

ORDER TO CASH TERMS AND CONDITIONS

© 2017 ALL RIGHTS RESERVED

This agreement (“Agreement”) is formed between you (“the Customer”) and Transnet SOC Ltd trading as Transnet National Ports Authority of 30 Wellington, Parktown, Gauteng, Republic of South Africa and governs your rights to transact on the Order to Cash Platform.

By ticking the box next to the link to these terms and conditions and by clicking on “Log in”, you (“the Customer”) agree to be bound by the terms and conditions detailed herein and confirm that you have read and understood this Agreement.

You furthermore agree that this Agreement is valid and enforceable in terms of, amongst other applicable legislation, section 11(3) of the [Electronic Communications and Transactions Act 25 of 2002](#) (“ECT Act”) You (“the Customer”) are encouraged to download, save and print this agreement.

IMPORTANT: If there is any conflict or inconsistency between the provisions of this Agreement and the provisions of the Act, at any time, the provisions of the Act shall prevail over the provisions of this Agreement.

For ease of reference, the breakdown of the applicable Terms and Conditions (click on any of the following headings to be transferred to the specific clause):

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1. DEFINITIONS AND INTERPRETATION

- 1.1 “the Act” means the National Ports Act No. 12 of 2005 ([click here](#) to view);
- 1.2 “Agreement” means this Terms and Conditions, together with annexures thereto;
- 1.3 “Business Day” means any day (other than a Saturday, Sunday or a proclaimed public holiday in the RSA);
- 1.4 “Cargo Dues Order” means the document representing a cargo declaration of cargo to be handled at a South African port, where an agent has been appointed to handle cargo on behalf of the cargo owner. This document contains all relevant billing information (e.g. account number, container size and type, quantity, transport type, cargo type. etc.). This is used as the source data to generate an invoice;
- 1.5 “Commencement Date” means the date on which the Customer agrees to be bound by this Agreement by ticking the box on the log in page of Order to Cash and clicking on “Log in”;
- 1.6 “Customer” means means any natural or juristic person, its agents, representatives, assignees and successors in title, including but not limited to the End-User and Gatekeeper and to whom or on behalf of whom the Service is provided by TNPA.

- 1.7 **“Customer Information”** means the information required by TNPA and provided by the Customer during the application process for registration onto the/Order to Cash system, including such other information requested and submitted to TNPA by the Customer from time to time;
- 1.8 **“Documentation”** means Cargo Dues Orders, Manifest and Outturn Reports Quotations, Invoices and Statements and any other system generated document;
- 1.9 **“End-User”** means TNPA’s Customers who are registered to use the Order to Cash, including, but not limited to Shipping Lines, Vessel Agents, Clearing and Forwarding Agents, Cargo Owners, Container Operators, and Terminal Operators, and their authorised representatives;
- 1.10 **“Gatekeeper”** means any one person appointed by the Customer to conclude this Agreement and any amendment(s) and/or addition(s) thereto, to appoint and terminate the appointment of the Super-User and generally to perform any act or do anything prescribed in terms of this Agreement and any addendum on behalf of the Customer;
- 1.11 **“Intellectual Property”** means, any knowhow (that is not in the public domain), invention, patent, design, trademark, copyright material, goodwill, processes, methodology and all other identical or similar intellectual property as may exist anywhere in the world and any applications for registration of such intellectual property;
- 1.12 **“Manifest”** means the internationally accepted trading document listing the contents of a ship as submitted to TNPA and other organisations such as the South African Revenue Services (Import Manifest), used primarily to extract statistical data and for revenue completeness;
- 1.13 **“Manual”** means the user manual(s), as may be amended and/or replaced by TNPA from time to time, which contain(s) the standards, rules and procedures governing Order to Cash, which manual(s) form(s) part of this Agreement;
- 1.14 **“Ports Regulator”** means the regulatory body established in terms of the Act and whose key function is economic regulation of the ports system in South Africa;
- 1.15 **“TNPA”** means Transnet SOC Ltd trading as Transnet National Ports Authority of South Africa, registration number 1990/000900/30 (referred to as “the Authority” under the Act) and whose further details appear on clause 2 below;
- 1.16 **“Outturn Reports”** means a detailed report prepared by a terminal to record discrepancies in the form of over, short, and damaged cargo as manifested, and cargo checked at a time and place of handling of ship. The notification from the terminal operator, to the TNPA, of cargo which the terminal operator has handled. Outturn reports must be submitted on a per vessel basis, per import and export leg from all terminals at the respective South African ports;
- 1.17 **“Order to Cash”** means TNPA’s custom-made and fully-integrated online / internet facility that enables the Customer to use and access the Services, and includes all future upgrades available and/or enhancements provided by TNPA from time to time;
- 1.18 **“Services”** means the use of the functionality and content of Order to Cash for purposes of:
- 1.18.1 submitting, amending, cancelling Cargo Dues Orders, Manifest and Outturn Reports;
 - 1.18.2 applying for credit facility or amendments thereto;
 - 1.18.3 requesting quotations; and
 - 1.18.4 viewing and downloading invoices and/or statements.
- 1.19 **“Super User”** means any person appointed by the Gatekeeper, whose functions include, but may not be limited to, accessing and using the Order to Cash, giving instructions in respect of adding, deleting and maintaining of accounts and modules, authorising payment, collection and transfer instructions and appointing and terminating Users, on behalf of the End User;
- 1.20 **“Tariff Book”** means the Tariff Book contemplated in section 72 of the Act and that can be accessed from www.transnetnationalportsauthority.net; and
- 1.21 **“User”** means any person authorised by the Super-User to access and use the Order to Cash on behalf of the Customer.
- 1.22 **In this Agreement:**
- 1.22.1 clause headings are for convenience and are not to be used in the interpretation of this Agreement;
 - 1.22.2 no provision will be construed or interpreted against a Party by reason of such Party having or being deemed to have structured or drafted such provision;
 - 1.22.3 unless the context indicates a contrary intention, an expression that denotes:
 - 1.22.4 any gender includes the other genders;
 - 1.22.5 a natural person includes a juristic person and vice versa; and
 - 1.22.6 references herein to the singular includes the plural and vice versa;

- 1.22.7 any substantive provision conferring rights or imposing obligations on any of the Parties and appearing in any of the definitions in this clause or elsewhere in this Agreement will be given effect to as if it were a substantive provision within the body of this Agreement;
- 1.22.8 terms other than those defined within this Agreement will be given their plain English meanings, and those terms, acronyms and phrases known in the information technology industry must be interpreted in accordance with their generally accepted meanings;
- 1.22.9 where figures are referred to in numerals and words, and there is a conflict between the two, the words will prevail, unless the context indicates a contrary intention;
- 1.22.10 the word 'clauses' refers to clauses of this Agreement;
- 1.22.11 any reference to 'days' will be construed as a reference to calendar days, unless qualified by the word 'business', in which instance the definition of Business Day will apply. Unless specifically otherwise provided, any number of days prescribed is determined by excluding the first and including the last day or, where the last day falls on a Saturday, Sunday or public holiday, the next Business Day.
- 1.22.12 the rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply; and
- 1.22.13 Notwithstanding the fact that hyperlinks in these terms and conditions to copyright notices and legislation should be deemed part of these terms and conditions in terms of section 11 of the ECT Act, the fact that some or all of the hyperlinks may be non-operational, shall not play a role in determination of the validity and interpretation of these terms and conditions.

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2. ABOUT TRANSNET SOC Ltd t/a TRANSNET NATIONAL PORTS AUTHORITY

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| <ul style="list-style-type: none"> 2.1 Company name: Transnet SOC Ltd , trading as Transnet National Ports Authority ; 2.2 VAT number: 4720103177 2.3 Directors : click here to see board of directors; 2.4 Physical Address : 47th floor, Carlton Centre, 150 Commissioner Street, Johannesburg, 2001, South Africa; 2.5 Postal Address: PO Box 72501, Parkview, 2122, South Africa; | <ul style="list-style-type: none"> 2.6 Tel : +27 860 109 330; 2.7 Email: customercare@transnet.net (email address you can use if you have complaints); 2.8 Type of Business: transport and related services 2.9 The Manual published in terms of section 51 of the Promotion of Access to Information Act 2 of 2000 of the owner of the Order to Cash may be downloaded here. |
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3. GRANT OF RIGHTS AND ALLOWED USE

- 3.1 TNPA hereby grants the Customer non-exclusive and a non-transferrable rights to view and use the functions and content of Order to Cash in accordance with this Agreement, provided that such use is for the exclusive execution of instructions, orders and / or notifications in terms of the Services.
- 3.2 The rights are given free of charge.
- 3.3 Other than as agreed to above, the Customer may not use, copy, adapt, redistribute or modify the content or any part thereof or frame, "mirror", data-mine or cache the Order to Cash or reverse engineer, copy, modify, download, distribute, decompile or create a derivative work of the TNPA software, or any part thereof without prior written permission from TNPA.
- 3.4 The Customer may not assign, transfer or sublicense the rights and/or obligations pursuant to this Agreement to a third party.
- 3.5 The Customer shall not to make false, speculative or fraudulent transactions.
- 3.6 The Customer may not use the Order to Cash communication facilities for purposes of unsolicited communications ("Spam") or to send or publish any content that is in violation of any law or that are obscene, defamatory, racist or offensive in nature or may result in the infringement of intellectual property.
- 3.7 The Customer's fair use and other rights are in no way affected by the above.

4. COMMENCEMENT AND TERM

This Agreement shall, subject to the terms and conditions contained herein, commence on the Commencement Date and shall continue indefinitely until it is terminated in accordance with the provisions of clause 18 below.

5. HYPERLINKS TO AND FROM ORDER TO CASH

- 5.1 The Order to Cash may contain links to other websites operated by third parties.
- 5.2 The links to third parties' websites are included solely for the convenience of the End-Users. The End-User therefore assumes sole responsibility for the use of a third parties' websites.
- 5.3 TNPA makes no warranties or representations:
 - 5.3.1 regarding the quality, accuracy, reliability, legality, merchantability or fitness for purpose of a third party's website content or products or services available through that third party's website; or
 - 5.3.2 that third party's website content does not infringe the intellectual property rights of any person. TNPA is not authorising or endorsing or otherwise condoning the reproduction of third party's website content by linking to it.
- 5.4 TNPA expressly disclaims acting in any respect on behalf of any third party's website operators and/or owners. Please note that third party sites may be subject to their own terms of use and privacy policies different from those of this site.
- 5.5 Hyperlinks to the Order to Cash may be allowed, subject to prior written approval by TNPA.

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6. INTERNATIONAL USERS

- 6.1 Order to Cash can be accessed from countries around the world, but is only applicable to the Services relevant to South Africa's ports managed by TNPA.
- 6.2 Order to Cash is controlled, operated, and administered by TNPA from its offices within the Republic of South Africa. TNPA makes no representation that Order to Cash or the Services available through it are appropriate or available for management of Services at locations outside South Africa, and access to Order to Cash from territories where Order to Cash or any of its Services are illegal is prohibited. If the End-User gains access to Order to Cash from a location outside South Africa, the End-User is responsible for compliance with all local laws.

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7. DUTIES OF THE CUSTOMER

Notwithstanding any other duties detailed in this Agreement, the Customer has the duty and responsibility to/for:

- 7.1 Provide all the correct Customer Information to enable TNPA to prepare a Gatekeeper and/or End-User profile and the End-User is required to update such data electronically as and when required by TNPA and promptly as and when such data changes;
- 7.2 Utilise Order to Cash and the Services as detailed herein and other relevant Documentation / User Manual;
- 7.3 Use the End-User's account and maintaining the confidentiality of all passwords and account information. Sharing of passwords and account numbers and account information is strictly prohibited and may result in suspension of the Services. End-User agrees to bear all responsibility for the confidentiality of End-User's password and all use or charges incurred from use of the Order to Cash with End-User's password;
- 7.4 The security, confidentiality and integrity of all messages and the content that End-User receives, transmits through or stores on Order to Cash platform. End-User agrees that it is solely responsible for collecting, inputting and updating all data related to End-User's use of Order to Cash;
- 7.5 Prohibit unauthorised access to End-User's account by another person;
- 7.6 Inform TNPA if there are any discrepancies between documentation submitted in relation to the use of the Order to Cash system and Order to Cash functionality or if Order to Cash is inaccessible for whatsoever reason and within 2 (two) hours of becoming aware of such problem(s);
- 7.7 Take all reasonable steps to ensure that the Order to Cash system and/or documentation related to the system is not used or exploited outside the scope of this Agreement;
- 7.8 Inform TNPA if the End-User becomes aware of any person who makes unauthorised use of Order to Cash;
- 7.9 Implement and communicate all reasonable instructions received from TNPA.

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8. EQUIPMENT

- 8.1 In order to receive and access the Services, the Customer is obliged to have appropriate connectivity, which may include internet connectivity, and the Customer must maintain and assumes full responsibility for all necessary telecommunications lines, hardware, software and consumable materials required for the End-User's access to and use of the Services.

- 8.2 Where applicable, the Customer must maintain all applicable software licence arrangements directly with the third-party licensor of any software required for the Client to receive, access and use the Services, and the Customer is liable for the payment of any applicable licence fees for such software.

The Customer is further obliged to ensure, at its own cost, that the hardware, middleware and software used by it to receive, access and use the Services are kept upgraded and refreshed from time to time so as to be and remain compatible with the hardware, middleware and software used and/or specified by TNPA from time to time for the provision of the Services.

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9. WARRANTIES

The Customer warrants that:

- 9.1 It has full power, authority and legal right to enter into this Agreement and has taken or obtained all necessary corporate and other action to authorise the execution of this Agreement and the performance of its obligations under this Agreement;
- 9.2 Compliance with the terms of this Agreement, and any document entered into by it in accordance with it this Agreement, does not and shall not conflict with or result in a breach of any of its constitutional documents;
- 9.3 Neither its acceptance of the provision of this Agreement nor the performance by it of any of its obligations or the exercise of any of its rights under this Agreement will conflict with or result in a breach of any law, regulation, judgment, order, authorisation, agreement or obligation applicable to it;
- 9.4 It shall not to use or attempt to use another's account, password, or system without authorisation;
- 9.5 It shall not exploit Order to Cash and/or any system generated documentation related to the use of the Order to Cash system beyond the scope of the allowed rights under this Agreement;
- 9.6 It shall ensure that the Customer Information is correct and updated;
- 9.7 The documents that it submits in relation to the use of the Order to Cash systems are true and correct and failure to comply with this clause shall constitute a breach of this Agreement; and
- 9.8 It shall not circumvent or disable or attempt to circumvent or disable any security or technical measures used and provided by TNPA to ensure the proper operation of Order to Cash.

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10. ACCESSIBILITY

- 10.1 The Customer agrees that from time to time Order to Cash may be inaccessible or inoperable for any reason, including, without limitation:
 - 10.1.1 equipment malfunctions;
 - 10.1.2 periodic maintenance procedures or repairs which TNPA may undertake from time to time;
 - 10.1.3 necessary updates or upgrades; or
 - 10.1.4 causes beyond the control of TNPA or which are not reasonably foreseeable by TNPA such as *force majeure* referred to in clause 21 below.
- 10.2 Any planned non-availability of Order to Cash will be communicated 48 (forty eight) hours in advance to the End-User via Order to Cash Notices, unless otherwise agreed to between TNPA and the Customer in writing.
- 10.3 Clause 10.2 will not be applicable under events as detailed under clause 10.1.1 above and 10.1.3 above.
- 10.4 To ensure business continuity, during a period where Order to Cash is inaccessible or inoperable, the Customer agrees to the execution of Services and receipt of confirmation manually.

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11. INTELLECTUAL PROPERTY RIGHTS

- 11.1 The Intellectual Property available on the Order to Cash or obtained via the interaction between itself and the Customer are the property of – or license to TNPA and may not be utilised outside the rights granted in terms of this Agreement.
- 11.2 TNPA will at all times retain any and all Intellectual Property rights to the Order to Cash as well as software and documentation used in the provision of the Services.
- 11.3 The Customer may not duplicate, reproduce, decompile, reverse-engineer, create derivative works from or in any way tamper with any of TNPA's Intellectual Property or any device, certificate, software or documentation that may be provided to it by TNPA.

- 11.4 The Customer represents and warrants that it will at all times access and use the Services and perform its obligations under this Agreement in a manner that does not constitute an infringement or misappropriation of any Intellectual Property or other proprietary rights of TNPA or any third party.

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12. CREDIT FACILITY

- 12.1 The Customer hereby authorises TNPA to perform any credit investigation into the Customer's creditworthiness and financial affairs in accordance with TRANSNET's credit policy and applicable national legislation.
- 12.2 The Customer agrees that in order to be considered for any credit facility to use the Order to Cash, it shall submit the necessary financial information by completing the required Application for Credit Facilities form and provide the relevant supporting documentation, as required by TNPA. The Application for Credit Facilities can be accessed [here](#).
- 12.3 The Customer agrees that the documentation submitted in support of its application for credit facilities may be subject to independent verification and may be rejected by TNPA in the event that it becomes apparent that such information and/or documentation is invalid and/or is not an accurate reflection of the true state of affairs.
- 12.4 In the event that the Customer's Application for Credit Facilities is approved then the Customer will be required by hand delivery or via courier or post, to send an original Transnet approved guarantees containing the bank stamp, made out in favour of TNPA and to the value of the credit facility provided.
- 12.5 The Customer also agrees that the Conditions of Credit applicable to the Application for Credit Facilities form an integral part of this Agreement. Where there is a conflict between the provisions of this Agreement and the Conditions of Credit then the provisions of the Conditions of Credit shall prevail. The Conditions of Credit can be accessed [here](#).

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13. RATES AND PAYMENT

- 13.1 In consideration of the provision of the Services, the Customer will pay the charges, fees, dues ("Charges") calculated in accordance with the Tariff Book. Subject to clause 13.2 below, the Charges as set out in the Tariff Book remain valid from 01 April of each year until 31 March of the following year.
- 13.2 The Charges are subject to be amended, changed or adapted by TNPA as and when such amended, changed or adapted Charges are given final approval by the Ports Regulator. It is the responsibility of the End-User to be familiar with the applicable charges and/or fees at the time.
- 13.3 Submission of an order, under the available Services, will be accepted by TNPA as a notification that the tariffs associated with the instructions contained therein are payable.
- 13.4 The Customer agrees to pay any additional charges that may be incurred by TNPA in carrying out the instructions contained on the order submitted to TNPA that are a departure from or are in addition to the basic Services or any other additional charges /penalties that may be incurred as set out in the Tariff Book and as a result of the late submission of certain orders and/or notifications.
- 13.5 TNPA shall submit to the Customer or Customer's authorised representative, in the form of monthly statement and/or real-time invoice(s), the outstanding amount as per the Customer Account with TNPA.
- 13.6 The Customer or its authorised representative shall make payment to TNPA 25 (twenty five) days after receipt of the TNPA statement, unless agreement between parties provides for different terms.
- 13.7 In the event that the Customer fails to make any payments for Services within the prescribed time limit or fails to comply with these terms and conditions, TNPA shall be entitled to, at its option, immediately withdraw from any additional agreements between TNPA and the Customer and/or also to refuse to accept requests from the Customer and/or to suspend any further services for the Customer. In case the Customer consistently fails to pay TNPA on time, TNPA is entitled to request pre-payment for services, or deposit or provide another security, without prejudice to the availment by TNPA, under such circumstance, of its other rights in these terms and conditions and other relevant agreements.
- 13.8 TNPA reserves its right not to honour any requested Services where no credit facility has been granted to the End-User or where the granted credit limit within the facility has been exceeded by the End-User.
- 13.9 All Charges are exclusive of value added tax and any other tax, duty or fee imposed from time to time by any government or other authority which shall be paid by the End-User at the rate and in the manner prescribed by law.
- 13.10 All payments due from the Customer under these terms and conditions shall be made in full without any set-off, abatement, restriction or condition and without any deduction in respect of bank charges or otherwise or withholding for or on account of a counter-claim.
- 13.11 TNPA reserves the right to charge interest at statutory rate, on all amounts not received by the due date for payment.

13.12 The Customer hereby authorises TNPA to send invoices in electronic format and shall provide TNPA with any contact data necessary to issue and send such invoices. The electronic invoices and statements shall be sent in encrypted format, subject to the requirements of the South African Revenue Services for electronic invoices.

13.13 The Customer shall be responsible for the correctness of the data and their update status. In the event of any changes in the contact data, the Customer shall be required to provide updated data within 7 (seven) days.

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14. ADDITIONAL RATES AND PAYMENTS

14.1 The Customer agrees that quotations provided by TNPA are based on information provided by the Customer at the time of the request for the quotation.

14.2 The Customer further agrees that cost and values contained in the quotation provided are subject to revision based on the information available to TNPA at the time the marine services are finalised.

14.3 TNPA shall be entitled to review all Outturn Reports received from terminal operators and reserves the rights to impose any additional related costs that may have arisen following the inspection of the information arising from such reports.

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15. CONFIDENTIALITY

15.1 The Parties hereby acknowledge that they are aware that, in order to provide and access the Services, information that may be regarded as secret and confidential will be made available to one another.

15.2 Each Party must therefore treat as strictly confidential all information that: (a) each Party discloses in confidence; or (b) reasonably can be identified as confidential and/or proprietary to the Party who disclosed such information; or (c) is received or obtained as a result of entering into or performing in terms of this Agreement, which relates to:

15.2.1 the provisions of this Agreement;

15.2.2 the negotiations relating to this Agreement;

15.2.3 the subject matter of this Agreement; and/or

15.2.4 the other Party.

15.3 Any of the Parties may disclose information that would otherwise be confidential if and to the extent:

15.3.1 required by law;

15.3.2 required by any regulatory or governmental body to which any Party is subjected, wherever situated, whether or not the requirement for information has the force of law;

15.3.3 disclosed to the professional advisers and auditors of any of the Parties;

15.3.4 the information comes into the public domain through no fault of that Party; or

15.3.5 the affected Party has given prior written approval to the disclosure, which approval may not be unreasonably withheld or delayed; provided that any information so disclosed is disclosed only after written notification to the other Party.

15.4 E-mail addresses, names, telephone numbers and fax numbers published on the Order to Cash website may not be incorporated into any database used for electronic marketing or similar purposes. The presentation of such details is no "opt-in" / permission from Order to Cash to utilise same.

15.5 TNPA hereby undertakes to comply with the provisions of the Protection of Personal Information Act No. 4 of 2013 in so far as it relates to the personal information of the End-User and/or any of its authorised agents that is in TNPA's possession and control.

15.6 TNPA collects and uses End-User Information, amongst others, for the following purposes:

15.6.1 To process the End-User's registration application with TNPA as a customer and to provide Services pursuant to such registration;

15.6.2 To create and maintain the profile of the Gatekeeper;

15.6.3 To receive and process queries and communicate with the End-User regarding the Order to Cash and/or Services;

15.6.4 To provide the End-User with access to restricted pages on the Order to Cash; and

15.6.5 To compile non-personal statistical information about browsing habits, click-patterns and access to the Order to Cash.

15.7 No Party shall use any other party's confidential information for any purpose other than to perform its obligations under this Agreement.

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16. SECURITY

- 16.1 TNPA shall take all such steps as may be required and are necessary to ensure that its computer controls environment complies with best practices and international standards. TNPA shall at all times ensure the data and relevant information are retained in a secure environment.
- 16.2 TNPA provide adequate security to all Customers of the Order to Cash and to monitor activities prohibited under section 86 of the ECT Act. The Customer hereby agrees to TNPA right to intercept, monitor, block, read, delete or accesses all data sent to Order to Cash or any other TNPA's communication facility, e.g. email, Instant messaging – or fax to email application, subject to conditions as set out under the applicable legislation.
- 16.3 The Customer must at all times:
- 16.3.1 adhere to the operating, maintenance and security requirements and procedures (including encryption standards) required by TNPA from time to time and ensure that its information technology systems are free from destructive programs, including without limitation viruses, worms and spyware;
 - 16.3.2 ensure the integrity, safekeeping and confidentiality of all communication lines, data and other confidential information (such as devices, certificates, passwords and PINs);
 - 16.3.3 where applicable, take adequate steps to ensure that its Users do not share devices, certificates, passwords or PINs with other persons; and
 - 16.3.4 ensure that the Services are not accessed or used, or any relevant functions performed, by anyone other than a person authorised by the Super-User to do so.
- 16.4 The Customer must, on becoming aware of any breach of the confidentiality or security obligations hereunder or the loss or theft of any devices, certificates, PINs or passwords, immediately advise TNPA thereof, in writing.

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17. INDEMNITY AND LIMITATION OF LIABILITY

- 17.1 The Customer hereby indemnifies TNPA and its employees against and holds them harmless from any and all losses suffered or damage incurred as a result of the breach of the provisions of this Agreement by the End-User, Gatekeeper, Super-User, Users, directors and/or trustees and/or members and/or partners and/or its signatories, administrators, or other employees or appointed third party representatives; or for any loss caused by any theft, fraud or other unlawful activity or any negligent, wilful or fraudulent misconduct of the End-User or its employees and appointed third party representatives, unless such loss or damage arises as a direct or indirect consequence of the gross negligence or wilful misconduct of TNPA or any person acting for or controlled by TNPA.
- 17.2 Any demand, claim or action arising against TNPA in connection with this Agreement and/or the Services (whether arising out of contract or delict) will be limited to claims for direct damage only. TNPA is not liable for any special, indirect or consequential damage of any nature whatsoever.
- 17.3 The Customer specifically indemnifies the TNPA against and holds it harmless from all demands, claims, actions, losses and damage of whatever nature that may be brought against TNPA or that TNPA or the Customer may suffer or incur arising from:
- 17.3.1 any instruction provided by the Customer to TNPA, including without limitation any incorrect, illegible, incomplete or inaccurate information or data;
 - 17.3.2 any inadvertent delays in accessing or using the Services, any Service interruptions, the malfunction, distortion, failure, interruption or unavailability of any hardware, software, communication links, equipment, third-party facilities or systems, or any security breaches caused by the End-User or a third party or the inability of a third party to process a transaction;
 - 17.3.3 any use, misuse, abuse or possession of any software used to access the Services, including without limitation any operating system software, browser software, third-party software or any other software packages or programs;
 - 17.3.4 any unauthorised or unlawful access to the Customer's accounts or data or any loss, destruction or theft of or damage to any of the Customer's or TNPA's data or equipment;
 - 17.3.5 any fluctuation in exchange rates, interest rates or values applicable to foreign exchange transactions, money market transactions or any other transaction conducted through the use of the Services; and
 - 17.3.6 the Customer not complying with any of its obligations set out herein, together with any security procedures specified by TNPA,
- except if such demands, claims, actions, losses or damage arises as a direct or indirect consequence of the gross negligence or wilful misconduct of TNPA or any person acting for or controlled by TNPA.
- 17.4 The Customer has elected to use the Services based on the Customer's, TNPA's and third parties' electronic infrastructure, which necessitates the electronic transfer of confidential data via the internet and/or email. The Customer indemnifies TNPA against and holds it harmless from all demands, claims, actions, losses and damage of whatever nature resulting from the

delay, interception, miscommunication, malfunction, distortion, disclosure, loss and/or fraudulent abuse of such data, prior to, during and after transmission, except if such demands, claims, actions, losses or damage arises as a direct or indirect consequence of the gross negligence or wilful misconduct of TNPA or any person acting for or controlled by TNPA. TNPA is not obliged to confirm receipt of an instruction from the Customer sent to TNPA by such means, and such instruction will be deemed to have been validly sent by the Customer.

- 17.5 Any demand, claim or action arising against the Customer in connection with this Agreement (whether arising out of contract or delict) will be limited to claims for direct damage only. TNPA shall not be held liable for any special, indirect or consequential damage of any nature whatsoever.

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18. BREACH & TERMINATION

- 18.1 If the Customer is in breach of the terms and conditions of Agreement and fails to remedy such breach within 7(seven) days of receipt of written notice calling on it to do so, TNPA will be entitled, without prejudice to any rights which it may have in terms hereof or at law, but not obliged, to:
- 18.1.1 immediately suspend the Services;
 - 18.1.2 claim specific performance;
 - 18.1.3 terminate this Agreement,
 - 18.1.4 recover any loss or damage suffered by it as a consequence of the breach by the Customer or the termination of this Agreement.
- 18.2 Notwithstanding anything to the contrary contained in this Agreement, this Agreement may be terminated at any time by TNPA on 48 (forty-eight) hours' written notice to the End-User in the event of a change in the Customer's financial position that would have the effect of prejudicing TNPA should it continue to render any of the Services to the Customer.
- 18.3 All costs, charges and expenses of whatsoever nature which may be incurred by TNPA in enforcing its rights in terms hereof including, without limitation, legal costs on the scale as between an attorney and own client and collection commission, irrespective of whether any action has been instituted, shall be recoverable from the Customer if the above rights are successfully enforced.
- 18.4 Either of the Parties may terminate this Agreement any stage by giving the other one (1) calendar month written notice of its intention to do so.
- 18.5 Any termination of this Agreement will not affect any accrued rights or liabilities of any Party nor will it affect the coming into force or continuation in force of any other clauses and provisions of this Agreement which are expressly or by implication intended to come into force or continue in force on or after termination.

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19. DISPUTE RESOLUTION

- 19.1 If the Parties are unable to resolve any dispute resulting from this Agreement by means of joint co-operation or discussion between the individuals directly involved with the execution of this Agreement within 5 (five) days after a dispute arises or such extended time period as the Parties may in writing allow, then such a dispute shall be submitted to the most senior executives of the Parties who shall endeavour to resolve this dispute within 5 (five) days after it has been referred to them.
- 19.2 Should the dispute not be resolved in the aforesaid manner, then it shall be resolved by way of arbitration in accordance with the provisions of clause 20 below.

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20. ARBITRATION

- 20.1 Any dispute referred to arbitration pursuant to clause 19.2 shall be determined by arbitration in terms of this clause.
- 20.2 This clause shall not preclude any Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction.
- 20.3 The arbitration shall be held:
- 20.3.1 at Johannesburg in the Republic of South Africa;
 - 20.3.2 with only the legal or other representatives of the Parties to the dispute present thereat;
 - 20.3.3 mutatis mutandis in accordance with the provisions of the Supreme Court Act, No 59 of 1959, the rules made in terms of that Act and the practice directives of the division of the High Court referred to in 20.9;
 - 20.3.4 otherwise in terms of the Arbitration Act, No 42 of 1965, it being the intention that the arbitration shall be held and completed as soon as possible.

- 20.4 The arbitrator shall be, if the matter in dispute is principally:
- 20.4.1 a legal matter, a practising advocate or attorney of Johannesburg of at least 15 (fifteen) years standing;
 - 20.4.2 an accounting matter, a practising chartered accountant of Johannesburg of at least 15 (fifteen) years standing; and
 - 20.4.3 any other matter, an independent person, agreed upon between the Parties to the dispute.
- 20.5 Should the Parties to the dispute fail to agree whether the dispute is principally a legal, accounting or other matter within 7 (seven) days after the arbitration was demanded, the matter shall be deemed to be a legal matter.
- 20.6 Should the Parties fail to agree on an arbitrator within 14 (fourteen) days after the giving of notice in terms of clause 19.2, the arbitrator shall be appointed at the request of either Party to the dispute by the President for the time being of the Law Society of the Northern Provinces according to the provisions of clause 20.4.
- 20.7 The award of the arbitrator shall be final and binding upon all the parties to the dispute (who hereby agree to carry out the award.)
- 20.8 The decision of the arbitrator may be made an order of the court referred to in clause 20.9 at the instance of any of the Parties to the dispute.
- 20.9 The Parties hereby consent to the jurisdiction of the High Court of South Africa Gauteng, Johannesburg and/or Pretoria Divisions) in respect of the proceedings referred to in clause 20.2;
- 20.10 The arbitrator shall have the discretion to award the costs of the arbitration as he may deem fit.
- 20.11 The Parties agree to keep the arbitration including the subject matter of the arbitration and the evidence heard during the arbitration confidential and not to disclose it to anyone except for purposes of an order to be made in terms of clause 20.7.
- 20.12 The provisions of this clause:
- 20.12.1 constitute an irrevocable consent by the Parties to any proceedings in terms hereof and no Party shall be entitled to withdraw there from or claim at any such proceedings that it is not bound by such provisions; and
 - 20.12.2 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.

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21. FORCE MAJEURE

- 21.1 Should either Party ("**the defaulting Party**") fail to meet any of its obligations under this Agreement as a result of acts of God, strikes, lockouts, riots, acts of war, civil disorder, rebellions or revolutions in any country, epidemics, acts of terrorism, vandalism or sabotage, governmental regulations imposed after the fact, communication line failures, power and telecommunications failures, earthquakes, fire, floods or other disasters (hereinafter the "**force majeure**"), then notwithstanding anything to the contrary contained or implied in this Agreement the affected obligation as well as the other Party's counter-obligation shall be suspended for the duration of the *force majeure* and the other Party shall not be entitled to terminate this Agreement prematurely nor shall it have any claim for damages of whatsoever nature against the defaulting Party, unless the event complained of continues for 30 (thirty) consecutive days or 60 (sixty) in aggregate in any 12 (twelve) month period, in which event the other Party may terminate this Agreement on written notice to the defaulting Party.

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22. SUPPORT & MAINTENANCE SERVICES

- 22.1 For online assistance the End-User may utilise the following contact details to communicate to TNPA Order to Cash issues:
- Tel: 0860 109 330
 - Email: customer@tnpa.transnet.net
- 22.2 Support and maintenance services that are requested by Customer and which cannot be resolved remotely, may be charged for by TNPA against its standard support and maintenance rate at time of request. The Customer further agrees that answers or guidance from TNPA may be communicated to the Customer through email.

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23. REMOVAL, AMENDMENT AND CORRECTION OF CONTENT

- 23.1 Customers are encouraged to report untrue, inaccurate, illegal, infringing and/or harmful content available from the Order to Cash to TNPA and TNPA undertakes to correct and/or remove such content or any part thereof if the person reporting such content provided reasonable grounds to prove the alleged nature of the content.
- 23.2 TNPA may make changes / amendments to Order to Cash, the policies, information described in the materials at any time without notice. TNPA makes no commitment to update the materials and may discontinue any part of Order to Cash or Services or certain software or version of certain software for the utilisation of the Order to Cash.

24. GENERAL AND MISCELLANEOUS

24.1 Sole record of agreement

These terms and conditions constitutes the sole record of the agreement between the Customer and TNPA with regard to the subject matter hereof. No Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein.

24.2 No amendments except in writing

24.2.1 No addition to, variation of, or agreed cancellation of, this Agreement shall be of any force or effect unless in writing and signed by or on behalf of the Customer and TNPA; and

24.2.2 No data message as defined above, including but not limited to an e-mail, SMS and recorded voice message, sent by Customer to TNPA shall amend this agreement or the rights and duties of the parties in any manner, unless such a data message is reduced to paper and signed by the parties.

24.3 Waivers

No relaxation or indulgence, which any party may grant to any other, shall constitute a waiver of the rights of that party and shall not preclude that party from exercising any rights which may have arisen in the past or which might arise in future.

24.4 Survival of obligations

Any provision under these terms and conditions, which contemplates performance or observance subsequent to any termination, or expiration of this Agreement shall survive any termination or expiration of this Agreement and continue in full force and effect.

24.5 Severability

If any one or more of the clauses of these terms and conditions shall be declared or adjudged (formally or informally) by competent authority to be illegal, invalid or unenforceable under any law applicable in any jurisdiction in which these terms and conditions is to be performed, including this clause :

24.5.1 That clause shall be deemed for all purposes to be severable from all the other clauses of these terms and conditions, which clauses shall continue in force unaffected;

24.5.2 The terms and conditions thus continuing shall (subject and without prejudice to any appeal to higher authority as to the status of that clause) exclude the offending clause but, if such deletion substantially affects or alters the commercial basis of these terms and conditions, the terms and conditions, including such provision, shall be amended in such manner as the parties shall in good faith agree which will, while not being void or unenforceable, most nearly achieve the object of the allegedly void or unenforceable provisions.

25. APPLICABLE AND GOVERNING LAW

This Agreement is governed by and must be construed in accordance with the laws of the Republic of South Africa, and all disputes, actions and other matters relating thereto will be determined in accordance with such laws.

26. LEGAL COSTS

TNPA shall not be liable for costs incurred by End-Users to obtain professional advice relating to these terms and conditions.

27. DOMICILIUM CITANDI ET EXECUTANDI

27.1 The Parties choose for the purposes of this Agreement the following addresses, e-mail addresses and designated officers:

27.1.1 In respect of TNPA

Physical Address	Transnet SOC Ltd 47 th floor, Carlton Centre, 150 Commissioner Street, Johannesburg, 2001, South Africa
Fax number	Fax: +27 11 308 2638
Attention	The Group Executive: Legal and Compliance

27.1.2 In respect of the Customer

Physical Address	As per the details contained in the Customer Account Application
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Fax Number	As per the details contained in the Customer Account Application
Attention	As per the details contained in Customer Account Application

- 27.2 Any legal process to be served on any of the Parties may be served on such Party at the address specified for it in clause 27.1 and such Party chooses that address as such Party's *domicilium citandi et executandi* for all purposes under this Agreement.
- 27.3 Any notice or other communication to be given to any of the Parties in terms of this Agreement shall be valid and effective only if it is given in writing, provided that any notice given by e-mail shall be regarded for this purpose as having been given in writing.
- 27.4 A notice to any Party which is delivered to the Party by hand at the address specified for such Party in clause 27.1 shall be deemed to have been received on the day of delivery, provided it was delivered to a responsible person during ordinary business hours, and the notice and the envelope in which it is delivered are both marked for the attention of the Party's designated officer specified in clause 27.1
- 27.5 A notice by e-mail to a Party to the e-mail address specified for it in clause 27.1 shall be deemed to have been received (unless the contrary is proved) within 4 (four) hours of transmission if it is transmitted during normal business hours of the receiving Party or within 4 (four) hours of the beginning of the next Business Day at the destination after it is transmitted, if it is transmitted outside those business hours, provided it is marked for the attention of the Party's designated officer specified in clause 27.1.
- 27.6 Notwithstanding anything to the contrary in this clause 27.1, a written notice or other communication actually received by any Party (and for which written receipt has been obtained) shall be adequate written notice or communication to it notwithstanding that the notice was not sent to or delivered at its chosen address, provided it is marked for the attention of the Party.
- 27.7 Any Party may, by written notice to the other Parties, change such Party's address and/or e-mail address for the purposes of clause 27.1 to any other address or e-mail address provided that the change shall become effective on the seventh day after the receipt of the notice.

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