



**DRAFT - AGREEMENT OF LEASE**

Entered into Between

**TRANSNET SOC LIMITED**

**Registration Number: 1990/000900/06**

Represented by its duly authorised division, Transnet Pipelines, of 202 Anton Lembede Street, Durban(Registration Number: 1990/000900/30)

("the Lessor")

and

-----  
Registration Number: -----

("the Lessee")

## **BACKGROUND**

Transnet Pipelines (TPL) is the owner of the Ladysmith Depot (Depot) which formed part of the Durban Johannesburg Pipeline (DJP) System. Part of the infrastructure situated at the Depot consists of 6 (six) accumulator tanks that were capable of accumulating petrol, diesel and intermixture. The product was transported by the DJP into the tanks and to the customers via the feeder lines that were connected to the tanks. The DJP was terminated from service in March 2018, which then meant that these accumulator tanks became idle and so did the feeder lines that connected the tanks to Ladysmith customer depots.

TPL has decided to lease out the 6 six tanks for commercial reasons to a lessee with the requisite skill and competence to utilise this portion of the facility in accordance with the conditions that will be set forth in this agreement.

### **1. THE PARTIES**

The parties to this agreement are:

- 1.1. The Lessor: Transnet Soc Ltd herein represented by its duly authorised division, Transnet Pipelines (TPL).
- 1.2. The Lessee:

### **2. LEASE PROPERTY**

The Lessor hereby leases to the Lessee a portion of the Ladysmith Depot (**See Annexure B**) containing the following:

- 2.1. 2 (two) petrol accumulator tanks with 1 770 m<sup>3</sup> working capacity each;
- 2.2. 2 (two) diesel accumulator tanks with 2 500 m<sup>3</sup> working capacity each; and
- 2.3. 2 (two) intermixture tanks with a working capacity of 84m<sup>3</sup> and 390 m<sup>3</sup> respectively.

The total working capacity of these six tanks is 9 014 m<sup>3</sup>, as shown in table1.

Table1. Tankage Capacity

TRANSNET PIPELINES					
Tank	Year of Inst.	Service	Products	Volume – NTC (m <sup>3</sup> )	Safe working capacity (m <sup>3</sup> )
4	1965	Intermix	Intermix	90	84
5	1976	Intermix	Intermix	452	390
6	1976	Accumulation	ULP	2032	1770
7	1976	Accumulation	ULP	2032	1770
8	1976	Accumulation	Diesel	3608	2500
9	1976	Accumulation	Diesel	3608	2500
TOTAL				11 822	9 014

### 3. DURATION OF LEASE

3.1 The duration of the lease will be for a period of \_\_\_\_\_ years commencing on \_\_\_\_\_ and terminating on \_\_\_\_\_.

### 4. RENTAL

4.1 The rental payable by the Lessee to the Lessor shall be R \_\_\_\_\_ (\_\_\_\_\_ rand) per month.

4.2 The rental is payable in advance on the first day of each month.

4.3 The rental shall be adjusted in accordance with the NERSA Tariff determination from time to time.

## 5. METHOD OF PAYMENT OF RENTAL

Payment of rental in accordance with clause 4 above shall be paid by electronic fund transfer ("EFT") to the following account:

Bank : First National Bank  
Account name : Transnet  
Account number :  
Branch number :

## 6. OBLIGATIONS OF THE LESSEE

The Lessee must:

- 6.1 Physically isolate the tanks from the rest of the depot and provide own primary access (gate) to the tank facility that is separate from the TPL access gate **(see Annexure B for suggested fencing position and proposed gates)**.
- 6.2 Provide its own secondary gate within TPL depot to access the tank farm facility. This secondary gate will not be used for day-to-day operations and will only be used upon official request to TPL.
- 6.3 Inspect & refurbish the tanks & bund area (slabs & walls).
- 6.4 Maintain the infrastructure and the land within the enclosed area (tanks, bund walls, separator, spill basin, floor slabs, grass cutting, lights, pumps, valves and piping).
- 6.5 Provide its own electricity for operation.
- 6.6 Establish and maintain such security measures including access control as it may deem necessary to ensure and promote security on or about the leased premises.
- 6.7 Provide its own pumps and valves.
- 6.8 Install a fire system.
- 6.9 Obtain the necessary licenses to be able to operate the tanks, and
- 6.10 Assume full responsibility for the enclosed facility's occupational safety and health administration (OSHA).

## **7. OBLIGATIONS OF LESSOR**

The Lessor must:

- 7.1 Provide free and undisturbed access to the property.
- 7.2 Obtain the necessary storage license from NERSA.

## **8. ACCESS TO LEASED PREMISES**

- 8.1 Subject to the circumstances in which the Lessor may have to enter the leased premises in an emergency, the Lessor and/or his duly authorised employees or agents may, upon giving the Lessee reasonable notice, enter upon and inspect the leased premises and do all things necessary in order to enable the Lessor to ascertain, determine and ensure that there is compliance with the terms and conditions of this lease agreement.
- 8.2 The Lessee undertakes to afford the persons inspecting the leased premises access.
- 8.3 The Lessor undertakes to ensure that the persons inspecting the leased premises will comply with all safety and security stipulations of the Lessee whilst such persons are on the leased premises and/or have access to the Lessee's facilities.

## **9. USE**

- 9.1 The leased premises are to be used for the storage of fuel.
- 9.2 Upon termination of the lease agreement, the Lessee will return the lease property in the condition in which it received it from the Lessor.
- 9.3 All improvements affected by the Lessee during the duration of this lease will accede to the property.

## **10. CESSION AND ASSIGNMENT**

- 10.1 The Lessee shall not cede or assign its rights or obligations in or to the leased premises or under this lease agreement without the prior written consent of the Lessor.

## **11. BREACH OF CONTRACT**

- 11.1 Should the Lessee:

- 11.1.1 fail to pay any amount due by the Lessee in terms of this lease agreement to the Lessor on due date; or
- 11.1.2 commit any material breach of this lease agreement; or
- 11.1.3 commit any other breach of any terms of this lease agreement, and fail to remedy that breach within a period of 7 (seven) business days after requested to do so in writing, then the Lessor shall be entitled to cancel this lease agreement on one month's written notice to the Lessee without prejudice to any other rights which he may have under this lease agreement or at common law.

## **12. WHOLE AGREEMENT**

- 12.1 This lease agreement contains the entire agreement between the parties hereto and no conditions, warranties or representations made by any party shall be of any force and effect, unless it has been reduced to writing and signed by both parties.
- 12.2 No amendment, addition or cancellation of this lease agreement shall be of any force or effect unless it is reduced to writing and signed by both parties or their duly authorised representatives.

## **13. JURISDICTION**

- 13.1 The parties consent to the jurisdiction of the High Court in respect of any legal proceedings which may arise out of or in connection with this lease agreement, notwithstanding that the cause of action or the amount in dispute might otherwise exceed the jurisdiction of the High Court.

## **14. LIABILITY AND INSURANCE**

The Lessee undertakes to maintain uninterrupted comprehensive insurance covering the depot facility, against physical loss or damage, including loss or damage due to earthquake, fire, lightning, explosion, storm, tempest, flood, civil unrest, war, terrorism and other such disturbances.

## **15. FORCE MAJEURE**

- 15.1 If, because of an event of force majeure (as defined below), either party is prevented (in whole or in part) from carrying out any of its obligations under this Agreement, and within 72 (seventy-two) hours of the occurrence of such event, gives notice thereof to the other party,

15.2 Specifically describing the claimed force majeure and the anticipated duration thereof, then the party claiming force majeure will be excused from the performance of its obligations hereunder, to the extent and during the period that it is prevented from doing so by the force majeure event.

15.3 For the purpose of this section, the term "force majeure", includes but is not limited to acts of God, acts of enemy, war, whether declared or not, hostilities, invasions, insurrection, riots, disorders, civil unrest, sabotage, blockades, embargoes, strikes, lockouts, fires, explosions, earthquakes landslides, storm floods, or other severe weather conditions, perils of the sea and pandemics.

## **16. POPIA CLAUSE**

### **PREAMBLE AND INTRODUCTION**

16.1 The rights and obligation of the Parties in terms of the Protection of Personal Information Act, 4 of 2013 ("POPIA") are included as forming part of the terms and conditions of this contract.

16.2 The following terms shall bear the same meaning as contemplated in Section 1 of the Protection of Person information act, No. of 2013" (POPIA"):

16.3 The Operator will process all information by the Transnet in terms of the requirements contemplated in Section 4(1) of the POPIA:

16.4 The Parties acknowledge and agree that, in relation to personal information of Transnet

### **PROTECTION OF PERSONAL INFORMATION**

The following terms shall bear the same meaning as contemplated in Section 1 of the Protection of Person information act, No. of 2013 "(POPIA"):

consent; data subject; electronic communication; information officer; operator; person; personal information; processing; record; Regulator; responsible party; special information; as well as any terms derived from these terms.

Accountability; Processing limitation; Purpose specification; Further processing limitation; Information quality; Openness; Security safeguards and Data subject participation.

and the information of a third party that will be processed pursuant to this Agreement, the Operator is (... ..) hereinafter Operator and the Data subject is "Transnet". Operator will process personal information only with the knowledge and authorisation of Transnet and will treat personal information and the information of a third party which comes to its knowledge as confidential and will not disclose it, unless so required by law or subject to the exceptions contained in the POPIA.

Transnet reserves all the rights afforded to it by the POPIA in the processing of any of its information as contained in this Agreement and the Operator is required to comply with all prescripts as detailed in the POPIA relating to all information concerning Transnet.

In terms of this Agreement, the Operator acknowledges that it will obtain and have access to personal information of Transnet and the information of a third party and agrees that it shall only process the information disclosed by Transnet in terms of this Agreement and only for the purposes as detailed in this Agreement and in accordance with any applicable law.

Should there be a need for the Operator to process the personal information and the information of a third party in a way that is not agreed to in this Agreement, the Operator must request consent from Transnet to the processing of its personal information or and the information of a third party in a manner other than that it was collected for, which consent cannot be unreasonably withheld.

Furthermore, the Operator will not otherwise modify, amend or alter any personal information and the information of a third party submitted by Transnet or disclose or permit the disclosure of any personal information and the information of a third party to any third party without prior written consent from Transnet.

The Operator shall, at all times, ensure compliance with any applicable laws put in place and maintain sufficient measures, policies and systems to manage and secure against all forms of risks to any information that may be shared or accessed pursuant to the services offered to Transnet in terms of this Agreement (physically, through a computer or any other form of electronic communication).

The Operator shall notify Transnet in writing of any unauthorised access to personal information and the information of a third party, cybercrimes or suspected cybercrimes, in its knowledge and report such crimes or suspected crimes to the relevant authorities in accordance with applicable laws, after becoming aware of such crimes or suspected crime. The Operator must inform Transnet of the breach as soon as it has occurred to allow Transnet to take all necessary remedial steps to mitigate the extent



of the loss or compromise of personal information and the information of a third party and to restore the integrity of the affected personal information as quickly as is possible.

Transnet may, in writing, request the Operator to confirm and/or make available any personal information and the information of a third party in its possession in relation to Transnet and if such personal information has been accessed by third parties and the identity thereof in terms of the POPIA.

Transnet may further request that the Operator correct, delete, destroy, withdraw consent or object to the processing of any personal information and the information of a third party relating to the Transnet or a third party in the Operator's possession in terms of the provision of the POPIA and utilizing Form 2 of the POPIA Regulations.

In signing this addendum that is in terms of the POPIA, the Operator hereby agrees that it has adequate measures in place to provide protection of the personal information and the information of a third party given to it by Transnet in line with the 8 conditions of the POPIA and that it will provide to Transnet satisfactory evidence of these measures whenever called upon to do so by Transnet.

**17. DOMICILIUM CITANDI ET EXECUTANDI**

The parties choose their respective addresses in the heading of this lease agreement as the addresses at which they will accept service of all notices, processes and other documents relating to this lease and any legal proceedings arising here from.

**DATED AT** \_\_\_\_\_ **on this** \_\_\_\_ **day of** \_\_\_\_\_

for TRANSNET SOC Ltd represented by its Pipeline Division (duly authorized)

Who by his signature warrants that he is duly authorized.

AS WITNESS

1. \_\_\_\_\_

2. \_\_\_\_\_

**DATED AT** \_\_\_\_\_ **on this** \_\_\_\_ **day of** \_\_\_\_\_

For...

Who by his signature warrants that he is duly authorized.

AS WITNESS

1. \_\_\_\_\_

2. \_\_\_\_\_