

Annexure 9 – Form of Preferred Bidder Guarantee

Form of Preferred Bidder Guarantee

[To be submitted on the letterhead of the issuing institution]

By: **[insert name of issuer of the Preferred Bidder Guarantee]**

In favour of Transnet National Ports Authority.

Terms with initial capital letters, unless otherwise defined herein, have the meanings given to them in the RFP.

WHEREAS Transnet National Ports Authority ("**TNPA**"), a division of Transnet SOC Ltd has issued a Request for Proposals ("**RFP**") in respect of the Financing, Construction, Operation and Maintenance and Transfer of a Terminal for Bunker and Associated Fuels for the purpose of entering into, *inter alia*, the Terminal Operator Agreement with TNPA;

AND WHEREAS pursuant to the RFP, TNPA has selected **[insert the names of each Member of the Preferred Bidder consortium or the name of the Preferred Bidder]** ("**Preferred Bidder**") as a Preferred Bidder in terms of the RFP for which it submitted a Bid Response;

AND WHEREAS TNPA requires the Bidder to provide and on demand guarantee in favour of TNPA in the amount of One Million Rand (R1 000 000) ("**Guarantee Amount**") to secure certain undertakings or obligations of the Bidder as the Preferred Bidder under the RFP;

AND WHEREAS we, **[insert name of guarantor institution]** ("**Bank / [Insurer (substitute throughout if applicable)]**") have agreed to issue this guarantee to secure such undertakings and obligations of the Preferred Bidder ("**Preferred Bidder Guarantee**").

NOW THEREFORE

1. the Bank, duly represented by _____ being duly authorised to sign this Preferred Bidder Guarantee, hereby irrevocably and unconditionally guarantees and as a primary obligation undertakes to pay TNPA without objection or argument amounts not exceeding in aggregate the Guarantee Amount, such payment(s) to be made by the Bank upon first written demand by TNPA being received at the Bank's counter, situated at [_____] , attention [_____] , declaring that the Preferred Bidder has:

- 1.1. breached any law relating to the RFP or is disqualified from the RFP as a result of its actions or omissions;
- 1.2. failed to extend the term of guarantee after agreeing to TNPA's request to extend the expiry date of the Preferred Bidder Guarantee; and/or

- 1.3. failed to sign the Terminal Operator Agreement within the time period specified in clause 8 (*Timetable of the RFP*) of Part I (*General Requirements, Rules and Provisions*);
 - 1.4. revoked, repudiated or withdrawn its Bid Response.
2. More than one demand may be made under this Preferred Bidder Guarantee, provided that the aggregate amount payable shall not exceed the Guarantee Amount.
 3. Payment of the amounts so demanded will be made without set-off or deduction to TNPA's bank account or to other accounts as TNPA may notify the Bank of in writing.
 4. This Preferred Bidder Guarantee shall be valid and effective from the date of its issue until the earlier of (a) the expiry of the Bid Validity Period (as it may be extended in terms of the RFP); and (b) the date on which the Preferred Bidder complies with the requirements of any protocol issued by TNPA.
 5. The Preferred Bidder Guarantee shall remain valid during the period described above notwithstanding the Bidder's insolvency, winding-up, liquidation, business rescue, dissolution or deregistration, whether provisionally or finally.
 6. Notwithstanding the above provisions, this Preferred Bidder Guarantee shall terminate and be returned to the Bank within 15 (fifteen) Business Days of payment of an amount or amounts which, in aggregate, equal the Guarantee Amount or the expiry of Preferred Bidder Guarantee as set out above.
 7. This Preferred Bidder Guarantee shall be governed by the laws of the Republic of South Africa, and the parties hereto consent and submit for the benefit of TNPA to the non-exclusive jurisdiction of the High Court of South Africa, Gauteng Division, Pretoria.

Signature of Representative

Date: _____

Signature of Representative

Date : _____

