

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

made and entered into by and between

TRANSNET SOC LTD,

acting through its operating division, Transnet Rail Infrastructure Manager (TRIM)

(Registration Number: 1990/000900/30)

and

_____ **[Insert Name of Company or Contracting Party]**

(Registration Number: _____)

(hereinafter referred to as **"The Parties"**)

1. Definition and Interpretation

The following terms shall have the meanings set out below and related expressions shall a corresponding meaning, namely-

- 1.1. **“Affiliate”** means, in relation to any Party, any person Controlled by that Party, or which Controls that Party, or which is Controlled by a person which also controls that Party, in each case, directly or indirectly and from time to time;
- 1.2. **“Agreement”** means the Non-Disclosure Agreement entered into between _____ [Insert name of Company] and TRIM.
- 1.3. **“Companies Act”** means the South African Companies Act No. 71 of 2008 (as amended by the Companies Amendment Act No. 3 of 2011), together with the Companies Regulations 2011, promulgated thereunder, as amended from time to time;
- 1.4. **“Confidential information”** shall, for the purpose of this Agreement include, without limitation, any technical, commercial or scientific information, trade secrets, processes, machinery, designs, drawings, technical specifications, and data in whatever form, disclosed to or assessed by either party during the course of his Relationship with the other party;
- 1.5. **“Control”** has the meaning given to it in terms of section 2(2) of the Companies Act and **“Controlling”** and **“Controlled”** shall be construed accordingly;
- 1.6. **“Disclosing Party”** means the Party which discloses Confidential Information;
- 1.7. **“Effective date”** means the date of signature of the last signing party hereto;
- 1.8. **“Governmental Entity”** means any South African supra-national, national, state, municipal or local government (Including any subdivision, court, administrative agency or commission or authority thereof) or any quasi-governmental or private body exercising any regulatory or other governmental or quasi-governmental authority;
- 1.9. **“Law”** means any law, constitution, treaty, regulation, rule, ordinance, principle of common law, order or decree of any Governmental Entity (including any judicial or administrative Interpretation thereof) in force, binding and enforcement as at the time of entering this agreement;

- 1.10. **“Parties”** means collectively _____ **[Insert name of Company]** and its affiliates and **TRIM** and its affiliates, and **“Party”** shall mean the individual reference to any one of them, as the context requires;
- 1.11. **“Receiving Party”** Party and its affiliates which receive the Confidential Information;
- 1.12. **“Relationship”** means the relationship that exists by virtue of the interaction between the Parties in relation to a potential **“Transport Agreement”** to be concluded.
- 1.13. **“Third Party”** means any party other than the Parties.

2. Introduction

- 2.1. The Parties are entering into this Agreement by virtue of the interaction between the Parties in relation to a potential Services to be concluded, relating to the _____ (the **“Project”**).
- 2.2. The Parties wish to record the terms and conditions upon which **TRIM** and _____ **[Insert name of Company]** shall disclose Confidential Information to each other, which terms and conditions shall constitute a binding and enforceable Agreement between the Parties.

3. The Confidential Information

- 3.1. The Disclosing Party will mark all **“Confidential Information”** to the Receiving Party as **“Confidential”**, and any oral disclosure at meetings, discussions or workshops will be regarded as confidential.

4. Disclosure of Confidential Information

- 4.1. The Disclosing Party shall only disclose the Confidential Information to the Receiving Party to the extent deemed necessary or desirable by the Disclosing Party in its discretion.
- 4.2. The Receiving Party acknowledges that the Confidential Information is a valuable, special and unique asset proprietary to the Disclosing Party.

- 4.3. The Receiving Party agrees that it will not, during or after the course of their Relationship and/or the term of this Agreement as described in Clause 9, disclose the information to any Third Party for any reason or purpose whatsoever without the prior written consent of the Disclosing Party, save in accordance with the provisions of this Agreement.
- 4.4. Notwithstanding anything to the contrary contained in this Agreement the Parties agree that the Confidential Information may be disclosed by the Receiving Party to its professional advisors on a need-to-know basis; provided that that party takes whatever steps are necessary to procure that such professional advisors agree to abide by the terms of this Agreement to prevent the unauthorised disclosure of the Confidential Information to Third Parties. For purposes of this clause, the Receiving Party's professional advisors and employees, directors or managers shall be deemed to be acting, in the event of a breach, as that party's duly authorised agents.
- 4.5. The Receiving Party agrees:
- 4.5.1. not to utilise, exploit or in any other manner whatsoever use the Confidential Information disclosed pursuant to the provisions of this Agreement for any purpose whatsoever without the prior written consent of the Disclosing Party;
- 4.5.2. that the unauthorised disclosure of the Confidential Information to a Third Party may cause irreparable loss, harm and damage to the Disclosing Party.

5. Title

- 5.1. All Confidential Information disclosed by the Disclosing Party to the Receiving Party is acknowledged by the Receiving Party:
- 5.1.1. to be proprietary to the Disclosing Party; and
- 5.1.2. not to confer any rights to the Receiving Party of whatever nature in the Confidential Information.

6. Restrictions on disclosure and use of the Confidential Information

6.1. The Receiving Party undertakes not to use the Confidential Information for any purpose other than:

6.1.1. that for which it is disclosed; and

6.1.2. in accordance with the provisions of this Agreement.

7. Standard of care

The Receiving Party agrees that it shall protect the Confidential Information disclosed pursuant to the provisions of this Agreement using the same standard of care that the Receiving Party applies to safeguard its own proprietary, secret or Confidential Information and that the information shall be stored and handled in such a way as to prevent any unauthorised disclosure thereof.

8. Return of material containing or pertaining to the Confidential Information

8.1. The Disclosing Party may, at any time, request the Receiving Party to return any material containing, pertaining to or relating to Confidential Information disclosed pursuant to the terms of this Agreement and may, in addition request the Receiving Party to furnish a written statement to the effect that, upon such return, the Receiving Party has not retained in its possession, or under its control, either directly or indirectly, any such material.

8.2. As an alternative to the return of the material contemplated in 8.1 above, the Receiving Party shall, at the instance of the Disclosing Party, destroy such material and furnish the Disclosing Party with a written statement to the effect that all such material has been destroyed.

8.3. The Receiving Party shall comply with a request in terms of this clause, within 7 (seven) days of receipt of such a request.

9. Excluded Confidential Information

9.1. The obligations of the Receiving Party pursuant to the provisions of this Agreement shall not apply to any Confidential Information that:

9.1.1. is known to, or in the possession of the Receiving Party prior to disclosure thereof by the Disclosing Party;

- 9.1.2. is or becomes publicly known, otherwise than as a result of a breach of this Agreement by the Receiving Party;
- 9.1.3. is developed independently of the Disclosing Party by the Receiving Party in circumstances that do not amount to a breach of the provisions of this Agreement;
- 9.1.4. is required by Law or by any stock exchange or any Governmental Entity (including any tax authority) having applicable jurisdiction (provided that the Disclosing Party shall, to the extent legally permissible, first inform the other Party of its intention to disclose such information and take into account the reasonable comments of the other Party);
- 9.1.5. disclosure is of Confidential Information which has previously become publicly available other than through that Party's fault (or that of either Party's representatives);
- 9.1.6. is required for the purpose of any legal and administrative proceedings arising out of the Relationship between the parties;
- 9.1.7. is made to any person who is negotiating with such Party for the direct or indirect acquisition of an interest in such Party, provided that the person to whom any disclosure is made in the aforesaid circumstances shall first have undertaken in writing not to divulge such information to any other person and to use it only for the purpose of evaluating the interest in question.
- 9.1.8. is disclosed by the receiving party to satisfy an order of a court of competent jurisdiction or to comply with the provisions of any law or regulation in force from time to time; provided that in these circumstances, the receiving party shall advise the disclosing party to take whatever steps it deems necessary to protect its interests in this regard and provided further that the receiving party will disclose only that portion of the information which it is legally required to disclose and the receiving party will use its reasonable

endeavours to protect the confidentiality of such information to the greatest extent possible in the circumstances;

9.1.9. is disclosed to a third party pursuant to the prior written authorisation of the disclosing party;

9.1.10. is receiving from a third party in circumstances that do not result in a breach of the provisions of this Agreement;

10. Breach

10.1. Without prejudice to the other rights of the Disclosing Party, in the event of any unauthorised disclosure or use of the Confidential Information which is or is likely to constitute a breach of any provision of this Agreement, the Receiving Party shall, at the sole cost of the Receiving Party:

10.1.1. immediately notify the Disclosing Party in writing and take such steps as the Disclosing Party may require in order to remedy or mitigate the effects of such actual or threatened breach; and

10.1.2. use its best commercial endeavours to assist the Disclosing Party in recovering and preventing the use, dissemination, sale or other disposal of such Confidential Information.

10.2. The Parties acknowledge and agree that:

10.2.1. cancellation is an appropriate remedy for breach of this Agreement and this Agreement may only be cancelled or terminated by written agreement between the Parties; and

10.2.2. damages alone may not be an adequate remedy for any breach of the obligations set out in this Agreement and that the remedies of interdict, specific performance and any other equitable relief may be appropriate for any threatened or actual breach of this Agreement. The Disclosing Party will be entitled to apply for such remedy, in addition to any other remedy to which it may be entitled in law (other than the remedy of cancellation).

11. Amendments

No amendment, interpretation or waiver of any of the provisions of this Agreement shall be effective unless reduced in writing and signed by both Parties.

12. Enforcement

The failure by the Disclosing Party to enforce or to require the performance at any time of any of the provisions of this Agreement shall not be construed to be a waiver of such provision, and shall not affect either the validity of this Agreement or any part hereof or the right of the Disclosing Party to enforce the provisions of this Agreement.

13. Headings

The headings of the clauses of this Agreement are used for convenience only and shall not affect the meaning or construction of the contents of this Agreement.

14. Representations & Warranties

14.1. Each Party represents that it has authority to enter into this Agreement and to do all things necessary to procure the fulfilment of its obligations in terms of this Agreement.

14.2. The Disclosing Party warrants that:

14.2.1. the disclosure of the Confidential Information to the Receiving Party will not result in a breach of any other agreement to which it is a party;

14.2.2. it will, to the best of its own knowledge and belief, not infringe the rights of any third party and the Disclosing Party hereby indemnifies and holds the Receiving Party harmless against any liability for third party claims on such a basis.

15. Entire Agreement

This Agreement contains the entire Agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior Agreements between the Parties, whether written or oral, with respect to the subject matter of this Agreement.

16. Governing law

This Agreement and the Relationship of the Parties in connection with the subject matter of this Agreement and each other shall be governed and determined in accordance with the laws of the Republic of South Africa.

17. Domicilium and Postal addresses

17.1. The Parties select as its *domicilium citandi et executandi* the physical addresses appearing in clause 17.2 and for the purposes of giving or sending any notice provided for or required hereunder, or such other addresses as may be substituted by notice given as herein required.

17.2. Any written notice in connection with this Agreement may be addressed to:

TRIM:

Address:

Inyanda House 2

15 Girtton Road

Parktown

2193

Attention: _____

E-Mail: _____

Tel No.: _____

_____ **[Insert name of Company]:**

Address:

Attention: _____

E-mail: _____

Tel No: _____ | M: _____

17.3. Any Party may, by written notice to the other Party, change its *domicilium* address to any other address in South Africa which is not a post office box or *post restante* and/or change the person designated for whose attention such notices or other communications are to be given.

17.4. Any notice given in connection with this Agreement shall, save where a particular form of notice is stipulated, be:

17.4.1. delivered by hand; or

17.4.2. sent by courier; or

17.4.3. sent by e-mail,

to the *domicilium* chosen by the Party concerned.

17.5. A notice given as set out above shall be deemed to have been duly given (unless the contrary is proved):

17.5.1. if delivered by hand, on the date of delivery; or

17.5.2. if sent by courier, on the date of delivery by the courier service concerned; or

17.5.3. If any notice is to be sent by mail, it shall be sent by prepaid registered mail and shall then be deemed until and unless the contrary is proved, to have been received 10 (ten) days after the date of posting; or

17.5.4. if sent by e-mail, on the expiration of 24 (twenty four) hours after the time of transmission.

17.6 The Parties choose their respective physical addresses in clause 17.2 as their respective *domicilia citandi et executandi* at which all documents relating to any legal proceedings to which they are a party may be served.

18. Severability

In the event of any one or more of the provisions of this Agreement being held for any reason to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision was not a part of this Agreement, and the Agreement shall be carried out as nearly as possible in accordance with its original terms and intent.

19. Dispute Resolution

All disputes arising out of or in connection with this Agreement shall be finally resolved in accordance with the rules of the Arbitration Foundation of South Africa (**AFSA**), as amended from time to time, by one or more arbitrators appointed by **AFSA**. The arbitration proceedings shall be conducted in Johannesburg, Republic of South

Africa, in English language, and all documents submitted as evidence in such proceedings shall also be in English language".

20. Counterparts

This Agreement may be executed in multiple counterparts, all of which taken together will constitute one and the same instrument binding on all the Parties. The Parties may execute and deliver this Agreement by email counterparts, in which case they will deliver the original signature counterpart(s) promptly thereafter.

Signed at _____ this ____ day of _____ 2024

AS WITNESS:

Name and Surname:

TRIM

Full Name:

Capacity:

Signed at _____ this ____ day of _____ 2024

AS WITNESS:

Name and Surname:

[Insert name of Company]

Full Name:

Capacity:

[Insert name of Company]

Full Name:

Capacity: