

**ACCESS AGREEMENT**  
**ENTERED INTO**  
**AND CONCLUDED BETWEEN**  
**TRANSNET LIMITED**  
**TRADING AS TRANSNET FREIGHT RAIL**  
**(“Transnet Freight Rail”)**

**AND**

---

**(“the Operator”)**

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# ACCESS AGREEMENT

## 1 PARTIES

1.1 The parties to this agreement are:

1.1.1 **TRANSNET LIMITED** trading as **Transnet Freight Rail** ("**Transnet Freight Rail**"); and

1.1.2 [ ] ("**the Operator**").

1.2 The parties agree as set out below.

## 2 INTERPRETATION

2.1 In this agreement, unless inconsistent with or otherwise indicated by the context -

2.1.1 "**Access**" means the granting of access by Transnet Freight Rail to the Operator to use the Transnet Freight Rail Network for the Permitted Purposes subject to the terms and conditions of this Agreement;

2.1.2 "**Access Condition**" means the specific suspensive conditions contained in 6.1 to 6.4 to be fulfilled prior to the granting of access to the Operator following an access request from time to time;

2.1.3 "**Access Request**" means a notice given by the Operator to obtain Access as contemplated in 6.1 to 6.4;

2.1.4 "**Accident**" means an unplanned event that results in harm to people or damage to property or the environment;

2.1.5 "**the Act**" means the National Railway Safety Regulator Act No.16 of 2002, including the Regulations, as amended from time to time. All terms defined in the Act will have a corresponding meaning in

this Agreement. In the event of a conflict between any term in the Act and this Agreement, the meanings contained in the Act shall prevail;

- 2.1.6        **“Accredited Training Courses”** means training courses applicable to specific tasks which have been accredited by TETA (Transport Education Training Authority);
- 2.1.7        **“the/this Agreement”** means this Access and Use Agreement and all Appendices hereto and any supplementary agreement or schedule as contemplated in terms of this Agreement;
- 2.1.8        **“Agreed Services”** means such terms and conditions applicable on a Scheduled Railway Operation where Access is granted to the Operator by Transnet Freight Rail in terms of this Agreement wherein the details of the Agreed Services to be provided are set out, including costs and Tariffs, deliverables, method of payment, reporting, period of agreement and nominated persons from both Parties responsible for management of the Agreed Services as more fully set out in **Appendix 9** be initialled by the Parties for identification purposes and annexed to this Agreement from time to time;
- 2.1.9        **“Appendix”** means all Appendices to this agreement from time to time;
- 2.1.10       **“Audit Requirements and Risk Assessments”** means the Audit Requirements and Risk Assessments contained in **Appendix 1** hereto;
- 2.1.11       **“Business Day”** means a day which is not a Saturday, Sunday or official public holiday in the Republic of South Africa;
- 2.1.12       **“Certification”** means the process of declaring an employee Competent to perform his tasks;

- 2.1.13        **“Competent”** means the Certification of an employee by means of an Accredited Training Course relating to a specific task correctly;
- 2.1.14        **“Contingency Plans”** means contingency plans as contemplated in clause 11 below, as amended from time to time;
- 2.1.15        **“Dangerous Goods”** means the commodities, substances and goods listed in the standard specification of the South African Bureau of Standards SABS 0228 “the identification and classification of dangerous substances and goods”;
- 2.1.16        **“Effective Date”** means the date on which this Agreement becomes unconditional by reason of the fulfilment of the Suspensive Conditions or such other date as the Parties may agree to in writing;
- 2.1.17        **“Incident”** means an unplanned event, which, under different circumstances, could have resulted in an Accident;
- 2.1.18        **“JIC”** means the Joint Interface Committee consisting of persons delegated by Metrorail, Transnet Freight Rail and the Operator which committee will be responsible for the management of this Agreement;
- 2.1.19        **“Law”** means any law of general application and includes the common law and any statute, constitution, decree, treaty, regulation, directive, ordinance, by-law, order or any other enactment of legislative measure of government (including local and provincial government) statutory or regulatory body which has the force of law;
- 2.1.20        **“Network”** means the system of railway infrastructure elements comprising track, civil infrastructure, Train control systems and electrical traction infrastructure which constitutes running lines, railway yards, sidings and private sidings and any other matter that may be described in terms of the Act;

- 2.1.21        “**NOC**” means the National Operations Centre of Transnet Freight Rail Services situated in Johannesburg which is responsible for the design, planning and execution of the Integrated Train Plan (“ITP”) as well as the monitoring and reporting of railway occurrences on a daily basis;
- 2.1.22        “**Occurrence**” means an Accident or Incident, including a railway occurrence, to be managed by the safety management system as contemplated in the Regulations;
- 2.1.23        “**Pilot**” means a Competent Metrorail or Transnet Freight Rail section manager or Train driver, with the necessary road knowledge of a particular section of a Railway, accompanying a Train driver of the Operator on the footplate of a Train that assist the Train driver with knowledge of the section they are traversing on a Scheduled Railway Operation, without having any responsibilities or duties whatsoever in respect of the driver and locomotive of such Scheduled Railway Operation;
- 2.1.24        “**RIC**” means the Rail Incident Commander, namely either a Metrorail or Transnet Freight Rail appointed employee to take charge of clear-up operations at the scene of occurrences, depending on the asset owner. This excludes the person first on the scene of the occurrence who must take charge until relieved by the relevant RIC;
- 2.1.25        “**RIC Office**” means the facility established by the RIC from which clearing up operations will be managed and controlled;
- 2.1.26        “**Rolling Stock**” means a vehicle that is able to operate on a railway, irrespective of its capability of independent motion;
- 2.1.27        “**the Operator**” means [\_\_\_\_\_], [registration number [\_\_\_\_/\_\_\_\_\_/\_\_\_\_], a private company duly incorporated in accordance with the laws of the Republic of South

Africa] [a Club or Association], herein represented by  
[\_\_\_\_\_], duly authorised;

2.1.28 “**Parties**” means the parties to this Agreement and any reference to  
“**Party**” shall mean any one of them;

2.1.29 “**Permitted Purposes**” means the purposes for which Access is  
granted by Transnet Freight Rail to the Operator, namely the  
transportation of passengers only and not any freight, excluding  
water and coal required for own consumption within the time  
schedules and operational times as set out in the Agreed Services.  
The conducting of “run past” activities (where an event is planned  
and passengers may disembark safely from a Train and then runs  
past the passengers for photographic purposes) shall not be  
allowed on the main lines of the Transnet Freight Rail Network. For  
the sake of clarity “run past activities” shall only be allowed at a  
permitted location as authorised on the train plan (YQ special  
notice), provided that these activities do not impede negatively on  
the running time of the train;

2.1.30 “**the Regulations**” means the Railway Safety Management  
Regulations and, 2004 published under GNR.866 on 20 July 2004  
and all further regulations promulgated in terms of the Act from time  
to time;

2.1.31 “**the Regulator**” means the Railway Safety Regulator established in  
terms of section 4 of the Act;

2.1.32 “**Safety Permit**” means a safety permit required in terms of section  
22 of the Act as issued by the chief executive officer of the  
Regulator in terms of sections 23 and 24 of the Act;

2.1.33 “**SANS 3000 Standard**” means the South African National  
Standard, Railway Safety Management (SANS 3000-1:2005  
(Edition 1)), as published and as amended from time to time by



Standards South Africa an extract of which is contained in **Appendix 4**;

- 2.1.34        **"SARCC"** means the South African Rail Commuter Corporation Limited a network operator and station operator as envisaged in the Act. SARCC's Train Operator is its division Metrorail and a reference in this Agreement to either "Metrorail" or "SARCC" will include a reference to the other;
- 2.1.35        **"the SARCC Network"** means the Network owned by SARCC and operated by Metrorail or its contractors as more fully described in **Appendix 7** hereto;
- 2.1.36        **"Scheduled Railway Operation"** means a Train consisting of the Operator's own Rolling Stock being scheduled by the Operator on a railway network, which is owned and managed by either Transnet Freight Rail or SARCC, along an agreed route as agreed upon in writing with Transnet Freight Rail to be operated subject to the terms and conditions contained in the Agreed Services. Access to Transnet Freight Rail mainlines shall be limited to certain main lines only and on condition that the train (steam locomotive and passenger coaches) is hauled by a diesel or electric locomotive. For the sake of clarity, the operator acknowledges and understands that it will not be allowed to operate its train with a steam locomotive(s) whilst traversing Transnet Freight Rail's mainlines;
- 2.1.37        **"Shunting"** means the breaking up, building, placement and collection of Rolling Stock, the brake testing of Rolling Stock and shunting out of non-Railway Worthy wagons at Transnet Freight Rail Yards in respect of the Operator's Rolling Stock;
- 2.1.38        **"Signature Date"** means the date on which this Agreement is last signed by the Parties;

- 2.1.39        **“Station”** means a railway station or a railway passenger terminal including without limitation stations owned by SARCC, stations owned by Transnet Freight Rail but solely used by Metrorail and stations used by both such entities as listed in **Appendix 6**;
- 2.1.40        **“Suspensive Conditions”** means the suspensive conditions as contemplated in clause 5;
- 2.1.41        **“Tariffs”** means the tariffs being charged by Transnet Freight Rail for the Agreed Services as set out in **Appendix 5**;
- 2.1.42        **“Train”** means a set or formation of Rolling Stock being used for purposes of a Scheduled Railway Operation;
- 2.1.43        **“Train Notice”** means a notice (“YQ”) to be given authorising the movement of a Scheduled Railway Operation as more fully described in **Appendix 3**;
- 2.1.44        **“Transnet Freight Rail”** means Transnet Limited trading as Transnet Freight Rail, registration number 1990/000900/06, a public company duly incorporated in accordance with the laws of the Republic of South Africa, herein represented by its Chief Operating Officer, duly authorised;
- 2.1.45        **“The Transnet Freight Rail Network”** means the Network operated by Transnet Freight Rail or its contractors as more fully described in **Appendix 8** hereto;
- 2.1.46        **“Transnet Freight Rail Yard”** means the designated arrivals and departure railway lines to which the Operator requires Access at the departure and arrival points where the Operator’s rolling stock arrive at or depart from in respect of a Scheduled Railway Operation;

- 2.1.47        **“Train Control Officer”** means a Competent employee authorised by Transnet Freight Rail who is responsible for the authorisation of movement on the Network;
- 2.1.48        **“Service Worthiness”** means infrastructure that is technically sound, with or without prescribed conditions or restrictions, and in a condition to ensure safe and efficient Rolling Stock or Shunting movements;
- 2.1.49        **“Train Worthiness”** means Rolling Stock which meet the following standards:
- 2.1.49.1        be technically sound with or without prescribed conditions or restrictions in respect thereof;
- 2.1.49.2        any conditions or restrictions imposed on one vehicle in a consist, for whatever reason, applies to the whole consist; and
- 2.1.49.3        all vehicle loads shall conform to loading specifications;
- 2.1.50        **“writing”** (or words of similar meaning) means legible writing and in English and includes any form of electronic communication contemplated in the Electronic Communications and Transactions Act, 25 of 2002;
- 2.1.51        any reference to –
- 2.1.51.1        the singular includes the plural and *vice versa*;
- 2.1.51.2        natural persons includes juristic persons and *vice versa*;
- 2.1.51.3        any one sex or gender includes the other sexes or genders, as the case may be;

- 2.1.51.4 any law means the relevant enactment or legislative measure as at the date of signature of this agreement and as amended or re-enacted from time to time.
- 2.2 The words “**shall**” and “**will**” and “**must**” used in the context of any obligation or restriction imposed on a party have the same meaning.
- 2.3 The clause headings in this agreement have been inserted for convenience only and shall not be taken into account in its interpretation.
- 2.4 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 the term has not been defined in this interpretation clause.
- 2.5 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, effect shall be given to that provision as if it were a substantive clause in the body of the agreement, notwithstanding that it is only contained in the interpretation clause.
- 2.6 If any period is referred to in this agreement by way of a reference to a number of days or weeks or months or other intervals, the period shall be reckoned exclusively of the 1<sup>st</sup> (first) day and inclusively of the last day of the relevant interval, 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.
- 2.7 If the due date for performance of any obligation in terms of this agreement is a day which is not a business day then (unless otherwise stipulated) the due date for performance of the relevant obligation shall be the immediately preceding business day.

- 2.8 If any obligation or act is required to be performed on a particular day it shall be performed (unless otherwise stipulated) by 16h00 (local time at the place where the obligation or act is required to be performed) on that day.
- 2.9 This agreement shall be governed, interpreted and enforced in accordance with the laws of the Republic of South Africa from time to time

### **3 RECORDAL AND BACKGROUND**

- 3.1 Transnet Freight Rail is a Network operator, Train operator and station operator of the Transnet Freight Rail Network and Station platform facilities and has the sole right of granting Access to its Network.
- 3.2 SARCC is a Network operator, Train operator and station operator of the SARCC Network and Station platform facilities and has the sole right of granting Access to its Network.
- 3.3 The Operator is a Train operator as envisaged in the Act and wishes to use the Transnet Freight Rail Network solely for the Permitted Purposes.
- 3.4 Transnet Freight Rail operates freight Trains and Metro Trains on the Transnet Freight Rail Network and Metrorail operates commuter Train services and Transnet Freight Rail Trains on the SARCC Network and all the related operational interface activities are managed by virtue of an Interface Agreement between Transnet Freight Rail and SARCC. Access agreements have also been concluded between the Operator and Metrorail and/or SARCC.
- 3.5 In accordance with the requirements of the Act and the Regulations, a Train operator shall conclude agreements relating to the access and usage of networks and stations with the relevant network and station operators **prior to applying for a Safety Permit** in terms of section 23

of the Act. This Agreement is concluded in compliance with the aforesaid requirements as more fully set out in Regulation 4(3) of the Regulations.

- 3.6 This Agreement governs the operations and working methods and procedures for the governance of the operational relationship between the Parties for purposes of the Agreed Services on the Transnet Freight Rail Network in order to ensure safe railway operations.
- 3.7 The Access rights granted to the Operator is subject to the terms and conditions of this Agreement, it being acknowledged by the Operator that the Access rights is a privilege which:
  - 3.7.1 will only be granted for purposes of a Scheduled Railway Operation subject to compliance by the Operator of all its obligations in terms of this Agreement and more specifically the procedures to apply for a Scheduled Railway Operation as set out in clause 6 below;
  - 3.7.2 will be granted for a Scheduled Railway Operation in the sole discretion of Transnet Freight Rail subject to its own commercial and operational requirements of the Transnet Freight Rail and SARCC Networks.
- 3.8 Representatives of Transnet Freight Rail and the Operator will introduce this Agreement by means of information and awareness sessions on all the regions in Metrorail and Transnet Freight Rail where applicable in an agreed format.
- 3.9 Leasing of Rolling Stock and/or maintenance facilities for the Operator's home depot shall be governed by a separate agreement to be concluded with Transnet Freight Rail.
- 3.10 The fact that Rolling Stock and/or maintenance facilities are leased and/or made available to the Operator by Transnet Freight Rail shall not automatically grant access to the Operator to the Transnet Freight Rail Network.

- 3.11 Transnet Freight Rail agrees to grant Access to the Operator subject to the terms and conditions contained in this Agreement.

## **4 OBJECTIVE OF AGREEMENT**

- 4.1 The objective of this Agreement is to manage and co-ordinate the planning and execution of safe railway operation on both Transnet Freight Rail and SARCC Networks between Transnet Freight Rail and the Operator as and when Access is granted in terms of this Agreement. This Agreement will be co-ordinated, implemented and managed by the signatories or their designated representative.
- 4.2 The Parties will operate their Rolling Stock on the Networks according to the following standards, copies of which have been supplied by Transnet Freight Rail and SARCC to the Operator and the terms and conditions of which are incorporated by way of reference and the Operator agrees to be bound to in terms of this Agreement:
- 4.2.1 Principles of Safe Movement on Rail (POSMOR);
  - 4.2.2 Transnet Freight Rail and Metrorail Operating Rules, Regulations and Instructions (all as amended from time to time); and
  - 4.2.3 any other applicable local operating instructions given by Transnet Freight Rail from time to time.

## **5 SUSPENSIVE CONDITIONS**

- 5.1 This agreement is subject to the fulfillment of the Suspensive Conditions that the Operator:
- 5.1.1 is in possession of a valid Safety Permit and a certified copy of both sides of such Safety Permit reflecting all applicable conditions thereon is supplied to Freight Rail;

- 5.1.2 supplies to Transnet Freight Rail all required information and complies with all the terms and conditions as set out in **Appendix 1** (Audit Requirements and Risk Assessment);
- 5.1.3 completes and supplies to Transnet Freight Rail the Checklist for Act 85 annexed hereto as **Appendix 2**;
- 5.1.4 supplies proof to Transnet Freight Rail of insurance cover as contemplated in clause 15.5 which is in Transnet Freight Rail's sole discretion and assessment adequate for purposes of this Agreement.
- 5.2 If any one or all of the Suspensive Conditions have not been fulfilled, then this Agreement will automatically fail and be of no further force or effect.
- 5.3 The Operator will use its best endeavours to procure the timeous fulfilment of the Suspensive Conditions.

## **6 ACCESS REQUEST AND PROCEDURES**

- 6.1 The Operator shall after the fulfilment (or waiver as the case may be) of the Suspensive Conditions as referred to in clause 5.1 be entitled to request Access from Transnet Freight Rail in terms of the following procedure:
  - 6.1.1 the Operator shall deliver an Access Request to Transnet Freight Rail and which Access Request shall be delivered to the Duty Manager of NOC not less than 28 (twenty eight) days prior to the date for the intended Access;
  - 6.1.2 the Operator may only request Access for a Permitted Purpose;
  - 6.1.3 the Access Request shall include all relevant information of the intended Scheduled Railway Operation, including without limitation the relevant dates, times, route, Rolling Stock and such other



reasonable information to enable Transnet Freight Rail to take an informed decision about Access;

6.1.4 the Access Request shall be supported by all relevant documentation including proof of the fulfilment of the Access Conditions referred to in clauses 6.5.1, 6.5.2 and 6.5.3 below.

6.2 If Transnet Freight Rail receives an Access Request which is valid and compliant in terms of all the provisions contained in 6.1.1 and the remainder of this Agreement, it shall in its sole discretion decide if Access will be granted. The Operator acknowledges that if an Access Request is given in respect of:

6.2.1 a main line being used that final approval thereof by Transnet Freight Rail may be given up to 7 (seven) Business Days prior to the planned date of the intended Scheduled Railway Operation; and

6.2.2 a line which is not being used as a main line that final approval thereof by Transnet Freight Rail may be given up to 14 (fourteen) Business Days prior to the planned date of the intended Scheduled Railway Operation.

6.3 The Operator shall at its own risk and peril market and or sell tickets for an intended Scheduled Railway Operation prior to approval thereof and will have no claim against Transnet Freight Rail if Access is not granted in terms of the provisions of this clause 6.

6.4 The Parties shall thereafter prepare an Appendix (to be appended to this Agreement as **Appendix 9.1, 9.2**, etc.) setting out all relevant information of the Access and Agreed Services as well as all costs, Tariffs and expenses to be paid to Transnet Freight Rail for such Agreed Services as more fully set out in clause 7 below.

6.5 Notwithstanding anything to the contrary contained in this Agreement, Transnet Freight Rail shall not be obliged to grant Access to the

Operator and issue a Train Notice in respect of the Agreed Services unless the following Access Conditions have been fulfilled (or waived by Transnet Freight Rail in terms of clause 6.6 below):

- 6.5.1 the supply to Transnet Freight Rail of sufficient proof that the Operator has a valid Safety Permit and complies with all conditions imposed by the Regulator in terms thereof (if applicable) as well as proof of appointment as Train operator and Station operator;
- 6.5.2 the supply to Transnet Freight Rail of sufficient proof that the Operator has sufficient insurance cover which is in Transnet Freight Rail's sole discretion and assessment adequate for purposes of the intended Scheduled Railway Operation;
- 6.5.3 the actual receipt by Transnet Freight Rail of all amounts due in respect of the Agreed Services as more fully set out in **Appendix 9** by not later than 7 (seven) Business Days prior to the intended Scheduled Railway Operation;
- 6.5.4 the supply to Transnet Freight Rail the written confirmation given by SARCC that the Scheduled Railway Operation or the ad hoc railway operation have been approved by SARCC in respect of the use of the SARCC Network (in so far as it may be applicable).
- 6.6 The Access Conditions have been inserted into this Agreement for the benefit of Transnet Freight Rail and Transnet Freight Rail may accordingly waive such Access Conditions by delivering a written notice of such waiver to the Operator at any time.

## **7 ACCESS TERMS AND CONDITIONS**

- 7.1 Access to the Transnet Freight Rail network will be as described in **Appendix 9** and as negotiated and agreed upon in writing between the Parties.

- 7.2 The range of the Access shall be as described in **Appendix 9**, after prior inspection and assessment by the Operator and finding it to be safe and suitable for steam and other Train operations subject to fire-risk level.
- 7.3 The Operator also undertakes and agrees that all Transnet Freight Rail Trains and Metrorail Trains take precedence over any Trains operated by the Operator.
- 7.4 The Operator acknowledges and accepts that Transnet Freight Rail does not have personnel at certain Stations as will be fully set out and described in **Appendix 9** and the Operator will be obliged to provide any services at such Stations at its own cost, expense and risk.
- 7.5 The Operator acknowledges and accepts that SARCC no longer maintains the railway reserve to suit steam traction with the result that combustible vegetation proliferates on certain railway lines right up to the railway track. The Operator fully realises the serious fire risk that this poses for coal fired steam locomotives. This Agreement will be terminated immediately with written notice from Transnet Freight rail in the event of the Operator being proved negligent in the case of a fire.
- 7.6 On certain railway lines, which are no longer frequented by passenger Trains, the encroachment of bushes or trees into the railway reserve is also evident in places. Allowing passenger Trains over these "non-passenger" lines may be risky for passengers who lean out of windows. The Operator accepts therefore, that passenger Trains will not be allowed on such lines, unless the Operator carries the cost of repairing the right of way on such lines, safe for passenger Trains. Such repairs shall be done at the sole cost and expense of the Operator upon such terms and conditions and standards as agreed upon with the relevant owner of the railway line in question. The Operator indemnifies and holds Transnet Freight Rail Services harmless against any claim by any third party in respect of such repair costs and expenses.

- 7.7 Any derailment or Occurrence involving the Operator Rolling stock while on the Transnet Freight Rail or SARCC Networks will be managed and/or cleared by Transnet Freight Rail according to the Transnet Freight Rail and Metrorail Contingency Plans for the account of the Operator which was caused by the negligence of the Operator, which includes without limitation the lack of maintenance of the Operator's Rolling Stock. The operator shall be responsible to arrange medical assistance for injured passengers and to arrange alternative transport for other passengers.
- 7.8 The Parties shall make all reasonable efforts to ensure that they achieve efficient Access and efficient and safe operations upon access in order to give effect to the spirit and intent of this Agreement.
- 7.9 **Appendix 9** shall also include all agreed upon pricing, expenses and costs payable to Transnet Freight Rail for the Scheduled Railway Operation.
- 7.10 The Operator's operations shall be in possession of and comply with all relevant safety and operating instructions and regulations pertaining to a particular railway line it operates on.
- 7.11 The Operator's Trains shall operate in strict accordance with the agreed schedules and Train Notices applicable to the occasion as more fully set out in **Appendices 3 and 9**.
- 7.12 Transnet Freight Rail shall
- 7.12.1 timeously give the Operator notice of known circumstances of events with regard to any known Metrorail circumstances or events which may prevent adherence to the agreed schedules, such as engineering work, occupations, Train failures, changes in maintenance regimes and Occurrences;

- 7.12.2 give notice to the Operator and allow sufficient time for discussion regarding changes to procedural issues and other areas of mutual concern.
- 7.13 The Safety Interface between Transnet Freight Rail and the Operator on the Transnet Freight Rail and SARCC Networks railway lines will be conducted in terms of the Safety Interface as set out in **Appendix 4** (SANS 3000 Standard).
- 7.14 If required, a qualified Transnet Freight Rail Pilot with the necessary road knowledge will accompany the Train being used for the Scheduled Railway Operation. No more than four (4) persons, including the Pilot, will be allowed on the footplate for the duration of the journey. If a Pilot is not required, only the Train driver who is Certified for the road on the particular line and his Train assistant (fireman) will be allowed on the footplate. A third person may only be allowed on the footplate of a steam locomotive for training purposes when a Pilot is not required. The other persons on the footplate must be in possession of a valid footplate permit. It is specifically recorded that the Pilot shall not be regarded for the aforesaid purposes as an employee or agent of Transnet Freight Rail and shall be under the control and supervision of the Operator where the Operator shall take full responsibility for the Pilot and Transnet Freight Rail shall not be liable for any acts or omissions of the Pilot and the Operator shall have no claim against Transnet Freight Rail in this regard. The Pilot shall, however, be in control of a train on a main line and Transnet Freight Rail shall take responsibility for the Pilot at such times.
- 7.15 The following general Access Conditions will apply to a Scheduled Railway Operation:
- 7.15.1 detonators and points keys required for the trip will be under control of the Operator, which will be supplied by Transnet Freight Rail, the costs of which will be borne by the Operator;

- 7.15.2 a maximum speed limit of 60 km per hour for the entire route will apply, subject to lesser section speed limits on the railway lines being adhered to and applicable to various types of Rolling Stock (e.g. wooden coaches). Transnet Freight Rail and/or Metrorail will do speed monitoring from time-to-time;
- 7.15.3 steam locomotives used by the Operator shall only operate tender first in unavoidable circumstances. All steam locomotives will be limited to a maximum of 30 km per hour tender first with the exception of class 24 and 25NC limited to 40 km per hour tender first and the Garret running either direction shall be limited to 60 Km per hour as contemplated in 7.15.2;
- 7.15.4 steam trains will not be permitted to operate on mainlines and only during hours of daylight only (from sunrise to sunset), but should evening or night operation be necessitated by operational factors beyond the control of the Operator, such operation may be permitted in exceptional circumstances only, and provided appropriate safety precautions as stipulated in **Appendix 4** are observed. The Transnet Freight Rail NOC can only grant such permission. Should the Operator in its Access request require operating before sunrise or after sunset, Transnet Freight Rail may in its sole discretion consider the said request;
- 7.15.5 wooden-bodied coaching Rolling Stock may be utilized on Trains for special occasions only. In such an event the Train will be subject to a speed restriction of 50 km per hour. Wooden-bodied coaching Rolling Stock shall not be placed between steel Rolling Stock and shall be marshalled to the rear of the Train Such operation may be permitted in exceptional circumstances only, and provided appropriate safety precautions are observed by the Operator. The Transnet Freight Rail NOC can only grant such permission and agree to higher speed limits subject to the relevant and applicable section speed limits;

- 7.15.6 the Operator shall within 72 (seventy two) hours of completion of the trip, submit a detailed Trip Report to the appropriate authority within Transnet Freight Rail; namely the NOC Duty manager Tel: (011) 544 9094 / 544 9257 (or such other contact numbers as advised in writing to the operator by Transnet Freight Rail) who will provide a copy to Metrorail on request;
- 7.15.7 all Occurrences on Transnet Freight Rail and SARCC Networks shall immediately be reported by the operator, at the time of the Occurrence, to the NOC Duty Manager (as contemplated in 7.15.6) and relevant local Metrorail Control Centres, who in turn will report the Occurrence to the Railway Safety Regulator, as required and must be confirmed in writing on the Trip Report;
- 7.15.8 the Operator shall at all times comply with Occurrence reporting procedures, as required by the Occupational Health and Safety Act, (Act 85 of 1993) as well as the Act.
- 7.16 In view of the potentially serious line side fire risk, resulting from steam locomotive operations, specific fire protection measures will be taken by the Operator where authorised to do so and upon such conditions as imposed by Transnet Freight Rail as follows:
- 7.16.1 an environmental risk assessment according to **Appendix 1** must be undertaken for the relevant sections over which a steam Train will run. The validity of such a risk assessment will be in force for 14 (fourteen) days unless clause 7.14.4 is applicable;
- 7.16.2 the Operator must ensure that fire protection measures are implemented and furnish conformation that their personnel have received adequate fire-fighting training. Comprehensive fire-fighting equipment, including water, a water pump and fire hoses, must be carried on the Train on the basis that the Operator shall at all times have sufficient water to operate a locomotive and to sufficiently address fire risks;

- 7.16.3 liaison (where applicable and possible) with potentially affected parties e.g. local Farmer's Association, landowners and Emergency Services, etc.;
- 7.16.4 the Operator will not run coal fired steam locomotives during excessively windy and/or dry conditions or where a fire hazard warning was issued by the Weather Bureau for a specific day. In such an event Transnet Freight Rail will not issue a Train Notice for the Scheduled Railway Operation.
- 7.17 Access to Transnet Freight Rail mainlines shall be limited to certain main lines only and on condition that the train (steam locomotive and passenger coaches) is hauled by a diesel or electric locomotive. For the sake of clarity, the operator acknowledges and understands that it will not be allowed to operate its train with a steam locomotive(s) whilst traversing Transnet Freight Rail's mainlines.

## **8 OTHER OBLIGATIONS OF THE OPERATOR**

- 8.1 The Operator accepts full responsibility for the safe operation of steam or other locomotives, Rolling Stock, equipment and personnel used by the Operator for Scheduled Railway Operation purposes and shall ensure that it meets the following requirements:
- 8.1.1 a Train driver shall be trained, qualified and Certified by the Operator as Competent to operate the specific class of locomotive, over a specific section of line, for a specific type of Train;
- 8.1.2 a Train driver's assistant (fireman) shall be trained, qualified and Certified by the Operator as Competent to undertake the relevant duties;
- 8.1.3 a Train safety officer shall be trained, qualified and Certified by the Operator as Competent to undertake the relevant duties;



- 8.1.4 coach controllers in each coach of the Train shall be trained and qualified by The Operator as Competent to undertake the relevant duties.
- 8.2 When steam locomotives and Rolling Stock will be used the Operator will ensure that the required certificates with regards to Service Worthiness are in accordance with SARCC and Transnet Freight Rail standards.
- 8.3 The Operator's Rolling Stock shall be operated in strict accordance with the relevant Transnet Freight Rail and Metrorail Train Notices which shall be made available not less than 72 (seventy two) hours before the Train's scheduled departure time.
- 8.4 The image of Transnet Freight Rail and/or HRASA shall not be tarnished or brought into disrepute through inappropriate and/or unprofessional and/or related activities by the Operator.
- 8.5 No locomotive, or combination of locomotives, shall be allowed to haul a Train of more than 18 (eighteen) vehicles, provided that the capacity of the locomotive(s) can haul the number of vehicles and has the required braking and train handling capacities, unless the prior written consent of Transnet Freight Rail was given thereto.
- 8.6 All the Operator's Rolling Stock shall have a valid weighbridge certificate, as a requirement for entry onto the Transnet Freight Rail Network. The Operator will be allowed a 12 (twelve) month period after the Signature Date to reach full compliance with the locomotive weighing requirement.
- 8.7 The civil engineering Certification by Transnet Freight Rail Infrastructure (Maintenance) staff and/or SARCC where applicable (the contact details of which shall be supplied by the NOC Duty Manager to the Operator from time to time and Transnet Freight rail shall use its best endeavours to facilitate such Certification), for the safe operation of Rolling Stock

over certain bridges and lines is mandatory. Rolling Stock will not be allowed to run unless written confirmation is given to the Operator that the envisaged route is safe for the passage of a passenger Train and in the case where the journey includes the SARCC Network, Metrorail must also provide its certification.

- 8.8 The Operator shall, at own cost and expense, ensure that the entire Train including the locomotive and Train crew of any particular Train, are provided with effective, suitable and reliable means of communication with each other and with the appropriate emergency services and local Train Control Officers of Transnet Freight Rail and Metrorail. The Operator acknowledges that arrangements for Train control and operating purposes, including any special authority, will only be allowed where voice logging is possible and that this arrangement also applies to SARCC Networks.
- 8.9 A passenger Train operated by the Operator shall be:
- 8.9.1 accompanied by at least two people with recognised and valid first aid qualifications;
  - 8.9.2 provided with at least two suitable and approved first aid boxes and fire fighting equipment
  - 8.9.3 each coach shall be fitted with an appropriate fire extinguisher and Train personnel to handle fire fighting equipment.
- 8.10 The Train shall be accompanied by a fully qualified and Competent Train Safety Officer (TSO) as well as a Train Manager. The TSO and the Train Manager are two different people, and each must be clearly and easily identified with their roles, by wearing an appropriate item of dress for this purpose. The Operator warrants that all such Competent persons shall at all times fully qualified for the said purposes.

- 8.11 Authority is vested in the TSO to prohibit movement of the Train if he has good cause to believe that the safety of the Train and/or public is at risk.
- 8.12 In the event that the Rolling Stock and/or crews of the Operator should fail to meet the standards required for a particular duty, Transnet Freight Rail reserves the right to recover all related costs from the Operator resulting from an Occurrence.
- 8.13 The attaching of any materials, banners, flags, etc. to the sides of the Rolling Stock, is prohibited but a locomotive headboard or banner shall be permissible, subject to it being firmly fixed to the Rolling Stock and not creating a safety or fire risk and in particular with due consideration of the profile or structural gauge of the locomotive and infrastructure.
- 8.14 The hours of duty of the Operator's crews, calculated from signing on duty to signing off duty, shall comply with the Basic Conditions of Employment Act (Act 75 of 1997) (BCEA) and all other applicable legislation.
- 8.15 The Operator shall have agreements with its Train crews and/or staff for the right at any time for Transnet Freight Rail to test its Train crews and/or staff for substance abuse, without the need to give any advanced notice of such intention.
- 8.16 The Operator acknowledges and agrees that Transnet Freight Rail or SARCC may remove the Operator's Train drivers or fireman from normal duties if suspected of any violation of any Transnet Freight Rail and SARCC standards where applicable.
- 8.17 The Operator will provide at its own cost, coal, water, lubrication and other support facilities including fire protection for steam locomotives at the start of every Scheduled Railway Operation and also en route and at terminating points.

- 8.18 The Operator will ensure that arrangements are made for the cleaning of steam locomotives' fires only in designated places which are far removed from overhead electric power lines and not on wooden sleepers anywhere in a section, and will ensure the disposal of ash at own cost.
- 8.19 The Operator will ensure the hygienic disposal in the prescribed manner of all refuse and domestic and human waste resulting from the use of the Operator's rolling stock by passengers and personnel. This undertaking will also include the use of any Stations by the Operator and its passengers.

## **9 SAFETY OBLIGATIONS OF THE OPERATOR**

- 9.1 The Operator shall not be exempt from any Law imposing duties or obligations on it as the Train operator or affecting the use of the Transnet Freight Rail Network and/or the SARCC Network, infrastructure and facilities.
- 9.2 The Operator undertakes to carry out all its obligations in accordance with the Occupational Health and Safety Act, (Act 85 of 1993) the Act as well as any other relevant Laws.
- 9.3 The Operator shall not contravene or permit the contravention of any Law that Transnet Freight Rail is required to observe resulting from the Transnet Freight Rail Network and the SARCC Network.
- 9.4 Transnet Freight Rail will not be an intermediary between the Operator and the National Department of Labour and/or Transport or any other Government Department and/or SARCC.
- 9.5 The Operator shall be obliged to use conditions of carriage, in ticket or other form and shall be completed between a passenger and the Operator. These conditions shall clearly state that Transnet Freight Rail and/or SARCC is not the Train operator and Transnet Freight Rail and SARCC must approve the wording of such contracts of carriage.

- 9.6 The Operator shall not cede, delegate, assign, dispose of or in any way transfer any of its rights or obligations in terms of his Agreement.
- 9.7 The parties agree that interface between the Operator and Transnet Freight Rail will be conducted in the operating framework of Transnet Freight Rail in terms of the interface procedure set out in **Appendix 4**.
- 9.8 The operational working on the Transnet Freight Rail Network will be conducted under the control systems of either Metrorail or Transnet Freight Rail as and when applicable.
- 9.9 Details of the operational working on the Railway Line are set out in **Appendix 9** hereto, which will include without limitation requirements on who must be contacted and how and when Access will be given.
- 9.10 The Operator or Transnet Freight Rail will undertake all Shunting to be conducted at Transnet Freight Rail Yards and the operator shall be liable to pay its *pro rata* costs thereof upon demand to Transnet Freight Rail.
- 9.11 The Operator shall ensure that its employees are registered in terms of the Compensation for Occupational Injuries and Diseases Act, 1993.
- 9.12 The Operator shall be liable for any act and omissions of its employees in the execution of this Agreement.
- 9.13 The Operator shall have in operation for the duration of this Agreement a Safety Management System (SMS) including Management Information Systems (MIS) as required in the Act and the Regulations, as well as other relevant structures for compliance with the principles of "good governance".
- 9.14 As part of the compliance to the Act for Safety Permit holders safety system audits will be conducted bi-annually by the JIC according to **Appendices 1, 2, 3** and **4**. These audits are additional to any other

audits conducted by the Regulator or Department of Labour from time to time.

## **10 LIASON MEETINGS**

- 10.1 At least bi-annual meetings will be held between Transnet Freight Rail, Metrorail and the Operator that will include bi-annual audits.
- 10.2 The Parties undertake to hold regular meetings at such times and venues as shall be agreed upon. Transnet Freight Rail representatives or their alternates shall attend such meetings.
- 10.3 Any proposed change, amendment or alteration to this Agreement shall be submitted to the JIC. Any such change, amendment or alteration submitted shall specify any effect the same shall have on price and services. Any such change, amendment or alteration requires the agreement of both parties in writing prior to implementation.
- 10.4 The Agenda for the meetings between Transnet Freight Rail and the Operator shall *inter alia* include the following topics:
  - 10.4.1 Safety Interface;
  - 10.4.2 Stations;
  - 10.4.3 Train Control;
  - 10.4.4 Operations;
  - 10.4.5 Operating Interface;
  - 10.4.6 Communication Systems;
  - 10.4.7 Hiring of Locomotives.

## **11 CONTINGENCY PLANS AND CHANGE MANAGEMENT**

- 11.1 The Transnet Freight Rail and SARC/Metrorail Contingency Plans shall be aligned or updated and activated during all Occurrences. The RIC will be appointed by either Metrorail/SARCC or Transnet Freight Rail depending on the asset ownership to ensure that the clearing-up operation is managed.
- 11.2 Transnet Freight Rail and the Operator shall compile and agree upon Contingency Plans for all types of Occurrences from time to time.
- 11.3 Both parties agree that the current operating systems contained in the respective Transnet Freight Rail and Metrorail General Operating Rules and Instructions will be applied. Should changes to the aforementioned be required Transnet Freight Rail and Metrorail shall inform the Operator of any changes to the systems

## **12 METHOD OF TRAIN OPERATIONS**

- 12.1.1 Transnet Freight Rail and Metrorail shall inform the Operator in writing of any changes to the systems, methods and procedures of Train operations relevant to the operator.
- 12.1.2 Should such a change require additional training, the Operator shall carry the training costs of its own personnel.

## **13 PROCEDURES AND STANDARDS**

- 13.1.1 Procedures and standards as prescribed in all existing Transnet Freight Rail and Metrorail instructions or special notices are to be adhered to by the Operator.
- 13.1.2 The Operator and its relevant personnel shall familiarise itself with the existing Transnet Freight Rail and Metrorail procedures and standards and special notices and shall be liable for any breach of the said instructions and special notices.

- 13.1.3 The Operator shall be responsible for all training of its employees at its own cost and expense in order to comply with all required safety obligations in terms of this Agreement

## **14 DURATION**

- 14.1 This Agreement shall commence on the Effective Date and shall endure indefinitely thereafter subject to the provisions of 14.2 and 14.3 below.
- 14.2 The Operator shall give at least ninety (90) days written notice to Transnet Freight Rail of its intention to terminate this Agreement or part thereof. A shorter period of notice may be negotiated by the mutual agreement in writing by both parties.
- 14.3 Notwithstanding anything to the contrary contained in this Agreement, Transnet Freight Rail shall be entitled to terminate this Agreement by giving ninety (90) days prior written notice to the Operator of such termination.

## **15 INDEMNITIES AND INSURANCE**

- 15.1 The Agreed Services shall be rendered and the Scheduled Railway Operations shall be operated at the sole risk of the Operator and the Operator shall ensure and take all reasonable steps to prevent that passengers and/or other persons on the Train throw sweets, money or any other objects to or at children or any other spectators, in order to prevent that such children or people fall under the Train whilst in pursuit of such objects. Notices to this effect shall be displayed on board in all coaches and brought to the attention of passengers on board the relevant Train.
- 15.2 The Operator hereby indemnifies and hold Transnet Freight Rail and/or its employees harmless against:



- 15.2.1 any loss, claim or damage to the Operator or any third party property and injury to or death of the Operator's employees or any third parties;
- 15.2.2 any loss or damage due to vandalism to the infrastructure of Transnet Freight Rail which results in the damage or loss of the Operator's Rolling Stock;
- 15.2.3 any other claim or liability of whatsoever nature; and
- 15.2.4 any legal costs or expenses reasonably incurred in connection with claims or actions arising out of this Agreement.
- 15.3 Transnet Freight Rail shall not be liable for the delay of the Scheduled Railway Operations and any consequent cost of such delays on the Railway Line. Transnet Freight Rail, however, shall use its best endeavours to adhere to the plan of the Scheduled Railway Operation and Agreed Services and the Operator shall adhere to the operating times as set out in the Agreed Services from time to time.
- 15.4 Transnet Freight Rail will obtain its own insurance commensurate with any risk it is exposed to.
- 15.5 The Operator shall obtain and maintain at its own expense, public liability insurance and insurance against loss or damage to Transnet freight Rail's property in an amount of not less than R50 million (or such other amount as assessed by Transnet Freight Rail from time to time) for any one Occurrence and in the aggregate in respect of any act or omission of the Operator and/or its employees and/or its duly authorised representatives in the performance or non-performance or defective performance of its duties in terms of this Agreement causing death, bodily injury or illness to persons or loss of or damage to property with the exclusion of Accidents or calamities directly or indirectly attributable to the negligence, act, omission, performance, defective performance, non-performance or non-compliance by Transnet Freight Rail of or with

its obligations in terms of this Agreement. In particular, but without limiting the generality of the foregoing, such insurance shall include insurance cover in respect of all and any such bodily injury, death or damage to property that arises out of or in connection with the Agreed Services from time to time.

- 15.6 The said insurance shall not be cancelled or materially changed, without at least thirty (30) days prior written notice being given to Transnet Freight Rail or such lesser period as may be applied in respect of war and allied occurrences.
- 15.7 The Operator shall at all times comply with all the terms and conditions of any policy of insurance effected in terms of 15.5 and shall implement the requirements thereof, and in particular (without limiting the generality of the foregoing and notwithstanding anything to the contrary in this Agreement contained), the operator shall -
- 15.7.1 notify Transnet Freight Rail promptly of the happening of an Occurrence in terms of this Agreement contract or any event which may give rise to a claim under any such policy of insurance;
- 15.7.2 render to Transnet Freight Rail and/or the insurer whatever assistance may be necessary or required in connection with or arising out of any claims; and
- 15.7.3 notwithstanding anything contained to the contrary in this Agreement, it is specifically recorded that neither the Operator nor Transnet Freight Rail shall be precluded from instituting a claim against each other following an Occurrence whether or not it is covered in terms of the insurance policies referred to in this 15.
- 15.8 The Operator shall for purposes of and subject to the provisions of 15.5, at its own cost and expense, appoint an assessor to conduct a survey and in particular alongside the proposed route of Access, in order to determine the maximum possible loss or damage which the Operator

may cause to property or assets, or cause the death of and/or injury to persons or live stock along side the route, including but not limited to the risk of the spreading of fire through its operations in order to fulfil its obligations in terms of this Agreement.

## **16 BREACH**

### **16.1 If the Operator –**

16.1.1 breaches any material provision or term of this Agreement and fails to remedy such breach within a period of fourteen (14) Business Days on receipt of written notice from Transnet Freight Rail requiring it to do so, Transnet Freight Rail may exercise its rights in terms of this clause, (or if it is not reasonably possible to remedy the breach within the specified period, within such further period as may be reasonable in the circumstances) or if a breach of a provision or term of this agreement has been again committed after two (2) written warnings from Freight Rail, even if the provision or term is not material, or

16.1.2 being a legal person, -

16.1.2.1 takes steps to place itself, or is placed in liquidation, whether voluntary or compulsory, or under judicial management, in either case whether provisionally or finally; or

16.1.2.2 takes steps to deregister itself or is deregistered; or

16.1.2.3 commits an act which would be an act of insolvency, as defined in the Insolvency Act, 1936, if committed by a natural person; or

16.1.2.4 compromises or attempts to compromise with its creditors generally; or

16.1.2.5 fails to satisfy any judgement (including any arbitration award) against itself within seven (7) days after the judgement was given and no application was made to set it aside or appeal was filed in respect thereof; or

16.1.2.6 loses its Safety Permit in any way,

then Transnet Freight Rail shall be entitled without notice, in addition to any other remedy available to it at law or under this Agreement, including obtaining an interdict, to cancel this agreement or to claim specific performance of any obligation whether or not the due date for performance has arrived, in either event without prejudice to Transnet Freight Rail's right to claim damages.

16.2 Transnet Freight Rail shall notwithstanding any provision to the contrary in this Agreement be entitled to terminate this Agreement with immediate effect by giving written notice of such termination in the event of:

16.2.1 the Operator's Safety Permit being suspended, revoked or surrendered as contemplated in terms of section 26 of the Acts; and/or

16.2.2 the Operator breaching the provisions of clause 7.4 above; and/or

16.2.3 the Operator breaching any Law applicable to this Agreement.

16.3 In the event of either party committing a breach of any of the provisions to this Agreement, it shall be reported immediately to the JIC.

## **17 DISPUTE RESOLUTION**

17.1 Should any dispute (other than a dispute in respect of which urgent relief may be obtained from a court of competent jurisdiction) arise between the Parties in the widest sense in connection with –

17.1.1 the formation or existence of;

- 17.1.2 the carrying into effect of;
- 17.1.3 the interpretation or application of the provisions of the Parties' respective rights and obligations in terms of or arising out of;
  - 17.1.3.1 the validity, enforceability, rectification, termination or cancellation, whether in whole or in part of;
  - 17.1.3.2 any documents furnished by the parties pursuant to the provisions of this Agreement or which relates in any way to any matter affecting the interests of the Parties in terms of this Agreement, that dispute shall, unless resolved amongst the parties to the dispute, be referred to and be determined by arbitration in terms of this clause, provided that a party to the dispute has demanded the arbitration by written notice to the other Parties.
- 17.2 The arbitration shall be held –
  - 17.2.1 at Johannesburg;
  - 17.2.2 with only the representatives and legal representatives of the parties to the dispute present thereat;
  - 17.2.3 otherwise in terms of the Arbitration Act, No 42 of 1965, it being the intention that the arbitration shall be held and completed within twenty one (21) days after it was demanded.
- 17.3 The arbitrator shall be, if the matter in dispute is principally -
  - 17.3.1 a legal matter, a practising advocate or attorney of Johannesburg of at least 15 (fifteen) years' standing;
  - 17.3.2 an accounting matter, a practising chartered accountant of Johannesburg of at least fifteen (15) years' standing;

- 17.3.3 any other matter, any independent person, agreed upon between the parties to the dispute.
- 17.4 Should the Parties to the dispute fail to agree whether the dispute is principally a legal, accounting or other matter within seven (7) days after the arbitration was demanded, the matter shall be deemed to be a legal matter.
- 17.5 Should the Parties to the dispute fail to agree on an arbitrator within seven (7) days after the expiry of the period referred to in 17.4, the arbitrator shall be appointed at the request of any party to the dispute by the President for the time being of the Law Society of the Northern Provinces.
- 17.6 The decision of the arbitrator shall be final and binding on the parties to the dispute and may be made an order of any competent court at the instance of any of the parties to the dispute.
- 17.7 The parties hereby consent to the jurisdiction of the High Court of South Africa (Witwatersrand Local Division) in respect of any proceedings arising out of this agreement not subject to arbitration in terms of this clause.
- 17.8 The provisions of this clause –
- 17.8.1 constitute an irrevocable consent by the Parties to any proceedings in terms hereof and no party shall be entitled to withdraw therefrom or claim at any such proceedings that it is not bound by such provisions;
- 17.9 are severable from the rest of this Agreement and shall remain in effect despite the termination of or invalidity for any reason of this Agreement.

## **18 CONFIDENTIALITY**

- 18.1 The Parties acknowledge that any information supplied in connection with this Agreement or in connection with each other's technical, industrial or business affairs or in respect of the business which has or may in any way whatsoever be transferred or come into the possession or knowledge of the other of them ("the receiving party") may consist of confidential or proprietary data, disclosure of which to or use by third parties might be damaging to the Party concerned.
- 18.2 The receiving party therefore agrees to hold such material and information in the strictest confidence, to prevent any copying thereof by whatever means and not to make use thereof other than for the purposes of this Agreement and to release it only to such properly authorised directors, employees or third parties requiring such information for the purposes of this Agreement and agree not to release or disclose it to any other party who has not signed an agreement expressly binding himself not to use or disclose it other than for the purposes of this Agreement.
- 18.3 The undertaking and obligations contained in this clause 18 do not apply to information which -
- 18.3.1 is publicly available at the date of disclosure or thereafter becomes publicly available from sources other than the Parties;
- 18.3.2 the receiving party demonstrates that it was already in its possession prior to its receipt by or disclosure to such receiving party;
- 18.3.3 is required by Law or any regulatory authority to be disclosed;
- 18.3.4 after being disclosed to the receiving party is disclosed by any other person to the receiving party otherwise than in breach of any obligation of confidentiality.

- 18.4 The Parties shall take such precautions as may be necessary to maintain the secrecy and confidentiality of such material and information in respect of its directors, employees, agents, and/or directors or employees or agents of any assignee, sub-contractor or distributor or any other person to whom any such confidential or proprietary data may have been or will be disclosed.
- 18.5 Save as may be required by Law or any regulatory authority, no announcement or publicity of the existence of this Agreement or its content or the transaction embodied in this Agreement shall be made or issued by or on behalf of any party without the prior written agreement of all the Parties.

## **19 FORCE MAJEURE**

- 19.1 If either Party is prevented from or delayed in performing any obligation under this Agreement for any reason beyond the reasonable control of that party, that party shall be excused from performing or timeously performing that particular obligation for the duration of that prevention or delay.
- 19.2 Any party so prevented or delayed shall inform the other party in writing of that prevention or delay as soon as reasonably possible after the circumstances causing such prevention or delay have arisen, but in any event no later than forty eight (48) hours after the commencement of such prevention or delay.
- 19.3 The Parties shall do everything reasonably possible to prevent, avoid or limit the duration or effects of any such prevention or delay. Upon termination of the circumstances giving rise to any such prevention or delay, the parties so prevented or delayed shall forthwith give written notice thereof to the other.
- 19.4 While any such prevention or delay continues, the parties shall continue to comply with their obligations under this Agreement which are not



affected by it, to the extent that they are able wilfully to do so, and this agreement shall be extended by the period for which such prevention or delay endures.

## **20 INDEPENDENT ADVICE**

Each of the Parties hereto acknowledges that they have been free to secure independent legal and other advice as to the nature and effect of all of the provisions of this Agreement and that they have either taken such independent legal and other advice or dispensed with the necessity of doing so.

## **21 DOMICILIA AND NOTICES**

21.1 Any written notice in connection with this agreement may be addressed to the parties at the following addresses:

21.1.1 TRANSNET FREIGHT RAIL: Chief Operating Officer, Transnet Freight Rail, 21 Wellington Street, Park Town, Johannesburg, 2000;

TEL: (011) 544 9143

FAX: (011) 544 9181

21.1.2 THE OPERATOR: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_.

21.2 The notice shall be deemed to have been duly given:-

21.2.1 Ten days after posting, if posted by pre-paid post to the party's address in terms of this sub-clause;

- 21.2.2 On delivery, if delivered to the party's physical address in terms of this sub-clause;
- 21.2.3 On the first Business Day following despatch, if sent to the Party's then telefax number and confirmed by pre-paid letter posted no later than the next Business Day.
- 21.3 A Party may change that party's address for this purpose, by notice in writing to the other party.
- 21.4 The Parties choose the above addresses at which documents in legal proceedings in connection with this agreement may be served (i.e. their *domicilia citandi et executandi*).

## **22 CO-OPERATION**

The Parties undertake to co-operate and consult with one another in good faith with regard to the alleviation of any hardship which may be occasioned to either party as a result of unforeseen circumstances arising from the execution of this Agreement its Appendices and Addendums, and support each other in performance of all such actions and the taking of all such steps as may be open to them and necessary for the execution and maintenance of this Agreement.

## **23 COSTS**

Each Party shall be liable to pay its own costs for professional fees, associated expenses and disbursements relating to and/or connected with the negotiation and conclusion of this Agreement.

## **24 SEVERABILITY**

The Parties agree that each and every provision of this Agreement is severable from the remaining provisions of this Agreement and should any provision of this Agreement be in conflict with any applicable law, or be held

to be unenforceable or invalid for any reason whatsoever, such provision should be treated as *pro non scripto* and shall be severable from the remaining provisions of this Agreement which shall continue to be of full force and effect.

## **25 RELAXATION**

No latitude, extension of time or other indulgence which may be given or allowed by any party to the other Parties in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of any party arising from this Agreement, and no single or partial exercise of any right by any party under this Agreement, shall in any circumstances be construed to be an implied consent or election by such party or operate as a waiver or a novation of or otherwise affect any of the party's rights in terms of or arising from this Agreement or estop or preclude any such party from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term hereof.

## **26 VARIATION**

No addition to or variation, consensual cancellation or novation of this Agreement and no waiver of any right arising from this Agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by all the Parties or their duly authorised representatives.

## **27 WHOLE AGREEMENT**

This Agreement constitutes the whole agreement between the Parties as to the subject matter hereof and no agreements, representations or warranties between the Parties regarding the subject matter hereof other than those set out herein are binding on the Parties.

**28 SIGNATURE**

28.1 This Agreement is signed by the parties on the dates and at the places indicated opposite their respective names.

28.2 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument.

SIGNED at \_\_\_\_\_ on \_\_\_\_\_

AS WITNESS:

\_\_\_\_\_

For:

\_\_\_\_\_  
(Name of witness in print)

\_\_\_\_\_  
Duly authorised

SIGNED at \_\_\_\_\_ on \_\_\_\_\_

AS WITNESS:

\_\_\_\_\_

For: **TRANSNET FREIGHT RAIL**

\_\_\_\_\_  
(Name of witness in print)

\_\_\_\_\_  
Duly authorised

**AUDIT REQUIREMENTS AND RISK ASSESSMENTS:  
ACCESS TO THE TRANSNET FREIGHT RAIL RAILWAY  
NETWORK.**

- (i) Transnet Freight Rail will only enter into an Access Agreement with a Legal Entity, which means with Companies, Pty (Ltd)'s, Municipalities associations or clubs or Steam Operators registered as Section 21 companies.
  - (ii) It is crucial for Transnet Freight Rail to obtain the following latest information/documentation to verify compliance with the legal requirements as a registered organization.
- 1 Operator's History / Foundation.
  - 1.2 Mission and goals.
  - 1.3 Constitutions.
  - 1.4 Names of office bearers and details of appointments.
  - 1.5 Membership. (Paid up only)
  - 1.6 Equipment / tools / machinery (itemized description.)
  - 1.7 Locomotives and rolling stock (details and indication of service worthiness.)
  - 1.8 Facilities / fixed assets / buildings / hoisting and lifting equipment / examination pits, etc.
  - 1.9 Magazines, newsletters, etc

- 1.10 Financial reports
- 1.11 Agreements, contracts, trusts, affiliations, etc.
- 1.12 Minutes of meetings (AGM, Safety, etc)
- 1.13 Operations reports and statistics
- 1.14 Names and details of people/organizations responsible for maintenance/repair to the operator's locomotives, rolling stock, machinery, etc.
- 1.15 Sketches of the Operator's premises, showing the main features of railway lines, tracks, examination pits, coaling installations, watering points, buildings and boundary lines, etc.
- 1.16 Any other information that the operator thinks may be of assistance.
- 2 Public liability insurance policy.
- 3 Conditional access only to certain lines for private locomotives and coaches as well as private crews for the purpose of furthering Railway preservation.
- 4 The steam drivers shall be qualified and Competent and not employees of Transnet Freight Rail. *Theoretical training and certification of steam qualifications will only conducted by Transnet Freight Rail.*
- 5 Operators must be registered members of HRASA that will regulate the steam operation industry.

- 6 The various steam operators must recognize and take appropriate measures to deal with the fact that Transnet Freight Rail is not in the business of steam preservation.
- 7 The Operator must confirm that proper facilities for the examination and maintenance of locomotives and rolling stock are available on its premises.
- 8 Steam traction may be allowed to haul Transnet Freight Rail Trains.
- 9 Steam locomotives will not be allowed to run during the dry seasons or at any other time or place where the risk of line-side fires is high, or could otherwise not be mitigated and no agreement can be reached with regard to the mitigation of such fire risks. The operator must conduct regular environmental risks assessments on the routes on which the Agreed Services are being conducted.
- 10 Steam locomotives and rolling stock will not be allowed on Transnet Freight Rail lines without the necessary and valid safety and rail-worthy certification documents. Documents must be kept in a safe place and be available for inspection if and when required.
- 10.1 Subject to the provisions of clause 7.14 of the main agreement to which this Appendix 1 is annexed, a maximum of four (4) people will be allowed to travel on the footplate when a Pilot or a trainee fireman/Train driver accompanies the Train. When no Pilot accompanies the Train, only three (3) persons will be allowed on the footplate.

- 10.2 Train crew must be properly trained, qualified and certified as Competent to operate a specific class of locomotive for a specific Train over a specific section.
- 11 Steam Trains shall operate in strict adherence to the agreed schedules and Train notices.
- 12 Safety for the protection of people and property must always be adhered to.
- 13 Actions or unauthorized activities by the operator must not negatively affect the image of Transnet; and/or Transnet Freight Rail; and/or the Steam preservation industry.
- 14 The capacity factor of 75% in terms of loads and speed for steam locomotives must be adhered to. Unauthorized testing of steam locomotives and heritage rolling stock is prohibited.
- 15 Steam locomotives used by the Operator shall only operate tender first in unavoidable circumstances. All steam locomotives will be limited to a maximum speed of 30 km per hour tender first with the exception of class 24 and 25NC to 40 km per hour tender first. Garrets are permitted a maximum speed of 60 km per hour in either direction.
- 16 Access Requests for Agreed Services for the running of steam Trains must be finalised seven (7) days on mainlines and 14 days on branch lines prior to departure.
- 17 Authorization for the running of all steam Trains as granted by Transnet Freight Rail or as otherwise agreed upon.
- 18 Short notice requests to run a Train will not be entertained.



- 19 A detailed trip report to Transnet Freight Rail be submitted by the operator within 72 hours after completion of trip.
- 20 All Occurrences to be reported immediately to the Metrorail Train Control Officer and the NOC Duty Manager (at such contact numbers as notified by Transnet Freight Rail from time to time), as well as to the Department of Labour and the Regulator (when applicable).
- 21 All steam operations shall comply fully with all Transnet Freight Rail's rules, regulations and standards.
- 22 Alterations or modifications to Steam locomotives and Rolling Stock must be approved by an acceptable authority. Weighbridge certificate will be required.
- 23 Civil engineering clearance for the operation of steam Trains over certain bridges and lines of Transnet Freight Rail are mandatory and no Train will traverse over these routes unless duly authorized.
- 24 The steam operator shall recognize that the maintenance and safe operations of vintage locomotives and rolling stock demands special care and attention over and above the minimum statutory technical specifications and must make a statement on how they intend demonstrating compliance herewith.
- 25 The Train operator shall arrange the onboard management, Train manager, Safety officer and assistants as required by the Access Agreement.
- 26 Transnet Freight Rail reserves the right to recover all costs incurred resulting from any Occurrence because of failure of

standards of locomotives and/or rolling stock and/or crews. Transnet Freight Rail also reserves the right to summarily terminate the operator's access to Transnet Freight Rail lines if the operator at a later stage is involved in any Occurrence of a similar nature, but subject to an enquiry into the Occurrence.

- 27 The compliance to the 80% limitation on the seating capacity per coach must be adhered to. Conditions of carriage in ticket or other forms shall be concluded between the passengers and the operator and shall state clearly that neither Transnet Freight Rail nor Metrorail is the carrier. Notices in this regard must be in conspicuous place in the coaches and locomotives.
- 28 The fixing of any material or substance to the outside of the coaches or locomotives shall only be allowed subject to compliance with the provisions of clause 8.13 of the main agreement to which this Appendix 1 is annexed.
- 29 Transnet Freight Rail will require a preliminary Train schedule and business plan every year in advance with updates every 3 months.
- 30 Steam locomotives will (unless agreed to the contrary in writing) not be allowed on any main railway lines and restricted to specific routes where and when possible, but with the following exceptions:
  - 30.1 Johannesburg to Germiston
  - 30.2 Johannesburg to Langlaagte.
  - 30.3 Durban station and immediate environments.

- 30.4 The entire Natal mainline.
- 30.5 Orex lines.
- 30.6 Coallink lines.
- 31 Steam access will be limited to daylight only (unless agreed upon to the contrary in an Access Request).
- 32 The maximum distance away from the home depot will be [\_\_\_\_\_] and will apply in conjunction with the maximum hours on duty, for Train crews namely [\_\_\_\_\_].
- 33 Steam access will also be subservient to Transnet Freight Rail and or Metrorail operation schedules.
- 34 The Operator will perform the training and certification of steam Train crews at its own cost and expense.
- 35 The Operator shall at all times comply with the provisions contained in the Appendices and al relevant Laws and the Act.

## Checklist for Act 85

**This Checklist is supplementary to the requirements of the Act and does not replace any responsibilities. Its purpose is to assist the steam operator in assessing their level of compliance in respect to certain elements of the Act.**

Definitions:

- Employees include Operator members and other people functioning under the instruction/supervision of a Operator official.
- Employer includes the Operator office bearers collectively and individually
- Each Operator shall within 3 months of signing the Interface/Access Agreement, establish a sound relationship and understanding with their local Health and Safety official of the National Department of Labour

SECTION 7: SAFETY AND HEALTH POLICY		YES	NO
1.	Is the policy in writing?		
2.	Does the policy address the protection of employees/		
3.	Does the policy address a description of organization?		
4.	Does the policy address arrangement for the carrying out of the policy?		
5.	Does the policy address arrangements for reviewing the policy?		
6.	Have the arrangements for carrying out and reviewing the policy been implemented?		
7.	Is the policy prominently displayed		
8.	Is the policy signed by the CEO / Chairman / Employer?		

SECTION 8: GENERAL DUTIES OF EMPLOYERS (STEAM OPERATORS) TO THEIR EMPLOYERS (OPERATOR MEMBERS)		YES	NO
1.	Is a working environment provided which is safe and without risk?		
2.	Is a working environment which is safe and without risk, maintenance?		
3.	Are plant, machinery and systems, or the work provided safe and without risk?		
4.	Has the employer eliminated the hazards?		
5.	If not reasonably practicable, has the employer mitigated the hazards identified?		
6.	Are risks eliminated before resorting to PPE?		

7. Are risks mitigated before resorting to PPE?		
8. Are hazards identified?		
9. Are hazards evaluated?		
10. Are hazards controlled?		
11. Are all measures taken to ensure legal compliance by persons (employees and other persons) on the premises under the control of the employer?		
12. Does the employer provide SWP (Safe Working Procedures)?		
13. Does the employer instructions in respect of the use of plant, machinery, and substances?		
14. Does the employer provide training?		
15. Does the employer provide information to ensure the safety at work of this employee?		
16. Does the employer provide supervision?		
17. Does the employer control the employee at work by way of control measures?		
18. Does the employer ensure that all persons are aware of the implications of the Act?		
19. Does the employer ensure the implications of the Act are understood		
20. Does the employer ensure that procedures are in place to check whether the Act is being contravened?		
21. Does the employer enforce discipline?		
22. It work performed under the supervision of a supervisor who is trained to take precautionary measures?		
23. Is work performed under the supervision of a supervisor who has authority to take precautionary measures?		
24. Are employees informed of their scope of authority?		
25. Are employees aware of what scope of authority means?		
26. Is the employer able to prove that he or she has informed the employees of their scope of authority?		

<b>SECTION 9: GENERAL DUTIES OF EMPLOYERS TO PERSONS OTHER THAN Their EMPLOYEES</b>	<b>YES</b>	<b>NO</b>
1. Does the employer conduct his undertaking in such a manner that he does not expose people other than this employee off his premises to hazards?		
2. Does the employer conduct his undertaking in such a manner that he does not expose people other than his employees off his premises to hazards?		

<b>SECTION 10: GENERAL DUTIES OF MANUFACTURERS AND OTHER REGARDING ARTICLES AND SUBSTANCES FOR USE AT WORK</b>	<b>YES</b>	<b>NO</b>
1. Are the articles that are designed safe and without risk when properly used?		

2.	Are the articles that are manufactured safe and without risk when properly used?		
3.	Are the articles that are imported safe and without risk when properly used?		
4.	Are the articles that are safe and without risk when properly used?		
5.	Are the articles that are supplied safe and without risk when properly used?		
6.	Do articles comply with requirements in respect of design?		
7.	Do articles comply with requirements in respect of manufacturing?		
8.	Are erected or installed articles safe when properly used?		
9.	Has information been supplied to the user of the article in respect of the safe use thereof?		
10.	Is the substance, which is manufactured without risk and safe when properly used?		
11.	Is the substance, which is imported without risk and safe when properly used?		
12.	Is the substance, which is sold without risk and safe when properly used?		
13.	Is the substance, which is supplied without risk and safe when properly used?		
14.	Has information applicable to the substance been supplied to the user in respect of conditions for safe use of the substance?		
15.	Has information applicable to the substance been supplied to the user in respect of conditions for safe use of the substance?		
16.	Has information applicable to the substance been supplied to the user in respect of procedures to be followed in the case of an emergency		
17.	Is there and undertaking in writing between the seller and the buyer when plant or machinery is sold "as is": or as scrap wherein the buyer commits himself to make the equipment safe before it is to be used?		

SECTION 13 DUTY TO INFORM		YES	NO
1.	Have the employees been made conversant with the hazards attached to their work through the conveyance of information?		
2.	Have the employees been made conversant with the hazards attached to their work through Training?		
3.	Is training up to date?		
4.	Have the employees been made conversant with the necessary precautionary measures that must be implemented in order to remove or mitigate the hazards?		
5.	Have health and safety representatives been informed beforehand by and inspector?		
6.	Have health and safety representatives been informed beforehand of investigations?		
7.	Have health and safety representatives been informed beforehand of formal inquiries		
8.	Have health and safety representatives been informed of the occurrence of Incidents?		
SECTION 14 GENERAL DUTIES OF EMPLOYEES AT WORK TO INFORM		YES	NO
1.	Are employees aware that they must take care of their own health and Safety?		

2. Are employees aware that they must take care of the health and safety of other persons?		
3. Are employees aware that they must co-operate with the employer in the interests of health and safety?		
4. Are employees aware that they must carry out all the employer's lawful orders in the interest of occupational health and safety?		
5. Are employees aware that they must obey health and safety rules and procedures		
6. Are employees aware that they must report unsafe or unhealthy situations to the employer or a health and safety representative?		
7. Are employees aware that they must report any Incidents/near miss to the employer or a health and safety representative?		
<b>SECTION 15 DUTY NOT TO INTERFERE WITH, DAMAGE OR MISUSE THINGS</b>	<b>YES</b>	<b>NO</b>
1. Are all persons entering the premises including employees, aware that they may not interfere with or damage anything provided in the interest of health and safety?		
<b>SECTION 17 HEALTH AND SAFETY REPRESENTATIVES</b>	<b>YES</b>	<b>NO</b>
1. Have health and safety representatives been appointed?		
2. Has the appointment of health and safety representatives been made in writing?		
3. Is each representative appointed for a specific area?		
4. Are the appointments made for a specific period?		
5. Has consultation taken place in respect of the nomination of health and safety representatives?		
6. Has consultation taken place in respect of the election of health and safety representatives?		
7. Has consultation taken place in respect of the period of office of health and safety representatives?		
8. Has consultation taken place in respect of the designation of health and safety representatives?		
9. Are health and safety representatives full time employees?		
10. Are health and safety representatives acquainted with the conditions and activities at the workplace?		
11. Have the correct number of health and safety representatives been appointed in terms of shops and offices and other places of public access (1:100)?		
12. Has the correct number of health of safety representatives been appointed in terms of other workplaces (1:50)		
13. Have those persons not working on the premises been included in the total number of employees relevant to those premises in determining the number of health and safety representatives that need to be appointed?		

14. Do health and safety representatives perform their functions during working hours?		
15. Are health and safety representatives trained during working hours?		

<b>SECTION 18 FUNCTIONS OF HEALTH AND SAFETY REPRESENTATIVES</b>	<b>YES</b>	<b>NO</b>
1. Did the employer make it possible for the health and safety representatives to exercise their rights as contained in section 18 (2)?		
2. Have facilities been provided to health and safety representatives?		
3. Has assistance to health and safety representatives been provided in respect of the performance of their functions?		
4. Has training been provided to health and safety representatives?		

<b>SECTION 19 HEALTH AND SAFETY COMMITTEES</b>	<b>YES</b>	<b>NO</b>
1. Has a health and safety committee been established where there are two or more H & S representatives?		
2. Does consultation take place at every meeting in respect of initiating measures to ensure the health and safety of employees?		
3. Does consultation take place at every meeting in respect of developing measures to ensure the health and safety of employees?		
4. Does consultation take place at every meeting in respect of promoting measures to ensure the health and safety of employees?		
5. Does consultation take place at every meeting in respect of the maintenance of measures to ensure the health and safety of employees?		
6. Does consultation take place at every meeting in respect of the reviewing of measures to ensure the health and safety of employees?		
7. Are all health and safety representatives members of an H & S committee?		
8. Has the employer ensured that those persons nominated by him or herself to serve, as committee members do not exceed the number of H & S representatives on the committee?		
9. Have the persons appointed by the employer been appointed in writing		
10. Have the persons appointed by the employer been appointed for a specific period?		
11. Are H & S committee meetings held at least every three months?		
12. If an inspector has directed that further meetings be held, have such meetings been held?		
13. Has the health and safety committee established a meeting procedure?		
14. Is the fact that an advisory member is not entitled to vote applied correctly by not granting him/her a vote (if the committee has granted voting rights under Sec 19 (5), this question is invalid)?		
15. If an inspector has instructed that further H & S committees have to be established, is the		



employer in compliance?		
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<b>SECTION 20 FUNCTIONS OF HEALTH AND SAFETY COMMITTEES</b>	<b>YES</b>	<b>NO</b>
1. Does the employer make it possible for the committee to make recommendations to him or her?		
2. Does the employer make it possible for the committee to approach an inspector?		
3. Does the employer make it possible for the committee to discuss Incidents?		
4. Does the employer make it possible for the committee to perform any prescribed functions?		
5. Does the H & S committee keep a record of reports to an Inspector?		
6. Does the H & S committee perform prescribed functions?		
7. Does the H & S committee keep a record of all recommendations?		
8. Does the H & S committee keep a record of reports to an inspector?		
9. Has the H & S committee been informed regarding their rights in terms of section 20(3)?		
10. Has the employer ensured that H & S committee meetings take place?		

<b>SECTION 21 GENERAL PROHIBITIONS</b>	<b>YES</b>	<b>NO</b>
1. Does the employer comply to notices issued by the Minister that may affect his or her workplace?		

<b>SECTION 22 SALE OF CERTAIN ARTICLES PROHIBITED</b>	<b>YES</b>	<b>NO</b>
1. Are steps taken to ensure that all articles that are sold comply with prescribed requirements?		
2. Are steps taken to ensure that all articles that are sold comply with health and safety standards?		

<b>SECTION 23 CERTAIN DEDUCTIONS PROHIBITED</b>	<b>YES</b>	<b>NO</b>
1. Are all health and safety equipment supplied to employees free of charge?		

<b>SECTION 24 REPORT TO INSPECTOR REGARDING CERTAIN INCIDENTS</b>	<b>YES</b>	<b>NO</b>
1. Has the employer reported Incidents as contemplated in section 24 within the prescribed period to an inspector?		
Has the employer reported Incidents contemplated in section 24 in the prescribed manner to an		

Inspector?		
3. Are steps taken to ensure that the site of an Incident as referred to in sub-section (2) is not disturbed prior to permission being gained from an inspector?		
4. Are employees aware that they may disturb the site to remove injured or dead persons?		
5. Are employees aware that they may disturb the site to prevent a further Incident?		
6. Are employees aware that they may disturb the site to remove persons form danger?		

<b>SECTION 26 VICTIMIZATION FORBIDDEN</b>	<b>YES</b>	<b>NO</b>
1.Can the employer prove that no employee was victimized for complying with section 26 (1)?		
2. Can the employer prove that no employee was victimized with section 26(2)?		

<b>SECTION 37 ACTS OR OMISSIONS BY EMPLOYEES OR MANDATORIES</b>	<b>YES</b>	<b>NO</b>
1. Has the employer taken all reasonable steps to comply with the provision of this Act?		
2. Whenever an employee contravened this Act can the employer prove that acts or omissions were carried out without his/her connivance?		
3. Whenever an employee contravened this Act can the employer prove that he did not give permission for the actions to happen?		
4. Has the employer informed all persons of their scope of authority?		
<b>SECTION 40 EXCEPTIONS</b>	<b>YES</b>	<b>NO</b>
1. Does the employer comply with all the conditions of any exemption granted to him or her?		

## APPENDIX 3

### 1 ADDITIONAL INFORMATION DISPLAYED ON TRAIN NOTICES FOR OPERATORS

1. Train Notices serves the purpose to authorise the movement of Trains and relevant listed equipment of the Operator and entry/access to the specified Transnet Freight Rail Network and/or SARCC Network and property on the stated date/s and time/s.
2. This authorisation is granted on the clear understanding that the Operator is, in full compliance with the relevant railway safety standards. The onus rests upon the said Operator not to withhold any relevant information from Transnet Freight Rail that might otherwise compromise this understanding.
3. By accepting this Train Notice, the said Operator is hereby bound to ensure unconditional compliance with the following requirements:
  - 3.1 The driver of the Operator's Train, shall at all times while on duty, be in possession of an applicable and valid Transnet Freight Rail Train Notice.
  - 3.2 In addition to the required Train Notice, the Train Safety Officer of the Operator shall also be in possession of the following documentation / items / equipment:
    - 3.2.1 Vehicle List,
    - 3.2.2 Train Load Certificate
    - 3.2.3 Train Journal,

- 3.2.4 Detonators / flags / emergency tools / first-aid kits, as well as all other items / equipment for the safe and satisfactory operation of the Train, Safety Officer
- 3.2.5 All other applicable Transnet Freight Rail or Metrorail Notices,
- 3.2.6 Valid Boiler/Roadworthy Certificates for the Locomotive, tender, and each vehicle marshalled on the Train.
- 3.3 The following documents, amongst others, must be in order and readily available on the registered premises of the said operator, for inspection by any recognised authority:
  - 3.3.1 Locomotive Boiler Certificate
  - 3.3.2 Pressure Vessel Certificate (as might be applicable in the case of heritage diesel / electric locomotives),
  - 3.3.3 Register for signing on / off duty by all the above listed members of the Train crew, Knowledge of the Road Book
  - 3.3.4 All Transnet Freight Rail recognised certificates of qualification pertaining to all the above listed members of the Train crew,
  - 3.3.5 Certificate validating payment and currency of the required insurance premiums,
  - 3.3.6 Proof of Competent awareness by all the above listed members of the Train crew, of the dangers presented by overhead electric traction equipment / cables / wires.
- 3.4 The Operator is alerted to the fact that the Transnet Freight Rail and Metrorail railway reserves are not maintained to accommodate steam operations, and that this might result in a serious fire and other risks.

Transnet Freight Rail therefore reserves the right to forbid steam operations at any time if the risk is deemed to be unacceptable.

- 3.5 The private operator recognises and accepts the stipulations that heritage/steam operations is subjected to Transnet Freight Rail's and Metrorail business activities and functions which has precedence.
- 3.6 The Operator will at all times, conduct its operations/business and behaviour in accordance with the letter and spirit of the general Access Agreements with Transnet Freight Rail and Metrorail..

**COMPLIANCE TO THE REQUIREMENTS OF SOUTH AFRICAN  
NATIONAL STANDARD (SANS 3000-1:2005)**

**The Railway Safety Regulator (RSR) requires all railway operators to effectively manage the interfaces and appended hereunder is an extract of the RSR's SANS 3000-1:2005 pertaining to Interface Management: instructions that must be strictly adhered to:**

**1 Interface Management**

**1.1 General**

The requirements for the management of interfaces between railway operations should be included in business or operating agreements (or both) between parties.

**1.2 Identification of Interfaces**

1.2.1 A network operator shall identify where its network meets the network of another operator and which parts of its network are used or are to be used by more than one operator (Train or station or both).

1.2.2 Station operators shall identify where they interface with network operators and indicate which parts of a station are used or are to be used by more than one Train operator.

**1.3 Safety Management of Interfaces**

**1.3.1 General Requirements**

All operators involved in the management of interfaces shall prepare, implement and maintain the necessary systems, procedures and processes that provide for safe railway operations in accordance with this Standard.

**1.3.2 Common Essential Requirements**

In addition to the general requirements of 1.3.1, the common essential requirements to be addressed in business or operating agreements (or both) between operators, in addition to commercial

aspects, technical standards, and other matters forming part of such agreements, include but are not limited to the following:

1.1 a) Rolling stock shall be considered in respect of the following:

Vehicle design, overall vehicle and load dimensions, in compliance with the clearances required by the fixed and moving structure gauges;

1. Service worthiness of vehicles, modules and Train sets;
2. Permissible speed limit of vehicles, modules and Train sets;
3. Size, shape, profile, and gauge of wheels and wheel sets;
4. Limits and tolerances of wheel size, defects, gauge, and wheel shape (including flange thickness);
5. Front and rear end visibility of Trains;
6. Coupler types, height and tolerances;
7. Braking systems, taking into account Train performance parameters;
8. Auxiliary equipment attachment (for example for telemeters, side and rear-end markers);
9. Fire fighting and related equipment;
10. Vehicle fittings for personnel safety (for example brake-step, commode handle, and hand brake);
11. Vehicle maintenance standards and procedures, including applicable visible evidence on the vehicle of maintenance done;
12. Vehicle type identification, including bogie types;
13. Electrical resistance tolerances between wheel-to-rail contact faces on the same axle (Train detection requirements);
14. Electrical compatibility between traction systems and Train control systems (signalling systems);
15. Effective vigilance controls; and
16. Technical limitations on length of a Train;

1.2 b) Track and civil infrastructure shall be considered in respect of the following:

1. Structure clearances;
2. Track geometry and tolerances;
3. Axle mass limits of track and civil infrastructure;
4. Structural condition of track and civil infrastructure;
5. Maintenance plans, standards and procedures; and
6. Track-side indicators, including speed restriction boards and whistle boards;

1.3 c) Stations shall be considered in respect of the following:

1. Platform structure clearances;
2. Building and other structure clearances;
3. Capacity of stations;
4. Safety equipment, including fire equipment, communication systems;
5. Abnormal working, including effective communication;
6. Occurrence management; and
7. Dangerous Goods passing through stations;

1.4 d) Electric traction infrastructure shall be considered in respect of the following:

1. Fault protection;
2. Power supply parameters;
3. Electrical clearances and approach distances;
4. Safety switching and isolation procedures; and
5. Earthing and bonding;

1.5 e) Train control shall be considered in respect of the following:

1. Train control systems;
2. Train working rules and instructions;
3. Safe work procedures; and
4. Effective means of communication;



1.6 f) Operations shall be considered in respect of the following:

1. Availability and suitability of route;
2. Train performance parameters;
3. Indication of track speed limits;
4. Axle mass limits;
5. Commodity loading profiles and patterns, and stability;
6. Occurrence Management, including Contingency Plans; and
7. Personnel competence;
8. Effective communication;
9. Dangerous Goods;
10. Limitations and restrictions;
11. Compatibility;
12. Train compilation;
13. Occurrence management, including contingency plans;
14. Personal Protective Equipment (PPE);
15. Abnormal loads; and
16. Special vehicles for dedicated freight.

**Transnet Freight Rail** and Operator agree to manage the interfaces according to the abovementioned guidelines.

**PRICING**

A price will be quoted per Access Request

**STATIONS**

Stations will be identified as per Access Request

**THE SARCC NETWORK**

As per attached maps depicting the SARCC Network

## **TRANSNET FREIGHT RAIL NETWORK**

### **APPENDIX 8**

As per existing maps depicting the Transnet Freight Rail Network. The Access request will determine the route.

**THE AGREED SERVICES**

The operator is desirous to operate on one or more of the following routes:

1            (As per Schedule)\_\_\_\_\_

2            \_\_\_\_\_

3            \_\_\_\_\_

Transnet Freight Rail shall only allow the operator to operate on selective mainlines on condition that access to Transnet Freight Rail mainlines shall be limited to certain main lines only and on condition that the train (steam locomotive and passenger coaches) is hauled by a diesel or electric locomotive. For the sake of clarity, the operator acknowledges and understands that it will not be allowed to operate its train with a steam locomotive(s) whilst traversing Transnet Freight Rail's mainlines.

Transnet Freight Rail shall consider each access request to operate on a specific route subject to the provisions of this agreement.