

**WASTE MANAGEMENT SERVICES AGREEMENT FOR A
PERIOD OF THIRTY (36) MONTHS
TNPA 836**

entered into and between

TRANSNET SOC Ltd

Registration Number **1990/000900/30**

trading through its Operating Division

TRANSNET NATIONAL PORTS AUTHORITY

(hereinafter referred to as "**TNPA**")

and

(hereinafter referred to as "**the Contractor** ")

(Collectively referred to as "**the Parties**")

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1. **PREAMBLE**

- 1.1. TNPA requires the Services of a professionally trained and duly qualified Waste Services Contractor (“the Contractor”) to provide Waste Management Services (the “Service”) to the Port of Saldanha for a period of thirty six (36) months. The Service includes the provision of resources to facilitate the collection, storage, transportation and disposal (if recycling is not possible) of hazardous and galley waste. The Service further includes the prevention, reduction, recovery, recycling and/or reprocessing of General Waste at TNPA Port of Saldanha.

2. **DEFINITIONS**

- 2.1. For the purpose of this Agreement, unless the context otherwise requires, the following words and phrases shall mean :

- 2.1.1. Ad Hoc Service/s : a Service for or concerned with one specific purpose;
- 2.1.2. AFSA : Arbitration Foundation of South Africa;
- 2.1.3. Agreement : this document, together with all its Annexures, the Tender documents and the Service Level Agreement;
- 2.1.4. Background Intellectual Property : all Intellectual Property introduced and required by either Party to give effect to their obligations under this Agreement, owned in whole or in part by or licensed to either Party or their affiliates prior to the Commencement Date or developed after the Commencement Date otherwise pursuant to this Agreement;
- 2.1.5. Business Day : Mondays to Fridays between 07:30 and 16:00, excluding Public Holidays as proclaimed in South Africa;
- 2.1.6. Calendar Month : a month of the Gregorian calendar;
- 2.1.7. Collection and Loading Points : means the various Waste Transfer Handling areas where Waste will be

collected or loaded by the Contractor prior to removal and disposal thereof pursuant to this Agreement;

- 2.1.8. Commencement Date : the date upon which the contractor commences the Service;
- 2.1.9. Confidential Information : any information or other data, whether in written, oral, graphic or in any other form such as in documents, papers, memoranda, correspondence, notebooks, reports, drawings, diagrams, discs, articles, samples, test results, prototypes, designs, plans, formulae, patents, or inventor's certificates, which a Party discloses or provides to the other Party [intentionally or unintentionally, or as a result of one Party permitting the representative of the other Party to visit any of its premises], or which otherwise becomes known to a Party, and which is not in the public domain and includes, without limiting the generality of the term:
- a) information relating to methods of operation, data and plans of the disclosing Party;
 - b) the contents of this Agreement;
 - c) private and personal details of employees or clients of the disclosing Party or any other person where an onus rests on the disclosing Party to maintain the confidentiality of such information;
 - d) any information disclosed by either Party and which is clearly marked as being confidential or secret;
 - e) information relating to the strategic objectives and planning of the disclosing Party relating to

- its existing and planned future business activities;
- f) information relating to the past, present and future research and development of the disclosing Party;
 - g) information relating to the business activities, business relationships, products, Services, customers, clients and Subcontractors of the disclosing Party where an onus rests on the disclosing Party to maintain the confidentiality of such information;
 - h) information contained in the software and associated material and documentation belonging to the disclosing Party;
 - i) technical and scientific information, Know-How and trade secrets of a disclosing Party including inventions, applications and processes;
 - j) Copyright works;
 - k) commercial, financial and marketing information;
 - l) data concerning architecture, demonstrations, tools and techniques, processes, machinery and equipment of the disclosing Party;
 - m) plans, designs, concepts, drawings, functional and technical requirements and specifications of the disclosing Party;
 - n) information concerning faults or defects in goods, equipment, hardware or software or the incidence of such faults or defects; and

- o) information concerning the charges, Fees and / or costs of the disclosing Party or its authorised Subcontractors, or their methods, practices or Service performance levels actually achieved;
- 2.1.10. Copyright : the right in expressions, procedures, methods of operations or mathematical concepts, computer program codes, compilations of data or other material, literary works, musical works, artistic works, sound recordings, broadcasts, program carrying signals, published editions, photographic works, or cinematographic works of the copyright owner to do or to authorise the doing of certain acts specified in respect of the different categories of works;
- 2.1.11. Contractor : the person or legal entity responsible for the provision of the Service (may also be referred to as Service Provider interchangeably);
- 2.1.12. DEA : means the Department of Environmental Affairs;
- 2.1.13. Contractor Materials : all works of authorship, products and materials [including, but not limited to, data, diagrams, charts, reports, specifications, studies, inventions, software, software development tools, methodologies, ideas, methods, processes, concepts and techniques] owned by, or licensed to, the Contractor prior to the Commencement Date or independently developed by the Contractor outside the scope of this Agreement at no expense to Transnet, and used by the Contractor in the performance of the Services;

- 2.1.14. Default : any breach of the obligations of either Party [including but not limited to fundamental breach or breach of a fundamental term] or any Default, act, omission, negligence or statement of Party, its employees, agents or Subcontractors in connection with or in relation to the subject of this Agreement and in respect of which such Party is liable to the other;
- 2.1.15. Deliverable(s) : any and all works of authorship, products and materials developed, written, prepared, assembled, integrated, modified or provided by the Contractor in relation to the Services;
- 2.1.16. Designs : registered Designs and/or Design applications and will include the monopoly right granted for the protection of an independently created industrial design including designs dictated essentially by technical or functional considerations as well as topographies of integrated circuits and integrated circuits;
- 2.1.17. DWAF : means the Department of Water Affairs and Forestry;
- 2.1.18. Emergency : means the following occurrences:
- a) when there is an unusually high volume of Waste commodity spilled; and/or
 - b) when there is a spillage of non-hazardous and/or hazardous Waste;
- 2.1.19. Employees : any individual employed permanently or otherwise by the Contractor, including but not limited to drivers, supervisors, and or permitted agents or assigns;
- 2.1.20. Environmental

- Manager : TNPA Manager responsible for environment, or his successor/s in title or assignee/s;
- 2.1.21. Environmental Officer/Specialist” : TNPA employee/s or his successor/s in title or assignee/s responsible for activity relating to environment, and who reports to the TNPA Environmental Manager or his successor/s in title or assignee/s;
- 2.1.22. Equipment : the equipment necessary to enable the Contractor to provide the Service, which may include, but not be limited to bin/s, skip/s, tools, front-end loader, Waste compact unit and any other specialised equipment;
- 2.1.23. Fee(s) : the agreed Fees for the Services to be purchased from the Contractor by Transnet, as detailed in the Work Order(s), issued in accordance with this Agreement, as amended by mutual agreement between the Parties and in accordance with the provisions of this Agreement from time to time;
- 2.1.24. Foreground Intellectual Property : all Intellectual Property developed by either Party pursuant to this Agreement;
- 2.1.25. Galley Waste : means Waste that, by circumstance of use, quantity, concentration or inherent physical, chemical or infectious characteristics, may cause ill-health or increase mortality in humans, fauna, or may adversely affect the environment when improperly treated, stored, transported or disposed of;
- 2.1.26. General Waste : means Waste that does not pose an immediate hazard or threat to health or to the environment, and includes paper,

- plastic, cans, cardboard, glass, litter, perishable waste;
- 2.1.27. H:H and/or H:h Landfill Site : means an existing landfill Waste disposal site for hazardous Waste whether it be the filling in of excavations, or the creation of a land form above ground, where the terms “fill” is used in the engineering sense which is duly permitted in terms of the applicable legislation, in use on the Commencement Date;
- 2.1.28. Hazardous Waste : means any waste that contains organic or inorganic elements or compounds that may, owing to the inherent physical, chemical or toxicological characteristics of that waste, have a detrimental impact on health and the environment and includes oily rags, contaminated PPE, fluorescent tubes, contaminated railway sleepers, empty oil drums, oil filters, batteries, liquid hazardous waste;
- 2.1.29. Incident : any spillage, accident, damage to property, theft of property or injury to or death of any person, and includes an emergency;
- 2.1.30. Intellectual Property : Patents, Designs, Know-How, Copyright and Trade Marks and all rights having equivalent or similar effect which may exist anywhere in the world and includes all future additions and improvements to the Intellectual Property;
- 2.1.31. Know-How : all Confidential Information of whatever nature relating to the Intellectual Property and its exploitation as well as all other Confidential Information generally relating to Transnet’s field of technology, including technical information, processing or manufacturing techniques, Designs,

- specifications, formulae, systems, processes, information concerning materials and marketing and business information in general;
- 2.1.32. LOA : Letter of Award;
- 2.1.33. LOI : Letter of Intent;
- 2.1.34. Materials : the Deliverables, the Service Provider Materials, and the Third Party Materials;
- 2.1.35. Operating Hours : 24 hours of every day, seven days of every week and every day of the year;
- 2.1.36. Parties : the Parties to this Agreement together with their subsidiaries, divisions, business units, successors-in-title and their assigns;
- 2.1.37. Party : either one of these Parties;
- 2.1.38. Patents : registered Patents and Patent applications, once the latter have proceeded to grant, and includes a right granted for any inventions, products or processes in all fields of technology;
- 2.1.39. Permitted Purpose : any activity or process to be undertaken or supervised by Personnel or employees of one Party during the term of this Agreement, for which purpose authorised disclosure of the other Party's Confidential Information or Intellectual Property is a prerequisite in order to enable such activity or process to be accomplished;
- 2.1.40. Personnel : any partner, employee, agent, consultant, independent associate or supplier of the Contractor and/or Subcontractor, if permitted and the staff of such Subcontractor, or other authorised representative of either Party;
- 2.1.41. Port(s) : Port of Saldanha including site/s, as is determined by the context in which the

- work is used in each instance in this Agreement
- 2.1.42. Purchase Order(s) : official orders issued by an operating division of Transnet to the Contractor for the provision of Services;
- 2.1.43. Recycling : Recycling is the process whereby discarded products and materials are reclaimed or recovered, refined or reprocessed, and converted into new or different products.
- 2.1.44. Service : the Waste Management Services described in clause 7 of this Agreement, which are to be provided by the Contractor and which also include the duties and obligations of the Contractor;
- 2.1.45. Service Level Agreement : the detailed level of Services that TNPA requires of the Contractor for the provision of the Service
- 2.1.46. SLA : Service Level Agreement ;
- 2.1.47. Termination Date : date of expiry of this Agreement;
- 2.1.48. Subcontract : any contract or agreement or proposed contract or agreement between the Contractor and any third party whereby that third party agrees to provide to the Contractor the Services or any part thereof;
- 2.1.49. Subcontractor : the third party with whom the Service Provider enters into a Subcontract;
- 2.1.50. Tax Invoice : the document as required by Section 20 of the Value-Added Tax Act, 89 of 1991, as may be amended from time to time;
- 2.1.51. Third Party Material : software, software development tools, methodologies, ideas, methods, processes, concepts and techniques owned by, or licensed to a third party and used by the Contractor in the performance of the Services;

- 2.1.52. "TNPA" : **TRANSNET SOC LTD**, trading through its Operating Division **TRANSNET NATIONAL PORTS AUTHORITY** (Registration Number 1990/000900/30)
- 2.1.53. "TNPA Site" : means any area within the TNPA Operational Areas and/or as directed by the duly authorised Environmental Manager/Officer/Specialist;
- 2.1.54. "TNPA Representative" : means the Environmental Manager, Environmental Officer/Specialist and/or his successor/s in title or assignee/s;
- 2.1.55. Trade Marks : registered Trade Marks and trade mark applications and includes any sign or logo, or combination of signs and/or logos capable of distinguishing the goods or Services of one undertaking from those of another undertaking;
- 2.1.56. "VAT" : Value Added Tax, which will be charged at the standard rate applicable at the time that the Service is rendered by the Contractor to TNPA;
- 2.1.57. "Vehicle/s" : any motor vehicles used in the provision of the Service, including but not limited to tippers, vans, cars, and trucks;
- 2.1.58. Waste : means Galley Waste, General Waste and Hazardous Waste;
- 2.1.59. Work Order (s) : means a detailed scope of work for a Service required by TNPA, including timeframes, deliverables, fees and costs for the supply of the Service to TNPA, which may be appended to this Agreement from time to time.

2.2. The headnotes to these clauses are inserted for reference purposes only and shall not govern or affect the interpretation of such clauses.

- 2.3. Unless inconsistent with the context, an expression which denotes:
 - 2.3.1. any gender, includes the other genders;
 - 2.3.2. a natural person, includes an artificial person and vice versa;
 - 2.3.3. the singular, includes the plural and vice versa.
- 2.4. If any provision in a definition is a substantive provision conferring rights or imposing obligations on either party, notwithstanding that it appears only in the definitions clause 2, effect shall be given to it as if it were a substantive provision of this Agreement.
- 2.5. Where any term is defined within the context of any particular clause in this Agreement, the terms so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes arising out of this Agreement, notwithstanding that the term has not been defined in the definitions clause 2.

3. APPOINTMENT

- 3.1. TNPA hereby appoints the Contractor to carry out the Service during operating hours at the Port of Saldanha;
- 3.2. The Contractor hereby agrees to provide the Service to TNPA in accordance with this Agreement at the Port of Saldanha.

4. DURATION

- 4.1. Notwithstanding the date of signature hereof, this Agreement shall be deemed to have commenced on..... ("the Commencement Date").
- 4.2. Subject to any earlier termination in accordance with the provisions of this Agreement, this Agreement shall terminate on..... ("the Termination Date").

5. GOOD FAITH: NO AGENCY: WARRANTY TO PERFORM

- 5.1. The Parties undertake to observe good faith in dealing with each other and in implementing the provisions of this Agreement;
- 5.2. Notwithstanding the provisions of clause 5.1, the Contractor shall not for any purpose be deemed to be an employee or an agent of TNPA, except for the specific purposes and to the extent stipulated in this Agreement;
- 5.3. The Contractor warrants that the Service will be of a sufficiently high standard and quality to enable TNPA to adhere to the environmental, safety, health, quality, risk and

compliance requirements as are set out in this Agreement and as TNPA is relying upon.

6. SERVICE LEVEL AGREEMENT (“SLA”)

The SLA will be concluded between TNPA and the Contractor within one calendar month of the Commencement Date of this Agreement. The SLA shall be supplementary to this Agreement and will form an integral part of this Agreement. The parties agree that until such SLA is concluded, the parties shall abide by the terms, procedures and conditions as set out in this Agreement. A copy of the SLA is annexed hereto as “G”

7. OBLIGATIONS OF THE CONTRACTOR

7.1. The Contractor shall:

- 7.1.1. provide all Employees, or personnel, and supervision necessary for the proper, efficient, timeous, safe and compliant provision of the Service for TNPA. This Service will be performed in such a way that all Waste will be removed from TNPA and disposed and/or recycled at appropriate licensed facility or licenced landfill site;
- 7.1.2. provide and make available such Equipment and Vehicle(s) as may be necessary for the performance of the Service all of which shall be maintained by the Contractor in good working order and condition at all times;
- 7.1.3. be responsible for the safe loading, removal and transportation, consolidation (if applicable), recycling (if applicable) and disposal of the Waste; in accordance with the prevailing legislation and in terms of this Agreement, while protecting TNPA, the environment and the public from unsound Waste management practices;
- 7.1.4. ensure that all statutory laws and other legislation pertaining to the temporary storage, handling, removal, transportation, recycling (if applicable) and disposal of the Waste are complied with;
- 7.1.5. provide a Service in which the interest of public health, hygiene and anti-pollution be paramount and will ensure clean and tidy areas without any accumulation of Waste and will prevent the spread of infectious and contagious diseases;
- 7.1.6. inspect the areas concerned and the nature and quantities of Waste requiring removal, and perform the Service in such a manner that the areas concerned are left in a tidy and sanitary condition;

- 7.1.7. register on the South African Waste Information System (SAWIS) as required by the South African Waste Information Centre (SAWIC) and TNPA Port of Saldanha already registered on the system, will provide the Contractor with the necessary registration number and/or additional information required in this regard;
- 7.1.8. upload the Waste quantities on SAWIS on a weekly basis which will be monitored as per the SLA;
- 7.1.9. ensure that arrangements with TNPA security are made for access onto the site on a regular basis. The Contractor must inform TNPA security prior to the day of their need to access the site. All the Contractor's vehicles accessing the site will be recorded at the security gate for monitoring purposes;
- 7.1.10. co-operate with TNPA and comply with all instructions issued and restrictions imposed with respect to the works which affect the operation of TNPA;
- 7.1.11. ensure that in the event of any emergency, which may arise at any time during which they are attending to the provisions of Services as contained in this agreement, such emergency is properly attended to. The Contractor is to provide suitable 24 hour communication between the Waste vehicle and the TNPA Environmental Department for emergency incidents. The Contractor is to provide details of the authorized persons responsible for the implementation and management of the contract and provide contact details of all staff involved, including those identified for emergency incident;
- 7.1.12. immediately notify the TNPA Environmental Department in the event of industrial action or any other unforeseen circumstances which may arise within the Port of Saldanha which results in the Contractor being prevented from gaining access into the Port of Saldanha through no fault of their own, and which results in the Contractor being unable to attend to the Waste Services as set out in the contract. Contingency plans shall be introduced whereby it may be necessary to perform the Service outside normal working hours;
- 7.1.13. nominate representatives of whom at least one shall be available at any hour for call-out in cases of emergency. The Contractor shall provide the TNPA Environmental Department with the names, addresses and telephone numbers of such representative;
- 7.1.14. not restrict the free use of any road, right-of-way or path on TNPA property unless the Contractor has obtained the approval of the authority/owner concerned and shall be liable for any damage caused by the Contractor and/or its employees to any road, path or street within TNPA;
- 7.1.15. ensure that no permanent works or structures of any nature are erected on TNPA property;

- 7.1.16. dispose of all Waste in the designated Waste receptacles in the manner stipulated for such Waste;
- 7.1.17. ensure that all Waste and run off, is taken directly to and disposed or recycled (if applicable) of at the registered landfill or recycling site in accordance with the requirements of the relevant government department, and any new laws which may be promulgated;
- 7.1.18. provide a safe disposal certificate or Waste manifest documents for all Waste removed, to TNPA Environmental Department; and
- 7.1.19. use international best practice procedures in the management of Waste, which may need to be reviewed and updated from time to time and which may result in the need to review the Terms of the Contract.

8. CONTRACTOR'S EMPLOYEES

- 8.1. The Service shall be carried out under the supervision of TNPA, and the Contractor shall be responsible for any acts and/or omissions of its employees;
- 8.2. The Department of Environmental Affairs and/or Department of Transport will conduct audits of Waste management at a minimum interval of once every 3 months or as and when deemed necessary and the Contractor and/or its employees shall comply with any requirements in this regard;
- 8.3. The Contractor shall ensure that all its Employees:
 - 8.3.1. comply with the identification requirements of TNPA at all relevant times.

"identification" for all purposes arising out of this Agreement shall include but not be limited to:

- (a) a standard uniform, as agreed upon between the Parties and failing Agreement, as may be stipulated by TNPA which shall consist of at least:
 - (aa) a numbered reflector jacket / day-glow jacket with the name of the Contractor appearing on both the front and the back;
 - (bb) an identity disc, tag or other device as agreed upon between the Parties, or as may be stipulated by TNPA. Such identity disc, tag or other device shall contain at least the following information:
 - (i) a recent colour photograph of the particular employee;
 - (ii) his full names, surnames and any other name(s) by which he is known; and

- (iii) his identity number
- 8.3.2. when at the Port of Saldanha (unless TNPA decides otherwise), wear the identity disc, tag or other device referred to in clause 8.3.1. (bb) above, which shall be issued by the Contractor at its own cost;
- 8.3.3. when at the Port of Saldanha and when performing the Service:
 - (a) wear the standard uniform(s) specified in clause 8.3.1. (a) above in accordance with the provisions of this Agreement, together with personal protective equipment (such as day glow vests, safety boots, hard hats, overalls, dust masks and any other requisite safety gear) as may be agreed to between the parties (and failing Agreement, as may be prescribed by TNPA), all of which shall be provided by the Contractor at its own cost;
 - (b) are in possession of the prescribed and requisite Equipment and Vehicle(s) (which shall at all times be clean and in working order and condition) so as to enable him to perform his duties in terms of this Agreement pursuant to the obligations of the Contractor to provide the Service;
 - (c) are available during operating hours;
- 8.3.4. are physically fit and in a sufficient sound mental condition to perform their duties in connection with the delivery of the Service by the Contractor and will undergo annual medical examinations (which shall, without limitation, include testing by a registered physician, an eye test examination by a registered optometrist and audiometric testing by a registered audiologist). Medical certificates and certificates providing proof of such medical examinations should be current and valid and the Contractor shall make them available to TNPA upon request by TNPA;
- 8.3.5. are subject to and comply strictly with the code of conduct as may be agreed upon between the Parties, and failing Agreement, as shall be prescribed from time to time by TNPA
- 8.3.6. are made aware of the relevant provisions of the Agreement on or before the Commencement Date and confirm this fact to TNPA in writing prior to the Commencement Date;
- 8.3.7. are aware and have consented in writing (prior to entering TNPA premises) to TNPA carrying out identity checks, searches of property or persons and/or conducting drug, alcohol, monitoring and/or polygraph tests on all or any of such Employees at any time and from time to time;
- 8.3.8. maintain a high standard of housekeeping at all sites utilised by the Contractor in the Port of Saldanha.

8.3.9. The Contractor shall ensure that:

- 8.3.9.1. at all times the relevant TNPA representative is in possession of a current and updated list of the Contractor's employees contact details which shall include their home telephone and cellular telephone numbers and who can be contacted during the operating hours;
- 8.3.9.2. the Service and its obligations are performed in a good, proper, efficient and workmanlike manner and in accordance with sound principles, standards, methods and practice generally accepted in the Republic of South Africa and with the degree of skill, care and diligence normally practised by a competent prudent Contractor whilst performing the Service or work and/or Services of a similar nature;
- 8.3.9.3. in the performance of the Service, that all potential hazards to the health and safety of persons are eliminated or adequately mitigated and further prescribe or enforce precautions to prevent against such hazards occurring, and provide the necessary means to apply such precautions, by instructing, training and supervising the Contractor's Employees so as to provide and maintain, so far as is reasonably practicable, a safe working environment without risk to the health and safety of persons; and
- 8.3.9.4. each Employee exercises all necessary care and diligence in and about his duties arising out of the fulfilment by the Contractor of the Service;

9. TRAINING

9.1. The Contractor undertakes to ensure that:

- 9.1.1. there are sufficient and available Employees or resources together with supervision who shall have the requisite skill and experience to perform the Service;
- 9.1.2. each Employee engaged by the Contractor in performing the Service in connection with this Agreement is competent and properly qualified as required by law and to the extent reasonably required by TNPA to execute his respective tasks, is properly trained and adequately supervised;
- 9.1.3. Employees are trained and undergo continuous re-training as may be required by applicable legislation and / or every six (6) months or at such particular periods as may be agreed upon from time to time between the parties for the duration of this Agreement for the due performance of this Agreement and the costs thereof will be borne by the Contractor;

- 9.1.4. the training plan and / or necessary proof of training or re-training is submitted to TNPA for inspection by it upon request at all reasonable times;
- 9.1.5. prior to any of the Contractor's Employees commencing with his or her duties in terms of this Agreement at the Port(s), he or she must attend the TNPA SHE Awareness Training which will be provided by TNPA;
- 9.1.6. the Employees employed as drivers to perform the Service are trained by the Contractor and are familiar with the Port(s), the requisite landfill site, Equipment position, weighbridge system and all applicable policies and procedures of TNPA relating thereto; and
- 9.1.7. should any Employee of the Contractor be found unsuitable for the performance of the Service by TNPA for any reason whatsoever in its sole and unfettered discretion, then such Employee will be replaced forthwith by the Contractor.

10. EQUIPMENT AND VEHICLES

- 10.1. The Contractor undertakes irrevocably in favour of TNPA that it will at no stage during the performance of the Service, use Equipment or Vehicle/s which is not to its knowledge and belief in safe, good and proper working order.
- 10.2. The choice of the Equipment or Vehicle(s) referred to in this clause shall rest with the Contractor. Without limitation, however, the Contractor undertakes at all times to:
 - 10.2.1. supply all necessary Equipment in which the Waste will be placed for the duration of this Agreement and ensure that all the Equipment are colour coded according to TNPA's Waste management plan requirements and duly labelled with signage as required by legislation;
 - 10.2.2. supply all necessary Equipment, Vehicle(s), signage, transport, competent Employees, adequate supervision, and each and every item of expense necessary for the timeous and safe performance of the Service;
 - 10.2.3. ensure that all vehicles, waste receptacles are covered and leak proof at all times which may include loading and transportation in accordance with all applicable legislation governing the transportation and to the satisfaction of TNPA;
 - 10.2.4. the vehicle, and waste receptacles must be cleaned daily and the contaminated run-off must be treated and / or disposed of correctly;
 - 10.2.5. provide comprehensively insured, roadworthy and duly licensed Vehicle(s) to perform the Service, with all the requisite road transportation permits;

- 10.2.6. provide TNPA with a list of its entire fleet of Vehicle(s), Equipment and Employees including but not limited to the names of the drivers that will be utilised for the performance of the Service;
- 10.2.7. ensure that all maintenance, servicing and mechanical repairs (hereinafter referred to as "maintenance"); of the Equipment and the Vehicle(s) including all adjustments necessary to keep the Equipment in an operational condition and the Vehicle(s) in a roadworthy condition shall be provided by the Contractor at its own cost. All maintenance records provided for in terms of this Agreement shall be made available to TNPA by the Contractor whenever such request is made by TNPA;
- 10.2.8. ensure that if any Equipment or Vehicle(s) provided by the Contractor breaks down, and/or is involved in an accident, is replaced immediately to continue with the performance of the Service;
- 10.2.9. have sufficient and properly maintained (at its own cost) Equipment and Vehicle(s) which are available timeously to perform the Service and such Equipment and Vehicle(s) shall remain the sole property of the Contractor and the Contractor shall not without the prior written consent of TNPA permit any of the Equipment or Vehicle(s) to be removed from the performance of the Service at the Port of Saldanha pursuant to this Agreement other than for the purpose of servicing, maintaining or repairing them;
- 10.2.10. ensure that the Equipment and Vehicle(s) are utilised by the Contractor to perform the Service in terms of this Agreement. Should such Equipment and Vehicle(s) not be utilised to their full capacity by the Contractor, during the term of this Agreement, then the Contractor with prior written consent from TNPA, shall make such Equipment and Vehicle(s) and its Employees (drivers) available to TNPA, free of any further charges or rates, for alternative use at the Port of Saldanha. In the event, that the capacity of such Equipment and Vehicle(s) are to be exceeded, then the Contractor shall inform TNPA in writing and obtain TNPA's written consent prior to rendering of any Service;
- 10.2.11. keep all its Equipment and Vehicle(s) marked in such a way as to be readily identified as being the property of the Contractor;
- 10.2.12. properly document all Equipment removed from, or re-installed in compliance with the TNPA's Access Control and Asset Control Procedures which is available on request;
- 10.2.13. ensure that all Equipment which is redundant, requires servicing, maintenance or repairs and which need to be removed from the Port of Saldanha are surrendered or declared to the TNPA security personnel or are disposed of in accordance with the instructions of the TNPA security personnel;

- 10.2.14. ensure the driver of each of the Vehicle(s) performing the Service:
 - 10.2.14.1. is in possession of suitable protective equipment during loading, removal and transportation, consolidation (if applicable) and disposal of the Waste;
 - 10.2.14.2. is in possession of a valid driver's licence and applicable permits at all times;
 - 10.2.14.3. remains inside the cabin of his/her Vehicle during loading and disposal and the windows shall be closed, so as to ensure minimal inhalation of, without limitation, dust, or hazardous or toxic fumes; and
 - 10.2.14.4. ensure that the vehicle is adequately equipped with spill kits, first aid kits and/or any other emergency equipment necessary.

11. LOADING, REMOVAL AND TRANSPORTATION OF WASTE

- 11.1. The Contractor undertakes to comply with the following conditions which apply to the loading, storing removal, transportation, recycling, treatment and disposal of the Waste. The Contractor shall:
 - 11.1.1. ensure that the Waste receptacles are provided timeously but within a maximum period of four (4) hours after having been notified.
 - 11.1.2. ensure that the Waste receptacles are sufficient to meet the TNPA requirements ;
 - 11.1.3. remove and dispose of the Waste in accordance with the Waste management plan, as provided to them by the Port of Saldanha;
 - 11.1.4. remove all Waste in terms of this contract from designated Sites within TNPA, as agreed upon with the Environmental Manager/Officer/Specialist;
 - 11.1.5. on an ongoing basis load, transport and remove Waste generated by TNPA from the Port of Saldanha or designated Collection and Loading Points and transport such Waste to the registered Landfill, recycling facility or disposal facility as required by TNPA;
 - 11.1.6. ensure that the Waste is loaded onto the Vehicle(s) provided and operated by the Contractor;
 - 11.1.7. ensure that during the loading, storing, removal, consolidation and (if applicable) transportation of the Waste that no spills and/or dust is generated;
 - 11.1.8. ensure that each load of Waste on each Vehicle shall be covered using a tarpaulin (if applicable) prior to the transportation thereof from the actual point of loading;

- 11.1.9. after loading of the Waste on each Vehicle, a Vehicle dispatch certificate must be issued by the Contractor's Employee and duly signed by a TNPA representative prior to the departure of the Vehicle from the Port of Saldanha;
- 11.1.10. ensure that all Waste removed by the Contractor is fully traceable from the time of such Waste generation to the disposal/recycling/treatment area of a registered Landfill, recycling facility;
- 11.1.11. co-operate and comply with the Environmental Officer/Specialist of TNPA, who having identified himself, may stop the work if, in his opinion, the safety of TNPA assets or any person is affected.
- 11.1.12. appoint a Supervisor who shall manage the performance of the Service at the Port of Saldanha. The Supervisor shall have the following duties in regard to the performance of the Service which include, but are not limited to:
- (a) monitor the Equipment and Vehicle/s and will remove the Equipment when they are at least 75% full;
 - (b) monitor the removal of the Waste so as to ensure that Waste is spilt during each loading operation or during transportation
 - (c) ensure that all Equipment and Vehicle(s) are covered with a tarpaulin when containing or carrying the Waste during transportation;
 - (d) perform daily inspections to ensure that the Equipment is correctly placed and that the Equipment is not wet, they are in the required condition and that it is in compliance with the Port of Saldanha Waste Management Standard Operating Procedure attached as Annexure "D";
 - (e) monitor the removal of the Waste
 - (f) ensure that TNPA vehicle permits are obtained from TNPA to enable its Vehicle/s to enter into the Port of Saldanha;
 - (g) ensure that no Vehicle is overloaded prior to such Vehicle performing any movement;
 - (h) ensure that all requisite and appropriate decals or permits are displayed on the Vehicle;
 - (i) accept responsibility for the safe transportation of the Waste from each Collection and Loading Point to each point of final disposal, including without limitation, instances where spillage of any nature may occur from any Vehicles;

- (j) ensure that the release of each Vehicle is signed by a TNPA Representative when it is ready to depart from the Port of Saldanha, and ensure that the release certificate contains and indicate the time which the Vehicle is to be released, the date of release, the name of driver, the signature of the driver, the name of TNPA Representative and the signature of TNPA Representative; and
- (k) obey all reasonable instructions of the TNPA Representative in the performance of the Service.

12. INTERIM STORAGE OF WASTE

12.1. In the event of there being a critical need for interim storage of the Waste after it leaves the Port of Saldanha but before being disposed at the registered Landfill Site, then the Contractor shall:

- (a) obtain prior written approval from the Environmental Manager;
- (b) transport such Waste to its registered Consolidation facility that has been approved and permitted by DEA and/or DWA;
- (c) ensure that such Waste does not remain overnight in a Consolidation Facility and that it is disposed of on the same day at the registered Landfill Site; and
- (d) be responsible for all and any costs incurred in relation to the Waste being transported to and from Consolidation Facility and thereafter to the registered Landfill Site.

13. DISPOSAL OF WASTE

13.1. The Contractor shall ensure:

- 13.1.1. that the disposal of the Waste at the registered Landfill Site, recycling facility or complies with all DWA, DEA, and any other national, provincial and local legislation and/or other applicable legislation;
- 13.1.2. that the disposal of the Waste at the registered Landfill Site, recycling facility is always supervised by and be subject to the direction and approval of the duly authorised person, landfill manager or employee in charge of the registered Landfill Site;
- 13.1.3. that all Waste is disposed of at a registered Landfill Site, recycling facility;

- 13.1.4. that it obtains a duly signed manifest for each load of Waste disposed of at the registered Landfill Site, recycling facility and submits each duly signed manifest to TNPA
- 13.1.5. that all costs incurred from the Collection and Loading Point until the Waste is disposed/recycled/treated at a registered Landfill Site, recycling facility is for its own account. The Contractor acknowledges that it shall be liable for such costs and indemnifies TNPA in respect of such costs;
- 13.1.6. The Contractor shall furnish to Environmental Manager, prior to the commencement and performance of the Service, the following:
 - 13.1.6.1. all relevant Waste transportation, handling, consolidation permits and certificates as required by the DWA, DEA, Provincial and/or National regulatory authorities;
 - 13.1.6.2. proof of Landfill Site registration with DWA or DEA and also provide evidence to indicate that the Landfill Site, recycling facility is authorised to dispose, treat or recycle of the types of Waste, and loading rates of the Landfill Site(s) , recycling facility; and
 - 13.1.6.3. the permit(s) and/or license required to dispose, treat or recycle of Waste in the registered Landfill Site, recycling facility.
- 13.1.7. The Contractor undertakes to:
 - 13.1.7.1. obtain the written approval from the Environmental Manager/Officer/Specialist prior to introducing improvements to TNPA's current Waste management practices in terms of the Port of Saldanha Integrated Waste Management System;
 - 13.1.7.2. obtain the written approval from the Environmental Manager/Officer/Specialist prior to the Contractor performing any supply or Service beyond the scope of this Agreement and if it is agreed in writing that the Contractor may supply goods or render Services outside of the scope of this Agreement, then the provisions of this Agreement shall apply mutatis mutandis thereto;
 - 13.1.7.3. accept from TNPA the quantity of Waste to be handled from time to time as determined by TNPA in its sole and unfettered discretion pursuant to this Agreement;
 - 13.1.7.4. attend to, and react within four (4) hours of notification by TNPA, to remove Waste from the Port of Saldanha;

- 13.1.7.5. remedy and rectify all non-conformances within a period of forty eight (48) hours of it having occurred or having been notified by the Environmental Manager ;
- 13.1.7.6. ensure that the Contractor's duly authorised and appointed employee attends the TNPA Safety meetings at the Port of Saldanha
- 13.1.7.7. supply any information of any nature relating to the performance of the Service or the loading, storage, handling, transportation, consolidation, disposal, recycling or treatment of the Waste, the contents or composition of the Waste nor any chemical analysis or components thereof to any unauthorised third party whatsoever;
- 13.1.7.8. ensure that the performance of the Service shall, without limitation, be in the interests of TNPA, the environment, public health, hygiene and anti-pollution and that the Contractor will at all times provide the Service so as to avoid or reduce to a minimum the risks relating to odour, dust, flies and rodents by using approved sanitary procedures; and
- 13.1.7.9. be liable for and bear all costs of making good any damage or harm caused by it to any person, area within the Port of Saldanha public road, path or street, private or third party property, environment including but not limited to fauna and flora. The Contractor indemnifies TNPA in respect of any damage or harm caused by the Contractor.

14. SPILLAGES BY THE CONTRACTOR

- 14.1. The Contractor must ensure that all necessary and reasonable measures are taken to prevent the spillage of Waste in the Port of Saldanha on public roads, onto third party property and into and onto the environment, during the loading, storage, removal, transportation and consolidation (if applicable) and disposal of the Waste.
- 14.2. The cost of any spillage clean up shall be for the sole account of the Contractor and the Contractor hereby indemnifies TNPA against all costs, charges and claims of whatsoever nature and howsoever arising which may be made against it by any person, entity or organisation.
- 14.3. The Contractor shall ensure that in the event of a spillage occurring:
 - 14.3.1. immediately inform the TNPA of the incident as well as of remediation measures undertaken;
 - 14.3.2. the vehicle and all affected areas must be appropriately cleaned and sanitised after disposal;

- 14.3.3. that the chemicals used by the Contractor, in the clean-up process are bio-degradable and that the Contractor will ensure that the chemicals will not contaminate storm water and / or cause any damage or harm to the environment;
- 14.3.4. that the Contractor has adequate hazmat resources;
- 14.3.5. that the Contractor will adhere to the Emergency turn-around time which will be provided to the Contractor prior to the Commencement Date;
- 14.3.6. that the Contractor will not leave the affected area until the spillage has been completely cleaned-up to the satisfaction of the environmental authorities and/or the TNPA Representative.

15. SPILLAGES BY TNPA

15.1. The Contractor shall ensure that:

- 15.1.1. it adheres to the Emergency turn-around time, which will be provided to it prior to the Commencement Date, when requested by the Port of Saldanha to clean up a spillage;
- 15.1.2. the chemicals used in the clean-up process are bio-degradable and that it will ensure that the chemicals will not contaminate storm water and / or cause any damage or harm to the environment;
- 15.1.3. it has adequate hazmat resources;
- 15.1.4. it will not leave the affected area until the spillage has been completely cleaned-up to the satisfaction of the environmental authorities and/or TNPA Representative;
- 15.1.5. it will render in addition to the basic requirements set out in 15.1.1. to 15.1.4. inclusive, such assistance as may be required by TNPA and to cooperate in any clean-up operation.

16. SAFETY REQUIREMENTS

The Contractor shall comply with the provisions of the Occupational Health and Safety Act 1993, Act No. 85 of 1993. As employer, they are in every respect responsible for compliance with the provisions of the Act, including the application of General Administrative Regulation 13 thereof to the employees of TNPA who visit the site. The Contractor will be responsible for the safety rules of TNPA. In this regard the Occupational Health and Safety Act Agreement and safety specifications are attached.

17. AUDITS

- 17.1. The Contractor acknowledges and agrees that TNPA will conduct internal audits , alternatively, engage the Service of a third party, inspectorate, as may be deemed necessary by TNPA, to furnish TNPA with a report regarding the performance of the Service by the Contractor.
- 17.2. The Contractor undertakes to grant TNPA all appropriate and relevant documentation relating to the performance of the Service and to co-operate so as to enable TNPA to achieve the objectives as set out in this clause, including, but not limited to:
 - 17.2.1. TNPA requesting copies of all third party invoices, accounts and all other financial documents (including costing sheets) and records of the Contractor for the purpose of auditing same and satisfying itself as to the reasonableness of any amount paid or to be paid in terms hereof;
 - 17.2.2. the Contractor making available to TNPA a copy of the Contractor's quality management manual, procedure manual, or other quality control documentation, for inspection;
 - 17.2.3. the Contractor authorising access to TNPA, to inspect work-in-progress, the Equipment and Vehicle(s) used in the performance of the Service.
- 17.3. The performance of the Service shall be determined by an audit using an agreed checklist detailing performance items as set out in this Agreement.
- 17.4. In the event of non-compliance or breach of this Agreement, then TNPA will inform the Contractor, in writing, of the non-compliance and/or breach require the Contractor to rectify same within forty eight hours (48) of such notice.
- 17.5. If such non-conformance is not remedied within forty eight (48) hours, then TNPA will withhold 10% (ten percent) of the total amount payable from each subsequent monthly payment due to the Contractor until the rectification required by such notice shall have been effected to the satisfaction of TNPA.
- 17.6. Should such rectification not be satisfactorily achieved by the next audit, the retained percentage shall become 15%. The amounts so withheld shall be paid when the rectification has been effected to the satisfaction of TNPA.
- 17.7. Failure by the Contractor to achieve such rectification within 3 months in succession will be regarded as a material breach of this Agreement and any monies then withheld shall be forfeited.
- 17.8. These penalty provisions shall not preclude any other remedies TNPA has in law and in terms of this Agreement.

18. OBLIGATIONS OF TNPA

- 18.1. TNPA undertakes to afford the Contractor such assistance as may be reasonably required by the Contractor in performing the Service, provided that under no circumstances shall such assistance be regarded as creating any obligations on the part of TNPA, nor relieving the Contractor of its obligation to comply with all the obligations imposed upon it in terms of this Agreement.
- 18.2. TNPA shall designate and appoint an authorized representative who shall be known as the TNPA Representative.
- 18.3. Without derogating from the generality of what is set out in clause 18.1, TNPA shall sign the release certificate of each Vehicle when it is ready to depart from the Port of Saldanha and will ensure that it indicates the time when the Vehicle is to be released, the date of release, the name of driver, the signature of the driver, the name of the TNPA Representative and the signature of the TNPA Representative.
- 18.4. The Environmental Manager/specialist, officer shall have the following duties in regard to the removal of the Waste by the Contractor:
- 18.4.1. monitor the removal of the Waste so as to ensure that no Waste is spilt during each loading operation and that there is no accumulation of Waste which occurs during or after its removal;
 - 18.4.2. monitor the condition of each Vehicle so as to ensure that it is in a roadworthy condition;
 - 18.4.3. monitor the removal of the Waste by pointing out:
 - 8.4.3.1. the exact location of the Waste to be removed at any particular point in time. The specific diagram indicating the exact location of all the Waste is annexed to this Agreement, marked Annexure "F";
 - 8.4.3.2. List of areas for the permanent placement of waste receptacles for TNPA in the Port of Saldanha.
 - 18.4.4. provide technical and operational advice to the Contractor in connection with the day to day operations and execution of its duties;
 - 18.4.5. ensure that Vehicle permits are furnished by TNPA to the Contractor to enable its Vehicle(s) to enter into the Port of Saldanha;
 - 18.4.6. furnish the Contractor with the rules of the Port of Saldanha ,including the safety requirements as may be published from time to time by TNPA, which Rules form an integral part of this Agreement and are attached as Annexure "H" ;
 - 18.4.7. furnish the Contractor with the Port of Saldanha Waste Management Plan, attached as annexure "E";

- 18.4.8. through its Environmental Manager/Officer/Specialist, conduct random checks on the Waste in the Equipment to ensure compliance with Port of Saldanha Waste Management Procedure and SHE Policy requirements, attached as "I";
- 18.4.9. regularly visit and audit the registered Landfill Site/s for compliance in respect of the disposal of the Waste;
- 18.4.10. communicate to the Contractor the need to review the Terms of the Contract in line international best practice in the management of the Waste;
- 18.4.11. provide the Contractor with the Port of Saldanha South African Waste Information Centre (SAWIC) registration number.

19. B-BBEE AND SOCIO-ECONOMIC OBLIGATIONS

19.1 B-BBEE Scorecard

- a) TNPA fully endorses and supports the Broad-Based Black Economic Empowerment Programme and is strongly of the opinion that all South African business enterprises have an equal obligation to redress the imbalances of the past.
- b) In response to this requirement, the Contractor shall submit to Transnet's Contract Manager or such other designated person details of its B-BBEE status in terms of the latest Codes of Good Practice issued in terms of the B-BBEE Act and proof thereof at the beginning of March each year during the currency of this Agreement.
- c) The Contractor undertakes to notify and provide full details to TNPA in the event there is:
 - (i) a change in the Contractor's B-BBEE status which is less than what it was at the time of its appointment including the impact thereof; and
 - (ii) a corporate or internal restructure or change in control of the Contractor which has or likely to impact negatively on the Contractor's B-BBEE status.
- d) Notwithstanding any other reporting requirement in terms hereof, the Contractor undertakes to provide any B-BBEE data (underlying data relating to the Contractor which has been relied upon or utilised by a verification agency or auditor for the purposes of issuing a verification certificate in respect of the Contractor's B-BBEE status) which TNPA may request on written notice within 30 (thirty) calendar days of such request. A failure to provide such data shall constitute a Contractor Default and may be dealt with in accordance with the provisions of clause 25.
- e) In the event there is a change in the Contractor's B-BBEE status, then the provisions of clause 25 shall apply.

19.2 Green Economy/Carbon Footprint

In addition to the B-BBEE commitments that the Contractor makes, the Contractor has in its bid provided TNPA with an understanding of the Contractor's position with regard to issues such as Waste disposal, recycling and energy conservation.

20. FEES AND EXPENSES

- 20.1. In consideration of the provision of the Services, Transnet will pay to the Service Provider the Fees detailed in the relevant schedule or Work Order.
- 20.2. Transnet will not be invoiced for materials used in the provision of the Services save for those materials [if any] set out in the Work Order and accepted by Transnet or in any relevant Work Order [which will be invoiced to Transnet at cost].
- 20.3. Unless otherwise agreed in a schedule or Work Order, Transnet will reimburse to the Service Provider all reasonable and proper expenses incurred directly and solely in connection with the provision of the Services, provided that all such expenses:
 - 20.3.1. are agreed by Transnet in advance;
 - 20.3.2. are incurred in accordance with Transnet's standard travel and expenses policies;
 - 20.3.3. are passed on to Transnet at cost with no administration fee; and
 - 20.3.4. will only be reimbursed if supported by relevant receipts.
- 20.4. All Tax Invoices relating to Fees, out of pocket expenses and, if applicable, travel and accommodation costs, will provide the detail for each of the Personnel carrying out the Services and incurring the expenses, and the Tax Invoice will, where appropriate, include VAT as a separate item.

21. INVOICING AND PAYMENT

- 21.1. Transnet shall pay the Service Provider the amounts stipulated in the relevant schedule or Work Order, subject to the terms and conditions of this Agreement.
- 21.2. Transnet shall pay such amounts to the Service Provider, upon receipt of a valid and undisputed Tax Invoice together with the supporting documentation as specified in the Work Order appended hereto, once the valid and undisputed Tax Invoices, or such portion of the Tax Invoices which are valid and undisputed become due and payable to the Service Provider for the provision of the Services, in terms of clause 21.4 below.

- 21.3. All Fees and other sums payable under this Agreement are exclusive of VAT, which will be payable at the applicable rate.
- 21.4. Unless otherwise provided for in the Work Order(s) appended to this Agreement, Tax Invoices shall be submitted together with a month-end statement. Payment against such month-end statement shall be made by Transnet within 30 [thirty] calendar days after date of receipt by Transnet of the statement together with all valid and undisputed Tax Invoices and supporting documentation.
- 21.5. Where the payment of any Tax Invoice, or any part thereof which is not in dispute, is not made in accordance with this clause, the Service Provider shall be entitled to charge interest on the outstanding amount, at The Standard Bank of South Africa's prime rate of interest in force, for the period from the due date of payment until the outstanding amount is paid.

22. FEE ADJUSTMENTS

- 22.1. Fees for Services rendered in terms of this Agreement shall be subject to review as indicated in the Work Order(s) annexed hereto from time to time.
- 22.2. No less than 2 [two] months prior to any proposed Fee adjustment, the Parties shall commence negotiations for Fees for the next period or as otherwise indicated and appended hereto.
- 22.3. Should Transnet and the Service Provider fail to reach an agreement on Fees for the successive period, either Party shall be entitled to submit this matter to dispute resolution in accordance with clause 40 of this Agreement.
- 22.4. Penalties may further be raised for payment by the Contractor, as contained in the Scope of Requirements (Annexure N), which includes a R 2, 500.00 penalty per bin/per month, which will be payable in the event that the Contractor fails to conform to the specifications as set out in this Agreement and/or the Scope of Requirements referred to above. A further penalty of R 1, 500.00 per day will be payable for non-performance in terms of this Agreement and/or the Scope of Requirements, which includes bins which have not been cleared.

23. ACCOUNTING PROCEDURES AND PAYMENT

- 23.1. The Contractor shall comply with such accounting procedures as may be agreed upon from time to time, in writing, between the Contractor and TNPA and failing agreement as may be stipulated by TNPA in its sole discretion.
- 23.2. The invoices provided for in this clause shall be submitted to the SHE Manager and shall only be valid and binding upon TNPA once:

- 23.2.1. he has acknowledged receipt of the invoices in writing; and
 - 23.2.2. approved each invoice.
- 23.3. Each invoice which is submitted by the Contractor to TNPA shall be accompanied by the following:
- 23.3.1. a landfill site weigh-bridge certificate must be provided in respect of each load of Waste removed from the Port of Saldanha and properly disposed of, which certificate shall indicate the weigh- in tonnage and also the weigh-out tonnage of such Vehicle carrying the load;
 - 23.3.2. the details of the Vehicle that transported the Waste will be included on each weigh-bridge certificate;
 - 23.3.3. such weigh-bridge certificate shall include a corresponding safe disposal certificate and/or manifest for the precise tonnage and such safe disposal certificate and / or manifest shall be appended to the invoice and the weigh-bridge certificate in each instance;
 - 23.3.4. each invoice shall contain a schedule of Waste removal containing the date, vehicle details, date removed from the Port of Saldanha, weigh-bridge certificate number, the safe disposal certificate number and/or manifest number and all costs associated therewith;
 - 23.3.5. each invoice shall contain a statement showing the outstanding balance and how it is calculated.
- 23.4. Each invoice shall also contain a schedule of the Waste removed from the Port of Saldanha, the date of removal, copies of proof of the date and time of release of each Vehicle from the Port of Saldanha, name of the driver, signatures of the driver and the TNPA Representative, the details of each Vehicle, the number of each weigh-bridge certificate, the number of the safe disposal certificate and/or manifest number and the costs relative thereto in each instance, together with a statement showing the balance of the invoice and the computation thereof.
- 23.5. The Contractor shall, in the first week of each Calendar Month, submit to TNPA an original invoice in respect of the Port of Saldanha, to be certified by both the Contractor and TNPA as correct, specifying the Service rendered during the previous calendar month and detailing the amount due and payable to the Contractor.
- 23.6. The Contractor shall thereafter invoice TNPA in respect of the Service rendered and TNPA shall pay each invoice within thirty (30) days of receipt of such original invoice from the Contractor.
- 23.7. TNPA shall notify the Contractor of any disagreement, dispute or discrepancy relating to any invoice within seven (7) days after the date of receipt of such invoice (as set out

in 23.5) stipulating clearly the area of dispute. The Contractor shall be obliged to immediately rectify any error or discrepancy on such invoice.

23.8. TNPA shall not be obliged to pay any invoice which is rejected pursuant to the provisions of clause 23.7, until the dispute has been resolved to the satisfaction of TNPA.

23.9. TNPA reserves the right to withhold payment until discrepancies or claims raised by TNPA have been resolved by the Contractor. TNPA also reserves the right to set off any monies owing by the Contractor to TNPA, against any payment due to the Contractor by TNPA and the Contractor acknowledges and agrees therewith.

[Note: Paragraphs incorporating the Terms and Conditions applicable to Payment Procedures, as are set out in the Tender documents, *mutatis mutandis*, are incorporated into this Agreement.]

24. INSURANCE

24.1. The Contractor shall, before the Commencement date, and throughout the existence of this Agreement obtain and maintain at its own cost, insurances with an insurer, approved of in advance in writing by TNPA, insuring itself against any and all loss which it may suffer arising out of or connected with the Service and/or the implementation of this Agreement and also in respect of the indemnities in this Agreement which it has given to TNPA. The Contractor shall obtain Public and Third Party Liability Insurance Policy cover for not less than R5, 000, 000.00 (Five Million Rand) in respect of one incident or a series of incidents arising from the same cause and with an annual limit of cover of not less than R50,000,000.00 (Fifty Million Rand).

24.2. TNPA reserves the right to inspect the Contractor's insurance policy documents at any time it may deem necessary for the duration of this Agreement. The Contractor shall exhibit the relevant policies and premium receipts in respect of the insurance to the TNPA Representative, and shall provide copies of such policies and receipts to TNPA, and, in the event of a dispute, shall bear the onus to prove that it has done so.

24.3. Should any single claim by any party exceed the amount of R5, 000,000.00 (Five Million Rand) covered by the Contractor's Liability Insurance Policy(s), the Contractor shall be liable for the difference between the actual amount claimed and the amount insured. Likewise it is recorded that in the event that the annual limit of cover is exceeded the Contractor shall be fully liable for any claims above those applicable limits.

- 24.4. The Contractor shall be liable for any deductibles/excess amounts payable and all associated costs in the event of a claim being made on the policy for the duration of the Agreement with TNPA.
- 24.5. The Contractor undertakes that it shall ensure that it complies with all of the terms and conditions of the said insurance policies and that it will not itself act or permit any act or omission that will or may have the effect of voiding or invalidating any policy of insurance or cover thereunder.
- 24.6. The Contractor undertakes in favour of TNPA that it shall take all necessary measures to claim for compensation under the terms of the insurance policies, immediately, in the event of the Contractor becoming aware of any facts and/or circumstances and/or incidents which have resulted in a claim or which could give rise to a claim and/or in the event of it having to fulfil any one or more of the indemnities given by it to TNPA in this Agreement.
- 24.7. The Contractor undertakes to immediately notify TNPA of any circumstances which may give rise to an insurance claim and will also notify TNPA once the Insurers are notified and provide regular status updates in respect of the claim.

25. **BREACH AND TERMINATION**

- 25.1. In the event of the Contractor failing to promptly commence performance of any obligation for which it is liable, or failing to carry out such obligation, partially or fully, without delay, TNPA shall be entitled to appoint an alternate Contractor to perform such obligation. Should TNPA exercise the right to do so at any stage, it shall also be entitled to claim and recover all damages and costs incurred thereby (directly or indirectly) from the Contractor, who hereby undertakes to pay such damages and costs to TNPA upon demand.
- 25.2. In the event of either party to this Agreement committing a breach of any provision of this Agreement ("the defaulting party"), excluding clause 7.1 (including 7.1.1 to 7.1.19), and the defaulting party fails to remedy such breach within 48 (forty eight) hours after having received written notice from the other party ("the aggrieved party") to remedy such breach, the aggrieved party shall be entitled to terminate this Agreement, immediately, by notice in writing to the defaulting party.
- 25.3. Without derogating from the provisions of clause 25.2, and in addition thereto, in the event of the Contractor for any reason committing a breach of the provisions of clauses 7.1. (including 7.1.1. to &.1.19) of this Agreement and failing to remedy such breach within twelve (12) hours after having received written notice from TNPA calling upon it to rectify such breach, TNPA shall be entitled to terminate this Agreement, immediately, by notice in writing to the Contractor.

- 25.4. Should the Contractor's certificate from DEA for a Landfill Registration Certificate, certificate for carry and/or transport dangerous goods and/or any other certification required for the performance of the Service, be suspended, revoked by an appropriate authority or competent person, for any reason whatsoever, or should the Contractor's competence to render the Service be terminated, or diminished in a material manner, such suspension, revocation, setting aside, termination or diminution shall be deemed to be a breach of this Agreement, entitling TNPA to terminate the Agreement forth with without notice to the Contractor.
- 25.5. Should the Contractor's insurance(s) for any reason whatsoever be suspended, revoked, set aside or terminated by their insurance Contractor, such suspension, revocation, setting aside or termination shall be deemed to be a breach of this Agreement, entitling TNPA to cancel as is prescribed in clause 25.4, summarily without notice.
- 25.6. Should the Contractor fail to register on the South African Waste Information System (SAWIS) as required by the South African Waste Information Centre (SAWIC) and fail to upload the Waste quantities on a weekly basis, as set out in clauses 7.1.7 and 7.1.8 above, such failure shall be deemed to be a breach of this Agreement, entitling TNPA to provide notice to the Contractor as prescribed in clause 25.3 above.
- 25.7. Should the Contractor act in conflict with or fail to comply with any statutory provision, regulation, by-law, rule or programme or TNPA policy or procedure that has a direct bearing on the Service, such action or failure shall be deemed to be a breach of this Agreement, entitling TNPA to give notice as is prescribed in clause 25.3.
- 25.8. Should TNPA incur any losses, including but not limited to damage to or harm of the environment including fauna and flora, damage, harm or theft of TNPA's property, damage, harm or theft of TNPA's third party property, fraud and or any other criminal activities and or civil action that are to the detriment of TNPA, at the Port(s) where the Contractor is performing the Service, such action shall be deemed to be a breach of this Agreement, entitling TNPA to cancel as is prescribed in clause 25.4, summarily without notice.
- 25.9. Notwithstanding anything to the contrary set out in this Agreement, and in addition thereto, TNPA may summarily terminate this Agreement without notice in the event of the Contractor perpetrating a fraud of any nature upon TNPA, or performing any act in the nature of a fraud, or being in breach of any environmental legislation which has any bearing on the subject matter of this Agreement, including, without limitation, any one or more of the provisions of the Environment Conservation Act No. 73 of 1989 and/or the National Environmental Management Act No. 107 of 1989 and/or the National Nuclear Regulator Act No. 47 of 1999 and/or the Nuclear Energy Act No. 46 of 1999 and/or the Hazardous Substances Act No. 15 of 1973 and/or any other applicable or relevant environmental or related legislation. Any action taken by TNPA

pursuant to the provisions of this clause shall be in addition to and without prejudice to any other rights which it may have in law, including the right to claim and recover damages from the Contractor as a result of its breach of this clause.

- 25.10. Notwithstanding anything contained to the contrary in this Agreement, TNPA may terminate this Agreement at any time by giving written notice to the Contractor of such termination if:
- 25.10.1. the Contractor is, other than for the purposes of reconstruction or amalgamation, placed under voluntary or compulsory liquidation, provisionally or finally, or under provisional or final judicial management, or under receivership or under any of the equivalent of any of the foregoing;
 - 25.10.2. a final and unappealable judgment against the Contractor remains unsatisfied for a period of twenty-one (21) days or more after it comes to the notice of the board of directors of the Contractor;
 - 25.10.3. the Contractor makes any arrangements or composition with all or some of its creditors, or ceases or threatens to cease carrying on business;
 - 25.10.4. the Contractor ceases or threatens to cease to carry on its normal line of business or default or threatens to default in the payment of its liabilities generally, or commit any act or omission which would be an act of insolvency in terms of the Insolvency Act, 24 of 1936 [as may be amended from time to time];
 - 25.10.5. the Contractor makes any material incorrect or untrue statement or representation to TNPA in connection with any information furnished by it in respect of this Agreement, or, without limitation, in the tender documents preceding the conclusion by the Parties of this Agreement, then upon the occurrence of any one (1) or more of such events, TNPA may without prejudice to any other rights it may have against the Contractor, elect to immediately terminate this Agreement forthwith by written notice of such termination to the Contractor
- 25.11. Notwithstanding anything to the contrary contained in this Agreement, and in addition to all of its other rights, TNPA shall also be entitled to cancel this Agreement, in whole or in part, (as it in its sole discretion may determine) upon thirty (30) days' written notice given by TNPA to the Contractor, without assigning any reason for such action. Such termination by TNPA shall not form the subject of any arbitration or review and shall be binding upon the Contractor who shall have no claim of any nature, howsoever arising, against TNPA out of such termination.
- 25.12. Notwithstanding anything to the contrary contained in this Agreement, and in addition to all of its other rights, TNPA shall also be entitled to cancel this Agreement, if any event or series of events occurs (whether or not caused by any

reasons whatsoever outside the control of the Contractor or TNPA) which, in the reasonable opinion of TNPA might have a material or adverse effect on the performance of the Service or the operations of TNPA at the Port of Saldanha, whether or not as contemplated in this Agreement.

- 25.13. Termination in accordance with this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either Party and all provisions which are to survive this Agreement or impliedly do so shall remain in force and in effect.
- 25.14. On termination of this Agreement or a Work Order, the Contractor will immediately deliver up, and procure that its Personnel will immediately deliver up to Transnet, all Deliverables and property belonging to TNPA [or, in the event of termination of a Work Order, such as is relevant to that Work Order] which may be in the possession of, or under the control of the Contractor and certify to TNPA in writing that this has been done.
- 25.15. To the extent that any of the Deliverables and property referred to in clause 25.1.4. above is in electronic form and contained on non-detachable storage devices, the Contractor will provide TNPA with unencrypted copies of the same on magnetic media and will irretrievably destroy and delete copies so held.
- 25.16. In the event that this Agreement is terminated by the Contractor or in the event that a Work Order is terminated by Transnet, in terms of the provisions of this Agreement then TNPA will pay to the Contractor all outstanding Fees [apportioned on a pro rata basis] relating to the work undertaken by the Contractor up until the date of such termination. TNPA will also pay the costs of any goods and materials ordered by the Contractor in relation to the such work for which the Contractor has paid or is legally obliged to pay, in which case, on delivery of such goods or materials, the Contractor will promptly deliver such goods and materials to TNPA or as it may direct.
- 25.17. The provisions of clauses 2 [Definitions], 5 [Good faith, no agency, warranty to perform], 27 [Liability], 32 [Confidentiality], 25 [Breach and Termination], 36 [Governing Law] and clause 40 [Dispute Resolution] shall survive termination or expiry of this Agreement.
- 25.18. If either Party [the Defaulting Party] commits a material breach of this Agreement and fails to remedy such breach within 30 [thirty] calendar days of written notice thereof, the other Party [hereinafter the Aggrieved Party], shall be entitled, in addition to any other rights and remedies that it may have in terms of this Agreement, to terminate this Agreement forthwith without any liability and without prejudice to any claims which the Aggrieved Party may have for damages against the Defaulting Party.

25.19. Notwithstanding anything to the contrary contained in this Agreement, and in addition to all of its other rights, TNPA shall also be entitled to cancel this agreement, in whole or in part, (as it in its sole discretion may determine) in the event that the Contractor colludes with any other party in respect of any Tender submitted to TNPA.

26. MEETINGS AND REPRESENTATIVES

26.1. Each party shall appoint a representative who shall each be available during operating hours for the duration of this Agreement to liaise with the other with a view to ensuring the efficient implementation of this Agreement by the Parties.

26.2. The Parties' first representatives shall be the persons named in Annexure "L", who shall maintain this office until replaced.

26.3. Either party will be entitled from time to time by written notice to the other to replace its representative.

26.4. The representative shall be deemed to have the necessary authority to represent the party nominating him in all day to day operational issues and the actions and agreements of the representatives shall be binding upon the parties at all times, provided that their changes shall not constitute a variation of this Agreement, or, constitute a waiver thereof.

26.5. Each representative shall be entitled to convene a meeting of the representatives on reasonable written notice to the other.

26.6. The purpose of any such meetings shall be to discuss, negotiate and agree upon any operational issues, including the identification of problems experienced by the Parties during the preceding day, week or month, in which event, the reasons for the problems and proposals for appropriate action to be taken to rectify such problems and/or avoid the re-occurrence thereof, shall be tabled, debated and agreed upon between the representatives, failing agreement between them, the issue causing disagreement shall forthwith be resolved by TNPA and which decision shall be final and binding upon the parties.

27. LIABILITY

27.1. The Contractor shall at all times be held strictly liable and accept responsibility for all damage of whatsoever nature (including consequential and special damage) due to any acts or omissions of its employees, servants, agents, assigns, contractors, independent contractors and sub-contractors.

27.2. The Contractor shall at all times be held strictly liable and accept responsibility for all harm and any loss of or damage to or caused by any Vehicles, Equipment, or other material used by the Contractor in respect of the Service provided in terms of this Agreement, including consequential losses.

27.3. The Contractor irrevocably and unconditionally undertakes to indemnify and keep TNPA indemnified and holds TNPA harmless against and in respect of all and any loss or damage incurred by TNPA as a result of, arising out of or connected with any failure, act or omission or breach of this Agreement by the Contractor or any of its employees, servants, agents, assigns, contractors, independent or otherwise, or occurring during or as a result of the provision of the Service by the Contractor. The absolute obligation of the Contractor to indemnify TNPA on a full indemnity basis against all claims shall include but not be limited to any claim by TNPA against the Contractor, by any of the Contractor's Employee's against TNPA or against TNPA by any third party, as set out, above arising out of or connected with the Contractor's performance of the Service, including any claim of any nature made against TNPA by DEA or DWAF.

27.4. Neither Party excludes or limits liability to the other Party for:

24.1. death or personal injury due to negligence; or

24.2. fraud

27.5. Without derogating from or limiting any liability or other obligation of the Contractor in connection with this Agreement, the Contractor shall, at the Contractor's sole cost, comply with the Compensation for Occupational Injuries and Diseases Act No 130 of 1993 ("COIDA") in respect of each workman engaged by the Contractor in connection with this Agreement, and shall on request therefore by TNPA from time to time furnish documentary proof that it has complied with COIDA.

28. **REPORTING OF INCIDENTS BY THE CONTRACTOR**

28.1. All incidents or accidents involving the death of or injury to any person, including each environmental or criminal offence committed on the premises of TNPA or outside TNPA's premises in relation to the provision of the Service, shall immediately be reported forthwith to the respective Environmental Manager/Officer/Specialist in the Port(s), within two (2) hours of the occasion thereof, or as soon as is possible after occurrence of the said incident has come to the attention of the Contractor. A detailed written report of each incident or accident shall be submitted to TNPA within two hours after the occurrence thereof.

- 28.2. A list of names and telephone numbers of TNPA's duly authorised representatives to whom the incidents or accidents referred to in clause 28.1 shall be reported to in the Port(s), shall be made available to the Contractor on or before the Commencement Date.
- 28.3. In addition to what is set out in clauses 28.1 and 28.2, the salient details of all incidents or accidents occurring in the Port(s) in relation to the provision of the Service shall be recorded immediately after the occurrence thereof in an Occurrence Book, which shall be kept by the Contractor at its own cost and remain available for inspection by TNPA at any reasonable time in a prearranged office or the facility of the Contractor within the Port(s). The pages of the Occurrence Book shall be consecutively numbered by the Contractor when implemented, and no pages shall be removed by any person for any reason whatsoever.
- 28.4. The Contractor shall report all incidents of damage, loss or non-conformance, incidents to the duly authorised and appointed TNPA Representative. A detailed written report all such incidents shall be presented to TNPA within six (6) hours after the occurrence of the said incident or accident.

29. **NOTICES, ADDRESS AND DOMICILIUM**

- 29.1. The parties choose the following addresses at which all notices and legal processes for all purposes of and in connection with this Agreement may be delivered (i.e. their *domicilium citandi et executandi*):

TNPA:

TNPA National Port(s) Authority

The Project Manager

P.O. Box X1

Saldanha.

7395

Email: Ethel.Coetzee@transnet.net

The Contractor:

XXXXXXXXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXXXX

Email:

29.2. Either party shall be entitled to change its *domicilium* from time to time, provided that any new *domicilium* selected by it shall be a physical address (other than a box number) in the Republic of South Africa and any such change shall only be effective upon acknowledgement/proof of receipt of such notice in writing by the other party of such change.

29.3. All notices, demands or communications ("a notice") intended for either party shall be made or given at such party's *domicilium*.

29.4. A notice sent by either party to the other party for the purpose of clause 29.3 shall be deemed to be received :

29.4.1. on the same day, if delivered by hand (provided that a receipt is obtained);

29.4.2. on the 4th (FOURTH) day after posting (provided that it shall be despatched by prepaid registered post);

29.4.3. on the same day, if despatched by facsimile (provided that the correct customer-answer-back code of the addressee has been received)

29.4.4. on the same day, if despatched by email (provided that a delivery and/or read receipt has been received from the recipient's email address).

29.5. Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a party shall be an adequate written notice or communication to it, notwithstanding that it was not sent to or delivered at its chosen *domicilium*. However, the person seeking to rely on it shall bear the onus of proving delivery.

30. **ENTIRE AGREEMENT**

30.1. This Agreement shall supersede and novate any other prior agreement(s), letters of intent, letters of acceptance or any other arrangements in relation to the matters dealt with in this Agreement.

30.2. This Agreement is the sole agreement between the Parties and no representations, terms, conditions or warranties (express or implied) which are not contained in this Agreement shall be binding upon the Parties.

31. **COMPLIANCE WITH STATUTES, POLICIES AND PROCEDURES**

31.1. In performing the Service, the Contractor shall comply with all material aspects of all applicable legislation, including (without limitation) the provisions of :

- 31.1.1. National Environmental Management Act 107 of 1998, as amended;
- 31.1.2. National Environmental Management: Waste Act (Act 59 of 2008)
- 31.1.3. National Environmental Management: Waste Amendment Act 26 of 2014
- 31.1.4. National Environment Management: Air Quality Act. 2004
- 31.1.5. National Water Act 36 of 1998, as amended;
- 31.1.6. National Road Traffic Act 93 of 1996, as amended;
- 31.1.7. SABS Codes of practice 0228 & 0229, as amended;
- 31.1.8. DWAF, 2nd Ed. 1998. Waste Management Series. Minimum Requirements for the handling, Classification and Disposal of Hazardous Waste, as amended;
- 31.1.9. Asbestos Regulations 2001, as amended;
- 31.1.10. DWAF, 2nd Ed. 1998. Waste Management Series. Minimum Requirements for Waste Disposal by Landfill, as amended;
- 31.1.11. DWAF, 2nd Ed. 1998. Waste Management Series. Minimum Requirements for Water, as amended;
- 31.1.12. Monitoring at Waste Management Facilities;
- 31.1.13. International Health Regulation Act 28 of 1974, as amended;
- 31.1.14. Dumping at Sea Control Act 73 of 1980, as amended;
- 31.1.15. Health Act 63 of 1977, as amended;
- 31.1.16. Hazardous Substances Act 15 1973, as amended;
- 31.1.17. the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993) as amended;
- 31.1.18. all Provincial Ordinances and Local Authority By-laws, (together with all relevant regulations promulgated in terms thereof) which affect its business or its employees;
- 31.1.19. the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993) as amended;
- 31.1.20. the Act;
- 31.1.21. the published safety, health, environmental and quality programmes of the TNPA, as they may be amended from time to time by the TNPA;

- 31.1.22. the in-house specific policies, procedures, Port SHE IMS guidelines, rules and regulations of TNPA, alternatively the Port of Saldanha as they may have been published or evolved and at all times in accordance with such Act in a professional and workmanlike manner, in accordance with Annexure "D" and Annexure "J", respectively, to this Agreement;
 - 31.1.23. the terms and conditions applicable to any Waste Contractor which has been issued by the TNPA to the Contractor;
 - 31.1.24. Codes of Good Practice embodied in the Broad Based Black Economic Empowerment Act No. 53 of 2003;
 - 31.1.25. Legal Succession to the South African Transport Services Act, 1989 (but excluding any tariff provided for in such Regulations), the National Port(s)s Act no 12 of 2005; and
 - 31.1.26. The Trade and Metrology Act No 77 of 1973, as amended.
- 31.2. In addition, the Contractor undertakes to carry out its obligations in accordance with the requirements of and to comply with all requirements of the Basic Conditions of Employment Act (Act 75 of 1997), especially as it relates to the appointment of its employees. This will (without limitation) include monthly minutes of Health and Safety meetings that were conducted by the Contractor or a certificate in which the Contractor confirms in writing that such meetings did take place as per specific sites in question.
- 31.3. Compliance with all relevant statutory enactments shall be effected entirely at the Contractor's cost and TNPA shall have no obligation whatsoever in this regard.
- 31.4. The Contractor acknowledges its general obligation to conduct the Service in accordance with the laws of the Republic of South Africa and undertakes in favour of TNPA to do so without compromise and to ensure that its permitted agent does so.
- 31.5. The Contractor shall be liable for any breach by any one or more of its Employees, servants, permitted agents, and contractors (independent or otherwise) of the provisions of clause 30 and hereby indemnifies and holds TNPA harmless against all claims, loss or damage which TNPA may suffer arising out of all such breaches.

32. CONFIDENTIALITY

- 32.1. The parties undertake that all information which each has or obtains at any time relating to the other, including but not limited to technical and commercial information, which is not available on request to the general public :
- 32.1.1. shall be kept confidential and shall not be disclosed by such party, or by its Employees, independent contractors or agents, to any third party;
 - 32.1.2. shall not directly or indirectly be used by such party, or by its employees and agents for its own benefit or the benefit of any third party.

32.2. Each party shall on demand from the other use its best endeavours to obtain written secrecy undertakings in the form reasonably specified by the other from any approved agent of such party.

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

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

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

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

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

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

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

- 32.3.7. the Parties shall not make or permit to be made by any other person subject to their control, any public statements or issue press releases or disclose Confidential Information with regard to any matter related to this Agreement, unless written authorisation to do so has first been obtained from the Party first disclosing such information;
 - 32.3.8. each Party shall be entitled to disclose such aspects of Confidential Information as may be relevant to one or more technically qualified employees or consultants of the Party who are required in the course of their duties to receive the Confidential Information for the Permitted Purpose provided that the employee or consultant concerned has a legitimate interest therein, and then only to the extent necessary for the Permitted Purpose, and is informed by the Party of the confidential nature of the Confidential Information and the obligations of the confidentiality to which such disclosure is subject and the Party shall ensure such employees or consultants honour such obligations;
 - 32.3.9. each Party shall notify the other Party of the name of each person or entity to whom any Confidential Information has been disclosed as soon as practicable after such disclosure;
 - 32.3.10. each Party shall ensure that any person or entity to which it discloses Confidential Information shall observe and perform all of the covenants the Party has accepted in this Agreement as if such person or entity has signed this Agreement. The Party disclosing the Confidential Information shall be responsible for any breach of the provisions of this Agreement by the person or entity; and
 - 32.3.11. each Party may by written notice to the other Party specify which of the Party's employees, officers or agents are required to sign a non-disclosure undertaking.
- 32.4. The duties and obligations with regard to Confidential Information in this clause 19 shall not apply where:
- 32.4.1. a Party can demonstrate that such information is already in the public domain or becomes available to the public through no breach of this Agreement by that Party, or its Personnel; or
 - 32.4.2. was rightfully in a Party's possession prior to receipt from the other Party, as proven by the first-mentioned Party's written records, without an infringement of an obligation or duty of confidentiality; or
 - 32.4.3. can be proved to have been rightfully received by a Party from a third party without a breach of a duty or obligation of confidentiality; or
 - 32.4.4. is independently developed by a Party as proven by its written records.

32.5. The provisions of this confidentiality clause shall survive the cancellation or termination of this Agreement for any reason, and shall remain binding on the Parties for a period of 5 (five) years after termination of this Agreement for any reason whatsoever.

33. ADVERTISING AND TRADING

33.1. The Contractor is prohibited from advertising or publishing in any of its promotional documents or brochures the fact that it is a Contractor to TNPA, unless the prior written consent of TNPA is obtained. TNPA reserves all advertising rights within its Ports.

33.2. The parties agree not to use the name of the other or any of the other's brand names or trademarks in publicity releases or advertising or for other promotional purposes, without the prior written consent of the other party, which consent can be withheld without assigning reasons therefor.

33.3. Neither the Contractor nor any of the Employees provided by it in terms of this Agreement shall during the duration of this Agreement be entitled to offer any article for sale, sell any article, or distribute any article free of charge in the Ports and Sites.

34. CONTRACTOR'S EMPLOYEES / NO EXPECTATION OF EMPLOYMENT

34.1. The Contractor undertakes irrevocably in favour of TNPA that it will do whatever is necessary to ensure that none of its employees who are employed in any way, directly or indirectly in connection with the performance of the Service, will have any entitlement to, or expectation of, further employment on or in connection with any of the work which forms the subject matter of this Agreement beyond the termination (for any reason whatsoever) of this Agreement.

34.2. In addition to the recourse that TNPA has against the Contractor for a breach of any one or more of the provisions of this Agreement by the Contractor, TNPA shall also have a claim against the Contractor for any breach by it of the provisions of clause 34.1.

34.3. The Contractor accordingly hereby indemnifies TNPA and holds it harmless against all claims, of whatever nature and howsoever arising, as well as all legal costs incurred as a result of such claims (including all costs incurred on the scale as between attorney and client), which may be made against TNPA by any one or more of the Contractor's employees and/or independent contractors, and specifically, but without derogating from the generality thereof, any and all claims made against TNPA arising from or connected with the employment of such of the Contractor's Employees and/or independent contractors who were employed by the Contractor immediately prior to

the termination, for any reason whatsoever, of this Agreement, or the termination of such employment at any stage for any reason.

35. MISCELLANEOUS LEGAL PROVISIONS

- 35.1. This Agreement and its annexures, including the SLA and its appendices and the tender documents contain all of the provisions agreed to by the Parties with regard to the subject matter hereof and the Parties waive the right to rely on any alleged provision not contained therein. This Agreement may be executed by the Parties in one or more counterparts, each of which shall be deemed to be an original, but all of which shall together constitute one indivisible whole.
- 35.2. The rule of interpretation that an Agreement shall be interpreted against the party responsible for the drafting and or preparation of an agreement shall not apply.
- 35.3. TNPA shall have the right to enforce any lien or right of retention it may have over the Contractor's equipment.
- 35.4. This Agreement and its annexures, including the SLA and its appendices, and the tender documents are to be taken as complementary. In the event of any conflict between the provisions of any annexure or the tender document and this Agreement, the provisions of this Agreement shall prevail.
- 35.5. The parties undertake at all times to do all such things, to perform all such acts and to take all such steps and to procure the doing of all such things, the performance of all such actions and the taking of all such steps as may be open to them and necessary for or incidental to the putting into effect or maintenance of the terms, conditions and import this Agreement.
- 35.6. The Contractor shall not be entitled to cede, assign or otherwise transfer or make over all or any of its rights, interests or obligations under and in terms of this Agreement to any third party.
- 35.7. Each party hereto shall bear and pay any costs incurred by it in connection with the negotiations, drafting, preparation and signature of this Agreement.

36. GOVERNING LAW

The provisions of this Agreement shall be governed by South African law and the Parties shall at all times be subject to the jurisdiction of the South African Courts irrespective of the place of signature of this Agreement.

37. SIGNATURE

The signatories to this Agreement hereby warrant that they have the proper and full authority to sign this Agreement on behalf of the Parties and each shall without delay produce an appropriate resolution to such effect, if and when called upon to do so by the other.

38. SEVERABILITY

Each clause of this Agreement shall be severable, the one from the other, and if any clause is found to be defective or unenforceable for any reason by any competent court, then the remaining clauses shall be and continue to be of full force and effect and binding upon the Parties.

39. FORCE MAJEURE

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

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

40. DISPUTE RESOLUTION

40.1. Should any dispute of whatsoever nature arise between the Parties concerning this Agreement, the Parties shall try to resolve the dispute by negotiation within 10 [ten] Business Days of such dispute arising.

40.2. If the dispute has not been resolved by such negotiation, either of the Parties may refer the dispute to AFSA and notify the other Party accordingly, which proceedings shall be held in Johannesburg.

- 40.3. Such dispute shall be finally resolved in accordance with the rules of AFSA by an arbitrator or arbitrators appointed by AFSA.
- 40.4. This clause constitutes an irrevocable consent by the Parties to any proceedings in terms hereof, and neither of the Parties shall be entitled to withdraw from the provisions of this clause or claim at any such proceedings that it is not bound by this clause.
- 40.5. This clause is severable from the rest of this Agreement and shall remain in effect even if this Agreement is terminated for any reason.
- 40.6. This clause shall not preclude either Party from seeking urgent relief in a court of appropriate jurisdiction, where grounds for urgency exist

41. EQUALITY AND DIVERSITY

- 41.1. The Contractor will not victimise, harass or discriminate against any employee of either Party to this Agreement or any applicant for employment with either Party to this Agreement due to their gender, race, disability, age, religious belief, sexual orientation or part-time status. This provision applies, but is not limited to employment, upgrading, work environment, demotion, transfer, recruitment, recruitment advertising, termination of employment, rates of pay or other forms of compensation and selection for training.
- 41.2. Both Parties to this Agreement undertake that they will not, and shall ensure that its employees, agents and Subcontractors will not breach any applicable discrimination legislation and any amendments and re-enactments thereof.

42. WHOLE AND ONLY AGREEMENT

- 42.1. The Parties hereby confirm that this Agreement constitutes the whole and only agreement between them with regard to the subject matter of this Agreement.
- 42.2. The Parties hereby confirm that this Agreement replaces all other agreements which exist or may have existed in any form whatever between them, with regard to the subject matter dealt with in this Agreement, including any annexures, appendices, schedules or Work Order(s) appended hereto.

43. VARIATION, SUSPENSION, DELETION, AMENDMENT OR MODIFICATION

No variation, suspension, deletion, extension, amendment or modification of this Agreement shall be of any force or effect, unless recorded in writing and signed by the Parties.

44. PARTIAL INVALIDITY

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

45. INDULGENCE OR EXTENSION

No latitude, extension of time or other indulgence which may be given or allowed by either party to the other in respect of the performance of any obligation or the enforcement of any right arising from this Agreement, shall be construed to be an actual or implied consent by the indulgent party, nor operate as a waiver or a novation of, or otherwise affect any of the indulgent party's rights in terms of or arising from this Agreement, or stop such party from enforcing, at any time and without notice, strict and punctual compliance with each and every provision hereof.

46. WAIVER

No waiver on the part of either party of any rights arising from a breach of any provision of this Agreement will constitute a waiver by the indulgent party of its rights in respect of any subsequent breach of any other provision of this Agreement by the defaulting party.

47. NON-WAIVER

47.1. Failure or neglect by either Party, at any time, to enforce any of the provisions of this Agreement, shall not, in any manner, be construed to be a waiver of any of that Party's rights in that regard and in terms of this Agreement.

47.2. Such failure or neglect shall not, in any manner, affect the continued, unaltered validity of this Agreement, or prejudice the right of that Party to institute subsequent action.

48. COUNTERPARTS

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

49. TRANSNET'S LIST OF EXCLUDED TENDERERS (BLACKLIST)

49.1. All the stipulations around Transnet's blacklisting process as laid down in

Transnet's Supply Chain Policy and Procurement Procedures Manual are included herein by way of reference. Below follows a condensed summary of this blacklisting procedure.

- 49.2. Blacklisting is a mechanism used to exclude a company/person from future business with TNPA for a specified period. The decision to blacklist is based on one of the grounds for blacklisting. The standard of proof to commence the blacklisting process is whether a "prima facie" (i.e. on the face of it) case has been established.
- 49.3. Depending on the seriousness of the misconduct and the strategic importance of the Services, in addition to blacklisting a company/person from future business, TNPA may decide to terminate some or all existing contracts with the company/person as well.
- 49.4. A supplier or Contractor to TNPA may not subcontract any portion of the contract to a blacklisted company.
- 49.5. Grounds for blacklisting include: If any person/Enterprise which has submitted a Bid, concluded a contract, or, in the capacity of agent or subcontractor, has been associated with such Bid or contract:
 - 49.6. Has, in bad faith, withdrawn such Bid after the advertised closing date and time for the receipt of Bids;
 - 49.7. has, after being notified of the acceptance of his Bid, failed or refused to sign a contract when called upon to do so in terms of any condition forming part of the bid documents;
 - 49.8. has carried out any contract resulting from such bid in an unsatisfactory manner or has breached any condition of the contract;
 - 49.9. has offered, promised or given a bribe in relation to the obtaining or execution of the contract;
 - 49.10. has acted in a fraudulent or improper manner or in bad faith towards TNPA or any Government Department or towards any public body, Enterprise or person;
 - 49.11. has made any incorrect statement in a certificate or other communication with regard to the Services or his B-BBEE status and is unable to prove to the satisfaction of TNPA that:
 - 49.11.1. he made the statement in good faith honestly believing it to be correct; and
 - 49.11.2. before making such statement he took all reasonable steps to satisfy himself of its correctness;
 - 49.11.3. caused TNPA damage, or to incur costs in order to meet the contractor's requirements and which could not be recovered from the contractor;

49.11.4. has litigated against TNPA in bad faith.

- 49.12. TNPA recognizes that trust and good faith are pivotal to its relationship with its suppliers. When a dispute arises between TNPA and its supplier, the parties should use their best endeavours to resolve the dispute in an amicable manner, whenever possible. Litigation in bad faith negates the principles of trust and good faith on which commercial relationships are based. Accordingly, TNPA will not do business with a company that litigates against it in bad faith or is involved in any action that reflects bad faith on its part. Litigation in bad faith includes, but is not limited to the following instances:
- 49.13. Vexatious proceedings. These are frivolous proceedings which have been instituted without proper grounds;
- 49.14. Perjury. Where a supplier commits perjury either in giving evidence or on affidavit;
- 49.15. Scurrilous allegations. Where a supplier makes allegations regarding a senior TNPA employee which are without a proper foundation, scandalous, abusive or defamatory.
- 49.16. Abuse of court process. When a supplier abuses the court process in order to gain a competitive advantage during a bid process.
- 49.17. Where any person or Enterprise has been found guilty by a court of law, tribunal or other administrative body of a serious breach of any law, during the preceding 5 years, such person/Enterprise may also be blacklisted. Serious breaches of the law would include but are not limited to corruption, fraud, theft, extortion, or contraventions of the Competition Act 89 of 1998 (e.g. collusive tendering). This process excludes minor convictions such as traffic offences or personal disagreements between parties which have no bearing on the business operations of the person or Enterprise.
- 49.18. Grounds for blacklisting include a company/person recorded as being a company or person prohibited from doing business with the public sector on National Treasury's database of Restricted Suppliers or Register of Tender Defaulters.
- 49.19. Companies associated with the person/s guilty of misconduct (i.e. entities owned, controlled or managed by such persons), any companies subsequently formed by the person(s) guilty of the misconduct and/or an existing company where such person(s) acquires a controlling stake may be considered for blacklisting. The decision to extend the blacklist to associated companies will be at the sole discretion of Transnet.
- 49.20. Any person or enterprise or company against whom a decision to blacklist has been taken, may make representations to the Chief Financial Officer of Transnet SOC Ltd, whose decision shall be final.

50. RIGHT TO SUB-CONTRACT

The Contractor shall not be entitled to sub-contract any of its obligations arising out of this Agreement, without the prior written consent of TNPA.

Signed and dated at _____ on the ____ day of _____ 2019.

AS WITNESSES:

1. _____

For and on behalf of: **TRANSNET SOC Ltd**

Registration Number **1990/000900/30**

trading through its Operating Division
TRANSNET NATIONAL PORTS AUTHORITY

2. _____

who warrants by virtue of his signature that
he/she is duly authorized hereto on behalf of
TNPA

Signed and dated at _____ on the ____ day of _____ 2019.

As witnesses:

1. _____

For and on behalf of:

.....

2. _____

who warrants by virtue of his signature that
he/she is duly authorized hereto on behalf of
the Contractor