000-1 (2010), as applicable) and shall continually ensure that all of its procedures and processes comply with the requirements of such certifications or successor certifications;

45.1.2 be fully ISO 27001 (2013) certified and ISO 27002 compliant and ensure that it at all times complies with and applies the ISO 27001 (2013) certification and applies ISO 27002 (or the then current or latest version thereof or if such standard is no longer in use, any other equivalent standard as applied in the IT security industry) to the Services, the manner in which it provides the Services and the environment in which it provides the Services; and

45.1.3 be fully ISO 27031 (or similar) aligned and ensure that it at all times is aligned to the ISO 27031 (or the then current or latest version thereof or if such standard is no longer in use, any other equivalent standard as applied in the IT security industry) to the Services, including the manner in which it provides the Services and the environment in which it operates.

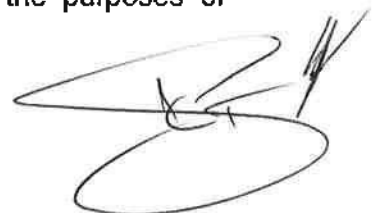
45.2 The Service Provider shall be required to ensure that it and its Employees do not take any action that results or may result in Transnet losing any ISO 20000-1 (2010) or similar quality certification in existence as of the Effective Date, or which Transnet obtains or seeks to obtain after such date.

45.3 The Service Provider is required to assist and cooperate with Transnet in designing the relevant ITIL process outputs to operate within a COBIT framework, allowing for the seamless output from the ITIL processes into the COBIT framework (or any equivalent or successor thereof).

46 ASSETS AND INTELLECTUAL PROPERTY

46.1 Treatment of Intellectual Property Created Prior to the Effective Date

46.1.1 Should Transnet wish to use any of the Intellectual Property created by the Service Provider prior to the Effective Date for the purposes of



delivering the Services, the Service Provider hereby grants Transnet for the Term (unless otherwise agreed) a royalty free, non-exclusive, and to the extent permissible, irrevocable, and fully paid-up, license for Transnet's Permitted Use with respect to the Services in order to perform its obligations under this Agreement. This license shall not permit Transnet or its Affiliates to sub-license or on-license the Service Provider's Intellectual Property to other parties.

46.1.2 Transnet retains all right, title and interest in and to its Intellectual Property. As of the Effective Date, the Service Provider is granted a non-exclusive, royalty free license for the Term for the Permitted Use. This license shall not permit the Service Provider to sub-license or on-license the Transnet Intellectual Property to other parties.

46.1.3 Should the Service Provider or the Subcontractors be required to use the Intellectual Property referred to in clause 46.1.2 as part of the provision of the Services hereunder, Transnet hereby provides the Service Provider or the Subcontractors with a non-exclusive license for the Term to enable it to continue the use of such Intellectual Property in its provision of the Services, including the right to modify, enhance and create Derivative Works.

46.2 Transnet Retained Equipment

46.2.1 The Service Provider shall be able to use at no charge, certain identified equipment owned by Transnet (the "**Transnet Owned Equipment**"), or leased by Transnet (the "**Transnet Leased Equipment**") for the duration of such lease for the sole and exclusive purpose of providing the Services in terms of this Agreement. "**Transnet Owned Equipment**" and "**Transnet Leased Equipment**" shall include equipment owned or leased by Transnet that is currently being used by the incumbent service provider in the provision of the Services including, but not limited to, such equipment that is not specifically identified as a result of human error or other omission. For the avoidance of doubt, Transnet Owned Equipment, includes equipment procured by the Service Provider on behalf of Transnet for the provision of the Services.



- 46.2.2 Notwithstanding that the Transnet-Owned Equipment and Transnet Leased Equipment will remain the property of Transnet or the lessor thereof and a Transnet-retained expense; the Service Provider shall be responsible for the life cycle management of all such equipment subject to clause 46.7 and **Attachment Z2**.
- 46.2.3 Irrespective of the location of any Transnet Owned Equipment or Transnet Leased Equipment, or the failure to list any item of Transnet Owned Equipment or Transnet Leased Equipment in any Service Tower or Annexure thereto, all Transnet Owned Equipment and Transnet Leased Equipment will be and remain vested in Transnet or the applicable lessor thereof.
- 46.2.4 The Service Provider will provide Transnet with reasonable access to all Transnet Owned Equipment or Transnet Leased Equipment located at a Service Provider or other facility.
- 46.2.5 No lien over any Transnet Owned Equipment and Transnet Leased Equipment shall be established in favour of the Service Provider.
- 46.2.6 The Service Provider shall:
- 46.2.6.1 take proper and diligent care of Transnet Owned Equipment and Transnet Leased Equipment under the Service Provider's control;
 - 46.2.6.2 mark all items owned or leased by Transnet uniquely;
 - 46.2.6.3 take all reasonable steps to exclude any landlord's hypothec over such Transnet Owned Equipment and Transnet Leased Equipment including giving any landlord written notice that it is not the owner of such Transnet Owned Equipment and Transnet Leased Equipment; and
 - 46.2.6.4 be responsible for damage to Transnet Owned Equipment and Transnet Leased Equipment or any part thereof damaged by the Service Provider, the



Service Provider Affiliates, their Employees, Subcontractors, agents or invitees, save that this shall exclude reasonable wear and tear and damage caused by Transnet taking reasonable steps to protect the Transnet Owned Equipment and Transnet Leased Equipment from loss and/or damage.

46.2.7 Return of Transnet Equipment

46.2.7.1 Where applicable, at the end of the agreed lease period and/or within 30 (thirty) days following the expiration or termination of this Agreement, the Service Provider will return each item of Transnet Owned Equipment and Transnet Leased Equipment to Transnet in substantially the same condition it was in when initially provided to the Service Provider, reasonable wear and tear excepted, and shall remedy to the satisfaction of Transnet, any damage to the Transnet Owned Equipment and Transnet Leased Equipment caused by the Service Provider, the Service Provider Affiliates, their Employees, Subcontractors, agents or invitees or sustained whilst under the care of the Service Provider; alternatively, in the event of the Transnet Owned Equipment and Transnet Leased Equipment being damaged beyond repair, shall, on written demand by Transnet and, replace such Transnet Owned Equipment and Transnet Leased Equipment with equipment of equal standard, quality and specification and if not available, pay to Transnet the fair market value as determined by a mutually agreed Third Party.

46.2.8 Purchase of Service Provider Equipment during the Term

46.2.8.1 If, and as requested by Transnet and agreed to by the Service Provider, Transnet wishes during the Term to



procure any Assets used by the Service Provider to provide the Services (including Service Provider Equipment), the Service Provider shall provide a list of the Assets dedicated to the Services for procurement and the price which shall be no higher than the fair market value price determined by a mutually agreed Third Party. Any transactions pursuant to this clause 46.2.8 will be subject to OEM transfer regime.

46.2.8.2 The Parties shall jointly prepare a hardware catalogue in accordance with the timelines agreed to in **Attachment O1**, on the Effective Date that will be used by the Service Provider to provide the Services and that shall be updated and provided by the Service Provider on a 6 (six) months basis and upon termination of this Agreement. The hardware catalogue will form part of the CMDB.

46.3 **Software**

46.3.1 **Transnet Owned Software**

46.3.1.1 All right, title and interest in and to the Transnet Owned Software (including all Transnet Intellectual Property pre-dating this Agreement) shall remain vested with Transnet and/or the Transnet Affiliates, as applicable, provided that Transnet grants to the Service Provider a non-transferable, non-exclusive, royalty free license (for the continued duration of this Agreement or for the duration required to carry out the specific task, as the case may be) to perform any lawful act for the sole purpose of providing the Services to Transnet pursuant to this Agreement.



46.3.2 Creation of Deliverables, Developed Software, Documentation and Other Tangibles

46.3.2.1 Notwithstanding anything to the contrary provided herein but excluding the Service Provider Platform, all Intellectual Property rights contained in any Developed Intellectual Property and Developed Materials (or which are created by Transnet for the purposes of and in support of the provision of the Services to Transnet) shall vest with Transnet, created as part of any Project. The Service Provider hereby irrevocably assigns, transfers and conveys to Transnet without further consideration all of its right, title and interest (including Intellectual Property rights) in all such Developed Intellectual Property and Developed Materials, together with all future copyright therein (with immediate effect from the date that such copyright comes into existence). The Service Provider agrees to execute any documents or take any 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 materials.

46.4 Non-Transnet Software

46.4.1 Service Provider Use of Transnet Licensed Third Party Software

46.4.1.1 The Service Provider shall not, without Transnet's express prior written consent, use any Third Party software licensed to Transnet whether to provide the Services to Transnet or for any other purpose whatsoever, unless such third party software is Transnet Third Party Managed Software and Transnet Third Party Assigned Software, in which event the Service Provider will at all times ensure that it and



Transnet comply with the Transnet Third Party Managed Software and Transnet Third Party Assigned Software terms and conditions. The Service Provider acknowledges that unauthorised use of Third Party software licensed to Transnet may constitute a breach of the provisions of the license agreement/s in terms of which such third party software is licensed to Transnet. Should consent be granted to the Service Provider to use Third Party software licensed to Transnet, the Service Provider undertakes that it shall only use such software strictly in accordance with the provisions of the relevant consent.

46.4.2 Service Provider Licensed Third Party Software

- 46.4.2.1 The Service Provider will notify Transnet of any dedicated Service Provider Licensed Third Party Software used to provide the Services.
- 46.4.2.2 Any required license, installation, maintenance, support and/or upgrade costs and expenses with respect to any Service Provider Licensed Third Party Software shall be deemed to be included in the Fees.
- 46.4.2.3 Subject to the terms of clause 54.3.5, all right, title and interest in and to the Service Provider Licensed Third Party Software (excluding derivative works that constitute Transnet Owned Software) shall remain with the applicable Third Party.
- 46.4.2.4 On request from Transnet, the Service Provider shall be required to verify in writing that all Service Provider Licensed Third Party Software used in connection with the Services has been properly licensed from the applicable Third Party and is being used strictly in accordance with such license terms.



46.5 Software Catalogue

46.5.1 Within 6 (six) months of the Effective Date, the Service Provider shall and with the assistance of Transnet, provide Transnet with a detailed catalogue of Software that will be used by the Service Provider to provide the Services that shall be updated and provided by the Service Provider on a 6 (six) month basis and upon termination of this Agreement.

46.6 Assigned Contracts

46.6.1 **Attachment Z1** sets forth the details of the license, support, maintenance and other agreements (including those in respect of Transnet Third Party Assigned Software) that are expected to be assigned to the Service Provider for use in providing the Services (collectively, the "**Assigned Contracts**").

46.6.2 Any costs associated with managing Assigned Contracts shall be agreed in accordance with **Attachment M** and will be incorporated into **Attachment G2**.

46.6.3 Transnet shall attempt, but shall not be obligated, to effect assignments of all such Assigned Contracts to the Service Provider. If, after exercising commercially reasonable efforts to do so, Transnet is unable to effect an assignment of such Assigned Contracts, such Assigned Contracts shall become subject to the terms and conditions of clause 46.7.

46.6.4 If any agreement inadvertently was omitted from **Attachment Z1**, the Parties shall, at Transnet's request, amend **Attachment Z1** and work together in a cooperative manner to effect the assignment of such Assigned Contract to the Service Provider. If Transnet is unable to effect an assignment of any of such Assigned Contract, such Assigned Contract shall become subject to the terms of clause 46.7.

46.6.5 Subject to clause 46.6.2, the Service Provider will pay all required license, support and maintenance fees with respect to the Transnet

Third Party Assigned Software.

46.7 **Managed Contracts**

46.7.1 **Attachment Z2** sets forth the details of the license, support, maintenance and other agreements that will be managed by the Service Provider as part of the Services (collectively, the "**Managed Contracts**"). If any agreement inadvertently was omitted from such Attachment, the Parties shall amend **Attachment Z2** as agreed between the Parties in accordance with **Attachment H**.

46.7.2 Any costs associated with managing Managed Contracts shall be agreed in accordance with **Attachment M** and will be incorporated into **Attachment G2**.

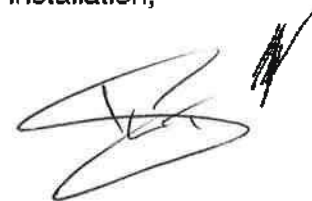
46.7.3 Transnet will secure the appropriate consents and approvals required to enable the Service Provider to perform its obligations relating to **Attachment Z2**.

46.7.4 If any such consents or approvals are not reasonably available, the provisions of clause 46.10 shall apply thereto.

46.7.5 On such written consents having been obtained, Transnet hereby appoints the Service Provider to act during the Term as its single point of contact for all matters pertaining to the Managed Contracts, and with Transnet's approval, the Service Provider promptly will notify all appropriate Third Parties of such appointment. Transnet will assist in identifying all Third Parties to be notified by Service Provider.

46.7.6 Transnet may at any time exercise reasonable control over the Service Provider's actions with respect to such Third Parties as it relates to the provision of Services.

46.7.7 Transnet will retain responsibility for all required license, support and maintenance and fees with respect to **Attachment Z2**. Except as otherwise specified, the Service Provider shall be responsible for all costs and expenses pursuant to clause 46.7.2 (not being license, support and maintenance fees), associated with the installation,



implementation and support of such Managed Contracts including, without limitation, applying upgrades.

46.8 Further Assurances

- 46.8.1 Over and above the relevant documents and instruments specifically mentioned in this clause 46, Transnet and the Service Provider agree to execute and deliver such other instruments and documents as either Party reasonably requests to evidence or effect the transactions contemplated by this clause 46.8.

46.9 Use of Transnet Facilities

- 46.9.1 Transnet shall, where possible make the necessary office space, , storage space, equipment and assets installed or operated on Transnet premises (the "**Transnet Facilities**") available to the Service Provider for performing the Services at all Transnet Sites and/or for the placement of Service Provider Equipment, (or Transnet Owned Equipment and Transnet Leased Equipment, as the case may be), required by the Service Provider in providing the Services throughout the Term, subject to the availability of such Transnet Facilities.

- 46.9.2 The Parties agree that no rental shall be payable by the Service Provider to Transnet or its Affiliates in respect of the Transnet Facilities where the Service Provider is using the Transnet Facilities to provide the Services exclusively to Transnet. Such Transnet Facilities as at the Effective Date are listed in **Attachment E1**.

- 46.9.3 Where the Service Provider is occupying Transnet Facilities not for the exclusive use of providing the Services (in a multi-tenanted environment), the Service Provider will be liable for market related rental for use of such Transnet Facilities. The list of the Transnet Facilities not exclusively used for the provision of the Services is contained in **Attachment E2**. In this instance where the Transnet Facilities is occupied by either Transnet or another service provider, the market related rent payable by the Service Provider shall be pro-rated accordingly.



46.9.4 The Parties agree to enter into lease agreements by no later than 3 (three) months from Effective Date, or the date of occupation of such Transnet Facilities in the event that such occupation takes place after the stipulated period of 3 (three) months from Effective Date, to set out terms and conditions of the use of Transnet Facilities by the Service Provider with respect to **Attachments E1** and **E2** for the duration of the Term as determined in accordance with clause 46.9.5. In the event that the Parties fail to conclude such lease agreements within the time stipulated above, Neotel shall remain liable to pay market related rental to Transnet for the Transnet Facilities in **Attachment E2** from the Effective Date as determined in accordance with clause 46.9.5. Transnet shall not prevent the Service Provider from gaining access to the Transnet Facilities in **Attachment E1**, save for health and safety reasons. In terms of clause 46.9.2 above, no rental is payable for Transnet Facilities in **Attachment E1** irrespective of the conclusion of lease agreements for Transnet Facilities in **Attachment E1**.

46.9.5 For the purposes of this clause 46.9, the market related rental payable for the Transnet Facilities listed in **Attachment E2** shall be determined having regard to, *inter alia*:

46.9.5.1 in the event that the Service Provider and Transnet have an existing agreement regarding the rental payable for the Transnet Facilities in question, the market related rate shall be the value of the agreed rental amount plus CPI;

46.9.5.2 in the event that the Service Provider and Transnet do not have an existing agreement regarding the rental payable for the Transnet Facilities in question, the market related rate shall be the amount that would be paid for rental of similar property in the same condition and in the same area. If the Parties are not able to agree on the value of such rental, the market related rate shall be determined by an independent valuator agreed to by the Parties or, should the Parties

fail to agree on an independent valuator within 10 (ten) days after such determination has been demanded, the independent valuator shall be nominated by the Estate Agency Affairs Board of South Africa or such appropriate body; and

46.9.5.3 calculated as a percentage of the portion of the Transnet Facility being utilised by Neotel in relation the total extent of such Transnet Facility.

46.9.6 In the event of any dispute relating to Transnet Facilities in **Attachment E2**, such dispute shall be resolved in accordance with clause 64, unless the lease agreement referred to in 46.9.4 has its own dispute resolution mechanism. In the event of any conflict between the lease agreement and this clause 46.9, the terms of the lease agreement shall prevail

46.9.7 Other Facility-Related Obligations

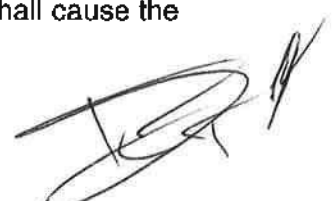
46.9.7.1 Except as expressly provided in this Agreement, the Service Provider shall use Transnet Facilities for the sole and exclusive purpose of providing the Services.

46.9.7.2 The Service Provider shall in no way use Transnet Facilities to provide services to other Third Parties.

46.9.7.3 The Service Provider shall be required to strictly comply with and not cause the breach of any lease agreements that may apply to any of the Transnet Facilities.

46.9.7.4 The Service Provider, and its Subcontractors, Employees, and agents, shall keep Transnet Facilities in good order, shall not commit or permit waste or damage to such facilities, and shall not use such facilities for any unlawful purpose.

46.9.7.5 The Service Provider shall comply, and shall cause the



Service Provider Affiliates, its Subcontractors and Employees to comply with all Applicable Law, including all of Transnet's standard policies and procedures regarding health and safety, security and access to and use of Transnet Facilities, including procedures for the physical security of Transnet Facilities.

- 46.9.7.6 When Transnet Facilities are no longer required for performance of the Services, the Service Provider shall return such facilities to Transnet in substantially the same condition in which it was received, fair wear and tear excepted.

46.10 Third Party Approvals

- 46.10.1 Transnet will take all actions reasonably necessary to obtain, any consents, approvals or authorisations from Third Parties as required for the Service Provider to perform the Services hereunder.
- 46.10.2 Should any Third Party require payment of a fee in order to grant the consents, approvals or authorisations referred to in clauses 46.6.2 and 46.7.1 in respect of any Assigned Contract or Managed Contract, Transnet shall be liable for any such fee.

47 PRE-DELIVERY TESTING BY SERVICE PROVIDER

- 47.1 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 and in accordance with the agreed timelines for such testing.
- 47.2 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 Service Provider testing and retest the Deliverable in accordance with this clause 47 to verify that the fault or deficiency has been successfully remedied and that there are no other deficiencies.




48 REVIEW AND ACCEPTANCE

- 48.1 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 48.
- 48.2 Following the Service Provider's notification to Transnet that the Service Provider 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**").
- 48.3 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 48.7 below.
- 48.4 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**").
- 48.5 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: (i) perform a Root Cause Analysis to identify the cause of the nonconformity; (ii) provide Transnet with a written report detailing the cause of, and procedure for correcting, such nonconformity; (iii) provide Transnet with satisfactory evidence that such nonconformity will not recur; and (iv) 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.

- 48.6 Upon the Service Provider's notice to Transnet that the Service Provider 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 48.2 above shall be repeated.
- 48.7 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: (i) the component or Deliverable meets the Acceptance Criteria and that Acceptance of such component or Deliverable has occurred; or (ii) that the Acceptance Criteria have not been met and provide an Exception Report in respect of any failures or defects. Notwithstanding the above, failure to issue a notice in terms of (i) and (ii) above, such identified component or Deliverable, shall be deemed accepted by Transnet.
- 48.8 If Transnet determines that the Acceptance Criteria have not been so met, the process described in clause 48.2 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**".
- 48.9 After the Deliverable, component and/or system has been subjected to further Acceptance Testing, as set out in clauses 48.6 through 48.8 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.

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

48.10.1 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

48.10.2 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.

48.11 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 anytime, 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 the Service Provider can demonstrably prove that the delay was caused wholly by Transnet.

49 SERVICE PROVIDER REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS

49.1 For the purposes of this clause 49, references to Service Provider, where applicable, shall include its Affiliates, Employees and Subcontractors.

49.2 As at the Effective Date and, unless stated otherwise, for the duration of this Agreement, the Service Provider hereby undertakes and/or warrants, as applicable, to Transnet the following:

49.2.1 Performance of the Services

49.2.1.1 The Service Provider warrants to Transnet that as at the Effective Date, it has the skills, resources and expertise to provide the Services in accordance with



the terms of this Agreement.

49.2.1.2 The Service Provider undertakes to Transnet that subsequent to the Effective Date it will have the skills, resources and expertise to provide the Services in accordance with the terms of this Agreement.

49.2.1.3 Without limiting the generality of the foregoing, Service Provider undertakes to Transnet that all Services provided under this Agreement shall be provided in a timely, professional and workmanlike manner consistent in accordance with Best Practice. Where this Agreement specifies a particular standard or criteria for performance, including, without limitation, applicable Service Levels, this clause is not intended to and does not diminish that standard or criteria for performance.

49.2.1.4 The Service Provider undertakes that, in relation to the Services, it will, as part of the Services, implement and maintain a robust business continuity plan in accordance with Best Practice as it relates to the performance of the Services.

49.2.2 Deliverables

49.2.2.1 The Service Provider warrants that it shall at all times ensure that all Deliverables comply with the agreed functional and technical specifications in terms of which they are supplied, procured or leased and as it relates to the Service and subject to the OEM warranties;

49.2.2.2 The Service Provider undertakes that it shall at all times have spare parts required for the maintenance of the Deliverables; be available to Transnet and that it shall have reasonable access to a supply of all spare



parts required for the maintenance of the Deliverables.

49.2.3 Operating systems and data compliance

- 49.2.3.1 The Service Provider undertakes that it shall ensure that in respect of each Deliverable which operates or is dependent on any platform or operating system, that such Deliverable will, at all times, be and remain compatible and operate in conjunction with the most stable release or the version prior to the latest release (n-1) and for security signatures, the most current release of that operating system required by Service Provider to meet the Deliverables and/or all components thereof, once installed and/or implemented, will process any date and time data correctly and all date-related output and results produced by the Deliverables will comply with the Gregorian calendar.

49.2.4 Viruses and disabling devices

- 49.2.4.1 The Service Provider warrants that it shall implement and use Best Practices to identify, screen and prevent viruses.
- 49.2.4.2 The Service Provider undertakes that it shall not introduce, any Disabling Device into any hardware, software or other resources utilized by the Service Provider, Transnet or the Service Provider Third Party in the provision of the Services, unless required for vulnerability assessment and penetration testing.
- 49.2.4.3 The Service Provider further undertakes that, at no cost or expense to Transnet and without adversely impacting the Services or any Other Services, Service Provider shall reduce and/or eliminate the effects of any Disabling Device including by restoring and/or



bearing the cost to re-create any lost data and/or software programming.

49.2.5 Conflicts of interest

49.2.5.1 The Service Provider warrants to Transnet that, to the best of its knowledge and belief, neither Service Provider, its Affiliates, its Employees, nor any member of the immediate family of any such Employees:

49.2.5.1.1 has, 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 duties and responsibilities to Transnet under this Agreement, the Service Provider shall promptly inform Transnet of any such interest that may be incompatible with the interests of Transnet;

49.2.5.1.2 shall use the authority provided under this 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;

49.2.5.1.3 has used or shall use any Transnet Confidential Information acquired in connection with this 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;

49.2.5.1.4 has accepted or shall accept an inducement that would provide an improper financial gain, advantage or benefit, nor influence any Transnet Employee by the direct or indirect offer of anything of value or an inducement; and

49.2.5.1.5 has paid or agreed to pay any Person any fee, commission, percentage, brokerage fee, gift or any other consideration for the RFP being awarded to the Service Provider, 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 or agents.

49.2.5.2 The Service Provider warrants to Transnet at the Effective Date that the prices presented in the Service Provider Bid were arrived at independently, without consultation, communication or agreement with any other bidder for the purpose of restricting competition; the prices quoted were not knowingly disclosed by the Service Provider to any other bidder; 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.

49.2.6 Financial condition and information

49.2.6.1 The Service Provider undertakes to Transnet that it has, and that it shall continue to maintain throughout



the Term, sufficient financial resources to comply with the requirements of this Agreement. The Service Provider undertakes to immediately notify Transnet of such change in writing if it at any time experiences a material change in its financial condition that shall adversely affect its ability to perform under this Agreement.

49.2.6.2 The Service Provider undertakes to Transnet that all financial statements, reports, and other information furnished by the Service Provider to Transnet as part of the Service Provider Bid or otherwise in connection with the award of this Agreement fairly and accurately represent the business, properties, financial condition, and results of operations of the Service Provider as of the respective dates and for the respective periods, covered by such financial statements, reports or other information. Since the respective dates or periods covered by such financial statements, reports or other information, there has been no material adverse change in the business, properties, financial condition or results of operations of the Service Provider.

49.2.7 Litigation and pending legal processes

49.2.7.1 The Service Provider warrants to Transnet that as of the Effective Date there is no pending or anticipated claim, suit or proceeding that involves the Service Provider or any of its Affiliates or Subcontractors that shall adversely affect the Service Provider's ability to perform its obligations under this Agreement including actions pertaining to the proprietary rights described in clause 49.2.8. The Service Provider undertakes to notify Transnet, within 15 (fifteen) Business Days of the Service Provider's knowledge of any such actual or anticipated claim, suit or proceeding.



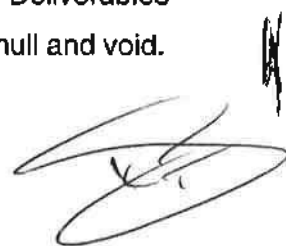
49.2.7.2 The Service Provider undertakes to notify Transnet, within 48 (forty-eight) hours, if any legal proceedings are instituted against the Service Provider in connection with this Agreement, including any subpoena for the Service Provider's records, and shall send a written notice of such proceedings together with a copy of the relevant papers to Transnet within 72 (seventy-two) hours of receipt thereof.

49.2.8 IP rights infringement

49.2.8.1 The Service Provider undertakes to Transnet that it shall at all times perform its responsibilities under the Agreement in a manner that does not infringe, or constitute an infringement or misappropriation of, any Intellectual Property or other proprietary rights of any Third Party; and that the use of any services, techniques or products provided or used by the Service Provider to provide the Services or Deliverables do not and shall not infringe upon any Third Party's Intellectual Property rights, nor make use of any misappropriated trade secrets.

49.2.8.2 The Service Provider warrants that it is either the owner of, or is authorised to use, distribute, licence and/or sublicense, the Intellectual Property it provides to Transnet or otherwise uses to provide the Services.

49.2.8.3 Any unauthorised modifications, use or improper installation of any of the Intellectual Property provided to Transnet by the Service Provider or of any Deliverables (together or individually the "Service Provider provided Intellectual Property or Deliverables") by or on behalf of Transnet shall render warranties and obligations related to such Service Provider provided Intellectual Property or Deliverables or related Services under this Agreement null and void.



49.2.8.4 The Service Provider shall not be held liable for any defects if attempts to rectify such defect other than normal recovery or diagnostic procedures have been made by Transnet or Transnet Third parties without the permission of the Service Provider provided the Service Provider can demonstrate that the defect was wholly caused by Transnet or Transnet's Third Parties.

49.2.8.5 If use of the Service Provider provided Intellectual Property or Deliverables or receipt of the benefit of the Services becomes, or is likely to become, the subject of any such claim, the Service Provider in the interests that Services are not interrupted, may:

49.2.8.5.1 replace all or part of the Service Provider provided Intellectual Property or Deliverables with functionally equivalent software or documentation without any charge to Transnet;

49.2.8.5.2 modify the Service Provider provided Intellectual Property or Deliverables as necessary to avoid such claim, provided that the Service Provider provided Intellectual Property or Deliverables (as amended) functions in substantially the same way as the Service Provider provided Intellectual Property or Deliverables before modification;

49.2.8.5.3 procure for Transnet a licence from the relevant claimant to continue using the Service Provider provided Intellectual Property or Deliverables (as the case may be).



49.2.9 Legal and corporate authority

49.2.9.1 The Service Provider warrants to Transnet that it has all necessary rights, powers and authority to enter into and perform this Agreement and that the execution, delivery and performance of this Agreement has been duly authorized by all necessary corporate action.

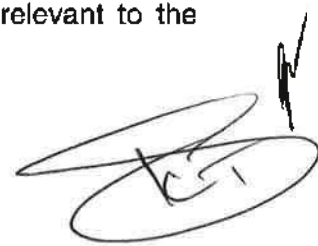
49.2.9.1.1 it has legal capacity, and is qualified and registered to transact business in all locations where the performance of its obligations hereunder would require such qualification or registration;

49.2.9.1.2 it has, and undertakes that it shall maintain in effect, all necessary licences, certificates, permits, authorisations and consents required under the laws of the Republic of South Africa or under any other applicable jurisdiction necessary for it to provide the Services contemplated by this Agreement; and

49.2.9.1.3 this Agreement constitutes a valid, binding, and enforceable obligation on the Service Provider.

49.2.10 Legal regulatory compliance

49.2.10.1 The Service Provider warrants that it is fully cognisant of and compliant with current Applicable Law as well as any current relevant legislative or regulatory requirements and/or rulings or codes of practice of any competent authority or industry body that has jurisdiction over the provision of or is relevant to the



Services and/or Deliverables under the Agreement.

49.2.11 Safety, health and environment

49.2.11.1 The Service Provider warrants that the Services provided will comply with the Applicable Law, safety, health and environmental standards imposed by Transnet and other professional ICT industry practices and codes relating to security, safety, occupational health and the environment.

49.2.11.2 The Service Provider undertakes that it shall immediately inform Transnet about any non-compliance by the Service Provider with this clause 49.2.11. In the event of any non-compliance with the aforesaid clause, the Service Provider will immediately take appropriate remedial action to ensure strict compliance with the said clauses and it will also report to the designated Transnet safety officer on all safety / health / environmental incidents arising out of or in connection with the Services, or in connection with the use of any equipment, plant, machinery, tools, facilities, resources or other equipment at the Areas that may cause harm to health, life or the environment or may jeopardise / compromise safety.

49.2.11.3 The Service Provider warrants that the Service Provider Equipment will be environmentally sound and at the very least, will adhere to all safety and environmental standards required in terms of Environmental Law.

49.2.12 Completeness of due diligence activities

49.2.12.1 The Service Provider acknowledges that it has been provided with sufficient access to the existing Transnet Facilities and Transnet Sites and any relevant



information relevant to the Services, information and Employees, and has had sufficient time in which to conduct and perform a thorough due diligence of Transnet's operations and business requirements and Transnet's assets used by Transnet, as at the Effective Date. In light of the foregoing, there will be no post-contract verification or any related adjustment to unit pricing, save for volume adjustments as per **Attachment G2**.

49.2.12.2 The Service Provider will not be entitled to seek any adjustment in the Fees based on any incorrect assumptions made by the Service Provider in arriving at the Fees.

49.2.13 Maintenance

49.2.13.1 The Service Provider warrants that it shall:

49.2.13.1.1 Maintain equipment and software so that they operate in accordance with their specifications, including (i) maintaining equipment in good operating condition, fair wear and tear excepted; (ii) undertaking repairs and preventive maintenance on equipment in accordance with the applicable equipment manufacturer's recommendations; and (iii) performing software maintenance in accordance with the applicable software Service Provider's documentation and recommendations, except to the extent directed otherwise by Transnet.

49.2.14 Communications, licenses and authorisations



49.2.14.1 The Service Provider warrants that it (i) has in place and will maintain in place all the necessary licenses, certificates, authorisations, permits, type approvals and consents that are required in terms of the Electronic Communications Act 36 of 2005 (the "ECA"), as amended, and any other Applicable Law to provide the Services to Transnet; and (ii) will comply in all material respects with the terms and conditions of (a) its licenses, certificates, authorisations, permits, type approvals and consents; (b) the provisions of the ECA and any other Applicable Law; and (c) any ruling or determination made by the Independent Communications Authority of South Africa in respect of the Service Provider in so far as it relates to the Service Provider's ability to provide the Services.

49.2.15 Service level measurement

49.2.15.1 The Service Provider undertakes that the steps, automated tools, processes, workflows and interfaces for measuring its performance against the Service Levels shall produce an accurate and auditable system for measuring its performance against the Service Levels.

49.2.16 Material misstatements or omissions

49.2.16.1 The Service Provider warrants to Transnet that all written information furnished to Transnet prior to the Effective Date by or on behalf of the Service Provider in connection with this Agreement, including in the Service Provider Bid, is true, accurate, and complete, and contains no untrue statement of a material fact or omits any material fact necessary to make such information not misleading.

49.2.17 ISO compliance



49.2.17.1 The Service Provider undertakes that within 12 (twelve) months from the Effective Date it shall at all times thereafter for the duration of the Agreement be fully ISO 20000-1 (2010) certified, ISO 27001 (2013) and ISO 27002 compliant, and ISO 27031 (or similar) aligned, and utilise procedures and processes that are consistent with each applicable certification.

49.2.17.2 The Service Provider undertakes that in the event that a new ISO standard pursuant to clause 49.2.17.1 above, is developed, it shall, within a period of 12 (twelve) months from such date comply with and/or align (as applicable) and implement the new standard to Transnet's satisfaction.

49.2.18 Security

49.2.18.1 The Service Provider warrants to provide all Services utilising security technologies and techniques in accordance with **Attachment D**.

49.2.19 Insurance

49.2.19.1 The Service Provider warrants it has adequate insurance in accordance with clause 63 and undertakes to maintain such insurance for the duration of the Agreement.

50 TRANSNET REPRESENTATIONS AND WARRANTIES

50.1 Transnet warrants to the Service Provider that it has all necessary rights, powers and authority to enter into and perform this Agreement and that the execution, delivery and performance of this Agreement by Transnet has been duly authorized by all necessary corporate action.

50.2 Warranty Disclaimer

50.2.1 All Transnet Owned Equipment and Transnet Leased Equipment made



available or conveyed by Transnet to the Service Provider under this Agreement at the Effective Date, are made available or conveyed to the Service Provider on an "as is, where is and with all faults" basis and Transnet makes no representations or warranties of any kind whatsoever with respect to the condition, capabilities or other attributes of such items. For the avoidance of doubt, Transnet Owned Equipment, includes equipment procured by the Service Provider on behalf of Transnet for the provision of the Services.

50.2.2 The Service Provider shall be given the opportunity during the Transition Period to inspect all Transnet Owned Equipment and Transnet Leased Equipment made available or conveyed by Transnet to the Service Provider on an "as is" basis (the "**Inspection**") which the Service Provider is to use to provide the Services, to satisfy itself as to the condition of the same and its suitability and sufficiency to perform the Services in accordance with the provisions of this Agreement ("**Suitable Equipment**").

50.2.3 If, following the Inspection, the Service Provider indicates in writing that the Inspected Equipment does not constitute Suitable Equipment as required to provide the Services and to meet the required Service Levels, then it shall provide Transnet with the list of the non-compliant Equipment causing impact to the Affected Services and written reasons for the deficiency ("**Deficiency Report**").

50.2.4 After having received and mutually agreeing the Deficiency Report, Transnet shall be entitled to:

50.2.4.1 replace or repair, at its cost, any or all of the non-compliant Equipment, following which the provisions of clause 50.2.4 shall apply to the replaced or repaired equipment; and/or

50.2.4.2 lower the Service Levels for the non-compliant Equipment; and/or

50.2.4.3 grant Excused Performance for such non-compliant



Equipment, until such time that Transnet replaces the non-compliant Equipment, as per the Equipment refresh cycle as defined in **Attachment D** and is able to meet the original Service Levels.

50.2.5 In the event that the Parties do not agree on the outcome of the Deficiency Report as per clause 50.2.4 above, the parties will proceed to resolve the dispute in accordance with clause 64.

51 BREACH AND TERMINATION

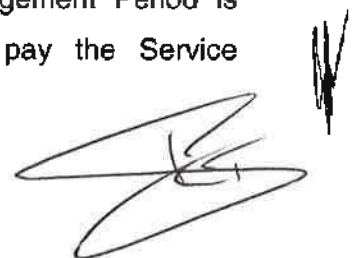
51.1 Early Termination

51.1.1 Termination For Convenience of Services (Other than Projects)

51.1.1.1 Following the expiry of a period of 18 (eighteen) months after the Effective Date, Transnet shall have the right to terminate for its convenience (i) 1 (one) or more Service Towers (excluding Projects); or (ii) this Agreement, in each case by delivering to the Service Provider a Termination Notice at least 90 (ninety) days before the Termination Date.

51.1.1.2 Notwithstanding the period set forth in clause 51.1.1.1 and where circumstances permit, Transnet shall have the right to extend the period for termination as stated in any Termination Notice for an additional period of up to 12 (twelve) months to ensure the successful and complete hand over of the Services. Transnet's right to extend the period for termination for an additional fixed period of up to 12 (twelve) months shall be subject to clause 6.2 as applicable and Transnet being up to date on undisputed Fees.

51.1.1.3 In the event that Transnet terminates the Agreement within the Term, and the Disengagement Period is within the Term, Transnet shall pay the Service



Provider in accordance with **Attachments G2, and W.**

- 51.1.1.4 Save as provided for in clause 51.1.2 or elsewhere in this Agreement, if Transnet terminates one or more Service Towers or terminates this Agreement in its entirety as provided in this clause 51.1.1, Transnet shall pay to the Service Provider the applicable once off Termination Fee according to **Attachment W.**

51.1.2 Termination For Convenience of Projects

- 51.1.2.1 Transnet may terminate a Project, in whole or in part, for convenience and without cause at any time by giving the Service Provider at least 90 (ninety) days prior written notice designating the Termination Date.

- 51.1.2.2 Other than being liable for payment to the Service Provider for proven sunken costs and Services delivered pursuant to a Project prior to its termination, in accordance with **Attachment M**, Transnet shall have no liability to the Service Provider with respect to such termination. To the extent that sunken costs include Assets, such Assets shall become the property of (and be at the risk of) Transnet when paid for by Transnet and delivered to and accepted by Transnet.

51.1.3 Reduction in Fees

- 51.1.3.1 In the case of a termination of a Service Tower, charges payable for such terminated Service Tower shall be removed from **Attachment G2** to reflect the partial termination of the Agreement. Partial Termination for Convenience will attract the applicable once off Termination Fee in accordance with **Attachment W.**

- 51.1.3.2 In the case of a termination of the whole Agreement or



1 (one) or more Service Tower(s), there will be no reduction in the Fees during the Disengagement Period until such time as the relevant Service Tower(s) has been disengaged.

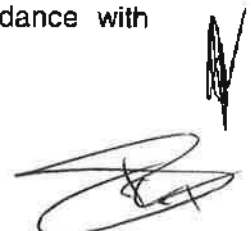
51.1.4 Change in Business Operations or Financial Position or Business Requirements

51.1.4.1 In addition to its right to terminate for convenience (as set forth in clauses 51.1.1 and 51.1.2), Transnet shall have the right to terminate, 1 (one) or more Service Towers and/or Projects and/or to terminate the Agreement, in each case by delivering to the Service Provider a Termination Notice at least 90 (ninety) days prior to the Termination Date, in the event of a demonstrable material change (whether adverse or otherwise) in its business operations, financial position or business requirements.

51.1.4.2 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 in accordance with **Attachment G2** and the applicable once off Termination Fee in accordance with **Attachment W**.

51.1.5 Change in Control of Service Provider

51.1.5.1 In the event of Change in Control of the Service Provider to which Transnet has not consented to in writing, and which consent shall not be unreasonably withheld, or the Change in Control is to an entity that is blacklisted by Transnet or Treasury, declared a security risk by the State Security Agency; is convicted of violating the PCCA Act, then Transnet shall have the right to trigger a Step-In Right in accordance with



clause 53.1 and terminate 1 (one) or more Service Towers or the entire Agreement by delivering to the Service Provider a Termination Notice at least 90 (ninety) days prior to the Termination Date.

51.1.5.2 If Transnet terminates the Agreement pursuant to this clause 51.1.5, the Service Provider shall be obliged to perform its Disengagement obligations hereunder until such obligations are fulfilled.


51.1.5.3 Any termination pursuant to this clause 51.1.5 shall not constitute a termination for convenience and Transnet shall not pay the Service Provider any Termination Fees. Transnet shall pay the Service Provider in accordance with **Attachments G2** and shall have no further liability or obligation to the Service Provider under this Agreement.

51.2 Termination for Breach

51.2.1 Material Breach

51.2.1.1 If the Service Provider commits a material breach and fails to remedy such material breach within 14 (fourteen) days of notice or such longer period proposed by the Service Provider and accepted by 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 Attachments upon written notice to the Service Provider, without prejudice to any claims which Transnet may have for damages against the Service Provider.

51.2.1.2 If Transnet commits a material breach and fails to remedy such material breach within 14 (fourteen) days of notice or such longer period proposed by Transnet

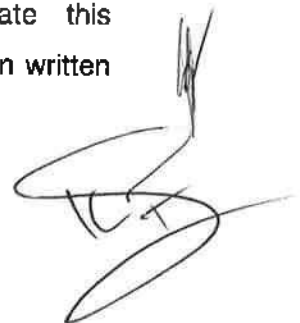


and accepted by the Service Provider, the Service Provider shall be entitled, in addition to any other rights and remedies that it may have in terms of the Agreement or otherwise, to terminate this Agreement and/or any or all Attachments upon written notice to Transnet, without prejudice to any claims which the Service Provider may have for damages against Transnet.

51.2.1.3 Upon the occurrence of an Event of Default with respect to which Transnet exercises a termination remedy as described in clause 51.2.3. Transnet shall implement such termination by delivering to the Service Provider a Termination Notice specifying the Termination Date; and provided, however, that the Service Provider shall remain obligated to perform its Disengagement obligations hereunder until they are fulfilled in accordance with clause 54. Any termination pursuant to this clause shall not constitute a termination for convenience, and Transnet shall not pay a Termination Fee to the Service Provider with respect to any such termination.

51.2.2 Non Material Breaches

51.2.2.1 If the 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 or such longer period proposed by the Service Provider and accepted by 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 Attachments upon written



notice to the Service Provider in circumstances where:

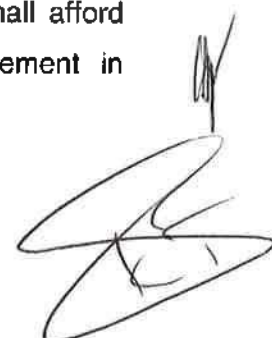
51.2.2.1.1 during the first 6 (six) months following the Effective Date, the Service Provider has failed to remedy more than 12 (twelve) non-material breaches within the 21 (twenty one) day notice period or such longer period proposed by the Service Provider and accepted by Transnet, in a Three Month Period;

51.2.2.1.2 after the first 6 (six) months following the Effective Date, and in any subsequent 6 (six) month period, the Service Provider has failed to remedy more than 6 (six) non-material breaches within the 21 (twenty-one) day notice period or such longer period proposed by the Service Provider and accepted by Transnet, in a Three Month Period.

51.2.2.2 In respect of clause 51.2.2.1, 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 to beyond the Three Month Period in which the breach occurred, that breach shall be reckoned in the following Three Month Period.

51.2.3 Events of Default

51.2.3.1 The occurrence of any 1 (one) or more of the "**Events of Default**" set forth in clause 51.2.3.3 shall constitute a material breach of this Agreement that shall afford Transnet the right to terminate this Agreement in accordance with clause 51.2.1, and



51.2.3.2 which right to terminate this Agreement (or any applicable Attachment thereto or part thereof), Transnet may exercise within a period of no later than 90 (ninety) days from the date on which it becomes aware of the Event of Default and has not been remedied.

51.2.3.3 The Events of Default are:

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

51.2.3.3.2 the recurrence in more than 4 (four) consecutive Measurement Intervals of the same Primary Service Level Failure;

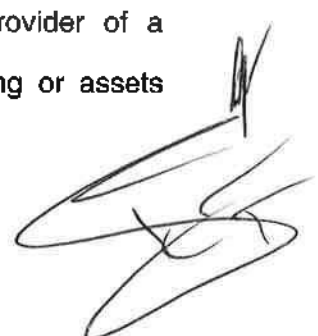
51.2.3.3.3 a material breach in terms of **Attachment J**;

51.2.3.3.4 the occurrence of 3 (three) or more "Priority Level One incidents" as defined in **Appendix 1** affecting the same system, which occurs during 3 (three) or more consecutive Measurement Intervals;

51.2.3.3.5 a Disaster Event occurs which is not recovered in accordance with the timelines agreed between the Parties;



- 51.2.3.3.6 breach of any warranty;
- 51.2.3.3.7 failure to comply with the Remedial Notices under clauses 18 and 19;
- 51.2.3.3.8 failure to comply with Applicable Law;
- 51.2.3.3.9 failure to successfully restore the Affected Services based on the Service Provider Disaster Recovery Plan;
- 51.2.3.3.10 the Service Provider carries out a compromise, scheme of arrangement or composition by the Service Provider with any or all of its creditors;
- 51.2.3.3.11 the liquidation of the Service Provider or placement of the Service Provider in judicial management, whether provisionally or finally;
- 51.2.3.3.12 the cessation of the Service Provider's normal line of business relating to the Services;
- 51.2.3.3.13 the commission of any act or any omission which is an act of insolvency by an individual in terms of the Insolvency Act 24 of 1936 (the "**Insolvency Act**"), 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;
- 51.2.3.3.14 the disposal by the Service Provider of a material portion of its undertaking or assets



that are dedicated for the provision of the Services and the disposal may have an adverse impact on such Services; and

- 51.2.3.3.15 the Service Provider fails, prior to Transnet's then current fiscal year-end, to remediate any internal control deficiencies and/or exceptions identified in any Type II Reports of the Service Provider and/or Transnet (or its Independent Auditors).

51.3 **Rights and Remedies of the Service Provider Upon Default of Transnet**

- 51.3.1 The failure by Transnet to perform its obligation under this Agreement, including Transnet's obligation to pay undisputed amounts owed to the Service Provider under the Agreement shall, subject to complying with clause 64, be deemed to be grounds for termination of the relevant Service Tower(s) or the Agreement in accordance with clause 51, 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.

52 FORCE MAJEURE

- 52.1 Delay or failure to comply with or a breach of any of the terms and conditions of this Agreement by either Party if occasioned by or resulting from an act of God or public enemy, fire, explosion, earthquake, perils of the sea, flood, storm or other adverse weather conditions, war, civil war, revolution, sabotage, blockade, embargo, sanctions, epidemics, or any other circumstances of like nature beyond the reasonable control of the Party so failing (hereinafter a "**Force Majeure Event**"), will not be deemed to be a breach of this Agreement nor will it subject either Party to any liability to the other save as set forth in this clause 52.



52.2 If a Force Majeure Event occurs and such Force Majeure Event continues for 3 (three) consecutive days or more, or for 7 (seven) non-consecutive days or more during any 30 (thirty) day period, then either Party shall have the right to terminate the Services affected by the Force Majeure Event by delivering to the other Party a Termination Notice specifying the Termination Date; provided, however, the Service Provider shall remain obligated subject to this clause 52, to perform its Disengagement obligations hereunder until such obligations have been fulfilled. During such Disengagement Period, Transnet shall remain obligated to pay the Fees in respect of the Services that it continues to receive to the Service Provider in accordance with the terms of this Agreement until such Services are terminated in accordance with this clause 52.

52.3 Notwithstanding clause 52.2, if a Force Majeure Event affects Transnet's critical business operations to be fully functional and operate within:

52.3.1 a period of 3 (three) consecutive days in the case that the Force Majeure results in a "Priority Level One incident" as defined in **Appendix 1**;

52.3.2 a period of 7 (seven) consecutive days in the case of a "Priority Level Two incident" as defined in **Appendix 1**; and


52.3.3 a period of 30 (thirty) consecutive days in the case of a "Priority Level Three incident" as defined in **Appendix 1**; or

52.4 if a Force Majeure Event affects a Transnet Site from being fully functional and operational within:

52.4.1 a period of 5 (five) consecutive days in the case of a "Priority Level One incident" as defined in **Appendix 1**;

52.4.2 a period of 10 (ten) consecutive days in the case of a "Priority Level Two incident" as defined in **Appendix 1**; and

52.4.3 a period of 30 (thirty) consecutive days in the case of a "Priority Level



Three incident" as defined in **Appendix 1**;

Transnet shall be entitled to terminate the Affected Services and/or the Agreement.

52.5 Within 12 (twelve) hours of the occurrence of a Force Majeure Event, the Service Provider shall provide a remedial plan to the Transnet Authorised Person on how it will remedy the Affected Services within the timeframes stated in clauses 52.3 and 52.4 above or such other time depending on the nature and extent of the Force Majeure Event as well as the impact on the Affected Services. Transnet shall consider and accept the Service Provider's remedial plan, which acceptance shall not be unreasonably withheld. In the event that Transnet accepts the remedial plan and the Service Provider fails to meet the milestones in accordance with the remedial plan or the Service Provider fails to restore such Affected Services in accordance with the remedial plan, then Transnet shall have the right to terminate the Affected Services.

52.5.1 Termination pursuant to this clause 52 shall not constitute a termination for convenience or cause, and neither Party shall be required to pay a Termination Fee with respect to any such termination.

53 STEP IN RIGHTS

53.1 Transnet shall have the right to require the partial or total suspension of the Affected Services until such time as the Service Provider is able to demonstrate to the satisfaction of Transnet that it can perform (and is capable of performing) its obligations in respect of the relevant Services to the required standard and in accordance with the relevant Service Levels in the event that any one of the following occurs (a "Step-in Right"):

53.1.1 a material interruption or disruption in the provision of the Services has occurred, which is wholly caused by the Service Provider; or



53.1.2 the Service Provider has, in any period of 6 (six) consecutive calendar months, accrued or incurred in aggregate Service Credits in accordance with **Attachment J**, which are equal to or exceed 10% (ten percent) of the total aggregate value of the Fees during such period as provided in **Attachment G2**;

53.2 For the purpose of this clause 52.5.1, "**material interruption or disruption**" shall mean any interruption or disruption in respect of the Affected Services such that Transnet's critical business operations are non-functional and/or cannot operate for:

53.2.1 a period of 3 (three) consecutive days in the case of a "Priority Level One incident" as defined in **Appendix 1**;

53.2.2 a period of 7 (seven) consecutive days in the case of a "Priority Level Two incident" as defined in **Appendix 1**; and

53.2.3 a period of 30 (thirty) consecutive days in the case of a "Priority Level Three incident" as defined in **Appendix 1**.

53.3 Notwithstanding any other rights and remedies that it may have in terms of the Agreement or otherwise, including the right to terminate this Agreement, should any of the events set forth in clause 53.1 occur, Transnet shall, prior to exercising its Step-In Rights as contained in clause 53.1, by written notice to the Service Provider elect to:

53.3.1 call for an urgent senior level meeting with the Service Provider; and/or

53.3.2 launch an audit investigation into the Service Provider's operations in accordance with the audit provisions detailed in clause 41; and/or

53.3.3 appoint a management team or Third Party to manage the Services or temporarily take over the Services (or part thereof) until such time as the provisions of clause 53.6 apply and/or Transnet exercises its right to terminate the Affected Service.

53.4 For so long as and to the extent that the Step-In Right is continuing, then:

53.4.1 the Service Provider shall not provide the Affected Services which are



subject to the Step-In Right;

- 53.4.2 any Service Credits or penalties for the Affected Services, shall be waived by Transnet for the duration of the Step-In Right;
- 53.4.3 Transnet shall not pay the relevant Fees in respect of the Affected Services for the duration of the Step-In Right;
- 53.4.4 any Third Parties appointed by Transnet shall be required to give the Service Provider a confidentiality undertaking equivalent to clause 57; and
- 53.4.5 the Service Provider shall fully co-operate with and assist Transnet and/or any Third Parties appointed by Transnet to step-in and provide the Affected Services.
- 53.5 The Service Provider shall bear the difference between the costs and the expenses incurred by Transnet in exercising the Step-In Right and the Fees due to the Service Provider for the Affected Services, and such differential charges shall not exceed 20% (twenty percent) of the Fees for the Affected Services.
- 53.6 If the Service Provider is able to demonstrate to Transnet that it can perform its obligations in respect of the Affected Services in accordance with the relevant Service Levels, Transnet may elect to cease its exercise of the Step-In Rights and not terminate the Affected Services by delivering a written notice to the Service Provider ("**Step-Out Notice**") specifying (1) the action it has taken in exercising the step-in right, (2) the date on which, subject to Transnet being satisfied with the plan the Service Provider is required to develop under clause 53.7 it plans to conclude that action ("**Step-Out Date**").
- 53.7 On receipt of the Step-Out Notice, the Service Provider shall develop a plan to restore the affected Services to the standards required by this Agreement in agreement with Transnet. The Service Provider shall implement such plan and devote sufficient resources to ensure that delivery is restored to the Service Levels from the Step-Out Date or as otherwise agreed by the Parties in writing.



54 DISENGAGEMENT SERVICES**54.1 General Obligations**

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

54.1.2 Subject to any provision of this Agreement providing for the contrary, Transnet shall be obliged to pay any undisputed outstanding Fees that have been invoiced by the Service Provider during the Term of the Agreement.

54.1.3 Without limiting the generality of the foregoing, the Service Provider shall:

54.1.3.1 continue to provide the Services during the Disengagement Period as per the agreed Disengagement Fees in **Attachment G2**;

54.1.3.2 provide to Transnet, its Affiliates and/or the Replacement Provider all information regarding the Services as is relevant to the continued provision of the Services;

54.1.3.3 provide any work required of the Service Provider over and above the Disengagement Services and the provision of the Services and which does not relate to the Disengagement and handover of the Services shall be dealt with as an Out of Scope Service;

54.1.3.4 provide for the prompt and orderly conclusion of all work, as Transnet may direct, including completion or partial completion of Projects as per the associated



Project Plan; and

- 54.1.3.5 generally accomplish a complete handover of any terminated Services from Service Provider and its Subcontractors to Transnet, its Affiliates and/or to any Replacement Provider(s) designated by Transnet without causing any unnecessary interruption of, or causing any unnecessary adverse impact on the Services.
- 54.1.4 **Attachment X1** 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 Provider.
- 54.1.5 Based on the principles set forth in **Attachment X1**, the Service Provider and Transnet shall discuss in good faith a detailed plan (the "**Disengagement Plan**" – **Attachment X2**), and the Service Provider shall provide such detailed plan to Transnet within 3 (three) months of the final Transition date, for determining the nature and extent of the Service Provider's Disengagement obligations and for the transfer of the Services in progress; provided, however, that the Service Provider's obligations under this Agreement to provide all Services necessary for Disengagement shall not be lessened in any respect.
- 54.1.6 In addition to the Service Provider providing the initial detailed Disengagement Plan contemplated in clause 54.1.5 (which initial Disengagement Plan shall be a Critical Deliverable), the Service Provider shall be required to keep such Disengagement Plan maintained and updated throughout the Term of the Agreement and the Service Provider shall, at least on an annual basis, provide an updated Disengagement Plan to Transnet. The provision of such further updated Disengagement Plans shall also be a Critical Deliverable.
- 54.1.7 The Service Provider's obligation to provide the Services shall not cease until the Disengagement Services have been completed in accordance with **Attachment X2**, to the satisfaction of Transnet.




54.2 Disengagement Period

- 54.2.1 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 **Attachment X2**.
- 54.2.2 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**").
- 54.2.3 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 58.2 or 51.1.5.3.

54.3 Specific Obligations

- 54.3.1 The Service Provider shall as soon as reasonably possible following
- 54.3.1.1 its issuance or receipt of a Termination Notice, but in no event longer than 10 (ten) Business Days thereafter;
 - 54.3.1.2 the date that is 6 (six) months prior to the end of the Term, but in no event longer than 10 (ten) Business Days thereafter, or
 - 54.3.1.3 where neither of clause 54.3.1.1 or clause 54.3.1.2 apply, date that is 30 (thirty) days from the commencement of a Disengagement Period,
 - 54.3.1.4 provide to Transnet a complete and accurate list of all items that will be subject to return to Transnet as provided under this Agreement.
- 54.3.2 Further to the provisions of clause 13.5, 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.

54.3.3 Full cooperation, information and knowledge transfer

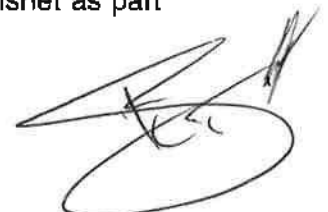
54.3.3.1 During Disengagement, the Parties shall cooperate fully with one another to facilitate a smooth transition of the terminated Services from Service Provider and its Subcontractors to Transnet, its Affiliates and/or the Replacement Provider.

54.3.3.2 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 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.

54.3.3.3 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.

54.3.4 Third Party authorisations

54.3.4.1 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 54.3.7.

54.3.5 Licenses to Software

54.3.5.1 Without limiting Transnet's rights in and to the licenses previously granted to Transnet pursuant to clause 46.4.2, which licenses 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 Provider any licenses assigned to the Service Provider pursuant to clause 46.5 and subject to the OEM licensing regime.

54.3.6 Transfer of Dedicated Assets

54.3.6.1 If and as requested by Transnet as part of the Disengagement, the Service Provider shall convey to Transnet, its Affiliates and/or the Replacement Provider from among those dedicated assets used by the Service Provider to provide the Services (including the Service Provider Equipment) such assets as Transnet might select from the list provided by the Service Provider pursuant to clause 46.5 at a price for each such asset that: (a) in the case where the Service Provider Equipment is owned by the Service Provider, and (b) in the case where the Service Provider Equipment is leased, the fair market value as determined by a mutually agreed Third Party.

54.3.6.2 At mutually agreed times during the Disengagement,



the Service Provider shall remove from Transnet's premises any Service Provider assets (including Service Provider Equipment) that Transnet, its Affiliates and/or the Replacement Provider elect not to purchase.

- 54.3.6.3 In addition, 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 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.

54.3.7 Assignment of contracts

- 54.3.7.1 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 Provider in obtaining an assignment from among those leases, maintenance, support 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 46.5.

- 54.3.7.2 The Service Provider's obligation under this clause 54.3.7 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.



54.3.8 Delivery of documentation and data

54.3.8.1 The Service Provider shall deliver to the Transnet Authorised Person, all Transnet Data, as well as all procedures, standards, installation guides, user manuals, training material and operating schedules (including the Operational Standards and Procedures Manual) related to the Service Provider's provision of the Services. Notwithstanding the foregoing, the Service Provider may retain 1 (one) copy of such documentation and data, excluding the Transnet Data, for archival purposes or warranty support.

54.4 Preparation for Disengagement

54.4.1.1 At all times during the Term, the Service Provider shall provide to Transnet complete information, including complete documentation in accordance with the standards and methodologies to be implemented by the Service Provider, for all software (including applications developed as part of the Services) and hardware, that is sufficient to enable Transnet, its Affiliates, and/or the Replacement Provider, to fully assume the provision of the Services to Transnet, in preparation for Disengagement.

54.4.2 Payment for Disengagement Services

54.4.2.1 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 51.2, then the Parties shall agree the Disengagement Fees for the applicable Disengagement Services (using **Attachments X1, X2**



and G2) as the baseline to determine and mutually agree the Disengagement Fees.

55 LIMITATION OF LIABILITY

- 55.1 The Parties agree that, in the event of a breach of any of the provisions of this Agreement, the defaulting Party shall be liable to the other Party for all direct damages or Losses which constitute direct and/or general damages.
- 55.2 Each Party's cumulative maximum liability to the other Party for all damages or Losses in any one Contract Year shall not exceed 2 (two) times the value of the Annual Contract Payments.
- 55.3 Neither Party shall be entitled to recover damages, or obtain payment, reimbursement, restitution or indemnity more than once in respect of the same loss, shortfall, damage, deficiency, breach or other event or circumstance. In the event that the damages recovered, payment obtained, reimbursement received or restitution made was not proportional to the prejudice suffered by the aggrieved Party, such aggrieved Party may approach a Court to seek recourse on the disproportionate recovery.
- 55.4 Neither Party shall exclude liability to the other Party for death or personal injury due to gross negligence, or wilful misconduct.
- 55.5 The Parties agree that neither Party shall be liable to the other for consequential and indirect damages save for those set out in clause 55.3.

56 SECURITY

56.1 General

- 56.1.1 The Service Provider shall provide all Services, including its obligations under clauses 28 and 29 utilising security technologies and techniques in accordance with **Attachment D** and Transnet's security policies, procedures and requirements, including those relating to the prevention and detection of inappropriate use or access of software, hardware, systems and networks. Where Transnet does not have a relevant security policy or standard, Transnet will review the Service Providers



policy and mutually agree to accept these.

56.1.2 Without limiting the generality of the foregoing, the Service Provider shall implement and/or use network management and maintenance applications and tools and appropriate fraud prevention and detection and encryption technologies, in the provision of the Services.

56.1.3 In addition, the Service Provider shall, as part of the Services, conduct a continuous security program (the "**Security Program**") that shall enable Transnet to:

56.1.3.1 subject to the terms, conditions and procedures set forth in **Attachment I**, conduct periodic risk assessments to identify the specific threats and vulnerabilities of Transnet relating to the Services; and

56.1.3.2 monitor and test the Security Program to ensure its effectiveness.

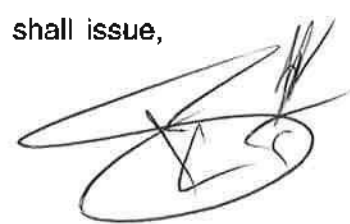
56.1.3.3 the Service Provider shall be required to review and as mutually agreed between the Parties adjust the Security Program in light of any assessed risks.

56.2 Information Access

56.2.1 Prior to performing any Services, the Service Provider and its Employees, agents and Subcontractors who may have access to Transnet Data and software shall execute the Parties' agreements and forms concerning access protection and data/software security consistent with the terms and conditions of this Agreement.

56.2.2 The Service Provider and its Employees, agents and Subcontractors shall comply with all policies and procedures of Transnet and its Affiliates regarding data access, privacy and security, including those prohibiting or restricting remote access to Transnet systems and Transnet Data.

56.2.3 The Parties, as and when applicable, shall authorise, and shall issue,



any necessary information-access mechanisms, including access IDs and passwords, and the Service Provider agrees that the same shall be used only by the Employees to whom they are issued. The Service Provider shall provide to such Employees only such level of access as is strictly necessary to perform the tasks and functions for which such Employees are responsible.

56.2.4 The Service Provider shall from time to time and upon request from Transnet (but in the absence of any request from Transnet, at least on a quarterly basis) provide Transnet with an updated list of those Service Provider Employees who have access to Transnet's and/or its Affiliate's systems, software and data as well as details of the level of such access.

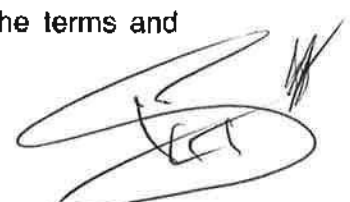
56.2.5 Computer data and Software, including Transnet Data, provided by Transnet or accessed (or accessible) by the Service Provider Employees or the Service Provider's Subcontractor Employees, shall be used by such Employees only in connection with the provision of the Services and shall not be commercially exploited by the Service Provider or its Subcontractors in any manner whatsoever.

56.2.6 Failure of the Service Provider or the Service Provider's Subcontractors to comply with the provisions of this clause 56 may result in Transnet restricting offending Employees from having access to Transnet computer systems or Transnet Data.

56.3 Health, safety and security procedures and guidelines

56.3.1 The Service Provider hereby agrees and undertakes, in terms of Section 37(2) of the Occupational Health and Safety Act 85 of 1993 (the "OHS Act"), to ensure that the Service Provider and the Service Provider's Employees comply with the OHS Act and accept sole responsibility for all health and safety matters relating to the provision of the Services, for the duration of this Agreement, including—

56.3.2 providing for the health and safety of the Service Provider's Employees and that they at all times adhere to the OHS Act, and the terms and

A handwritten signature in black ink, appearing to be 'S. L. T.', is located in the bottom right corner of the page.

conditions of this Agreement; and

- 56.3.3 that neither Transnet's Employees nor any Third Party's health and safety is endangered in any way by the Service Provider's activities or conduct in providing the Services.

56.4 Other Policies

- 56.4.1 The Service Provider shall, and shall cause its Employees, contractors (including Subcontractors) and agents to, abide by all policies and procedures of Transnet and its Affiliates. Any violations or disregard of these rules shall be cause for denial of access to such Employees to premises, facilities or properties of Transnet and/or its Affiliates.

57 DISCLOSURE AND USE OF CONFIDENTIAL INFORMATION

- 57.1 The Parties acknowledge that the Confidential Information is a valuable, important and unique asset of the Disclosing Party and that the Disclosing Party may suffer irreparable harm or substantial economic and other loss in the event of such Confidential Information being disclosed or used otherwise than in accordance with this Agreement.

- 57.2 All Confidential Information disclosed by the Disclosing Party to the Receiving Party or which otherwise comes to the knowledge of the Receiving Party, is acknowledged by the Receiving Party:

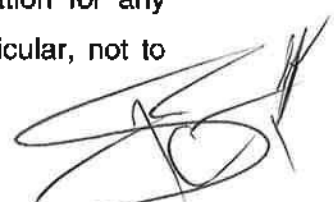
- 57.2.1 to be proprietary to the Disclosing Party; and

- 57.2.2 not to confer any rights of whatsoever nature in such Confidential Information on the Receiving Party.

- 57.3 The Receiving Party irrevocably and unconditionally agrees and undertakes:

- 57.4 to treat and safeguard the Confidential Information as strictly private, secret and confidential;

- 57.4.1 not to use or permit the use of the Confidential Information for any purpose other than for which it was intended and, in particular, not to



use or permit the use of the Confidential Information, whether directly or indirectly, to obtain a commercial, trading, investment, financial or other advantage over the Disclosing Party or otherwise use it to the detriment of the Disclosing Party;

57.4.2 except as permitted by this Agreement, not to disclose, publish or divulge, directly or indirectly, the Confidential Information in any manner to any Third Party for any reason or purpose whatsoever without the prior written consent of the Disclosing Party, which consent may be granted or withheld in the sole and absolute discretion of the Disclosing Party;

57.4.3 not to use the Confidential Information, whether directly or indirectly, for the Receiving Party's benefit or the benefit of any person other than the Disclosing Party; and

57.4.4 unless agreed to by the Disclosing Party, not to decompile, disassemble or reverse engineer the whole or any part of Confidential Information.

57.5 The Receiving Party shall be entitled to disclose the Confidential Information only to Permitted Recipients, and then only to the extent that such disclosure is strictly necessary and on a "need to know" basis after having ensured that such Permitted Recipients have entered into a non-disclosure agreement committing them to the obligations of this clause 57, notwithstanding which agreement, the Receiving Party shall at all times remain liable for the actions of any such Permitted Recipients that would constitute a breach of this Agreement.

57.6 The Receiving Party shall (if requested to do so by the Disclosing Party) procure that the Permitted Recipients give a written undertaking in favour of the Disclosing Party in regard to the Confidential Information on substantially the same terms and conditions contained in this Agreement.

57.7 A breach of this clause 57 shall constitute a material breach of the Agreement for which, in addition to any other rights and remedies available to the Disclosing Party at law or in equity, the Disclosing Party shall be entitled to preliminary and final relief, restraining such breach or threatened



breach or intended breach.

57.8 The provisions of this clause 57 shall survive the termination of the Agreement and continue thereafter indefinitely.

57.9 Return of Confidential Information

57.9.1 The Receiving Party shall, at its own expense, within 5 (five) Business Days of written demand from the Disclosing Party:

57.9.1.1 return or destroy (as stipulated by the Disclosing Party), all Confidential Information and all copies of it (whether in paper, electronic or other format) held by the Receiving Party or by a Permitted Recipient without keeping any copies or partial copies thereof;

57.9.1.2 destroy, all analyses, compilations, notes, studies, memoranda or other documents prepared by the Receiving Party or by any Permitted Recipient which contain or otherwise reflect or are generated from the Confidential Information, in part or in whole;

57.9.1.3 delete all Confidential Information from any computer, word processor or other device in the possession or control of the Receiving Party or any Permitted Recipient; and

57.9.1.4 confirm in writing to the Disclosing Party that the Receiving Party and all Permitted Recipients have complied with the provisions of clauses 57.9.1.1 to 57.9.1.3.

57.10 The Receiving Party shall not be required to return, destroy or delete Confidential Information to the extent that it is required to retain such Confidential Information by law or to satisfy the rules and regulations of a regulatory body to which the Receiving Party or any Permitted Recipient is subject. The obligations of confidentiality contained in this Agreement will continue to apply to such retained Confidential Information.



57.11 Forced Disclosure

57.11.1 In the event that the Receiving Party is required to disclose Confidential Information pursuant to a requirement or request by operation of law, regulation or court order, it will:

57.11.1.1 advise the Disclosing Party thereof in writing prior to disclosure, if possible;

57.11.1.2 take such steps to limit the disclosure to the minimum extent required to satisfy such requirement and to the extent that it lawfully and reasonably can;

57.11.1.3 in the case of any disclosure required in terms of the Act, apply the principles of Chapter 4 of the PAI Act in order to avoid and/or limit the extent of any such disclosure;

57.11.1.4 afford the Disclosing Party a reasonable opportunity, if possible, to intervene in the proceedings, to the extent that the Receiving Party will not be in default of Applicable Law;

57.11.1.5 comply with the Disclosing Party's reasonable requests as to the manner and terms of any such disclosure; and

57.11.1.6 notify the Disclosing Party of the recipient of, and the form and extent of, any such disclosure or announcement immediately after it is made.

57.11.2 The Parties record that this clause 57 shall not be infringed where either Party discloses Confidential Information to its attorneys or auditors, provided that such disclosure is required by the Disclosing Party as it relates to the Services.



58 COMPLIANCE WITH APPLICABLE LAW**58.1 Compliance with Applicable Law**

- 58.1.1 The Parties shall be required to comply with all Applicable Law in respect of the performance of the Services in terms of this Agreement, and in such a manner so as to not cause the other Party to be in violation of any such Applicable Law, including all laws and regulations relating to the collection, dissemination, transfer and use of data and specifically including, without limitation, the privacy and security of confidential, personal, sensitive or other protected data.

58.2 Non Compliance With Applicable Law

- 58.2.1 A Party may terminate this Agreement, in whole or in part, by giving a Termination Notice to the other Party, specifying the Termination Date in the event that it is advised that the actual or imminent change in the Applicable Laws prevents either Party from performing their obligations under this Agreement. In the event that a change in Applicable Laws only affects Services partially, a Party may only terminate such Services to the extent affected, and not the whole Agreement or the Services not impacted by such change in Applicable Laws.

58.3 Compliance with King III

- 58.3.1 The Service Provider recognises Transnet's adoption of King III as stipulated by it and the Service Provider confirms it subscribes to the principles of good corporate governance, including those set out in King III.

58.4 Service Provider Permits, Licenses and Assistance

- 58.4.1 The Service Provider shall obtain and maintain, in full force and effect, and shall cause its Subcontractors to obtain and maintain, at no cost to Transnet, all approvals, permissions, permits, licenses, and other forms of documentation required in order to comply with all Applicable Law applicable to the performance of Services hereunder. Transnet reserves



the right to reasonably request and review all such approvals, permissions, permits and licenses prior to the commencement of any Services hereunder. If requested, Transnet shall cooperate with the Service Provider, at the Service Provider's cost and expense, to obtain any such approvals, permits, permissions and licenses.

58.4.2 The Service Provider shall advise Transnet of all permits, approvals, permissions and licenses required to be obtained in Transnet's name with respect to the Services, and the Service Provider shall cooperate with and assist Transnet in obtaining all such permits and licenses.

58.4.3 In the instance that the Service Provider's license is revoked, by way of final determination by the relevant regulator, Transnet shall be entitled to terminate this Agreement and shall not be obliged to pay Termination Fees.

58.5 Hazardous Materials

58.5.1 The Service Provider shall not store any Hazardous Materials at any Transnet Site.

58.5.2 The Service Provider agrees to take, at its expense, all actions necessary to protect Third Parties including, Employees and agents of Transnet, from any exposure to Hazardous Materials generated or utilised in its performance under this Agreement.

58.5.3 The Service Provider agrees to promptly report to Transnet all discharges, releases, and spills of Hazardous Materials that the Service Provider becomes aware of, that are required to be reported by any Environmental Laws. The Service Provider shall not be liable to Transnet for Transnet's failure to comply with, or violation of, any Environmental Laws.

58.6 Changes in Applicable Law

58.6.1 The Service Provider shall promptly notify Transnet of any changes or proposed changes to the Applicable Law of which it becomes aware and that could have a material impact on the Services.

A handwritten signature in black ink, consisting of a stylized 'S' followed by a large 'X' and a vertical line.


58.6.2 Upon becoming aware of a change to the Applicable Law, the Service Provider shall notify Transnet of the impact of such change on the Services or this Agreement and propose to Transnet in accordance with clause 33 and **Attachment H**, Changes to the Services and/or this Agreement, if any, that are required in order to enable the Service Provider to comply with Applicable Law as it is or may be modified. Transnet shall promptly review such proposal and upon Transnet's approval, the Service Provider shall promptly implement such Changes to the Services as well as any other Changes requested by Transnet and reasonably required as a consequence of such Change.

58.6.3 Save to the extent agreed to under clause 18 above, if either Party has a reasonable belief that a Change in the Applicable Laws or in the judicial or official governmental interpretation of such Applicable Laws, made after the Signature Date, has occurred or is imminent, which has or would have the effect of rendering this Agreement or its implementation in contravention of such Applicable Laws, such Party can require the other Party to immediately enter into negotiations in good faith regarding a variation of this Agreement in order to ensure that neither this Agreement nor its implementation constitutes a contravention of such Applicable Laws.

58.6.4 If the Parties are not able to agree to a variation of this Agreement within 14 (fourteen) days of being requested to enter into negotiations by the other Party then either Party may give notice in writing to the other Party that the continuation of the Agreement would render this Agreement or its implementation in contravention of such Applicable Laws and accordingly may terminate the Agreement. The notice shall include sufficient information concerning the alleged contravention to allow the other Party to properly consider the matter and proceed in accordance with clause 51.2.

59 PUBLIC ANNOUNCEMENTS AND PUBLICITY

59.1 Except as may be agreed by the Parties in writing or as may be required by law or regulation, neither Party shall make any public announcement or public disclosure with regard to the Agreement or refer to the same in its



promotional or marketing material and the Parties will refrain from disclosing the existence and contents of the Agreement to any other party or authority or to the media.

59.2 The taking of photographs (including by means of cellphones, computers or any other electronic equipment) of Transnet Sites, Transnet Facilities, plants, premises and/or the Services or any portion thereof is expressly forbidden, unless authorised in writing by Transnet or as agreed to under **Attachment M** and in accordance with clause 57.

59.3 The Parties shall be responsible to ensure that their Employees, agents, service providers, Subcontractors and representatives comply with the provisions of this clause 59.

60 SERVICE PROVIDER INDEMNITIES

60.1 Intellectual Property

60.1.1 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 the 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").

60.1.2 If Transnet's right to use any such technology, Deliverable or Service is the subject of an Infringement Claim, at its sole cost and expense, Service Provider shall either procure a license to enable Transnet to continue using such technology or replace or modify the technology so that it no longer is subject to any such Infringement Claim while maintaining equivalent or better functionality and performance capabilities in a form acceptable to Transnet as it relates to the Services.

60.2 Personal Injury, Property and Other Damage

60.2.1 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, Service Provider Employee or Transnet Employee against Transnet for actual or alleged bodily injury or death, damage to tangible personal or real property including computer data, data loss or any other damage, notwithstanding the form in which any such action is brought (e.g. contract, delict or otherwise), to the extent such injuries or damages arise directly or indirectly from acts, errors or omissions that constitute negligence, wilful misconduct or a contravention of law, by Service Provider and/or its Employees, agents and/or Subcontractors.

60.3 **Third-Party Claims**

60.3.1 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:

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

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

60.3.1.3 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

60.3.1.4 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.



60.4 Service Provider Employees

60.4.1 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 Service Provider Employee against Transnet based upon any claim, demand, charge, action, cause of action, or other proceeding resulting from an act or omission by the Service Provider, its Employees, agents and/or its Subcontractors in its capacity as an employer of such Employee on or after the Effective Date including, without limitation, any claim relating to the failure to appoint or promote Employees by Service Provider, claims for wages, benefits, discrimination or harassment of any kind, wrongful termination and/or refusal to pay severance or notice pay or termination payments upon leaving Service Provider's employ.

60.4.2 The Service Provider shall indemnify and hold Transnet harmless against any and all losses, damages, compensation, fines, penalties, costs, awards, liabilities, expenses, arising from any transfer of the Service Provider Employees under section 197 of the LRA as a result of the termination or expiry of this Agreement, as the case may be.

60.5 Safety, Health and Environmental

60.5.1 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 against Transnet as a result of the Service Provider's failure to comply with any applicable safety, health and Environmental Laws.

60.6 Security Breaches

60.6.1 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 or action brought by any Third Party against Transnet as a result of any failure by Service Provider, its Employees, agents and/or Subcontractors to comply with the security obligations set forth in this Agreement relating to protection



against fraudulent or other inappropriate or unauthorised use of or access to the software, hardware, systems and/or networks described herein.

61 TRANSNET INDEMNITEES

61.1 Intellectual Property

61.1.1 Transnet shall indemnify and hold harmless the Service Provider from and against, any and all Losses sustained or incurred by any of the Service Provider, arising out of any claim, suit or proceeding brought by any Third Party against any of them for infringement of any Intellectual Property or similar proprietary right, including misappropriation of trade secrets, arising out of or relating to the Transnet-Owned Software, Transnet's Data and Transnet-owned Equipment provided by Transnet to the Service Provider for the provision of the Services.

61.1.2 If the Service Provider's right to use any such technology or Deliverable is the subject of an Infringement Claim, Transnet shall either procure a license to enable the Service Provider to continue using such technology or replace or modify the technology so that it no longer is subject to any such Infringement Claim.

61.2 Death and Bodily Injury

61.2.1 Transnet shall indemnify and hold harmless the Service Provider from and against, any and all Losses sustained or incurred by the Service Provider based upon or relating to any claim brought by any Third Party against the Service Provider for actual bodily injury or death, to the extent such injuries or damages arose directly or indirectly from acts, errors or omissions that constitute negligence, wilful misconduct or a contravention of law by Transnet and/or its Employees.

61.3 Hazardous Materials

61.3.1 Transnet shall indemnify and hold harmless the Service Provider from and against, any and all Losses sustained or incurred by the Service Provider upon or relating to any claim brought by any Third Party against



any of the Service Provider as a result of Transnet's failure to comply in all material respects with any applicable Environmental Laws.

62 INDEMNIFICATION PROCEDURE

- 62.1 Any Party may pursue an indemnified action by providing the Indemnifying Party with written notice.
- 62.2 If any legal action for which an indemnity is provided under this Agreement is commenced against an Indemnified Party, such Indemnified Party shall give written notice thereof to the Indemnifying Party promptly after such legal action is commenced provided, however, that failure to give prompt notice shall not reduce the Indemnifying Party's obligations under this clause 62, except to the extent the Indemnifying Party is prejudiced thereby and the failure to do so was due to the fault of the Indemnified Party.
- 62.3 After such notice, if the Indemnifying Party acknowledges in writing to the Indemnified Party that the right of indemnification under this Agreement applies with respect to such claim, then the Indemnifying Party shall be entitled, if it so elects in a written notice delivered to the Indemnified Party not fewer than 10 (ten) Business Days prior to the date on which a response to such claim is due, to take control of the defence and investigation of such claim and to employ and engage attorneys of its choice, that are reasonably satisfactory to the Indemnified Party, to handle and defend same, at the Indemnifying Party's expense.
- 62.4 The Indemnified Party shall cooperate in all reasonable respects with the Indemnifying Party and its attorneys at the Indemnifying Party's expense.
- 62.5 No settlement of a claim shall be entered into by the Indemnifying Party without the prior written consent of the Indemnified Party. In no event shall an adverse judgement be entered against the Indemnified Party as part of a settlement without its express written consent.
- 62.6 Should the Indemnifying Party decline to assume defence of a claim as provided in this clause 62 it shall not be construed as a waiver of any other rights it may have under this Agreement or in law and if it is later determined that such claim was eligible for indemnification by the



Indemnifying Party under this clause 62, within 30 (thirty) days following such determination, the Indemnifying Party shall reimburse the Indemnified Party in full for all settlements, judgments, costs and expenses (including attorneys' fees on an attorney and own client scale) incurred by the Indemnified Party in connection with such claim.

62.7 Notwithstanding anything contained herein to the contrary, if the Indemnifying Party accepts defence of a claim as provided in this clause 62.7, the Indemnified Party shall have the right to engage independent counsel to monitor and participate in the investigation and defence of the matter as such counsel or the Indemnified Party deems fit to adequately protect the Indemnified Party's interests. The Indemnifying Party and its counsel must reasonably cooperate with the Indemnified Party's counsel to enable such counsel to adequately represent the interests of the Indemnified Party.

62.8 Notwithstanding the foregoing, if there is any complaint, dispute or claim arising from any alleged contravention/s of any Applicable Law by the Service Provider, the Service Provider shall take all necessary steps required by Transnet to have the claim abandoned against Transnet and brought against the Service Provider. If the Service Provider is unsuccessful in this, Transnet shall be entitled to join the Service Provider to defend such a claim.

62.9 Each indemnity in clauses 60 and 61, is severable, is a continuing obligation, constitutes a separate and independent obligation of the Party giving the indemnity from any other obligations of that Party under this Agreement, and shall survive the termination of this Agreement by 36 (thirty six) months.

63 INSURANCE

63.1.1 The Service Provider shall for the duration of this Agreement, at its own cost and expense, be required to have and maintain in force sufficient insurance cover, to cover both its obligations and liabilities under this Agreement, consistent with acceptable and prudent business practices, as part of its obligations under the Agreement including at a minimum,



the insurance specified hereunder:

63.1.1.1 General Liability Insurance, with a minimum limit of indemnity of R 10,000,000 (ten million rand) per event and a minimum annual limit of liability of R 500,000,000 (five hundred million rand), written on an occurrence basis;

63.1.1.2 Professional Indemnity Insurance, with a minimum limit of indemnity of R 50,000,000 (fifty million rand) per event, with a minimum annual limit of liability of R 1,500,000,000 (one thousand five hundred million rand), written on an acts committed basis;

63.1.1.3 Assets All Risks and Business Interruption and SASRIA; and

63.1.1.4 Information Security or Cyber Risk Insurance.

63.2 The insurance cover as set out in clauses 63.1.1.1 through 63.1.1.4 above shall not be required to be endorsed to reflect that the limits referred to are reserved for claims made against the Service Provider by Transnet. The Service Provider shall procure from its insurers that any indemnity payments for claims made against the Service Provider by Transnet and received under the policies in respect of the insurance cover set out in clauses 63.1.1.1 through 63.1.1.4 above are made directly to Transnet. This clause shall not grant any rights, other than provided for in this clause 63.2 to Transnet under any of the policies obtained in terms of clause 63. Transnet shall be entitled to accept the benefits procured for it in terms of clause 63.2 at any time.

63.3 The Service Provider shall provide copies of certificates of insurance issued by its insurers evidencing the insurance cover and policy endorsements required under this Agreement, which shall be provided as **Attachment S**, and maintained in force for the duration of this Agreement, as updated from time to time. The Service Provider shall ensure that the following details are reflected on the certificates of insurance:



- 63.3.1 in respect of General Liability Insurance: details relating to the insurer(s) and a description of (i) the insurance cover; (ii) the period of insurance; (iii) insurance limits and sub-limits; (iv) retroactive date(s) (if a claims made policy); (v) direct loss settlement to Transnet endorsement in terms of clause 63.2; and (vi) the Subcontractors whose acts and omissions are covered in terms of clause 63.6;
- 63.3.2 in respect of Professional Indemnity Insurance: details relating to the insurer(s) and a description of (i) the insurance cover; (ii) the period of insurance; (iii) insurance limits and sub-limits; (iv) retroactive date(s) (if a claims made policy); (v) direct loss settlement to Transnet endorsement to policy in terms of clause 63.2; and (vi) the Subcontractors whose acts and omissions are covered in terms of clause 63.6; and
- 63.3.3 in respect of Assets All Risks, Business Interruption and SASRIA: Details relating to the insurer(s) and a description of (i) the insurance cover; (ii) the period of insurance; and (iii) limits and sub-limits. The Service Provider shall also ensure that, in addition to the details referred to in (i) to (iii) of this clause 63.3.3, the insurance certificate in respect of the Assets All Risks Insurance shall include confirmation of the insurance cover for Transnet's assets which are (i) on the premises of the Service Provider; or (ii) otherwise within the care, custody and control of the Service Provider on any premises other than Transnet's premises provided that Transnet's assets are so held or controlled by the Service Provider for purposes of or in connection with the Services rendered to Transnet. Compliance by the Service Provider with the provisions of this clause 63 which relate to the Transnet's assets is subject to the Parties compiling the necessary list of Transnet assets which are (i) on the premises of the Service Provider; or (ii) otherwise within the care, custody and control of the Service Provider on any premises other than the Transnet's premises, provided that the Transnet's assets are so held or controlled by the Service Provider for purposes of or in connection with the Services rendered to the Transnet. The Service Provider shall take responsibility and insure all goods that it is procuring or has procured on behalf of Transnet, until the Transnet Authorised Person has signed for acceptance of delivery.




- 63.4 The Service Provider shall provide Transnet with at least 45 (forty-five) days' written notice prior to any adverse material modification, cancellation, or non-renewal of any insurance policies, provided that if any of the events contemplated in this clause 63 occur in circumstances where it is not possible to give 45 (forty-five) days notice, the Service Provider shall give written notice of the happening of the event as soon as possible thereafter but in any event not later than 2 (two) days following the event.
- 63.5 In the case of loss or damage or other event that requires notice or other action under the terms of any insurance coverage under this Agreement, the Service Provider shall be solely responsible to take such action. In the event that the provisions of clause 63.2 shall apply, then the Service Provider shall provide Transnet with contemporaneous notice and with such other information as Transnet may request regarding the event.
- 63.6 The Service Provider shall be required to ensure that the General Liability and Professional Indemnity Insurances and cover provided for in this clause 63.6 also cover the acts and omissions of all its Subcontractors where such acts and omissions relate to the provision of the Services under this Agreement, and which may constitute, give rise to or cause a breach or failure in terms of the Agreement or other legal liability to be incurred by the Service Provider.
- 63.7 The Service Provider shall not be absolved of any of its obligations and liabilities under this Agreement by virtue of it having obtained the insurance required in this clause 63.
- 63.8 In addition to the coverage requirements specified above, the Service Provider shall make all commercially reasonable efforts to provide that:
- 63.8.1 where the Professional Indemnity and/or General Liability insurance covers are written on a claims made basis and not on an occurrence or acts committed basis, the insurance covers are maintained during the required extended period of coverage following expiration of the Agreement for a minimum of 2 (two) years;
- 63.8.2 if Professional Indemnity and/or General Liability insurance covers are



terminated for any reason, the Service Provider shall:

- 63.8.2.1 if the Professional Indemnity and/or General Liability insurance covers are written on a claims-made policy purchase a replacement claims-made policy/ies with a retroactive date which is the same as the inception date of this Agreement to report claims arising in connection with this Agreement; or
- 63.8.2.2 if the Professional Indemnity and/or General Liability insurance covers are written on an occurrence or acts committed basis shall purchase a replacement occurrence or acts committed policy as appropriate for the duration of the Agreement.
- 63.8.3 Incidents or circumstances that give rise to claims against the relevant insurance policies must be reported by the policy holder in accordance with the relevant insurance policies' notification and reporting requirements.
- 63.9 Without limiting the generality of Transnet's rights and remedies hereunder, in the event of a failure by the Service Provider to maintain any insurance required hereunder, or to provide evidence of renewal at least 5 (five) days prior to expiration, on 5 (five) days' notice to the Service Provider, Transnet may purchase the requisite insurance and deduct the costs thereof from any amounts owed to the Service Provider under this Agreement, provided that such deduction shall be limited to the costs incurred by the Service Provider in the previous year for procuring the requisite insurance.
- 63.10 To the extent that the Service Provider uses the assets of Transnet in connection with the Services during the term of this Agreement, and where such assets are not otherwise covered in terms of any insurances provided for in clause 63.1.1 above, Transnet shall be required to insure, at its cost, such assets before allowing the Service Provider to use such assets in connection with the Services. Compliance by the Service Provider with the provisions of this clause 63.10 is subject to the Parties compiling the



necessary list of Transnet's assets which are (i) on the premises of the Service Provider; or (ii) otherwise within the care, custody and control of the Service Provider on Transnet's premises.

64 DISPUTE RESOLUTION

64.1 Internal Dispute Resolution Procedure

64.1.1 Informal Resolution

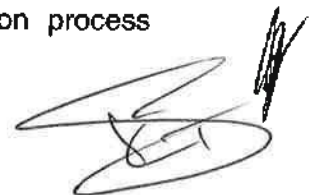
64.1.1.1 If any dispute or Problem arises between the Parties, the aggrieved Party must raise the dispute within 5 (five) Business Days. The Transnet Authorised Person and the Service Provider Relationship Manager shall meet and attempt to resolve the dispute within 10 (ten) Business Days of the dispute being raised. Written minutes of such meetings shall be kept by the Service Provider and delivered to Transnet within 5 (five) Days after the meeting.

64.1.1.2 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 64.1.2.

64.1.2 IT Outsourcing Management Committee Resolution

64.1.2.1 Upon receipt of a written referral from the Parties' representatives as provided in clause 64.1.1, the IT Outsourcing Management Committee shall meet within 5 (five) days of such referral with the purpose of mediating the Problem.

64.1.2.2 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 64.1.3, along with a statement of any actions taken or recommendation made by the respective members of the IT Outsourcing Management Committee.

64.1.3 Executive Resolution and/or Mediation

64.1.3.1 For Problems that are not resolved as described in clause 64.1.2, negotiations to mediate the Problem shall be conducted by the Chief Information Officer or higher-level officer of Transnet and senior level officer of the Service Provider.

64.1.3.2 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.

64.2 Arbitration

64.2.1 If the Parties are unable to resolve any dispute, other than a dispute described in clause 64.2.7, in the manner contemplated by clause 64.1, such dispute shall on written demand by either Party to the dispute be submitted to arbitration at AFSA in Sandton, which shall comprise a panel of 3 (three) arbitrators and in accordance with the rules thereof by arbitrators agreed on by the Parties or should the Parties fail to agree on the arbitrators within 10 (ten) days after arbitration has been demanded, the arbitrators shall be nominated by AFSA. The arbitration shall be held in the English language.

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



the arbitration proceeding.

- 64.2.3 The Parties shall request that the arbitrators render their decision within 14 (fourteen) days following the conclusion of the hearing.
- 64.2.4 Recognising the express desire of the Parties for an expeditious means of dispute resolution, the arbitrators shall limit or allow the Parties to expand the scope of discovery as may be reasonable under the circumstances.
- 64.2.5 The Parties undertake not to withhold their consent to join another party to the Arbitration.
- 64.2.6 The decision of the arbitrators shall be final and binding in terms of this clause 64.2.6 and may be made an order of court at the instance of any Party to the arbitration.
- 64.2.7 Disputes between the Parties regarding the Service Provider's obligations to provide Disengagement Services as contemplated in this Agreement shall not be subject to the provisions of clause 64.2.1 and Transnet may proceed directly to court in these circumstances.
- 64.2.8 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).
- 64.2.9 The Parties shall use commercially reasonable efforts to resolve disputes arising under the Agreement as rapidly as possible.
- 64.2.10 This clause 64 shall not preclude either Party from seeking urgent relief 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.
- 64.2.11 Any dispute resolution or arbitration process under this clause 64 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.

64.2.12 Except for the duration of a valid Force Majeure Event, and in accordance with clause 51.3 herein, the Parties agree to continue performing their obligations under this Agreement while the Problem is being resolved as provided in this clause 64 until the Problem is resolved or until this Agreement is terminated.

64.2.13 The costs of the arbitration shall be borne equally by the Parties.

65 GIFTS AND FAVOURS

65.1 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 at **Attachment I** (which the Service Provider is obliged to strictly comply with).

65.2 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 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.



- 65.3 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, 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.
- 65.4 The Service Provider to the best of its knowledge and belief, hereby warrants to Transnet that neither the Service Provider nor any of its Affiliates, nor any Employee of either, 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.
- 65.5 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, 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.
- 65.6 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, 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.
- 65.7 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

A handwritten signature in black ink, consisting of a stylized, cursive script that appears to be a first name followed by a last name, enclosed within a large, loopy oval shape.

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.

- 65.8 Should the Parties become aware of any transgression as stated in this clause 65, then the Parties shall be entitled to conduct an investigation which, notwithstanding any other provision to the Agreement, may lead to termination of the Agreement.

66 BUSINESS ETHICS AND OTHER CONFLICTS OF INTEREST

- 66.1 In this clause 66, reference to the Service Provider, Transnet or the Parties will, where applicable, refer to their Affiliates, Employees, or Sub-contractors.
- 66.2 Both Parties undertake to act only on the basis of utmost good faith and trust between them and with the highest regard to business ethics during the conclusion, in the execution and in the performance of any its obligations in terms of the Agreement. Should the Parties commit any act contrary to the foregoing and such act compromises, purports to, or may compromise such relationship, then the Parties shall be entitled to conduct an investigation which, notwithstanding any other provision to the Agreement, may lead to termination of the Agreement.

67 GENERAL

67.1 Third Party Beneficiaries

- 67.1.1 This Agreement is an agreement between the applicable Parties and, except for the Transnet Indemnities and the Service Provider Indemnities, confers no rights upon any of such Parties' Employees, agents, or contractors, or upon any other Person.
- 67.1.2 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.

67.2 Use of Party Names

67.2.1 Except as necessary to deliver the Services in accordance with this Agreement, the Parties shall have no right to use, and shall not use, the name of either Party 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 other Party, which consent may be withheld.

67.3 Assignment

67.3.1 No Party shall assign, transfer or delegate its duties under this Agreement, in whole or in part, without the prior written consent of the other Party, which shall not be unreasonably withheld; except for the subcontracting permitted under the terms of clause 13.2 and/or clause 67.3.2 below; where the Service Provider is expressly required by its existing syndicated funding agreements with its funders as they are currently and as updated from time to time to cede, transfer and make over its right, title and interest in and to any and all debts and receivables due and/or payable to the Service Provider under this Agreement, both future and present arising under this Agreement, as security or otherwise, Transnet hereby recognises and consents to such assignment, cession, and/or transfer of all debts and receivables due and/or payable to the Service Provider. The consent hereby given by Transnet is limited to, and shall only be exercised, as is expressly required by the existing syndicated funding agreements between the Service Provider and its funders.

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



67.4 Penalties

- 67.4.1 Wherever this Agreement provides for a penalty in favour of Transnet, Transnet shall be entitled to at any time recover damages in lieu of any such penalty.

67.5 Notices

- 67.5.1 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:

Parties	Addresses and contact details
Transnet	47 th Floor, Carlton Centre, 150 Commissioner Street, Johannesburg, 2001 Marked for the attention of: Group Executive, Legal Services
Service Provider	Neotel Proprietary Limited 44 Old Pretoria Main Road Midrand Marked for the attention of: General Manager: Legal and Contracts

provided that a Party may change its *domicilium* or its address for the purposes of notices to any other physical address or electronic mail 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.

- 67.5.2 All notices to be given in terms of this Agreement will be given in writing, in English, and notwithstanding the provisions of Table CR-3 of the Companies Act, will:

67.5.2.1 be delivered by hand or sent by electronic mail;

67.5.2.2 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

67.5.2.3 if sent by e-mail during business hours, be presumed to have been received on the date of successful transmission of the e-mail. Any e-mail sent after business hours or on a day that is not a Business Day will be presumed to have been received on the following Business Day.

67.5.3 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 67.5.

67.5.4 The Parties record that whilst they may correspond via e-mail 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.

67.6 **Relationship Between the Parties**

67.6.1 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.

67.7 **Authorised Signatories**

67.7.1 The Parties agree that this Agreement and any Attachment 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 Group Executive Legal Services 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.

67.8 Severability

- 67.8.1 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.

67.9 Amendments and Waiver

- 67.9.1 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.

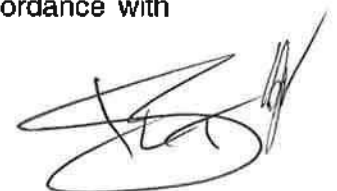
- 67.9.2 No waiver of any of the terms and conditions of this Agreement will be binding or effectual for any purpose unless in writing and signed by the Party giving the same. Any such waiver will be effective only in the specific instance and for the purpose given. Failure or delay on the part of either 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.

67.10 Counterparts

- 67.10.1 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.

67.11 Governing Law and Venue

- 67.11.1 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 and the Parties hereby submit to the jurisdiction of the courts of the Republic of South Africa.

67.12 **Survival**

67.12.1 Clauses 54, 55, 57, 60, 61, 62 and 64 and this clause 67 are provisions of the Agreement that contemplate performance or observance subsequent to any termination or expiration of the Agreement and accordingly shall survive any termination or expiration of the Agreement.

67.13 **Expenses**


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

67.14 **Benefits of Agreement**

67.14.1 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.

67.15 **Entire Agreement**

67.15.1 This Agreement and all Attachments hereto are incorporated herein and are an integral part of the Agreement and shall be read and interpreted together with the Agreement as a single document and constitute the whole of the agreement between the Parties relating to the matters dealt with 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. This Agreement, consisting of all of the pages of this instrument, together with all Attachments hereto, sets forth the entire, final and exclusive agreement between the Parties and



CONFIDENTIAL**Master Services Agreement**

supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, between the Parties related to the subject matter herein.

[SIGNATURES ON FOLLOWING PAGE]



A handwritten signature in black ink, appearing to be "R. K. A.", is located in the bottom right corner of the page.

CONFIDENTIAL

Master Services Agreement

SIGNED at Johannesburg on 15th December 2014

For and on behalf of

TRANSNET SOC LIMITED


Signature

Karl Socikwa
Name of Signatory

Acting GCE
Designation of Signatory

SIGNED at Nidrand on 19th December 2014

For and on behalf of

NEOTEL PROPRIETARY LIMITED


Signature

STEVEN WHITEM
Name of Signatory

CFO
Designation of Signatory

