



SERVICES AGREEMENT

Entered into by and between

TRANSNET SOC LIMITED operating as TRANSNET PORT TERMINALS

Registration No. 1990/000900/06

(hereinafter referred to as "TPT")

and

Registration No. -----

(hereinafter referred to as "-----")

**FOR THE PROVISION OF A MENTORSHIP PROGRAMME TO THE PLANNERS IN THE
CONTAINER SECTOR TERMINALS.**

Agreement No: iCLM HQ 0849

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SCHEDULE "A"	MENTORSHIP PROGRAMME INCLUDING THE OBJECTIVES TARGET, SCOPE OF WORK AND DELIVERABLES
SCHEDULE "B"	- MENTORSHIP OPERATIONAL EXECUTION PLAN INCLUDING TARGETS AND FORMULAE TO DETERMINE PENALTY
SCHEDULE "C"	- MENTOR PROFILE
SCHEDULE "D"	- LETTER OF COMFORT
SCHEDULE "E"	- SERVICE LEVEL AGREEMENT
SCHEDULE "F"	- PRICE SCHEDULE
SCHEDULE "G"	- OHS ACT SECTION 37(2)

	PROVIDER from time to time, acting jointly
"BCEA"	Basic Conditions of Employment Act, No. 75 of 1997, as amended
"Business Day"	the period specified in 2.5.1
"Business Hours"	the time specified in 2.5.1
"Calendar Month"	a month of the Gregorian calendar
"Closing Date"	the first Business Day immediately following the day that the Conditions are fulfilled
"Commencement Date"	01 March 2012
"Conditions"	the conditions precedent referred to in 4.1
"Confidential Information"	any information, which is not lawfully in the public domain, in respect of know-how, processes, systems, business methods, marketing methods, commercial plans, financial models, long-term plans and any other information of the Parties and their customers in whatever form it may be, and shall include, but not be limited to, all their internal controls systems, details of their financial structure and operating results, the contractual and financial arrangements between them and others with whom they have business arrangements of whatsoever nature, and all other matters which

relate to them and which are of a confidential nature

“Crane”

container gantry cranes

“CSI”

Container Security Initiative

“Equipment”

All moving appliances within a container terminal

“GCH”

Gross Crane Hour

“Gross Crane Hour”

number of container moves per Crane per hour

“Facilities”

training facilities, which includes but is not limited to:

- classrooms and training equipment and facilities as required

“Force Majeure”

all labour unrest, including but not limited to strikes, lock-outs and cessation of labour, any other unrest or public disturbance, civil commotion, fire, explosion, floods, riot, war, accident, act of God, embargo, legislation, shortage of or a breakdown in transport facilities, government interference or control, or any other cause or contingency beyond the reasonable control of either Party

“ILO Convention”	any convention of the International Labour Organisation which is applicable to the Parties, the Mentors and/or the Mentees
“ISPS”	International Ship and Port Facilities Security Code
“Labour Legislation”	all legislation administered by the South African Department of Labour and which without limitation includes the LRA, BCEA, OHSA and all other applicable labour laws and regulations promulgated in the RSA from time to time
“Letter of Comfort”	the letter referred to in 4.1.3
“Liaison Officers”	the persons identified in 9
“Logistics Fee”	<p>the fee which is payable by TPT to THE SERVICE PROVIDER in terms of 10.1.1.2 so as to enable THE SERVICE PROVIDER to meet its obligations to the Mentors and which comprises:</p> <ul style="list-style-type: none">• Return Air Fares (which is one return air fare for every completed twelve (12) month period• Travel costs while providing the services in South Africa; and

- Subsistence Allowance. (Accommodation and Meal Costs)

“LRA”	Labour Relations Act, No. 66 of 1995, as amended
“Mentees”	the employees of TPT who are to be mentored by the Mentors, in terms of the Mentorship Programme
“Mentors”	the 12 employees of THE SERVICE PROVIDER who will undertake the Mentorship Programme for the Planners and who shall comprise various categories of persons as is detailed in Schedule “C”
“Mentorship Fee”	the Quarterly fee provided for in 10.1.1
“Mentorship Programme”	the Objectives, Target and scope of work and deliverables embodied in and described in Schedule “A”
“Moves”	the movement of containerised cargo: <ul style="list-style-type: none"> • from, into and within the hull of various Vessels; • onto or from various types of motorised transport, and/or

- onto or from the quayside

with reference to each berth at the Premises, as the case may be, as well as the movement of hatch lids/covers of Vessels

“National Ports Act”

ensure compliance with the National Ports Act No. 12 of 2005 (“the Act”), Port Rules and Harbour Master’s Written Instructions issued in terms of Section 80 (2) and 74 (3) respectively of the Act. In the event of any conflict arising between the interpretation of the Act, such Port Rules and the Harbour Master’s Written Instructions and this Agreement then the Act, Port Rules and Harbour Master’s Instructions shall prevail

“Objective”

those goals set out in 3.2

“OHSA”

Occupational Health & Safety Act, No. 85 of 1993, as amended

“Operating Hours”

24 hours of every day, seven days of every week and every day of the year

“Parties”

THE SERVICE PROVIDER and TPT collectively and “Party” shall mean either one of them as the context requires

“Penalty”

the amount payable to TPT by THE SERVICE PROVIDER by way of deduction from the

	Retention Amount upon THE SERVICE PROVIDER' failure to achieve the Target as set out in 14.2 and detailed in Schedule "B"
"Phase"	the service provided and performed at each Terminal as set out and defined in Schedule "B"
"Plant"	<p>which includes but is not limited to:</p> <ul style="list-style-type: none"> • Navis; • Vessels, stacks, berths, equipment (RTG's, straddle carriers, gantry cranes and other yard equipment) and rail;
"THE SERVICE PROVIDER"	_____
"Port of Cape Town"	the area which is defined in the Harbour Regulations as constituting the Port of Cape Town
"Port of Durban"	the area which is defined in the Harbour Regulations as constituting the Port of Durban
"Port of Ngqura"	the area which is defined in the Harbour Regulations as constituting the Port of Ngqura
Port of Port Elizabeth	the area which is defined in the Harbour Regulations as constituting the Port of Port of Elizabeth
"Premises"	the Durban Container Terminal, Pier 1

Container Terminal in the Port of Durban, and/or the Ngqura Container Terminal at the Port of Ngqura, the Port Elizabeth Container Terminal at the Port of Port Elizabeth and/or the Cape Town Container Terminal at the Port of Cape Town

"Prime Rate"

the rate of interest quoted by the Standard Bank of South Africa Limited (Durban Corporate Branch) from time to time on ZAR accounts on overdraft to its corporate customers, as certified by the manager of the bank (whose appointment or authority it shall not be necessary to prove), whose certificate shall be final and binding on the Parties

"Quarter"	each period of 3 consecutive Calendar Months, the first of which shall be calculated from the Commencement Date
"Return Air Fare"	the cost of a return economy class air ticket from _____ (including airport taxes) for each of twenty five (25) persons embodied in Schedule "C"
"Retention Amount"	<p>an amount equal to:</p> <ul style="list-style-type: none"> • Ten (10) percent (%) of the Training fee for each and every Quarter which is _____ per Quarter;
"RSA"	Republic of South Africa
"SARB"	South African Reserve Bank
"SARS"	South African Revenue Service
"SLA"	Service Level Agreement
"Services"	the Planner Mentorship services which is provided for and described in clause 7 of this Agreement, which is to be provided by THE SERVICE PROVIDER and includes the obligations of THE SERVICE PROVIDER;
"Service Level Agreement"	the detailed levels of services that TPT requires

	of THE SERVICE PROVIDER for the provision of the mentorship programme attached as Schedule "E" and all the annexures thereto
"Signature Date"	the date of last signing of this Agreement
"Subsistence Allowance"	the amount which shall be paid by TPT to THE SERVICE PROVIDER in respect of the subsistence of each Instructor during each Calendar Month of the Term
"Target"	Mentees to consistently plan operations of vessel, yard, equipment, berth and rail to achieve the moves per hour to support the GCH as set out in Schedule "B"
"Term"	the period from 1 st March 2012 to 28 February 2013 or 12 successive Calendar Months commencing on the Commencement Date
"Terminals"	the Durban Container Terminal, Pier 1 Container Terminal, Ngqura Container Terminal, Port Elizabeth Container Terminal and the Cape Town Container Terminal
"TPT"	Transnet Port Terminals, a division of Transnet Limited, registration number 1990/000900/06
"VAT Act"	Value-Added Tax Act No. 89, 1991 (as amended)

"VAT"	value-added tax payable in accordance with the VAT Act
"Vessel"	ship
"ZAR"	the currency of the RSA

2.3 Where any term is defined within the context of any particular clause in this Agreement, the term 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 in terms of this Agreement, notwithstanding that that term has not been defined in this interpretation clause.

2.4 Unless inconsistent with the context, an expression which denotes:

2.4.1 any gender includes the other genders;

2.4.2 a natural person includes an artificial person and *vice versa*;

2.4.3 the singular includes the plural and *vice versa*.

2.5 Unless inconsistent with the context or save where the contrary is expressly indicated:

2.5.1 a reference to "days" shall be construed as calendar days unless qualified by the word "business", in which instance a "Business Day" shall be any day other than a Saturday, Sunday or official public holiday in the RSA. Any reference to "Business Hours" shall be construed as being the hours between 08:00 and 16:00 on any Business Day.

- 2.5.2 when any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which case the last day shall be the next succeeding Business Day;
- 2.5.3 in the event that the day for payment of any amount due in terms of this Agreement should fall on a day which is not a Business Day, the relevant day for payment shall be the subsequent Business Day;
- 2.5.4 in the event that the day for performance of any obligation to be performed in terms of this Agreement should fall on a day which is not a Business Day, the relevant day for performance shall be the subsequent Business Day;
- 2.5.5 any reference in this Agreement to an enactment is to that enactment as at the Signature Date and as amended or re-enacted from time to time;
- 2.5.6 no provision of this Agreement constitutes a stipulation for the benefit of any person who is not a Party to the Agreement;
- 2.5.7 a reference to a Party includes that Party's successors-in-title and permitted assigns.
- 2.6 The contra proferentem rule regarding the drafting of a document shall not apply to this Agreement.
- 2.7 The schedules and annexures to this Agreement form an integral part hereof and words and expressions defined in this Agreement shall bear, unless the context otherwise requires, the same meaning in such schedules and annexures.

3. **WARRANTY AND UNDERTAKINGS IN RESPECT OF THE MENTORSHIP PROGRAMME AND THE OBJECTIVE**

- 3.1 THE SERVICE PROVIDER states that it is a provider of mentorship programmes for vessel, yard and equipment planners and has the required expertise to transfer skills and provide mentorship to Mentees in a container operational environment.
- 3.2 TPT accordingly requires THE SERVICE PROVIDER to utilise the expertise referred to in 3.1 to achieve the following goals at the Premises:
- 3.2.1 to develop and improve the skills, the efficiency and productivity levels of the Mentees to enable the Mentees to:
- 3.2.1.1 Increase productivity to achieve the Target;
- 3.2.1.2 to perform vessel, yard, berth, rail and equipment planning safely, effectively and efficiently in order to:
- 3.2.1.2.1 reduce delays in stacking and un-stacking;
- 3.2.1.2.2 reduce unproductive moves;
- 3.2.1.2.3 reduce incidents and accidents; and
- 3.2.1.2.4 safely load and unload containers.
- 3.2.2 increase TPT's equipment utilization;
- 3.2.3 optimise TPT's service delivery to end-user; and
- 3.2.4 ensure compliance with the project objectives and deliverables as set out in Schedule "A"; "B" and "E".

- 3.3 TPT requires THE SERVICE PROVIDER to realise the Objective and THE SERVICE PROVIDER undertakes to do so.

4. **CONDITIONS PRECEDENT**

- 4.1 This Agreement (save in respect of 1, 2, this clause 4.1, 4.2, 4.3 and 20 to 23 inclusive, all of which shall be of immediate force and effect) is subject to the fulfilment of the following conditions precedent:

- 4.1.1 obtaining the written approval of SARB by TPT for the payment of the Mentorship Fee in _____
- 4.1.2 obtaining by THE SERVICE PROVIDER of formal written approval from the appropriate authorities for the grant of temporary residence and/or work permits, as the case may be, to the Mentors for the Term;
- 4.1.3 the production and delivery by THE SERVICE PROVIDER to TPT of the Letter of Comfort in the form as set out in Schedule "D";
- 4.1.4 obtaining approval for the insurance obligations of TPT arising from the provisions of this Agreement from its all risks and public liability insurers and underwriters, and to the extent appropriate, obtaining the necessary endorsement of all of TPT's relevant and appropriate insurance policies noting the interest of THE SERVICE PROVIDER therein;
- 4.1.5 the submission by THE SERVICE PROVIDER to TPT of a Mentorship Operational Execution plan (that is, the Mentorship Programme for Mentees) prepared by THE SERVICE PROVIDER which will have to be approved by TPT. Once the Mentorship Operational Execution Plan (Schedule "B") (including but not limited to the Baseline, Target and Timelines of the

Programme) and Schedule E is accepted by TPT, it will form an integral part of this Agreement; and

4.1.6 the final determination of the Logistics Fees by the Parties.

4.2 The Parties shall use their respective best endeavours to procure the fulfilment of the Conditions as soon as practicably possible after the Signature Date.

4.3 Each Party undertakes irrevocably in favour of the other to keep the other informed in writing on a weekly basis of progress made on the fulfilment of the Conditions.

4.4 In the event that any one or more of the Conditions are not fulfilled or waived (only to the extent capable of waiver) by both Parties, by written notice to the other of them, on or before _____ 2012, this Agreement (save in respect of 1, 2, 4.2, 4.3 and 19 to 24 inclusive, all of which shall continue to remain of full force and effect) will be of no further force or effect and neither Party shall have any claim against the other for anything done hereunder or arising herefrom.

5. **APPOINTMENT**

With effect from the Commencement Date, TPT hereby appoints THE SERVICE PROVIDER, which appointment THE SERVICE PROVIDER hereby accepts, to render the Services.

6. **DURATION**

The appointment of THE SERVICE PROVIDER in terms of 5 shall commence and take effect on the Commencement Date and shall endure for the Term subject to the termination provisions of this Agreement.

7. **SERVICES**

THE SERVICE PROVIDER shall provide:

7.1 **Mentors**

7.1.1 On 01 March 2012:

7.1.1.1 provide suitably qualified Mentors to deliver the Services;

7.1.1.2 contract in writing with the Mentors for the Term in accordance with _____ law;

7.1.2 ensure that each Mentor:

7.1.2.1 is qualified in his sphere of specialisation to deliver that part of the Services to be performed by him;

7.1.2.2 understands and is able to communicate adequately in English;

7.1.2.3 complies in every material respect with the obligations imposed upon TPT in respect of the ISPS Code, Maritime Security Regulations and the CSI;

7.1.2.4 complies in all material respects with South African law during the Term in the performance of THE SERVICE PROVIDER' obligations;

7.1.2.5 complies fully and effectually with all TPT's safety, health, environmental, quality and risk codes, TPT policies and procedures, notices and requirements;

- 7.1.3 comply with the Labour Legislation and the provisions of any applicable ILO Conventions;
- 7.1.4 timeously make or procure the making of all necessary applications for the temporary immigration and/or temporary work permits of the Mentors;
- 7.1.5 at its cost appoint such professional advisors to apply for and on its behalf to obtain from the appropriate South African authorities all temporary immigration and/or temporary work permits;
- 7.1.6 ensure that the Mentors arrive timeously in the RSA to commence Mentorship Programme with effect from the Commencement Date;
- 7.1.7 be liable for the remuneration of the Mentors in accordance with the contracts concluded with them;
- 7.1.8 be liable for:
 - 7.1.8.1 payment of the necessary taxes to SARS;
 - 7.1.8.2 all appropriate employee/employer insurances and benefits, which shall include but not be limited to comprehensive accident, medical cover and life insurance cover in respect of each Instructor;
 - 7.1.8.3 all airfares (other than the Return Air Fare) in respect of the Mentors;
 - 7.1.8.4 the management and control of the Mentors and all their acts and/or omissions in the course and scope of their employment for the duration of the Term;
- 7.1.9 at all times maintain a complement of twelve (12) Mentors in the RSA during the Term. However if any Mentor becomes unavailable to provide

mentorship training for any reason (including but not limited to illness, injury or family bereavement), then THE SERVICE PROVIDER agrees to provide a substitute Mentor within fifteen (15) days of the particular Mentor becoming unavailable;

7.1.10 procure that all Mentors, on the expiry of the Term, return to _____

7.1.11 in terms of their contracts and further in accordance with their temporary immigration and/or temporary work permits;

7.2 **Mentorship**

7.2.1 be liable for the Mentoring of the Mentees during the Operating Hours;

7.2.2 ensure that the Mentors are conversant with South African operating conditions;

7.2.3 prior to the Commencement Date undertake the necessary operational research in respect of the practical operational environment and circumstances prevailing at the Premises in order to ensure that the Mentors are aware of the nature of such environment and circumstances;

7.2.4 report back, liaise, communicate and meet on a regular basis (but in any event at least once per week) with the Liaison Officers of TPT.

7.2.5 establish and agree with TPT the base line performance for the duration of the Term as per and in accordance with Schedule B;

7.2.6 to provide sufficient number of Mentors to attend to and perform all remedial work in Completed Phases, in the event of the Target not being met, without comprising the service provision in Current Phases.

7.3 **Insurance**

7.3.1 procure insurance cover in the RSA in respect of the delivery of the Services, which cover shall include but not be limited to:

7.3.1.1 third party liability insurance cover of at least ZAR 10,000,000 (ten million five hundred thousand rand);

7.3.1.2 emergency medical and evacuation travel cover of at least ZAR 1,000,000 (one million rand) ;

7.3.1.3 any other employee related insurance of at least ZAR 1,000,000 (one million rand);

and shall upon written request by TPT deliver satisfactory proof to TPT of the existence of such insurance cover and of the payment of the premiums in respect thereof;

7.4 **Compliance**

7.4.1 comply in all material respects with South African law;

7.4.2 compensate TPT, upon written demand, all costs and charges for which it may become liable in terms of 8.2, subject to delivery of TPT to THE SERVICE PROVIDER of all reasonably required documentary proof.

8. **OBLIGATIONS OF TPT**

TPT shall:

8.1 make available to THE SERVICE PROVIDER:

- 8.1.1 the Facilities; and
- 8.1.2 all such other aids and materials specifically associated with the tasks of the Mentees,

and keep such Facilities, Plant and such other aids and materials in good working order for the Term;
- 8.2 maintain the Facilities at its cost, save for such maintenance and/or repairs which are required as a result of any act or omission of any Mentor in which event THE SERVICE PROVIDER shall be liable to reimburse TPT for such cost;
- 8.3 be and remain liable as the employer of the Mentees in respect of:
 - 8.3.1 the performance of their work;
 - 8.3.2 their remuneration, benefits and insurances;
- 8.4 provide THE SERVICE PROVIDER with copies of TPT's safety, health, environmental, quality and risk codes and notices, and the relevant updates thereof from time to time;
- 8.5 generally afford THE SERVICE PROVIDER such authority as is reasonably necessary to enable it to discharge its obligations efficiently and effectively;
- 8.6 procure and maintain all appropriate insurances in place for the Term in respect of the Facilities and the Plant on the Premises, including but not limited to all risks insurance and public liability insurance and shall, upon the reasonable written request by THE SERVICE PROVIDER deliver satisfactory proof to THE SERVICE PROVIDER of the existence of such insurance cover and of the payment of the premiums in respect thereof; and

9. **LIAISON**

9.1 Each Party shall within ten (10) days of the Commencement Date notify the other in writing of the identity and contact details of its nominated representatives who shall act as its dedicated persons for the purposes of liaison in connection with the implementation of this Agreement.

9.2 Such persons shall, *inter alia*, be responsible for dealing with all day-to-day verbal and written communication between the Parties in connection with the Services. Either Party shall be entitled to replace such nominated Liaison Officer on not less than fourteen (14) days' prior written notice to the other.

10. **FEES, VAT AND PAYMENT**

10.1 TPT shall pay to THE SERVICE PROVIDER:

10.1.1 in consideration for the Services rendered by THE SERVICE PROVIDER to TPT, a Training fee of _____ payable in _____ instalments in _____ by electronic transfer into THE SERVICE PROVIDER nominated account. TPT shall make payment to THE SERVICE PROVIDER of the Mentorship Fee as follows:

10.1.1.1 in respect of the first Quarter:

10.1.1.1.1 on the Closing Date an amount equal to, _____;

10.1.1.1.2 in respect of the second, third and fourth Quarters, on the first Business Day of such Quarter, an amount equal to _____;

- 10.1.1.2 TPT will pay a maximum Logistics Fee of ZAR _____. This will be paid in ZAR in advance for each Quarter on the first Business Day of such Quarter, payable in four (4) instalments in ZAR by way of an electronic transfer into a ZAR denominated banking account which has been established by THE SERVICE PROVIDER in the RSA at a registered South African commercial bank. The payments will be effected as follows:
- 10.1.1.2.1 in respect of the first Quarter, on the 1 March 2012 an amount equal to ZAR _____, which will be the first of four instalments of the total Logistics fee.
- 10.1.1.2.2 in respect of the second, third and fourth Quarters, on the first Business Day of the such Quarter an amount equal to ZAR _____.
- 10.2 The Training Fee and the Logistics Fee exclude VAT.
- 10.3 THE SERVICE PROVIDER shall deliver a valid tax invoice to TPT three weeks prior to any payment date provided in 10.1.
- 10.4 The Training Fee is subject to adjustment in accordance with 11.
- 10.5 All amounts payable in terms of this Agreement shall be paid on the due date for payment thereof and in the relevant currencies, without set-off or deduction, save as otherwise provided herein.

11. **ADJUSTMENT OF FEES**

- 11.1 Notwithstanding the provisions of 10.1, TPT shall be entitled to withhold the Retention Amount and shall pay such Retention Amount (or such lesser amount pursuant to the adjustment thereof in terms of 11.2 to THE SERVICE PROVIDER, on the first Business Day of the fourth Calendar Month of a Completed Phase following on the Quarters in respect of which the Retention Amount was withheld. Notwithstanding the other provisions of this clause 11, in respect of the eighth Quarter, payment of the Retention Amount or such remaining portion thereof (pursuant to the provisions of 14.2) shall be made no later than the 120th day after expiry of the Term.
- 11.2 TPT shall be entitled to deduct the amount of the Penalty (if any) as determined in terms of 14.2 from the Retention Amount, and shall pay such remaining portion of the Retention Amount over to THE SERVICE PROVIDER in accordance with 11.1.
- 11.3 In the event that an Instructor is unavailable to perform the Services for a period of in excess of seven (7) consecutive days and, if THE SERVICE PROVIDER has failed to substitute such absent Instructor, then THE SERVICE PROVIDER shall refund to TPT the pro rata portion of the Subsistence Allowance in respect of such Instructor for such period in excess of seven (7) consecutive days that the Instructor fails to deliver the Services. The amount of such refund shall be paid by THE SERVICE PROVIDER to TPT on the first Business Day of the Quarter following on the expiry of the Quarter during which such failure occurred.

12. **INTEREST ON OVERDUE PAYMENTS**

All amounts due, owing and payable by either Party to the other in terms of this Agreement shall bear interest at the applicable Prime Rate with effect from the due date for payment thereof up to and including the actual date of payment, both dates inclusive.

13. **WARRANTY IN RESPECT OF PERFORMANCE**

13.1 THE SERVICE PROVIDER hereby irrevocably warrants in favour of TPT that it will perform the Services so as to achieve the Objective and Target during the period from the Commencement Date up to the end of the Term;

13.2 THE SERVICE PROVIDER agrees to provide sufficient number of Mentors to attend to and perform all remedial work in Completed Phases, in the event of THE SERVICE PROVIDER failing to meet or exceed the Target, without comprising the service provision in Current Phases.

13.3 Notwithstanding the right of TPT to recover from THE SERVICE PROVIDER the amounts reflected in 14.2 arising from THE SERVICE PROVIDER' failure to achieve the Target and Objective and notwithstanding the provisions of 19, TPT shall have the right, in the event that THE SERVICE PROVIDER does not achieve the Target for two successive Completed Phases, to cancel this Agreement summarily without further notice.

14. **PENALTIES**

14.1 The Parties agree that the performance of the Mentors will be measured against the performance of the Mentees on the basis of the Target set out in Schedule "B" with specific reference to:

14.1.1 number of Moves per Crane Hour

- 14.1.2 in each complete and current Phase
- 14.1.3 calculated for each Calendar Month.
- 14.2 In the event that the actual average Moves per Crane Hour measured over the relevant Calendar Month within the current Phase as well as the completed Phase(s) (if any) shall be less than the Target for that Calendar Month in that Phase and the completed Phases (if any), then TPT shall be entitled to deduct from the Retention Amount an amount equal to the relevant percentage, set out in Schedule "B", of the monthly Training Fee (which for the avoidance of doubt is an amount of _____), calculated with reference to the average number of Moves per Crane Hour achieved in the Calendar Month for all berths falling within the current Phase as well as the completed Phases ("Penalty").
- 14.2.1 The Liaison Officers shall, as soon as reasonably feasible after the expiry of each Quarter, meet to assess the performance of the Trainees in respect of the achievement of the Target for each Calendar Month falling in that Quarter both in respect of the current Phase and in respect of completed Phases and on the basis of such assessment determine whether the Penalty has become due, owing and payable by THE SERVICE PROVIDER to TPT.
- 14.3 If the Liaison Officers are unable to reach consensus on such determination the assessment shall forthwith be referred to the Expert on the basis of 21.3 for final determination by no later than the last Business Day of the first Calendar Month of the Quarter following on the Quarter in respect of which the performance of the Trainees is to be assessed.

15. **FORCE MAJEURE**

- 15.1 If either Party ("the Affected Party") is prevented or restricted directly or indirectly from carrying out all or any of its obligations under this Agreement by reason of

Force Majeure, the Affected Party shall be relieved of its obligations hereunder during the period that such event and its consequences continue (but only to the extent so prevented), and shall not be liable for any delay or failure in the performance of such obligations hereunder or loss or damages, either general, special or consequential, which the other Party ("the Counter Party") may suffer due to or resulting from such delay or failure; provided always that the Affected Party shall have given written notice to the Counter Party of its inability to perform its obligations hereunder by no later than seven (7) days after the event or events giving rise thereto shall first have occurred, and the Affected Party shall endeavour to rectify the cause of such *Force Majeure* event as expeditiously as possible in the circumstances.

- 15.2 The obligation of an Affected Party to rectify the cause of any *Force Majeure* event expeditiously shall not be construed as imposing on such Party any obligation to settle any strike, lock-out or other labour dispute on terms contrary to its reasonable commercial best interest and the manner of resolving such labour-related difficulties shall at all times remain the sole discretion of the Affected Party.
- 15.3 Any Affected Party invoking *Force Majeure* shall, upon termination of such event giving rise thereto, forthwith give written notice thereof to the Counter Party.
- 15.4 Should such *Force Majeure* continue for a period of more than sixty (60) days then either Party shall be entitled (but not obliged) to cancel this Agreement on written notice to the other Party in respect of any obligations still to be performed, but not yet due, hereunder.
- 15.5 Neither Party shall be entitled to invoke *Force Majeure* as a ground for any refusal to pay any amount which is due and payable to the other. If either Party cancels this Agreement pursuant to the provisions of 15.4, neither Party shall have any claim against the other for any amount to which it would have been entitled, save

in respect of amounts which have fallen due and payable prior to the date of *Force Majeure*, but for such cancellation.

- 15.6 Any unwillingness of the Mentees to co-operate with the Mentors, or any intimidating of or threatening behaviour by the Mentees towards the Mentors shall not be construed as *Force Majeure*.

16. **INDEMNITY**

- 16.1 THE SERVICE PROVIDER hereby unconditionally and irrevocably indemnifies and holds TPT, its respective officers, directors, employees, servants and agents harmless from and against any liability, claim, loss, damage, penalty, cost or expense of whatever nature and however arising from and/or in connection with:

16.1.1 the injury or death of any person;

16.1.2 damage to or loss of any property whatsoever;

16.1.3 any economic loss sustained by any person; and/or

16.1.4 any act or omission performed in the course and scope of the employment of the Mentors,

as a result of any negligent act or omission, or act of wilful misconduct, by THE SERVICE PROVIDER, its directors, officers, employees, agents or invitees and the Mentors, relating to and/or in connection with and/or arising from THE SERVICE PROVIDER' conduct of the Services and/or the use of the Plant.

- 16.2 TPT hereby unconditionally and irrevocably indemnifies and holds THE SERVICE PROVIDER and its respective officers, directors, employees, servants, agents and the Mentors harmless from and against any liability, claim, loss, damage, penalty,

cost and expense of whatever nature and howsoever arising from and/or in connection with:

- 16.2.1 the injury or death of any person;
- 16.2.2 damage to or loss of any property whatsoever; and
- 16.2.3 economic loss sustained by any person,

as a result of any negligent act or omission, or act of wilful misconduct, by TPT, its directors, officers, employees, agents or invitees and the Mentees relating to and/or in connection with and/or arising from its obligations and/or the performance of its business at the Premises.

- 16.3 The Parties hereby agree in writing as required in terms of Section 37(2) of OHSA, that:

- 16.3.1 THE SERVICE PROVIDER shall be liable for the acts and omissions of the Mentors; and

- 16.3.2 TPT shall be liable for the acts and omissions of the Mentees,

and each of them shall and does hereby hold the other harmless from any liability attaching to the other arising from a breach of the provisions of OHSA, or any acts or omissions contemplated therein.

17. **HARDSHIP**

- 17.1 In entering into this Agreement, the Parties declare it to be their intention that this Agreement shall operate between them with fairness and without undue hardship to either Party, on the basis of the terms and conditions contained in this Agreement.

- 17.2 Should circumstances arise which were not contemplated by the Parties at the Signature Date, the Closing Date and/or the Commencement Date, which render impractical the implementation of this Agreement, the Parties will meet and negotiate in good faith to establish a *modus operandi* for the attainment and fulfilment of the fundamental purposes of this Agreement.
- 17.3 The Parties agree that, if during the currency of this Agreement, there is any significant change in circumstances which results in either of the Parties being placed in a materially inequitable or unfavourable position relative to the position in which it was as at the Signature Date, the Parties shall meet with a view to agreeing, in a spirit of mutual trust and understanding, what modifications to this Agreement would be appropriate in order to give effect to such change.

18. **RELATIONSHIP OF PARTIES**

THE SERVICE PROVIDER shall act as an independent contractor in providing the Services. Nothing herein contained shall be construed as constituting either Party the agent of the other and/or of creating any partnership (whether universal or for limited purposes) between them and/or of entitling either Party to bind the credit of the other, or to represent to any person that it is entitled to do so.

19. **DEFAULT AND TERMINATION**

- 19.1 If either Party (the "Defaulting Party"):
- 19.1.1 commits a material breach of any provision of this Agreement and fails to remedy such breach after receipt of not less than thirty (30) days' written notice from the other Party ("the Aggrieved Party") calling upon it to do so;
or

19.1.2 is placed in liquidation or under judicial management, whether provisionally or finally, other than for purposes of a reconstruction or amalgamation of its business,

the Aggrieved Party will be entitled to cancel this Agreement or to claim immediate payment and/or performance by the Defaulting Party of all the Defaulting Party's obligations, whether or not the due date for such payment or performance has arrived, in either event without prejudice to the Aggrieved Party's right to claim damages or other relief.

19.2 Any delay in the arrival of any Instructor in the RSA, or the temporary absence of any Instructor, shall not constitute a material breach of the provisions of this Agreement, provided that the delivery of the Services by THE SERVICE PROVIDER shall not be impaired. In any event, THE SERVICE PROVIDER shall not, upon any basis, be released from its obligation to achieve the Objective, notwithstanding the delay in arrival or temporary absence of any Instructor.

20. **CONFIDENTIALITY**

20.1 The Parties hereby undertake that, both during the currency of this Agreement and at all times after its termination:

20.1.1 each of them shall keep secret and shall not, without the prior written consent of the other, either directly or indirectly, except insofar as may be absolutely necessary in the usual and ordinary course of business, use or disclose or divulge to any person, all Confidential Information or any proprietary information relating to the business or affairs of the other, its clients, customers or trade connections;

20.1.2 each of them shall keep the terms of this Agreement secret, except to the extent that they are absolutely required to disclose any of such terms in order to fulfil the Conditions.

20.2 This clause 20 will survive any termination or cancellation of this Agreement.

21. **DISPUTE RESOLUTION**

21.1 Subject to the provisions of clause 21.3, any dispute between the Parties arising from, relating to and/or in connection with this Agreement, its interpretation, application and/or termination, shall be resolved in accordance with the terms of this clause 21.

21.2 Each dispute raised by a Party –

21.2.1 shall be notified in writing (“the dispute notice”) by such Party’s Liaison Officer to the Liaison Officer of the other Party. The Parties’ respective Liaison Officers shall meet as soon as possible thereafter and shall use their *bona fide* endeavours to resolve the dispute in an expeditious and amicable manner, subject to full disclosure of all information and documentation relevant to the dispute by each to the other;

21.2.2 in the event that the Liaison Officers fail to resolve the dispute within thirty (30) days after delivery of the dispute notice, any of them may refer the dispute in writing to the Parties’ respective Chief Executive Officers or their duly appointed representatives, who shall then use their *bona fide* best endeavours to resolve the dispute;

21.2.3 in the event that the special committee referred to in 21.2.2 fails or is unable to resolve the dispute within a period of fifteen (15) days after the dispute has been referred to it, either Party shall be entitled, on delivery of a

written notice ("the arbitration notice") to the other, to demand that the dispute be referred to arbitration in London in terms of the rules of the International Chamber of Commerce ("ICC") for final settlement by one or more arbitrators appointed in accordance with the said Rules.

- 21.3 Any dispute between the Parties relating solely to the quantum or calculation of the amount payable by either Party to the other in terms of any provision of this Agreement shall, as soon as practicably possible after such dispute has arisen, be submitted by the Parties to the Auditors for determination within fifteen (15) days of such submission, and failing agreement between the Auditors within the such period, shall forthwith be referred to an independent practising chartered accountant of not less than five (5) years' standing ("the Expert") acceptable to both Parties. If the Parties are unable to agree on the identity of the Expert by no later than seven (7) days after the Auditors shall have notified the Parties of their failure to reach agreement, either Party shall be entitled to request the President for the time being of the Public Accountants' and Auditors Board (KwaZulu-Natal) (or such similar body in the absence of the aforementioned) to appoint the Expert. In making their determination, the Auditors (or the Expert, as the case may be) shall act as an expert(s) and not an arbitrator(s), and his/their determination shall be final and binding on the Parties, save in the case of manifest error. The costs of the Auditor(s) (or Expert(s), as the case may be) shall be borne by the Parties in equal shares.
- 21.4 Nothing contained in this clause 21 shall preclude either Party from seeking interim relief from any competent court having jurisdiction pending the institution of any arbitration proceedings in terms of this clause.
- 21.5 The provisions of this clause 21 shall survive the termination for whatever reason of this Agreement.

22. **NOTICES AND DOMICILIA**

22.1 **Written Notices**

Subject to 22.2, all written notices or communications between the Parties in connection with this Agreement shall be addressed and delivered to the domicilium *citandi et executandi* of each as follows:

<u>Name</u>	<u>Physical Address</u>	<u>Telefax</u>
THE SERVICE PROVIDER		

Postal Address

Marked for the attention of: _____

Email Address:
Under copy to:

<u>Name</u>	<u>Physical Address</u>	<u>Telefax</u>
TPT	Kingsmead Office Park Stalwart Simelane Street Durban 4001	(+27) (31) 308-8353

Marked for the attention of: _____ or her successor in title

Email Address: _____

22.2 **Legal Notices and Process**

For all purposes of and in connection with the service of processes, legal proceedings, demands, notices and the like, TPT selects as its *domicilium citandi et executandi* the following physical address:

<u>Name</u>	<u>Domicilium Address</u>
TPT	Kingsmead Office Park Stalwart Simelane Street Durban 4001

THE SERVICE PROVIDER shall notify TPT of its physical address in the RSA, which shall then be deemed to be its *domicilium citandi et executandi*. Until the happening of such event, the address set out in 22.1 shall be the *domicilium citandi et executandi* of THE SERVICE PROVIDER.

- 22.3 Either Party shall be entitled from time to time to change its *domicilium in 22.1* or 22.2, provided that any such new address shall be a physical address in the RSA and any such change shall only be effective upon receipt of notice in writing by the other Party of such change.
- 22.4 A written notice or communication sent by either Party to the other Party shall be deemed to have been received:
- 22.4.1 on the same day, if delivered by hand during business hours on any Business Day;
- 22.4.2 on the same day, if sent during business hours on any Business Day by telefax with receipt received confirming completion of transmission;
- 22.4.3 on the 10th day after posting, if sent by prepaid registered mail.
- 22.5 Notwithstanding anything to the contrary herein contained a written notice or communication contemplated in 22.2 actually received by a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*. In any event, the Party seeking to rely upon any notice shall bear the onus of providing receipt of such notice by the other Party.

23. **COSTS**

The Parties shall each bear their own costs of and incidental to the negotiation, preparation and execution of this Agreement.

24. **GOVERNING LAW**

This Agreement shall be governed in all respects by and shall be interpreted in accordance with the laws of South Africa. Subject to the provisions of 21, each Party consents to the jurisdiction of the High Court of South Africa (Durban and Coast Local Division) for all purposes in connection with this Agreement.

25. **GENERAL**

25.1 Neither Party shall be bound by any express nor implied term, representation, warranty, promise or the like, not recorded in this Agreement.

25.2 No addition to, variation or consensual cancellation of this Agreement shall be of any force or effect unless reduced to writing and signed by or on behalf of the Parties.

25.3 No indulgence which either of the Parties ("*the grantor*") may grant to the other Party ("*the grantee*") shall constitute a waiver of any of the rights of the grantor, who shall not thereby be precluded from exercising any rights against the grantee which might have arisen in the past, or which might arise in the future.

25.4 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 implementation or maintenance of the terms, conditions and import of this Agreement.

25.5 Neither Party shall be entitled to cede, assign or otherwise transfer all or any of its rights or obligations under and in terms of this Agreement, except with the prior written consent of the other Party which consent shall not be unreasonably withheld.

25.6 This Agreement may be executed in any number of counterparts and by the different Parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts together shall constitute one and the same instrument.

26. **SEVERABILITY**

The Parties agree that 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.

THUS DONE and SIGNED at DURBAN on this the _____ day of _____ 2011.

For and on behalf of

by

who warrants his authority hereto

WITNESS:

1. _____

2. _____

THUS DONE and SIGNED at DURBAN on this the _____ day of _____ 2010.

For and on behalf of

**TRANSNET SOC LIMITED operating as
TRANSNET PORT TERMINALS**

by

who warrants her authority hereto

WITNESS:

1. _____

2. _____

SCHEDULE "A"

SCOPE OF REQUIREMENTS AND GENERAL INFORMATION

1. EXECUTIVE OVERVIEW AND SCOPE OF REQUIREMENTS

TPT will require optimal waterside and landside efficiency at minimal costs with optimal resource allocation. This requires effective planning systems, processes and skills to ensure that vessel schedules, people and equipment allocation and maintenance schedules are properly coordinated.

2. SCOPE OF REQUIREMENTS

- Offer Planner mentorship for Container terminal operations, including Berth allocation, equipment and people and other resource allocation, integrated planning and problem solving for planning related issues;
- Working with TPT Planning personnel on a daily and ongoing basis and providing guidance on how to apply effective planning techniques to maximize terminal and supply chain efficiencies;
- Offer Business continuity by being able to replace TPT Planning personnel for certain periods while they attend training;
- Offer a structured performance management process that will assess, develop and review planners;
- Recommend- interventions where planners are not performing at a satisfactory level.

The development and execution of Planner Mentorship so that these mentors will be able to provide the following:

- Provide effective planner mentorship in the various terminals;
- Apply evaluation techniques and learner performance assessments for planners;
- Ensure that planners observe work safety, environmental, and quality practices when planning;
- Develop and apply training material- learner guide, trainer guide, presentation slides, exercises and assessments/tests.

The ability to execute the following planning tasks:

(3) VESSEL PLANNING

- Simultaneous discharge and loading (Double Cycling);
- Monitoring vessel performance and implementing corrective actions to achieve required norms;
- Optimised crane splits per vessel - maximum number of cranes on a vessel for maximum time period;
- Minimising stack shifters/shuffles;

- Use of 3rd or 4th crane on all vessel calls exceeding 1,000 moves;
- Reduced stowage-planning time through collaboration with Chief Mates on vessels;
- Stack Optimisation for empty containers - loading by Operator/Size/Type rather than specific container number;
- Elimination of all delays in planning processes;
- Vessel Planning - factoring of vessel trim and stability into planning processes;
- Minimised gantry long-travel movements during loading;
- Optimal Crane splits - particularly when cargo stowed in bays close to one another.

(4) STACK PLANNING

- Minimised equipment travel distances by optimising stack locations;
- Stack management to maintain fluidity - stack date allocation;
- Stack optimisation - new/improved stacking strategies to attain norms (Both straddle and RTG terminals);
- Tier by Tier releases (appointment system) - or alternative strategy to deal with import collections in RTG terminals;
- Alignment of Stack Allocations to crane splits (particularly RTG terminals.);
- Management of yard impact when adding cranes to vessels;
- RTG Terminals - Best practice when loading with 3 cranes from 2 blocks.

(5) RAIL PLANNING

- Double-Cycling for Rail discharge/loading;
- Navis rail planning functionality used optimally;
- Alignment of Rail Planning with Corridor strategy.

(6) BERTH PLANNING

- Optimising berth/terminal allocation taking all factors into account.

(7) EQUIPMENT ALLOCATION

- Inter- Terminal Transshipment planning;
- Optimising Resource planning;
- Efficient Landside equipment allocation.

(8) GENERAL

- Importance of understanding relationships between Operations, Planning and Finance

THE OBJECTIVES AND TARGET

1. TPT requires THE SERVICE PROVIDER to provide a planning mentorship programme to the Mentees who will plan vessel, stack, rail, berth and equipment operations effectively so that they can improve their productivity levels to achieve the Target.
2. The Mentors will provide a structured mentoring and operational support programme during the Operating Hours to the Mentees. The Mentorship Programme will comprise of:
 - 2.1. oral instructions in the classroom in respect of theoretical and practical aspects of the execution of the specific tasks required in the job description of the relevant Mentee;
 - 2.2. practical instructions and demonstrations so as to achieve the Objective and Target;
 - 2.3. practical instruction and demonstration on the job involving planning and utilization of the Plant in the Premises;
 - 2.4. the transfer of skills and the continuous monitoring and assessment during the Term of the levels of operational skills in respect of the mentorship received by the Mentees;
 - 2.5. the making of operational recommendations appropriate and necessary in regard to the items specified in this Schedule "A" in order to achieve the Objective and the Target;
 - 2.6. the instilling and nurturing of positive attitudes in all the Mentees towards the attainment of the requisite standards of performance provided for in this Agreement.
3. THE SERVICE PROVIDER must perform and deliver on the following:
 - 3.1. Initial individual assessment to identify and analyse the skills gap;
 - 3.2. Provide individual mentorship according to the different types of interventions to ramp up the productivity levels of each Mentee and THE SERVICE PROVIDER shall:
 - 3.2.1. ensure that the transfer of skills and the continuous improvement during the mentorship is achieved by the Mentees; and
 - 3.2.2. ensure that TPT is notified where the interventions have been carried out and the Mentees are not performing at satisfactory levels.
 - 3.3. Weekly and final assessments for each Mentee on each Mentee's progress on the mentorship programme;
 - 3.4. ensure that where gaps are identified in the Mentees, actions to close the gaps are applied; and
 - 3.5. ensure that progress on closing the gaps is monitored by THE SERVICE PROVIDER.
4. LIAISON
 - 4.1. The Liaison Officer shall:
 - 4.1.1. meet with the to monitor the effectiveness of the Mentorship Programme and address challenges and problems;
 - 4.1.2. attend regular TPT Operations Planning and Briefing meetings; and
 - 4.1.3. attend performance measurement meetings.

5. MENTORSHIP PROGRAMME

- 5.1. The Mentorship Programme will require Twenty Five (25) Mentors from THE SERVICE PROVIDER to provide the Mentorship Programme which will take place in accordance to the Phases as set out by TPT.
- 5.2. THE SERVICE PROVIDER understands and is conversant with the operating environment in TPT.
- 5.3. The Mentorship Programme requires on-going evaluations and assessments to be done during the interventions.
- 5.4. THE SERVICE PROVIDER agrees that at the end of each Phase, the Mentees will be able to perform and should be able to plan effectively and consistently

The proposed sequencing of the Planner Mentorship Programme is as follows:-

- Durban Ro-Ro and Maydon Wharf
- Durban Pier 2 Container Terminal
- Cape Town Container Terminal
- Ngqura Container Terminal
- Port Elizabeth Container Terminal

The estimated amount of Planners that require mentoring is as follows:-

<u>TPT Terminal</u>	<u>Amount of Planners</u>
Durban Ro-Ro and Maydon Wharf	48
Durban Pier 2 Container Terminal	65
Cape Town Container Terminal	20
Ngqura Container Terminal	30
Port Elizabeth Container Terminal	12

The above number of Planners is an estimate and the amount may change according to TPT's business requirements.

SCHEDULE "B"

Mentorship Operational Execution Plan including Baseline, Target and Timeline Schedule

SCHEDULE "C"

MENTOR PROFILE

Description	No
Mentors	25
Total	

**LETTER OF COMFORT TO BE TYPED ON THE
LETTERHEAD**

Transnet SOC Limited
operating as Transnet Port Terminals
P O Box 10124
Marine Parade
Durban

[DATE]

Dear Sirs

**SERVICE AGREEMENT ENTERED INTO BETWEEN _____
("THE SERVICE PROVIDER") AND TRANSNET SOC LIMITED operating TRANSNET
PORT TERMINALS ("TPT") DATED [.....] ("THE AGREEMENT")**

We hereby record that we have read, understood and are fully conversant with the provisions of the Agreement, a copy of which is under our control.

We further confirm that THE SERVICE PROVIDER is a wholly-owned _____

We will procure, to the extent permitted in law, that THE SERVICE PROVIDER, its directors and employees (specifically those assigned to execute the obligations of THE SERVICE PROVIDER under the Agreement) are appropriately qualified and sufficiently competent to comply with their respective obligations arising under the Agreement and to enable THE SERVICE PROVIDER to give effect to its obligations in terms of this Agreement. To the extent that THE SERVICE PROVIDER, its directors or employees, fail to perform their respective obligations under the Agreement, we will make all reasonable endeavours to perform or procure the performance of such obligations in their name, place and stead.

We will ensure that THE SERVICE PROVIDER will remain a wholly owned _____ until all of the obligations of THE SERVICE PROVIDER under the Agreement are discharged. In the unlikely event that a change of control of THE SERVICE PROVIDER is contemplated, we will seek your consent in writing, which you shall be entitled to withhold.

Yours faithfully

.....
DIRECTOR

.....
DIRECTOR

SCHEDULE "E"

SERVICE LEVEL AGREEMENT

SCHEDULE "F"

PRICE SCHEDULE

SCHEDULE "G"

OHS ACT SECTION 37(2)