

**SALE OF VESSEL AGREEMENT**

between

**IZIKO MUSEUMS OF SOUTH AFRICA**

and

**THE PURCHASER SPECIFIED IN THE SCHEDULE**

## TABLE OF CONTENTS

1	PARTIES.....	3
2	DEFINITIONS, INTERPRETATION AND GENERAL PROVISIONS.....	3
3	INTRODUCTION.....	3
4	CONDITIONS PRECEDENT .....	3
5	SALE.....	5
6	PURCHASE CONSIDERATION AND PAYMENT PROVISIONS.....	6
7	DELIVERY .....	6
8	EXCLUDED HERITAGE OBJECTS.....	6
9	PURCHASER WARRANTIES .....	8
10	PURCHASER INDEMNITIES .....	9
11	GENERAL WARRANTIES .....	10
12	PUBLICITY .....	11
13	CONFIDENTIALITY .....	12
14	SUPPORT .....	13
15	BREACH .....	13
16	DISPUTE RESOLUTION .....	14
17	NOTICES AND DOMICILIA.....	15
18	BENEFIT OF THE AGREEMENT.....	16
19	APPLICABLE LAW AND JURISDICTION.....	16
20	INDEPENDENT ADVICE.....	16
21	GENERAL.....	16
22	COSTS.....	18
23	SIGNATURE .....	18

## ANNEXURES

Annexure A	Definitions, Interpretation and General Provisions
Annexure B	Schedule of Information
Annexure C	RFQ

## 1 PARTIES

- 1.1 The Parties to this Agreement are –
- 1.1.1 Iziko Museums of South Africa; and
- 1.1.2 the Purchaser specified in the Schedule.
- 1.2 The Parties agree as set out below.

## 2 DEFINITIONS, INTERPRETATION AND GENERAL PROVISIONS

The Parties acknowledge the Interpretation and General Provisions set out in Annexure A incorporated into this Agreement by reference and binding on the Parties.

## 3 INTRODUCTION

- 3.1 Iziko is the owner of the Vessel and the Minister of Arts and Culture (office subsequently renamed the Minister of Sport, Arts and Culture) gave ministerial approval for the de-accessioning of the Vessel on 3 August 2018 ("**De-accessioning Approval**").
- 3.2 Further to the De-accessioning Approval Iziko removed the Heritage Objects (save for the Excluded Heritage Objects) from the Vessel and wishes to sell the Vessel and sent out the RFQ in compliance with the requirements of Treasury and the Purchaser was selected pursuant to the RFQ.
- 3.3 As provided for in the RFQ, the anchor and propeller of the Vessel also constitute heritage objects but Iziko has obtained the consent of SAHRA and may accordingly sell the Vessel with the anchor and propeller and these heritage objects therefore do not form part of the Excluded Heritage Objects and will be sold with the Vessel in terms of this Agreement.
- 3.4 Accordingly, Iziko wishes to sell, and the Purchaser wishes to purchase the Vessel in accordance with the terms and conditions contemplated in this Agreement.
- 3.5 The Parties wish to record in writing their agreement in respect of the above and matters ancillary thereto.

## 4 CONDITIONS PRECEDENT

- 4.1 Save for clauses 1 to 4, and clauses 11 to 23 all of which will become effective immediately, this Agreement is subject to the fulfilment of the Conditions Precedent that –
- 4.1.1 by not later than 4 weeks after the Signature Date, the Purchaser has submitted its Removal Plan to Iziko which Removal Plan has been agreed between Iziko, the V&A Waterfront, the TNPA and the Purchaser;

- 4.1.2 by not later than 4 weeks after the Signature Date the Purchaser has received all required consents, permits or approvals required to move the Vessel from the Current Berth to the Alternative Berth in terms of the Removal Plan ("**Removal Consents**");
- 4.1.3 by not later than 2 weeks after the Signature Date, the Purchaser has furnished Iziko with an unconditional and irrevocable guarantee acceptable to Iziko in an amount reasonably acceptable to Iziko. This guarantee shall be irrevocable even in instances where the Purchaser is insolvent, liquidated or becomes subject to business rescue proceedings, for any potential claims Iziko may have against the Purchaser pursuant to a breach of this Agreement by the Purchaser;
- 4.1.4 by not later than 2 weeks after the Signature Date, the Purchaser has procured the Purchaser Insurance and provided Iziko with proof thereof in a form reasonably acceptable to Iziko;
- 4.1.5 by not later than 4 weeks after the Signature Date, the Purchaser has submitted a copy of the Environmental Management Programme and Health and Safety Plan to Iziko in a form reasonably acceptable to Iziko;
- 4.1.6 by not later than 4 weeks after the Signature Date, the Purchaser has submitted a copy of the duly completed V&A Waterfront Health and Safety Specification to Iziko and the V&A Waterfront in a form reasonably acceptable to Iziko and the V&A Waterfront;
- 4.1.7 by not later than 4 weeks after the Signature Date, the Parties shall have lodged with SAMSA all documents as may be required to register the Vessel in the name of the Purchaser on the South African Register of Ships ("**Ships Register**") on the Delivery Date in accordance with the requirements of the Ship Registration Act, No. 58 of 1998; and
- 4.1.8 by not later than 4 weeks after the Signature Date, Iziko shall prepare the "Protocol of Delivery" and deliver same to the Purchaser.
- 4.2 The Purchaser shall use reasonable endeavours to procure the fulfilment of the Conditions Precedent contained in clauses 4.1.1 to 4.1.6 as soon as reasonably possible after the Signature Date and shall to the extent that such Conditions Precedent have been fulfilled, prior to the expiry of the relevant time periods set out in those clauses, furnish to Iziko documents evidencing the fulfilment of such Conditions Precedent to Iziko's satisfaction.
- 4.3 Iziko shall use reasonable endeavours to procure the fulfilment of the Condition Precedent contained in clause 4.1.8, as soon as reasonably possible after the Signature Date and shall to the extent that such Condition Precedent has been fulfilled, prior to the

expiry of the relevant time period set out in that clause, furnish to the Purchaser documents evidencing the fulfilment of such Condition Precedent.

4.4 The Parties shall use their reasonable endeavours and the Parties will co-operate in good faith to procure the fulfilment of the Condition Precedent contained in clause 4.1.7 as soon as reasonably possible after the Signature Date.

4.5 The Conditions Precedent set out in –

4.5.1 clauses 4.1.3 to 4.1.5 and 4.1.7 to 4.1.7, have been inserted for the benefit of Iziko which will be entitled to waive fulfilment of any of the said Conditions Precedent, in whole or in part, on written notice to the Purchaser prior to the expiry of the relevant time periods set out in those clauses; and

4.5.2 clauses 4.1.1, 4.1.2 and 4.1.6 are not capable of being waived.

4.6 Unless all the Conditions Precedent have been fulfilled or waived by not later than the relevant dates for fulfilment thereof set out in clause 4.1 (or such later date or dates as may be agreed in writing between the Parties before the aforesaid date or dates) this Agreement will not automatically lapse and any Party shall be entitled to give written notice to the others that unless such Condition Precedent in question is fulfilled within 14 days of the date of receipt of the notice by the other Parties (or such additional period or periods as the Parties may agree in writing) (for the purposes of this clause 4.6 referred to as the "**Notice Period**"), the period for fulfilment or waiver of the Suspensive Condition will expire, and the provisions of this Agreement, save for clauses 1 to 4 and clauses 11 to 23 which will remain of full force and effect, will never become of any force or effect and the *status quo ante* will be restored as near as may be possible and none of the Parties will have any claim against the others in terms hereof or arising from the failure of the Conditions Precedent, save for any claims arising from a breach of clause 4.2, clause 4.3 and/or clause 4.4. For the avoidance of doubt, no Party shall be entitled to give notice to the others as contemplated herein before the expiry of the relevant date for fulfilment of the relevant Conditions Precedent as set out in clause 4.1.

## 5 **SALE**

5.1 Iziko hereby sells to the Purchaser, which hereby purchases the Vessel, with effect from the Delivery Date.

5.2 The Sale shall expressly exclude the Heritage Objects and Iziko shall remain the owner of the Heritage Objects notwithstanding the Sale and the Delivery Date.

5.3 Notwithstanding the Signature Date, the Sale will be deemed to have taken place on the Delivery Date and ownership, risk in and benefit attaching to the Vessel (excluding the Excluded Heritage Objects) will be deemed to have passed to the Purchaser on the

Delivery Date against payment of the Purchase Consideration in accordance with clause 6.1.

## 6 PURCHASE CONSIDERATION AND PAYMENT PROVISIONS

- 6.1 The total Purchase Consideration payable by the Purchaser in respect of the purchase of the Vessel is an amount equivalent to R[•][**Note: Will be determined in RFQ responses**], exclusive of VAT which is payable on the Delivery Date.
- 6.2 All payments to be made under or arising from this Agreement will be made by electronic transfer of immediately available and freely transferable funds, free of any deductions or set-off whatsoever, in the currency of South Africa and, (1) in the case of payments made by the Purchaser to Iziko to the Iziko Designated Account and (2) in the case of payments made by Iziko to the Purchaser to the Purchaser Designated Account.
- 6.3 Should any payment under or arising from this Agreement fail to be made on the due date thereof then, without prejudice to such other rights as may accrue to the payee consequent upon such failure, such overdue amounts will bear interest at the Prime Rate, from the due date for payment to the date of actual payment, both dates inclusive.

## 7 DELIVERY

- 7.1 On the Delivery Date, representatives of Iziko and the Purchaser shall meet at the Current Berth at a time agreed upon by them, where Iziko shall –
- 7.1.1 give possession of the Vessel to the Purchaser and place the Purchaser in control of the Vessel; and
- 7.1.2 deliver to the Purchaser the diagrams for the Vessel as well as the limited historic documents the curator of Iziko has in its possession.
- 7.2 Once Iziko has delivered the Vessel to the Purchaser pursuant to this clause 7, the Purchaser shall prepare the Vessel to be transported from the Current Berth to the Alternative Berth in accordance with the provisions of the Removal Plan and the Purchaser shall further procure that the Vessel is only moved within the permitted working hours as prescribed by the V&A Waterfront and/or the Port.

## 8 EXCLUDED HERITAGE OBJECTS

- 8.1 Within 14 days after the Vessel has been transported from the Current Berth to the Alternative Berth in accordance with the Removal Plan, the Purchaser shall have removed or procured the removal of the Excluded Heritage Objects from the Vessel in line with the requirements of SAHRA and in terms of the provisions of the NHRA.
- 8.2 A representative of Iziko shall be entitled to:

- 8.2.1 inspect the Vessel at any time at the Alternative Berth until the Excluded Heritage Objects have been removed from the Vessel; and
- 8.2.2 be present during the removal of the Excluded Heritage Objects from the Vessel.
- 8.3 To ensure the safety and security of the Excluded Heritage Objects, Iziko shall further be entitled to appoint a security officer to guard the Vessel at the Alternative Berth 24 hours a day 7 days a week until all the Excluded Heritage Objects are safely delivered to Iziko.
- 8.4 Once the Excluded Heritage Objects have been removed from the Vessel the Purchaser shall be responsible to ensure that it or the Selected Transporter safely transports the Excluded Heritage Objects at the Heritage Objects Transport Fee to Iziko's storage site located within a 20km radius from the Cape Town City Centre within 14 days from the Delivery Date. Iziko shall provide the Purchaser with the address of its storage site by the Delivery Date.
- 8.5 The Vessel or any portion thereof, including but not limited to, any scrap from the scrapping of the Vessel may not be removed and transported from the Port or the V&A Waterfront until the Excluded Heritage Objects are removed from the Vessel and safely delivered to Iziko to Iziko's satisfaction. Once the Excluded Heritage Objects are removed from the Vessel and safely delivered to Iziko to Iziko's satisfaction and should the Purchaser not wish to scrap the Vessel at the Port, the Vessel may further only be transported from the Port or the V&A Waterfront if the Vessel is stable and can be transported from the Port or the V&A Waterfront in accordance with the Removal Plan, the Port Rules and all applicable Maritime and Merchant Shipping Laws, marine laws, Environmental Laws and Health and Safety Laws and any equivalent international laws.
- 8.6 Should the Purchaser scrap the Vessel after the Excluded Heritage Objects are removed from the Vessel and safely delivered to Iziko to Iziko's satisfaction, the Purchaser shall scrap the Vessel in accordance with the TNPA Scrapping Rules, Port Rules and all other applicable Maritime and Merchant Shipping Laws, marine laws, Environmental Laws and Health and Safety Laws and it shall be the Purchaser's responsibility to advise SAMSA once the Vessel has been decommissioned and scrapped and to request SAMSA to remove the Vessel from the Ships Register.
- 8.7 The Purchaser shall further procure that all works performed in respect of the Vessel pursuant to this clause 8 occurs within the permitted working hours as prescribed by the V&A Waterfront and/or the Port.
- 8.8 The Purchaser shall provide Iziko with an invoice for the Heritage Objects Removal Fee and the Heritage Objects Transport Fee, which invoice shall be payable by Iziko to the Purchaser in line with Iziko's internal processes notwithstanding the date of the invoice.

## 9 PURCHASER WARRANTIES

- 9.1 Without prejudice to any other warranties expressed elsewhere in this Agreement, the Purchaser warrants that ("**Purchaser Warranties**")-
- 9.1.1 the Purchaser has the level of expertise, capability and know-how required in order to transport and move the Vessel in accordance with the Removal Plan and remove the Excluded Heritage Objects from the Vessel in accordance with clause 8.1;
- 9.1.2 where the Purchaser will appoint a service provider to remove the Excluded Heritage Objects from the Vessel in accordance with clause 8.1, such service provider has the level of expertise, capability and know-how required in order to remove the Excluded Heritage Objects from the Vessel in accordance with clause 8.1;
- 9.1.3 where the Purchaser will appoint the Selected Transporter to safely transport the Excluded Heritage Objects in accordance with clause 8.4, the Selected Transporter has the level of expertise, capability and know-how required in order to safely transport the Excluded Heritage Objects in accordance with clause 8.4;
- 9.1.4 the Vessel shall be transported from the Current Berth to the Alternative Berth in accordance with the Removal Plan and all Applicable Law including all Maritime and Merchant Shipping Laws, marine laws, Environmental Laws and Health and Safety Laws, and any conditions or requirements imposed by any Governmental Body, the TNPA, the Port, the V&A Waterfront or any conditions or requirements contained in the Removal Consents;
- 9.1.5 the Purchaser and its Associated Parties have not engaged in any Corrupt Act prior to the date of this Agreement;
- 9.1.6 to the best of its knowledge and belief, neither the Purchaser nor any of its Associated Parties has at any time –
- 9.1.6.1 been found by a court in any jurisdiction to have engaged in any Corrupt Act (or similar conduct);
- 9.1.6.2 admitted to having engaged in any Corrupt Act (or similar conduct); or
- 9.1.6.3 been investigated or been suspected in any jurisdiction of having engaged in any Corrupt Act (or similar conduct); and
- 9.1.7 the Purchaser warrants that neither it nor any of its Associated Parties have been involved in Fronting Practices (as defined or contemplated in the B-BBEE Act), nor have they breached or committed any other offence under the B-BBEE Act.
- 9.2 Each Purchaser Warranty–

- 9.2.1 is a separate warranty and will in no way be limited or restricted by reference to or inference from the terms of any other warranty or by any other words in this Agreement;
- 9.2.2 is, insofar as it is promissory or relates to a future event, be deemed to have been given as at the date of fulfilment of the promise or future happening of the event, as the case may be; and
- 9.2.3 be deemed to be material and to be a material representation inducing Iziko to enter into this Agreement.
- 9.3 It is recorded that Iziko has entered into this Agreement on the strength of the Purchaser warranties both as regards their content and the date or dates to which they apply.

## 10 PURCHASER INDEMNITIES

- 10.1 The Purchaser hereby agrees to indemnify and hold the Minister of Sport, Arts and Culture, Iziko and its officers, board members, directors, employees, agents, contractors, and attorneys harmless from and against the entirety of any Adverse Consequences, which Iziko may suffer (whether directly or indirectly) resulting from, arising out of, or relating to—
- 10.1.1 any information provided by the Purchaser to Iziko in response to the RFQ or pursuant to this Agreement being found to be incorrect;
- 10.1.2 a failure of any of the Purchaser Warranties or any other warranties or undertakings contained in this Agreement to be true and correct;
- 10.1.3 any breach of or non-compliance by the Purchaser with any of its obligations contained in this Agreement;
- 10.1.4 any Environmental Liability which arises as a result of any breach or non-compliance by the Purchaser with any of its obligations contained in this Agreement or under all Applicable Laws;
- 10.1.5 any fine, sanction or penalty imposed upon Iziko under Applicable Laws as a consequence of a breach by the Purchaser of the Purchaser Warranties or its obligations under this Agreement;
- 10.1.6 as a result of the Purchaser Insurance lapsing for any reason whatsoever;
- 10.1.7 any claim made against the Minister of Sport, Arts and Culture or Iziko by any third party including, but not limited to, any Associated Parties of the Purchaser, the TNPA, the Port or the V&A Waterfront, which arises out of the breach, negligent performance or failure or delay in performance of this Agreement; and

- 10.1.8 any claim made against the Minister of Sport, Arts and Culture or Iziko by any third party including but not limited to any Associated Parties of the Purchaser, the TNPA, the Port or the V&A Waterfront, which arises out of-
- 10.1.8.1 the use of the Vessel by the Purchaser after the Delivery Date; or
- 10.1.8.2 the transporting and removal of the Vessel from the Current Berth to the Alternative Berth by the Purchaser after the Delivery Date; or
- 10.1.8.3 transporting the Vessel in the V&A Waterfront and at the Port after the removal and delivery to Iziko of the Excluded Heritage Objects when the Purchaser is entitled to deal with the Vessel as it sees fit; or
- 10.1.8.4 transporting the Vessel out of the Port after the removal and delivery to Iziko of the Excluded Heritage Objects when the Vessel can be removed from the Port in accordance with clause 8.5; or
- 10.1.8.5 the removal and delivery to Iziko of the Excluded Heritage Objects in accordance with clause 8; or
- 10.1.8.6 the abandonment by the Purchaser of the Vessel or any parts of the Vessel after the Delivery Date.

## 11 GENERAL WARRANTIES

- 11.1 Each of the Parties hereby warrants to and in favour of the other that –
- 11.1.1 it has the legal capacity and has taken all necessary corporate action required to empower and authorise it to enter into this Agreement;
- 11.1.2 this Agreement constitutes an agreement valid and binding on it and enforceable against it in accordance with its terms;
- 11.1.3 the execution of this Agreement and the performance of its obligations hereunder does not and shall not –
- 11.1.3.1 contravene any law or regulation to which that Party is subject;
- 11.1.3.2 contravene any provision of that Party's constitutional documents; or
- 11.1.3.3 conflict with or constitute a breach of any of the provisions of any other agreement, obligation, restriction or undertaking which is binding on it; and
- 11.1.4 to the best of its knowledge and belief, it is not aware of the existence of any fact or circumstance that may impair its ability to comply with all of its obligations in terms of this Agreement;

- 11.1.5 it is entering into this Agreement as principal (and not as agent or in any other capacity);
  - 11.1.6 the natural person who signs and executes this Agreement on its behalf is validly and duly authorised to do so;
  - 11.1.7 no other party is acting as a fiduciary for it; and
  - 11.1.8 it is not relying upon any statement or representation by or on behalf of any other Party, except those expressly set forth in this Agreement.
- 11.2 Each of the representations and warranties given by the Parties in terms of clause 11.1 shall –
- 11.2.1 be a separate warranty and will in no way be limited or restricted by inference from the terms of any other warranty or by any other words in this Agreement;
  - 11.2.2 continue and remain in force notwithstanding the completion of any or all the transactions contemplated in this Agreement; and
  - 11.2.3 *prima facie* be deemed to be material and to be a material representation inducing the other Party to enter into this Agreement.

## 12 PUBLICITY

- 12.1 Subject to clause 12.3, each Party undertakes to keep confidential and not to disclose to any third party, save as may be required in law (including by the rules of any recognised securities exchange, where applicable) or permitted in terms of this Agreement, the nature, content or existence of this Agreement and any and all information given by one Party to the other pursuant to this Agreement.
- 12.2 No announcements of any nature whatsoever will be made by or on behalf of a Party relating to this Agreement without the prior written consent of the other Party, save for any announcement or other statement required to be made in terms of the provisions of any law or by the rules of any recognised securities exchange, in which event the Party obliged to make such statement will first consult with the other Party in order to enable the Parties in good faith to attempt to agree the content of such announcement, which (unless agreed) must go no further than is required in terms of such law or rules. This will not apply to a Party wishing to respond to the other Party which has made an announcement of some nature in breach of this clause 12.
- 12.3 This clause 12 shall not apply to any disclosure made by a Party to its professional advisors or consultants, provided that they have agreed to the same confidentiality undertakings, or to any judicial or arbitral tribunal or officer, in connection with any matter relating to this Agreement or arising out of it.

### 13 CONFIDENTIALITY

- 13.1 The Parties undertake that during the operation of, and after the expiration, termination or cancellation of, this Agreement for any reason, they will keep confidential –
- 13.1.1 any information which any Party ("**Disclosing Party**") communicates to any other Party ("**Recipient**") and which is stated to be or by its nature is intended to be confidential; and
- 13.1.2 all other information of the same confidential nature concerning the business of a Disclosing Party which comes to the knowledge of any Recipient whilst it is engaged in negotiating the terms of this Agreement or after its conclusion.
- 13.2 If a Recipient is uncertain about whether any information is to be treated as confidential in terms of this clause 13, it shall be obliged to treat it as such until written clearance is obtained from the Disclosing Party.
- 13.3 Each Party undertakes, subject to clause 13.4, not to disclose any information which is to be kept confidential in terms of this clause 13, nor to use such information for its own or anyone else's benefit.
- 13.4 Notwithstanding the provisions of clause 13.3, a Recipient shall be entitled to disclose any information to be kept confidential if and to the extent only that the disclosure is *bona fide* and necessary for the purposes of carrying out its duties or implementing or enforcing any of its rights in terms of this Agreement.
- 13.5 The obligation of confidentiality placed on the Parties in terms of this clause 13 shall cease to apply to a Recipient in respect of any information which –
- 13.5.1 is or becomes generally available to the public other than by the negligence or default of the Recipient or by the breach of this Agreement by the Recipient;
- 13.5.2 the Disclosing Party confirms in writing is disclosed on a non-confidential basis;
- 13.5.3 has lawfully become known by or come into the possession of the Recipient on a non-confidential basis from a source other than the Disclosing Party having the legal right to disclose same, provided that such knowledge or possession is evidenced by the written records of the Recipient existing at the Signature Date; or
- 13.5.4 is disclosed pursuant to a requirement or request by operation of law, regulation or court order, to the extent of compliance with such requirement or request only and not for any other purpose,

provided that –

- 13.5.5 the onus shall at all times rest on the Recipient to establish that information falls within the exclusions set out in clauses 13.5.1 to 13.5.4;
- 13.5.6 information will not be deemed to be within the foregoing exclusions merely because such information is embraced by more general information in the public domain or in the Recipient's possession; and
- 13.5.7 any combination of features will not be deemed to be within the foregoing exclusions merely because individual features are in the public domain or in the Recipient's possession, but only if the combination itself and its principle of operation are in the public domain or in the Recipient's possession.
- 13.6 In the event that the Recipient is required to disclose confidential information of the Disclosing Party as contemplated in clause 13.5.4, the Recipient will –
- 13.6.1 advise the Disclosing Party thereof in writing prior to disclosure, if possible;
- 13.6.2 take such steps to limit the disclosure to the minimum extent required to satisfy such requirement and to the extent that it lawfully and reasonably can;
- 13.6.3 afford the Disclosing Party a reasonable opportunity, if possible, to intervene in the proceedings;
- 13.6.4 comply with the Disclosing Party's reasonable requests as to the manner and terms of any such disclosure; and
- 13.6.5 notify the Disclosing Party of the recipient of, and the form and extent of, any such disclosure or announcement immediately after it is made.

#### 14 **SUPPORT**

The Parties undertake at all times to do all such things, perform all such actions and take all such steps and to procure the doing of all such things, the performance of all such actions and the taking of all such steps as may be open to them and necessary for or incidental to the putting into effect or maintenance of the terms, conditions and/or import of this Agreement.

#### 15 **BREACH**

- 15.1 In the event of any of the Parties ("**Defaulting Party**") committing a breach of any of the terms of this Agreement and failing to remedy such breach within a period of 5 business days after receipt of a written notice from another Party ("**Aggrieved Party**") calling upon the Defaulting Party so to remedy, then the Aggrieved Party shall be entitled, at its sole discretion and without prejudice to any of its other rights in law, either to claim specific performance of the terms of this Agreement or to cancel this Agreement forthwith and

without further notice, and in either case to claim and recover damages from the Defaulting Party.

- 15.2 The Parties agree that any costs awarded will be recoverable on an attorney-and-own-client scale unless the Court specifically determines that such scale shall not apply, in which event the costs will be recoverable in accordance with the High Court tariff, determined on an attorney-and-client scale.

## 16 DISPUTE RESOLUTION

- 16.1 In the event of there being any dispute or difference between the Parties arising out of this Agreement, the said dispute or difference shall on written demand by either Party be submitted to arbitration in Cape Town in accordance with the AFSA rules, which arbitration shall be administered by AFSA.
- 16.2 Should AFSA, as an institution, not be operating at that time or not be accepting requests for arbitration for any reason, or should AFSA refuse to accept the particular request for arbitration for whatever reason, then the arbitration shall be conducted in accordance with the AFSA rules for commercial arbitration (as last applied by AFSA) before an arbitrator appointed by agreement between the parties to the dispute or failing agreement within 10 business days of the demand for arbitration, then any party to the dispute shall be entitled to forthwith call upon the chairperson of the Cape Bar Council (or its successor) to nominate the arbitrator, provided that the person so nominated shall be an advocate of not less than 10 years standing as such. The person so nominated shall be the duly appointed arbitrator in respect of the dispute. In the event of the attorneys of the parties to the dispute failing to agree on any matter relating to the administration of the arbitration, such matter shall be referred to and decided by the arbitrator whose decision shall be final and binding on the parties to the dispute.
- 16.3 Nothing herein contained shall be deemed to prevent or prohibit a party to the arbitration from applying to the appropriate court for urgent relief or for judgment in relation to a liquidated claim.
- 16.4 Any arbitration in terms of this clause 16 (including any appeal proceedings) shall be conducted *in camera* and the Parties shall treat as confidential details of the dispute submitted to arbitration, the conduct of the arbitration proceedings and the outcome of the arbitration.
- 16.5 This clause 16 will continue to be binding on the Parties notwithstanding any termination or cancellation of the Agreement.
- 16.6 The Parties agree that the written demand by a party to the dispute in terms of clause 16.1 that the dispute or difference be submitted to arbitration, is to be deemed to be a

legal process for the purpose of interrupting extinctive prescription in terms of the Prescription Act, 1969.

## 17 NOTICES AND DOMICILIA

17.1 The Parties select as their respective *domicilia citandi et executandi* the following physical addresses, and for the purposes of giving or sending any notice provided for or required under this Agreement, the said physical addresses as well as the following email addresses —

<u>Name</u>	<u>Physical Address</u>	<u>Email Address</u>
Iziko	Office of the CEO 25 Queen Victoria Street Cape Town	ojeffries@iziko.org.za

Marked for the attention of: The CEO

<u>Name</u>	<u>Physical Address</u>	<u>Email Address</u>
Purchaser	As specified in the Schedule	As specified in the Schedule

Marked for the attention of: As specified in the Schedule

provided that a Party may change its *domicilium* to another physical address (provided that such physical address is not a post office box or *poste restante*), or may change its address for the purposes of notices to any other physical address or email address by written notice to the other Party to that effect. Such change of address will be effective 5 business days after receipt of the notice of the change.

17.2 All notices to be given in terms of this Agreement will be given in writing and will —

17.2.1 be delivered by hand or sent by email;

17.2.2 if delivered by hand during business hours, be presumed to have been received on the date of delivery. Any notice delivered after business hours or on a day which is not a business day will be presumed to have been received on the following business day; and

17.2.3 if sent by email during business hours, be presumed to have been received on the date of successful transmission of the email. Any email sent after business hours or on a day which is not a business day will be presumed to have been received on the following business day.

17.3 Notwithstanding the above, any notice given in writing, and actually received by the Party to whom the notice is addressed, will be deemed to have been properly given and received, notwithstanding that such notice has not been given in accordance with this clause 17.

## 18 **BENEFIT OF THE AGREEMENT**

This Agreement will also be for the benefit of and be binding upon the successors in title and permitted assigns of the Parties or either of them.

## 19 **APPLICABLE LAW AND JURISDICTION**

19.1 This Agreement will in all respects be governed by and construed under the laws of South Africa.

19.2 Subject to clause 16, the Parties hereby consent and submit to the non-exclusive jurisdiction of the High Court of South Africa, Western Cape Division, Cape Town in any dispute arising from or in connection with this Agreement.

## 20 **INDEPENDENT ADVICE**

Each of the Parties to this Agreement hereby acknowledges and agrees that –

20.1 it has been free to secure independent legal and other professional advice (including financial and taxation advice) as to the nature and effect of all of the provisions of this Agreement and that it has either taken such independent advice or has dispensed with the necessity of doing so; and

20.2 all of the provisions of this Agreement and the restrictions herein contained are fair and reasonable in all the circumstances and are in accordance with the Party's intentions.

## 21 **GENERAL**

### 21.1 **Whole Agreement**

21.1.1 This Agreement constitutes the whole of the agreement between the Parties relating to the matters dealt with herein and, save to the extent otherwise provided herein, no undertaking, representation, term or condition relating to the subject matter of this Agreement not incorporated in this Agreement shall be binding on either of the Parties.

21.1.2 This Agreement supersedes and replaces any and all agreements between the Parties (and other persons, as may be applicable) and undertakings given to or on behalf of the Parties (and other persons, as may be applicable) in relation to the subject matter hereof.

### 21.2 **Variations to be in Writing**

No addition to or variation, deletion, or agreed cancellation of all or any clauses or provisions of this Agreement will be of any force or effect unless in writing and signed by the Parties.

### 21.3 **No Indulgences**

No latitude, extension of time or other indulgence which may be given or allowed by either Party to the other in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of either Party arising from this Agreement and no single or partial exercise of any right by either Party under this Agreement, shall in any circumstances be construed to be an implied consent or election by that Party or operate as a waiver or a novation of or otherwise affect any of its rights in terms of or arising from this Agreement or estop or preclude it from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term hereof. Failure or delay on the part of either Party in exercising any right, power or privilege under this Agreement will not constitute or be deemed to be a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

### 21.4 **No Waiver or Suspension of Rights**

No waiver, suspension or postponement by either Party of any right arising out of or in connection with this Agreement shall be of any force or effect unless in writing and signed by that Party. Any such waiver, suspension or postponement will be effective only in the specific instance and for the purpose given.

### 21.5 **Provisions Severable**

All provisions and the various clauses of this Agreement are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision or clause of this Agreement which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever, shall, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as *pro non scripto* and the remaining provisions and clauses of this Agreement shall remain of full force and effect. The Parties declare that it is their intention that this Agreement would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.

### 21.6 **Continuing Effectiveness of Certain Provisions**

The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

## 21.7 **Assignment**

21.8 Neither this Agreement nor any part, share or interest herein nor any rights or obligations hereunder may be ceded, delegated or assigned by the Purchaser without the prior signed written consent of Iziko.

21.9 Iziko may assign this Agreement, or any of its rights under it, or by a cession and delegation transfer the benefit and the burden of this Agreement or of any of its rights and obligations under it, to any of its Affiliates, provided that –

21.9.1 the Affiliate agrees to be bound by the terms of this Agreement; and

21.9.2 the liability of the Affiliate under this Agreement will continue to be subject to the same limitations, exceptions and exclusions under this Agreement and such liability shall not be increased by reason of the novation or assignment.

## 21.10 **Exclusion of Electronic Signature**

The reference in clauses 21.2, 21.4 and 21.7 to writing signed by a Party shall, notwithstanding anything to the contrary in this Agreement, be read and construed as excluding any form of electronic signature.

## 22 **COSTS**

Except as otherwise specifically provided herein, each Party will bear and pay its own legal costs and expenses of and incidental to the negotiation, drafting, preparation and implementation of this Agreement.

## 23 **SIGNATURE**

23.1 This Agreement is signed by the Parties on the dates and at the places indicated below.

23.2 This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as at the date of signature of the Party last signing one of the counterparts.

23.3 The persons signing this Agreement in a representative capacity warrant their authority to do so.

23.4 The Parties record that it is not required for this Agreement to be valid and enforceable that a Party shall initial the pages of this Agreement and/or have its signature of this Agreement verified by a witness.

SIGNED at ..... on ..... 2020

For and on behalf of  
**IZIKO MUSEUMS OF SOUTH AFRICA**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of Signatory

\_\_\_\_\_  
Designation of Signatory

SIGNED at ..... on ..... 2020

For and on behalf of  
**THE PURCHASER**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of Signatory

\_\_\_\_\_  
Designation of Signatory

## Annexure A

### Definitions, Interpretation and General Provisions

- 1 In this Agreement, unless the context indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings –
- 1.1 "**Adverse Consequences**" means all adverse consequences of whatever description including, but not limited to, all actions, applications, suits, proceedings, hearings, investigations, charges, complaints, claims, demands, interdicts, judgements, orders, decrees, directives, rulings, damages, dues, penalties, fines, costs, reasonable amounts paid in settlement, liabilities, Environmental Liabilities, obligations, tax, liens, losses, compensation (including compensation paid or payable to any employee), expenses and fees, including reasonable fees and expenses of attorneys, counsel, accountants, consultants and experts and including for the avoidance of any doubt personal injury/death of any individual as result of the Purchaser's actions or omissions;
- 1.2 "**Affiliates**" means in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company;
- 1.3 "**AFSA**" means the Arbitration Foundation of Southern Africa;
- 1.4 "**Agreement**" means the agreement contained in this document, including all annexures (if any) hereto;
- 1.5 "**Alternative Berth**" means an alternative berth at the Port where the Selected Heritage Objects can be lawfully removed, and the Vessel subsequently stabilised for whatsoever safe use the Purchaser may have for the Vessel;
- 1.6 "**Applicable Law**" means all laws, regulations, directives, statutes, subordinate legislation, common law and civil codes of any jurisdiction, all judgments, orders, notices, instructions, decisions and awards of any court or competent authority or tribunal, all codes of practice having force of law, statutory guidance, regulatory policy or guidance and industry codes of practice;
- 1.7 "**Associated Parties**" means Affiliates, officers, employees, shareholders, representatives or agents of either Party;
- 1.8 "**B-BBEE**" means broad-based black economic empowerment as defined in section 1 of the B-BBEE Act;
- 1.9 "**B-BBEE Act**" means the Black Economic Empowerment Act, No 53 of 2003, as amended and any regulations and codes of good practice published thereunder from time to time;
- 1.10 "**Companies Act**" means the Companies Act, No 71 of 2008;
- 1.11 "**Conditions Precedent**" means the suspensive conditions set out in clause 4 of the Agreement;
- 1.12 "**Current Berth**" means the berth in the Marina Basin where the Vessel is berthed at the Signature Date in terms of the V&A Berthing Agreement;
- 1.13 "**Corrupt Act**" means to offer, give or agree to offer or give (either by itself or in agreement with others) any payment, gift or other advantage with respect to any matters which are the subject of this Agreement which –
- 1.13.1 would violate Applicable Law including but not limited to the Corrupt Act Acts;

- 1.13.2 is intended to, or does, influence or reward any person for acting in breach of an expectation of good faith, impartiality or trust, or which it would otherwise be improper for the recipient to accept;
- 1.13.3 is made to or for a public official with the intention of influencing them and obtaining or retaining an advantage in the conduct of business; or
- 1.13.4 a reasonable person would otherwise consider to be unethical, illegal or improper;
- 1.14 "**Corrupt Act Acts**" means the Prevention of Organised Crime Act, No 121 of 1998 and the Prevention and Combating of Corrupt Activities Act, No 12 of 2004, and any other acts contemplated therein;
- 1.15 "**Delivery Date**" means the 1<sup>st</sup> business day after the day on which the last of the Conditions Precedent are fulfilled or waived;
- 1.16 "**Environment**" means the surroundings within which humans exist and that are made up of the land, water and atmosphere of the earth, all forms of life, ecological systems; and the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and well-being;
- 1.17 "**Environmental Law**" means –
- 1.17.1 common law duties and rules, national, provincial and municipal legislation (including regulations and other subsidiary legislation); and self-executing provisions of international agreements approved by Parliament, that are concerned with the protection or rehabilitation of the Environment, the use of natural resources (including land), and the maintenance of an Environment conducive to human health and well-being;
- 1.17.2 directives, orders or other instructions lawfully given by a Governmental Body exercising powers under any provision referred to in this paragraph 1.17, and;
- 1.17.3 licences, authorisations and exemptions issued under any provision referred to in this paragraph 1.17;
- 1.17.4 "**Environmental Liability**" means –
- 1.17.4.1 any liability arising under any Environmental Law, Maritime and Merchant Shipping Laws, TNPA requirements (including the TNPA Scrapping Rules) and/or any Health and Safety Law; or;
- 1.17.4.2 any liability of any nature whatsoever incurred as a result of direct or indirect breach of any Consent required in terms of any Environmental Law, Maritime and Merchant Shipping Laws and/or any Health and Safety Law; or
- 1.17.4.3 any and all liability, liens, claims, demands, damages, expenses, fees, costs, fines, penalties, suits, proceedings, actions and causes of action (including without limitation all attorneys' fees and expenses) arising out of or relating to, directly or indirectly, the release or threatened releases of any Regulated Material into the Environment and any liability otherwise involving any Regulated Material, damage or harm to the Environment, site assessment or characterisation, remediation (including operation and maintenance), treatment, containment, mitigation, removal, monitoring, assessing, resource damage, harm to a resource, enforcement proceedings, directives, other remediation or administrative orders, citizen suits, property damage, economic loss, personal injury or death of any employee or other individual, occupational or other exposure or actions whether claimed or instituted by one or more private parties (including the Parties hereto) or Governmental Bodies, in either case (whether under paragraph 1.17.4.1 or this paragraph 1.17.4.3) including any fees and expenses of attorneys, counsel, accountants, consultants, and experts, whether based on any Environmental Law or any Health and Safety Law which became or becomes effective before, on or

after the Signature Date, and whether arising out of or related to on-site or off-site matters;

- 1.18 "**Environmental Management Programme**" means the Purchaser's Environmental Management Programme or EMP contemplated in paragraph [3.3] of the RFQ;
- 1.19 "**Excluded Heritage Objects**" means the following-
- 1.19.1 pounder gun;
  - 1.19.2 radar tower;
  - 1.19.3 springbok emblems;
  - 1.19.4 weather vane;
  - 1.19.5 seals on main mast;
  - 1.19.6 brass flute on funnel; and
  - 1.19.7 brass horn on funnel;
- 1.20 "**Governmental Body**" means any country, any national body, any state, province, municipality, or subdivision of any of the foregoing, any Governmental department, or any agency, court, entity, commission, board, ministry, bureau, locality or authority of any of the foregoing, or any quasi-Governmental or private body exercising any regulatory, taxing, importing, exporting, or other Governmental or quasi-Governmental function;
- 1.21 "**Health and Safety Laws**" means all laws regulating health and safety in the workplace, including but not limited to, laws governing compensation for injuries sustained and illnesses suffered in the course and scope of an employee's employment;
- 1.22 "**Health and Safety Plan**" means the Purchaser's health and safety plan contemplated in paragraph [3.4] the RFQ;
- 1.23 "**Heritage Objects**" means the Excluded Heritage Objects as well as all other heritage objects on the Vessel that Iziko is required to retain in line with the NHRA and the requirements of SAHRA;
- 1.24 "**Heritage Objects Removal Fee**" means the fee payable by Iziko to the Purchaser pursuant to the quote contemplated in paragraph [4.2] of the RFQ;
- 1.25 "**Heritage Objects Transport Fee**" means the fee payable by Iziko to the Purchaser pursuant to the quote contemplated in paragraph [4.3] of the RFQ;
- 1.26 "**Holding Company**" means, in relation to a company or corporation, any other company or corporation in respect of which it is a Subsidiary;
- 1.27 "**Iziko**" means Iziko Museums of South Africa being an agency of the South African National Department of Sport, Arts and Culture and a National Public Entity in terms of Schedule 3 Part A of the PFMA;
- 1.28 "**Iziko Designated Account**" means the bank account nominated by Iziko, the details of which are set out below, or such other account as Iziko may designate in writing on 5 business days' notice to the Purchaser –

<b>Name of Account:</b>	[•]
<b>Bank:</b>	[•]
<b>Branch:</b>	[•]
<b>Branch Code:</b>	[•]
<b>Account Number:</b>	[•]

- 1.29 "**Maritime and Merchant Shipping Laws**" means the Merchant Shipping Act, No 57 of 1951, its Regulations, and any other Applicable Law regulating merchant shipping and maritime matters generally;
- 1.30 "**NHRA**" means the National Heritage Resources Act, No 25 of 1999;
- 1.31 "**Parties**" means the parties to this Agreement;
- 1.32 "**PFMA**" means the Public Finance Management Act, No 1 of 1999;
- 1.33 "**Port**" means the Port of Cape Town;
- 1.34 "**Port Rules**" means the rules published in terms of the National Ports Act, No 12 of 2005 in Government Notice 255 in Government Gazette 31986;
- 1.35 "**Prime Rate**" means the publicly quoted basic rate of interest, compounded monthly in arrears and calculated on a 365 day year irrespective of whether or not the year is a leap year, from time to time published by Iziko's bankers as being its prime overdraft rate, as certified by any representative of that bank whose appointment and designation it will not be necessary to prove;
- 1.36 "**Purchaser**" means the Purchaser as defined in the Schedule;
- 1.37 "**Purchaser Warranties**" means the warranties contemplated in clause 9.1 of the Agreement;
- 1.38 "**Purchase Consideration**" means the amount payable by the Purchaser to Iziko for the Vessel in terms of this Agreement;
- 1.39 "**Purchaser Designated Account**" means the South African bank account nominated by the Purchaser, the details of which are set out in the Schedule, or such other South African bank account as the Purchaser may designate in writing on 5 business days' notice to Iziko;
- 1.40 "**Purchaser Insurance**" means the insurance the Purchaser needs to procure as contemplated in paragraph [3.2] of the RFQ;
- 1.41 "**Regulated Material**" means –
- 1.41.1 any material, substance, waste (including any solid, liquid, semisolid or gas or gaseous mixture), product, by-product, chemical, pesticide, fungicide, rodenticide, pollutant, hazardous material, hazardous substance, hazardous waste, solid waste, or non-hazardous waste as the foregoing terms are considered or defined as harmful, under, or regulated by, any applicable Environmental Law or Health and Safety Law, or known or suspected to pose a threat to health, safety or the Environment;
- 1.41.2 any hydrocarbons (including petroleum, crude oil or any fraction thereof);
- 1.41.3 any asbestos, asbestos containing material, and presumed asbestos containing material;
- 1.41.4 any radioactive substance;

- 1.41.5 any polychlorinated biphenyl (PCB); and
- 1.41.6 any methylene chloride, trichloroethylene, 1,2-trans-dichloroethylene, dioxins or dibenzofurans;
- 1.42 "**Removal Consents**" has the meaning given to such term in clause 4.1.1;
- 1.43 "**Removal Plan**" means the Removal Plan of the Purchaser contemplated in paragraph [3.1] of the RFQ;
- 1.44 "**RFQ**" means the document titled "*Request for Quote (RFQ) for Sale and Removal of the SAS Somerset*" submitted by Iziko for purposes of identifying a suitable purchaser of the Vessel, attached hereto as Annexure C;
- 1.45 "**SAHRA**" means the South African Heritage Resources Agency;
- 1.46 "**Sale**" means the sale of the Vessel contemplated in this Agreement;
- 1.47 "**SAMSA**" means the South African Maritime Safety Authority as established by section 2(1) of the South African Maritime Safety Authority Act, No 5 of 1998;
- 1.48 "**Schedule**" means the schedule of information attached hereto as Annexure B;
- 1.49 "**Selected Transporter**" means a service provider that will safely transport the Excluded Heritage Objects as contemplated in paragraph [3.5] and [4.3] of the RFQ;
- 1.50 "**Signature Date**" means the date of signature of this Agreement by the Party last signing;
- 1.51 "**South Africa**" means the Republic of South Africa;
- 1.52 "**Subsidiary**" means a subsidiary as defined in the Companies Act and shall include any person who would, but for not being a company under the Companies Act, qualify as a subsidiary as defined in the Companies Act;
- 1.53 "**TNPA**" means the Transnet National Ports Authority, a division of Transnet;
- 1.54 "**TNPA Scrapping Rules**" means the TNPA Standard Requirements for Cutting or Scrapping of Vessels;
- 1.55 "**Transnet**" means Transnet SOC Limited;
- 1.56 "**Treasury**" means the National Treasury as defined in the PFMA;
- 1.57 "**VAT**" means value-added tax payable in terms of the Value-Added Tax Act, No 89 of 1991, as amended;
- 1.58 "**Vessel**" means the Iziko Bar-class Boom Defence Vessel (inclusive of all parts of which the Vessel comprises and/or all equipment currently contained on the Vessel) known as the SAS Somerset;
- 1.59 "**V&A Berthing Agreement**" means the agreement titled "Berthing Agreement" entered into between Iziko and V and A Waterfront Holdings Proprietary Limited in terms of which the Vessel is berthed at the Current Berth;
- 1.60 "**V&A Waterfront**" means the Victoria and Alfred Waterfront in Cape Town; and
- 1.61 "**V&A Waterfront Health and Safety Specification**" means the health and safety specification document contemplated in paragraph [3.4.2] of the RFQ.

- 2.1 clause headings and the heading of the Agreement are for convenience only and are not to be used in its interpretation;
- 2.2 an expression which denotes —
  - 2.2.1 any gender includes the other genders;
  - 2.2.2 a natural person includes a juristic person and *vice versa*;
  - 2.2.3 the singular includes the plural and *vice versa*;
  - 2.2.4 a Party includes a reference to that Party's successors in title and assigns allowed at law; and
  - 2.2.5 a reference to a consecutive series of two or more clauses is deemed to be inclusive of both the first and last mentioned clauses.
- 2.3 Any reference in this Agreement to —
  - 2.3.1 "**business hours**" shall be construed as being the hours between 08h30 and 17h00 on any business day. Any reference to time shall be based upon South African Standard Time;
  - 2.3.2 "**days**" shall be construed as calendar days unless qualified by the word "business", in which instance a "business day" will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of South Africa from time to time;
  - 2.3.3 "**laws**" means all constitutions; statutes; regulations; by-laws; codes; ordinances; decrees; rules; judicial, arbitral, administrative, ministerial, departmental or regulatory judgements, orders, decisions, rulings, or awards; policies; voluntary restraints; guidelines; directives; compliance notices; abatement notices; agreements with, requirements of, or instructions by any Governmental Body; and the common law, and "**law**" shall have a similar meaning; and
  - 2.3.4 "**person**" means any person, company, close corporation, trust, partnership or other entity whether or not having separate legal personality.
- 2.4 The words "**include**" and "**including**" mean "include without limitation" and "including without limitation". The use of the words "**include**" and "**including**" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.
- 2.5 Any substantive provision, conferring rights or imposing obligations on a Party and appearing in any of the definitions in this paragraph 2 of the Agreement or elsewhere in this Agreement, shall be given effect to as if it were a substantive provision in the body of the Agreement.
- 2.6 Words and expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout this Agreement.
- 2.7 Unless otherwise provided, defined terms appearing in this Agreement in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning.
- 2.8 A reference to any statutory enactment shall be construed as a reference to that enactment as at the Signature Date and as amended or substituted from time to time.
- 2.9 Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a business day, the next succeeding business day.

- 2.10 Except to the extent that any provision of this Agreement expressly provides otherwise, if the only day or the last day for the exercise of any right, performance of any obligation or taking (or procuring the taking of) any action in terms of any provision of this Agreement falls on a day which is not a business day, such right shall be capable of being exercised, or such obligation performed or action taken on the immediately succeeding business day.
- 2.11 The rule of construction that this Agreement shall be interpreted against the Party responsible for the drafting of this Agreement, shall not apply.
- 2.12 No provision of this Agreement shall (unless otherwise stipulated) constitute a stipulation for the benefit of any person (*stipulatio alteri*) who is not a Party to this Agreement.
- 2.13 The use of any expression in this Agreement covering a process available under South African law, such as winding-up, shall, if either of the Parties to this Agreement is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such other jurisdiction.
- 2.14 Whenever any person is required to act "*as an expert and not as an arbitrator*" in terms of this Agreement, then –
- 2.14.1 the determination of the expert shall (in the absence of manifest error) be final and binding;
- 2.14.2 subject to any express provision to the contrary, the expert shall determine the liability for his or its charges, which shall be paid accordingly;
- 2.15 the expert shall be entitled to determine such methods and processes as he or it may, in his or its sole discretion, deem appropriate in the circumstances provided that the expert may not adopt any process which is manifestly biased, unfair or unreasonable;
- 2.15.1 the expert shall consult with the relevant Parties (provided that the extent of the expert's consultation shall be in his or its sole discretion) prior to rendering a determination; and
- 2.15.2 having regard to the sensitivity of any confidential information, the expert shall be entitled to take advice from any person considered by him or it to have expert knowledge with reference to the matter in question.
- 2.16 Any reference in this Agreement to "**this Agreement**" or to any other agreement or document shall be construed as a reference to this Agreement or, as the case may be, such other agreement or document, as amended, varied, novated or supplemented from time to time.
- 2.17 In this Agreement the words "**clause**" or "**clauses**" and "**annexure**" or "**annexures**" refer to clauses of and annexures to this Agreement.

## Annexure B

## Schedule of Information

<b>DEFINED TERMS</b>	
<b>Purchaser</b> (Annexure A paragraph 1.42)	[●] Proprietary Limited, registration number [●], a limited liability public company duly incorporated in South Africa
Purchaser Designated Account ( Annexure A paragraph 1.39)	<b>Name of Account</b> [●]
	<b>Bank:</b> [●]
	<b>Branch:</b> [●]
	<b>Branch Code:</b> [●]
	<b>Account Number:</b> [●]
<b>NOTICES</b>	
<b>Purchaser Physical Address</b> (clause 17.1 of the Agreement)	[●]
<b>Purchaser Email Address</b> (clause 17.1 of the Agreement)	[●]
<b>Purchaser Marked for the attention of</b> (clause 17.1 of the Agreement)	[●]

**Annexure C**

**RFQ**